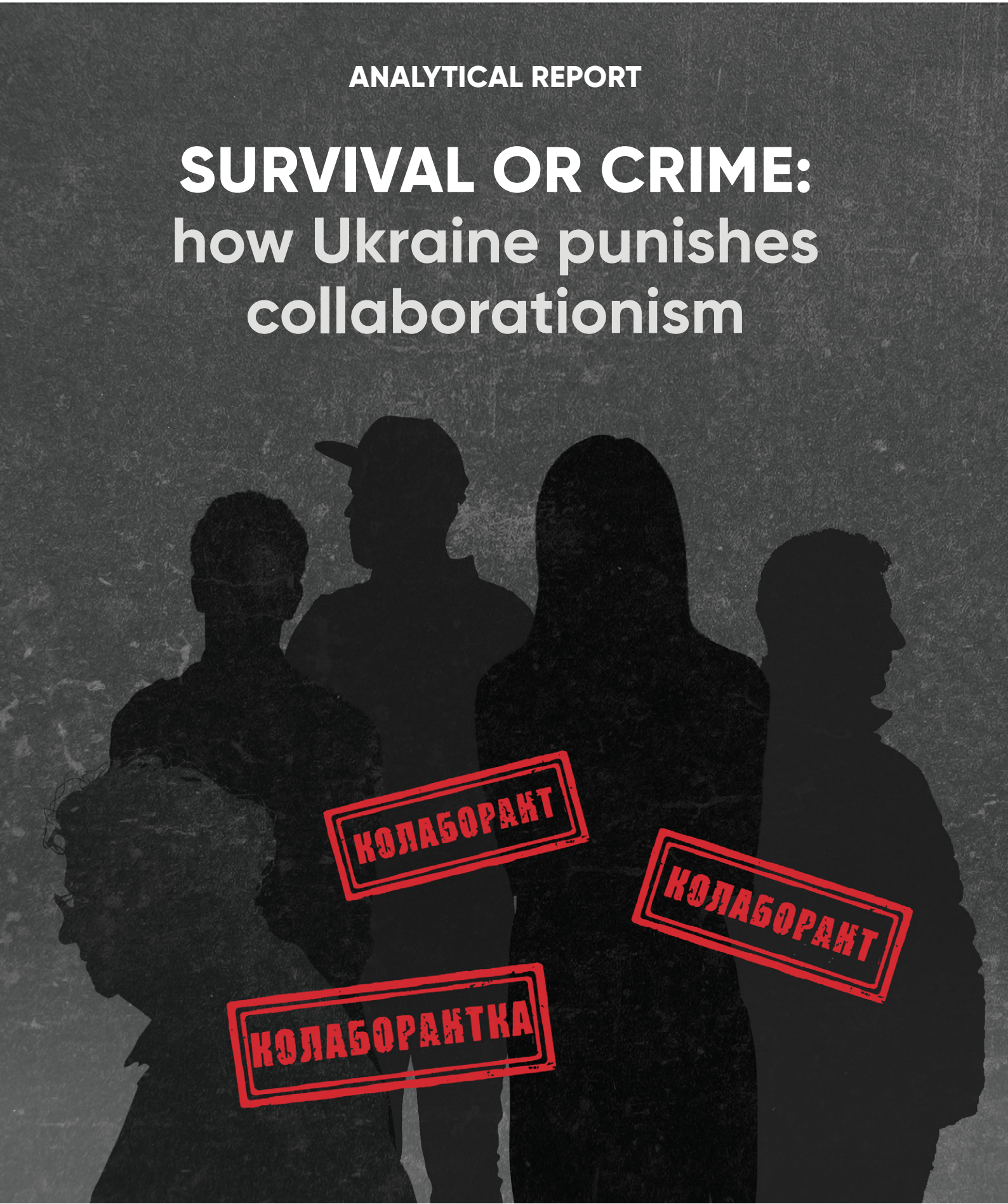
ZMINA

HUMAN RIGHTS CENTER

ANALYTICAL REPORT

SURVIVAL OR CRIME: how Ukraine punishes collaborationism



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Survival or crime: how Ukraine punishes collaborationism ? Analytical report / Syniuk O. Deputat D., Vyshnevska I., Volkovynska V., Chervonna V., Yelihulashvili M.; Editor – Lunova A. — Kyiv, 2024. — 100 p.

The analytical report is aimed at researching trends in the practice of considering cases on collaborative activity in Ukraine and analysing the relevant case law, studying developments in amending criminal legislation, as well as communication and public perception of responsibility for collaborationism and the demand for justice, with the aim of further improving legislation on collaborative activity and developing an effective strategy for considering such cases to form a uniform and proper practice.

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Human Rights Centre ZMINA works to protect freedom of speech and movement, combat discrimination, and prevent torture and ill-treatment. It also works to combat impunity, protect human rights defenders and civil society activists in Ukraine, including the occupied Crimea, and protect the rights of people affected by the war. The organisation conducts information campaigns, educational programmes, monitors and documents cases of human rights violations, prepares research and analysis, and advocates for change through national and international advocacy.

More information about Human Rights Centre ZMINA and its activities: zmina.ua, zmina.info

Partnership Fund for a Resilient Ukraine (PFRU) — is a donor programme funded by the governments of the United Kingdom, Estonia, Canada, the Netherlands, the United States of America, Finland, Switzerland, and Sweden. With the joint support of the Government of Ukraine and partner governments, the Fund implements projects in de-occupied and frontline communities, as well as at the national level. The goal of the PFRU is to strengthen the resilience of the Ukrainian government in the face of Russian aggression and enhance its ability to provide critical assistance to communities in cooperation with civil society, media and the private sector

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INTRODUCTION

After the start of Russia's large-scale armed aggression against Ukraine in 2022, the Verkhovna Rada of Ukraine considered and approved amendments to the CC of Ukraine under a shortened procedure, which established liability for cooperation with the occupation authorities: Articles 111-1 ("Collaborative activity") and 111-2 ("Aiding the aggressor state") were added. These changes were primarily aimed at preventing Ukrainian citizens from cooperating with the occupation authorities in the territories that were and could potentially be occupied by the enemy after February 24, 2022. That is why a wide range of acts of various actors were criminalised, which led to a significant number of criminal proceedings. This did not take into account the experience of the ongoing occupation of the Crimean peninsula and certain districts of Donetsk and Luhansk regions. In addition, the norms of international humanitarian law and the conditions under which involvement in the life support of the occupied territories should not be subject to criminal liability were not taken into account.

As of June 15, 2024, according to the Security Service of Ukraine, 9179 criminal proceedings under Article 111-1 of the Criminal Code of Ukraine were registered[1].

Over the past two years, at least 11 draft laws have been registered in the Verkhovna Rada of Ukraine aimed at amending criminal liability for cooperation with the occupation authorities, but most of these draft laws do not resolve the problematic issues of applying the provisions of Article 111-1 of the CC of Ukraine. At the same time, none of these draft laws fully take into account the practice of applying Article 111-1 of the CC of Ukraine, nor do they take into account the prolonged occupation of the territories – for more than two years, and some territories – for more than ten years.

A preliminary analysis of court practice conducted by the Human Rights Centre ZMINA in 2023[2] highlighted the main trends in the consideration of cases of collaborative activity: Difficulties in distinguishing between similar elements of crimes (in particular, Articles 111-1, 111-2 and 436-2 of the CC of Ukraine); the vast majority of cases considered under Article 111-1 of the CC of Ukraine relate to parts that provide for liability for misdemeanours, in particular parts one and two, (which may indicate the lack of a strategy for prioritising cases in this category of crimes; accusatory bias

1 Response of the Office of the Head of the Department for Media and Public Relations No. 10/3/l-150-p/1-23 of 18.07.2024 to the request of Human Rights Centre ZMINA.

2 Analytical Report "Collaborationism and abetting the aggressor state: practice of legislative application and prospects for improvement" / Syniuk O., Lunova O.; Edited by Svyrydova D. Human Rights Centre ZMINA – Kyiv, 2023: https://zmina.ua/wp-content/uploads/sites/2/2023/10/colaboration_web_ukr-1.pdf.

in the consideration of cases and significant risks to the full exercise of the right to defence in this category of cases. This analysis is intended to trace the previously identified trends and identify the emergence of new ones.

It is also important to study the issue of public perception of cases of collaborative activity. On the one hand, the issue of communication by the investigating authorities (SSU, SBI, National Police) and the prosecutor's office on cases of collaboration on their official websites is relevant. On the other hand, it is important to study how information about the facts of collaborationism is broadcast in the media at the national and regional levels.

Currently, criminal liability remains the only response of the state to the facts of cooperation between Ukrainians and the occupation forces. However, the existing regulation in the Criminal Code of Ukraine does not take into account the almost ten-year occupation of a part of Ukraine's territory (the Crimean peninsula, certain districts of Donetsk and Luhansk regions), as well as the prospect of reintegrating the liberated territories and their residents. In this regard, studying the perception of the meaning of the concept of "collaborationism", current practices of prosecution and expectations will allow us to assess how the current situation in communities correlates with the public demand for justice.

We would like to thank Olena Kopina, Olena Matviichuk, and Daria Bielinska for their significant contribution to the preparation of the methodology, the facilitation of the discussions, as well as for summarizing their results and findings. The discussions would not have been possible without the help and support of Yuliia Napolska and Lina Pluzhenko (Kharkiv), Natalia Seliukova (Zaporizhzhia), Nataliia Vysikanets (Chernihiv), Yevhen Vasiliev (Luhansk and Kherson) and Svitlana Piven (Sumy).

LIST OF ABBREVIATIONS

SBI – State Bureau of Investigation

DPR – the so-called Donetsk People's Republic, i.e. the territory of Donetsk region temporarily occupied by Russia

CC of Ukraine – Criminal Code of Ukraine

CPC of Ukraine – Criminal Procedure Code of Ukraine

LPR – the so-called Luhansk People's Republic, i.e. the territory of Luhansk region temporarily occupied by Russia

reg. no. – registration number

RF – Russian Federation

SES – State Emergency Service of Ukraine

SSU – Security Service of Ukraine

METHODOLOGY

The research covers different areas of analysis, so the authors use different methodologies, which should be considered separately.

(1) Analysis of judicial practice in collaborative activity cases

In order to conduct a comprehensive analysis and identify systemic problems in the practice of applying legislation on collaborative activity, as of June 15, 2024, an analysis was conducted of 1442[3] verdicts under various parts of Article 111-1 of the CC of Ukraine and twelve verdicts under Article 111-2 of the CC of Ukraine, registered in the Unified State Register of Court Decisions, as well as decisions on choosing a preventive measure in the form of detention and seizure of property in at least 379 criminal proceedings under Article 111-1 of the CC of Ukraine, in which a verdict has been delivered, and 23 proceedings under part four of Article 111-1, in which a verdict has not yet been delivered.

The research of court practice was aimed at the following tasks:

- to identify the main trends in the consideration of cases under certain parts of Article 111-1;
- to monitor the development of trends in the practice of considering cases under Article 111-1, identified in the course of the previous research, namely: unclear distinction between the elements and qualification of actions that may fall under cooperation or aiding the aggressor state with other elements of crime; lack of prioritisation of cases; preferential choice of detention as a preventive measure for a suspect at the pre-trial investigation stage;
- to trace the impact of the failure to take into account the standards of international humanitarian law in the wording of the article on the practice of prosecuting for collaborative activity;
- to consider the research during the trial the intention to harm national security in the actions of the accused, the voluntariness of the act.

(2) Analysis of legislation and legislative initiatives

To understand the trends in legislative proposals, predict their effectiveness, and formulate our own proposals, we analysed the draft laws for the period from March 2022 to July 2024.

3 of which 751 sentences were analysed during the current research period (end of September 2023 – June 15, 2024), 691 sentences were analysed during the previous research period

The stages of work included:

1. Analysis of the current wording of Article 111-1 of the Criminal Code of Ukraine and its main shortcomings.
2. Analysis of legislative initiatives concerning amendments to the articles establishing criminal liability for crimes against the foundations of national security of Ukraine.
3. Analysis of legislative initiatives proposing amendments to other laws of Ukraine regulating certain types of cooperation with the aggressor state or illegal occupation authorities.
4. Analysing legislative initiatives concerning restrictions on the rights of persons who have been served with suspicion or accused of committing both crimes against the foundations of national security and collaborative activity.
5. Identification of trends in legislative activity.
6. Formulation of conclusions and directions for improvement of criminal legislation and regulatory acts regulating certain issues of cooperation with the aggressor state or illegal occupation authorities

The task of analytics**:**

- identify the legislator's approaches to amending criminal and regulatory legislation relating to collaborative activity and related issues;
- assessing the impact of legislative changes;
- preparation of recommendations for further improvement of criminal law and regulatory legislation relating to cooperation with the aggressor state or occupation authorities.

(3) Analysis of the peculiarities of covering the topic of collaborationism and prosecution for cooperation with the occupation authorities

The purpose of this part of the research was to collect and analyse the data set from April 1, 2022 to May 31, 2024 according to certain quantitative and qualitative characteristics in the context of coverage of the topic of collaborationism and prosecution for collaborative activity under Article 111-1 of the CC of Ukraine. To study the regional peculiarities of information coverage on the official websites of law enforcement agencies and the prosecutor's office.

The following tasks were identified in this part of the research:

1. to determine the number and coverage of publications using the keywords "collaborationism", "collaborator" and references to Article 111-1 of the CC of

Ukraine from selected sources of law enforcement and prosecutorial authorities, as well as regional and national media on a monthly basis and by region of Ukraine.

2. to investigate the regional peculiarities of information coverage on national and regional media, websites and social media pages of the regional offices of the SSU, the National Police, the SBI, and prosecutors' offices.

3. to determine the general tone of publications and identify negatively charged words and phrases in the context of a given topic.

4. to determine from the text of the publication whether it contains references to the verdict and conviction of a person, tracking keywords related to the description of a person as guilty of a crime in cases where there is no mention of a verdict or conviction.

5. to determine the presence of an image of a person suspected or accused of collaborative activity and the presence of face concealment techniques. In this case, the first image is analysed if there are several in a publication or post.

6. to form conclusions about the key narratives of the publications.

To generate the data for the research, publications with the keywords "collaborationism", "collaborator", "Article 111-1 of the CC" were used. The following categories of media were used to create the first part of the report: Web-sources, Facebook, Telegram of regional departments of the SSU, the National Police, the SBI, and prosecutors' offices (if such regional sources are available, for Web-sources – if they are available in the Semantrum[4] system). The following categories of media were used to create the second part of the report: Ukrainian online media (national and regional) and news agencies, available in the TV system (in particular, United News telethon) and the press, YouTube channels of selected TV channels.

In total, the analysis covered 164 sources in part one (law enforcement agencies' pages) and 2,508 sources in part two (media pages).

All publications were automatically analysed to identify the presence of negative vocabulary related to the description of persons accused of committing crimes. Based on this analysis, the following groups of negative words and phrases were identified: Intruder/perpetrator/criminal; traitor/ betrayed Ukraine/ sellouts/ betrayers/renegade; defector; accomplice; agent of the Kremlin/rf/ FSB/ Russian/ Russian/ Russian; gauleiter, etc.

All publications analysed in the study were divided into neutral and negative. Negative publications were classified as negative:

4 Semantrum is an online media monitoring and content analysis system that collects and analyses publications from various types of media and social networks around the world. More information about Semantrum you can find here: https://www.promo.semantrum.net/

- Publications containing the above-mentioned negative words and phrases;
- publications identified as negative for keywords using the Semantrum ML algorithm[5];
- publications identified as negative in relation to keywords using the Semantrum dictionary-based tone detection method[6].

In order to determine the observance of the presumption of innocence in publications, a special list of keywords was created to track references to the sentencing and conviction of a person, including the following phrases: sentencing, verdict for a collaborator, sentence under Article 111-1, a convicted collaborator, conviction under Article 111-1, conviction and other variants, using a special query language. Based on the presence of these phrases, all publications selected for the study were labelled according to the presence or absence of a mention of the sentencing of a suspect. This data was combined with the data on the presence of negative keywords and phrases related to the description of a person as guilty of a crime. Publications that contain negative words and phrases, but do not contain information about the sentencing of a suspect, were considered to contain markers of a possible violation of the presumption of innocence.

(4) Conducting facilitated discussions

The design of the events and the study as a whole is based on the dialogue approach, which was formulated by Ukrainian practitioners in 2018, where dialogue is defined as "a specially prepared group process that, with the help of a facilitator, helps a group of participants to discuss rather complex and controversial topics in the most constructive way, following a trauma-informed and conflict-sensitive approach".

Based on the established principles and the overall goal of the study, the design of two-day and one-day events, a portrait of potential participants and key target groups, prioritised research hypotheses and questions to be tested during the dialogue meetings were developed.

The purpose of the dialogue meeting is to develop, in a facilitated manner, the types of collaborative activity, expectations and demands for justice in the context of collaborationism cases, based on the personal experience and vision of representatives of target groups from the pilot regions.

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5 A mechanism for determining the tone of a text in relation to the monitored object using an AI model trained on a corpus of texts posted manually by analysts. For ML-tone, the so-called Entity related sentiment analysis was used, which means that the emotional colouring of messages was determined not just for the publication as such, but in relation to the monitored object in the topic.

6 Determining the tone of the publication based on the presence and number of words or phrases in the document that belong to dictionaries with positive or negative connotations in the immediate vicinity of the location of the monitoring object in the text (object-oriented tone detection algorithm).

Taking into account the specifics of the topic, the target audience and the potential psycho-emotional state of the participants, the overall design of the meetings was based on the principles of conflict sensitivity and the 'do no harm' approach, and in five of the six events, experts with experience in therapeutic work with victims were involved as facilitators.

The methodology identified several types of territories with different experiences of the duration and specifics of the occupation regime. From the point of view of the researchers, this was to provide a broader understanding of both collaborative activity and the demand for justice among people directly affected by the full-scale invasion, namely:

1. communities that were under partial, short-term occupation – districts of Chernihiv and Sumy regions;
2. communities that were under prolonged occupation but were liberated in full or in a significant part – districts of Kharkiv and Kherson regions;
3. communities under prolonged occupation, where the territories have not been liberated – Luhansk and Zaporizhzhia regions.

The dialogue meetings took place in May-June 2024.

A total of 85 participants took part in the discussions, including 69 women and 16 men.

When agreeing on the list of potential participants for recruitment, several principles of group formation were identified:

1. personal experience of being directly under occupation and/or in the area as close to it as possible;
2. the presence of local residents who have become internally displaced as a result of Russia's full-scale aggression;
3. inclusion of a wide range of professional and age groups;
4. direct damage from the occupation and cooperation of local residents with the Russian Federation.

Restrictions on participant recruitment and methodology

Despite the assumption that this topic would cause resistance, unwillingness to talk or, on the contrary, fatigue from discussions, security issues became the key challenge in the third year of the full-scale invasion.

Firstly, physical security – on the day of the event in Kharkiv, the Russian army launched an invasion of the Kharkiv region, which significantly affected both the group's composition and the psycho-emotional state of the participants.

Secondly, the issue of mobilisation and the need to cross checkpoints was a significant factor that limited men's participation in the events.

Thirdly, for some participants who were under occupation during the full-scale invasion, discussions on this topic were defined as "dangerous due to the activities of the SSU".

It is important to note that the participants in the meetings were mostly people who did not have a neutral position. Most of them have a pro-Ukrainian position and have suffered damage from Russia's actions in the occupied territories. It is neither possible nor ethical to form a group of a mixed type of values at this time and in the context of the research focus of the dialogue approach. At the same time, certain requests and problems raised, controversial issues on the part of the participants allow us to assume that some of them are ready to join measures on restorative justice. But only on the condition of voluntariness, legal and security clarity on the aspects of responsibility for collaborative activity.

The presence of professional lawyers in the group, especially those with experience in law enforcement, acted as both a structuring and a limiting factor. By discussing the issue "professionally", quoting the CCU/CPC of Ukraine, the group more clearly distinguished between collaborationism and other types of crimes, and at the same time stopped generating ideas and limited themselves to "legally correct" interpretation.

SUMMARY

1. In the absence of legislative changes in 2022-2024, the practice of considering cases of collaborative activity (1442 verdicts as of 15.06.2024) mostly maintains the previously identified trends: unclear and broad wording of the legislation leads to different interpretations and problems with the distinction of elements of crimes against the foundations of national security; detention is used in the vast majority of cases as a non-alternative measure of restraint, the majority of sentences are passed on appeal upon the complaint of the prosecution (7 out of 10 sentences that aggravated the punishment) and there is almost no acquittal (2). Within the longer-term practice of case consideration, other trends in non-compliance with international humanitarian law standards can be identified, in particular, the prosecution of persons who provide vital functions in the occupied territory, as well as limited consideration of the intent to harm national security in the actions of the accused, a significant difference in the practice of sentencing *in absentia* and in the presence of the accused, etc.

2. As of 20.07.2024, 16 draft laws of Ukraine are under consideration by the Verkhovna Rada of Ukraine regarding amendments to the articles establishing criminal liability for crimes against the foundations of national security of Ukraine (11), which amend other laws of Ukraine regulating certain types of cooperation with the aggressor state or illegal occupation authorities (2) and which restrict the rights of persons who are suspected or accused of committing crimes against the foundations of national security and collaborative activity (3). At the same time, most of them are aimed at strengthening criminal liability for collaborative activity by increasing the amount of punishment, adding new types of sanctions, and extending the period of expungement of a criminal record. Proposals to amend Article 111-1 of the CC of Ukraine to distinguish it from other related criminal offences not only failed to solve the problem, but also created problems with distinguishing it from even more criminal offences. Almost all of the draft laws under consideration are not being considered.

3. An analysis of publications on both the official pages of law enforcement agencies and the media showed the widespread use of negatively coloured words to describe people suspected of collaboration. At the same time, the vast majority of publications that use negative language do not contain information about the sentencing of such a person – they refer to cases in which a person was only notified of suspicion. Accordingly, communication from both law enforcement agencies and the media contains violations of the presumption of innocence. However, it is impossible to say that there is a unified policy of coverage by both state authorities and media – most sources publish both cor-

rect and materials containing violations of the presumption of innocence. Although there is no significant regional difference in the number of negatively coloured words in publications, the regions closer to the frontline have a higher number of publications on collaborative activity in general and a more active use of negatively charged words.

4. Facilitated discussions with residents of the communities that were under occupation or are still occupied allowed us to identify key categories of persons whose accountability is a significant public demand, in particular, representatives of communities that have experienced occupation of different durations, namely: (1) participation in the establishment and development of the system of power and governance; (2) participation in the political legitimation of the occupation regime through the organisation of elections, referendums, election as a deputy; (3) belonging to law enforcement agencies, "security forces"; (4) passing on information about activists, veterans; (5) participation in propaganda activities; (6) participation in armed formations on the side of the Russian Federation; (7) management of large industrial facilities, production or business that deliberately and proactively used ties with the occupiers for their own growth, expansion, gaining significant competitive advantages and monopolies. A significant request concerned the prioritisation of cases on collaboration with a focus on certain categories.

5. The request identified in the facilitated discussions partially reflects the requirements established by international humanitarian law standards for the continuation of the activities of medical workers, rescuers, and public utilities in the occupied territory and the absence of responsibility for these activities. At the same time, the issue of education and management personnel, including the provision of medical and utility services, and the activities of rescuers, remains a difficult one. The corrective request is an individual approach and assessment of the motivation, voluntariness and initiative, direct actions of the accused person in their position and the damage caused by them. According to the participants, the severity of the punishment should be determined on the basis of the assessment of these factors.

6. The unclear legislation on collaborative activity and the failure to take into account the duration of the occupation have led to another public demand for clear and constant communication from government officials on the definition of collaborative activity. In particular, explanations of the actions that would be subject to criminal liability, as well as clarification of the algorithm for recording coercion to cooperate with the aggressor state. A separate request concerned support for people in the occupied territory – given the need for survival, people need to be provided with an alternative way to earn a living.

RECOMMENDATIONS

1. To develop and amend Article 111-1 of the CC of Ukraine taking into account the analysis of the practice of application of the article by investigative and judicial authorities, as well as the need to (1) take into account the norms of IHL and the need to ensure the vital activity in the temporarily occupied territories; (2) to clarify the existing forms of the objective element provided for in Article 111-1 of the CC of Ukraine in order to avoid wording that allows for an overly broad interpretation of the provision, which, in turn, violates the principle of legal certainty; (3) to supplement the sanction of paragraphs 1, 2 of Article 111-1 with a fine as an alternative to deprivation of the right to hold certain positions or engage in certain activities.

2. To take into account the public danger and consequences of the offence under Article 111-1 of the CC of Ukraine and determine proportionate and fair punishments for such violations. In particular, consideration should be given to removing the least serious category of violations from the criminal justice system and ensuring lustration measures and considering the development of amnesty legislation. Such steps will not only help to balance the gap between the social danger of the act and the punishment for it, but will also help to relieve the burden on the law enforcement and justice systems, as well as the reintegration of the de-occupied territories of Ukraine and Ukrainian citizens living there.

3. To ensure effective investigation of cases related to the commission of crimes under Article 111-1 of the CC of Ukraine, a unified approach (strategy) should be developed within the framework of the current legislation for law enforcement agencies working with this category of cases. Such a strategy should include a framework for cooperation between different agencies to prevent duplication of actions, clearly define the distinction between different articles and interpretation of broad concepts to reduce the discretion of a particular law enforcement officer (investigator, prosecutor) and the inconsistency of application of the legislation in its current version. It should also contain criteria for proving voluntariness, taking into account the realities, the atmosphere of intimidation and coercion in the occupied territory of Ukraine and determining which evidence does not meet the relevance and sufficiency criteria, as well as prioritising cases under Article 111-1 of the CC of Ukraine.

4. To avoid adopting draft laws that impose restrictions on the exercise of rights (in particular, the right to pension and the right to be recognised as a victim or a family member of a deceased victim) of persons suspected of committing an act under Article 111-1 of the CC of Ukraine.

5. To ensure that the public is systematically informed about the activities of law enforcement agencies to identify and investigate the facts of collaborative activity. At the same time, both law enforcement and media communications should adhere to journalistic standards, including the presumption of innocence. Refrain from using aggressive language that incites hatred.

6. To provide mechanisms for involving the assessment (opinion) of residents in clarifying the context and peculiarities of controversial cases related to the accusation of collaborationism, at the community level.

