

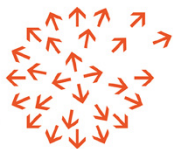
CRIMINAL LIABILITY FOR COLLABORATIONISM:

analysis of current legislation,
practice of its application, and
proposals for amendments





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Introduction

After the large-scale armed aggression against Ukraine broke out, law-makers faced the need to introduce additional types of criminal liability which would define a specific “watershed” between permitted and acceptable behaviour of Ukrainian citizens and the behaviour which poses a threat and is unacceptable, in particular, of those who stayed in the temporarily occupied territory of Ukraine or the territory temporarily controlled by the army of the Russian Federation.

The adoption of amendments to the criminal legislation and the introduction of new elements of crimes, such as “collaborationism” (Article 111-1 of the Criminal Code of Ukraine), “aiding and abetting the aggressor state” (Article 111-2 of the Criminal Code of Ukraine), led to numerous appeals filed by residents of the occupied territories of Ukraine to non-governmental human rights organisations with a request to clarify whether the activities they continued to carry out in the occupied territory constitute collaborationism.

However, as it turned out, the law enforcement agencies still haven’t decided on how to distinguish the elements of the crime of “collaborationism” from other elements provided for by the Criminal Code of Ukraine (CCU). The reason for this uncertainty is the inaccuracy of the wording of Art. 111-1 of the CCU, as well as the fact that the elements of the crime of “collaborationism” overlap with other elements of such crimes as “high treason”, “aiding and abetting aggressor state”, “justification, recognition as legitimate, denial of the armed aggression of the Russian Federation against Ukraine, glorification of its participants”.

We present the analysis of the current legislation on prosecution for collaborationism, investigative and judicial practice, as well as existing proposals for amendments to relevant legislation as of November 2022.

The analysis was prepared by experts of organisations that are participants of the Coalition of NGOs for protection of the rights of persons affected by armed aggression against Ukraine, in particular, NGO “Human Rights Centre ZMINA”, NGO “Civil Holding “GROUP OF INFLUENCE”, NGO “Donbas SOS”, NGO “Crimea SOS”, Charity Foundation “VostokSOS”, Charity Foundation “Stabilization Support Services” and NGO “Crimean Human Rights Group”

The conclusions and recommendations presented in the analytical note reflect the consolidated position of the Coalition organisations.

We would like to express our gratitude to Artur Prikhno, an investigative journalist of the NGO “Media Initiative for Human Rights”, for his participation in the preparation of the analytical note.

1 Overview of national legislation on criminal liability for the crime of “collaborationism”

The Law of Ukraine No. 2108-IX of 3 March 2022 added a new Art. 111-1 to the Criminal Code of Ukraine which establishes criminal liability for so-called “collaborationism”. The article provides for the establishment of criminal liability for various types of activities that can be qualified as collaborative activities.

Article 111-1. Collaborationism

- 1** Public denial by a citizen of Ukraine of the armed aggression against Ukraine, establishment and consolidation of the temporary occupation of a part of the territory of Ukraine, public calls by a citizen of Ukraine for support for decisions and/or actions of the aggressor state, armed formations and/or occupation administration of the aggressor state, co-operation with the aggressor state, armed formations and/or occupation administration of the aggressor state, non-recognition of the extension of the state sovereignty of Ukraine to the temporarily occupied territories of Ukraine –
shall be punished by deprivation of the right to hold certain positions or engage in certain activities for ten to fifteen years.
- 2** Voluntary occupation by a citizen of Ukraine of a position not related to the performance of organisational-administrative or administrative-economic functions in illegal authorities created in the temporarily occupied territory, including in the occupation administration of the aggressor state, –
shall be punished by deprivation of the right to hold certain positions or engage in certain activities for ten to fifteen years with or without confiscation of property.
- 3** Propaganda by a citizen of Ukraine in educational institutions, regardless of the types and forms of ownership, to facilitate the armed aggression against Ukraine, establishment and consolidation of the temporary occupation of a part of the territory of Ukraine, avoidance of responsibility for the armed aggression against Ukraine by the aggressor state, as well as the actions of citizens of Ukraine aimed at implementing the education standards of the aggressor state in educational institutions, –
shall be punished by community service for up to two years or arrest for up to six months, or three years in prison with deprivation of the right to hold certain positions or engage in certain activities for ten to fifteen years.

- 4** Transfer of material resources to illegal armed or paramilitary formations created in the temporarily occupied territory and/or armed or paramilitary formations of the aggressor state, and/or implementation of economic activities in cooperation with the aggressor state, illegal authorities created in the temporarily occupied territory, including the occupation administration of the aggressor state, –

shall be punished by a fine of up to ten thousand non-taxable minimum incomes of citizens or three to five years in prison with deprivation of the right to hold certain positions or engage in certain activities for ten to fifteen years with confiscation of property.
- 5** Voluntary occupation by a citizen of Ukraine of a position related to the performance of organisational-administrative or administrative-economic functions in illegal authorities created in the temporarily occupied territory, including the occupation administration of the aggressor state, or voluntary election to such authorities, as well as participation in organising and holding illegal elections and/or referendums in the temporarily occupied territory or public calls for holding such illegal elections and/or referendums in the temporarily occupied territory –

shall be punished by five to ten years in prison with deprivation of the right to hold certain positions or engage in certain activities for ten to fifteen years with or without confiscation of property.
- 6** Organisation and conduct of political events, information activities in cooperation with the aggressor state and/or its occupation administration aimed at supporting the aggressor state, its occupation administration or armed formations and/or at avoiding their responsibility for the armed aggression against Ukraine, in the absence of signs of high treason, active participation in such activities –

shall be punished by ten to twelve years in prison with deprivation of the right to hold certain positions or engage in certain activities for ten to fifteen years with or without confiscation of property.
- 7** Voluntary occupation by a citizen of Ukraine of a position in illegal judicial or law enforcement bodies created in the temporarily occupied territory, as well as voluntary participation of a citizen of Ukraine in illegal armed or paramilitary formations created in the temporarily occupied territory and/or in the armed formations of the aggressor state or provision of assistance to such formations in conducting military operations against the Armed Forces of Ukraine and other military formations formed in accordance with the laws of Ukraine, voluntary formations that were formed or self-organised to protect the independence, sovereignty and territorial integrity of Ukraine, –

shall be punished by twelve to fifteen years in prison with deprivation of the right to hold certain positions or engage in certain activities for ten to fifteen years and with or without confiscation of property.

