ZMINA

HUMAN RIGHTS CENTRE

Analytical report

LIABILITY FOR COLLABORATIONISM: HOW HAS JUDICIAL PRACTICE CHANGED?

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Liability for collaborationism: How has judicial practice changed?. Analytical report /
Deputat D., Syniuk O., edited by Lunova A. Pavliuk A., Kapalkina I. — Kyiv, 2025. — 40 p.

“The analytical report is aimed at monitoring both previously identified trends and newly observed developments in the application of Article 111-1 of the Criminal Code of Ukraine during the period from 15 June to 31 December 2024. A detailed analysis of the verdicts for the last six months of 2024, compared to previous periods, allows to assess the formation and consolidation of unified approaches to holding persons liable for collaborative activity, including in the practice of the Supreme Court, and its impact on solving or deepening the problems described in previous research”.

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Photo by **Oleksii Arunian**

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

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CONTENTS

LIST OF ABBREVIATIONS

CCU — Criminal Code of Ukraine

CPCU — Criminal Procedure Code of Ukraine

HCS — Housing and communal services

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

SBU — Security Service of Ukraine

SES — State Emergency Service of Ukraine

TOT — Temporarily occupied territories

USRCD — Unified State Register of Court Decisions

INTRODUCTION

The full-scale Russian aggression launched in 2022 pushed the legislator to criminalise the cooperation of Ukrainians with the occupation authorities. Thus, in March 2022, Article 111-1 ("Collaborative activity") was added to the Criminal Code of Ukraine.

Over the three years of existence of Article 111-1 "Collaborative activity" in the Criminal Code of Ukraine (hereinafter – CCU), a rather extensive practice has been developed, which is, at the same time, quite controversial. A systematic research of the issue of liability for collaborationism exposed several problems in the investigative and judicial practice, some of which are systemic in nature.

ZMINA has conducted three research reports on prosecution for the offence under Article 111-1 of the CCU, which were published in November 2022[1], September 2023[2] and July 2024[3]. The analysis shows that prosecution for collaborative activity does not consider the context of the occupation, the need to ensure life in the occupied territory and is based on a formal assessment of the actions of the accused. Warnings about the flaws in the legislation and the practice of its application have been repeatedly expressed by international organisations, including the UN Human Rights Monitoring Mission in Ukraine[4] and Human Rights Watch[5], drawing attention to the prosecution for actions necessary to ensure the daily life of civilians in the occupied territories and insufficient consideration of individual circumstances, including the existence of coercion[6].

Since the introduction of Article 111-1 to the CCU, the legislator has proposed at least 13 draft laws aimed at amending this article or adjusting the application of Article 111-1 through amendments to other laws.[7] All of these draft laws remain pending.

The situation is different, with at least four draft laws that provide for restrictions on the rights of persons suspected or accused of crimes against national security, including collaborationism. In particular, we are talking about the following initiatives:

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1 Analytical note "Criminal liability for collaborationism: analysis of current legislation, practice of its application, and proposals for amendments" / NGO Human Rights Centre ZMINA, NGO Civil holding GROUP OF INFLUENCE, NGO Donbas SOS, NGO Crimea SOS, CF East SOS, CO CF 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

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. The Human Rights Centre ZMINA — Kyiv, 2023.: https://zmina.ua/wp-content/uploads/sites/2/2023/10/colaboration_web_ukr-1.pdf

3 Analytical report "Survival or crime: how Ukraine punishes collaborationism" / Syniuk O., Deputat D., Vyshnevska I., Volkovynska V., Chervonna V., Yelihulashvili M.; edited by Lunova O. — Kyiv, 2024: https://zmina.ua/wp-content/uploads/sites/2/2024/07/colaboratz_print_ukr.pdf

4 Report on the human rights situation in Ukraine 1 September – 30 November 2024, Office of the United Nations High Commissioner for Human Rights, 31 December 2024: https://ukraine.ohchr.org/sites/default/files/2025-01/2024-12-31%20OHCHR%2041st%20periodic%20report%20on%20Ukraine_UKR.pdf

5 Report "All She Did Was Help People" Flawed Anti-Collaboration Legislation in Ukraine December 2024: "https://www.hrw.org/sites/default/files/media_2024/12/ukraine1224ukr%20web.pdf

6 Fact sheet "3 years since the full-scale invasion of Ukraine: Key facts and findings about the impact on human rights 24 February 2022 – February 2025", February 2025: https://ukraine.ohchr.org/sites/default/files/2025-02/Human%20rights%203%20years%20into%20Russia%27s%20full-scale%20invasion%20of%20Ukraine_factsheet%20%28UKR%29.pdf

7 Analytical report "Survival or crime: how Ukraine punishes collaborationism" / Syniuk O., Deputat D., Vyshnevska I., Volkovynska V., Chervonna V., Yelihulashvili M.; edited by Lunova O. — Kyiv, 2024: https://zmina.ua/wp-content/uploads/sites/2/2024/07/colaboratz_print_ukr.pdf

The Law of Ukraine "On Legal and Social Protection of the Rights of Victims of Sexual Violence Related to the Aggression of the Russian Federation against Ukraine, and Urgent Interim Reparations"[8], adopted on 20 November 2024, provides that the grounds for refusing to recognise a person as a victim are the entry into force of a guilty verdict of a Ukrainian court against a person against whom, after 20 February 2014, the pre-trial investigation authorities of Ukraine conducted criminal proceedings for crimes against the foundations of national security. At the same time, consideration of applications for recognition as a victim of a person subject to criminal proceedings is temporarily suspended by the Commission for the duration of the investigation and/or until the court's guilty verdict enters into force. At the same time, in the case of the Law of Ukraine "On the Accounting of Information on Damage to Personal Non-Pecuniary Rights of Individuals as a Result of the Armed Aggression of the Russian Federation against Ukraine"[9], partly due to a shift in the approach to regulating the issue, the provision stating that individuals convicted of 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, shall not be eligible to receive compensation, was removed prior to its adoption.

In January 2025, the draft law "On Amendments to Certain Legislative Acts on Peculiarities of Pension Payment to Persons Who Committed a Criminal Offence Against the Foundations of National Security, Public Safety, Peace, Human Security, International Law and Order" was adopted in the first reading[10]. In particular, the draft law provides that pensions for those convicted of crimes against the foundations of national security will be paid in the minimum amount while serving their sentence. In addition, restrictions are proposed to be applied to persons who are suspected or accused of committing the following criminal offences[11].

The Draft Law "On Amendments to Certain Laws of Ukraine on Ensuring the Exercise of the Right to Acquire and Retain Ukrainian Citizenship"[12] (adopted as a basis in the first reading, is being prepared for the second reading) expands the grounds for loss of citizenship, in particular, stipulates that the grounds for loss of Ukrainian citizenship are the entry into force of a guilty court verdict for committing a crime against the foundations of national security of Ukraine[13].

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8 Law of Ukraine "On Legal and Social Protection of the Rights of Victims of Sexual Violence Related to the Aggression of the Russian Federation against Ukraine, and Urgent Interim Reparations" of 20.11.2024 4067-IX: https://zakon.rada.gov.ua/laws/show/4067-20#Text

9 Law of Ukraine "On the Accounting of Information on Damage to Personal Non-Pecuniary Rights of Individuals as a Result of the Armed Aggression of the Russian Federation against Ukraine" of 20.11.2024 No. 4071-IX:: https://zakon.rada.gov.ua/laws/show/4071-20#Text

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

11 Statement of the Coalition of organisations dealing with the protection of the rights of victims of armed aggression against Ukraine on the Draft Law "On Amendments to Certain Legislative Acts on Peculiarities of Pension Payment to Persons Who Committed a Criminal Offence Against the Foundations of National Security, Public Safety, Peace, Human Security, International Law and Order" of 24 January 2024: https://www.vplyv.org.ua/wp-content/uploads/2024/01/ЗП-10355.pdf; Roadmap of draft laws on the protection of the rights of victims of the armed aggression of the RF against Ukraine: thirteenth session of the Verkhovna Rada of Ukraine of the IX convocation, 05.02.2025: https://drive.google.com/file/d/1Pe2u-7FZGvAck-etpnbUyx1s8fLiuZvT/view

12 Draft Law of Ukraine "On Amendments to Certain Laws of Ukraine on Ensuring the Exercise of the Right to Acquire and Retain Ukrainian Citizenship" of 07.08.2024 No. 11469: https://itd.rada.gov.ua/billInfo/Bills/Card/44687

13 Statement of the coalition of organisations dealing with the protection of the rights of victims of armed aggression against Ukraine, on the Draft Law on Amendments to Certain Laws of Ukraine on Ensuring the Exercise of the Right to Acquire and Retain Ukrainian Citizenship (Reg. No. 11469), 14.02.2025:https://zmina.ua/statements/mistyt-ryzyky-vtraty-gromadyanstva-ukrayiny-zhyteliv-tot-pravozahysnyky-zaklykayut-vru-doopraczyuvaty-zakonoproyekt-№-11469/

Methodology

This research is aimed at monitoring the new trends in the enforcement of Article 111-1 of the CCU in the period from 15 June to 31 December 2024, which have already been identified in previous periods. A detailed analysis of the verdicts for the last six months of 2024, in comparison with previous periods, allows to assess the formation and consolidation of unified approaches to prosecuting collaborative activity, including the existing practice of the Supreme Court and its impact on solving or deepening the problems described in previous research.

