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Collaboration with the enemy under the criminal law of Ukraine and other European states: comparative research

Співпраця з ворогом за кримінальним законодавством України та інших європейських держав: порівняльне дослідження

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Written by:
Roman Movchan[1]
https://orcid.org/0000-0003-2074-8895
Serhii Klymenko[2]
https://orcid.org/0009-0004-2629-2133
Oleksandra Hrynkiv[3]
https://orcid.org/0000-0003-1002-7955
Iryna Sukhachova[4]
https://orcid.org/0000-0002-5844-2229
Oleksandr Makhlai[5]
https://orcid.org/0000-0002-8201-3387

Abstract

The paper provides criminal law interpretation of collaboration offenses in Ukraine and several other European countries. The study critically elaborates on the overlapping provisions in Ukraine's Criminal Code, specifically Articles 111 (treason), 111-1 (collaboration activity), and 111-2 (aiding the aggressor state), which create inconsistencies and hinder effective prosecution in the area of national security.

Using comparative, historical, and systemic analytical methods, the authors highlight the challenges in distinguishing between collaboration, treason, and other related crimes under Ukrainian law. The study contrasts these issues with the clearer frameworks established in some European countries like Lithuania and Estonia, where collaboration and treason are distinctly defined.

Анотація

У статті здійснено кримінально-правове трактування злочинів колабораціонізму в Україні та кількох інших європейських країнах. У дослідженні критично розглядаються положення Кримінального кодексу України, які дублюють один одного, а саме статті 111 (державна зрада), 111-1 (колабораціонізм) та 111-2 (пособництво державі-агресору), які створюють суперечності та перешкоджають ефективному переслідуванню у сфері злочинів. національна безпека.

Використовуючи порівняльний, історичний та системний аналітичні методи, автори висвітлюють проблеми, пов'язані з розмежуванням колабораціонізму, державної зради та інших пов'язаних злочинів згідно з українським законодавством. Дослідження порівнює ці проблеми з більш чіткими рамками,

[1] Doctor of Legal Sciences, Professor, Professor of the Department of Constitutional, International and Criminal Law at Vasyl' Stus Donetsk National University, Ukraine. WoS Researcher ID: AAK-1080-2021 - Email: romanmov1984@gmail.com
[2] Candidate of Legal Sciences, Associate Professor, Head of the Department of Criminal Law and Criminology at the National Academy of Security Service of Ukraine, Ukraine. WoS Researcher ID: MBH-0851-2025 - Email: serklymenko@gmail.com
[3] Doctor of Legal Sciences, State Border Guard Service of Ukraine, Ukraine. WoS Researcher ID: IQV-8954-2023 - Email: alexandra.pravo@gmail.com
[4] Candidate of Legal Sciences, National Academy of Internal Affairs, Ukraine. WoS Researcher ID: HZZ-3404-2023 Email: Irinagolos05@gmail.com
[5] Candidate of Psychological Sciences, Associate Professor, Head of the Department of Special Disciplines at Bohdan Khmelnytskyi National Academy of the State Border Service of Ukraine, Ukraine. WoS Researcher ID: MAI-4219-2025 - Email: al_m@ukr.net

The authors propose reforms to Ukrainian criminal legislation, including removing Article 111-2 and clarifying the distinctions between treason and collaboration. The paper advocates for adopting specific provisions for less severe offenses, similar to European models, to ensure proportionality and coherence in criminal liability. The study highlights an important aspect observed in many European countries, where lawmakers distinguish a separate provision for "military treason" (serving in the armed forces of an enemy state) apart from general treason offenses. It has been established the sanctions for such actions are particularly severe. This underscores the urgency of removing any elements of such conduct from the privileged provision in Article 111-1 of the Criminal Code of Ukraine, titled "Collaborative Activity."

Keywords: criminal liability, treason, assistance to aggressor state, collaborative activity, national security, martial law.

встановленими в деяких європейських країнах, таких як Литва та Естонія, де колабораціонізм і державна зрада чітко визначені.
Автори пропонують реформи українського кримінального законодавства, зокрема вилучення статті 111-2 КК України, та уточнення відмінностей між державною зрадою та колабораціонізмом. Документ виступає за прийняття спеціальних положень щодо менш суворих правопорушень, подібних до європейських моделей, для забезпечення пропорційності та узгодженості кримінальної відповідальності.
Дослідження підкреслює важливий аспект, який спостерігається в багатьох європейських країнах, де законодавці виділяють окреме положення про «військову зраду» (службу в збройних силах ворожої держави) окремо від загальних злочинів державної зради. Встановлено, що санкції за такі дії є особливо суворими. Це підкреслює необхідність виключення будь-яких елементів такої поведінки з привілейованого положення статті 111-1 Кримінального кодексу України під назвою «Колабораційна діяльність».

Ключові слова: кримінальна відповідальність, державна зрада, сприяння державі-агресору, колабораціонізм, національна безпека, воєнний стан.