7. To provide formats of “safe” spaces for discussing the experience of occupation and return, restoring peaceful life. Such dialogue practices can become a tool to heal and stabilise people, gain recognition and provide support for the continued progress of the affected people.

CHAPTER 1.

ANALYSIS OF JUDICIAL PRACTICE IN CASES OF COLLABORATIVE ACTIVITY

The issues of legislation and practice of prosecution for collaboration have been considered on several occasions, in particular, in the studies of November 2022[7] and September 2023[8]. The main trends that emerged in the previous research period during the analysis of verdicts were as follows:

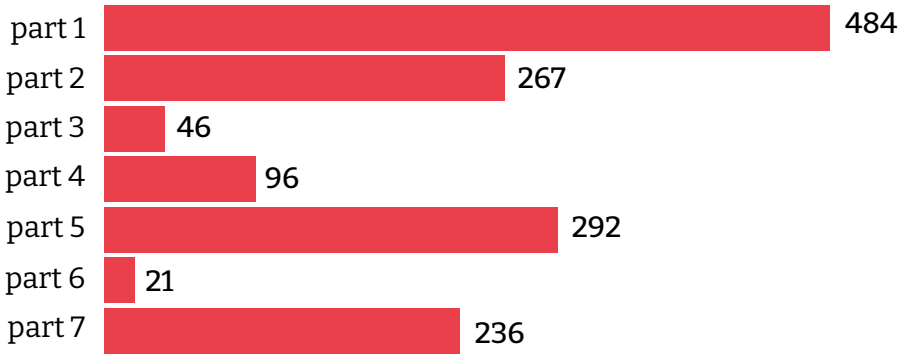
- unclear wording in Articles 111-1 and 111-2 of the CC of Ukraine allows for a broad interpretation of the qualifying features of crimes;
- unclear distinction between the elements and qualification of actions that may fall under collaboration or aiding the aggressor state and other elements of crime;
- lack of prioritisation of cases;
- the predominant choice of detention as a preventive measure for a suspect at the pre-trial investigation stage;
- the issue of proportionality between the violation and the punishment.

The current study monitored both the development of previously identified trends and possible changes in the practice of considering this category of cases.

7 Analytical note "Criminal prosecution for collaborative activity: analysis of current legislation, its application practice and proposals for legislative changes" / Human Rights Centre ZMINA, NGO Civil holding GROUP OF INFLUENCE, NGO Donbas SOS, NGO Crimea SOS, CF EAST SOS, Charitable Foundation Stabilization Support Services and NGO Crimean Human Rights Group, December 2022: https://zmina.ua/wp-content/uploads/sites/2/2022/12/zvit_zmina_ukr-2.pdf

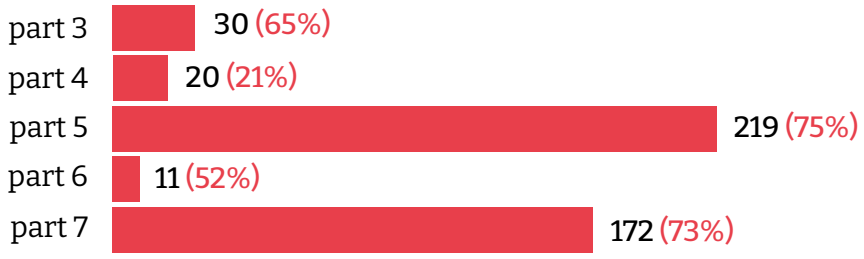
8 Analytical Report "Collaborative Activity and Aiding and Abetting the Aggressor State: Practice of Legislation Application and Prospects for its Improvement" / Syniuk O., Lunova A.; Edited by Svyrydova D. Human Rights Centre ZMINA, September 2023: https://zmina.ua/wp-content/uploads/sites/2/2023/10/colaboration_web_ukr-1.pdf

As of June 15, 2024, 1442 decisions[9] in cases under Article 111-1 of the CC of Ukraine were registered in the Unified State Register of Court Decisions. At the same time, as of July 5, 2024, 8315 proceedings under Article 111-1 were registered.



There has been a certain change in the prioritisation of proceedings under different parts of Article 111-1 – although the largest share of verdicts remains under part one – 484, the number of verdicts under part five currently exceeds the number of verdicts under part two, unlike in the previous period – 267 and 292 respectively. The number of sentences under part seven has increased significantly – now there are 236.

In absentia[10] proceedings are conducted under all parts of Article 111-1 of the CC of Ukraine, except for the first and second, and the number of such proceedings has increased significantly. Compared to the previous period, when more than 50% of verdicts under parts three and five were considered *in absentia*, in the current period more than 50% of verdicts were delivered *in absentia* in cases under parts three, five, six and seven of Article 111-1 of the CC of Ukraine. At the same time, the share of cases under parts five and seven exceeds 70%.

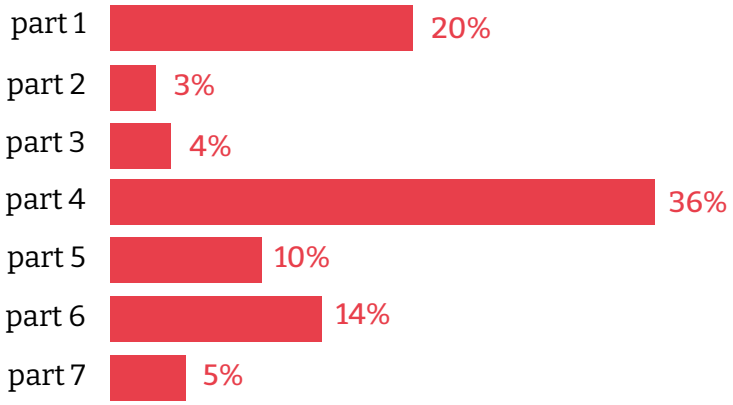


The trend with plea bargaining is the opposite – the number of plea bargains in all parts has decreased, with the largest share remaining in cases under parts one

9 The figure of 1,442 verdicts does not include verdicts prohibited for publication under paragraph 4 of part one of Article 7 of the Law of Ukraine "On Access to Court Decisions", duplicate verdicts in the system, verdicts under related articles, as well as verdicts in appeal or cassation instance.

10 a special procedure in the pre-trial investigation and in court proceedings, which is carried out in the absence of the suspect or accused

and four. This change can be explained, among other things, by the increase in the number of proceedings *in absentia*, which makes it impossible to conclude a plea agreement.



It is also important to highlight the simplified procedure applicable to criminal offences. The procedure stipulates that if the accused does not dispute the circumstances established during the inquiry and agrees to the consideration of the indictment, the court, in the absence of the participants in the court proceedings, considers the indictment without a trial in a court hearing.[11]

Under Article 111-1, cases under parts one and two may be considered in a simplified procedure, as these violations are misdemeanours. During the monitored period, 56% of cases under part one and 91% of cases under part two were considered in the framework of simplified proceedings.

The situation with the consideration of cases in the appellate instance changed somewhat, in particular, appeals were filed in 79 cases. In total, 26 appeals were filed by the prosecution and 56 by the defence (in some appeal proceedings, appeals were filed by both the prosecution and the defence). There are currently 10 verdicts in the appellate instance.

In general, most of the new sentences were passed following the prosecutor's appeal and they aggravate the punishment (especially this trend is observed in relation to sentences under part three of Article 111-1 of the Criminal Code), only one of the sentences was mitigated and was caused by a technically incorrect application of criminal law by the court of first instance[12]. Most of the appeals filed by defence counsel concerned verdicts delivered *in absentia*. Only three appeals of defence counsels were partially satisfied – they were filed against the verdicts delivered under part five of Article 111-1 of the CC of Ukraine and the court of appeal

11 The Criminal Procedure Code of Ukraine ed. of 19.06.2024, part 2, Article 381: https://zakon.rada.gov.ua/laws/show/4651-17#Text

12 Court order in case No. 636/285/24 of 04.04.2024: http://reyestr.court.gov.ua/Review/118381985

reduced the sentence from the maximum 10 years of imprisonment to 7-8 years of imprisonment.

However, there have also been the first hearings of cases of collaboration in the cassation instance – at least three Supreme Court rulings have been issued upholding previous verdicts, and five cases are still under consideration.

The fact that the number of appeals and subsequent cassation appeals against first instance court verdicts is still low is also due to a number of factors:

- the conclusion of a plea agreement provides that the only grounds for appealing a sentence are the imposition of a sentence more severe than that agreed upon by the parties to the agreement, the passing of a sentence without the defendant's consent to the sentence, and the court's failure to comply with the requirements that the defendant understand their rights in the event of acceptance of the agreement, the belief that the agreement was concluded voluntarily, etc[13]. Further appeals against the verdict on other grounds are not possible.
- the consideration of a case in a simplified proceeding provides that a verdict delivered in such proceedings may not be appealed on the following grounds: the proceedings were held in the absence of the parties to the proceedings; the court did not examine the evidence; the circumstances established by the pre-trial investigation were challenged.[14] Therefore, an appeal on the merits is not possible.
- the consideration of the case under the special procedure *in absentia*. While the application of the special procedure does not limit the possibility of appealing the verdict, practical obstacles should be taken into account – the procedure *in absentia* is applied to those persons who are in the temporarily occupied territory of Ukraine or in the territory of the Russian Federation. The possibility of their travelling to the territory controlled by Ukraine or participating in the process remotely is significantly limited.

There were no significant changes in the number of acquittals in the monitored period. In particular, there have been two acquittals so far, one of which was delivered under part one of Article 111-1 of the CC of Ukraine,[15] and the other under part seven of Article 111-1 of the CC of Ukraine, but it was cancelled by the court of appeal[16].

13 Criminal Procedure Code of Ukraine ed. of 19.06.2024, part 4 of Article 394, Article 474: https://zakon.rada.gov.ua/laws/show/4651-17#Text

14 Criminal Procedure Code of Ukraine ed. of 19.06.2024, part 1 of Article 394: https://zakon.rada.gov.ua/laws/show/4651-17#Text

15 Verdict in case No. 740/4456/22 of 10.10.2023: https://reyestr.court.gov.ua/Review/114072331

16 Verdict in case No. 191/3178/22 of 10.01.2024:https://reyestr.court.gov.ua/Review/116187804

Regarding the acquittal under part one of Article 111-1 of the CC of Ukraine, the person was accused of publicly denying the armed aggression of the Russian Federation against Ukraine, which was expressed in various statements. The prosecution presented four witnesses who confirmed the commission of these actions, while the defence presented six witnesses who denied them. The conclusions reached by the court were, in particular, that it found the defence's version of PERSON_6's innocence to be true, which consisted of defamation based on a private legal conflict between two relatives regarding the pouring of paint on a fence.[17]

Regarding the acquittal under part seven of Article 111-1 of the CC of Ukraine: the person was accused of voluntarily taking a position in a law enforcement agency of the occupation authorities, namely, an assistant to the duty officer of the Temporary Detention Facility of the Troitsk District Department of the Ministry of Internal Affairs of the LPR[18]. The case was considered in the absence of the accused, the prosecution presented two witnesses, reports of screen shots, and some other materials that the court did not recognise as evidence. The court acquitted the defendant on the basis that the subject of the criminal offence was a Ukrainian citizen, and the court noted that the prosecution had not presented evidence to prove the defendant's Ukrainian citizenship. Against this background, the prosecutor filed an appeal, pointing to the incompleteness of the trial and the biassed interpretation of written evidence and its selective examination – the court of appeal partially upheld the appeal and sent the case for a new trial.[19]

1.1 TRENDS IN PARTS OF ARTICLE 111-1 OF THE CC OF UKRAINE

It is also worth highlighting certain trends that can be traced in the verdicts under certain parts of Article 111-1 of the CC of Ukraine. These trends are highlighted based on the analysis of the verdicts delivered between September 2023 and mid-June 2024, namely in the context of the assessment of the relevant acts, the qualification of criminal offences and the sentencing for their commission.

part 1 of Article 111-1 of the CC of Ukraine

1. 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

17 Verdict in case No. 740/4456/22 of 10.10.2023:https://reyestr.court.gov.ua/Review/114072331
18 hereinafter quoted from court judgements in the original language
19 Court order in case No. 191/3178/22 of 20.03.2024: http://reyestr.court.gov.ua/Review/117905124

state, to non-recognition of the extension of state sovereignty of Ukraine to the temporarily occupied territories of Ukraine –

shall be punishable by deprivation of the right to hold certain positions or engage in certain activities for a term of ten to fifteen years.

- the most common network for publicly denying Russian aggression in Ukraine or for verbally supporting the enemy remains the Odnoklassniki social network, as 90% of sentences are related to this network. Other "popular" social networks in this context include Telegram, Facebook, VK, X (Twitter) and Youtube;
- a quarter of the cases included expert conclusions, the costs of which were covered by the convicts;
- the tendency to impose a sentence of deprivation of the right to hold positions in state authorities, public administration, local self-government and engage in activities related to the provision of public services for a period of 10 years remains. At least 20 verdicts stipulate a longer sentence than the above, but the reasons for this variation are not obvious: in seven verdicts – 11 years of deprivation of the right; in seven more – 12 years of deprivation of the right; in one verdict – 13 years of deprivation of the right; in five verdicts – 15 years of deprivation of the right.
- under this particular part, the prosecutor filed an appeal aimed at mitigating the sentence imposed on the person due to the incorrect application of Article 69-1 of the CC of Ukraine by the court of first instance, since the sentence should not exceed two-thirds of the maximum term of the most severe type of punishment provided for by the relevant sanction of the article. That is why it became necessary to change 11 years to 10 years of deprivation of the right to hold positions in state authorities, public administration, local self-government or bodies providing public services.[20]

part 2 of Article 111-1 of the CC of Ukraine

2. Voluntary occupation by a citizen of Ukraine of a position not related to the performance of organisational, administrative or administrative and economic functions in illegal authorities established in the temporarily occupied territory, including in the occupation administration of the aggressor state

20 Court order in case No. 636/285/24 of 04.04.2024: http://reyestr.court.gov.ua/Review/118381985

shall be punishable by deprivation of the right to occupy certain positions or engage in certain activities for a term of ten to fifteen years with or without confiscation of property.

- in at least 20 proceedings, the confiscation of all property belonging to the accused was imposed as an additional punishment;
- the court practice in terms of imposing different sentences for people who held similar positions and performed similar functions remains unclear;
- along with a number of "standard" popular positions held by persons convicted under this this part of Article 111-1 of the Criminal Code of Ukraine such as specialist, chief specialist, accountant, chief accountant, security guard, etc, there are some extraordinary positions such as "head of a street ... of the settlement council" – occurs in 5 cases, and "head of a block ...of the settlement council" – can be found in 1 of the cases.

part 3 of Article 111-1 of the CC of Ukraine

3. Propaganda by a citizen of Ukraine in educational institutions, regardless of type and form of ownership, with the aim of facilitating the armed aggression against Ukraine, establishing and confirming the temporary occupation of part of the territory of Ukraine, avoiding responsibility for the armed aggression against Ukraine by the aggressor state, as well as actions of citizens of Ukraine aimed at implementing the educational standards of the aggressor state in educational institutions

shall be punishable by correctional labour for up to two years, or arrest for up to six months, or imprisonment for up to three years with disqualification to hold certain positions or engage in certain activities for a term of ten to fifteen years.

- despite the small number of proceedings, more than ⅔ of them involved the imposition of a preventive measure in the form of detention. Only three cases involved the imposition of house arrest as a preventive measure and one case involved the replacement of a preventive measure in the form of detention with a personal commitment;
- there are isolated cases of convictions of teachers under this section, but most of the sentences passed concern heads of educational institutions;

- in the proceedings under this part, there is a clear pattern of systematic denials of defence counsels' motions to change the measure of restraint to a more lenient one;
- also, in this part, the prosecutor filed the most appeals, at least 95% of which were upheld: they concerned the imposition of a more severe punishment than the sentence imposed.

Example: a person was sentenced to six (6) months' arrest, with deprivation of the right to hold positions in state authorities, public administration, local self-government or bodies providing public services for ten (10) years. The prosecutor filed an appeal, and the verdict of the court of first instance was cancelled and a new verdict was passed, where the sentence of 6 months' arrest was replaced by 1 year's imprisonment. The change was justified by the fact that the court of first instance had not fully taken into account the gravity of the criminal offence committed by a person[21].

Example 2: a person was sentenced to one year of imprisonment, with the deprivation of the right to hold positions related to the performance of organisational, administrative and economic functions in educational institutions, as well as to hold positions in public authorities, public administration, local self-government in the field of education for a period of 10 years. The prosecutor filed an appeal, which was partially upheld and a new verdict was delivered: in the context of imprisonment, the punishment was imposed more severely, namely, it was increased to 1 year and 6 months of imprisonment[22].

There are 5 cases of this nature, where the court of appeal "adds" 6 months of imprisonment.

part 4 of Article 111-1 of the CC of Ukraine

4. The transfer of material resources to illegal armed or paramilitary groups established in the temporarily occupied territory and/or armed or paramilitary groups of the aggressor state and/or conducting economic activity in cooperation with the aggressor state, illegal authorities established in the temporarily occupied territory, including the occupation administration of the aggressor state

shall be punishable by a fine of up to ten thousand tax-free minimum incomes, or imprisonment for a term of three to five years, with deprivation of the right to occupy certain positions or engage in certain activities for a term of ten to fifteen years, and confiscation of property.

21 Verdict in case No. 636/4174/23 of 11.10.2023: http://reyestr.court.gov.ua/Review/114098337
22 Verdict in case No. 953/2742/23 of 25.12.2023: http://reyestr.court.gov.ua/Review/114098337

- as with part 3 of Article 111-1 of the CC of Ukraine, there is a tendency not to grant the defence's request to change the measure of restraint to a more lenient one;
- in proceedings under this part, it is quite common to be released from serving a sentence with probation and to set a probationary period;
- there is a tendency to impose a long term of detention: there are cases where it reaches or exceeds 1 year and 5 months;
- so far, there is only one case where the operative part of the verdict obliged the convict to make a contribution of UAH 1,000,000 to the UNITED24 project within 15 days after the court verdict came into force.[23]

part 5 of Article 111-1 of the CC of Ukraine

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 established in the temporarily occupied territory, including in the occupation administration of the aggressor state, or voluntary election to such bodies, as well as participation in the organisation and conduct of illegal elections and/or referendums in the temporarily occupied territory or public calls for such illegal elections and/or referendums in the temporarily occupied territory

shall be punishable by imprisonment for a term of five to ten years with deprivation of the right to occupy certain positions or engage in certain activities for a term of ten to fifteen years, with or without confiscation of property.

- in ¾ of the cases, custody was used as a measure of restraint. At the same time, in at least two proceedings, house arrest was chosen as a measure of restraint, and in one case, detention was replaced by house arrest following an appeal by the defence counsel. In particular, in the latter case, such a change was made taking into account the strength of the person's social ties. The panel of judges concluded that the risk of hiding remains real, but that this risk can be prevented by applying a measure of restraint milder than custody;
- in general, proceedings under this part are characterised by long periods of detention without determining the amount of bail[24];
- at least 10 agreements were approved within the proceedings under this part of Article 111-1 of the CC of Ukraine;

23 Verdict in case No. 761/43660/23 of 30.11.2023: https://reyestr.court.gov.ua/Review/115395294
24 Verdict in case No. 191/2400/23 of 24.04.2024: http://reyestr.court.gov.ua/Review/118814168

- some cases contain qualification of the offence under a combination of articles of the CC of Ukraine: in particular, the most frequent combination of qualifications was under part 2 of Article 110 of the CC of Ukraine ("Trespass against the territorial integrity and inviolability of Ukraine") – 22 cases. In addition, there are 14 cases where the offence was also classified under part 2 of Article 28 ("Committing a criminal offence by a group of persons, a group of persons by prior conspiracy, an organised group or a criminal organisation"). Other articles classified as cumulative include part 2 of Article 111 of the Criminal Code of Ukraine ("High treason"), part 6 of Article 111-1 of the Criminal Code of Ukraine, parts 1, 2 and 3 of Article 436-2 of the Criminal Code of Ukraine ("Justification, recognition as lawful, denial of the armed aggression of the Russian Federation against Ukraine, glorification of its participants") and part 7 of Article 111-1 of the CC of Ukraine;
- under this part of Article 111-1 of the CC of Ukraine, when convicting a person *in absentia*, there is a tendency to impose a sentence depending on the position held by the person: about 5-7 years in prison are imposed on assistants, heads of certain institutions; acting and senior officials are usually sentenced to 8-10 years in prison, and about 5-6 years in prison for participation in the organisation and conduct of illegal referendums.

part 6 of Article 111-1 of the CC of Ukraine

> 6. Organising and conducting political events, carrying out 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 responsibility for armed aggression against Ukraine, in the absence of signs of treason, active participation in such events
>
> shall be punishable by imprisonment for a term of ten to twelve years with deprivation of the right to occupy certain positions or engage in certain activities for a term of ten to fifteen years and with or without confiscation of property.

- despite the rather small number of cases in the Register, the periods of pre-trial detention are quite long, with one detention lasting almost two years;[25]
- only two verdicts in the cases under this part did not apply confiscation of property;
- also characteristic is the qualification in conjunction with other articles of the Criminal Code of Ukraine: in particular, most often qualification in conjunc-

25 Verdict in case No. 370/654/22 of 08.04.2024: https://reyestr.court.gov.ua/Review/118207249

tion with part 3 of Article 436-2 of the Criminal Code of Ukraine ("Justification, recognition of the lawfulness, denial of the armed aggression of the Russian Federation against Ukraine, glorification of its participants") – 3 cases; part 2 of Article 436-2 of the Criminal Code of Ukraine – 2 cases. Among other articles qualified by the aggregate, we see part 4 of Article 111-1 of the Criminal Code of Ukraine – 1 case, as well as in one case qualification under part 3 of Article 28 ("Committing a criminal offence by a group of persons, a group of persons by prior conspiracy, an organised group or a criminal organisation"), part 6 of Article 111-1 of the Criminal Code of Ukraine and part 5 of Article 111-1 of the Criminal Code of Ukraine.

part 7 of Article 111-1 of the CC of Ukraine

7. Voluntary occupation by a citizen of Ukraine of a position in illegal judicial or law enforcement bodies established in the temporarily occupied territory, as well as voluntary participation of a citizen of Ukraine in illegal armed or paramilitary formations established in the temporarily occupied territory, and/or in the armed formations of the aggressor state or assisting such formations in conducting hostilities against the Armed Forces of Ukraine and other military formations established in accordance with the laws of Ukraine, volunteer formations that were formed or self-organised to protect the independence, sovereignty and territorial integrity of Ukraine

shall be punishable by imprisonment for a term of twelve to fifteen years, with deprivation of the right to occupy certain positions or engage in certain activities for a term of ten to fifteen years, with or without confiscation of property.

- as in cases under parts 5 and 6 of Article 111-1 of the CC of Ukraine, it is characterised by a rather long period of detention;
- some cases contain qualification of the act under a combination of articles of the Criminal Code of Ukraine: in particular, the most frequently qualified in combination were: part 1 of Article 111-2 of the CC of Ukraine ("Aiding the aggressor state"), namely in 12 cases; part 1 of Article 111 of the CC of Ukraine ("High treason"), part 1 of Article 258-3 of the CC of Ukraine ("Creation of a terrorist group or terrorist organisation") – in 4 cases. In particular, among other articles qualified by the aggregate, we can observe parts 2 and 3 of Article 260 of the Criminal Code of Ukraine ("Creation of paramilitary or armed formations not provided for by law") and part 2 of Article 111 of the CC of Ukraine;

- there are a number of cases in which it can be questioned whether there was really a voluntary nature to taking up a particular position: for example, in one of the cases, the convicted person stated that the military of the occupation authorities put him in a car, blindfolded him with a cloth and taped his hands and took him to a "pit" where he was beaten, interrogated and held for about one day, and then offered a job in the police of the occupation authorities. The person was sentenced to 12 years in prison with the deprivation of the right to hold positions in law enforcement for 12 years and confiscation of all his property.[26]

1.2. GENERAL TRENDS IN THE CONSIDERATION OF CASES UNDER ARTICLE 111-1 OF THE CC OF UKRAINE

In addition to the trends typical for proceedings under certain parts of Article 111-1, it is also worth noting the problems related to the article in general and its application. Thus, the analysis of the verdicts within the period under study allowed us to identify the following general problems and peculiarities, some of which were observed earlier.

1.2.1. Failure to take into account the standards of international humanitarian law

It has been repeatedly pointed out that Ukrainian legislation on collaboration does not comply with international humanitarian law. In particular, the broad wording may cover, among other things, the performance by civilians of functions designed to ensure life support in the occupied territory.[27]

While there is no clear and complete list of all activities necessary to maintain life in the occupied territory, some understanding is provided by the obligations imposed on the occupying power to maintain conditions in the occupied territory that will ensure the most normal life possible,[28] the proper functioning of institutions responsible for the education of children,[29] the provision and support of medical and hospital facilities,[30] and sustaining the work of civilian civil defence

26 Verdict in case No. 953/7696/22 of 02.02.2024: https://reyestr.court.gov.ua/Review/116713589

27 Report on the Human Rights Situation in Ukraine 1 August 2022–31 January 2023 / United Nations High Commissioner for Human Rights, 24.03.2023, para. 119: https://www.ohchr.org/sites/default/files/documents/countries/ukraine/2023/23-03-24-Ukraine-35th-periodic-report-ENG.pdf

28 IV Convention on the Laws and Customs of War on Land and its annex: Regulations respecting the Laws and Customs of War on Land, ed. of 18.10.1907, Article 43: https://zakon.rada.gov.ua/laws/show/995_222#Text

29 Convention relative to the Protection of Civilian Persons in Time of War, ed. of 23.02.2023, Article 50: https://zakon.rada.gov.ua/laws/show/995_154#Text

30 Convention relative to the Protection of Civilian Persons in Time of War, ed. of 23.02.2023, Article 56: https://zakon.rada.gov.ua/laws/show/995_154#Text

organisations.[31] At the same time, civil defence includes rescue operations, firefighting, urgent restoration of the necessary public utilities, etc.[32]

Persons performing the above functions do not have comprehensive immunity – they can be held liable for other actions that constitute collaboration under national law. That is why it is important to establish a clear distinction between actions designed to ensure life in the occupied territory and actions that pose a threat to national security.