The previous analytical report[14] covered the research period from the end of September 2023 to 15 June 2024. This research includes a general analysis of the quantitative indicators of verdicts under Article 111-1 of the CCU for the period of application of the article from spring 2022 to December 2024. The research also reflects the general quantitative indicators of verdicts delivered under different parts of Article 111-1 of the CCU in 2022-2024. For greater efficiency in comparing the quantitative indicators for 2024, the quantitative data for the first (1 January to 30 June) and second (1 July to 31 December) half of 2024 were also analysed separately. The detailed substantive analysis of verdicts covers the period from 15 June 2024 to 31 December 2024. Thus, the detailed analysis includes 515 verdicts out of 1956 verdicts registered in the Unified State Register of Court Decisions.[15]

Tasks of analytics:

- To analyse the verdicts under Article 111-1 of the CCU for the period from 15 June to 31 December 2024;
- To identify the total number of verdicts under Article 111-1 of the CCU as of 31 December 2024, to assess the trends in the increase/decrease in the number of verdicts within each part of Article 111-1 of the CCU;
- To analyse the practice of the courts of first instance, the practice of the courts of appeal and the Supreme Court under Article 111-1 of the CCU in the specified period;
- To compare the development of approaches in cases of collaborative activity identified in previous research.

This research did not examine in detail the judicial practice under Article 111-2 of the CCU ("Aiding the aggressor state"). This issue, however, also requires further analysis, given the previously identified trends in the difficulty of distinguishing between certain parts of Article 111-1 of the CCU and Article 111-2 of the CCU[16] and the reflection of this aspect in practice, in particular, in the issue of bringing to justice persons for holding managerial positions in medical institutions.[17]

14 Analytical report "Survival or crime: how Ukraine punishes collaborationism" / Syniuk O., Deputat D., Vyshnevska I., Volkovynska V., Chervonna V., Yelihulashvili M.; edited by Lunova O. — Kyiv, 2024: https://zmina.ua/wp-content/uploads/sites/2/2024/07/colaboratz_print_ukr.pdf

15 The number 1,956 does not include the number of verdicts prohibited from being made public in accordance with Paragraph 4 of Part 1 of Article 7 of the Law of Ukraine "On Access to Court Decisions", does not take into account duplicate verdicts in the system, verdicts under related articles, as well as verdicts in appeal or cassation instance.

16 Analytical report "Survival or crime: how Ukraine punishes collaborationism" / Syniuk O., Deputat D., Vyshnevska I., Volkovynska V., Chervonna V., Yelihulashvili M.; edited by Lunova O. — Kyiv, 2024, p.33: https://zmina.ua/wp-content/uploads/sites/2/2024/07/colaboratz_print_ukr.pdf

17 Verdict in case No. 947/17419/23 of 17.01.2025: https://reyestr.court.gov.ua/Review/123854708

SUMMARY

1. Over the three years of existence of Article 111-1 ("Collaborative activity") in the Criminal Code of Ukraine (CCU), an extensive body of judicial practice has developed regarding its application. As of 31 December 2024, 1956 verdicts were registered in the USRCD. Although the largest part (517 verdicts) of them are still verdicts under Part 1 of Article 111-1 of the CCU (public denial of armed aggression and public calls for support of decisions and/or actions of the aggressor state). In the last research period there was a decrease in the number of verdicts under this part and an increase in the number of verdicts under parts of Article 111-1 of the CCU that provide for liability for crimes – Part 3 (propaganda in educational institutions and implementation of the aggressor state's education standards), Part 4 (transfer of material resources and/or conduct of economic activity in cooperation with the aggressor state), Part 5 (voluntary holding a position related to the performance of organisational, administrative or economic functions in illegal authorities), Part 6 (organisation and conduct of political events, information activities in cooperation with the aggressor state) and Part 7 (voluntary holding a position in illegal judicial or law enforcement bodies, as well as voluntary participation in illegal armed or paramilitary formations) of Article 111-1 of the CCU. At the same time, out of the total number of verdicts, only four were acquittals, three of which were cancelled by the courts of appeal and sent for retrial, and one of which is still under appeal.

2. The percentage of proceedings considered under the special procedure in absentia under all parts of Article 111-1 of the CCU, exluding Parts 1 and 2 (voluntary holding of a position not related to the performance of organisational, administrative or economic functions in illegal authorities) continues to grow. As the number of verdicts delivered in absentia increases, the possibility of concluding plea agreements decreases, as the case is considered in the absence of the accused. In 2024, no plea agreements were concluded in proceedings under Parts 2, 6 and 7. However, in proceedings under Part 4, plea agreements remain highly relevant, as their number in 2024 tripled compared to 2023.

3. Judicial practice is also developing at the appeal level. The number of appeals has increased, especially in relation to verdicts passed under Part 5 of Article 111-1 of the CCU, but a small number of appeal proceedings have had a positive outcome for the defence. In addition to the increase in the number of decisions in the appellate instance, the Supreme Court's practice continues to be shaped, which consolidates the problematic trends developed in the first and second instance. In 2024, only 14 cassation proceedings were opened on the defence's cassation appeals.

4. The issue of failure to consider the standards of international humanitarian law when qualifying actions as constituting collaboration remains relevant. In particular, the legislation does not provide for exceptions, and the practice is based on bringing to justice every person, including those performing functions that may be considered vital to life in the occupied territory, such as medical, spiritual, and civil defence organisations (evacuation, rescue operations, firefighting, emergency repair of indispensable public utilities, assistance in the preservation of objects essential for survival, etc.), including the

organisation of their activities (complementary activities necessary to carry out any of the tasks mentioned above, including, but not limited to, planning and organization).

5. The violation of the principle of legal certainty in the wording of the article continues to lead to a broad and formal approach to the qualification of acts as collaborative activity. In particular, an approach has been formed and entrenched that stipulates that liability is provided for the mere fact of holding a position in an occupation authority, rather than for the specific activities of a person while performing their duties. The application of a formal approach to the interpretation of the concepts of "holding a position in illegal authorities" and "holding a position in a law enforcement agency" raises a number of problems regarding the qualification of the offence.

6. In some cases, despite being appointed to a position that involves the performance of organisational, administrative or economic functions, the person does not actually perform them, but carries out completely different activities. In this case, the person's action is qualified as holding a position that involves the performance of organisational-administrative or administrative-economic functions, with a corresponding harsher sentencing.

7. Activities that merely formally fall under the concept (such as holding a position of the head of a "forestry") are qualified as holding a position in a law enforcement agency. Moreover, the qualification is done on the basis of Ukrainian legislation, without researching the place of the agency and its definition as a law enforcement agency in the occupation system, as provided for in the wording of Part 7 of Article 111-1.

8. The broad and formal approach leads to different interpretation and application of the legislation, in particular, the holding of almost similar positions in one proceeding was qualified under Part 5 with a focus on the organisational and administrative functions of the position, and in another – under Part 7 of Article 111-1, as the position in both cases was described as a "position in a law enforcement agency".