Introduction

Within the academic sciences of criminal law and criminology, the topic ofcollaboration as a specific offense refers to acts of cooperation with the enemy or occupying force, particularly during the period of war or occupation, in ways that harm one's own country or its citizens. It involves assisting or aligning with the adversary, often for personal gain, survival, or ideological alignment and is typically considered treasonous or subversive in its nature.

Historically, the concept of collaborative activities has been associated with actions that undermine national sovereignty and security. In the context of Ukraine, the ongoing conflict with Russia since 2014, and particularly the full-scale invasion in 2022, has brought the issue of collaboration into sharp focus. The war has exposed significant gaps and ambiguities in Ukraine's legal framework, particularly concerning the prosecution of individuals engaged in acts of collaboration, such as supporting occupation authorities, disseminating enemy propaganda, or aiding military operations of the aggressor state. This ongoing conflict has underscored the critical importance of a clear, comprehensive, and enforceable legal definition of collaboration that aligns with best European practices while addressing Ukraine's unique security challenges. The inclusion of collaboration offenses in Article 111-1 of the Criminal Code of Ukraine represents an important step forward.

While regulation of collaborationism is primarily governed by the national criminal laws of individual countries, international law also prohibits collaboration in the context of armed conflicts. Notably, the 1907 Hague Convention (IV) on the Laws and Customs of War on Land forbids collaboration with an enemy, including actions such as aiding the enemy, cooperating in hostilities, or providing other forms of assistance. Under international humanitarian law, depending on the nature, extent, and consequences of such acts, collaboration with an enemy can be prosecuted as a war crime or a crime against humanity (International Committee of the Red Cross, 1907).

However, the phenomenon of collaboration can not be examined through "black and white" lenses only. As a matter of fact, some individuals might collaborate under duress, coercion, or in an effort to mitigate harm caused to their communities. Thus, countries that are confronted with ongoing war conflicts on their territories often struggle with distinguishing between necessary cooperation and treacherous collaboration.

Understanding collaboration as a serious crime often requires a nuanced consideration of a combination of motives, circumstances, and the degree of harm caused to the national security or public welfare.

The academic aim of this paper is to examine approaches in the criminal law of Ukraine and other European countries to imposing liability for various forms of collaboration with the enemy, to compare such approaches, to identify their advantages and disadvantages, and, based on this, to develop proposals, which national legislators can use in the future to improve relevant criminal law provisions. As an important research tool, the method of legal comparison will be used extensively throughout this research paper.

Literature review

The issue of collaboration with the enemy remains a critical topic in modern criminal law scholarship, particularly in the context of national security, international law, and transitional justice. Ukrainian and other European scholars have researched this complex legal issue at length.

In particular, Ukrainian commentator Ye. Pysmenskyy writes that social and political changes in Ukraine, which took place in 2014 and are still underway require rejection of the established negative trends in the implementation of state policies in all areas, including the area of criminal law regulation. Due to a number of various circumstances, this area of public regulation remains particularly sensitive. "The urgent need for reforming it requires, among other things, moderation and caution in the usage of various criminal policy methods, careful and thorough analysis of the criminalization and decriminalization factors, and also compliance with specific conditions" (Pysmenskyy, 2016).

In her turn, N. Melnychenko underlines the fact that collaboration is, in the vast majority of cases, carried out on the sovereign territory under occupation by another state. According to Art. 42 of the Regulations on the Laws and Customs of War on Land of the Convention (IV) respecting the Laws and Customs of War on Land of 1907, a territory is recognized as being occupied if it is, in fact, under the authority (control) of the enemy army. The occupation regime extends only to the territory where such authority is established and is capable of performing its functions. More broadly, the rules for the behavior of the aggressor state and the interaction of the civilian population with the occupier in the occupied territory are regulated by the provisions of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Melnychenko, 2023).

According to some Ukrainian researchers, collaborationism, when described broadly as a criminal, constitutes a special form of treason, which consists of military, political, economic, administrative, cultural, informational, and media cooperation of a citizen of Ukraine with the aggressor state or its representatives, illegal armed formations created or supported by it (Orlov, 2022).

The works by the above-mentioned, as well as several other legal commentators on the topic of criminal liability for collaboration activities, will be discussed in the following text as well. At the same time, during the research phase of working on this paper we have observed that non-Ukrainian commentators, both members of European and American academic communities, have scarcely researched the criminal law phenomenon of collaboration with the enemy. This can be probably explained by the fact that since World War II, there have been no wars and related occupations on the scale comparable to the ongoing Russo-Ukrainian war.

However, Western researchers have paid much more attention to collaboration in other historical conflicts, such as the Vichy regime's collaboration with the enemy in France during World War II, and also treason legislation in different countries. Among such researchers, we can name G. Fletcher (1982), R. Dudai (2021), D. Hill and D. Whistler (2022) and some others.

Methodology

In the course of working on this paper, the following research methods have been used.