The need to take these provisions into account in national practice is stated, in particular, in the guidance on the peculiarities of criminal prosecution for collaboration for heads of regional prosecutor's offices from the Prosecutor General's Office of Ukraine.[33] The preparation of such a clarification, taking into account the standards of international humanitarian law, is an important step towards improving the practice of investigating cases of collaboration. However, the question arises as to whether these clarifications can be effectively applied in practice. Current legislation does not take into account these standards, using broad wording that includes persons performing life support functions in the occupied territory. In the exercise of their powers, law enforcement agencies shall apply the applicable law and are obliged to initiate proceedings in all cases that fall within the wording of this law.

Accordingly, in practice, proceedings are opened and sentences are passed against persons performing vital functions in the occupied territory.

> **Example:** PERSON_5 voluntarily took a position in an illegal law enforcement agency established in the temporarily occupied territory, namely a firefighter-rescuer of the fire and rescue unit of the state budgetary institution Fire and Rescue Unit of Volnovakha of the Ministry of Civil Protection, Emergency Situations and Disaster Relief of the Donetsk People's Republic, created by representatives of the aggressor state on the territory of the temporarily occupied Volnovakha city territorial community of Volnovakha district, Donetsk region.[34] The case was tried *in absentia* and a verdict was passed with a sentence of 15 (fifteen) years' imprisonment with deprivation of the right to hold any positions in state authorities for a period of 15 (fifteen) years and confiscation of all property belonging to them by right of ownership.

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31 Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), ed. of 08.12.2005, Article 63: https://zakon.rada.gov.ua/laws/show/995_199#Text

32 Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), ed. of 08.12.2005, Article 61: https://zakon.rada.gov.ua/laws/show/995_199#Tex

33 Letter of Orientation on Peculiarities of Criminal Prosecution for Collaborative Activity to Heads of Regional Prosecutor's Offices, Office of the Prosecutor General of Ukraine, May 15, 2024

34 Verdict in case No. 461/10300/23 of 16.04.2024: https://reyestr.court.gov.ua/Review/118420195

> **Example:** a person voluntarily took a non-managerial position of driver of a car of the fire and rescue unit of the State Budgetary Institution Fire and Rescue Unit of Krasny Lyman of the Ministry of Civil Defence, Emergencies and Elimination of Consequences of Natural Disasters of the Donetsk People's Republic, established in the temporarily occupied territory by the occupation administration of the Russian Federation, which was held until the beginning of the active phase of de-occupation of Lyman, Donetsk region. While holding this position, a person travelled as a member of the crew to the places of rescue operations in Rubtsivskyi, Yatskivskyi, Korovoyarskyi, Ridkodubivskyi, and Yarivskyi starosta districts.[35]

The only ground for prosecution is the qualification of a person's action as a voluntary position held by a citizen of Ukraine in an illegal law enforcement agency established in the temporarily occupied territory.

At present, the Register contains 11 cases against representatives of the SES and 18 cases against representatives of municipal institutions.

Another challenge is the question of the responsibility of persons who have taken up leadership positions within the framework of performing functions designed to maintain life in the occupied territory – heading medical institutions or becoming heads of fire and rescue stations, or taking up positions in housing and communal services.

> **Example:** During June-July 2022, PERSON_3, while in the village of Shevchenkove, Kupiansk district, Kharkiv region, voluntarily held the position of chief specialist of the housing and communal services department of the occupation administration of the village of Shevchenkove, Kupiansk district, Kharkiv region. While holding this position, PERSON_3, in agreement with the occupation administration, took measures aimed at planning the work of the department for the third or fourth quarter of 2022, compiled lists of needs for the purchase of fuel and lubricants, compiled lists of candidates for the positions of security guards for the premises of the occupation brigade's structural units, landscaping crews and other auxiliary workers, participated in meetings in Kupiansk, Kharkiv region, attended by representatives of the housing and communal services departments of the occupation administrations of the settlements.[36]

The performance of medical care functions or rescue operations is impossible without the proper organisation and provision of this work, respectively, without the proper performance of duties by the heads of medical institutions and heads of the relevant rescue service units. In the absence of other actions that pose a threat to national security, holding such persons liable for the organisation of life support

35 Verdict in case No. 202/2407/23 of 14.02.2023: https://reyestr.court.gov.ua/Review/109085846
36 Verdict in case No. 953/5852/22 of 21.10.2022: https://reyestr.court.gov.ua/Review/106876470

functions in the occupied territory should also be considered as inconsistent with the norms of international humanitarian law.

Example: In early April 2022, PERSON_5 intentionally, voluntarily took the position of chief physician of the so-called State Institution Starobilsk Physiotherapy Hospital of the LPR and assumed the powers of a state authority to implement the state policy of the LPR in the field of health care in the temporarily occupied territory of Starobilsk and Starobilsk district of Luhansk region. Holding this position, subordinating directly to the Ministry of Health of the LPR, PERSON_5 actually organises the work of the State Institution Starobilsk Physiotherapy Hospital of the LPR and implements the state policy, regulatory and legal regulation in the field of healthcare in the specified territory of the occupation administration of the aggressor state. PERSON_5 was convicted *in absentia* under part 5 of Article 111-1 of the CC of Ukraine and sentenced to 10 years' imprisonment with disqualification to hold positions in state and local authorities, state management and control bodies, enterprises and organisations of state or municipal ownership for a period of 15 years and confiscation of all their privately owned property.[37]

Example: PERSON_5, being the commander of the department of the 68th State Fire and Rescue Unit of the 11th State Fire and Rescue Detachment of the Main Directorate of the State Emergency Service of Ukraine in Donetsk region (68 State Fire and Rescue Unit of the 11th State Fire and Rescue Detachment of the Main Directorate of the State Emergency Service of Ukraine in Donetsk region) in the period from March 2022 to 08.04.2022, he cooperated with the aggressor state and its occupation authorities and, by submitting a personal application and a package of documents in accordance with Order No. 741 of 08.04.2022, voluntarily took up a position in a law enforcement agency established in the temporarily occupied territory of Ukraine, namely, Commander of the department of the 69th fire and rescue unit of the state budgetary institution Fire and rescue unit of Volnovakha of the Ministry of Internal Affairs of Ukraine. Volnovakha of the Ministry of Civil Defence, Emergencies and Elimination of Consequences of Natural Disasters of the Donetsk People's Republic in Volnovakha, Donetsk region. PERSON_5 was convicted *in absentia* under part 7 of Article 111-1 of the CC of Ukraine and sentenced to 13 years and 6 months of imprisonment with disqualification to hold senior positions in law enforcement for 12 years and confiscation of all property.[38]

37 Verdict in case No. 191/3386/22 of 16.05.2024: https://reyestr.court.gov.ua/Review/119116226
38 Verdict in case No. 463/1670/23 of 23.10.2023: https://reyestr.court.gov.ua/Review/114352073

1.2.2. Unclear and broad wording of the legislation, leading to different interpretations and problems with delineation of offences against the foundations of national security

This problem has also been highlighted in previous studies and remains relevant, given the lack of relevant amendments to the legislation or clarifications on the interpretation of certain concepts, as well as the distinction between the elements of crimes under Articles 111-1 ("Collaborative activity"), 111 ("High treason"), 111-2 ("Aiding the aggressor state") and others.

The problem of unclear and broad wording in the legislation is now reflected in the practice of the Supreme Court. In particular, in the cassation proceedings, a case was considered in relation to a person who had taken the position of a driver of a duty unit in an illegal law enforcement agency[39]. The defence argued that the position held by the person in the body created by the occupation authorities did not belong to law enforcement and therefore did not fall under the category of "law enforcement officer". In its ruling, the Supreme Court noted that part 7 of Article 111-1 does not contain the term "law enforcement officer", but provides for liability for holding a position in law enforcement agencies, respectively, including positions that do not involve the performance of law enforcement functions.

The complexity of the distinction is also often reflected in practice in the qualification of cases involving the same acts under different articles. In particular, there are cases of requalification of individual cases from one article to another.

> **Example:** PERSON_4, being in Kherson (during its occupation), as the director of LLC Trading House Prodexim, in July 2022, on behalf of the said legal entity, concluded a contract for the safe custody of corn seeds weighing 152.6 tonnes, sunflower seeds weighing 11 tonnes, for a total value of 2 163 000.00 Russian rubles, dated 10.07. 2022, with LLC Agrarian (located in the Russian Federation) represented by PERSON_6, who, in accordance with the order of the illegal occupation authority – the Kherson Regional Military and Civil Administration No. 06-r of 13.04.2022 "On certain measures for the management of property of business entities", was appointed head of the temporary administration for the management of property of business entities in the territory of Kakhovka, Henichesk, Ivanivka, Novotroitsk, Chaplynsk districts of the Kherson region. In addition, in July 2022, PERSON_4, being a director of LLC Trading House Prodexim and LLC Lanapodove 1, i.e. an authorised person, entered into agreements "On transfer of powers of the sole executive body" on behalf of the said legal entities with LLC Agrarian, represented by director PERSON_6, respectively, dated 11.07. 2022, according to which the right to represent LLC Trading House Prodexim and LLC Lanapodove 1 in any instance, sign documents on behalf of the companies, dispose of property, funds and

39 Ruling in case No. 953/406/23 of 22.01.2024: https://reyestr.court.gov.ua/Review/116670763

other assets of the companies, conclude contracts, open bank accounts, hire and dismiss employees, issue orders and other internal documents, use the funds of the companies, re-register, etc. was transferred to the sole authority of LLC Agrarian represented by PERSON_6.[40]

The actions of the person were initially classified under part 1 of Article 111-2 and, as part of this proceeding, the person was imposed a preventive measure in the form of detention[41] and seizure of property.[42] The following rulings are not available within the framework of this proceeding – they are contained in the Register with the note Information is prohibited for disclosure in accordance with paragraph 4 of part 1 of Article 7 of the Law of Ukraine "On Access to Court Decisions"[43]. And then a new proceeding appears, in the absence of any new facts, this time qualified under part 4 of Article 111-1.[44] Already within the framework of this proceeding, the person was released from serving the main sentence of 5 (five) years' imprisonment with deprivation of the right to hold positions in state authorities, public administration, local self-government and engage in economic activity for a period of 15 years without confiscation of property. Instead, a probationary period of two years and a fine of UAH 680,000 were imposed.

Example: PERSON_7, being a citizen of Ukraine, being an inspector of the patrol police response sector of the police department No. 1 of the Skadovsk district police department, having a sufficient level of education, special knowledge and life experience to understand the fact of the seizure and subsequent retention of the territory of the Kherson region by the Russian Federation, knowing for certain about the armed aggression of the Russian Federation against Ukraine as a circumstance that is a well-known fact, and knowing for certain the fact of the capture of the city of Kherson by the armed forces of the Russian Federation, in May 2022 (a more precise time has not been established), acting intentionally, supporting the military aggression of the Russian Federation on the territory of Ukraine, agreed to the proposal of unidentified persons from among the military and representatives of the special services of the Russian Federation in the city of Kherson, and voluntarily took the position of the so-called "deputy chief" in the illegally created body subordinate to the occupation administration of the Russian Federation, the Hola Prystan District Police Department of the Ministry of Internal Affairs of the Kherson

40 Verdict in case No. 766/5921/24 of 30.04.2024: https://reyestr.court.gov.ua/Review/118880738
41 Court order in case No. 490/3472/23 of 23.02.2024: https://reyestr.court.gov.ua/Review/117201620
42 Court order in case No. 490/3472/23 of 26.03.2024: https://reyestr.court.gov.ua/Review/117903013
43 Court order in case No. 490/3472/23 of 19.04.2024: https://reyestr.court.gov.ua/Review/118476576
44 Court order in case No. 766/5921/24 of 19.04.2024: https://reyestr.court.gov.ua/Review/118638789

> Region, i.e. a position in a law enforcement agency illegally created by the occupation authorities in the temporarily occupied territory of the Kherson region.[45]

In the preliminary research, during an interview, one of the representatives of law enforcement agencies noted that in order to distinguish between the elements of crimes under part 7 of Article 111-1 and Article 111, the following rationale is applied: part 7 of Article 111-1 covers the actions of persons who did not perform the functions of law enforcement or judicial officers before the occupation, but took up their positions under the occupation. However, if a person exercised the relevant powers and continued to do so under the occupation, this is already a transition to the enemy, and accordingly, such actions fall under Article 111 of the CC of Ukraine ("High Treason").

This approach was not applied in this case – the actions of a person who held a position in the law enforcement agencies of Ukraine and took a position in a law enforcement agency illegally created by the occupation authorities were qualified under part 7 of Article 111-1.

1.2.3. Lack of investigation into the actions of the accused with the intention to harm national security

Collaborative activity is a crime against the foundations of national security. All crimes against the national security of Ukraine are committed with direct intent. Accordingly, even in the absence of this wording in parts of the article, the subjective side of collaborative activity includes the motive to commit an act to the detriment of Ukraine's interests and the purpose to harm the national security of Ukraine.[46] The existence of these motive and purpose in the actions of the defendants must be proved.

It is also important to assess such actions in each individual case in the context of their threat to national security. This is also mentioned in the guidance letter of the Prosecutor General's Office of Ukraine: in particular, it is envisaged that when deciding whether to bring persons to criminal liability for collaboration, a number of circumstances should be taken into account: the type of activity, whether it is aimed at ensuring the normal life of the population of the temporarily occupied territory, whether such actions of a person are voluntary, ideologically motivated cooperation with the enemy, which undermines the national security of Ukraine, threatens state sovereignty, etc. It is also noted that the specific circumstances of each case must be properly taken into account, first of all, whether such an act has caused or could have caused significant damage to an individual or legal entity, society or the state.

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45 Verdict in case No. 516/230/23 of 10.04.2024: https://reyestr.court.gov.ua/Review/118286408

46 How to distinguish between collaborative activity and related criminal offences / Supreme Court, 26.07.2022: https://supreme.court.gov.ua/supreme/pres-centr/news/1299973/

At the same time, the research of the motive and purpose in the actions of persons who may fall under collaborative activities, as well as the assessment of the threat of such actions, are almost absent in the relevant proceedings – their presence is presumed solely on the fact of committing actions, and the threat is determined by the very fact of holding any position, even in cases where the functions of the position held by the person were not performed at all. This distinction is particularly relevant in relation to those parts of the article that relate to holding positions in the occupation authorities (parts 2, 5 and 7).

> **Example:** PERSON_4 applied for a job as an accountant to the so-called temporary civil administration in Balakliia and was hired, collected report cards from schools in Izium district; filled in and checked the time sheets of employees of the education department who worked in the so-called temporary civil administration of Balakliia; compiled time sheets of school employees for further salary calculation. Punishment in the form of deprivation of the right to hold positions in state authorities, public administration, local self-government, law enforcement agencies, courts, bodies providing public services for a period of 10 (ten) years with confiscation of all property owned by them.[47]

> **Example:** PERSON_3 voluntarily gave her consent to the representatives of the occupation administration of the Russian aggressor state to be appointed as a specialist in the sector of land management, land relations, state construction and architecture of the temporary civil administration of Balakliia, Kharkiv region. Working in the occupation administration of the aggressor state of Russia from 23.06.2022 to 08.09.2022, i.e. before the de-occupation of the city of Balakliia, Izium district, Kharkiv region, due to the fact that the sector of land management, land relations, state construction and architecture in the illegal authority had not yet begun to function at that time, she did not actually perform organisational or administrative functions, performing the duties of a cook in the dining room of the occupation administration of the aggressor state, namely: she prepared lunches for employees of illegal authorities from the food provided to her by the illegal occupation authorities.[48] For performing these functions, the person was sentenced to deprivation of the right to hold positions in state authorities, public administration, local self-government, law enforcement agencies, courts, legal entities under public law, and bodies providing public services for a period of 10 (ten) years with confiscation of all property owned by her.

In some cases, the defence counsel's position also reflects a lack of understanding that this offence contains a subjective aspect – the intent to harm national security. In particular, the defence counsel of the accused in one of the cases stated that the actions of PERSON_3 did not constitute a criminal offence under part 1 of

47 Verdict in case No. 610/804/24 of 03.04.2024: https://reyestr.court.gov.ua/Review/118097842
48 Verdict in case No. 610/3402/23 of 29.12.2023: https://reyestr.court.gov.ua/Review/116037086

Article 111-2 of the CC of Ukraine and his actions should be reclassified to part 4 of Article 111-1 of the CC of Ukraine, since the accused "became a hostage of circumstances and performed his duties under pressure from the Russian military, did not intend to harm the state, but simply continued to work to provide for his family".[49] In the absence of the purpose of causing damage to the state and voluntariness of actions, the offence under part 4 of Article 111-1 is also absent.

A special case is also the proceedings against the "head of streets" people – active residents, usually women, who keep order and contact the city hall on behalf of the citizens[50]. The institution of "street" people functions as a body of self-organisation of the population, so the question also arises as to how persons fulfilling this role fall under the "holding positions in the occupying authorities". The motives and purpose of the activities of such persons, who mainly clean the adjacent territory, keep records of destroyed and damaged buildings, and distribute humanitarian aid to vulnerable categories of the population in the occupied territory, are also presumed to be aimed at harming national security without sufficient justification for such an interpretation.

> **Example:** In the period from 26.06.2022 to the end of August 2022, during the occupation of Zarichne village of the Lyman of the Kramatorsk district of Donetsk region, a citizen of Ukraine PERSON_3 voluntarily took a non-managerial position of "the head of a street" of the Kirovsky settlement council of the Krasnolymanskyi district of the administration of Yenakiieve of the DPR, created in the temporarily occupied territory by the occupation administration of the Russian Federation, which she held until the end of August 2022. As "the head of a street", PERSON_3 was authorised to perform the following functions: cleaning the territory of Zarichne; announcing to local residents the time of distribution of humanitarian aid; creating and maintaining up-to-date lists of local residents on Zhovtneva and Chapaeva streets in Zarichne; keeping records of destroyed and damaged houses; collecting and transferring to the occupation administration information on the needs of local residents for construction materials; ensuring communication between local residents and the occupation administration of Zarichne – sentence of deprivation of the right to hold positions in state and local government bodies of Ukraine for a period of 10 (ten) years with confiscation of all property owned by the convicted person.[51]

49 Verdict in case No. 646/3927/23 of 24.04.2024: https://reyestr.court.gov.ua/Review/118577694

50 "I just couldn't leave people behind". Court of Appeal sentences head of street committee from Lyman, who became "head of neighbourhood" during occupation, to five years in prison / Hraty, 24.05.2024: https://graty.me/ya-prosto-ne-mogla-kinuti-lyudej-apelyaczijnij-sud-priznachiv-pyat-rokiv-koloniï-kerivniczi-vulichnogo-komitetu-z-limana-yaka-stala-golovoyu-mikrorajonu-pid-chas-okupa/

51 Verdict in case No. 202/7628/23 of 03.05.2023: https://reyestr.court.gov.ua/Review/110594795

The element of "voluntariness", which is also typical for those parts of the article that relate to holding positions in the occupation authorities, is also insufficiently researched. At the moment, it is interpreted rather narrowly – the prosecution is limited to proving the absence of physical coercion (for example, without physical coercion, threats of death or use of violence against them and their family members[52]). Another dubious argument of voluntariness, which the court takes into account, is the failure of a person to take measures aimed at leaving the temporarily occupied territory.[53]

The criminal legislation of Ukraine provides for certain forms of influence on a person, in the case of which the person's actions are not considered a criminal offence or the person is not subject to criminal liability – extreme necessity (including mental coercion)[54] and physical coercion.[55] Given the existence of separate provisions for these types of influence, the question arises as to the proper interpretation of the additional element of "voluntariness" in Article 111-1. In the context of committing actions falling under the provisions of Article 111-1 under occupation, the general atmosphere of coercion and intimidation, which affects the voluntariness of actions, should be taken into account. This is also the position of the Prosecutor General's Office – in each case, the general atmosphere of fear and the imposition of Russian systems in the temporarily occupied territories, which may have constituted relevant coercion or pressure on a person, should be taken into account.[56] At the same time, the Supreme Court's ruling reflects a narrow approach: a voluntary act is considered to be an act committed when there are several options for behaviour, taking into account the circumstances that may exclude criminal unlawfulness under Articles 39 and 40 of the Criminal Code.[57]

It is also worth noting that consideration of cases in simplified proceedings makes it impossible to study the motive, purpose and element of voluntariness in court proceedings, since the proceedings are based solely on the indictment.

1.2.4. Court practice in the context of preventive measures in proceedings under Article 111-1 of the CC of Ukraine

The issue of applying various measures to ensure criminal proceedings to suspects, especially the preventive measure of detention, remains problematic. In court practice, we see a wide application of this measure. This is due, in particular, to the

52 Verdict in case No. 344/18062/23 of 04.12.2023: https://reyestr.court.gov.ua/Review/115387208
53 Verdict in case No. 337/1435/23 of 10.04.2024: https://reyestr.court.gov.ua/Review/118256350
54 Criminal Code of Ukraine ed. of 19.05.2024, Article 39: https://zakon.rada.gov.ua/laws/show/2341-14#Text
55 Criminal Code of Ukraine ed. of 19.05.2024, Article 40: https://zakon.rada.gov.ua/laws/show/2341-14#Text
56 Letter of Orientation on Peculiarities of Criminal Prosecution for Collaborative Activity to Heads of Regional Prosecutor's Offices, Prosecutor General's Office of Ukraine, May 15, 2024.
57 Ruling in case No. 638/5446/22 of 31.01.2024: https://reyestr.court.gov.ua/Review/116705070

provisions of the procedural law[58], which stipulates that if a person is suspected of committing a crime under Article 111-1 of the CC of Ukraine and there are risks[59] (the person may hide from the pre-trial investigation and/or court; destroy, hide or distort any of the things or documents that are essential for establishing the circumstances of the criminal offence; unlawfully influence the victim, witness, other suspect, accused, expert, specialist in the same criminal proceedings, etc). In addition, the investigating judge or court has the right not to determine the amount of bail when choosing a preventive measure – detention[60].

Thus, according to the analysis of verdicts under different parts of Article 111-1 of the CC of Ukraine, the following can be observed:

- Under part 1 of Article 111-1 of the CC of Ukraine, no preventive measure in the form of detention is applied, and under part 2 of Article 111-1 of the CC of Ukraine, detention was applied in only one proceeding for a period of less than one month[61].
- Under part 3 of Article 111-1 of the CC of Ukraine, the aforementioned measure was applied in 28 proceedings, of which 20 proceedings were delivered *in absentia*, and the remaining 8 proceedings were delivered in the presence of the person. The longest term of detention in proceedings under this part of Article 111-1 of the CC of Ukraine, where the verdict was delivered in the presence of a person, was almost one year, and the average duration of detention in these proceedings was 6 months. In particular, it is interesting to note that in one of the proceedings, a preventive measure of round-the-clock house arrest was initially imposed, which was later changed to custody by the court of appeal following the prosecutor's appeal.[62]
- In 31 proceedings under part 4 of Article 111-1 of the CC of Ukraine, a preventive measure in the form of detention was imposed on a person, in 23 of which the verdict was delivered in the presence of the person, and the remaining 8 – *in absentia*. The maximum term of detention on suspicion of committing an act under this part was 18 months, and the average duration of this measure of restraint was 8 months. Also, in at least three cases, the amount of bail was determined:
- Under part 5 of Article 111-1 of the CC of Ukraine, 171 proceedings resulted in the application of a custodial measure of restraint to suspects, and only in 30 proceedings the verdict was delivered in the presence of the person. In particular, the longest period of detention on suspicion of committing an act under this

58 part 6 of Article 176 of the CPC of Ukraine: https://zakon.rada.gov.ua/laws/show/4651-17#Text
59 Ibid, Article 177
60 Ibid, paragraph 6 of part 4 of Article 183
61 Verdict in case No. 638/8520/24 of 13.05.2024: https://reyestr.court.gov.ua/Review/118995114
62 Court order in case No. 638/6804/23 of 23.10.2023: http://reyestr.court.gov.ua/Review/114575468

part was 18 months, and the average duration of this measure of restraint was 9 months. In one of the proceedings, the verdict replaced the preventive measure in the form of detention with a personal obligation.[63]

- Under part 6 of Article 111-1 of the CC of Ukraine, in total, the above measure was applied only in 9 proceedings, in 5 of which the verdict was delivered in the presence of the person. The longest term of detention in proceedings under this part of Article 111-1 of the CC of Ukraine, where the verdict was delivered in the presence of the person, was 20 months (i.e. two years),[64] and the average duration of detention in these proceedings was 13 months.
- In 125 proceedings under part 7 of Article 111-1 of the CC of Ukraine, a preventive measure of detention was applied to suspects in the form of detention, and only in 27 proceedings the verdict was delivered in the presence of the person. The longest period of detention on suspicion of committing an act under this part was 20 months, and the average duration of this measure of restraint was 10 months.

Also, the study analysed 23 criminal proceedings in which no verdicts have been delivered yet, but many rulings have been issued, in particular, on the selection of measures to ensure criminal proceedings, such as seizure of property and preventive measures (house arrest, detention). In general, it is worth emphasising the duration of the measures imposed in the analysed proceedings. Seizure of property is particularly problematic due to the following factors: 1) termination of business activities of enterprises for a long time due to restrictions/prohibitions on the use and/or disposal of the relevant property; and 2) rather broad interpretation in court practice of the grounds, purpose and proportionality of seizure.

In most cases, it concerns the seizure of corporate rights of enterprises, their fixed and current assets, since the prohibition of their use paralyses their business activities. Thus, part 11 of Article 170 of the CPC of Ukraine provides for the possibility to prohibit or restrict the use or disposal of property when imposing an arrest, which can be applied only if there are circumstances confirming that their non-application will lead to concealment, damage, deterioration, disappearance, loss, destruction, use, transformation, movement, transfer of property. The criminal procedure legislation also provides that material evidence worth more than 200 times the minimum subsistence level for able-bodied persons in order to ensure their safety or preserve their economic value is transferred to the National Agency of Ukraine for finding, tracing and management of assets derived from corruption and other crimes (hereinafter – ARMA) with the written consent of the owner, and in the absence of such consent – by decision of the investigating judge.[65] Certainly, this mechanism is

63 Verdict in case No. 202/6911/23 of 09.11.2023: https://reyestr.court.gov.ua/Review/114783059
64 Verdict in case No. 370/654/22 of 08.04.2024: https://reyestr.court.gov.ua/Review/118207249
65 Criminal Procedure Code of Ukraine ed. of 19.06.2024, Article 100: https://zakon.rada.gov.ua/laws/show/4651-17#Text

ambiguous in the context of not freezing business activities, but given the existing threshold of UAH 605,600, many business entities do not fall under this provision. This is confirmed by the fact that in only a quarter of the analysed proceedings were assets transferred to ARMA.