9. Due to the absence of a research into the specific functions performed by the person in the position held, the insignificance of the act, i.e. the fact that the act does not pose a public danger, i.e. did not and could not cause significant harm to an individual or legal entity, society or the state, is not taken into account when qualifying it as collaborative activity.

10. Another consistent trend in judicial practice is the presumption of direct intent in cases involving alleged collaborative activity. "Direct intent" is mentioned in the proceedings under review mainly formally, without any additional investigation of this element. The prosecution presumes the existence of direct intent without providing any justification for this position, and the burden of proof is mainly on the defence.

11. An illustrative case of the consolidation, of a number of problematic trends in judicial practice is the case of the "street representatives", which was considered in all three instances, and the first instance verdict was upheld. The courts did not review the issue of justifying the qualification of the work of "street representatives" as holding a position in the occupation administration, given that it was a body of self-organisation of the population that existed before the occupation, the absence of a job description or any

remuneration, and did not define the concept of "organisational and administrative functions". During the proceedings, it was also noted that the "purpose and motive" of the actions did not matter, and the context and conditions of occupation in which the accused and other residents of the occupied city were living were not taken into account at all.

12. The narrow interpretation of coercion and voluntariness in assessing the elements of the crime continues to be affirmed in judicial practice. In particular, the court ignores the conditions of occupation, which in themselves create an atmosphere of fear due to the presence of the Russian military and the absence of Ukrainian authorities that could ensure proper protection of the rights of the population. The court also fails to assess the facts of massive and systematic violations of international humanitarian law by Russia, including illegal detentions, enforced disappearances, ill-treatment and torture, etc., against the civilian population in the TOT of Ukraine.

13. Current trends in judicial practice, from the first instance to the Supreme Court's review of proceedings on alleged collaborative activity, contribute to the formation and reinforcement of the stereotype that staying and surviving in the TOT of Ukraine is an offence in itself.

SECTION 1.

GENERAL TRENDS IN CONSIDERATION OF CASES UNDER ARTICLE 111-1 OF THE CRIMINAL CODE OF UKRAINE

Since the introduction of Article 111-1 ("Collaborative activity") to the Criminal Code of Ukraine, the relevance and need to analyse trends in the administration of justice under this article remains. Previous analytical reports of ZMINA describe the key trends observed in the judicial practice until mid-June 2024. The main of them were the following:

- Practical problems of distinguishing between criminal offences involving collaborative activity or aiding and abetting the aggressor state and other criminal offences[18];
- Broad wording of the objective side of the elements of criminal offences under parts of Article 111-1 ("Collaborative activity") and Article 111-2 of the CCU ("Aiding the aggressor state")[19];
- Length of time suspects are held in custody, the predominant use of this measure of restraint against suspects and the ineffectiveness of appealing against decisions that impose it and refusal to apply alternative measures of restraint, such as bail[20];
- Absence of prioritisation of cases under different parts of Article 111-1 of the CCU (in practice, the largest share of cases considered in court are cases under Parts 1 and 2 of Article 111-1 of the CCU, which provide for liability for misdemeanours, not felonies)[21];
- Failure to take into account the standards of international humanitarian law regarding the conviction of persons performing vital functions in the TOT of Ukraine[22];
- Disproportionality of the offence and punishment (difficulties in distinguishing between Articles 111-1, 111-2, 436-2 of the CCU, as well as unclear wording that leads to wide discretion of the investigating authorities, also lead to the imposition of punishments that are disproportionate to the established offence[23]);

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18 Analytical Report "Collaborationism and abetting the aggressor state: practice of legislative application and prospects for improvement" / Syniuk O., Lunova O.; Edited by Svyrydova D. The Human Rights Centre ZMINA — Kyiv, 2023, p.35: https://zmina.ua/wp-content/uploads/sites/2/2023/10/colaboration_web_ukr-1.pdf

19 Analytical Report "Collaborationism and abetting the aggressor state: practice of legislative application and prospects for improvement" / Syniuk O., Lunova O.; Edited by Svyrydova D. The Human Rights Centre ZMINA — Kyiv, 2023, p.29: https://zmina.ua/wp-content/uploads/sites/2/2023/10/colaboration_web_ukr-1.pdf; Analytical report "Survival or crime: how Ukraine punishes collaborationism" / Syniuk O., Deputat D., Vyshnevska I., Volkovynska V., Chervonna V., Yelihulashvili M.; edited by Lunova O. — Kyiv, 2024, p.33: https://zmina.ua/wp-content/uploads/sites/2/2024/07/colaboratz_print_ukr.pdf

20 Analytical report "Survival or crime: how Ukraine punishes collaborationism" / Syniuk O., Deputat D., Vyshnevska I., Volkovynska V., Chervonna V., Yelihulashvili M.; edited by Lunova O. — Kyiv, 2024, p.39-43: https://zmina.ua/wp-content/uploads/sites/2/2024/07/colaboratz_print_ukr.pdf

21 Analytical Report "Collaborationism and abetting the aggressor state: practice of legislative application and prospects for improvement" / Syniuk O., Lunova O.; Edited by Svyrydova D. The Human Rights Centre ZMINA — Kyiv, 2023, p.39: https://zmina.ua/wp-content/uploads/sites/2/2023/10/colaboration_web_ukr-1.pdf

22 Analytical report "Survival or crime: how Ukraine punishes collaborationism" / Syniuk O., Deputat D., Vyshnevska I., Volkovynska V., Chervonna V., Yelihulashvili M.; edited by Lunova O. — Kyiv, 2024, p.29: https://zmina.ua/wp-content/uploads/sites/2/2024/07/colaboratz_print_ukr.pdf

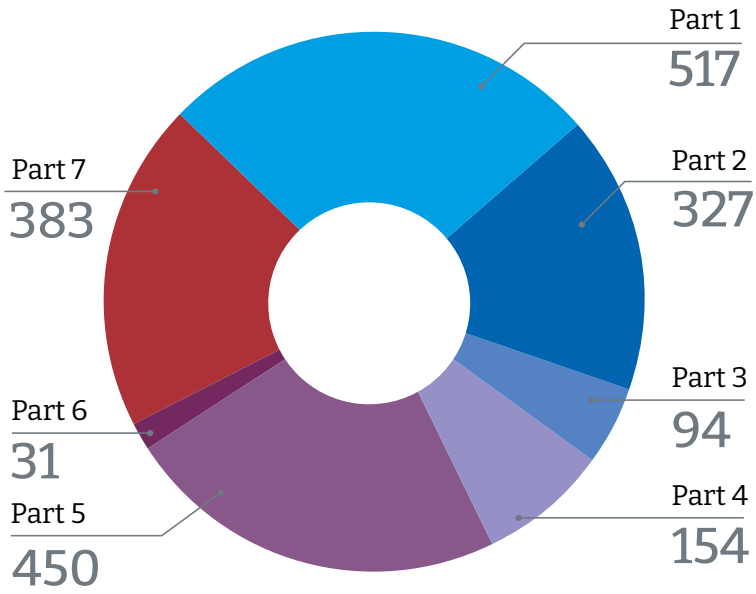
23 Analytical Report "Collaborationism and abetting the aggressor state: practice of legislative application and prospects for improvement" / Syniuk O., Lunova O.; Edited by Svyrydova D. The Human Rights Centre ZMINA — Kyiv, 2023, p.49: https://zmina.ua/wp-content/uploads/sites/2/2023/10/colaboration_web_ukr-1.pdf

- Small number of proceedings in which court decisions were appealed in the appellate and cassation instances and an almost complete absence of acquittals under Article 111-1 and Article 111-2 of the CCU[24];
- Incomplete investigation of the intention of the accused to harm national security and voluntariness in committing the act under the dispositions of Article 111-1 and Article 111-2 of the CCU[25].

This research is aimed at observing existing trends and identifying new ones within the period from 15 June 2024 to 31 December 2024.

Thus, as of 31 December 2024, the SBU investigators conducted pre-trial investigations in 10,203 proceedings under Article 111-1 of the CCU[26], and 1,956[27] verdicts in proceedings under Article 111-1 of the CCU were registered in the Unified State Register of Court Decisions (hereinafter – USRCD).