8 Actions by the persons specified in Parts 5-7 of this Article or decision-making which led to the death of people or other serious consequences, –

shall be punished by fifteen years in prison or life imprisonment with deprivation of the right to hold certain positions or engage in certain activities for ten to fifteen years with or without confiscation of property.

Note. 1. In Part 1 of this Article, the calls or denial addressed to an unspecified number of persons, in particular on the Internet or through mass media, are considered to be public.

Note. 2. In Part 6 of this Article, congresses, meetings, rallies, marches, demonstrations, conferences, roundtable discussions, etc. are considered to be political events.

Note. 3. In Part 6 of this Article, information activities mean the creation, collection, receipt, storage, use, and distribution of relevant information.

Note. 4. In Part 8 of this Article, damage that exceeds a non-taxable minimum income of citizens one thousand or more times is considered to be serious consequences.

According to the Prosecutor General's Office, [3,361 criminal proceedings](#) were opened under Art. 111-1 of the CCU as of 12 November. However, it is unknown what parts of the Article were referred to as the request to obtain such statistics was denied. The reason is that the records do not indicate data on criminal offences under specific parts of the articles of the CCU¹.

The existing norms of the Criminal Code, according to the explanatory note, did not fully cover the new problems caused by the full-scale invasion, which led to the need for the adoption of a new article that would outline the limits of permitted and prohibited activities of the Ukrainian citizens in the temporarily occupied territory.

At the same time, the addition of other norms to the CCU in March-May 2022 and the practice of applying the provisions of Art. 111-1 of the CCU highlighted several significant problems. In particular, there is a complexity of distinguishing among offences provided for by Art. 111 of the CCU "High treason", Art. 111-1 of the CCU "Collaborationism", Art. 111-2 of the CCU "Aiding and abetting the aggressor state", and Art. 436-2 "Justification, recognition as legitimate, denial of the armed aggression of the Russian Federation against Ukraine, glorification of its participants".

¹ Response from the Prosecutor General's Office No. 27/3-1193 No.22 to inquiry filed by Human Rights Centre ZMINA

In addition, Art. 111-1 of the CCU formally covers perfectly legitimate activities, in particular, measures aimed at solving humanitarian problems in the occupied territory, providing medical services, activities in the field of pipeline transport, operation of grocery stores, etc.

Therefore, the residents of the occupied territory (including the territory that is actually under the temporary control of the Russian army but its status of “temporarily occupied territory” has not been formally defined) are at risk of being held criminally liable for acts that are not socially dangerous but may fall under the provisions of Art. 111-1 of the CCU.

2

Practice of applying legislation on collaborationism

a) INVESTIGATIVE PRACTICE

To analyse the investigative practice of applying Art. 111-1 of the CCU, the proceedings registered by the regional prosecutor's offices of eight regions (Kyiv, Chernihiv, Sumy, Kherson, Zaporizhzhia, Kharkiv, Luhansk, and Donetsk regions) were analysed. Some areas of these regions were captured or temporarily occupied as a result of Russia's full-scale invasion of Ukraine. The analysis was carried out on the basis of information published on the official web pages of regional prosecutors' offices from the moment Art. 111-1 of the CCU came into force on 15 March 2022 and until 4 November 2022. According to publicly available information, the largest share of cases in these regions concerns the acts qualified under Part 5 of Art. 111-1 (141 proceedings), Part 7 of Art. 111-1 (54 proceedings), Part 4 of Art. 111-1 (18 proceedings), Part 1 of Art. 111-1 (14 proceedings), Part 3 of Art. 111-1 (9 proceedings), Part 6 of Art. 111-1 (7 proceedings), and the least under Part 2 of Art. 111-1 (4 proceedings).

In investigative practice, there is obvious complexity in distinguishing among offences provided for by Art. 111 of the CCU "High treason", Art. 111-1 of the CCU "Collaborationism", Art. 111-2 of the CCU "Aiding and abetting the aggressor state", and Art. 436-2 "Justification, recognition as legitimate, denial of the armed aggression of the Russian Federation against Ukraine, glorification of its participants". As a result, similar actions are qualified under different articles even within the framework of the proceedings considered by one and the same regional prosecutor's office, in particular:

1. Part 1 of Art. 111-1 and Art. 436-2 of the CCU:

1	after the President of the Russian Federation had announced the start of the special military operation against Ukraine on 24 February 2022, a suspect supported this decision in the presence of other persons ; the man repeatedly spoke out in support of the criminal actions of servicemen of the Russian Federation – his actions were qualified under Part 1 of Art. 111-1, punishable by the deprivation of the right to hold certain positions or engage in certain activities for ten to fifteen years.	in the presence of her fellow villagers, a girl justified the actions of the military personnel of the Russian Federation , and also expressed the opinion that the President of the Russian Federation "did everything right" in relation to Ukraine – her actions were qualified under Part 1 of Art. 436-2, punishable by community service for up to two years, or arrest for up to six months, or up to three years in prison, this person was sentenced to six months of arrest .
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<p>2 since the beginning of Russia's full-scale invasion, a resident of Kharkiv posted public calls for the support for the aggressor state on his account in social media banned in Ukraine. In his posts, the suspect calls defenders of Ukraine, members of the Armed Forces of Ukraine "Nazis", and Ukrainian mass media - "ukrop [derogatory Russian slang term used to refer to Ukrainians] mass media". The Kharkiv resident speaks of "constant victories of Russian troops over the Armed Forces of Ukraine", confirming the military aggression of the neighbouring state against Ukraine –</p> <p>his actions were qualified under Part 1 of Art. 111-1, punishable by the deprivation of the right to hold certain positions or engage in certain activities for ten to fifteen years</p>	<p>on 25 March 2022, a suspect posted on her Telegram channel a post glorifying the participants in the armed aggression of the Russian Federation against Ukraine. This information material became available to an unlimited number of users. On 5 April 2022, the suspect posted another informational material on her Telegram channel, justifying and recognising as legitimate the armed aggression of the Russian Federation against Ukraine –</p> <p>her actions were qualified under Part 3 of Art. 436-2, punishable by five to eight years in prison with or without confiscation of property.</p>
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2. Part 4 of Art. 111-1 and Art. 111-2 of the CCU:

<p>3 from 24 February to 4 May 2022, a 60-year-old man, the acting manager of a branch of one of the state-owned enterprises in Luhansk region, entered into a criminal conspiracy with the Russian occupation forces and representatives of the so-called "LPR". Defendant voluntarily handed over the material resources of the branch to the representatives of the armed forces of the aggressor state and the illegal armed formations of "LPR". Later, he voluntarily assumed the position of the director of the so-called "State Enterprise of "LPR" Derkulsky horse farm" and conducted business activities in mixed agriculture –</p> <p>his actions were qualified under Part 4 of Art. 111-1, punishable by a fine of up to ten thousand non-taxable minimum incomes of citizens or three to five years in prison with deprivation of the right to hold certain positions or engage in certain activities for ten to fifteen years with confiscation of property.</p>	<p>a director general of the milk canning factory in Kupyansk established stable working and ideological ties with representatives of the Russian Federation during the occupation of the town. The entrepreneur continued doing business and concluded supply contracts with representatives of the so-called "Military and Civilian Administration of Kupyansk District". The director general instructed his subordinates to hand over dairy products to the occupiers. In addition, he managed to establish working relations with the Ministry of Economic Development of the Russian Federation on the dairy products supplies to the territory of the so-called "DPR" –</p> <p>his actions were qualified under Art. 111-2, punishable by ten to twelve years in prison with deprivation of the right to hold certain positions or engage in certain activities for ten to fifteen years and with or without confiscation of property.</p>
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3. Part 5 of Art. 111-1 and Art. 111-2 of the CCU:

<p>4 after the village of Novopskov, Starobilsk district, was captured and the illegal authorities started functioning, a former employee of a Ukrainian bank entered into a criminal conspiracy with representatives of the occupation administration of the Russian Federation. In March 2022, she was appointed as the head of the so-called "Novopskov Branch of the State Bank of the LPR" –</p> <p>her actions were qualified under Part 5 of Art. 111-1, punishable by five to ten years in prison with deprivation of the right to hold certain positions or engage in certain activities for ten to fifteen years and with or without confiscation of property</p>	<p>a suspect, staying in the temporarily occupied territory of Kherson Region, voluntarily agreed to cooperate with the occupation authorities. He gave his consent to occupy the position of a manager of the Kherson branch of PJSC "Promsvyaz bank" –</p> <p>his actions were qualified under Art. 111-2, punishable by ten to twelve years in prison with deprivation of the right to hold certain positions or engage in certain activities for ten to fifteen years and with or without confiscation of property.</p>
<p>5 in May 2022, a man voluntarily agreed to cooperate with the occupation authorities of the Russian Federation and agreed to the proposal to occupy a pseudo-position of "head of the Military and Civilian Administration of the town of Dniprorudne" –</p> <p>his actions were qualified under Part 5 of Art. 111-1, punishable by five to ten years in prison with deprivation of the right to hold certain positions or engage in certain activities for ten to fifteen years with or without confiscation of property.</p>	<p>at the end of May 2022, a resident of one of the villages of Beryslav district, supporting the illegal actions of the occupiers, agreed to perform the functions of the so-called head of the village –</p> <p>his actions were qualified under Art. 111-2, punishable by ten to twelve years in prison with deprivation of the right to hold certain positions or engage in certain activities for ten to fifteen years with or without confiscation of property.</p>

4. Part 6 of Art. 111-1 and Art. 436-2 of the CCU:

<p>6 after Russia's full-scale invasion of Ukraine, a student of the Kupyansk Medical College of Kharkiv region took part in the propaganda projects of the Russian mass media. In her speeches, she said that she consciously decided to "help Russian soldiers" and "want to serve Russia." In a video interview, she spoke in support of the actions of the aggressor state, called for assistance to the armed formations and the occupation administration of the Russian Federation –</p> <p>her actions were qualified under Part 6 of Art. 111-1, punishable by ten to twelve years in prison with deprivation of the right to hold certain positions or engage in certain activities for ten to fifteen years with or without confiscation of property.</p>	<p>at the end of May, a 35-year-old resident of Kupyansk-Vuzlovy publicly expressed her position in support of the actions of the aggressor state in Ukraine. Thus, the supporter of the occupiers gave an interview to the Russian TV channel "Zvezda", in which she said that she supported the Russian army and that she began to feel safe with its arrival. The woman talked about how her child was "smothered with this Ukrainian language" –</p> <p>her actions were qualified under Part 3 of Art. 436-2, punishable by five to eight years in prison with or without confiscation of property.</p>
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5. Part 7 of Art. 111-1 and Art. 111 of the CCU:

<p>7 a local resident, who had been earlier dismissed from the State Emergency Service of Ukraine, agreed to cooperate with the representatives of the Russian armed forces and was appointed as "acting deputy chief of the Berdiansk Town Department Of The Emergency Service - chief of the Berdiansk Fire And Rescue Station No.1" –</p> <p>his actions were qualified under Part 7 of Art. 111-1, punishable by twelve to fifteen years in prison with deprivation of the right to hold certain positions or engage in certain activities for ten to fifteen years with or without confiscation of property</p>	<p>a suspect passed an interview with representatives of the aggressor state and voluntarily assumed a "senior position" in the so-called "Emergency Service" of the temporarily occupied Starobilsk district of Luhansk Region. In May 2022, he was appointed as "Chief of the Starobelsk State Fire and Rescue Squad of the Emergency Service of LPR" –</p> <p>his actions were qualified under Part 2 of Art. 111, punishable by fifteen years in prison or life imprisonment with confiscation of property.</p>
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While analysing investigative practice, it was not possible to establish the principles of differentiation during qualification. Most likely, it happens at the discretion of individual representatives responsible for the proceedings because it is impossible to single out the essential circumstances of the cases that would lead to their different qualifications under the specified articles. This creates problems of double qualification and violates the principle of legal certainty.

In addition, separate cases were recorded in which the actions of a person were [simultaneously qualified under two articles](#): the actions of a citizen of Ukraine, who in March 2022 agreed to a proposal of representatives of the occupation administration of the aggressor state and assumed the position of “assistant prosecutor” in the “prosecutor’s office of Belokurakine district of LPR”, was qualified under Part 2 of Art. 111 and Part 7 of Art. 111-1 of the CCU.

There is also concern that the articles, the differentiation between which is left mainly to the discretion of the executors, provide for very different penalties for committing the same act – from deprivation of the right to hold certain positions or engage in certain activities for ten to fifteen years (Part 1 of Art. 111-1 of the CCU) to five to eight years in prison with or without confiscation of property (Part 3 of Art. 436-2 of the CCU).

The analysis of investigative practice also raised concern in the context of the proportionality of the public danger posed by the act and the punishment for it. Pursuant to Articles 50 and 65 of the CCU, a person who has committed a criminal offence shall be given a punishment that is necessary and sufficient to correct and prevent the commission of new criminal offences. This punishment must comply with the principles of legality, reasonableness, justice, proportionality and individualisation, which is a system of the most essential rules and criteria that determine the order and limits of the court’s activity when choosing a punishment. However, the analysis of court rulings in this category of cases raises the question of the extent to which the provided and assigned types of punishment are commensurate with the committed act.

For example, the actions of a 43-year-old woman who, hiding from enemy shelling together with other Mariupol residents in the premises of the Mariupol Chamber Philharmonic, repeatedly [justified the actions of the occupiers](#) for her own ideological reasons, and during the evacuation from Mariupol, while at a Russian checkpoint, glorified the invaders and asked them to “liberate the city faster”, was qualified under Art. 436-2 (which provides for a higher sanction than Part 1 of Art. 111-1 of the CCU), and was sentenced to five years in prison without confiscation of property with a probationary period of two years. The Donetsk Regional Prosecutor’s Office did not agree with this ruling of the Krasnohvardiysky District Court in Dnipropetrovsk City and [filed an appeal to the Dnipro Court of Appeal](#) to challenge the ruling’s leniency. The court of appeal upheld the position of the prosecutor’s office, [sentencing the woman to five years in prison with confiscation of property](#).

b) JUDICIAL PRACTICE²

As of 4 November 2022, the Unified State Register of Court Decisions (USRCD) had 34 rulings on prosecution in accordance with Art. 111-1 of the CCU (collaborationism). The number is significantly less than the number of open proceedings which may, among other things, indicate that not all cases over prosecution in accordance with Art. 111-1 of the CCU are entered into the register. In particular, the Security Service of Ukraine reports that the courts have already passed sentences in 53 proceedings submitted³.

Of these 34 sentences, 26 were passed under Part 1 of Art. 111-1 of the CCU, and 8 – under Part 4 of Art. 111-1 of the CCU, although the largest share of open proceedings, according to open sources, were initiated under Parts 5 and 7 of Art. 111-1.

The penalty of Part 1 of Art. 111-1 of the CCU provides for punishment in the form of deprivation of the right to hold certain positions or engage in certain activities for ten to fifteen years. Out of 26 sentences, only one punishment can reasonably be considered sufficient to correct and prevent the commission of new criminal offenses as only one convict holds a position related to the performance of functions of the state and local self-government. The rest, taking into account the information presented in court decisions, are not potential subjects who will hold positions related to the performance of functions of the state and local self-government. These are pensioners, unemployed people, a teacher, a locksmith, Chernobyl disaster liquidators, people with criminal records. The vast majority of sentences available in the USRCD contain approval of plea agreements.

In particular, the [sentence](#) under Art. 111-1 was recorded in the case against a resident of Dnipropetrovsk region, who is unemployed and has a secondary education, whom the court deprived of the right to hold positions in the government agencies and local self-government bodies of Ukraine for 10 years. The analysed sentence states that the convict posted on Facebook publications and personal video materials which “show signs of public denial of the armed aggression against Ukraine, the establishment and consolidation of the temporary occupation of a part of the territory of Ukraine, public calls for the support for the decisions and/or actions of the aggressor state, armed formations and/or occupation administration of the aggressor state, cooperation with the aggressor state”, etc. The court did not mention other circumstances of the case in the wording of the sentence, finding the person guilty specifically under Art. 111-1, while the specified circumstances may point to the qualification of actions under Art. 436-2, namely justification, recognition as legitimate, denial of the armed aggression of the Russian Federation against Ukraine, glorification of its participants.