1. Comparative Method. It was extensively used to analyze and contrast the legal frameworks addressing collaboration offenses in Ukraine and various European countries. This method helped to identify differences and similarities to propose legislative improvements. For the record, legal comparison method is actively used to research various legal principles and legal provisions in today's globalized environment. The comparative method strengthened the study's recommendations by grounding them in proven international experiences, which enhances their practical applicability and credibility.
2. Historical Method. It examined the evolution of legal approaches to collaboration in Ukraine and other states, thus highlighting how historical context influences contemporary legislation. The historical method provided the authors with a foundation for understanding why legal ambiguities exist, reinforcing the urgency for targeted reforms.
3. Systematic Analytical Method. This method was utilized to evaluate the coherence and effectiveness of Ukrainian Criminal Code provisions, specifically Articles 111, 111-1, and 111-2, in addressing collaboration offenses. This method helped to identify overlaps, inconsistencies, and gaps within the legislative framework. The systematic analytical method ensured that the study's recommendations are not only grounded in comparative insights but are also tailored to improve legal clarity and functionality within Ukraine's unique context.

The chosen combination of the comparative, historical, and systematic analytical methods significantly enhances the depth, breadth, and rigor of the study by providing a multifaceted approach to understanding collaboration offenses under Ukrainian and European criminal law. This holistic approach, supported by the authors, strengthens the study's argument for legislative reforms by linking theoretical analysis with practical examples. It also dmonstrates the complexity of prosecuting collaboration offenses in hybrid and asymmetric conflicts, a critical issue in Ukraine's ongoing defense against aggression; balances the academic, pragmatic, and normative aspects of legal scholarship, making the findings relevant both for immediate policy-making and future research. Finally, the integration of these methods enhances the study's ability to provide actionable, well-founded, and contextually appropriate solutions for reforming Ukrainian criminal law on collaboration offenses.

Results and discussion

The occupation of part of the territory of Ukraine as a result of the invasion of the troops of the aggressor state has created a new social, economic and ideological situation in the occupied territories. In order to establish the governance over the occupied territories, new authorities are being created, which are not subject to Ukrainian legislation. Citizens of Ukraine who reside in the occupied territory partially work in authorities, participate in peaceful assemblies, public actions of the occupation administrations. In order to legally prosecute such citizens while working in the bodies of the occupation authorities, criminal liability for collaboration activities and some other types of crimes has been introduced into the Criminal Code of Ukraine (Pletnov & Kovalenko, 2023).

Today, legal regulation of the phenomenon of collaborationism is largely governed by the criminal laws of a particular country. However, international law also recognizes the inadmissibility of collaboration in the context of armed conflicts. Legal scholarship distinguishes among several common types of collaboration:

- Political collaboration – supporting or participating in the governance imposed by an enemy force, such as serving in administrative roles under occupation;
- Military collaboration – providing intelligence, aiding in military operations, or directly fighting alongside the enemy;
- Economic collaboration – supplying goods, services, or resources to the occupying power, especially if it strengthens their war efforts;
- Cultural collaboration – promoting the occupying power's ideology, culture, or propaganda (Pysmenskyy & Movchan, 2022).

Based on the specific legal frameworks in various jurisdictions, collaboration may be prosecuted as treason, espionage, or similar offenses against the national security.

A. Collaboration Activity as a Crime under Ukrainian Law: Theory and Adjudication

All of the above-mentioned forms of collaboration activities are currently addressed in Article 111-1, "Collaboration activity" of the Criminal Code of Ukraine, which was adopted on March 3, 2022, right after the start of the full-scale invasion by the Russian Federation. In particular, part 1 of this provision recognizes as a crime: public denial by a citizen of Ukraine of the armed aggression against Ukraine, establishment and confirmation of the temporary occupation of a part of the territory of Ukraine, or public calls by a citizen of Ukraine to support decisions and/or actions of the aggressor state, armed formations and/or occupation administration of the aggressor state, to cooperate with the aggressor state, armed formations and/or occupation administration of the aggressor state, to non-recognition of the extension of state sovereignty of Ukraine to the temporarily occupied territories of Ukraine (Verkhovna Rada of Ukraine, 2001). In comparison, other countries, which have not previously faced collaboration-related challenges have not included anti-collaboration provisions in their national criminal laws.

Historically, in Ukraine, the concept of "collaborationism" as a legal, political, and criminal phenomenon was first widely introduced in 2014 following Russia's annexation of Crimea and its establishment of effective control over parts of the Donetsk and Luhansk regions. Moreover, Russia's full-scale invasion in February 2022 further prompted Ukrainian lawmakers to criminalize "collaboration" explicitly. Today, this offense has many forms and overall contributes to the Russian war of aggression against Ukraine (Sullivan & Kamensky, 2024).

Among the first decisions adopted by the Parliament of Ukraine after the introduction of martial law was the addition to the Criminal Code of Ukraine, Art. 111-1 "Collaborative activity". Several other criminal provisions, including the offense of humanitarian aid embezzlement, have been put on the books in 2022.

When analyzing legal consequences of the above-mentioned legal decision, we believe that the recently adopted statute should be regarded as a "special" provision in relation to treason as the major offense under Art. 111 of the Criminal Code of Ukraine. Such approach fully corresponds to the social and legal nature of collaboration activities and is consistent with the results obtained by historical and legal sciences. Based on those research results, understanding of collaborationism is reduced to conscious, voluntary, and deliberate cooperation by a person with the enemy in his own interests and to the detriment of his country. Collaborative activity as a form of state treason is also evidenced by the place of the corresponding norm in the overall structure of the Criminal Code text.