Verdicts in the proceedings under parts of Article 111-1 of the Criminal Code of Ukraine since March 2022



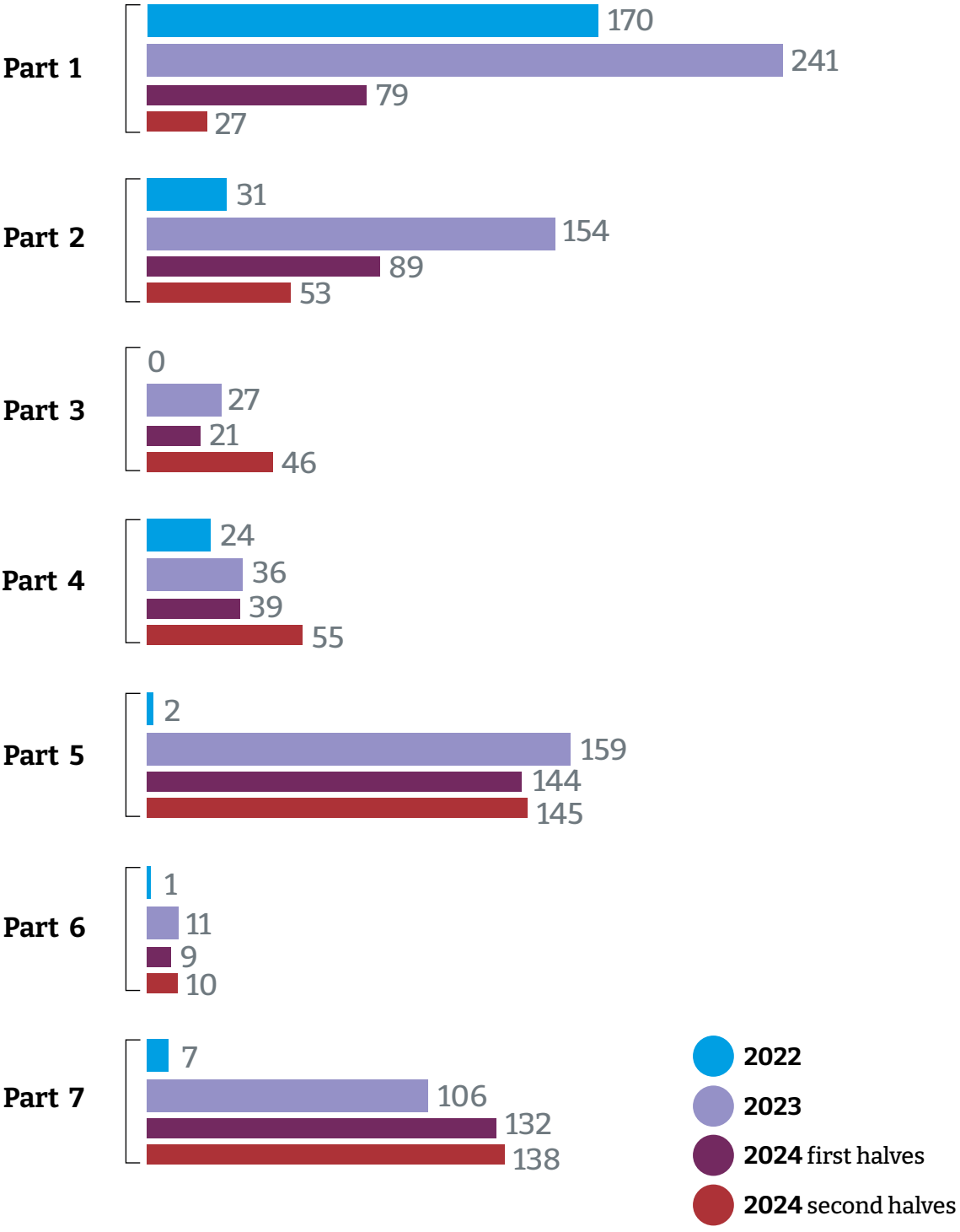
24 Analytical Report "Collaborationism and abetting the aggressor state: practice of legislative application and prospects for improvement" / Syniuk O., Lunova O.; Edited by Svyrydova D. The Human Rights Centre ZMINA — Kyiv, 2023, p.27: https://zmina.ua/wp-content/uploads/sites/2/2023/10/colaboration_web_ukr-1.pdf; Analytical report "Survival or crime: how Ukraine punishes collaborationism" / Syniuk O., Deputat D., Vyshnevska I., Volkovynska V., Chervonna V., Yelihulashvili M.; edited by Lunova O. — Kyiv, 2024, p.22: https://zmina.ua/wp-content/uploads/sites/2/2024/07/colaboratz_print_ukr.pdf

25 Analytical report "Survival or crime: how Ukraine punishes collaborationism" / Syniuk O., Deputat D., Vyshnevska I., Volkovynska V., Chervonna V., Yelihulashvili M.; edited by Lunova O. — Kyiv, 2024, p.36: https://zmina.ua/wp-content/uploads/sites/2/2024/07/colaboratz_print_ukr.pdf

26 Response of the Office of the Head of the Department for Interaction with the Media and the Public of the Security Service of Ukraine №10/3/709-166-17 of 05.03.25 to the request of the Human Rights Centre ZMINA.

27 The number 1,956 does not include the number of verdicts prohibited from being made public in accordance with Paragraph 4 of Part 1 of Article 7 of the Law of Ukraine "On Access to Court Decisions", does not take into account duplicate verdicts in the system, verdicts under related articles, as well as verdicts in appeal or cassation instance.

Verdicts in proceedings under parts of Article 111-1 of the Criminal Code of Ukraine for 2022, 2023 and the first and second halves of 2024



Although the total number of verdicts passed under Part 1 of Article 111-1 of the CCU continues to prevail (517 verdicts), the actual number of verdicts passed in the second half of 2024 under this part decreased significantly compared to the first half of the year. Thus, in the first half of 2024, 79 verdicts were delivered under Part 1 of Article 111-1 of the CCU, while in the second

half of the year, only 27 verdicts were delivered. A similar trend is observed in relation to Part 2 of Article 111-1 of the CCU, as in the second half of 2024, only 53 verdicts were delivered under this part, compared to 89 verdicts in the first half of the year.

In addition, within the framework of general observations, the number of verdicts delivered under Parts 3, 4, 5, 6 and 7 of Article 111-1 of the CCU increased significantly in the period from 15 June to 31 December 2024:

- 47 verdicts were delivered under Part 3 of Article 111-1 of the CCU, which is 50% of the total number of verdicts under this part recorded in the USRCD;
- During the same period, 57 verdicts were delivered under Part 4 of Article 111-1 of the CCU, which is 37% of the verdicts available in the USRCD;
- A similar situation is observed in Parts 5, 6 and 7, as the number of verdicts passed in the mentioned period also accounts for more than a third of the verdicts available in the USRCD – 160 (36%), 11 (36%) and 147 (38%) respectively.

Such a change in the number of proceedings under different parts may be a sign of the beginning of the prioritisation of investigations into felonies over cases of criminal misdemeanours within the scope of this article. However, a full assessment of this change is possible only after studying the practice under Article 436-2 ("Justification, recognition of lawful, denial of armed aggression of the Russian Federation against Ukraine, glorification of its participants"). The decrease in the number of proceedings under Part 1 of Article 111-1 of the CCU may be due to a change in the approach to the qualification of actions that fell under Part 1 of Article 111-1 of the CCU and their qualification under Article 436-2 of the CCU.