2 Due to the lack of access to all court cases under Art. 111-1 of the CCU, the analysis of judicial practice cannot be considered complete, the practice requires further analysis

3 Response from the Security Service of Ukraine, Office of the Head of the Department for Interaction with Mass Media and the Public No. 10/P-147-p/1/1-23 of 15 November 2022 to inquiry filed by Human Rights Centre ZMINA

There is also an ambiguous approach to the confiscation of instruments of criminal offences. For example, in criminal proceedings [No. 22022040000000137](#) of 27 July 2022, [No. 22022160000000184](#) of 28 June 2022, [No. 42022102020000051](#), the equipment used to commit a criminal offence was confiscated into state revenue; in criminal proceedings [No. 22022160000000167](#) of 23 June 2022, the equipment was not confiscated.

The penalty of Part 4 of Art. 111-1 of the CCU provides for punishment in the form of a fine of up to ten thousand non-taxable minimum incomes of citizens or three to five years in prison with deprivation of the right to hold certain positions or engage in certain activities for ten to fifteen years with confiscation of property. In four of the eight rulings, the imposed punishment cannot be considered sufficient to correct and prevent the commission of new criminal offences. Individuals are not potential subjects of elected positions in government agencies and local self-government bodies. There is an ambiguous approach to the application of confiscation of property and the size of the fine.

3

Proposals for amendments to legislation to regulate prosecution for collaborationism

To solve the problems that arise in the practice of applying Art. 111-1 of the CCU, several draft laws were registered in the Verkhovna Rada of Ukraine.

In particular, on 20 July 2022, the Draft Law of Ukraine “*On Amendments to the Criminal and Criminal Procedural Codes of Ukraine on Improving Liability for Collaborationism and Related Criminal Offences*” was registered (No. [7570](#)).

This draft law suggests eliminating drawbacks of overlapped elements of crimes, in particular:

- to determine the distinctive features of the crime of “collaborationism” (Art. 111-1 of the CCU) to distinguish it from high treason (Art. 111 of the CCU), justification, recognition as legitimate, denial of the armed aggression of the Russian Federation against Ukraine, glorification of its participants (Art. 436-2 of the CCU) and from other related criminal offences
- to exclude responsibility for public calls for non-recognition of the extension of the state sovereignty of Ukraine to the temporarily occupied territories of Ukraine from Art. 111-1 of the CCU, since responsibility for such actions is provided for by Art. 110 of the CCU “Encroachment on the territorial integrity and inviolability of Ukraine”
- to exclude Art. 111-2 of the CCU “Aiding and abetting the aggressor state” as it provides for collaborationism in its specific forms which are already defined in Art. 111-1 of the CCU, and to include some of its provisions in the wording of Art. 111-1.

Moreover, this draft law suggests singling out those types of activities that are directly prohibited and can be qualified as prohibited under Art. 111-1 of the CCU. Such a presentation format helps to eliminate the ambiguity of interpretation and is a logical addition to the criminal legislation which defines socially dangerous acts that are criminal offences, not legitimate activities. The proposed wording of Art. 111-1 takes into account the elements of a criminal offence and, therefore, will ensure the effective application of the article in practice.

Therefore, this draft law provides for a specific list of prohibited types of activities, which will contribute to the understanding of the limits of lawful activity by persons who stay in the occupied territories, as well as the predictability of the application of criminal legislation to activities that can be qualified as collaborationism under Art. 111-1 of the CCU.

At the same time, some provisions of the proposed version **require further finalisation**. In particular, agreeing with the [opinion](#) of the Central Scientific Experts Office of the Secretariate of the Verkhovna Rada of Ukraine, we note that certain wording of actions considered to be collaborationism may lead to their broad interpretation and, as a consequence, difficulties in their proper application in practice, namely:

- 1** Part 1 of Art. 111-1 of the CCU (implementation of information activities). According to Paragraph 3 of Note to Art. 111-1 of the CCU, the implementation of information activity means the creation, collection, receipt, storage, use, and distribution of information whose content corresponds to the purpose defined in Part 1 of this article. Under such conditions, a fairly wide range of actions, from working in enemy mass media to spreading fakes or providing information to the aggressor state as assistance in conducting military operations against military formations of Ukraine or against volunteer formations formed or self-organised for the defence of Ukraine, should be recognised as criminally punishable. In accordance with the provisions of the draft law, the provision of such assistance will also fall under Part 4, 6 of Art. 111-1 of the CCU and may also fall under Art. 436-2, which makes it difficult to distinguish between crimes;
- 2** Part 4 of Art. 111-1 of the CCU contains the wording “financing such an armed or paramilitary formation, supplying weapons, ammunition, explosives, military equipment, fuel or providing it with other assistance in conducting military operations against military formations of Ukraine or against volunteer formations formed or self-organised for the defence of Ukraine”, which also covers a fairly wide range of actions which, in particular, may include those actions for which liability is provided for in other parts of the same article, which may also complicate the qualification of an action;
- 3** The wording “public calls for support for the decisions or actions of the aggressor state or cooperation with it” and “public calls for holding illegal elections or referendum” are too broad and their application may lead to a violation of human rights due to the possibility of criminal prosecution for placing appeals as a post on a social media site because, according to Paragraph 4 of the Note to Art. 111-1 of the CCU, the calls or denial mentioned in Part 1 and Part 3 of this article are considered to be public when addressed to an unspecified number of persons, expressed on the Internet, through mass media, or during a public event;
- 4** Uncertainty remains in distinguishing between the act of a citizen of Ukraine when siding with the enemy under martial law (Part 2 of Art. 111 of the CCU) and such a form of collaborationism of a citizen of Ukraine as the participation in an illegal armed or paramilitary formation of the aggressor state or in an illegal armed or paramilitary formation managed and financed by the aggressor state (Part 4 of Art. 111-1 of the CCU in the draft version), given that the subject of the offence, the form of guilt, the purpose of committing the act may be absolutely identical;

5 Paragraph 6 of Art. 111-1 of the CCU defines the criteria for the legality of actions that may fall under the provisions of Art. 111-1. In particular, cooperation with the aggressor state is not considered collaborationism under this article, if it is a) forced, carried out against own beliefs and will, while a person took all possible measures under specific conditions so as not to cause or to minimise damage to the sovereignty, territorial integrity, and inviolability, defence capability and security of Ukraine, or b) aimed exclusively at ensuring the maintenance of a settlement or the interests of community, which correspond to laws of Ukraine. The current wording of the paragraph can be used as a tool to avoid liability.