As for another problem arising in the context of seizure of property, it is worth emphasising that the purpose of the seizure is to ensure 1) preservation of physical evidence; 2) special confiscation; 3) confiscation of property as punishment or a criminal sanction against a legal person; 4) compensation for damage caused by a criminal offense (civil action) or recovery of improper advantage received by the legal entity[66]. The investigating judge or court is obliged to apply a method of seizure of property that will not lead to the suspension or excessive restriction of a person's lawful business activities or other consequences that significantly affect the interests of other persons[67]. In addition, analysing the rulings, one can observe an even broader interpretation of these concepts[68]. In particular, in one of the rulings, the court emphasised the following: *"the materials of the proceedings show that at this stage of the criminal proceedings, the needs of the pre-trial investigation justify such interference with the rights and interests of the property owner in order to prevent their disappearance, which may hinder the criminal proceedings, and the investigating judge, in turn, is not entitled to resolve the issues that should be resolved by the court when considering the criminal proceedings on the merits, i.e., the court is not entitled to assess the evidence in terms of its sufficiency and admissibility for finding a person guilty or innocent of a crime, but is only obliged to determine, based on a reasonable assessment of the totality of the evidence received, that the person's involvement in the commission of a criminal offence is probable and sufficient to apply measures to ensure criminal proceedings, one of which is the seizure of property"*.[69] When considering an appeal in the same proceedings concerning the seizure of vehicles, the Kyiv Court of Appeal agreed with the investigating judge's conclusions that the seizure of property in criminal proceedings would ensure a fair balance between the public interest and a legitimate aim, as there is a reasonable proportional relationship between the means used – seizure and the goal sought to be achieved is the preservation of material evidence, as there are circumstances that confirm that their non-use may lead to irreversible consequences.[70] Similar grounds for seizure can be found in most cases when it comes to the treatment of property as material evidence in criminal proceedings. In view of the above, we can observe how diverse the interpretation of the expediency and legality of seizure is,

66 Criminal Procedure Code of Ukraine ed. of 19.06.2024, Part 2, Article 170: https://zakon.rada.gov.ua/laws/show/4651-17#Text

67 part 4 of Article 173 of the CPC of Ukraine: https://zakon.rada.gov.ua/laws/show/4651-17#Text

68 Ibid, part 4 of Article 173

69 Court order in case No. 757/19291/22-к of 12.08.2022: https://reyestr.court.gov.ua/Review/105780673

70 Court order in case No. 757/27943/22 of 17.01.2023: https://reyestr.court.gov.ua/Review/108669534

since proportionality is assessed in each case separately by the investigating judge/court based on their own judicial discretion, which in turn may be more of a punitive element.

Another problematic aspect is the application of preventive measures to suspects, especially in relation to detention. The general trend is to apply detention without determining the amount of bail, and there are controversial rulings in which the amount is determined in violation of procedural law.

> **Example:** a custodial measure of restraint was imposed on the suspect with bail set at 700 times the minimum subsistence level for able-bodied persons, which amounts to UAH 1,878,800.[71] Part 5 of Article 182 of the CPC of Ukraine sets out the legal limits of the amount of bail that may be granted to a person – for non-serious crimes, it should not exceed 20 times the minimum subsistence level for able-bodied persons. Only in exceptional cases may the bail amount exceed this limit – in cases of suspicion of grave and especially grave crimes. Accordingly, in the mentioned case, the determined amount of bail exceeds the legally established limits by 35 times. As for house arrest, it was applied in only two of the analysed proceedings, when custody was chosen in at least 5 proceedings.

1.2.5. Difference between sentences in proceedings *in absentia* and with the presence of the accused

Analysing the punishments imposed for the acts stipulated by parts 5 and 7 of Article 111-1 of the CC of Ukraine, one can observe a certain gradation in the context of imprisonment depending on the position held by the person. Thus, with regard to the sentences under parts 5 and 7 of Article 111-1 of the CC of Ukraine passed *in absentia*, there is a tendency according to which a police officer for an act committed by them is sentenced to 13 years in prison, 12 years in prison for passing information on the location and movement of the Armed Forces of Ukraine, 14 years in prison for prosecutors, 14 or 15 years in prison for employees of the State Emergency Service, and 15 years in prison for persons holding senior positions. In the context of such a gradation, questions arise as to its logic, especially in the context of imposing punishment for the act provided for in part 7 of Article 111-1 of the CC of Ukraine on officers of the National Police and the SES, since the latter tend to be sentenced to higher penalties, and it is not entirely clear why such a distinction is made, since the expectations of society in particular are different in this regard.[72] However, this proportion is not always observed and it happens that more severe punishment is imposed in different

71 Court order in case No. 646/3660/23 of 01.08.2023: https://reyestr.court.gov.ua/Review/112561720

72 Analytical report on the results of the survey "Reintegration of liberated communities and social cohesion" / The School for Policy Analysis NaUKMA, 09.02.2024: https://spa.ukma.edu.ua/analytics/reintehratsiia-zvilnenykh-hromad-ta-sotsialna-zghurtovanist/

categories than the above.[73] Also, the fact that more than 80% of such sentences are imposed *in absentia* causes the most controversy in understanding such trends in court practice, so there is a need to understand whether there is a uniform approach to the qualification of similar situations.

In addition, a significant difference in the sentence imposed can be observed depending on whether the verdict was delivered in the presence of the person or *in absentia*. Thus, in the case of sentences passed *in absentia*, for example, the term of imprisonment will be within the sanction provided for in the relevant part of Article 111-1 of the CC of Ukraine or will be the most severe or close to the most severe punishment.

> **Example**: in early June 2022, PERSON_5 accepted the offer of unidentified persons from among the representatives of the occupation authorities of Mykhailivka village and voluntarily took the position of assistant of the operational duty police department in an illegal law enforcement body established in the temporarily occupied territory of Mykhailivka village, Vasylivka district, Zaporizhzhia region, called the Police Department No. 3 (location of Mykhailivka village) of the Department of Internal Affairs in the city of Vasylivka and Vasylivka district. Holding this position from approximately the beginning of June 2022, PERSON_5 carried out illegal activities in the interests of the aggressor state and in order to support the occupation authorities in the territory of Mykhailivka village, Vasylivka district, Zaporizhzhia region, among other things, patrolled the territory of Mykhailivka village together with other personnel of the illegal law enforcement agency to detect criminal and administrative offences, recorded and investigated traffic accidents that occurred in the temporarily occupied territory of Mykhailivka, served and personally protected public safety in the interests of the occupation authorities during the illegal referendum on the accession of the temporarily occupied territory of Zaporizhzhia region to the aggressor state of the Russian Federation from September 23 to 27, 2022 at the local territorial headquarters of the referendum. The case was considered *in absentia* and PERSON_5 was sentenced to 14 years of imprisonment with deprivation of the right to hold positions in law enforcement agencies and state authorities, local self-government bodies and public service providers for 15 years with confiscation of all property that is his personal property.[74]

Opposite approaches can be observed when analysing sentences passed in the presence of a person, as there is a tendency to impose the lowest punishment provided for by the sanction of the mentioned parts of Article 111-1 of the CC of Ukraine, or even lower punishment if the sentence is passed in the presence of a person, especially when a plea bargain is concluded with them.

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73 Verdict in case No. 404/3982/22 of 20.05.2024: https://reyestr.court.gov.ua/Review/119147515, verdict in case No. 202/11633/23 of 25.03.2024: https://reyestr.court.gov.ua/Review/117890951

74 Verdict in case No. 337/127/24 of 31.05.2024: https://reyestr.court.gov.ua/Review/119408675

Example: PERSON_5, being an active employee of the State Emergency Service of Ukraine, namely the Main Directorate of the State Emergency Service in Kherson region, in connection with his voluntary application for employment, was appointed to the position of the Deputy Head of the Operational Coordination Centre in the Operational Coordination Centre of the Office of the Directorate with a salary of RUB 22905.00, in accordance with the staffing table, a salary for the rank of lieutenant colonel in the amount of RUB 13408.00, a monthly cash bonus of 100% of the official salary in the amount of RUB 22905.00, thereby voluntarily taking a position related to the performance of organisational, administrative or administrative and economic functions in the illegal authorities established in the temporarily occupied territory, including the occupation administration of the aggressor state. Thus, PERSON_5, holding the aforementioned position, organised firefighting in the settlements of Kherson region, coordinated and organised emergency rescue operations, emergency response, search and rescue, coordinated the activities of fire and rescue units and emergency services, etc. Subsequently, while serving in this illegal authority, approximately in late August – early September 2022, having well-known information from the media about the offensive of the Ukrainian Defence Forces in the South of Ukraine, realising the inevitability of punishment for his collaboration, in order to create opportunities for further hiding from the pre-trial investigation and court, PERSON_5 under circumstances not established by the investigation left the place of service, ceasing to perform his official duties. An agreement was concluded with PERSON_5, which was approved by a court verdict and sentenced to 1 year of imprisonment, with the deprivation of the right to hold positions related to the performance of organisational, administrative and economic functions in the SES of Ukraine for a period of 10 years and without confiscation of property.[75]

Example: PERSON_4 took the position of the so-called secretary of precinct election commission No. 210 and participated in the organisation and holding of an illegal referendum on the secession of Kherson region from Ukraine, the formation of an independent state and its accession to the Russian Federation as a subject of the Russian Federation in the temporarily occupied village of Komyshany, Kherson district, Kherson region. In particular, the person committed the following actions aimed at organising and conducting an illegal referendum on the territory of Komyshany village, Kherson district, Kherson region, namely: organised and controlled the work of members of PEC No. 210; formed the so-called voter lists and supervised the work with other election documentation of the commission; accepted and was responsible for the storage of ballots; posted campaign materials about the need to hold the so-called 'referendum'; organised the placement of voting booths and attributes with

75 Verdict in case No. 521/14740/23 of 28.11.2023: https://reyestr.court.gov.ua/Review/115288528

symbols of the Russian Federation in the premises of the Komyshany secondary school; carried out other actions aimed at organising and conducting an illegal referendum. An agreement was concluded with the person and a sentence of 5 years' imprisonment was imposed, with deprivation of the right to hold positions in state authorities, public administration, local self-government and engage in activities related to the electoral process for a period of 10 years, without confiscation of property.[76]

KEY CONCLUSIONS/FINDINGS

1. The analysis of the practice of judicial review of cases on collaborative activity shows that the previously identified trends of unclear and broad wording of legislation, which lead to different interpretations and problems with the delineation of crimes against the foundations of national security, and the predominant use of detention, continue in the current period. At the same time, with a significant increase in the number of proceedings, other trends are observed, in particular, the failure to take into account the standards of international humanitarian law, the lack of investigation of the intent to harm national security in the actions of the accused, the tendency to use property seizure as a measure of restraint in criminal proceedings, and the difference between sentences in proceedings *in absentia* and with the presence of the accused.

2. Overall increase in the number of proceedings also affected the number of appeals to the appellate and even cassation instances. At the same time, the increase in the number of appeals had a minimal impact on the ratio of appeals by the prosecution and defence, as well as guilty verdicts and acquittals – the vast majority of appeals are initiated by the prosecution and the decisions aggravate the punishment of the accused. To date, there have been only two acquittals under Article 111-1.

3. The problem of the failure to take into account international law standards in legislation and, as a result, in practice has been raised on numerous occasions. At the moment, this practice persists, and proceedings are being opened and sentences are being passed against persons performing vital functions in the occupied territory, including firefighters and rescuers, housing and utilities workers, etc.

4. The complexity of distinguishing between the elements of crimes and the unclear wording continue to shape the practice. The problem is currently reflected in the cassation court ruling – the concept of "positions in an illegal law enforcement agency" was interpreted broadly, without limiting it to positions

76 Verdict in case No. 766/10563/23 of 05.12.2023: https://reyestr.court.gov.ua/Review/115389898

performing a law enforcement function, which significantly affects the further prosecution of a wider range of persons.

5. The practice shows that there is no investigation of the intent to harm national security in the actions of the accused, limited to confirming the fact of holding a certain position without individualising the case. The personal motive and the activities of the person after holding the position are not investigated. In considering voluntariness, a narrow approach is used by examining the signs that would trigger the application of the articles on extreme necessity or physical coercion, without taking into account the atmosphere of coercion and intimidation in the occupied territory.

6. There is almost no alternative to the use of detention in proceedings for collaboration and no effective appeals against the application of this measure of restraint. At the same time, the duration of detention is usually significant – on average, eight months. Seizure of property is widely used in the context of proceedings under part four of Article 111-1.

7. With the development of practice and a significant increase in the number of in absentia proceedings, a significant difference in sentences imposed in cases where proceedings are considered within the framework of a special procedure and in the presence of the accused is more clearly visible. In the case of proceedings in the presence of the accused, there is a much higher probability of a lighter sentence, in particular, as a result of a plea bargain.

CHAPTER 2.

ANALYSIS OF DRAFT LAWS ON COLLABORATIVE ACTIVITIES

Since the introduction of Article 111-1 in the Criminal Code of Ukraine in March 2022, at least 16 draft laws have been registered in the Verkhovna Rada of Ukraine aimed at both "improving" criminal liability for cooperation with the occupation authorities and defining restrictions on the rights of those suspected, accused or convicted of committing the crime of "collaborative activity".

2.1. OVERVIEW OF LEGISLATION ON COLLABORATIVE ACTIVITIES

Article 111-1 of the CC of Ukraine ("Collaborative activity") is quite unique in its structure. Thus, the article consists of eight parts, seven parts of which provide for the basic elements of the criminal offence, and one is a qualified part (commission of actions or making decisions by the persons referred to in parts 5-7 that led to the death of people or other serious consequences).

The diversity of forms of the objective side allowed researchers to distinguish three types of collaborative activity based on them[77]:

1) Ideological and cultural (spiritual) collaborationism:

- public denial by a citizen of Ukraine of the armed aggression against Ukraine, the establishment and confirmation of the temporary occupation of a part of the territory of Ukraine;
- public calls by a citizen of Ukraine to support the decisions and/or actions of the aggressor state, armed formations and/or the occupation administration of the aggressor state, to cooperate with the aggressor state, armed formations and/or the occupation administration of the aggressor state, to non-recognition of the extension of Ukraine's state sovereignty to the temporarily occupied territories of Ukraine;
- propaganda by a citizen of Ukraine in educational institutions, regardless of type and form of ownership, to facilitate the armed aggression against

77 Movchan R.O. Military Novels of the Criminal Code of Ukraine: Lawmaking and Law Enforcement Problems: a monograph. Kyiv: Norma Prava, 2022. 243 p.

Ukraine, establish and confirm the temporary occupation of part of the territory of Ukraine, and avoid responsibility for the armed aggression against Ukraine by the aggressor state;

- actions of Ukrainian citizens aimed at implementing the education standards of the aggressor state in educational institutions;
- 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 avoiding responsibility for armed aggression against Ukraine;
- active participation in political events;
- participation in the organisation and holding of illegal elections and/or referendums in the temporarily occupied territory or public calls for such illegal elections and/or referendums in the temporarily occupied territory.

2) political (administrative) collaborationism:

- voluntary occupation by a citizen of Ukraine of a position not related to the performance of organisational, administrative or economic functions in illegal authorities established in the temporarily occupied territory, including in the occupation administration of the aggressor state;
- voluntary occupation by a citizen of Ukraine of a position related to the performance of organisational, administrative or administrative and economic functions in illegal authorities established in the temporarily occupied territory, including in the occupation administration of the aggressor state, or voluntary election to such bodies;
- voluntary occupation by a citizen of Ukraine of a position in illegal judicial or law enforcement bodies established in the temporarily occupied territory, as well as voluntary participation of a citizen of Ukraine in illegal armed or paramilitary groups established in the temporarily occupied territory and/or in the armed formations of the aggressor state or provision of assistance to such formations in conducting hostilities against the Armed Forces of Ukraine and other military formations formed in accordance with the laws of Ukraine, volunteer formations that were formed or self-organised to protect the independence, sovereignty and territorial integrity of Ukraine.

3) economic collaborationism: :

- transfer of material resources to illegal armed or paramilitary groups established in the temporarily occupied territory and/or armed or paramilitary groups of the aggressor state;

- conducting economic activities in cooperation with the aggressor state, illegal authorities established in the temporarily occupied territory, including the occupation administration of the aggressor state.

At the same time, Article 111-2 of the CC of Ukraine ("Aiding and abetting the aggressor state") provides for criminal liability for intentional actions aimed at assisting the aggressor state (aiding and abetting), armed formations and/or the occupation administration of the aggressor state committed by a citizen of Ukraine, a foreigner or a stateless person, except for citizens of the aggressor state, with the aim of causing damage to Ukraine by implementation or support of decisions and/or actions of the aggressor state, armed formations and/or occupation administration of the aggressor state; voluntary collection, preparation and/or transfer of material resources or other assets to representatives of the aggressor state, its armed formations and/or occupation administration of the aggressor state.

2.2. REVIEW OF REGISTERED DRAFT LAWS OF UKRAINE ON COLLABORATIVE ACTIVITY.

As noted above, from the moment the CC of Ukraine introduced such a criminal offence as "collaborative activity", draft laws began to appear in the Ukrainian parliament, the main purpose of which was to amend various parts of Article 111-1 of the CC of Ukraine. At the moment, in addition to draft laws aimed at changing the scope of the offence or the types of punishment, there are also draft laws that do not relate to liability but amend other laws of Ukraine that regulate certain types of cooperation with the aggressor state or illegal occupation authorities, or aim, in particular, to establish certain restrictions on the exercise of the rights of those suspected, accused or convicted of collaboration.

It is advisable to consider each of these three groups of draft laws separately.

2.2.1. Draft Laws of Ukraine on Amendments to the Articles Establishing Criminal Liability for Crimes Against the Foundations of National Security of Ukraine

Currently, at least 11 draft laws have been registered that contain proposals to amend Article 111-1 of the CC of Ukraine. However, most of these draft laws do not resolve the problematic issues of applying the provisions of Article 111-1 of the CC of Ukraine and do not fully take into account the practice of applying Article 111-1 of the CC of Ukraine, as well as the realities of the ongoing occupation of a large part of Ukraine.

1. Draft Law of Ukraine "On Amendments to Article 111-1 of the Criminal Code of Ukraine on Expanding the List of Criminal Offences for Collaborationism" No. 7223 of 28.03.2022[78]

Legislative proposal: Article 111-1 of the CC of Ukraine is proposed to be supplemented with a new part two, which provides for a new offence, namely, the stay of a citizen of Ukraine in the citizenship (nationality) of another state that carries out aggression against Ukraine. The legislator proposes to punish this offence by deprivation of the right to hold certain positions or engage in certain activities for a term of ten to fifteen years with or without confiscation of property.

Purpose of the draft law: establishing criminal liability for collaborative activities, which will be applied to Ukrainian citizens with Russian citizenship (nationality).

Status of the draft law: submitted for review to people's deputies (31.03.2022).

Assessment of the draft law and potential consequences: the legislator's position is based on the constitutional prohibition of dual citizenship. In addition, when justifying the need to amend Article 111-1 of the CC of Ukraine by adding a new part, it is argued that citizens who have citizenship (nationality) of the aggressor state are the "fifth column" and "can stab the state in the back".

Therefore, the changes proposed to be made to the CC of Ukraine by this draft law prompt a negative assessment of it due to the following arguments:

- a criminal offence is an act (action or inaction) of a person, while a person's status as a citizen (subject) of another state is not an act in itself;
- the fact that a person acquired citizenship (nationality) of a state could have occurred long before the first manifestation of aggression by the Russian Federation in 2014, and before the full-scale invasion;
- a person's status as a citizen or subject of the aggressor state is only a special political and legal relationship that arises between such a person and the state. At the same time, it does not indicate that such a person shares the ideological and political beliefs of the aggressor state or collaborates with it;
- the acquisition of citizenship (nationality) of the aggressor state could be carried out by force through physical coercion, intimidation or other types of psychological coercion;
- if a person voluntarily acquired the citizenship of another state upon reaching the age of majority, this is grounds for the loss of Ukrainian citizenship. To impose legal liability for a person's choice of citizenship of another state contradicts not only the requirements of national legislation, but also Article 7 of the

78 Draft Law of Ukraine "On Amendments to Article 111-1 of the Criminal Code of Ukraine on Expanding the List of Criminal Offences for Collaborationism" reg. no. 7223 of 28.03.2022 URL: https://itd.rada.gov.ua/billInfo/Bills/Card/39302

European Convention on Nationality, which enshrines the right of a person to freely choose their citizenship.

This draft law contradicts not only the basic principles laid down in the CC of Ukraine, but also international acts. Thus, the adoption of this draft law violates the right to free choice of citizenship and may jeopardise Ukraine's further acquisition of EU member state status.

2. Draft Law of Ukraine "On Amendments to the Criminal Code of Ukraine on Establishing Liability for Subordination of Ukrainian Divisions of International Companies to Regional Offices Located in the Territory of the Aggressor State" No. 7279 of 12.04.2022[79]

Legislative proposal: to establish criminal liability for violation of restrictions on the activities of a legal entity or representative office of a foreign business entity associated with the aggressor state committed by a person who is legally entitled to act on behalf of such a legal entity. Moreover, violations of restrictions on the activities of a legal entity or representative office of a foreign business entity associated with the aggressor state mean the economic activities of a legal entity established under the laws of Ukraine, a representative office of a foreign business entity, which and/or whose officials are involved in such activities:

1) execute instructions, orders, act in accordance with instructions of citizens and/or legal entities (their officials) established under the legislation of the aggressor state, or persons convicted of criminal liability or subject to criminal law measures for committing one or more crimes under Articles 109-111-1, 113, 114 of this Code, or persons related to them by control relations within the meaning of the legislation on protection of economic competition;

2) act on behalf of or in the interests of citizens and/or legal entities (their officials) established under the laws of the aggressor state, or persons convicted of criminal liability or subject to criminal law measures for committing one or more crimes under Articles 109-111-1, 113, 114 of this Code, or persons related to them by control relations within the meaning of the legislation on protection of economic competition.

Purpose of the draft law: mitigating the negative effects of the armed aggression of the Russian Federation against Ukraine, in particular by providing instructions to the Ukrainian divisions of international companies from the regional offices of these companies located in the territory of the aggressor state

79 Draft Law of Ukraine "On Amendments to the Criminal Code of Ukraine on Establishing Liability for Subordination of Ukrainian Divisions of International Companies to Regional Offices Located in the Territory of the Aggressor State" reg. no. 7279 of 12.04.2022 URL: https://itd.rada.gov.ua/billInfo/Bills/Card/39419

Status of the draft law[80]: submitted for review to people's deputies (14.04.2022).

Assessment of the draft law and potential consequences: as a rule, restrictions on the procedure for conducting business activities, prohibition or regulation of certain types of activities of a legal entity are regulated by regulatory legislation (the Commercial Code, the Civil Code of Ukraine, the Law of Ukraine "On State Registration of Legal Entities, Individual Entrepreneurs and Public Organisations" and other acts). In this regard, it would be more logical to provide for such prohibitions in regulatory legislation.

In some cases, there will be a conflict between the proposed wording of Article 111-1 of the CC of Ukraine and part 4 of Article 111-1 of the CC of Ukraine, as both refer to the conduct of economic activity, while due to the lack of legislative definition of the phrase "in cooperation with the aggressor state, illegal authorities established in the temporarily occupied territory, including the occupation administration of the aggressor state" it can be assumed that the execution of instructions and orders based on or in connection with the legislation of the aggressor state may technically fall under part 4 of Article 111-1 of the CC.

A separate warning should be made regarding actions on behalf of/in the interests of persons related to them by control relations within the meaning of the legislation on protection of economic competition. Thus, such control relationships are not always publicly known, and therefore a person working for such a legal entity may not be aware that they are committing a criminal offence.

Given the legislator's proposal, in this case it would be logical to provide for the possibility of applying criminal law measures to such legal entities.

3. Draft Law of Ukraine "On Amendments to the Criminal and Criminal Procedure Codes of Ukraine on Improving Liability for Collaborationism and the Procedure for Pre-trial Investigation of Crimes Against the National Security of Ukraine" No. 7329 of 29.04.2022[81]

Legislative proposal: The draft law proposes to improve the jurisdiction of the Security Service of Ukraine to conduct pre-trial investigation of a criminal offence committed by a member of parliament on behalf of the prosecutor.

The draft law also proposes to define additional types of punishment that may be imposed by a court for collaborative activity.

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80 hereinafter Status of the draft law in the Verkhovna Rada of Ukraine, listed as of 10 July 2024

81 Draft Law of Ukraine "On Amendments to the Criminal and Criminal Procedure Codes of Ukraine on Improving Liability for Collaborationism and the Procedure for Pre-trial Investigation of Crimes Against the National Security of Ukraine" reg. no. 7329 of 29.04.2022: https://itd.rada.gov.ua/billInfo/Bills/Card/39519

Purpose of the draft law: improvement of certain provisions of criminal and criminal procedural legislation and effective implementation of the tasks of criminal proceedings.

Status of the draft law: pending (03.05.2022).

Assessment of the draft law and potential consequences: the introduction of an additional type of punishment in the form of a fine may be a positive step, given that currently the first and second parts of the article only provide for the possibility of imposing a punishment in the form of deprivation of the right to hold certain positions or engage in certain activities. At the same time, a person who has committed such a criminal offence may not hold a position or engage in activities, and therefore the application of punishment to them will not have the proper effect.

The draft law also prohibits entrusting the pre-trial investigation of a criminal offence committed by a member of the Ukrainian Parliament to other pre-trial investigation bodies, except for the National Anti-Corruption Bureau of Ukraine (NABU), the central office of the State Bureau of Investigation (SBI) and the investigative unit of the Central Directorate of the Security Service of Ukraine in accordance with their jurisdiction. The draft law also proposes to amend the law to provide that SBI investigators conduct pre-trial investigations of criminal offences committed by the relevant categories of persons (including people's deputies of Ukraine), except when the pre-trial investigation of these criminal offences falls under the jurisdiction of security investigators or detectives of the NABU's internal control unit.