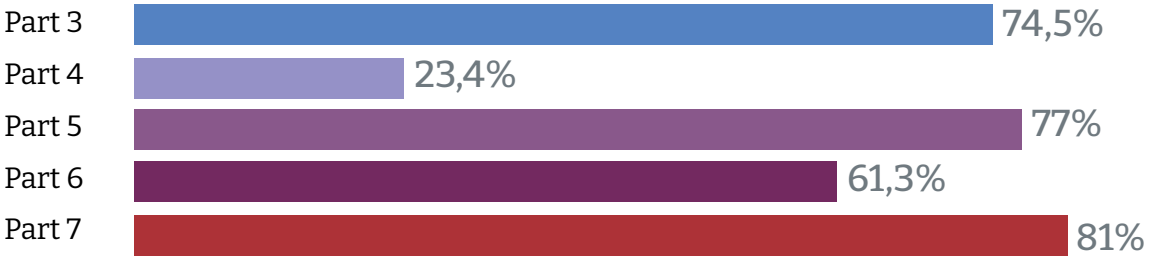
Cases within the special procedure in absentia[28] were considered under all parts except for Parts 1 and 2. During the analysed period, the first and only criminal proceedings[29] under Part 2 of Article 111-1 of the CCU were recorded, where the case was considered in absentia. In general, in 2024, compared to 2023, the number of in absentia proceedings under all other parts of Article 111-1 of the CCU increased:

- Number of cases considered in absentia under Part 3 increased fourfold, as in 2023 there were 14 cases considered in absentia under this part, and in 2024 - 56 cases.
- Number of cases considered in absentia under Part 4 tripled, as in 2023, 9 cases were considered in absentia under this part, and in 2024 - 27 cases.
- Number of cases considered in absentia under Part 5 increased 2.4 times, as in 2023, 104 cases were considered under this procedure, and in 2024 - 242 cases;
- Number of cases considered in absentia under Part 6 almost tripled, as in 2023, 5 cases were considered in absentia under this part, and in 2024 - 14 cases.
- Number of cases considered in absentia under Part 7 increased almost 4 times, as in 2023, 64 cases were considered under this procedure, and in 2024 - 246 cases.

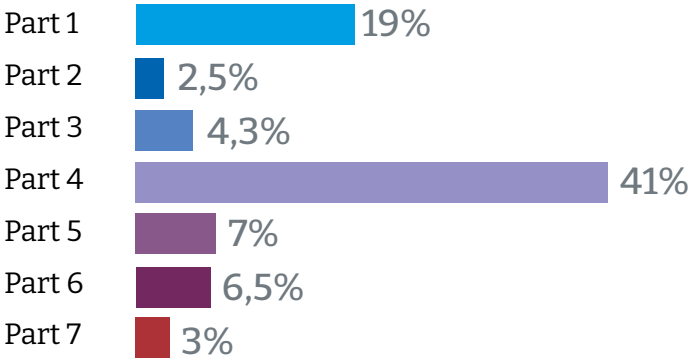
28 A special procedure in pre-trial investigation and in court proceedings, which is conducted in the absence of the suspect or accused. For more details: Part 2 of Article 297-1 of the Criminal Procedure Code of Ukraine (hereinafter – CPCU)

29 Verdict in case No. 335/7086/23 of 02.09.2024: https://reyestr.court.gov.ua/Review/121304181

It should also be noted that there has been a significant increase in the number of cases considered under the special procedure in proceedings under Parts 3, 6, and 7 of Article 111-1 of the CCU over the entire period of existence of Article 111-1 of the CCU, as as of 31 December 2024, the percentage of cases considered in absentia under these parts increased to 74.5%, 61% and 81%, respectively. Parts 4 and 5 also showed a slight increase in the number of cases considered under the special procedure. In general, the situation regarding the consideration of cases in absentia is as follows:



The analysis of court proceedings for the purpose of concluding a plea agreement between the prosecution and the accused indicates that over the entire period of existence of Article 111-1 of the CCU, the largest number of agreements were concluded in cases under Part 4. The overall percentage of all agreements concluded since the beginning of the criminalisation of collaborationism is as follows:



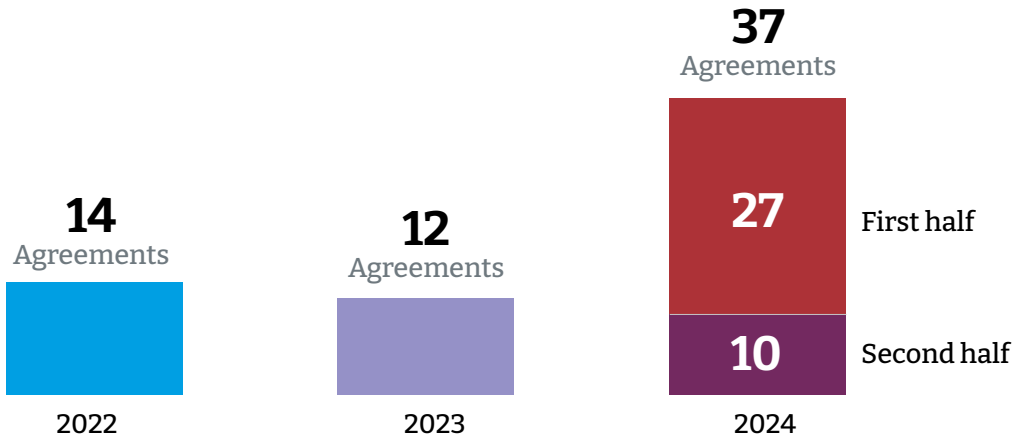
It is interesting to see a comparison of the situation with the conclusion of agreements in 2023 and 2024. Thus, no agreements were concluded under Parts 2, 6 and 7 in 2024. For Parts 1 and 5, the number of agreements decreased several times compared to 2023:

- Under Part 1, the number of plea agreements decreased fourfold, as 54 plea agreements were concluded in 2023, compared to only 13 in 2024;
- Under Part 5, the number of plea agreements decreased almost threefold, with 23 plea agreements concluded in 2023 compared to only 8 in 2024.

The situation with the conclusion of agreements in cases under Part 4 of Article 111-1 of the CCU in 2024 is significantly different. Thus, the number of concluded agreements has tripled compared to 2023: 37 plea agreements were concluded in 2024, whereas only 12 were concluded in 2023. Moreover, 73% of the plea agreements concluded in 2024 (i.e. 27) were concluded in the second half of the year. Overall, the number of plea agreements in cases under Part 4 of Article 111-1 in

2024 accounts for 59% of all plea agreements concluded under this part since the introduction of Article 111-1 into the CCU.

Number of agreements concluded in proceedings under Part 4 of Article 111-1 of the Criminal Code of Ukraine in 2022, 2023 and 2024



The trend identified in the previous research continues: the increase in the number of proceedings under the special procedure in absentia, in particular, affects the possibility of concluding plea agreements between the prosecution and the defendant.

It is also worth highlighting the trend of a proportional increase in the number of cases within the proceedings under Parts 1 and 2 of Article 111-1 of the CCU, which are considered under the simplified procedure[30]. Although the overall number of cases considered under Parts 1 and 2 decreased in 2024, the use of simplified proceedings became more widespread:

- under Part 1 of Article 111-1 of the CCU in 2023, 153 cases out of 214 were considered within the framework of simplified proceedings, i.e. 64%, while in 2024, 76 cases out of 106 were considered within this procedure, i.e. 72%;
- under Part 2 of Article 111-1 of the CCU, in 2023, 141 cases out of 154 were considered within the framework of simplified proceedings, i.e. 92%, while in 2024, 134 cases out of 142 were considered within this procedure, i.e. 94%.

There is a trend in appealing cases in the appellate instance, namely an increase in the number of open proceedings on appeals filed by the defence (especially in relation to verdicts delivered under Part 5 of Article 111-1 of the CCU). In total, from 15 June 2024 to 31 December 2024, 44 appeal proceedings were opened, in most of which appeals were filed solely by the defence, namely in 28 appeal proceedings. At the same time, only 7 appeals were filed solely by the prosecution. In another nine appeal proceedings, appeals were filed by both the prosecution and the defence.

In a total of three proceedings, the court of appeal delivered new verdicts as partial satisfaction of the prosecution's appeals. In two proceedings, the court of appeal overturned the

30 A procedure that provides for the consideration of an indictment by a court in the absence of the parties to the court proceedings and is applied if the accused does not dispute the circumstances established by the investigating authorities and agrees to the application of such a procedure.

verdicts following defence appeals. In the first case, the case concerned the prosecution under Part 2 of Article 111-1 of the CCU, namely the defendant's position as the head of the housing and communal services department.[31] The verdict was cancelled due to the expiry of the time limit for bringing the person to criminal liability.[32] The second case concerned a newspaper editor who allegedly took part in celebrations in the TOT of Ukraine and called on the public to participate in an illegal referendum.[33] The court of appeal cancelled the verdict of the court of first instance and sent the case for a retrial. In 13 proceedings, the defence's appeal was dismissed, and in only one appeal proceeding was the prosecutor's appeal dismissed.