In our opinion, the offense of collaborationism constitutes a privileged form of treason, thus providing for a more lenient and specific punishment compared to other acts, which constitute treason. As one Ukrainian commentator notes, such format makes it possible not only to properly differentiate criminal liability for committing state treason but also, given the delay of the legislative solution to this important issue, ensure the retroactive effect of the relevant criminal law norm in time (Pysmenskyy, 2020).

Despite all this, it should be kept in mind that the most important guarantee for the successful implementation of the corresponding idea should be the comprehensive legislative description of actions, liability for which is regulated within the "privileged" provision for collaborationism – that is, the deliberate definition of specific manifestations of state treason, which are significantly less dangerous than all others provided (directly or indirectly) by the general provision (Art. 111 of the Criminal Code of Ukraine) (Verkhovna Rada of Ukraine, 2001).

Unfortunately, even a brief analysis of the collaboration statute reveals no scientifically based approach to solving this issue. In particular, in the context of the above, the question arises: why did the legislator provide for liability in Part 7 of Art. 111-1 of the Criminal Code of Ukraine for such actions of a citizen of Ukraine as voluntarily holding a position in an illegal law enforcement agency established in the temporarily occupied territory (hereinafter – TOT) and participation in the armed formations of the aggressor state, mitigate the punishment for them? After all, we are talking about one specific form of high treason, such as siding with the enemy during an armed conflict. In Ukrainian legal literature, the latter is traditionally interpreted as providing by a citizen of Ukraine direct assistance to a state with which Ukraine is currently at war or in armed conflict, the manifestation of which, among other things, is recognized as *joining certain military, intelligence or security formations of the enemy state (police, punitive units)*. In other words, here we talk about actions directly provided for in Part 7 of the new Art. 111-1 of the Criminal Code of Ukraine (Melnyk & Khavronyuk, 2018).

As an example, the Dzerzhinsky District Court of the city of Kharkiv (Ukraine) held that during the period of time no later than June 2022, representatives of the occupying authorities in the city of Izyum (Izyum District, Kharkiv Region, Ukraine) established a subdivision of an illegal law enforcement agency, namely the so-called "Izyum Department of the People's Militia" at the Department of Internal Affairs of the Temporary Civil Administration of Kharkiv Region". Furthermore, the verdict indicates that Person-1, during the same period of time, voluntarily applied for a position at that illegal law enforcement body and was appointed to the position of criminal investigation officer. Later, during the period of time from June 25, 2022 to August 26, 2022, Person-1, while in the relevant position, performed the official duties assigned to him by the occupying power aimed at the functioning of the specified illegal so-called law enforcement body of the occupying power, namely: accepted applications and reports from citizens about the commission of domestic and property crimes, as well as conducted surveys of persons who applied with relevant applications. Considering the stated circumstances, the court found Person-1 guilty of committing a crime under Part 7 of Art. 111-1 of the Criminal Code of Ukraine (Dzerzhinsky District Court of Kharkiv, 2023).

In another criminal case, the district court also found the defendant Person-2 guilty of collaboration with the enemy. The court has established that Person-2, who previously held an official position in the local prosecutor's office of Ukraine, starting from March 2022, while being in the Bilovodsk township of the Starobilsky district of the Luhansk region and also having previously held a position, has agreed to the proposal of representatives of the occupation administration of the aggressor state, namely – the Russian Federation, and representatives of illegal armed formations of the so-called "Luhansk People's Republic", to occupy position in the unrecognized law enforcement agency "Belovodsky District Prosecutor's Office of the General Prosecutor's Office of the Luhansk People's Republic" and thus continued to work as a prosecutor (Shevchenkiv District Court of Chernivtsi, 2023).

Such cases raise a question: why should actions of such "law enforcement officers" be prosecuted based not under Part 2 of Art. 111, but under the "privileged" Part 7 of Art. 111-1 of the Criminal Code of Ukraine? Also, if this act is recognized by the Parliament as a less dangerous form of high treason (privileged offense), then we, as legal scholars, would like to know what exactly type of offenses should be considered more dangerous and punishable under Part 2 of Art. 111 of the Criminal Code of Ukraine?

Overall, Ukrainian courts have been busy adjudicating criminal cases of collaboration with the enemy and also other offenses against the national security of Ukraine.

As we have mentioned at the beginning of this paper, members of the Ukrainian Parliament did not limit themselves to adding Art. 111-1 to the Criminal Code of Ukraine. In their opinion, such a step was not enough to create a truly effective mechanism of criminal liability for various and, admittedly, multifaceted forms of cooperation with the enemy. This is the reason why on April 14, 2022, Ukrainian parliamentarians adopted (taking into account the proposals of the President of Ukraine) Law of Ukraine No 2198–IX "On amendments to the Criminal and Criminal Procedure Codes of Ukraine regarding the improvement of liability for collaborative activities and the application of preventive measures for committing crimes against the foundations of national and public security" (Law of Ukraine No 2198–IX, 2022). It has led to the emergence of yet another criminal law provision in the system of Section I of the Special Part of the Criminal Code of Ukraine aimed at regulating the liability of persons who committed acts to harm Ukraine – Art. 111-2 "Aiding the aggressor state."