It is also proposed to define that the pre-trial investigation is carried out by investigators individually or by an investigation team or interagency investigation team.

4. Draft Law of Ukraine "On Amendments to the Criminal and Criminal Procedure Codes of Ukraine on Improving Liability for Collaborationism and Related Criminal Offences" No. 7570 of 20.07.2022[82]

Legislative proposal: (1) to restate Article 111-1 of the CC of Ukraine in a new wording, which more differentiates the forms of objective side depending on the scope of such an act; (2) to exclude from Article 111-1 of the CC of Ukraine such form of collaborative activity as public calls for non-recognition of the extension of state sovereignty of Ukraine to the temporarily occupied territories of Ukraine, since liability for such acts is provided for in Article 110 of the CC of Ukraine "Encroachment on the territorial integrity and territorial inviolability of the state"; (3) to exclude Article 111-2 of the CC of Ukraine 'Aiding and abetting the aggressor state' due to duplication of provisions of Article 111-1 of the CC of Ukraine.

82 Draft Law of Ukraine "On Amendments to the Criminal and Criminal Procedure Codes of Ukraine on Improving Liability for Collaborationism and Related Criminal Offences" reg. no. 7570 of 20.07.2022 URL: https://itd.rada.gov.ua/billInfo/Bills/Card/40023

Purpose of the draft law: to promote a clear delineation of criminal offences under Articles 111, 111-1, 111-2 and 436-2 of the CC of Ukraine and to eliminate conflicts in the current legislation that create problems in law enforcement.

Status of the draft law: submitted for review to people's deputies (21.07.2022).

Assessment of the draft law and potential consequences:

- The legislator proposes to restate Article 111-1 of the CC of Ukraine, which groups the forms of collaborative activity according to the possible sphere or method of their commission (economic, informational, management, etc.), which deserves support and is related to the ease of application of this article in practice;
- At the same time, despite the attempt of the authors of the draft Law of Ukraine to write the article in such a way that clear boundaries are defined to further distinguish Article 111-1 of the CC of Ukraine from other articles, there are isolated cases where the wording of the type of objective party gives wide scope for its interpretation. An example is the use of "coordinated cooperation" in the text of paragraph 2 of part 2 of Article 111-1 of the CC of Ukraine (as drafted), which does not make it clear with whom and how such activities should be coordinated. Another example is "active participation" in paragraph 4 of part 3 of the mentioned article, which also gives grounds for a broad interpretation of human participation;
- The expediency of defining the concept of an "aggressor state" in the draft law is questionable. First of all, it should be noted that the definition of "aggression" is contained in UN General Assembly Resolution 3314 (XXIX) "Definition of Aggression", adopted on December 14, 1974. According to Article 1 of the Resolution, aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set forth in the current definition. The above definition is fully consistent with the understanding of "aggressor state" used in the national legislation of Ukraine. The next point to be made is that the definition of this term is not defined in the text of the CC. The phrase "aggressor state" is repeatedly used in acts of other branches of law. It should be noted that the meaning of this concept is not differentiated from act to act. This allows us to question both the expediency of defining the term "aggressor state" if it is defined in an international act, and its provision in the CC, and not in an act relating, for example, to the field of international humanitarian law;
- In some cases, there may be a coincidence between the acts stipulated in paragraph 2 of part 4 of Article 111-1 of the CC of Ukraine (participation in an illegal armed or paramilitary formation of the aggressor state or in an illegal armed or paramilitary formation controlled and financed by the aggressor state) and

one of the forms of the objective side of part 2 of Article 111 of the CC of Ukraine (defection to the enemy);

- The removal of part 2 of Article 111-2 of the CC of Ukraine, which currently duplicates the provisions of Article 111-1 of the CC of Ukraine and creates unnecessary criminalisation, will at the same time contribute to legal certainty and delineation of elements of crime.

5. Draft Law of Ukraine "On Amendments to the Criminal Code of Ukraine on Improving Liability for Collaborationism" No. 7647 of 08.08.2022[83]

Legislative proposal: (1) to restate part four of Article 111-1 of the CC as follows: "4. Transfer of material resources to illegal armed or paramilitary groups established in the temporarily occupied territory and/or armed or paramilitary groups of the aggressor state and/or voluntary conduct of economic activity in cooperation with the aggressor state, illegal authorities established in the temporarily occupied territory, including the occupation administration of the aggressor state, **except in cases determined by law**". The proposed amendments and additions to the article with this wording, according to the legislator, will allow to exclude from the scope of the article those types of economic activity that will be determined by other regulatory acts.

Purpose of the draft law: bringing the provisions of the criminal law in line with the actual reality and the state's tasks of maintaining control over the territories actually occupied after 24.02.2022 and ensuring the livelihoods of the residents of such territories.

Status of the draft law: sent to the Committee for consideration (14.03.2023).

Assessment of the draft law and potential consequences: if this Law is adopted, indeed, some types of economic activity will be removed from the scope of this Article by supplementing the CC with a blanket provision to another regulatory act that will provide for permitted types of such activity in the temporarily occupied territories of Ukraine. At the same time, it should be noted that such a draft Law of Ukraine should be adopted simultaneously with the draft Law of Ukraine amending the Law of Ukraine "On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine".

Legalisation of certain types of economic activity, in particular those aimed at ensuring the livelihood of the population, will have a number of positive effects, in particular:

- meeting the requirements of the Geneva Conventions in terms of providing the population with everything necessary to support their livelihoods;

83 Draft Law of Ukraine "On Amendments to the Criminal Code of Ukraine on Improving Liability for Collaborationism" reg. no. 7647 of 08.08.2022: https://itd.rada.gov.ua/billInfo/Bills/Card/40205

- provide the population with the necessary resources, including food, medicines, etc.;
- the positive social effect is that the population that was unable to leave the occupied territories and was forced to stay will not feel abandoned and will see the "presence of Ukraine" even despite the occupation.

6. Draft Law of Ukraine "On Amendments to Article 111-1 of the Criminal Code of Ukraine on Improving Criminal Liability for Collaborationism" No. 8077 of 26.09.2022[84]

Legislative proposal: to remove a separate reference to the sign of voluntariness in certain parts of the article; to provide for criminal liability in the new part for the exercise of professional activities related to the provision of services of a lawyer, auditor, appraiser, expert, bankruptcy trustee, private executor, independent mediator, member of labour arbitration, and arbitrator, as well as the exercise of powers of a notary or state registrar or subject of state registration of rights, or the provision of other public services.

Purpose of the draft law: to eliminate the gap in relation to this category of persons, since the specifics of the activities of the above-mentioned entities and their important role in the social and legal life of the state, as well as possible negative consequences of carrying out these activities under the legislation of the aggressor state, indicate the need to establish separate criminal liability for this category of persons.

Status of the draft law: submitted for review to people's deputies (27.09.2022).

Assessment of the draft law and potential consequences:

- The removal of a separate reference to voluntariness from the text of the article seems to be a reasonable proposal, since if a criminal offence is committed involuntarily, i.e. under physical or mental coercion, the person should be subject to Articles 39 or 40 of the CC of Ukraine.
- The proposal to introduce criminal liability for the above subjects cannot be assessed unambiguously positively or negatively. Certainly, the argument that the exercise of independent professional activity in all cases will contribute to the implementation of the ideas and policies of the aggressor state or the illegal occupation authorities is not enough.

Special attention should be paid to the proposal to criminalise the practice of law in the temporarily occupied territories of Ukraine. Thus, the draft Law of Ukraine provides for the liability of an advocate for the provision of services without assess-

84 Draft Law of Ukraine "On Amendments to Article 111-1 of the Criminal Code of Ukraine on Improving Criminal Liability for Collaborationism" reg. no. 8077 of 26.09.2022 URL: https://itd.rada.gov.ua/billInfo/Bills/Card/40531

ing the purpose of such activities or the conditions under which such services are provided. It should be remembered that there are still citizens of Ukraine in the temporarily occupied territories who need protection from arbitrary arrests, detentions, fabrication of cases against them based on ideological or other criteria, illegal confiscation of property, etc. In this regard, the possibility of contacting a lawyer in most of these cases remains the only way to protect their rights.

At the same time, if an advocate, instead of protecting the rights and legitimate interests of the client, contributes to the implementation of the policy of the aggressor state or illegal occupation authority, provides them with support and carries out actions to the detriment of the sovereignty, territorial integrity and inviolability, defence capability or state, economic or information security of Ukraine, this is grounds for bringing the person to criminal liability. It would be a mistake to assert that such activities of lawyers or other entities engaged in independent professional activities remain unpunished and out of the scope of the CC, since criminal qualification, if the relevant elements of a criminal offence are present, can be made under Article 111 of the CC of Ukraine ("High Treason") or one of the parts of Article 111-1 of the CC of Ukraine ("Collaborative Activity").

- The proposal to use the wording "other public services" in the proposed text of the part of the article does not contribute to legal certainty, since according to national legislation, the list of such services includes, among others, housing and communal, social, transport, health improvement services, etc. Thus, this wording may partially cover services aimed at supporting the vital activity of the population.

The adoption of this draft law may lead to violations of the rights of people who remain in the temporarily occupied territories. Thus, criminalisation of, for example, the activities of lawyers will contribute to the violation of not only the human right to defend one's own interests, but also other rights that will be violated by illegal decisions of the aggressor state or illegal occupation authorities.

The inclusion of public services, which include activities aimed at maintaining the livelihood of the population, in the list of actions for which criminal liability is provided, may lead to the termination of the provision of such services and pose a threat to the survival of the population. This is also contrary to the provisions of the Geneva Conventions and their additional protocols, which stipulate the need to carry out activities aimed at maintaining an adequate standard of living.

7. Draft Law of Ukraine "On Amendments to Article 111-1 of the Criminal Code of Ukraine on Improving Liability for Collaborationism" No. 8301 of 23.12.2022[85]

Legislative proposal: (1) to remove the element of voluntariness in certain parts of Article 111-1 of the CC of Ukraine; (2) to add the wording "except in cases stipulated by laws" to part 4 of Article 111-1 of the CC of Ukraine; (3) to provide for criminal liability for the performance by a citizen of Ukraine in the temporarily occupied territory of Ukraine and on the basis of legislation other than Ukrainian legislation of professional activities related to the provision of services of an auditor, appraiser, expert, bankruptcy trustee, private enforcement officer, independent mediator, member of labour arbitration, arbitrator, as well as the performance of the powers of a notary or state registrar or subject of state registration of rights, or the provision of other public services; (4) to establish in paragraphs 1 and 2 of Article 111-1 of the Criminal Code of Ukraine a penalty in the form of a fine and community service.

Purpose of the draft law: to improve the provisions of Article 111-1 of the CC of Ukraine to ensure more effective qualification of actions for collaborative activity.

Status of the draft law: submitted for review to people's deputies (26.12.2022).

Assessment of the draft law and potential consequences: the assessment of some of these proposals has already been reflected in the analysis of previous draft laws that propose to introduce similar changes. In this regard, it may be noted that the exclusion of the reference to the voluntary nature of certain types of objective party and the provision of exceptions provided for in the law in respect of certain types of economic activity in the temporarily occupied territories deserve support.

Establishing criminal liability for the provision of public services requires a clear definition of specific types of such services in order to avoid violations of international law and the rights of people who remained in the temporarily occupied territories.

The adoption of this draft law may result in a violation of the rights of people in the temporarily occupied territories by criminalising the provision of public services without specifying their types. The establishment of exceptions for certain types of economic activity will have a positive effect.

85 Draft Law of Ukraine "On Amendments to Article 111-1 of the Criminal Code of Ukraine on Improving Liability for Collaborationism" reg. no. 8301 of 23.12.2022 URL: https://itd.rada.gov.ua/billInfo/Bills/Card/40894

8. Draft Law of Ukraine "On Amendments to Article 111-1 of the Criminal Code of Ukraine on Improving Liability for Collaborationism" No. 8301-1 of 05.01.2023[86]

This draft law is an alternative to the draft Law of Ukraine No. 8301.

Legislative proposal: to provide for a fine as a type of punishment in the sanctions of parts 1-2 of Article 111-1 of the CC, but in higher amounts than proposed in the draft Law of Ukraine No. 8301.

Purpose of the draft law: to improve the provisions of Article 111-1 of the CC of Ukraine in terms of expanding the list of possible sanctions for certain manifestations of collaboration to achieve the purpose of the punishment imposed on the perpetrator.

Status of the draft law: submitted for review to people's deputies (09.01.2023).

Assessment of the draft law and potential consequences: as mentioned above, the introduction of a fine as a type of punishment may be a positive step, given that currently these parts of the article only provide for the possibility of imposing a punishment in the form of deprivation of the right to hold certain positions or engage in certain activities. At the same time, a person who has committed such a criminal offence may not hold a position or engage in activities, and therefore the application of punishment to them will not have the proper effect.

Due to the addition of a fine in the amount of 3 to 5 thousand tax-free minimum incomes to the sanction of part 2 of Article 111-1 of the CC of Ukraine, such a criminal offence becomes a minor crime (in the current version it is a criminal offence). This raises the issue of additional research into the need to transfer it to the list of crimes, as this will have significant procedural consequences (in particular, a simplified pre-trial investigation procedure).

At the same time, it should be noted that the above criminal offence under part 2 of Article 111-1 of the CC of Ukraine is a criminal offence due to its degree of public danger. This is due to the fact that holding a position not related to the performance of organisational, administrative or economic functions in illegal authorities established in the temporarily occupied territories does not inherently give a person 'access to power' and any decision made by the person is not of a power nature and does not affect the determination of the political vector of the temporarily occupied territories.

In addition, the positions covered by this part of the article also include those types of work of a person that consist in performing purely technical functions (in

86 Draft Law of Ukraine "On Amendments to Article 111-1 of the Criminal Code of Ukraine on Improving Liability for Collaborationism" reg. no. 8301 of 23.12.2022 URL: https://itd.rada.gov.ua/billInfo/Bills/Card/41119

particular, maintenance of technical support or document management). In this regard, the socially dangerous consequences of the actions performed by a person in such positions do not reach the degree of social danger that would allow this criminal offence to be classified as a crime.

9. Draft Law "On Amendments to the Criminal Code of Ukraine to Clarify Liability for Certain Types of Criminal Offences in the Temporarily Occupied Territories" No. 8301-2 of 09.01.2023[87]

Legislative proposal: (1) to provide for the possibility of releasing a person from criminal liability for treason if they are a citizen of Ukraine who is illegally (forcibly) conscripted into the armed forces of the occupying state or illegal armed groups in the temporarily occupied territories of Ukraine and voluntarily surrenders to the armed forces, law enforcement agencies or other military formations of Ukraine; (2) to increase criminal liability for collaborative activity; (3) to add the element of voluntariness; (4) to define the subject of the criminal offence under Article 111-1(1) of the CC ("Collaborative activity") as an official only; (5) to clarify the types of economic activity prohibited in the temporarily occupied territories

Purpose of the draft law: to create a legislative basis for the correct distinction between offences under Article 111-1 of the Criminal Code of Ukraine "Collaborative Activities" and other related offences, to improve liability for collaborative activities and related criminal offences, etc.

Status of the draft law: submitted for review to people's deputies (11.01.2023).

Assessment of the draft law and potential consequences:

- It is questionable whether a new type of exemption from criminal liability for collaborative activity is envisaged, since if a person was coerced (physically or mentally), this act cannot be considered intentional. In this case, it is advisable to talk about the presence of physical or mental coercion in the person's act;
- A person who was forcibly conscripted into the armed forces of the occupying state or illegal armed groups in the temporarily occupied territories of Ukraine may continue to commit intentional criminal offences, which is the basis for bringing them to criminal liability;
- Recognition of an official as the subject of a criminal offence under part 1 of Article 111-1 of the CC exclusively will further complicate the distinction between this part of the article and Article 436-2 of the CC;
- Supplementing part 3 of Article 111-1 of the CC with a new form of objective side "propaganda, agitation, recruitment and other forms of involvement of

87 Draft Law "On Amendments to the Criminal Code of Ukraine to Clarify Liability for Certain Types of Criminal Offences in the Temporarily Occupied Territories" reg. no. 8301-2 of 09.01.2023 URL: https://itd.rada.gov.ua/billInfo/Bills/Card/41131

children in children's and youth movements and formations in the temporarily occupied territories for their further involvement in the armed forces of the aggressor state, ensuring the activities of such movements and formations" requires not only stating the fact of propaganda, agitation or recruitment, but also proving the purpose of their further involvement in the armed formations, which will be quite a difficult task in practice;

- Establishing an exhaustive list of economic activities that are punishable in the temporarily occupied territories will lead to a constant need to amend the article and the impossibility of prosecuting persons for conducting those economic activities that, although harmful to the security of Ukraine, are not included in the list.

10. Draft Law of Ukraine "On Amendments to the Criminal Code and the Code of Criminal Procedure of Ukraine on Improving Liability for Certain Crimes Against the National Security of Ukraine" No. 10136 of 09.10.2023[88]

Legislative proposal: It is proposed to significantly increase criminal liability for collaboration and aiding and abetting the aggressor state. In particular, it is stipulated:

- deprivation of the right to occupy certain positions or engage in certain activities as an additional punishment for crimes against the national security of Ukraine, is imposed for a term of ten to fifteen years;
- the terms of repayment of convictions in cases of offences against the national security of Ukraine are extended;
- for committing an offence under parts 1-4 of Article 110-2 of the Criminal Code, it is proposed to increase the penalty in the form of deprivation of the right to hold certain positions or engage in certain activities from 10 to 15 years instead of a maximum of 2 years;
- to introduce a fine in parts 1-3 of Article 111-1 of the CC.

The amendments also include an increase in the period of time for the repayment of a conviction for crimes against the foundations of national security and the extension of paragraph 5 of part 1 of Article 89 of the CC to cover cases of committing not only crimes but also misdemeanours.

In addition, in Articles 111-1 and 111-2 of the CC, the legislator proposes to specify the types of objective side, in particular:

88 Draft Law of Ukraine "On Amendments to the Criminal Code and the Code of Criminal Procedure of Ukraine on Improving Liability for Certain Crimes Against the National Security of Ukraine" reg. no. 10136 of 09.10.2023 URL: https://itd.rada.gov.ua/billInfo/Bills/Card/42957

- in part 3, add health and recreation facilities, places used for educational, sports and cultural events as places where propaganda that is subject to criminal liability may be delivered;
- in part 4, add a sign of voluntariness, prohibit independent professional activity and define the purpose of ensuring the interests and needs of the aggressor state, its occupation administration, paramilitary or armed groups created in the temporarily occupied territories of Ukraine;
- in part 5, add a new form of objective party – coercion to organise, hold or participate in illegal elections and/or referendums on the temporarily occupied territory of Ukraine;
- in part 6 to narrow the subject of a criminal offence to a citizen of Ukraine only;
- in the note to Article 111-1, it is also proposed to define the concepts of "occupation administration of the aggressor state", "education standard of the aggressor state", "economic activity" and "independent professional activity".
- in Article 111-2, it is proposed to specify the purpose, namely to replace the wording "with the aim of harming Ukraine" to "with the aim of harming the sovereignty, territorial integrity and inviolability, defence capability, state, economic or information security of Ukraine;
- in Article 111-2, add the following types of objective side: coercion to cooperate with the armed or paramilitary formations of the aggressor state and/or the occupation administration and transfer of information about Ukrainian citizens to the aggressor state, its armed or paramilitary formations, illegal paramilitary or armed formations created in the temporarily occupied territories of Ukraine, and/or the occupation administration of the aggressor state.

In addition, as part of the proposals for amendments to the CPC, it is proposed to remove criminal offences under parts 1-3 of Article 111-1 of the CC of Ukraine from the jurisdiction of the SSU and retain only those under parts 4-8 of Article 111-1 of the CC of Ukraine.

Purpose of the draft law: to improve the provisions of the Criminal Code and the Criminal Procedure Code of Ukraine to ensure more effective qualification, investigation and punishment of crimes against the foundations of national security of Ukraine.

Status of the draft law: submitted for review to people's deputies (11.10.2023).

Assessment of the draft law and potential consequences: The legislator justifies the draft law by the fact that in practice there are difficulties in distinguishing between criminal offences against the foundations of national security, and in some cases the lawful behaviour of individuals falls under the article.

At the same time, the draft law contains a number of shortcomings:

- Amendments to the terms of repayment of a criminal record under part 5 of Article 89 of the CC, in particular, the replacement of the word 'crime' with 'criminal offence', allows us to note that from now on, the term of repayment of a criminal record of 1 year from the date of serving the main or additional sentence will also apply to cases of misdemeanour. However, such a proposal contradicts not only the idea of introducing a misdemeanour, but also the provisions of paragraph 2-1 of the same part of the article, according to which persons convicted of a criminal offence are recognised as having no criminal record immediately after serving their sentence.
- Increasing the term of additional punishment in the form of deprivation of the right to hold certain positions or engage in certain activities may result in a person remaining in the status of a convicted person for too long, since the period of repayment of the conviction is calculated only after the person has served the additional punishment (if imposed).
- There is still a problem with the distinction of elements of criminal offences under parts 4 and 5 of Article 111-1 and Article 111-2 of the CC due to: 1) the intertwining of the elements of these criminal offences; 2) the distinction by intent may be difficult, as it may be difficult to prove a specific intent, such as undermining the constitutional order or changing state borders. In addition, in some cases, securing the interests of the aggressor state in the context of part 4 of Article 111-1 of the CC of Ukraine (as proposed in the draft) may be aimed at achieving a kind of final goal, namely the establishment of the occupation or aggressor state power and the change of the territorial structure of Ukraine.

The adoption of this draft law may result in a significant deterioration in the situation of persons who have committed a criminal offence under Article 111-1 of the CC due to the fact that in some cases the total period of time a person is subject to restrictions on their rights, at first in connection with serving a sentence (main and additional), and then – in connection with a criminal record, can reach more than 20 years (for example, in cases where a person is sentenced to an additional punishment in the form of deprivation of the right to hold certain positions or engage in certain activities for 15 years + 7 years of conviction).

In addition, in practice, the issue of distinguishing between the elements of criminal offences under Articles 111-1 and 111-2 of the CC of Ukraine will not be resolved due to the lack of proposals for clear criteria for distinguishing these elements.

11. Draft Law of Ukraine "On Amendments to the Criminal Code and the Code of Criminal Procedure of Ukraine on Improving Liability for Certain Crimes Against the National Security of Ukraine" No. 10136-1 of 24.10.2023[89]

This draft law is an alternative to the draft Law of Ukraine No. 10136.

Legislative proposal: (1) amendments to Articles 55 and 89 of the Criminal Code (in this part, this draft law duplicates the provisions of the previously analysed draft law No. 10136); (2) a significant increase in the list of acts to be understood as collaboration, which are reflected in 16 parts of Article 111-1 of the CC of Ukraine.

Purpose of the draft law:

- bringing the criminal law provisions on liability for certain crimes against the foundations of Ukraine's national security in line with the standards of a "high-quality" and "foreseeable" law;
- eliminating the difficulty in distinguishing between the elements of crimes under Articles 111 of the CC of Ukraine "High Treason", 111-1 of the CC of Ukraine "Collaborative Activity", 111-2 of the CC of Ukraine "Aiding the Aggressor State" and 436-2 "Justification, Recognition of the Lawfulness, Denial of the Armed Aggression of the Russian Federation against Ukraine, Glorification of its Participants" and some other elements of crime;
- bringing national legislation in line with international humanitarian law regarding civilians forcibly residing under the authority of the occupying power.

Status of the draft law: submitted for review to people's deputies (25.10.2023).

Assessment of the draft law and potential consequences:

- with regard to the provisions on the terms of repayment of a criminal record and the increase in the amount of additional punishment in the form of deprivation of the right to hold certain positions or engage in certain activities, the conclusions are similar to those set out in the analysis of the previous draft Law of Ukraine No. 10136;
- the new types of collaboration activity proposed by the legislator in most cases represent a fragmentation of the types currently provided for in the current CC. For example, the actions proposed in parts 4 (Propaganda in favour of the occupation forces in order to facilitate the armed aggression against Ukraine, establish and confirm the temporary occupation of part of the territory of Ukraine, avoidance of responsibility by the state that carries out armed aggression against Ukraine) and 5 (Propaganda in favour of the occupation forces during teaching, educational and pedagogical activities, including the

89 Draft Law of Ukraine "On Amendments to the Criminal Code and the Code of Criminal Procedure of Ukraine on Improving Liability for Certain Crimes Against the National Security of Ukraine" reg. no. 10136-1 of 24.10.2023 URL: https://itd.rada.gov.ua/billInfo/Bills/Card/43055

use of education standards by the state that carries out armed aggression against Ukraine) of the proposed version are similar in content. Thus, both acts constitute propaganda in favour of the occupying power, while the latter is a special type of the former, namely, propaganda during teaching, educational and pedagogical activities. As a rule, the special type is distinguished from the general type in cases where such a criminal offence is privileged, qualified or especially qualified, which is reflected not only in the text of the disposition, but also in the differentiation of the type and amount of punishment. At the same time, the text of the draft law provides for identical punishment for these two acts. It should be noted that this case is not an isolated one in the proposed wording.

- The excessive "fragmentation" of collaboration activities raises certain reservations, as they are arranged chaotically in the text of the article, without proper systematisation.
- Supplementing Article 111-1 of the CC with new types of objective elements will have the opposite effect. If the legislator intended to clearly distinguish between the elements of criminal offences provided for in Articles 111, 111-1, 111-2 and 436-2, this task was not only not fulfilled, but also new conflicts with Articles 114, 114-2, 433 and 438 of the CC of Ukraine were created.

This draft law will create even more difficulties in practice related to the distinction between these criminal offences. In addition, the situation of a convicted person will be significantly worsened in the context of the previously expressed comments on the amount of additional punishment and the terms of repayment of the conviction.

2.2.2. Draft laws of Ukraine that amend other laws of Ukraine regulating certain types of cooperation with the aggressor state or illegal occupation authorities

This section of the study is devoted to the analysis of draft laws that amend the regulatory legislation relating to the conduct of business in the temporarily occupied territories of Ukraine.