As of 12 November, Draft Law No. 7570 **is being finalised** by the Committee on Law Enforcement of the Verkhovna Rada of Ukraine.

Despite Draft Law No. 7570 registered in the Verkhovna Rada, the Government of Ukraine initiated on 9 August the registration of two draft laws:

«On Amendments to the Law of Ukraine ‘On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine’ on the Peculiarities of Activity in the Temporarily Occupied Territory of Ukraine»

(No. [7646](#))

«On Amendments to the Criminal Code of Ukraine on Enhancing Liability for Collaborationism»

(No. [7647](#))

The amendments provided for by these draft laws are aimed at establishing a regime of responsibility for collaborationism, under which legitimate and necessary activity will not fall under the wording of Art. 111-1 of the CCU.

Fully agreeing with the need to make appropriate changes, it is worth noting that the provisions set forth in the government draft laws No. 7646, No. 7647, **do not provide an efficient solution to the issue** for the following reasons.

FIRST,

as the Central Scientific Experts Office of the Secretariate of the Verkhovna Rada of Ukraine rightly indicates in its [opinion](#) on Draft Law No. 7647 and the [opinion](#) on Draft Law No. 7646, the approach proposed in the draft does not solve all the problematic issues that arose with the adoption of recognition as legitimate, the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on Establishing Criminal Liability For Collaborationism” of 3 March 2022 No. 2108-IX which added a new article 111-1 “Collaborationism” to the Criminal Code. We are talking about the use of evaluative language constructions and language constructions that can be broadly interpreted in the disposition of the article (“measures to ensure the rights and freedoms of a person and a citizen”, “measures aimed at solving humanitarian problems”), limiting

the perpetrator of a crime exclusively to a citizen of Ukraine in most types of collaborationism, as well as not solving the problem of the difficulties of distinguishing among the acts provided for in Art. 111 “High Treason”, Art. 111-1 “Collaborationism”, Art. 111-2 “Aiding and abetting the aggressor state”, and Art. 436-2 “Justification, recognition as legitimate, denial of the armed aggression of the Russian Federation against Ukraine, glorification of its participants” of the CCU (for example, the effective Art. 111-2 of the CCU and Art. 111-1 of the CCU provide for liability for collaborationism in its specific forms, which are already provided for in Art. 111-1 of the CCU), etc.

SECOND,

Draft Law No. 7646 suggests introducing a specific list of types of activities that are allowed in the occupied territory using the reference norm in the Criminal Code with the wording *except for cases specified by law*. The wording of permitted types of economic activity in the occupied territories runs counter to Part 2 of Art. 13 of the current Law, according to which “economic activity by legal entities, individual entrepreneurs, and individuals engaged in independent professional activity, whose location (place of residence) is the temporarily occupied territory, is allowed only after changing their tax address to another territory of Ukraine. A juristic act, the party of which is an economic agent whose location (place of residence) is the temporarily occupied territory, is null and void. The provision of Paragraph 2 of Part 2 of Art. 215 of the Civil Code of Ukraine does not apply to such juristic acts.” Establishing a list of permitted types of activities does not take into account the fact that individuals have to register businesses or pay taxes and fees to the occupation authorities in order to conduct even permitted types of activities in the occupied territory, which is a criminal offence and may be the elements of the crime provided for in Art. 111-2 of the CCU as the support for the actions or decisions of the occupation authorities.

Also, when applying Art. 111-1 of the CCU in this version, all types of activities not specified in the laws will be subject to criminal liability. Thus, the provisions of the draft law do not create adequate legal certainty which is a necessary element of any criminally punishable act. If the draft law is adopted, when applying its provisions, it may be necessary to clarify and supplement those cases and types of activities that are not specified in the laws and that should not be subject to criminal liability.

The application of a reference norm as a disposition also contributes to uncertainty because there is no reference to specific legislative acts that can determine the permitted types of activities. Also, the amendments to legislative acts that are not part of the criminal legislation will change the list of activities recognised as a criminal offence or decriminalised under

Art. 111-1 of the CCU. An act should be recognised as a criminal offence or decriminalised only by amending the criminal law. At the same time, the wording includes such a feature of the permitted activity as *“if no assistance is provided to the aggressor state at the same time”*. Establishing this criterion without its interpretation will only contribute to the fact that ordinary citizens will not understand under what conditions their legitimate activity in the occupied territories can be interpreted as a crime.

The wording which has a reference to another offence is also questionable. While this article in the Law of Ukraine “On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine” clarifies Art. 111-1 of the CCU, its wording has a reference to Art. 111-2 of the CCU regarding aiding and abetting the aggressor state. In view of the above, the question arises which article these acts will be qualified under.

The use of the term “interaction”, which the legislator does not explain, also promotes uncertainty. Accordingly, this allows for a broad interpretation of the concept and creates the possibility of qualifying any activity as such that constitutes interaction and can be considered collaborationism under Art. 111-1 of the CCU. Moreover, the wording *“interaction between government agencies, authorities of the Autonomous Republic of Crimea, local self-government bodies, other legal entities under public law, their officials, economic agents, and the aggressor state...”* raises questions in the context that the government agencies, in fact, cannot act and exercise any powers in the occupied territories, and the responsibilities for the maintenance of the occupied territories and the population according to IHL rest with the occupying power.