However, starting with the legislative introduction of Art. 111-2 of the Criminal Code of Ukraine in its current version, the issue of distinguishing this norm from the provision of Art. 111 of the Criminal Code of Ukraine on treason has remained quite a challenge (Dudorov & Movchan, 2022).

In particular, it is presumed that such abstractly worded acts as "the implementation or support of the decisions and/or actions of the aggressor state committed with the aim of harming Ukraine" in the text of this criminal law provision, in fact, may well be considered high treason in the form of the same unspecified comprehensive encroachment, such as "providing a foreign state, a foreign organization or their representatives with assistance in carrying out subversive activities against Ukraine". The latter can also be recognized as virtually any act committed by a citizen of Ukraine on the grounds mentioned in Art. 111 of the Criminal Code of Ukraine, which harms the sovereignty, territorial integrity and inviolability, defense capability, state, economic or informational security of Ukraine.

Such approach has led to the fact that acts, which ate virtually identical in their meaning, can be recognized as:

- Implementation or support of the decisions of the aggressor state under Art. 111-2 of the Criminal Code of Ukraine, which is punishable by imprisonment for a term of "only" 10 to 12 years;
- Providing assistance to a foreign state in conducting subversive activities against Ukraine, which, under martial law, entails a much more severe punishment of imprisonment for a term of 15 years or life imprisonment with the confiscation of property.

As an example to the point, the Khortytskyi District Court of Zaporizhzhia has established that Person-3, while acting deliberately in the city of Tokmak, Polohi District, Zaporizhzhia Region, have assisted the aggressor state (the form of assistance) in carrying out subversive activities against Ukraine, supported the decisions and actions of the aggressor state in the implementation of educational standards of the Russian Federation at the TOT of Tokmak, Polohi District, Zaporizhzia Region, and also helped the occupying administration installed by the aggressor state to organize educational process and implement educational system based on the standards of the Russian Federation in educational institutions for children and young adults (Khortytsky District Court of Zaporizhzhia, 2023).

We want to raise the following question: why such "assistance in carrying out subversive activities against Ukraine," which, we would like to remind you once again, is directly indicated in Art. 111 of the Criminal Code of Ukraine, as one of the forms of high treason, has been recognized not as high treason but rather as assistance to the aggressor state? Why exactly the defendant here was not prosecuted for educational collaborationism under part 3 of Art. 111-1 of the Criminal Code of Ukraine?

We will now turn to the decision by the Vinnytsia City Court of the Vinnytsia Region, which has found Person-5 guilty under Art. 111 of the Criminal Code of Ukraine for voluntarily taking position of assistant prosecutor in the so-called "Prosecutor's Office of the Stanichno-Luhansk District of the Prosecutor General's Office of the LPR" (here the question arises again about part 7 of Art. 111-1 of the Criminal Code of Ukraine) and on April 13, 2022 held a meeting together with the so-called heads of educational institutions of the Stanichno-Luhansk district (Vinnytsia City Court of Vinnytsia Region, 2023).

In this regard, the following question can be raised once again: why the actions of a police officer who expelled Ukrainian citizens from Tokmak have been recognized as aiding the aggressor state, while the actions of the so-called prosecutor, who held a meeting with the so-called heads of educational institutions in the Stanychno-Luhansk district, were considered treason?

We believe that such situation, where virtually any behavior committed with the intent to harm Ukraine can be prosecuted under two (this is even without considering the Criminal Code provision on collaboration) separate provisions with significantly different sanctions, is unacceptable and, therefore, should be corrected as soon as possible. At the same time, one can only imagine how critical the situation would become if the original intentions of parliamentarians to refer to such purely abstract actions as "other voluntary interaction" and "any other cooperation" in Art. 111-2 of the Criminal Code were to be implemented.

In our opinion, when elaborating on ways to improve national criminal law in the discussed area, the Ukrainian Parliament should choose one of the following options:

1) Either to provide for only specific (not abstractly worded) types of the most dangerous, in their opinion, acts committed with the aim of harming Ukraine (for example, serving in the military formations of the aggressor state, espionage, and, if necessary, some others) in Art. 111 of the Criminal Code of Ukraine, while excluding the reference to the all-inclusive general "provision of assistance to a foreign state or their representatives, foreign organization or their representatives in conducting subversive activities against Ukraine" (the same applies to 'defection to the enemy') from it, all manifestations of which should be recognized as the less dangerous offense "aiding the aggressor state" and thus should be prosecuted under Art. 111-2 of the Criminal Code of Ukraine;
2) Or, on the contrary (as was done in Art. 111-1 of the Criminal Code of Ukraine), describe, within Art. 111-2 of the Criminal Code of Ukraine, on an exhaustive range of specific actions committed with the aim of harming Ukraine, which, according to the legislator, are less dangerous and should be recognized as aiding and abetting the aggressor state. At the same time, under the condition of the

implementation of such initiative, the general and unspecified "implementation or support of the decisions and/or actions of the aggressor state" should be excluded from this norm, while its manifestations should be recognized as treason in the form of "providing assistance to a foreign state, a foreign organization or their representatives in carrying out subversive activities against Ukraine" (or "switching to the side of the enemy") and, accordingly, qualify under Art. 111 of the Criminal Code of Ukraine;