Taking into account the long existence of Article 111-1 of the CCU, the cases were transferred and considered in the cassation instance. Thus, from 1 January 2024 to 31 December 2024, 14 cassation proceedings were opened on the defence's cassation appeals. Six cassation appeals were denied to the defence, while the prosecution was denied in only two of them. In total, six cassation appeals by the defence were dismissed during the period under review, while only two appeals by the prosecution were dismissed. There are also four cassation appeals that still need to be addressed by the defence.

Overall, out of the 1956 recorded verdicts in the USRCD for collaborative activity, four were acquittals, three of which were reversed by the court of appeal and sent back for further consideration, and one is currently under appeal.

During the period analysed in this report, out of 515 verdicts delivered, only one acquittal was delivered: the case concerned the accusation under Part 5 of Article 111-1 of the CCU of taking part in the illegal referendum by going door-to-door to residents and providing them with ballots for voting in the said illegal referendum. The court found that the prosecution had proved the objective aspect of the crime, but failed to provide convincing evidence of the voluntariness of the act. When assessing the evidence, the court noted that psychological coercion had been applied to the person, which was not refuted by the prosecution. The court reached this conclusion on the basis of the testimony of one of the witnesses, who was not interested in the outcome of the criminal investigation, as well as on the basis of the information provided by the accused during the pre-trial investigation (not refuted by the prosecution). According to Article 39 of the CCU, the use of physical and/or psychological coercion is a circumstance that excludes the criminality of an act. As a result, the court acquitted the defendant.[34]

In total, since 2022, only four acquittals have been delivered under Article 111-1 of the CCU. The grounds for such verdicts were quite different: the existence of a private conflict (Part 1), contradictions in the testimony of witnesses (Part 1), failure to prove voluntariness (Part 5), non-admission of some of the materials submitted by the prosecution as evidence and failure to prove that the person was the subject of a criminal offence (Part 7).

Partial satisfaction of cassation appeals is not a common outcome of cassation appeals: four cassation appeals of the defence were partially satisfied and the cases were sent for retrial to courts of first and second instance. The rulings that upheld the respective appeals concerned

31 Verdict in case No. 610/2157/24 of 03.07.2024: https://reyestr.court.gov.ua/Review/120143071

32 According to Part 1 of Article 49 of the CCU, a person is exempt from criminal liability if certain terms specified in the article have elapsed between the date of the criminal offence and the date of the verdict's entry into force. Part 2 of Article 111-1 of the CCU is a criminal misdemeanour, and in accordance with the said article, 2 years have elapsed since the date of the criminal offence.

33 Verdict in case No. 296/10089/23 of 19.06.2024: https://reyestr.court.gov.ua/Review/119870817

34 Verdict in case No. 522/7069/23 of 22.07.2024: https://reyestr.court.gov.ua/Review/120568583

significant violations of procedural law that made it impossible to make a lawful and reasonable decision.

In the cassation appeal, the defence argued, in particular, that unknown law enforcement officers, exerting moral and physical pressure on the accused, forced him to confess to collaborative activity in committing a criminal offence under Part 1 of Article 111-1 of the CCU. Later, the defence counsel learned that due to pressure and threats of imprisonment, without being given the opportunity to read the content of the notice of suspicion in advance, the latter signed the said procedural document, and in the absence of the defence counsel, with whom the legal aid agreement had not yet been concluded. Moreover, in a number of procedural documents, the signatures were not made by the convict, and the interrogation reports of five witnesses contained additions. The Supreme Court found that the court of appeal had failed to properly examine and provide detailed reasons to refute the defence counsel's arguments in the appeal regarding the circumstances. Accordingly, the case was sent for retrial to the Court of Appeal.[35]

The other two partially upheld cassation appeals by the defence concerned collegial consideration of the case: in one case, the motion for collegial consideration was unlawfully dismissed[36], and in another, the first instance court failed to explain the right of the accused to file a motion to have the criminal proceedings against them considered by a three-judge panel[37].

Only one cassation appeal by the prosecutor was partially upheld and the case was sent for reconsideration to the cassation court.

35 Ruling in case No. 948/1054/22 of 02.10.2024: http://reyestr.court.gov.ua/Review/122153711
36 Ruling in case No. 638/7236/23 of 06.11.2024: https://reyestr.court.gov.ua/Review/122935919
37 Ruling in case No. 202/10407/22 of 21.11.2024: http://reyestr.court.gov.ua/Review/123380708

SECTION 2.

ANALYSIS OF PRACTICE UNDER SPECIFIC PARTS OF ARTICLE 111-1 OF THE CRIMINAL CODE OF UKRAINE

Specific trends can be identified for each part of Article 111-1 of the CCU. The following trends are based on the analysis of the verdicts delivered between mid-June and the end of December 2024, and take into account the comparison with the individual trends observed in the July 2024 research[38].

Part 1 of Article 111-1 of the CCU

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 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 10 to 15 years.

- Majority of verdicts (24 out of 33) were passed for expressions made in public places (at a bus stop, while receiving humanitarian aid, in a queue at a shop, at a railway station, etc.), and only 9 verdicts were passed for acts committed on the social network platforms such as Odnoklassniki, Vkontakte and Telegram. Additionally, a large number of verdicts were delivered in relation to acts committed without the use of social media, the number of forensic examinations conducted has also sharply decreased;
- In one of the proceedings[39], a person was convicted of a set of criminal offences under Part 1 of Article 111-1 of the CCU and Part 3 of Article 436-2 of the CCU ("Justification, recognition of lawful, denial of armed aggression of the Russian Federation against Ukraine, glorification of its participants"), despite the fact that the distinction between the qualification of acts under these articles is difficult due to the significant similarity of their dispositions;
- Although in 24 proceedings the punishment 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 is imposed for a period of 10 years, unjustified variability of punishment still exists in some sentences. It is expressed in the imposition of different main punishments for a similar act. For example, in one case, for denying Russian

38 Analytical report "Survival or crime: how Ukraine punishes collaborationism" / Syniuk O., Deputat D., Vyshnevska I., Volkovynska V., Chervonna V., Yelihulashvili M.; edited by Lunova O. — Kyiv, 2024: https://zmina.ua/wp-content/uploads/sites/2/2024/07/colaboratz_print_ukr.pdf

39 Verdict in case No. 686/3625/23 of 06.12.2024:https://reyestr.court.gov.ua/Review/123777157

aggression, a person was sentenced to deprivation of the right to hold positions in public authorities, public administration, local self-government and engage in activities related to the provision of public services for a period of 10 years[40], and in another, on a rather similar charge, for a period of 15 years[41]. In both cases, the defendants pleaded guilty.

Part 2 of Article 111-1 of the CCU

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, —

shall be punishable by deprivation of the right to occupy certain positions or engage in certain activities for a term of 10 to 15 years with or without confiscation of property.

- In 43 cases out of 60 considered under this part of Article 111-1 of the CCU, the punishment in the form of deprivation of the right to hold certain positions or engage in certain activities is imposed for a period of 10 years. However, in the remaining 17 proceedings, the judicial practice is not very consistent in terms of imposing restrictions on the right to hold positions of a different duration on persons who held similar positions (for example, in some cases, the chief specialist or chief accountant receives the aforementioned punishment for 10 years, and in others - for 14 years);
- In 8 proceedings under this part, persons holding positions in housing and communal services departments (specialists, department heads, accountants) were convicted;
- In the proceedings under this part, based on the appeal of the accused, the court of appeal cancelled[42] the verdict of the court of first instance due to the expiry of the limitation period for bringing a person to criminal liability;
- In addition to the above, the prosecutor filed appeals in two proceedings. One of them resulted in the opening of appeal proceedings[43], and the other one resulted in the overturning of the verdict and the case was sent for a retrial[44].