THIRD,

the offences stipulated by the CCU are not limited to their implementation in the occupied territories. In turn, the inclusion of lists of permitted activities in the Law of Ukraine “On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine” creates the impression that Art. 111-1 of the CCU applies only to activities in the occupied territories which runs counter to its wording. In this context, a question arises regarding the application of these norms to the territory that is occupied de facto but not yet recognised as occupied de jure.

FOURTH,

the proposed amendments also provide that the Cabinet of Ministers of Ukraine is authorised to determine the specifics and establish restrictions on the conduct of activities and the implementation of measures, as well as the procedure for paying for goods, works, and services in the

temporarily occupied territory which even more blurs the limits within which legitimate activities in occupied territories can be qualified as aiding and abetting the aggressor state.

Also, on 26 September, the Draft Law of Ukraine “*On Amendments to Article 111-1 of the Criminal Code of Ukraine on Enhancing Criminal Liability for Collaborationism*” (No. [8077](#)) was registered which proposes to supplement Art. 111-1 of the CCU with a new Part 5 which provides for criminal liability for carrying out by a citizen of Ukraine professional activities related to the provision of services of lawyer, auditor, appraiser, expert, insolvency officer, private executor, independent intermediary, member of labor arbitration, arbitrator, as well as the exercise of powers of notary or state registrar or subject of state registration of rights, or provision of other public services in the temporarily occupied territory of Ukraine and on the basis of the legislation of the aggressor state.

In addition, it is proposed to amend Art. 111-1 of the CCU in terms of bringing its provisions into line with Art. 40 of the CCU by excluding the “voluntariness” of cooperation with the aggressor state as a necessary component for qualifying the act as collaborationism.

In the context of the proposed amendments, fully agreeing with the opinion of the Central Scientific Experts Office of the Secretariate of the Verkhovna Rada of Ukraine on this draft law, it is important to note the following. According to Paragraph 2 of Part 1 of Art. 1 of the Law of Ukraine “On the Bar and Practice of Law”, the practice of law is an independent professional activity of a lawyer regarding protection, representation and provision of other types of legal assistance to a client. Such activity, among other things, may involve the professional activity of a lawyer in the temporarily occupied territory of Ukraine and on the basis of the legislation of the aggressor state in order to protect and prevent violations of the rights and interests of Ukrainian citizens who stay in the temporarily occupied territory. Lawyers in the occupied territory of Ukraine, in particular, in Crimea, defend the rights of Ukrainian citizens in the Russian-occupation courts and are often the only possible link with family members who are held in penal facilities in the occupied territories, subjected to unlawful arrests, enforced disappearances or other violations of their rights. The proposed amendments to the law obviously do not take into account the realities of living under occupation, as well as the peculiarities of the ongoing occupation of Ukrainian territories. Criminalisation of all such activities will deprive the Ukrainian citizens of any legal protection against the occupation authorities.

It is also inappropriate to introduce another broad construction (“*provision of other public services*”), which will complicate the interpretation of the article and create a danger of violating the principle of legal cer-

tainty. The current legislation does not contain a definition of the concept of “public services”, while various legislative acts single out a wide list of services that can be considered public, in particular, administrative services (Law of Ukraine “On Administrative Services”); social (Law of Ukraine “On Social Services”), financial (Law of Ukraine “On Financial Services and State Regulation of Financial Services Markets”); housing and communal services (Law of Ukraine “On housing and communal services”); transport services (Law of Ukraine “On Transport”) and others. The introduction of such a structure will make it possible to interpret any activity that falls under the provision of such services in the temporarily occupied territory of Ukraine as collaborationism.

CONCLUSIONS

1

The analysis of investigative and judicial practice made it possible to single out the main difficulties in the application of Art. 111-1, namely:

- a) the absence of criteria for distinguishing among the qualification of acts under Articles 111, 111-2 and 436-2 and Article 111-1 which creates problems of double qualification and violates the principle of legal certainty
- b) disproportionality of the punishment for actions that can be qualified under Art. 111-1 or related articles – in some cases the punishment is too severe, in others – it does not fulfill the function of correction and prevention of new criminal offences by a person.

2

Amendments to the legislation regarding the clarification of the types and methods of activity, in particular, in the temporarily occupied territory, which can be qualified as illegitimate, and establishment of a clear distinction between the qualification of such actions under Articles 111, 111-1, 111-2 and 436-2 of the CCU, are necessary. However, their presentation, proposed in the government draft laws No.7646, No.7647 regarding the peculiarities of activities in the temporarily occupied territory of Ukraine, does not solve the problem of the ambiguity of the wording and needs to be finalised.

It also seems inappropriate to make a long list of permitted activities in the Law of Ukraine “On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine” instead of a clearly formulated list of prohibited activities directly in Part 4 of Art. 111-1 of the CCU. The optimal option is to highlight those types of activities that are directly prohibited and can be qualified as prohibited under Art. 111-1 as this will contribute to the unambiguous interpretation and such an addition fits into the logic of criminal legislation.

3

Introduction of new elements of a crime proposed by Draft Law No. 8077 jeopardise the protection of the rights and interests of Ukrainian citizens who stay in the temporarily occupied territory.

4

The most efficient in the context of distinguishing is Draft Law No. 7570 and the method proposed in it to formulate the distinguishing features of the crime “collaborationism” (Art. 111-1 of the CCU) in order to distinguish it from high treason (Art. 111 of the CCU), justification, recognition as legitimate, denial of the armed aggression of the Russian Federation against Ukraine, glorification its participants (Art. 436-2 of the CCU) and from other related criminal offences, as well as to exclude responsibility for public calls for non-recognition of the extension of the state sovereignty of Ukraine to the temporarily occupied territories of Ukraine from Art. 111-1 of the CCU and to exclude Art. 111-2 of the CCU to eliminate the multiplication of articles of the Criminal Code which contain the same elements of crimes with different penalties established for them.