3) However, and this is extremely important, the previous option will only become viable if a range of relevant, less socially dangerous offenses is identified – the one not addressed either by Art. 111 or by Art. 111-1 of the Criminal Code of Ukraine. At the same time, with regard to such an initiative, it should be stressed out:

   – Firstly, based on the analysis of Art. 111-2 of the Criminal Code of Ukraine, no such behavior has been detected so far, except holding positions in the illegal so-called state or municipal enterprises created on the TOT, related to the performance of organizational-managerial or administrative-economic functions), which could not be "painlessly" charged under the two above-mentioned provisions;
   – Secondly, the question arises: if such a type of act, which is not provided for even in the excessively casuistic Art. 111-1 of the Criminal Code of Ukraine, does exist (see the exception mentioned in the previous paragraph), would it not be easier to include this encroachment in the relevant provision on collaboration, rather than supplementing the Criminal Code of Ukraine with one more provision of unclear legal meaning?

4) Or, finally, for the most dangerous offenses committed with the intent to harm the state of Ukraine (e.g., siding with the enemy during an armed conflict, espionage) in a distinct *corpus delicti* while leaving other less dangerous acts within the general provision on treason and the Article on collaboration with its milder penalties.

B. European Models of Liability for Collaborative Actions: Distinct Approaches

Within the comparative analyses mode, the legislative model, under which dangerous offenses with the intent to harm the state are recognized in specific provisions with enhanced penalties while leaving all other less dangerous acts within the general criminal law provision on treason and the norm on collaboration with its milder penalties, has been "tested" in the texts of:

a) The Criminal Code of Croatia, which has a general provision on high treason and several provisions on service in the enemy armed forces, aiding the enemy (only Croatian citizen can be prosecuted), and espionage (any person can be prosecuted) (Articles 340, 343-344, 348 of the Croatian Criminal Code). Noteworthy are the provisions of Art. 342 "Prevention of Fighting the Enemy", which, although recognizing a Croatian citizen as the perpetrator, in part 2 contains a special clarification that for the purposes of the entire relevant Chapter 32 "Criminal Offenses against the Republic of Croatia", a foreigner residing in Croatia is also recognized a Croatian citizen (Republic of Croatia, 1997);
b) The Criminal Code of Romania, which has a general provision on treason (Art. 394, with a penalty of imprisonment for a term of 10 to 20 years), as well as separate Articles on treason by espionage (Art. 395) and treason in the form of waging hostilities against Romania by a Romanian citizen during the war, assisting the enemy in the form of bypassing the Romanian army, reporting the location of the Romanian armed forces, etc. (Art. 396, punishment - imprisonment for a term of 15 to 25 years or life imprisonment). In addition, liability for hostile acts against Romania committed by a foreigner or a stateless person is regulated separately (Art. 399) (Romanian Parliament, 2009).

As for the European experience in general (not only Romania and Croatia), the lack of a unified approach to this issue is self-evident, while criminal law of different countries contains:

– Either a single provision on high treason, which is virtually identical in content to the one provided for in Art. 111 of the Criminal Code of Ukraine (Art. 337 of the Criminal Code of Moldova (Parliament of the Republic of Moldova, 2002); Section 3 of Chapter 12 (Law № 39, 1889), etc.);
– Or a single provision called "actions against the state" or "assistance in subversive activities against the state" (sometimes also espionage) rather than treason. Within such provision: first, the acts that

should be criminalized by it are not specified (abstract method); second, the subject is general (Articles 80, 85 of the Criminal Code of Latvia (Latvijas Vēstnesis, 1998), Articles 127-128 of the Criminal Code of Poland (Polish Sejm, 1997), § 81-82 of the Criminal Code of Germany (Federal Office of Justice (1871), Articles 1, 5, 6, 7 of the Criminal Code of Sweden (any person can be prosecuted) (Swedish Parliament, 1962));

– Or a single provision on high treason, which recognizes such specific offenses as defection to the enemy in wartime or a period of armed conflict or terror or sabotage (guilty person – citizen of the country), and espionage (general subject) (Articles 100, 104 of the Criminal Code of Bulgaria, (UNHCR, 1968); § 311, 318 of the Criminal Code of Slovakia (Slovak National Council, 2005)).