1. Draft Law of Ukraine "On Amendments to the Law of Ukraine On Ensuring the Rights and Freedoms of Citizens and Legal Regime in the Temporarily Occupied Territory of Ukraine" on the Peculiarities of Activities in the Temporarily Occupied Territory of Ukraine' No. 7646 of 08.08.2022[90]

90 Draft Law of Ukraine "On Amendments to the Law of Ukraine On Ensuring the Rights and Freedoms of Citizens and Legal Regime in the Temporarily Occupied Territory of Ukraine" on the Peculiarities of Activities in the Temporarily Occupied Territory of Ukraine' reg. no. 7646 of 08.08.2022 URL: https://itd.rada.gov.ua/billInfo/Bills/Card/40204

Legislative proposal: (1) to allow, in certain specific cases, interaction with the aggressor state, its state bodies, local self-government bodies or armed or paramilitary groups, illegal authorities established in the temporarily occupied territory, including the occupation administration of the aggressor state, illegal armed or paramilitary groups established in the temporarily occupied territory, their officials (if this does not cause damage to Ukraine); (2) permission to conduct business activities in the temporarily occupied territory of Ukraine related to ensuring human and civil rights and freedoms, as well as activities aimed at ensuring the livelihood of the population of the temporarily occupied territories.

Purpose of the draft law: determining the measures and activities that may be carried out in the temporarily occupied territories, or in cooperation with the aggressor state, illegal authorities and the occupation administration, by public authorities, legal entities under public law and other business entities, as well as fulfilling the state's tasks to maintain control over the territories actually occupied after 24.02.2022 and to ensure the livelihoods of the inhabitants of such territories.

Status of the draft law: sent to the Committee for consideration (14.02.2023).

2. Draft Law of Ukraine "On Amendments to the Law of Ukraine 'On Ensuring the Rights and Freedoms of Citizens and Legal Regime in the Temporarily Occupied Territory of Ukraine' On the Peculiarities of Conducting Economic Activities for the Provision of Certain Services in the Field of Energy and Utilities under Martial Law" No. 9236 of 24.04.2023[91]

Legislative proposal: to establish the possibility of allowing the provision of utilities in the territories occupied after 24.02.2024

Purpose of the draft law: the need to regulate the conduct of economic activities in the territories of Ukraine where hostilities are (were) conducted or which are (were) actually temporarily occupied (after 24.02.2022).

Status of the draft law: submitted for review to people's deputies (25.04.2023).

Assessment of Draft Laws No. 7646 and No. 9236 and potential consequences: the adoption of these draft laws will allow to remove from the area of punishment the types of economic activity that allow to ensure the livelihood of the population in the temporarily occupied territories of Ukraine. This approach is also in line with the provisions of Article 55 of the Convention relative to the Protection of Civilian Persons in Time of War.

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91 Draft Law of Ukraine "On Amendments to the Law of Ukraine 'On Ensuring the Rights and Freedoms of Citizens and Legal Regime in the Temporarily Occupied Territory of Ukraine' On the Peculiarities of Conducting Economic Activities for the Provision of Certain Services in the Field of Energy and Utilities under Martial Law" reg. no. 9236 of 24.04.2023. URL: https://itd.rada.gov.ua/billInfo/Bills/Card/41820

At the same time, it should be noted that quite often, when justifying the expediency of adopting these draft laws, the legislator takes into account only those territories that were occupied after February 24, 2024, which indicates a certain selective approach and leaves out the territory of the Autonomous Republic of Crimea, part of Donetsk and Luhansk regions that were occupied in 2014. It would be advisable to extend the effect of these laws to include cases of economic activity in the territories occupied since 2014.

2.2.3. Draft Laws of Ukraine on Restricting the Rights of Suspects and Accused of Crimes Against National Security

1. Draft Law of Ukraine "On the Status of Victims of Sexual Violence Related to the Armed Aggression of the Russian Federation against Ukraine and Urgent Interim Reparations" No. 10132 of 09.10.2023[92]

Legislative proposal: this draft law proposes to deprive persons who served in the armed forces of the Russian Federation, other military formations or law enforcement agencies, those who voluntarily held positions related to the performance of organisational, administrative or economic functions in illegal authorities established on the temporarily occupied territory of Ukraine, or participated in illegal armed or paramilitary groups of the right to be recognised as victims.

Status of the draft law: adopted as a basis in the first reading (19.06.2024).

Purpose of the draft law: to determine the legal status of victims of sexual violence related to the armed aggression of the Russian Federation against Ukraine and family members of the deceased victims, and the legal basis for providing them with urgent interim reparations.

Assessment of the draft law and potential consequences:

Within the framework of this study, the provisions of the draft law will be examined in more detail, namely part 3 of Article 10 of the draft Law of Ukraine, according to which a person who has been a victim or a family member of a deceased victim since February 20, 2014, is not entitled to be recognised as a victim or a family member of a deceased victim:

- served in the Armed Forces, internal affairs agencies, state security agencies, police, and other military formations of the Russian Federation, including as a private or commander;
- held civil service positions (in local self-government bodies, other state bodies), in the relevant bodies (formations) of the Russian Federation;

92 Draft Law of Ukraine "On the Status of Victims of Sexual Violence Related to the Armed Aggression of the Russian Federation against Ukraine and Urgent Interim Reparations" reg. no. 10132 of 09.10.2023 URL: https://itd.rada.gov.ua/billInfo/Bills/Card/42862

- voluntarily held positions related to the performance of organisational, administrative or economic functions in illegal authorities established in the temporarily occupied territory of Ukraine, including in the occupation administration of the aggressor state, in illegal judicial or law enforcement bodies;
- voluntarily participated in illegal armed or paramilitary groups established in the temporarily occupied territory of Ukraine and/or in the armed formations of the aggressor state.

It is worth noting that the last two paragraphs cover persons who have committed criminal offences under parts 5 and 7 of Article 111-1 of the CC. However, the text of the Draft Law does not clearly state how the fact of a person's military service or holding positions in illegal authorities is confirmed: by a court verdict convicting the person of these crimes or by the fact of holding such a position. In accordance with the principle of legality, such aspects should be clearly and unambiguously provided for in the text of the law in order to avoid its free interpretation and unlawful restriction of human rights.

At the same time, the status of a convicted person should in no way affect the status of a victim in another criminal proceeding. Thus, according to part 1 of Article 55 of the CPC, a victim in criminal proceedings may be an individual who has suffered moral, physical or property damage as a result of a criminal offence, a legal entity that has suffered property damage as a result of a criminal offence, as well as a bond administrator who acts in the interests of bondholders who have suffered property damage in accordance with the provisions of the Law of Ukraine "On Capital Markets and Organised Commodity Markets". The only exception to this rule is contained in part 4 of Article 55 of the CPC, according to which the victim cannot be a person who has suffered moral damage as a representative of a legal entity or a certain part of society. The above indicates that a person convicted of a crime under parts 5 or 7 of Article 111-1 of the CC and serving a sentence or having a criminal record may well be a victim of sexual violence related to the armed aggression of the Russian Federation against Ukraine.

In case a person has served their sentence and has an expunged criminal record for committing the above crimes, they are considered to have no criminal record and, as a result, are not recognised as a person falling under paragraphs 3 and 4 of part 3 of Article 10 of the Draft Law of Ukraine.

2. Draft Law of Ukraine "On registration of persons whose lives and health were affected as a result of the armed aggression of the Russian Federation against Ukraine" No. 10256 of 13.11.2023[93]

Legislative proposal: it is proposed to create a State Register of persons affected by the armed aggression of the Russian Federation against Ukraine to ensure compensation for damage to their lives and health. One of the proposals put forward by the authors of the draft law is the actual duplication of the provision of the Law of Ukraine "On Compensation for Damage and Destruction of Certain Categories of Real Estate as a Result of Hostilities, Terrorist Acts, Sabotage Caused by the Armed Aggression of the Russian Federation against Ukraine and the State Register of Property Damaged and Destroyed as a Result of Hostilities, Terrorist Acts, Sabotage Caused by the Armed Aggression of the Russian Federation against Ukraine"[94], according to which the recipients of compensation cannot be persons with a criminal record for committing criminal offences under section I "Crimes against the foundations of national security of Ukraine" of the Special Part of the Criminal Code of Ukraine, as well as their heirs.

Purpose of the draft law: ensure the creation of a State Register of persons affected by the armed aggression of the Russian Federation against Ukraine.

Status of the draft law: adopted as a basis in the first reading (25.04.2024).

Assessment of the draft law and potential consequences: in accordance with international and national legislation, the right to compensation for damage to life and health is a fundamental human right. According to international human rights standards, in particular the Convention for the Protection of Human Rights and Fundamental Freedoms, states are obliged to ensure effective protection of the rights of all persons under their jurisdiction, including the right to reparation.

Article 3 of the Constitution of Ukraine recognises a person, their life and health, honour and dignity, inviolability and security as the highest social value in Ukraine, and Article 27 of the Constitution of Ukraine states that everyone has the right to life, and the corresponding obligation of the state to ensure this right.

A number of provisions of the Civil Code of Ukraine, in particular Articles 1168, 1195, 1197 of the Civil Code, provide for the right of a person to receive compensation in case of damage to their life and health. Moreover, the text of these articles does not contain any exceptions when a person is deprived of such a right.

93 Draft Law of Ukraine "On registration of persons whose lives and health were affected as a result of the armed aggression of the Russian Federation against Ukraine" reg. no. 10256 of 13.11.2023 URL: https://itd.rada.gov.ua/billInfo/Bills/Card/43188

94 Law of Ukraine "On Compensation for Damage and Destruction of Certain Categories of Real Estate as a Result of Hostilities, Terrorist Acts, Sabotage Caused by the Armed Aggression of the Russian Federation against Ukraine and the State Register of Property Damaged and Destroyed as a Result of Hostilities, Terrorist Acts, Sabotage Caused by the Armed Aggression of the Russian Federation against Ukraine" reg. no. 2923-IX of 23.02.2023. URL: https://zakon.rada.gov.ua/laws/show/2923-20#Text

If we analyse the legal restrictions that apply to a person who has committed a criminal offence against the foundations of national security of Ukraine, they can be divided into 1) those related to serving a sentence and 2) criminal record. Special attention within the framework of this article should be paid to the legal restrictions arising from a person's criminal record.

A person's conviction may result in restrictions on their rights to hold certain positions in state and commercial institutions, to engage in certain activities, including professional, political and social activities, and to exercise freedom of movement, and may deprive them of the right to vote and exercise other civil rights. At the same time, given the recognition of human life and health as an indisputable value, a person's criminal record cannot be a ground for discrimination in matters of compensation for damages.

If such a provision is adopted, it will violate the right to compensation for damages provided for, among other things, by international instruments: Article 8 of the Universal Declaration of Human Rights, Article 2 of the International Covenant on Civil and Political Rights, Articles 6, 13, 41 of the Convention for the Protection of Human Rights and Fundamental Freedoms. This, in turn, will be the basis for individuals to apply to international judicial institutions in connection with the violation of this right.

3. Draft Law of Ukraine "On Amendments to Certain Legislative Acts on Peculiarities of Payment of Pensions to Persons Who Committed a Criminal Offence Against the Foundations of National Security, Public Safety, Peace, Security of Humanity, International Law and Order" No. 10355 of 18.12.2023[95]:

Legislative proposal: the draft law proposes amendments to the provisions of the Criminal Executive Code and the Law of Ukraine "On Pension Provision", which would reduce the amount of pension for persons sentenced to restriction or imprisonment for committing crimes under Articles 109, 110, 110-2, 111, parts 3-8 of Articles 111-1, 111-2, 113, 114, 114-1, 258, 258-2, 258-3, 258-5, 260, 437, 438, 441, 442, 447 of the Criminal Code to an amount not exceeding the subsistence minimum for persons who have lost their ability to work (including allowances, increases, additional pensions, targeted financial assistance, pensions for special services to Ukraine, compensation payments, indexation and other pension supplements, supplements to allowances for certain categories of persons who have special services to the Motherland, as established by law), sentenced to restriction of liberty or imprisonment.

In addition, it is proposed to supplement Article 49 of the Law of Ukraine "On Compulsory State Pension Insurance" with paragraph 4-1, according to which the

95 Draft Law of Ukraine "On Amendments to Certain Legislative Acts on Peculiarities of Payment of Pensions to Persons Who Committed a Criminal Offence Against the Foundations of National Security, Public Safety, Peace, Security of Humanity, International Law and Order" reg. no. 10355 of 18.12.2023. URL: https://itd.rada.gov.ua/billInfo/Bills/Card/43413

payment of pensions by decision of the territorial bodies of the Pension Fund or by court decision is terminated six months after the acquisition of the procedural status of a suspect accused of a criminal offence against the foundations of national security, public safety, peace, human security, and international law and order.

Purpose of the draft law: creation of a preventive measure to protect state, public security, human security, international law and order, peace, defence capability, independence of the country, its constitutional order in the form of a reduction in the amount of pension, as well as expression of the state's negative assessment of the actions taken against it, as well as condemnation of such actions by Ukrainian society, which defends its independence and freedom.

Status of the draft law: the Committee's opinion on the review was submitted (18.01.2024).

Assessment of the draft law and potential consequences:

The right to pension provision for convicted persons is regulated by both international standards and national legislation, namely the Law of Ukraine "On Pension Provision". The analysis of international acts, namely Articles 22 and 25 of the Universal Declaration of Human Rights, Article 9 of the International Covenant on Economic, Social and Cultural Rights, Article 12 of the European Social Charter, International Labour Organization Convention No. 102 "On Minimum Standards of Social Security", provide for the right to pension provision and do not contain cases when a person may be deprived of such a right. As Ukraine is a party to these treaties, it has an obligation to ensure the right to pension provision to individuals, regardless of the status or conviction of the individual.

The first serious comment on the analysed draft Law of Ukraine is the termination of a person's pension due to their procedural status (suspect or accused). This provision violates the presumption of innocence provided for in part 1 of Article 62 of the Constitution of Ukraine. Thus, a person is presumed innocent of committing a crime and cannot be subjected to criminal punishment until their guilt is proved in accordance with the law and established by a court verdict of guilty. The same principle is also contained in Article 11 of the Universal Declaration of Human Rights, Article 14 of the International Covenant on Political and Civil Rights, Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms and other acts. The fact that a person has the status of a suspect or accused does not mean that they are guilty of a criminal offence and may be subject to restrictions on their rights.

The next point, which is also a violation of a person's right to a pension, is that deprivation of such a right in the cases provided for in this draft law has signs of punishment, as it 1) is a measure of coercion, 2) is applied for the commission of a criminal offence, the list of which is contained in the draft law of Ukraine, and 3) is intended to punish. However, such a restriction of the right is not only not provided for in part

1 of Article 51 of the CC among the types of punishment, but also violates the requirements of part 3 of Article 3 of the CC, according to which the criminal unlawfulness of an act, as well as its punishability and other criminal consequences, are determined only by this Code.

However, as the ECtHR case law shows (e.g., Engel and Others v. the Netherlands and Labita v. Italy), the failure to recognise the restriction or deprivation of a person's right as a punishment does not mean that it is not. In this regard, it can be assumed that if this draft law is adopted, convicted persons who will be deprived of their right to pension benefits will apply to the ECtHR and their complaints will be satisfied.

KEY CONCLUSIONS/FINDINGS

The analysis of the draft laws revealed the following trends:

1. Legislative initiatives, mostly registered by people's deputies of Ukraine, propose to increase criminal liability for collaboration. This can be seen in the increase in penalties, the addition of new types of sanctions, and the extension of the period of time for the expungement of a criminal record in the event of a crime against the foundations of national security. At the same time, new draft laws are emerging that, in particular, propose to restrict the rights (e.g., the right to compensation for damage caused by armed aggression against Ukraine, the right to a pension) of persons accused or found guilty of crimes against the national security of Ukraine.

2. The existence of at least eleven draft laws proposing amendments to Article 111-1 of the CC of Ukraine, as well as the fact that none of the registered draft laws has been adopted for a long time, indicate, on the one hand, a high demand for improving the legislation due to its gaps and inconsistency with reality. On the other hand, there is no consensus on what changes need to be made to ensure effective and proper prosecution of those who collaborated with the occupation authorities.

3. The proposed amendments are aimed at distinguishing Article 111-1 of the CC of Ukraine from related offences by clarifying the types of collaboration activity provided for in the current legislation and amending the subject composition.

4. The draft laws have repeatedly raised the issue of the need to establish criminal liability for the exercise of independent professional activity in the temporarily occupied territories of Ukraine, including the practice of law. Such proposals have a negative impact on the activities of those lawyers in the oc-

cupation who provide support to our citizens, in particular, persons deprived of their personal freedom as a result of armed aggression against Ukraine.

5. The lack of a uniform approach is observed in the enshrining of the voluntary nature of Article 111-1. Some draft laws propose to add it, while others propose to remove it. It is irrelevant whether voluntariness is specified in Article 111-1 of the CC of Ukraine, since if a criminal offence is committed involuntarily, i.e. under physical or mental coercion, Articles 39 or 40 of the CC of Ukraine should be applied to the person.

CHAPTER 3.

PECULIARITIES OF COVERING THE TOPIC OF COLLABORATIONISM AND PROSECUTION FOR COOPERATION WITH THE OCCUPATION AUTHORITIES

In addition to analysing and assessing what the legislation on collaboration looks like, the practice of its application and the prospects for changing the legislation itself, it is also important to study the issue of public perception of cases of collaboration. On the one hand, the issue of communication by the investigating authorities (SSU, SBI, NPU) and the prosecutor's office on cases of collaborative activity on their official websites is relevant. On the other hand, it is important to study how information about the facts of collaboration is broadcast in the media at the national and regional levels.

Therefore, an analysis of publications made in the period from April 1, 2022 to May 31, 2024 on the topic of collaborationism and prosecution for collaborative activity under Article 111-1 of the CC of Ukraine was conducted.[96]

The study identified and compiled a list of negative words and phrases associated with describing a person as guilty of a crime. In addition, the study included determining the tone of the publication; assessing the technique of hiding the face in publications; and analysing the presumption of innocence.

3.1. RETROSPECTIVE MONITORING OF REGIONAL WEBSITES AND SOCIAL MEDIA PAGES OF THE SSU, NATIONAL POLICE, SBI, AND PROSECUTORS' OFFICES

During the study period, a total of **25,268 publications** were analysed on the websites of regional regional departments of the National Police, prosecutors' offices, the State Bureau of Investigation, as well as their official Facebook and Telegram pages.

The publications use terms such as "collaborator", "pseudo-official", "pseudo-police", "traitor", "pro-Russian event", "enemy", "invader" and others that have a clearly negative connotation and form a negative perception of the suspects. The total number of negative mentions is **16,455**, of which **12,421** publications contain negative

96 for more details on the research methodology, see the section "Methodology"

vocabulary related to the description of persons accused and suspected of committing crimes. Accordingly, 65% of all analysed publications have some kind of negative context, and 49% of all analysed publications have clearly identified negative words and phrases used to describe suspects and convicted persons.

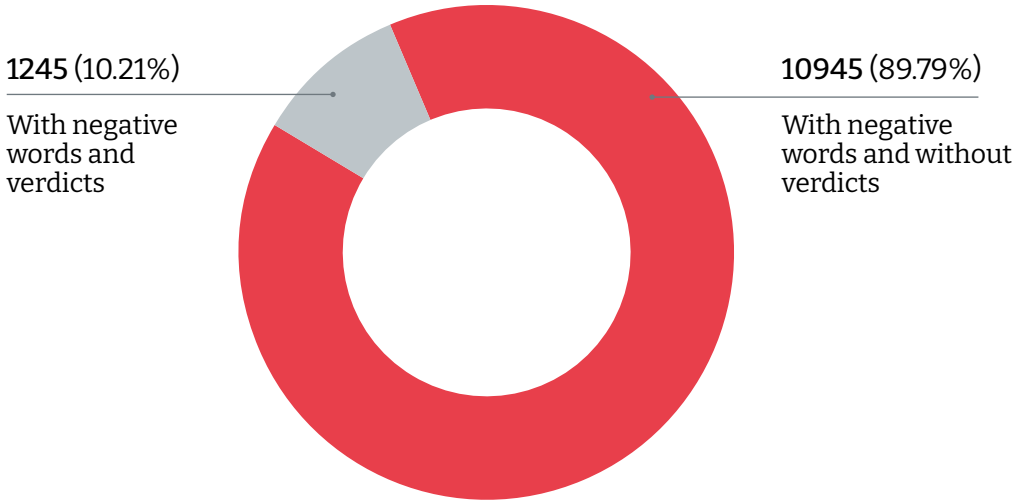
The number of publications with negative words increases in parallel with the increase in the total number of publications until September-November 2022, after which there are certain fluctuations, but they **do not develop into long-term trends of a decrease in the percentage of publications with negative descriptions of suspects**. The largest number of posts with negative descriptions was found on Facebook, which is due to the fact that the law enforcement agencies we analysed are most present on this social media platform.

An example of a publication about a notice of suspicion of committing a crime under Article 111-1 of the CC of Ukraine: *In Zaporizhzhia region, police exposed another traitor: investigators served a man with a notice of suspicion of collaborationism in absentia*.[97] The headline of the publication states that 'a traitor has been exposed', which, in addition to the negative attitude towards the suspect, also adds to the impression that the process of finding him guilty has been completed. The text goes on to describe the actual circumstances of the crime, and only in the last paragraph does it say that the person in question has been notified of being suspected.

"Criminal (**perpetrator**) is the most frequently used word to describe individuals who are suspected or convicted of collaborationism. This characteristic was used in 8,933 publications, and the projected number of contacts is 11.1 million. The descriptors **"traitor"** and **"accomplice**" are also frequently used to describe suspected or convicted individuals in 4,907 and 3,425 cases respectively. **"Gauleiter"** and **"agent**" are used much less frequently, but still remain significant characteristics in 1,354 and 1,106 publications.

The number of publications using negative words in publications with verdicts during the period of analysis was **1,242 publications (10%**). The number of publications using negative words in publications without a verdict was **11,179 (90%**). In publications without information about the verdict or conviction, characteristics that imply the fact of guilt are often used ("another traitor", "Kremlin agent").

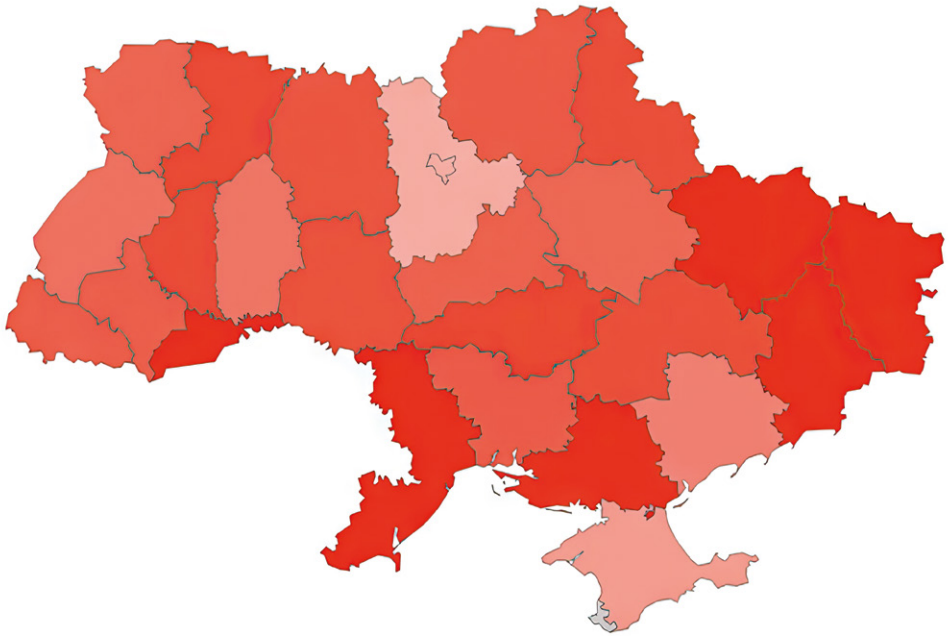
97 In Zaporizhzhia region, police exposed another traitor: investigators served a man with a notice of suspicion of collaborationism *in absentia*. / website of the Main Department of the National Police in Zaporizhzhia region, 29.05.2024: https://zp.npu.gov.ua/news/na-zaporizhzhi-politseiski-vykryly-cherhovoho-zradnyka-slidchi-zaochno-povidomyly-choloviku-pro-pidozru-u-kolaboratsionizmi



43% of all analysed publications contain negative language and do not contain information about the conviction of the suspect, i.e., they have signs of violation of the presumption of innocence.

Face hiding techniques were used 4,788 times, which is 65% of the total number of publications with an available image, while regular photos without face hiding were mentioned in 2,580 publications, which is 35%.

Most publications with negative vocabulary were identified in the sources of Kharkiv, Donetsk, Kherson and Odesa regions. There are much fewer such publications in Khmelnytskyi, Zakarpattia, and Lviv regions.