ANNEXES



СЛУЖБА БЕЗПЕКИ УКРАЇНИ

Апарат Голови

**Управління
взаємодії із засобами масової
інформації та громадськістю**

вул. Володимирська, 33, м. Київ, 01601

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Код ЄДРПОУ 00034074

15.11.2022 № 10/3/17-147-н/1-23

На № _____ від _____

Голові правління

Центру прав людини ZMINA

Тетяні ПЕЧОНЧИК

al@humanrights.org.ua

Ваш запит від 09 листопада 2022 року № 104/11 щодо відкритих проваджень за статтею 111-1 Кримінального кодексу України опрацьовано компетентними підрозділами СБ України.

За результатами розгляду повідомляємо, що з початку повномасштабної агресії російської федерації Служба безпеки України викрила 727 осіб, яких підозрюють у вчиненні злочину, передбаченого статтею 111-1 (колабораційна діяльність) Кримінального кодексу України.

Кримінальні провадження щодо 268 колаборантів СБУ вже передала до суду, стосовно 53 із них - винесені реальні судові рішення. Розслідування у решті проваджень тривають.

Начальник Управління

Артем ДЕХТЯРЕНКО



Прокуратура України
ОФІС ГЕНЕРАЛЬНОГО ПРОКУРОРА

вул. Різницька, 13/15, м. Київ, 01011 факс: (044) 280-26-03
e-mail: office@gp.gov.ua, web: www.gp.gov.ua
Код ЄДРПОУ 00034051

16.11.2022 № 27/3-1193ВчХ-22

На № _____ від _____

Голові правління
Центру прав людини ZMINA
Тетяні Печончик
al@humanrights.org.ua

Ваші запити щодо надання інформації про кількість зареєстрованих у розрізі регіонів держави станом на 01.11.2022 кримінальних правопорушень, передбачених статтею 111¹ КК України за окремою її частиною розглянуто.

Роз'яснюємо, що відповідно до статті 1 Закону України «Про доступ до публічної інформації» публічною є відображена та задокументована будь-якими засобами та на будь-яких носіях інформація, що була отримана або створена в процесі виконання суб'єктами владних повноважень своїх обов'язків, передбачених чинним законодавством, або яка знаходиться у володінні суб'єктів владних повноважень, інших розпорядників публічної інформації, визначених цим Законом.

Відтак, визначальним для публічної інформації є те, щоб вона була заздалегідь готовим, зафіксованим продуктом, отриманим або створеним суб'єктом владних повноважень у процесі виконання своїх обов'язків.

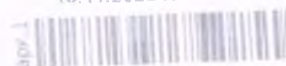
Закон не передбачає проведення аналізу, підрахунків або виокремлення інформації за запитуваними критеріями, а відтак створення нової інформації.

Повідомляємо, що відомості про зареєстровані кримінальні правопорушення (провадження) та результати їх розслідування, узагальнюються у звітності за формою №1 «Єдиний звіт про кримінальні правопорушення», яка формується на підставі даних, внесених до Єдиного реєстру досудових розслідувань користувачами інформаційної системи, щомісячно, наростаючим підсумком з початку звітного періоду (року) у розрізі статей та розділів Кримінального кодексу України за регіоном вчинення злочину.

Разом із тим у звітності не передбачено виокремлення даних про кримінальні правопорушення за окремими частинами статей Кримінального кодексу України, у зв'язку з чим надати таку інформацію немає можливості.

З урахуванням викладеного, надаємо відомості про кількість зареєстрованих у розрізі регіонів держави упродовж січня-жовтня 2022 року, кримінальних правопорушень (проваджень), передбачених статтею 111¹ КК

Офіс Генерального прокурора
16.11.2022 №27/3-1193ВчХ-22



України, відповідно до звітності за формою №1 «Єдиний звіт про кримінальні правопорушення».

У разі незгоди з відповіддю Ви вправі її оскаржити відповідно до статті 23 Закону України «Про доступ до публічної інформації» керівництву Офісу Генерального прокурора або до суду.

Додаток: на 1 арк.

**Начальник відділу розгляду
запитів на публічну інформацію**



Андрій СЬОМІЧ

Відомості
про зареєстровані у розрізі регіонів держави упродовж січня-жовтня 2022 року кримінальні
правопорушення (провадження), передбачені ст. 111-1 КК України
(за даними статистичної звітності за формою №1 "Єдиний звіт про кримінальні правопорушення")

Регіон	Зареєстровано кримінальних правопорушень у звітному періоді	Кримінальні правопорушення, у яких провадження закрито		Обліковано* кримінальних правопорушень у звітному періоді
		Усього	у т.ч. за п.п. 1, 2, 4, 6, 9- 1 ч. 1 ст. 284 КПК України	
АР Крим	44			44
Вінницька	24	2	2	22
Волинська	2	1	1	1
Дніпропетровська	57	1	1	56
Донецька	462	6	6	456
Житомирська	76	23	23	53
Закарпатська	32	13	13	19
Запорізька	213			213
Івано-Франківська	3			3
Київська	102	22	22	80
Кіровоградська	1			1
Луганська	577	5	5	572
Львівська	3			3
м. Київ	129	10	10	119
м. Севастополь	5			5
Миколаївська	57	6	6	51
Одеська	80	18	18	62
Полтавська	10	4	4	6
Рівненська	18	5	5	13
Сумська	74	27	27	47
Тернопільська	12	2	2	10
Харківська	679	9	9	670
Херсонська	576	1	1	575
Хмельницька	32			32
Черкаська	17	3	3	14
Чернівецька	6	3	3	3
Чернігівська	40	1	1	39
Усього по Україні	3331	162	162	3169

* - Без урахування кримінальних правопорушень, виключених з обліку у зв'язку
із закриттям провадження на підставі пунктів 1, 2, 4, 6, 9-1 ч.1 ст. 284 КПК України