Alternatively, in the criminal legislation of some countries, liability framework for switching to the enemy side has been prescribed within the limits of a separate provision, which exists alongside the prohibitions on treason and espionage (Articles 102, 108, 110-111 of the Criminal Code of the People's Republic of China (National People's Congress of the People's Republic of China, 1979), Articles 301, 303, 325 of the Criminal Code of Turkey – general subject (Grand National Assembly of Turkey, 2004), Articles 411-1, 411-2, 411-3, 411-4, 411-5, 411-6, 411-7, 411-8 of the Criminal Code of France (French Parliament, 1994). At the same time, we want to mention Art. 586 of the Spanish Criminal Code, in which, similar to the Croatian approach, it is noted that a foreigner can be recognized as a perpetrator of all relevant crimes. However, he must be sentenced to a punishment, which is one degree lower than the one to be imposed on a Spanish citizen.

The Criminal Code of Lithuania, along with the prohibition of espionage, contains a few general provisions on: a) high treason, which recognizes actions of a Lithuanian citizen who, in wartime or after the declaration of martial law, went over to the enemy or helped the enemy to act against the state, b) and aiding and abetting another state, as well as c) a separate provision on collaboration (Articles 117-120), and in the Czech Criminal Code – a provision on high treason, which recognizes terrorist acts, sabotage, terror, subversion of the Republic, espionage (general subject), as well as separate provisions on collaboration (general subject) and treason, i.e. service of a Czech citizen in the enemy armed forces (Articles 309, 316, 319-321) (Seimas of the Republic of Lithuania, 2000).

In the context of the possible correlation between liability of a citizen of the respective state and a foreigner (stateless person), the Estonian legislative experience is also of value to our research since the criminal law of this country has: a) an abstract rule on violent acts directed against Estonia – a general "offender" (Art. 231); b) an equally abstract provision on high treason, which recognizes non-violent acts or espionage committed by an Estonian citizen (Art. 232); c) special provisions on relevant non-violent acts of an alien and espionage committed by an alien (Articles 233-234); d) separately, a provision on the defection of an Estonian citizen to the enemy during the period of war or occupation of Estonia (Art. 234-1) (Riigi Teataja, 2001).

As a brief observation, the approaches by European legislators are far from being unified, which is hardly news to any alternative legal commentator.

Within the discussion part of our research, we would like to make the following point to summarize our brief analyses based on the scope of issues and the extent of criminal behavior prescribed in the collaboration provision. Quite a few issues are related to the text of Art. 111-1 and its practical implementation remain unresolved. For example, as a matter of pragmatic approach, it is worth comparing the elements of crimes established in Part 7 of Art. 111-1 and in Art. 260 ("Creation of unlawful paramilitary or armed groups") of the Criminal Code of Ukraine. Part 7 of Art. 111-1 provides for criminal liability for a specific form of collaborationism, such as the voluntary participation of a Ukrainian citizen in illegal armed groups formed on the temporarily occupied territory. In comparison, Art. 260 of the Criminal Code of Ukraine establishes criminal liability for the creation and participation in paramilitary or armed groups not provided for by the laws of Ukraine. At first glance, the mentioned elements of crimes provide for liability for the same actions – that is the creation of illegal military formations. However, those elements have certain differences, such as: 1) national security constitutes both the scope and goal of collaboration activities. In contrast, public security interests are affected by the crime provided for in Art. 260 of the Criminal Code of Ukraine; 2) Art. 260 of the Criminal Code establishes liability for the creation of illegal military formations during peacetime, while Part 7 of Art. 111-1 provides for criminal liability for participation in illegal armed groups during the occupation of part of the territory of Ukraine by an aggressor state.

Among the key distinguishing features between collaboration activities and the creation of illegal paramilitary formations is the territory (place) where this crime has been committed. Under real-life conditions, collaboration activities are possible only on the occupied territory. Thus, we share the scholarly position that the establishment of illegal armed formations in peacetime (Art. 260) and under conditions of occupation of part of Ukraine's territory during armed aggression (Art. 111-1) should be prosecuted based on different provisions of the Criminal Code of Ukraine (Pletnov & Kovalenko, 2023).

As our analyses has revealed, there is overlap among Articles 111 (treason), 111-1 (collaboration activity), and 111-2 (aiding the aggressor state) of Ukrainian Criminal Code. Offenses like aiding the enemy can be prosecuted under multiple provisions, leading to confusion and unequal application of penalties.

Also, collaboration under Article 111-1 overlaps with offenses such as creating illegal paramilitary formations (Article 260). We argue that such distinctions should be clearer, as collaboration typically occurs in occupied territories, while other crimes may occur in peacetime.

In contrast, some countries, like Lithuania and Estonia, differentiate treason, collaboration, and aiding the enemy more distinctly. European systems often provide for a "privileged" form of treason for less severe offenses or specific rules for foreign perpetrators, thus offering better clarity and proportionality in punishment.

Our discussion ultimately led to the call for Ukrainian lawmakers to reform the national Criminal Code in order to address ambiguities and learn how to prosecute collaboration offenses from the best European practices. Among various other resources in the hands of the government, legal education could also play a major role in educating Ukrainians on their key rights, freedoms and obligations when it comes to the priority issues of the national defense and national security (Myroshnychenko et al., 2024).

The overall effectiveness of the proposed reforms in combating collaboration depends on how well they balance clarity, fairness, and enforceability. Positive outcomes would include better-targeted prosecution of collaborationist activities and clearer deterrence mechanisms. However, careful consideration must be given to the risks of over-criminalization, enforcement challenges, and political interference. A well-structured and transparent reform could foster public confidence and legal clarity, allowing Ukraine to more effectively combat collaboration during occupation and in its broader fight against foreign aggression.