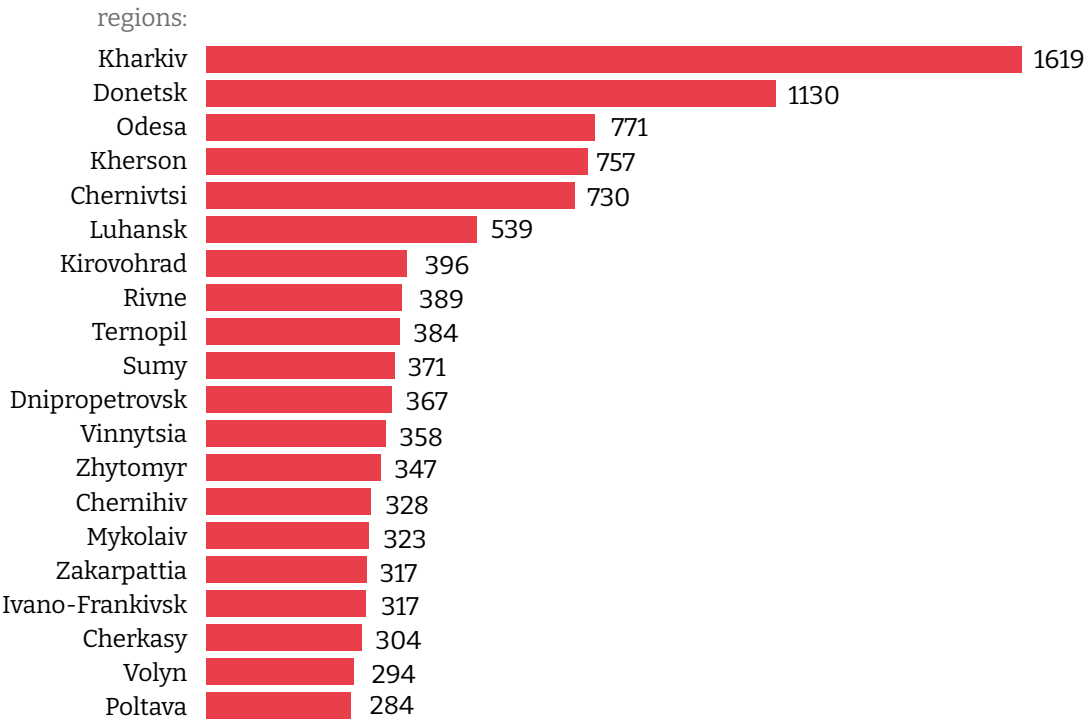
The map of Ukraine shows the distribution of the number of mentions of negative words by region. The colour of the region reflects the intensity of mentions: darker shades of red mean more mentions, while lighter shades mean fewer mentions

The highest number of publications with negative language and no information about the court verdict was reported by sources in Kharkiv, Donetsk, Odesa, Kherson and Chernivtsi regions. The highest number of publications with negative language and without information about the verdicts was reported by the SSU sources in Odesa region, Kramatorsk, Chernivtsi and Kherson regions, as well as the police in Kharkiv region.

In the context of respecting the presumption of innocence, the tendencies to publish photos and hide faces in posts related to allegations of collaborative activity were also investigated.

The highest number of publications of photos without face hiding techniques was recorded in Donetsk and Luhansk regions. In terms of the ratio of the presence and absence of blurring or pixelation of photos in percentage terms, the SSU sources in Kramatorsk and Sievierodonetsk stand out – 79% and 80% of photos without face hiding. The other sources with the largest number of publications also show that a fairly significant proportion of publications have photos of detainees or suspects without face hiding techniques, ranging from 37% to 63%. Moreover, most of these sources are the SSU sources.

Number of publications by region with negative words and absence of verdicts



Along with the statistical data, it is worth noting that the number of negative articles published in the regions is increasing due to the fact that regional sources often duplicate information from the main pages of the analysed state bodies. Also,

in many cases, it is difficult to talk about any regional peculiarities, as some posts on regional pages are written in a certain repetitive structure. For example, the SSU's publications have a repeating structure. At the beginning, we have a lead, which is written according to media rules – a brief explanation of the news, which contains the main facts. Next, there are details about the suspect's actions, and at the very end, there is information about the stage of the investigation, such as the issuance of a suspicion.[98]

3.2. MONITORING OF REGIONAL AND NATIONAL MEDIA FOR REPORTING ON COLLABORATIONISM, BRINGING TO JUSTICE FOR COLLABORATIVE ACTIVITY

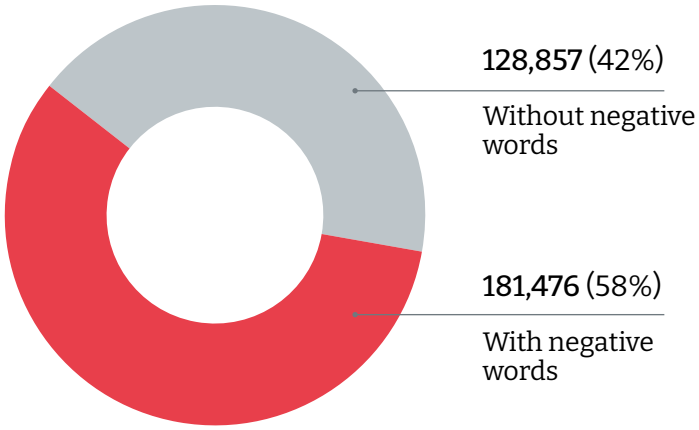
During the study period, a total of **339,536** publications were analysed, including mentions from online media (national and regional) and news agencies, the TV system (including the United News telethon and the press, and YouTube channels of selected TV channels.

In general, the media use the term 'collaborator' in a general sense, without providing specific legally relevant information. Most of the publications selected for the study do not contain information about actual prosecutions or verdicts in cases against collaborators. A large number of publications with the word 'collaborator' refer to news articles in which this word is used in a common sense, beyond the provisions of the CC of Ukraine. For example, the media most often report on various events in the temporarily occupied territories related to local officials, from mayors to teachers, without information about the initiation of cases of collaboration. Also, evidence of collaborative activity in the media often does not come from law enforcement agencies. For example, in the article "Mariupol City Council published a list of traitors from the party Opposition Platform — For Life"[99] states that "the Mariupol City Council received convincing evidence of the crimes of local collaborators from the party Opposition Platform – For Life". There is no information from law enforcement agencies in the article. The peak in the number of publications with the word "collaborator" but without information about the initiation of a case was observed in September 2022 and was related to the pseudo-referendum in the TOT.

98 Another traitor from the village of Mykilske, Kherson region, liberated from Russian occupation, was served a notice of suspicion of collaborative activity by SSU investigators. / Facebook page of the SSU Office in Ternopil region, 30.05.2024: https://www.facebook.com/500744378764853/posts/860608096111811%20/

99 Mariupol City Council published a list of traitors from the party Opposition Platform — For Life / UNIAN, 05.04.2022: https://www.unian.ua/war/mariupol-miskrada-mariupolya-opublikuvala-spisok-zradnikiv-z-opzzh-novini-vtorgnennya-rosiji-v-ukrajinu-11774452.html

128,851 publications (42%) contain negative vocabulary related to the description of persons accused and suspected of committing crimes under Article 111-1 of the CC of Ukraine.



Articles and reports on collaborationism often have an emotionally charged tone. Expressions such as "traitor", "collaborator", "sellout" are used, which emphasises the negative attitude towards such people and their actions. For example, the characteristic 'traitor' is the most frequently used to describe people suspected or convicted of collaborationism. This characterisation was used in 76,605 publications. The characteristics "criminal" and "gauleiter" are also frequently used to describe suspected or convicted persons. For example:

- "Traitors of Ukraine: Shocking stories about the murderers of Ukrainians and how much Russia pays them for it"[100] / TSN. The article focuses on betrayal, using vivid and emotional language to emphasise the negative attitude towards collaborators.

- "Sellouts and Russians with machine guns"[101] / Nova Kakhovka. This article uses emotionally charged words and phrases to arouse indignation among readers. Cases of betrayal and collaboration with the occupiers are described, often with an emphasis on the moral degradation and immorality of the collaborators' actions.

Along with such materials, the media also contain analytical articles:

- "Anatomy of Betrayal. A report from a colony for collaborators"[102] / Glavcom. This article focuses on the life stories of people who decided to cooperate with the occupation forces.This allows readers to understand their personal moti-

100 Traitors of Ukraine: Shocking stories about the murderers of Ukrainians and how much Russia pays them for it / TSN, 26.03.24: https://tsn.ua/exclusive/zradniki-ukrayini-shokuvalni-istoriyi-pro-vbivc-ukrayinciv-ta-skilki-rosiya-yim-za-ce-platit-2543761.html

101 "Sellouts and Russians with machine guns" / Nova Kakhovka City, 08.09.2023: https://novakahovka-city.translate.goog/articles/310906/prodazhni-shkuri-ta-rosiyani-z-avtomatami?_x_tr_sl=uk&_x_tr_tl=en&_x_tr_hl=en&_x_tr_pto=sc

102 https://glavcom.ua/longreads/anatomija-zradi-reportazh-z-koloniji-dlja-kolaborantiv-990716.html

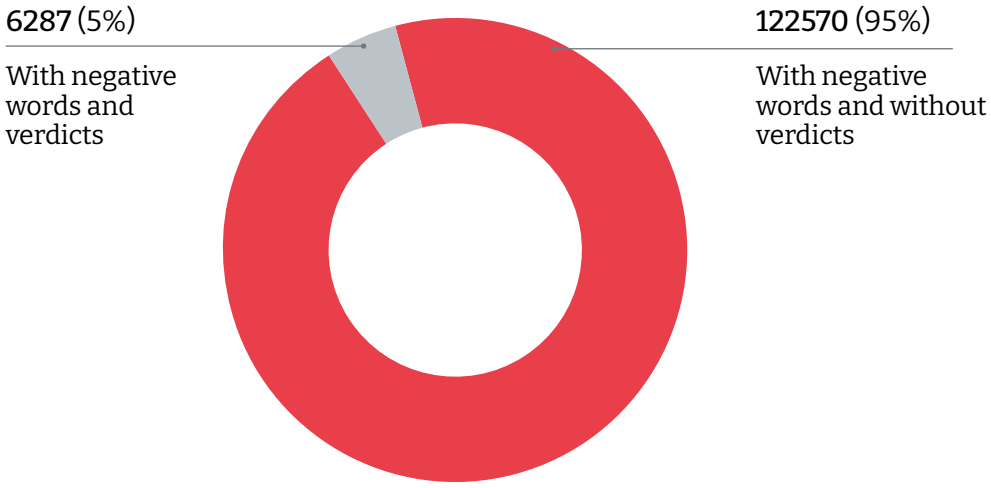
vations, the consequences of such actions for their personal and social lives, and the attitude of society towards such individuals.

"Why Ukrainians become collaborators and how to live with those who betrayed their own citizens and welcomed the Russians"[103] / LIGA.net. In the article, a historian and a trauma therapist use data and scientific research to explain why people may be inclined to collaborate with the occupiers. They look at the psychological and historical aspects that influence such behaviour, such as fear, social pressure or material motivations.

Among other influential sources, Obozrevatel, Channel 24, Zaxid.Media, RBC-Ukraine, TSN, Gazeta.ua, Channel 5, and Espresso TV had the highest number of publications with negative language. The following sources wrote somewhat less about collaborationism in general: Fakty ta Komentari, Interfax, Apostrophe, Zaxid.net, Radio Liberty, LIGA.net, Vechirniy Kyiv, and I.UA.

Accordingly, they also posted fewer negative articles. However, in terms of percentage, it cannot be said that negative publications had a significantly lower share of all news on this topic than other sources that wrote more often.

95% of publications containing negative descriptions of suspects do not contain information about convictions, i.e. proof of guilt of these persons. 5% of publications that contain negative descriptions of suspects have information about the existence of a conviction.



39% of all analysed publications contain negative language and do not contain information about the conviction of the suspect, i.e., they contain markers of a possible violation of the presumption of innocence.

103 https://life.liga.net/poyasnennya/article/pochemu-ukraintsy-stanovyatsya-kollaborantami-i-kak-teper-jit-s-temi-kto-sdaval-svoih

A typical publication with negative vocabulary and no information about the April 2022 verdict: *Helped the occupiers. The SSU detained saboteurs, Russian agents and a collaborator.*[104] In general, the publication is informative, however, at the time of publication of this information, proceedings against these individuals had just been opened. The word 'suspects' is not used to refer to them, but instead to collaborators and agents of the Russian Federation (which may indeed be established by the results of the trial).

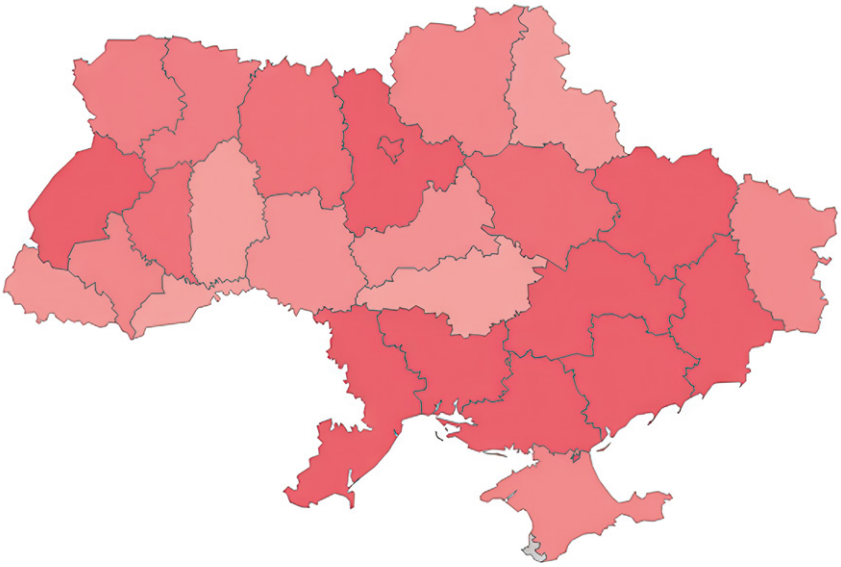
As for the media research, to analyse the presence of face hiding techniques, a sample of publications in very large and large online media outlets was selected, with images, with the keywords exposing a collaborator, detaining a collaborator, convicting a collaborator, suspicion of a collaborator, detention of a collaborator, sentencing of a collaborator, initiation of a case against a collaborator, etc. (in Ukrainian and Russian), provided that the keywords "collaborationism", "collaborator", "111-1 Article of the Criminal Code" are in the main role in the publication. An analysis of the data on mentions of such photos shows that out of 1,612 publications, face-hiding techniques were used 1,107 times, which is 69% of the total number of mentions, while regular photos without face hiding were present in 505 publications, which is 31%. A significant number of media outlets actively use face hiding techniques in their publications about collaborators. Suspilne, Espresso TV and LB.ua used raw photos of suspects or convicts the most

The largest number of references with negative words is observed in the Eastern and Southern regions of Ukraine, in particular in **Donetsk, Luhansk, Kharkiv, Zaporizhzhia and Kherson regions**. In terms of the proportion of negative language in publications on the topic, we see approximately the same situation in all regions, with more than a third of the materials containing negative words. Among the regional peculiarities, we can note that in some regions, sources still use the Russian language. At the same time, the content of the publications does not differ from the Ukrainian-language ones: they also contain condemnation of collaborative activity and use negative emotional contexts. A typical publication of the Kharkiv-based source All Kharkov: "SSU detained a collaborator-deputy and eliminated the occupiers' agent network in the South and East (video)"[105] The publication contains negative language. It is a summary of data from the SSU for different regions, including the Kharkiv region. The suspects are called collaborators and traitors before the court verdict. In addition to such materials, there are also many publications that do not contain such explicit negative descriptions. A typical publication of the Kharkiv-based source 057.ua: "Promoted Russian aggression against Ukraine in Kharkiv region SBU exposed

104 Helped the occupiers. The SSU detained saboteurs, Russian agents and a collaborator / RBC-Ukraine, 03.04.2022: https://www.rbc.ua/ukr/news/pomogali-okkupantam-sbu-zaderzhala-diversantov-1648981727.html

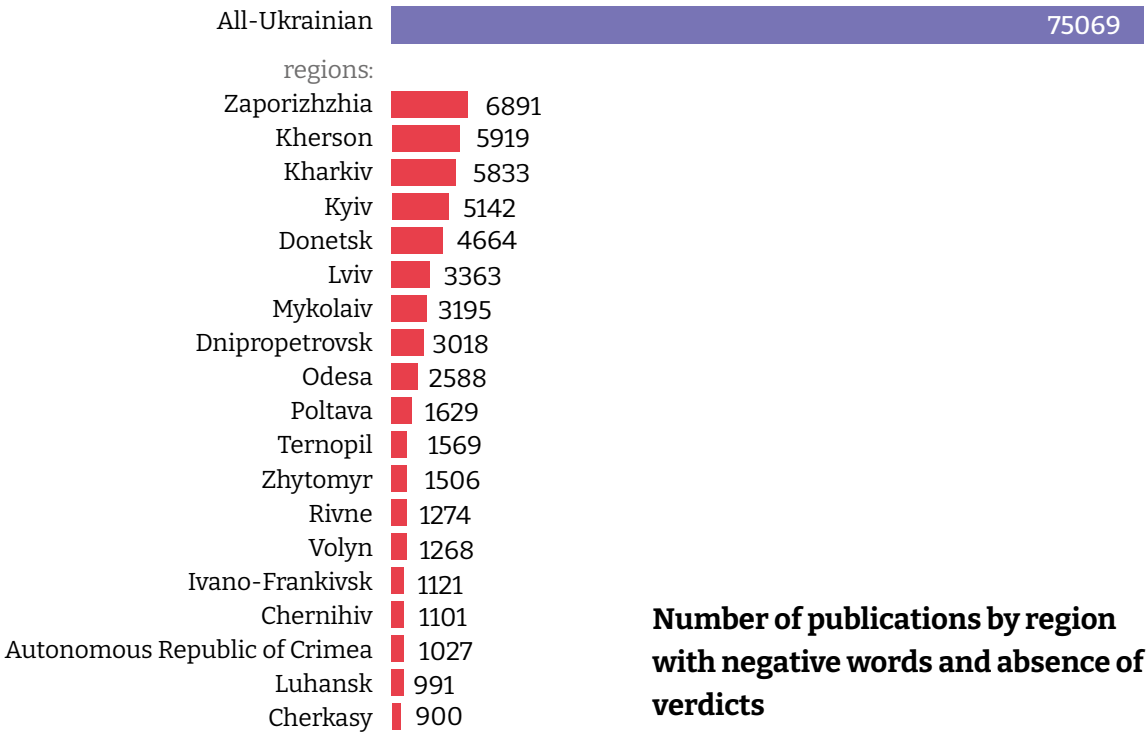
105 SSU detained a collaborator-deputy and eliminated the occupiers' agent network in the South and East (video) / All Kharkov, 25.04.2022: https://allkharkov.ua/news/crime/sby-zatrimala-depytata-kolaboranta-lkvdyvala-agentyrny-merejy-okypantv-na-pvdn-ta-shod-vdeo.html

two collaborators – VIDEO"[106] does not contain negative vocabulary, although it has a general negative context ("promoted aggression"), which looks quite reasonable in the description of the suspects' activities. The video used the blur technique. At the time of publication of the material, the individuals were suspected.



The map of Ukraine shows the distribution of the number of mentions of negative words by region. The colour of the region reflects the intensity of mentions: darker shades of red mean more mentions, while lighter shades mean fewer mentions

In terms of the presence of publications with violations of the presumption of innocence, the all-Ukrainian sources are the most notable. The regions with the highest number of publications with negative descriptions of suspects without information about their sentences are Zaporizhzhia, Kherson and Kharkiv.



Number of publications by region with negative words and absence of verdicts

106 Promoted Russian aggression against Ukraine in Kharkiv region SBU exposed two collaborators – VIDEO / Kharkiv city website, 17.05.2022: https://www.057.ua/news/3390478/propaguvali-agresiu-rosii-proti-ukraini-na-harkivsini-sbu-vikrila-dvoh-kolaborantiv-video

Based on the percentage of photos with and without blurring, it can be concluded that Lviv region sources still use photos with face hiding techniques more often. It should be noted that these publications relate to events in different regions of Ukraine, i.e. Lviv sources publish materials on events in the Kharkiv region and many others.

The regional distribution of materials with negative language about suspects and convicts is explained by:

- The regional distribution of stories with negative language about suspects and convicts can be explained by the number of stories in general – regions closer to the frontline usually have more newsbreak;
- The choice of the source from which a particular media outlet takes its materials and the choice of specific materials to be posted – sources from all regions add aggregated materials, materials from other regions, and here, most often, the coverage depends on the source of the information, not on the region that disseminates this material;
- at least some editorial offices do not have their own editorial policy on the use of materials, and often copy materials available in other media. As a result, the nature of the material in terms of hiding/not hiding faces depends on the materials available for the media quite a lot.

KEY CONCLUSIONS/FINDINGS:

1. 65% of all analysed publications from regional sources of state bodies had a negative context. 49% of publications contained clear negative references to persons accused or suspected of committing crimes. 'Criminal' is the most frequently used word to describe people suspected or convicted of collaborationism. This characteristic was used in 35% of all collected publications by keywords from the regional resources of the analysed state bodies. 90% of publications with negative descriptions do not contain information about convictions. 43% of all analysed publications contain negative vocabulary without mentioning the conviction of the suspect. 65% of publications with available photographic materials used techniques of face hiding (blurring).

2. In the media, a general negative context was identified in 85% of publications by keywords. **12,421** publications contain explicit negative language related to the description of persons accused and suspected of committing crimes under Article 111-1 of the CC of Ukraine, which is 42% of all publications. The percentage of publications with explicit negative language in the media is slightly lower than in the regional sources of government agencies – 42% vs. 49%. This may indicate that the assumption that negative attitudes towards suspects

are formed in the media, outside the activities of law enforcement agencies, is wrong. 95% of publications with negative descriptions do not contain information about convictions. 39% of all analysed publications contain negative language and do not contain information about the conviction of the suspect, i.e. have markers of a possible violation of the presumption of innocence. In the analysed sample of photo materials with images, in 505 cases of publication of photos of suspects or convicted persons, the media did not use face hiding techniques. This is 31% of the materials with photos of individuals in the analysed sample.

3. It cannot be unequivocally stated that the media use exclusively photo materials of law enforcement agencies and disseminate them only in the way they were used in the original source. Sometimes, the media not only add photos of suspects or convicts on their own, but also edit them, for example by adding "stamps" or vice versa, removing them, adding face hiding techniques.[107]

4. As already mentioned, regional sources of state bodies may use negative terms to attract the attention of the audience, even when verdicts in a case have not yet been delivered. It is quite possible that the studied state bodies are trying to shape their communication with the public not on the basis of what may be of direct interest to the audience of their websites and social media pages, but on the basis of how they believe their texts will be better received by the media (better disseminated, included in the news without significant changes, etc.), as well as to shape public opinion on zero tolerance to such crimes.

5. The highest level of negative references both in government agencies and in the media is observed in the regions that are in close proximity to the area of active hostilities or where active hostilities are taking place.

6. The regions with the largest number of publications with negative descriptions of suspects, as well as with negative words and no information about their sentences in regional sources of state bodies are Zaporizhzhia, Kherson and Kharkiv. However, a fairly high percentage of negative words is observed in most regions – from 34% to 50%. In general, the regions closer to the frontline are characterised by a higher number of publications on collaborationism, including those with negative descriptions, but not by the percentage of such negative publications.

7. In terms of the availability of information about the verdict in publications with negative descriptions of suspects in the sources of regional state bodies, all regions have a fairly high percentage of negative publications without information about the verdict or conviction of the suspect – from 90% to 97% of publications. The figure of national sources is 96%. It can be argued that the

107 SSU detained a collaborator hiding in occupied Kharkiv region / LB.ua, 13.09.2022: https://lb.ua/society/2022/09/13/529209_sbu_zatrimala_kolaborantku_yaka.html

media in all regions of Ukraine have a policy of drawing negative attention to collaboration, its emotional perception and condemnation.

8. It can be argued that regional peculiarities are most influenced by the policies of individual state bodies, as it is often a particular state body that stands out in terms of the number of negative publications in many regions. At the same time, in terms of percentage, most regions show similar results in terms of the proportion of negative language. Sources also repost and duplicate information from other regions, which reinforces this effect.

9. The study did not reveal the existence of a special policy of state bodies or media outlets in unequivocally negative coverage of this topic, or, conversely, in a 100% commitment to adhere to certain standards. Most sources publish both correct materials and materials with markers of possible violation of the presumption of innocence and violation of the rules for publishing photos.

10. The high percentage of negative descriptions and lack of blurring of suspects' photographs in the media can be explained by the patriotic attitude of both the media and the audience for which these materials are targeted. If there is confirmed evidence of their criminal activity, the use of negative terms helps to convey the seriousness of their actions to the target audience. Negative terms can be used to form a stable negative public opinion about collaborators, which helps to prevent similar activities in the future and to form condemnation of the activities of such persons. At the same time, it should be noted that patriotism does not necessarily have to contradict the norms of international law, and, in our opinion, it is quite possible to formulate messages on this topic more objectively, while remaining patriotic and unconditionally supporting the sovereignty and territorial integrity of Ukraine.

CHAPTER 4.

PERCEPTION IN COMMUNITIES OF THE FACTS OF COOPERATION WITH THE OCCUPATION AUTHORITIES AND THE RUSSIAN ARMY

In addition to analysing the judicial and investigative practices of applying legislation on collaborative activity, and communicating this topic with society, it is important to study the perception of the meaning of the concept of "collaborationism", current practices of prosecution and expectations in communities. This may allow to assess how the current situation correlates with the public demand for justice by residents of the affected communities that have been or continue to be under occupation.

The research of these issues was ensured through the format of facilitated discussions with community residents, such as:

- residents of communities that have been under occupation for up to six months (Sumy and Chernihiv regions);
- residents of communities that have been under occupation for more than six months (Kharkiv and Kherson regions);
- with displaced residents of communities that are still occupied (Zaporizhzhia and Luhansk regions).

A total of 85 participants took part in the discussions, including 69 women and 16 men.

The facilitated discussion tool allowed for a more in-depth and comprehensive approach to determining the attitude of residents of certain types of territories to collaborative activity, and the compliance of existing state steps with expectations and the population's demand for justice. The meetings provided an opportunity to develop a list of key challenges and systemic issues related to ensuring justice for those accused of collaborationism, reflect on the effectiveness of existing approaches and practices, and discuss alternative tools that could potentially be relevant to the needs of communities. Below you can find the key observations.

4.1. THE LIMIT OF COLLABORATION: CRITERIA FOR DETERMINING BETWEEN CRIME AND SURVIVAL

Despite the rather diverse range of cases and situations shared by the participants during the dialogue meetings, we can identify points of convergence around which proposals in most cases coincide. It is only important to note that the duration of the occupation had a significant impact on the diversity of examples, a certain complication of understanding the types of collaborative activity, factors and context that influenced a person's choice. At the same time, the duration of the occupation may have displaced the forms of interaction that were typical of the initial period of occupation. For example, carriers – as a type of business and sometimes direct interaction with Russian troops – are mentioned mainly in the case of Chernihiv and Sumy, while in other groups this focus disappears as these actions become part of the new reality, i.e. normalised.

The process of discussing this block was based on identifying, first at the individual level, and then at the level of the entire group, those types of activities that, in the participants' opinion, (1) clearly fall into the list of types of collaborative activity, (2) require clarification – these actions need to be clarified and specified in detail, (3) do not fall within the definition of collaborative activity.