Part 3 of Article 111-1 of the CCU

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 10 to 15 years

40 Verdict in case No. 635/826/24 of 17.07.2024: https://reyestr.court.gov.ua/Review/120437634
41 Verdict in case No. 607/10546/24 of 05.08.2024: https://reyestr.court.gov.ua/Review/121128242
42 Court order in case No. 610/2157/24 of 27.11.2024:http://reyestr.court.gov.ua/Review/123397065
43 Court order in case No. 610/2000/24 of 15.08.2024: http://reyestr.court.gov.ua/Review/121024222
44 Court order in case No. 335/7086/23 of 21.11.2024: http://reyestr.court.gov.ua/Review/123317738

- A large number of proceedings are still being considered in absentia, with only 7 cases out of 147 being considered in the presence of a person;
- In three proceedings, in the presence of a person, the convicted persons were sentenced to probation (two of which were the result of a plea agreement). In the remaining cases, the sentence was imposed for a term of 1 year and 6 months or 2 years of imprisonment;
- In contrast to the previously outlined trends[45], during the period under review almost all appeals were filed by the defence (only in one case the appeal was filed by both the prosecution and the defence);
- Only two proceedings contained a conviction under the cumulative parts of Article 111-1 of the CCU, namely Parts 3 and 5.

Part 4 of Article 111-1 of the CCU

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 10 to 15 years, and confiscation of property.

- There is a trend towards an increase in the number of plea agreements concluded: in the majority of proceedings considered in the presence of the person, agreements were concluded. Thus, during the analysed period, verdicts were delivered in 57 proceedings, 43 of which were in the presence of a person. At the same time, plea agreements were concluded in 27 of the 43 proceedings;
- During the analysed period, the dominant use of imprisonment as the main punishment for a convicted person was observed: 41 proceedings out of 57 considered under this section involve its application. However, the number of cases of release from serving this sentence with probation is increasing (21 verdicts).
- A fine, as a less severe primary penalty, was applied in only 16 proceedings;
- There is a trend of qualifying a crime as committed by a group of persons or an organised group by prior conspiracy (14 proceedings) or by an organised group (4 proceedings);
- There are isolated cases of convictions under Part 4 for a set of crimes under other articles of the CCU: the most common classification is in combination with Part 6 of Article 111-1 of the CCU (3 proceedings), Part 1 of Article 436-2 of the CCU ("Justification, recognition of lawful, denial of armed aggression of the Russian Federation against Ukraine, glorification of its participants"), Part 2 of Article 364 of the CCU ("Abuse of power or official position");

45 Analytical report "Survival or crime: how Ukraine punishes collaborationism" / Syniuk O., Deputat D., Vyshnevska I., Volkovynska V., Chervonna V., Yelihulashvili M.; edited by Lunova O. — Kyiv, 2024: https://zmina.ua/wp-content/uploads/sites/2/2024/07/colaboratz_print_ukr.pdf , p. 24.

- The operative parts of four verdicts impose an obligation on the convicted person to transfer a certain amount of money to support the Armed Forces of Ukraine within 30 days after the verdict enters into force: in three proceedings - UAH 400,000,[46] and in one - UAH 1,000,000, with the indication that these funds should be transferred to the UNITED24 project.[47] For the first time such obligations were imposed by the verdict of 30 November 2023[48].

> ***Part 5 of Article 111-1 of the CCU***
>
> 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 the deprivation of the right to occupy certain positions or engage in certain activities for a term of 10 to 15 years, with or without confiscation of property.

- It was under this part that the only acquittal for the monitored period was delivered on the grounds of failure to prove that the accused's actions constituted a criminal offence[49];
- There is a further trend towards a small number of agreements concluded between the suspect and the prosecution: only 4 out of 32 cases heard in the presence of the person resulted in such agreements;
- More than half of the proceedings, namely 88, involved the application of a measure to secure criminal proceedings in the form of seizure of property;
- There is a trend of appealing against verdicts by the defence, regardless of whether the verdicts were delivered in absentia: 15 appeals were filed by the defence, in some of which the appeal was dismissed (7 proceedings), one cassation appeal was returned, and in the remaining cases, appeal proceedings were opened.
- 7 verdicts include qualification of the act under a cumulative offence under articles of the CCU: in particular, one case is qualified under Part 2 of Article 110 of the CCU ("Trespass against the territorial integrity and inviolability of Ukraine"), some cases are also qualified under Part 2 of Article 28 of the CCU ("Committing a criminal offence by a group of persons, a group of persons by prior conspiracy, an organised group or a criminal organisation") – 3 cases. There is also 1 case with qualification under Part 4 of Article 260 of the CCU ("Creation of unlawful paramilitary or armed formations") and Part 7 of Article 111-1 of the CCU. In addition, two cases were qualified cumulatively under Part 3 of Article 111-1 of the CCU.

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46 Verdict in case No. 639/6386/24 of 16.10.2024: https://reyestr.court.gov.ua/Review/122347345, Verdict in case No. 639/6387/24 of 16.10.2024: https://reyestr.court.gov.ua/Review/122308879,
Verdict in case No. 639/6385/24 of 09.10.2024: https://reyestr.court.gov.ua/Review/122179661

47 Verdict in case No. 61/32677/24 of 09.09.2024: https://reyestr.court.gov.ua/Review/121491509

48 Verdict in case No. 761/43660/23 of 30.11.2023: https://reyestr.court.gov.ua/Review/115395294

49 Verdict in case No. 522/7069/23 of 22.07.2024: https://reyestr.court.gov.ua/Review/120568583

- The trend of imposing a lighter sentence in case of consideration of the case in the presence of the person continues to be relevant. Thus, for example, in the proceedings under the special procedure in absentia, where a person was accused of voluntary participation in the organisation of an illegal referendum, the main sentence was 10 years of imprisonment[50]. In a similar indictment in proceedings considered in the presence of the defendant, taking into account all the circumstances of the case, the court imposed a basic sentence lower than the sanction provided for in Part 5 of Article 111-1 of the CCU, namely 2 years of imprisonment[51];
- A new trend is the application of Article 69 of the CCU ("Imposition of a milder punishment than provided by law"), mainly in proceedings concerning members of precinct election commissions - 6 cases;
- The gradation of punishment under this part of Article 111-1 of the CCU when convicting a person in absentia was changed: thus, the report of July 2024 states that there was a trend of sentencing to 5-6 years in prison for participation in the organisation and conduct of illegal referendums. During the period under study, persons were usually sentenced to 8-10 years in prison for this offence. However, the trend to sentence assistants, deputy heads and heads of certain departments to 5-7 years in prison remains relevant; heads, directors, deputies and managers are usually sentenced to 8-10 years in prison.
- There are still problems with distinguishing between criminal offences under Part 5 and other parts of Article 111-1 of the CCU: for example, there are two proceedings in the analysed period where a person was convicted under Part 5[52], for holding the position of chief accountant, although there are also cases where the person was convicted under Part 2 for taking up the same post.

Part 6 of Article 111-1 of the CCU

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 10 to 12 years with deprivation of the right to occupy certain positions or engage in certain activities for a term of 10 to 15 years and with or without confiscation of property.

- Although only 2 verdicts were appealed under this part, in one of the proceedings the court of appeal overturned the verdict and sent the case for retrial to the court of first instance (the reason was a significant violation of procedural law, as the motivational and introductory and resolution parts of the verdict referred to different persons)[53];
- The qualification of acts under a cumulative set of criminal offences provided for in the CCU is still quite widespread: In particular, the most frequent cumulative qualification is with Part 3 of Article 436-2 of the CCU ("Justification, recognition of lawful, denial of armed

50 Verdict in case No. 727/4319/24 of 14.08.2024: https://reyestr.court.gov.ua/Review/121024108

51 Verdict in case No. 344/10401/24 of 04.07.2024: https://reyestr.court.gov.ua/Review/120171568

52 Verdict in case No. 485/1116/24 of 10.12.2024: https://reyestr.court.gov.ua/Review/123638459; Verdict in case No. 337/3587/24 of 03.12.2024: https://reyestr.court.gov.ua/Review/123467884

53 Court order in case No. 96/10089/23 of 10.12.2024: http://reyestr.court.gov.ua/Review/123934082

aggression of the Russian Federation against Ukraine, glorification of its participants") – 3 proceedings; Part 1 of Article 110 of the CCU ("Trespass against the territorial integrity and inviolability of Ukraine") – 2 proceedings; Part 2 of Article 110 of the CCU - 1 proceeding; Part 2 of Article 436-2 of the CCU - 1 proceeding; Part 3 of Article 109 of the CCU ('Acts aimed at violent change or overthrow of the constitutional order or at seizure of state power'). There are also qualifications under Part 1 of Article 111-1 of the CCU – 1 proceeding, and Part 3 of Article 111-1 of the CCU;

- In general, most of the proceedings are qualified under a cumulative set of offences under other articles of the CCU.