Conclusions

Based on the results of the comparison of relevant Ukrainian and other European approaches with regard to criminalizing collaboration, we have been able to formulate certain conclusions and observations.

Firstly, Lithuania is probably the only European country with three separate provisions in its criminal legislation, similar to those provided for in Articles 111, 111-1, 111-2 of the Criminal Code of Ukraine, on treason, collaboration, and aiding and abetting another state. However, unlike in Ukraine, Lithuanian legislators have clearly distinguished between those elements of crime, in particular, by pointing out that only actions committed in peacetime are punishable under the provision of aiding another state against Lithuania.

Secondly, none of the other European countries discussed in this paper has two separate general rules, similar to those provided for in Articles 111 and 111-2 of the Criminal Code of Ukraine, under which citizens of a country could be held criminally liable for actions committed to harm the state in wartime.

Thirdly, the perpetrator of this crime can be a citizen of Ukraine, a foreigner, or even a stateless person. However, holding foreigners accountable for such crimes is usually not a reason to create a separate legal provision for aiding an aggressor state. In many countries we have studied, this issue is addressed more thoroughly, which is reflected in: a) either the presence of separate provisions, which provide for the punishment of such acts (Estonia, Romania); or b) the assignment of foreigners to the circle of persons capable of bearing liability for treason (Slovenia, Croatia); or c) the inclusion of foreigners permanently residing in a certain country into the group of persons capable of bearing liability for treason and other crimes against national security in general. At the same time, such liability is less severe when compared to the one provided for state citizens (Spain, Croatia); or d) the unified liability framework for espionage elements in most countries, where any person can be recognized as a perpetrator.

Fourthly, in those countries, which criminal codes contain not only provisions on treason but also on collaborationism (Estonia, Lithuania, Czech Republic), there are no other general norms (in Estonia, liability is differentiated depending on whether the relevant actions are violent or non-violent), according to which individuals could be held liable for actions committed during a state of war (or armed conflict), while aimed at harming the state in a certain manner.

In our opinion, when taken together, the four outlined circumstances convincingly prove the need to exclude Article 111-2 of the Criminal Code of Ukraine from the system of current domestic criminal legislation.

One last aspect to which we would like to draw attention is that parliamentarians of many European countries distinguish a separate (from the provision on treason) prohibition dedicated to "military treason" (performing military service as a citizen of the state in the enemy armed forces). At the same time, sanctions for such actions are very severe. This once again underlines the need to exclude indications of the relevant behavior as quickly as possible in the privileged norm provided for in Art. 111-1 of the Criminal Code of Ukraine "Collaborative activity".

A significant area of future research would be to conduct detailed case studies on the practical application of collaboration laws in Ukraine, focusing on real-world instances where individuals have been charged under Articles 111, 111-1, and 260. Case studies could provide insights into the difficulties faced by law enforcement, the judiciary, and the legal professionals involved in prosecuting such crimes. These studies could examine the following aspects.

Judicial outcomes. How have courts interpreted collaboration charges in different contexts? Are there discrepancies in sentences, and if so, why do they occur?

Enforcement challenges. What practical issues have law enforcement agencies encountered when investigating collaboration cases? How have these challenges been addressed, and where do gaps still exist?

Defendant profiles. What are the backgrounds and circumstances of individuals accused of collaboration? Are there patterns related to coercion, socio-economic conditions, or geographic location that could help inform more effective legal strategies?

Such case studies could offer valuable lessons for improving the application of collaboration laws and might serve as a foundation for developing more nuanced and equitable legal practices.

Additionally, comparative legal analysis would be a fruitful avenue for understanding how Ukraine's legal framework on collaboration aligns with or diverges from practices in other conflict zones around the world. By examining how different countries prosecute collaboration, particularly in situations of occupation or foreign aggression, this research could help identify best practices and potential pitfalls. Comparative studies could focus on the following topics.

Eastern European Case Studies. Exploring the legal approaches of countries with similar historical contexts, such as Latvia, Estonia, and Lithuania, could provide insights into how these nations differentiate between treason, collaboration, and aiding the enemy. How have their legal frameworks evolved over time, especially in the post-Soviet period?

Conflict Areas in the Middle East and Africa. Studying collaboration laws in countries such as Syria, Iraq, or Somalia—where occupation, insurgency, and foreign intervention have created complex legal landscapes—could offer lessons on how to effectively prosecute collaboration and prevent the exploitation of legal ambiguities.

Post-War Societies. Investigating how countries like Bosnia and Herzegovina or Rwanda addressed collaboration during and after periods of armed conflict may highlight the importance of reconciliation mechanisms, the role of transitional justice, and how laws on collaboration can be applied in post-conflict societies to prevent future violence.

We believe that effective comparative studies along those lines would provide a broader context for understanding how collaboration is defined, prosecuted, and punished in different legal systems, potentially informing rational reforms in Ukraine.

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