(1) Actions that clearly fall within the list of types of collaborative activity:

- **participation in the establishment and development of the government and management system.** Work in the local occupation administrations, both in leadership positions and as employees. It is important to note that the participants often did not distinguish between simply holding a position and holding a managerial position. In fact, "everyone who went to the government" was included in the list of collaborators. In addition, this category was hardly ever considered as one that could be subject to pressure or a justifying context (such as a humanitarian component in the motivation to take a certain position).
- **participation in the political legitimation of the occupation regime through the organisation of elections, referendums, and being elected as a deputy.** For some of the participants, it was important to differentiate the degree of responsibility in the future, that newly elected deputies and heads of election commissions are held to the highest degree of responsibility, while commission members may receive a lower degree, and that their actions need to be clarified and further investigated;
- **law enforcement officers, "security forces"[108].** This block included almost all those who directly or indirectly interacted with or joined the ranks of the newly

108 for the regions with prolonged occupation (Kherson, Zaporizhzhia, Luhansk), this Russian term was already used as a standard term

created law enforcement and security agencies of the Russian Federation in the occupied territories. This applies to both the police and, for example, the penitentiary service;

- **persons who knowingly and voluntarily provided information** about Ukrainian activists and veterans, or even helped with their search or participation in Russian filtration activities. This category also included the managers of databases and documents who voluntarily and proactively provided datasets to the Russians;

- **"propagandists"** – is one of the broadest categories, as it includes both media workers and opinion leaders, those who actively created content for Russian social media, etc. This block also included those locals who became "systemic", permanent "faces" of propaganda, even at the level of ordinary residents. It is worth noting that the content of their activities was quite broad: public support, glorification of the Russian Federation, the "Russian world", campaigning for a change of government, including through the devaluation of the Ukrainian state or the spread of destabilising messages (narratives) of disbelief and anti-Ukrainian fakes. The actions included the creation and administration of groups in social media; deliberate targeted person-to-person agitation; participation in the creation of media stories and propaganda videos. At the same time, criticism of the Ukrainian government and leadership was defined as a component of democracy and not anti-Ukrainian activity.

- **persons who participated in armed groups on the side of the Russian Federation.** In fact, these categories appeared only in the regions with prolonged occupation (Zaporizhzhia, Kherson and Luhansk regions);

- **transfer of data to the army and Russian security agencies**, which led to the destruction of Ukrainian equipment, military and civilian personnel, and strategic objects. This category included both "fire adjusters" and, for example, local residents who showed routes. However, these were mainly regions with short-term occupation and specific landscape – forests, swamps (Sumy and Chernihiv regions);

- **management of large industrial facilities, production or business that consciously and proactively used ties with the occupiers for their own growth, expansion, gaining significant competitive advantages and monopolies.** Especially if this entrepreneurial activity was aimed at the direct provision or production of dual-use goods for the benefit of the Russian military;

- the groups were divided into management of institutions, educational, cultural and artistic institutions, and simply working as a teacher or librarian. The **management of institutions and establishments** was labelled as a collaborative activity, and discussions and debates arose about simply working in these

institutions. However, in most cases, even just working as a teacher, from the point of view of the participants, required clarification and verification before responsibility for this work could be determined.

It is important to note that the participants did not distinguish, even when asked directly or clarified, whether such responsibility applies only to those who worked before the occupation in local government or law enforcement agencies, or to conditionally local residents who went to work in this area for the first time in their lives after the occupation of the territories began

Separately, in some groups (Zaporizhzhia, Kherson, Chernihiv and Sumy), when discussing activities that participants perceive as collaborative, ideas arose to include sexual contacts between local women and the Russian military in this list. At the beginning of the discussion of this issue, participants usually did not doubt that such ties with the enemy were a type of collaborative activity. However, as the discussion progressed, the participants raised the issue of direct coercion or the context that removed this component from the general discussion of collaborationism in some depth. In fact, there was a distinction in the groups that was almost the only one throughout the meetings. According to the majority of participants, the very relationship or provision of sexual services to the Russian army or representatives of the occupation authorities "deserve public condemnation" However, responsibility should be borne only for actions that could potentially occur during such "interaction" – informing about patriotic locals, passing on information about the positions of the Armed Forces, etc.

All groups also noted the need for prioritisation in the activities of law enforcement agencies – first of all, according to the participants, efforts should be focused on actions that clearly fall into the list of types of collaboration

(2) Actions that require clarification and details were by far the largest list of actions at each meeting. It included those activities that did not find the same attitude among the participants of the dialogue meetings. This is where most of the discussion and clashes of viewpoints and experiences of the participants occurred. The list of factors and the context that influenced the degree of responsibility, minimising or, on the contrary, aggravating it, was mainly formed on the basis of this block. It should be noted that, from the point of view of the participants, this group included those actions that require further clarification and explanation:

- **business, entrepreneurial activity**. During the process of detailing and specifying which business or entrepreneurial activity should be subject to certain forms of punishment for collaborationism, participants introduced a fairly clear system of criteria. Firstly, it is the type and size of business: self-employed and small businesses, especially those with a potentially humanitarian component (small and often the only grocery stores, pharmacies, etc. in the community), in the participants' opinion, should be excluded from crim-

inal liability. Натомість великі підприємства, особливо ті, що виробляють товари прямого, або подвійного призначення для армії РФ, мають бути покарані. Instead, large enterprises, especially those that produce direct or dual-use goods for the Russian army, should be punished. Secondly, it is necessary to assess whether the business has tried to avoid interaction with the occupation administration as much as possible. For example, until the last moment, they did not re-register their business in accordance with Russian procedures. Thirdly, it is worth assessing whether the business used its ties with the occupation administrations to enrich itself, build a monopoly, or make excessive profits by taking advantage of additional benefits (e.g., transport companies).

- **work in the education system or cultural institutions.** Despite the results of national surveys, which traditionally do not assess work in these areas as a priority for prosecution for collaborationism, this was not confirmed by the participants of the dialogue meetings. For the participants of the meeting, the management of these institutions was actually included in the block of collaborative activity. Despite the fact that the participants noted that the system being built by the Russian Federation in the occupied territories and the lack of clear recommendations from the relevant central executive bodies does not allow this category to avoid participation in pro-Russian propaganda. Nevertheless, most groups emphasised the need for thorough vetting of this category of workers. This gap between the data of national surveys and the position of participants at the level of communities that have gone through/are going through the experience of occupation, in our opinion, is based on: (1) an increased level of danger for residents, as teachers and librarians work primarily with children, and therefore there is an overestimated requirement for trust/mistrust; (2) even before the occupation, despite the low financial motivation, representatives of these professions, especially in medium and small settlements, received some intangible "compensation" from the community – higher social capital and respect; therefore, interaction with the occupation administrations is perceived by the population as a "double betrayal".
- **leaders (employees) of civil society organisations.** This category appeared only in the regions with a prolonged occupation regime. This topic was discussed most often by representatives of the Luhansk region, which can be attributed to the specifics of the ongoing armed conflict and occupation, when certain NGOs have been the basis for demonstrating "support" for the population of the Luhansk region since 2014.

For the participants from Zaporizhzhia and Kherson regions, these organisations were perceived through a propaganda prism, as well as as a means of distributing humanitarian aid. Accordingly, given the specifics of this activity, from the point of view of the participants, which definitely requires direct interaction with the occu-

pation administrations, at the same time, the possibility of humanitarian aid needs to be clarified in order to make a final decision.

- **personal actions aimed at promoting and glorifying the Russian Federation and the "Russian world"** in interpersonal communication, their own social networks without creating their own content or media product. Depending on the degree and scale of promotion, participants placed this category in the transit zone. In cases where a person became a regular participant in pro-Russian stories, had an extremely wide audience and used it to broadcast pro-Russian propaganda, this was already grounds for transferring them to a more detailed investigation by law enforcement.
- **work of utility companies and organisations.** Most of the participants distinguished between management activities and direct services for the maintenance of critical infrastructure, landscaping or funeral services. Accordingly, it was not administration but management activities that needed to be clarified from the participants' point of view. And they considered the provision of services to be a non-collaborative activity.

The generalised results of the discussions indicate a rather high level of demand from participants for inspections ("filtration measures") as the first priority steps to restore Ukrainian authority and governance on the ground. Their task should actually cover all the liberated territories and should be aimed at quickly screening the situation and prioritising actions for further investigation and determining the degree of responsibility of certain individuals. As for the tools of this verification, it ranges from preventive meetings/conversations with representatives of law enforcement and security agencies to the use of a polygraph.

(3) Actions that do not fall within the definition of collaborative activity. The groups were largely unanimous in identifying those cases where they did not see collaborative activity. In most cases, these were issues of survival and staying in the occupied territories. Any actions or interactions with the occupiers require clarification (specification) of the specifics of these actions. Without any reservations, only the following were included:

- **living in the temporarily occupied territories.** Participants in all groups emphasised the different circumstances and conditions in which people found themselves under occupation. Accordingly, refusing to leave the occupation is not consensually considered a collaborative activity.
- **obtaining a passport of a Russian citizen and documents critical for survival in the occupied territories.** At the same time, the participants stressed that the passport should not have been obtained immediately after the occupation as a gesture of loyalty to the new government. It is also important that the fact of obtaining a passport does not become part of propaganda;

- **receiving humanitarian and other types of aid,** including social benefits, pensions, etc.
- **activities of medical workers and "rescuers"** (employees of the State Emergency Service). The groups noted that meeting the critical needs of the local population, providing medical services that were not accompanied by pro-Russian propaganda, enrichment and other aggravating factors, would allow them to avoid accusations of collaborationism.

During the discussions in separate groups, other activities that should not be perceived as collaborative activity were also discussed. For example, receiving education, educational documents, using the Russian language, forced, not proactive participation in rallies and demonstrations, working in order to survive, etc.

4.2. LIABILITY FOR COLLABORATIONISM: FORMS, EXTENT AND RELEVANCE

During the discussion of the forms of responsibility for the implementation of collaborative activity, each group actually formed an impressive list of 12-15 items on average, which can be summarised into several blocks.

First, those that directly contradict the norms of Ukrainian legislation and human rights law in general, but which, from the point of view of some participants, should ensure appropriate severity of punishment (death penalty, deportation, deprivation of parental rights for the views of parents, deprivation of the right to vote, deprivation of Ukrainian citizenship, etc.) It is important to note that such proposals were often declined by the participants themselves as unacceptable.

Second, there is a large block related to criminal liability – deprivation (restriction) of liberty, fines, confiscation of property, deprivation of the right to hold certain positions or engage in certain activities, etc.

Third, there is a much smaller block related to administrative penalties – community service, for example, work to restore the liberated territories, etc.

Fourth, the introduction of a public and accessible register of persons accused of collaborative activity. This register should be established by the state and should include all information about those who have a court decision establishing the fact of collaborative activity, even if no form of punishment has been applied.

Fifth, the participants in some of the categories showed a fairly high level of readiness to use lustration mechanisms and amnesty. However, this mechanism does not eliminate the obligation to place information in the above-mentioned register. Some groups mentioned the need to create a certification system that would ensure the 'weeding out' of specialists.

4.3. FACTORS OR CONTEXT THAT INFLUENCE THE DEGREE OF RESPONSIBILITY

The participants analysed in detail the criteria that weaken/strengthen liability for collaborative activity using specific cases.

The list of factors below allows us to identify the main aspects that, from the point of view of the participants, should be directly taken into account when determining both the priority of investigating cases and the degree of responsibility for collaborative activity.

- **The factor of proactivity and voluntariness.** Participants cited examples where interaction, offering of services and support to the occupation authorities by local residents took place without a request from the occupation authorities. Such proactivity, demonstration, readiness to be the first to assist the occupation authorities, to be among the first to receive a Russian passport, etc. may become an aggravating factor in determining the degree of responsibility.
- **The factor of pressure,** threats to the life and health of a person or their loved ones. It is worth noting that for most groups, this was one of the key factors that should be taken into account to minimise responsibility. At the same time, being under occupation, the presence of weapons, the architecture of coercion and punishment that the Russian Federation was building in the occupied territories were often perceived as pressure. At the same time, after updating their own experiences and memories, most participants noted that even just a large number of armed enemy people and armoured vehicles had a 'disorienting' and 'overwhelming' effect on t
- **The time factor,** the duration of the occupation. Participants noted that the prolonged form of occupation creates conditions for a high degree of dependence of residents on the Russian Federation and the bodies formed by them. Especially in the context of reduced payments (assistance) from the State of Ukraine, which in fact leaves no other choice for survival but to cooperate.
- **The factor of consciousness of actions.** Unconscious actions, when people, especially in the first hours or days of the occupation, not understanding what was happening, and being disoriented, could provide some kind of assistance or assistance to the occupation forces. From the point of view of some participants, this could be a justification for certain actions. At the same time, some participants often put forward the antithesis that the war began in 2014 and, accordingly, the events and actions of 2022 should take into account the previous period.
- **The factor of enrichment,** increase in influence and growth, obtaining benefits. The majority of participants clearly mentioned the factor of increasing

influence, opportunities to significantly expand their own business, or even get a new one at the expense of the occupiers, as a factor that should lead to increased responsibility for collaborationism. The use of the occupation and ties with the occupiers as a tool for regaining (expanding) power, satisfaction with competitors, and a chance for self-realisation became aggravating circumstances.

- **The damage factor.** For the participants of the discussions, the damage was understood in terms of physical harm (death and injury of people, destruction of buildings and infrastructure, equipment, general destruction), value damage (spreading disbelief, destabilising narratives, glorification of the Russian Federation, etc.), military damage (transfer of information and material assets that strengthened the Russian army, reduction of defence capabilities), and identity damage (destruction of tangible and intangible cultural objects as the basis of local or national, ethnic identity). Accordingly, the degree of damage caused should be directly correlated with the severity of the punishment.
- **The factor of humanitarian component in professional activity.** In all groups, discussions were held, and examples were given of the exclusive role of representatives of the "humanitarian sphere" as those who ensured the vital activity of the occupied territories (doctors, firefighters, socially important businesses, etc.).

The factors that should influence the strengthening of liability for collaborative activity:

- **the existential factor** – collaborative activity is perceived as an action that actually rejects, crosses out all common, previous experience, devalues the importance of the very order of life that existed in the community before the Russian invasion. In fact, there is a transformation in the perception of an individual act of cooperation with the enemy into an attack on the fundamental components of the organisation of life at the community level;
- **the factor of "accessibility"** – in the perception of most participants, it is the "grassroots" collaborators who remained in the communities who bear responsibility for all the crimes and damage caused by the Russian army during the occupation. The Russian army retreated, and with them went the "new" leaders and those who committed the most serious crimes during the occupation. Accordingly, the 'punishment' of those who remained in the communities and somehow cooperated with the occupation authorities becomes the only available option to ensure justice and satisfaction for the locals;
- **the leadership factor** – holding leadership positions, actually ensuring the construction of a governance system and legitimising the transfer of power through the organisation (participation) in the so-called elections and referendums in the occupied territories;

- **the media factor** – readiness to participate in media and propaganda activities. Permanent, even episodic presence in Russian propaganda media materials and willingness to participate in videos were identified by participants as an aggravating circumstance;
- **the factor of violation of the oath**, when people remained in their positions and were promoted in the same system in which they worked before the occupation. At the same time, clarifying, for example, whether local residents who had not worked in the authorities before the occupation were less liable than those who had violated the oath was not an influential factor in the participants' view. The degree of severity of responsibility was virtually the same;
- **coercion of others to cooperate** with the occupation authorities by providing information, direct psychological, moral or physical pressure, and incentives to obtain documents of one type or another from the Russian Federation;
- **the factor of social service** – teachers, priests, cultural workers were defined as those who had an increased social responsibility towards people, directly promoted/participated in the promotion of Ukrainian values and the state. Accordingly, their collaborative activity was perceived as a factor that aggravates their responsibility.
- **the factor of personal experience and damage to participants.** It is important to note that the direct harm (physical, threat to security, property losses, etc.) that the participants of the dialogue meetings suffered as a result of collaboration activities directly influenced their rigidity in defending the attribution of this type of activity to collaborationism and, accordingly, insisting on maximum punishment;
- **the "relapse" factor** – repeated activities aimed at retransmitting pro-Russian narratives and values, supporting the idea of "Russian world". This factor was particularly acutely felt by participants from the regions that had already experienced liberation and those closest to the frontline. The virtually unfulfilled demand for justice, the information and security vacuum that has formed in the frontline areas is one of the drivers that legitimises lynching for participants in cases of declaring a certain commitment/justification of the actions of the Russian Federation;
- **the factor of participation in war** and other crimes of the Russian Federation. In particular, involvement in filtration activities, informing on activists and veterans, complicity in torture, deportation of children, etc;
- **gathering and providing information** that strengthened the actions of the Russian army (surrender of positions of the Ukrainian Defence Forces, transfer of information about strategic objects, etc;);
- **proactive activities aimed at the destruction of Ukrainian heritage**, symbols, identity, and the desecration of state symbols.

The factors that mitigate liability:

- sincere confession and receiving forgiveness from those who have suffered harm. It is important to note that this thesis was voiced by only two groups out of six;
- cooperation and assistance to the investigation by providing evidence or information;
- "guerrilla" activities in favour of the Ukrainian side. In the case of short-term occupation, this activity was noted without halftones (additional conditions). In the case of the long-term occupation (Kherson and Luhansk regions), participants noted that such activities could be accompanied by crimes. In such situations, participants believed that responsibility should be imposed for committing crimes, but not for collaborative activity

Participants from the regions where some communities have been liberated and some are still under occupation stressed the need for proper communication with the population remaining in the temporarily occupied territories, not only to demonstrate the severity of Article 111-1 of the CC of Ukraine and the practice of the Ukrainian justice system in this category of cases. It is important to explain in detail what the population expects for certain actions, given the long duration of the occupation; what kind of state support will provide conditions and means of material support that mitigate the risk of cooperation with the enemy now. From the point of view of the participants, there should be communication and an understandable material and information block for those who remained in the occupied territories and do not want to interact with the enemy. Those who could potentially be forced to cooperate by the occupation authorities should receive a clear algorithm of actions, how they can record the fact of this coercion and what they should do after the liberation of the territories.

On the other hand, it is important to preserve the instruments of material support for the population that remains under occupation but is able to work and is ready to remotely provide certain services for Ukrainian actors, both state and non-state, in compliance with the relevant security protocols. This will create a group among the local population that does not cooperate but has the resources to survive. Some groups perceived the proposed changes to the cancellation of payments as a deliberate push by the Ukrainian authorities to encourage the local population to cooperate with Russia.

All the groups noted the need for active participation of local residents, those who directly experienced the occupation, in events related to ensuring justice in collaboration cases. The first major block of involvement that arose almost immediately at the beginning of the discussions was informing law enforcement agencies about specific cases of cooperation with the occupation authorities. At the same time, the discussions raised the issue of low levels of trust and expectations in law enforce-

ment agencies, as participants felt that justice was not provided, and many of those who cooperated continued to live in the community. The second important block is engagement in the process of restoring interaction. For many participants, especially those for whom return is not possible at the moment, this was a painful and problematic issue. The prolonged occupation breaks ties and shapes the perception of the abandoned place of residence as extremely hostile. At the same time, some community representatives noted that it is the opinion of local residents, those who were under occupation together, that can act as a measure, a 'prism' to take into account the context and specifics of both the control regime established by the Russians and the behaviour of local residents. Therefore, the community-witness format can be developed to introduce certain participatory aspects, including the idea of holding certain hearings and providing characteristics of the person accused of collaborative activity.

KEY CONCLUSIONS/FINDINGS:

1. **The factor of the existing experience of return and the absence of liberation of the territories did not have a significant "mitigating" effect.** One of the key challenges for the participants was the issue of returning/understanding the decision not to return to the potentially liberated territories, and the complexity of resuming life and contact with people who remained in the temporarily occupied territories. For the regions where the experience of return has actually taken place, we have found a more complex, multi-layered understanding of the collaborative activity and the challenges faced by the local population. At the same time, our assumption that this experience should have produced a certain rehumanising effect did not come true, and despite a more comprehensive understanding of the topics, motives and context, this was rarely translated into a degree of responsibility.

2. **The main drivers of the severity of the punishment were the factors of unfulfilled demand for justice, the demand for real, not imitative, work of law enforcement agencies.** From the point of view of the local population, there is a real difficulty in bringing to justice the 'offenders' – both the Russian military and the people who ensured systematic actions to build the occupation authorities. After all, they often retreated in advance and did not stay in the liberated territories. Accordingly, if it is impossible to ensure the punishment of the perpetrators – either directly through their participation in the Ukrainian Defence Forces or indirectly by bringing them to justice because of their stay in the temporarily occupied territories or the Russian Federation – there is a need to maximise the punishment of those who remained. The security threat – the proximity of the frontline, the understanding of the possibility of a repeat, rapid Russian offensive and the recapture of Ukrainian territories –

makes the local population instrumentalise the persecution of collaborators as a means of building safe territories. Especially in the context of the Russian army's active use of rocket attacks on civilian and military targets in the communities. In fact, unpunished persons for collaborationism become for the local population the embodiment of the inability of the state and law enforcement agencies not only to administer justice, ensure justice, but also to guarantee basic security. In fact, these cases are often transferred into the dimension of a test, a capacity test for the state system. The clear link between threats and individual, national and, in fact, existential danger leads to a high level of anxiety and a demand for the authorities to act as proactively as possible, with demonstrable rigour/rigidity. Thus, ensuring that risks and threats are minimised. On the other hand, an important aspect of the severity of responsibility in the perception of the participants is not only the fact that collaborationism is punished as 'wrong' behaviour and choice, but also the use of this means as a confirmation of the "rightness" of their own choice. Accordingly, evacuation from the occupied territories and abandoned property are not in vain, and if the state does not directly recognise/thank for this, the very fact of the severity of the punishment can become such a form of gratitude. Finding an adequate strategy for recognising and making visible the actions of people who made a pro-Ukrainian choice at the local level can be a tool to reduce social tensions and radicalisation, and minimise the risk of instrumentalising this issue in the processes of division and escalation.

3. **There are contradictory aims of prosecuting collaborationism.** The participants noted that, in fact, liability for collaborationism should serve several, and, unfortunately, mutually exclusive, purposes. On the one hand, it is a tool for the state and society to demonstrate the extreme inappropriateness of collaborationist behaviour, which should ensure prevention of such actions in the temporarily occupied territories. This results in the broadest possible interpretation of the types of such activities and the severity of punishment by the state. On the other hand, the factor of prolongation of the occupation regime and the Ukrainian state's choice to reduce the mechanisms of material support for the population remaining in the occupied territories leads to an increase in mitigating factors. And we get quite dynamic and often divisive processes at the community level. For example, participants of the Kherson group noted the beginning of rather cautious conversations and discussions about establishing interaction with residents of the occupied left bank of the Kherson region to address humanitarian issues. At the same time, the ineffective actions of the Ukrainian state in this territory are perceived as a clear signal to other still-occupied territories, which is picked up by Russian propaganda.

4. **The dominance of the demand for a criminal, punitive approach.** The participants of the meetings maximised liability and often proposed types of liability that were beyond the law of Ukraine and international human rights law, such as the death penalty, deportation, restrictions on communication between parents-collaborators and their children, restrictions on movement, deprivation of Ukrainian citizenship, etc. At the same time, the long experience of the occupation has led not only to a more detailed list of the specifics and types of collaborative activity, but also to a more targeted, variable application of various forms of liability, including amnesty (exemption from liability). Despite the rather punitive focus, the requests of the participants of the meetings still include a request for proper, standards-based justice, investigation of facts and establishment of guilt, balanced and strategic priorities on the part of the law enforcement system, and punishment of those who prepared and built the occupation system. A significant number of participants expressed a demand for clear legislative regulation and clearly defined criteria of collaborationism, especially for the territories where the occupation regime has existed for a long time. This primarily concerns the criteria of harm, the degree of interaction, the distinction between crime and humanitarian activity, etc.

5. **Collaborative activity is correlated with the overall damage caused by the war.** Accordingly, this affects the ability to distinguish between different elements of crime, forming a single background of a common, absolute crime against an individual, community and country as a whole. This is often the case with other crimes (high treason, looting, etc.) as accompanying or identical in nature to collaborative activity. At the same time, in some regions that were accompanied by a short occupation (Chernihiv, Sumy) or a quick occupation (Kherson), the issue of responsibility for the lack of preparation of the territory for defence, neglect or, in the opinion of the participants, "deliberate sabotage" by representatives of local and regional authorities of measures that should have prevented the enemy's rapid advance into Ukrainian territory was raised quite sharply. At the same time, participants have a vague understanding of the damage and, accordingly, the demand for compensation relevant to this damage as a result of the distancing from their own individual experience. The personal damage to life, health or property can be measured and therefore compensated. The participants of the meetings found it easiest to work with the personal dimension of the damage, while at the community and national level, this damage is blurred and transformed into a picture of "absolute evil" caused by the Russian Federation, which made it significantly more difficult to determine compensation or relevant forms of responsibility.

6. **The duration of the occupation has a significant impact.** On the one hand, this time affects the detailing of both the types of collaborative activity, the division within certain areas, such as business, local government, etc., and the forms of

responsibility. In fact, representatives of Zaporizhzhia, Kherson and Luhansk regions often identified in more detail and meticulously the factors that can influence the degree of responsibility, the aspects that affect a person's actions, and the general context. On the other hand, for some of the participants who had experience of internal displacement in 2014, the discussion of the issue of punishment for collaborative activity turned into a rather deep and complex reflection. First of all, regarding their own contribution and responsibility – "whether what I did was enough to warn, whether I created the basis for the rapid occupation and active cooperation of the local population with the Russian Federation with my previous tolerant attitude".

7. **The facilitated discussions had a psychotherapeutic effect.** It was noted by representatives of each group at the end of the meetings. These discussions actually became a means of not only reflecting on a complex, controversial topic in a dialogue manner, but also allowed participants to rethink their own traumatic experiences in a safe space and rationalise their vision of the demand for justice in relation to those who committed collaborative activity. In addition, some of the groups identified a request for the state to recognise the loyalty of the participants' own choice to leave the occupied territories and their refusal to cooperate with the occupation authorities and the Russian army.

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