> ***Part 7 of Article 111-1 of the CCU***
>
> 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 12 to 15 years, with deprivation of the right to occupy certain positions or engage in certain activities for a term of 10 to 15 years, with or without confiscation of property.

- Some of the proceedings contain qualification of the act under a cumulative set of crimes under the following articles of the CCU: in particular, most often, the cumulative qualification was under Part 1 of Article 111-2 of the CCU ("Aiding the aggressor state"), namely in 4 cases; Part 2 of Article 111 of the CCU ("High treason") - 1 case; under part 1 of Article 111 of the CCU, Part 1 of Article 258-3 of the CCU ("Creation of a terrorist group or terrorist organisation"), Part 2 of Article 260 of the CCU ("Creation of unlawful paramilitary or armed formations") - 1 case;
- There is a broad interpretation of "holding a position in a law enforcement agency" within Part 7;

Example: *during March-May 2022, the person voluntarily agreed to take the position of director in an illegal body with law enforcement and law enforcement functions, the state unitary enterprise of the LPR "Svatovo forestry".*[54] *The question arises as to the qualification of the act, since in a similar case, an assistant forester, who also held a senior position in the Balakliia Forestry State Enterprise, was convicted under Part 5 of Article 111-1 of the CCU*[55].

- As in Part 5, there is a trend of appeals against verdicts by both the prosecution and the defence: one of the verdicts was changed for the worse following an appeal by the prosecutor (the changes concerned the imposition of additional punishments)[56];

54 Verdict in case No. 712/5188/24 of 29.08.2024: https://reyestr.court.gov.ua/Review/121287067
55 Verdict in case No. 642/1980/22 of 11.10.2024: https://reyestr.court.gov.ua/Review/122229031
56 Court order in case No. 317/4149/23 of 19.09.2024: http://reyestr.court.gov.ua/Review/121771372

SECTION 3.

APPLICATION OF MEASURES OF RESTRAINT

As shown in the previous analytical research, there are problems with the application of measures of restraint to persons suspected of committing collaborative activity. Although the provision of Part 6 of Article 176 of the CPCU allows for the application of the most severe measure of restraint (i.e., detention) in the presence of relevant risks, questions arise as to the appropriateness of its application, especially when it is a long-term application. Currently, there is a trend of prolonged use of detention as a measure of restraint for persons suspected of committing an act under Paragraphs 3-7 of Article 111-1 of the CCU. However, there are some positive developments in this direction.

Thus, in proceedings **under Part 3 of Article 111-1 of the CCU**, there are different trends in the choice of measures of restraint for suspects, namely, more cases of choosing a lighter measure of restraint. Thus, out of seven proceedings where a measure of restraint was imposed on a person, three resulted in house arrest, and one in personal commitment. However, the long duration of detention on suspicion of committing this minor crime remains a negative trend - the average duration is more than 1 year.

Under Part 4 of Article 111-1 of the CCU, there is still a trend of frequent use of detention as a measure of restraint: namely, in 26 proceedings out of 43 considered in the presence of a person, this measure was applied, but in half of them, detention was applied with the determination of the amount of bail or the amount of bail was determined during the extension. Moreover, the average length of detention in cases where bail was not set was over 1 year and 3 months, but in most cases, the detention period was at least 1 year and 5 months.

A negative practice is when the amount of bail was determined only after 2 years of detention.

Example: *the person, while holding the position of the head of the Rubizhne workshop of the State Enterprise "Vovchansk Forestry" of the Kharkiv Regional Forestry and Hunting Department of the State Forest Resources Agency of Ukraine, from July to September 2022, voluntarily began to cooperate with the "temporary occupation administration" of the aggressor state illegally established in the city of Vovchansk, Chuhuiv district, Kharkiv region. The person ensured the fulfilment of duties aimed at conducting economic activities in cooperation with the occupation authorities, carried out works aimed at ensuring the activities of the newly created illegal body, as well as the sale of wood, which was later used by Russian troops to equip dugouts and fortifications used against the Armed Forces of Ukraine during the armed conflict.*[57]

The person was held in custody from 8 November 2022 on the basis of a court order by the Hlobynskyi District Court of Poltava Region, and the measure of restraint was extended during

57 Verdict in case No. 948/1020/22 of 06.12.2024: https://reyestr.court.gov.ua/Review/123567398

the course of the appeal proceedings[58]. It was only on 11 November 2024 that the amount of bail was set for the measure of restraint in the form of detention[59].

Under **Part 5 of Article 111-1 of the CCU**, there continues to be a trend of choosing a measure of restraint in the form of detention without setting bail: only in one case house arrest[60] was chosen. There are also two cases where the bail amount was determined by the court order, but in one of them the determined bail amount was later cancelled and the measure of restraint was continued without determining the bail amount.

In addition, a rather long period of application of a measure of restraint in the form of detention remains characteristic. Thus, the average duration of its application is more than one year, and there are proceedings where the application of the measure of restraint lasted more than two years[61].

Regarding Part 6 of Article 111-1 of the CCU, the number of verdicts is rather small, but even in the three cases that were considered in the presence of the person, the application of a measure of restraint in the form of detention lasted almost two years[62].

Under **Part 7 of Article 111-1 of the CCU**, there is also a trend for suspects to be held in custody for a rather long time. Thus, the average period of detention is 1 year and 4 months. Despite the small number of cases that were considered in the presence of a person (9 proceedings out of 147), in most of them the term of detention was at least 1 year and 6 months. During this period, there was one case in which a measure of restraint in the form of detention was not imposed on a person, as the person was granted the status of a prisoner of war.[63]

58 Court order in case No. 948/1020/22 of 20.12.2022: http://reyestr.court.gov.ua/Review/107986667
59 Court order in case No. 948/1020/22 of 11.11.2024: http://reyestr.court.gov.ua/Review/122938333
60 Verdict in case No. 638/13490/24 of 15.10.2024: https://reyestr.court.gov.ua/Review/122286825
61 Verdict in case No. 642/1980/22 of 11.10.2024: https://reyestr.court.gov.ua/Review/122229031
62 Verdict in case No. 752/9748/23-к of 13.11.2024: https://reyestr.court.gov.ua/Review/123014471
63 Verdict in case No. 185/6347/24 of 31.07.2024: https://reyestr.court.gov.ua/Review/120739091

SECTION 4.

CROSS-CUTTING ISSUES IN THE APPROACH TO LIABILITY FOR COLLABORATIVE ACTIVITY

In the third year of application of 111-1 of the CCU, the relevant practice has been formed, which contains systemic problems in the very approaches to bringing to justice for collaborative activity. Some of these problems arise from imperfect legislative provisions that do not take into account the standards of international humanitarian law. However, while there was previously an expectation that practice would help address the shortcomings of the legislation, the approaches that have developed at this stage – both in the first and second instances, and even at the cassation level – do not meet those expectations.

4.1. Issues with the application of international humanitarian law standards

The issue of compliance of criminal prosecution for collaborative activity with the standards of international humanitarian law remains relevant. The necessity to take into account the need to ensure the livelihoods of people in the TOT of Ukraine has been repeatedly emphasised by both international[64] organisations and the Prosecutor General's Office of Ukraine.[65] The question remains open - no clear criteria have been defined as to which activities are considered to be essential to life in the TOT of Ukraine. However, at least based on the provisions of Protocol Additional I[66], medical and clerical personnel[67], as well as civil defence organisations and their personnel, can be included in this category.[68] Civil defence functions include evacuation, rescue, firefighting, emergency repair of indispensable public utilities, assistance in the preservation of objects essential for survival, etc.

The possibility of bringing these individuals to justice for collaborative activity was also analysed by the Supreme Court in the aforementioned ruling of 20 June 2024. In particular, the Supreme Court determined which activities do not constitute criminal offences under Paragraphs 2, 5 and 7 of Article 111-1 of the CCU:

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

65 Letter of Guidance on Peculiarities of Criminal Prosecution for Collaborative Activity to Heads of Regional Prosecutor's Offices, Prosecutor General's Office of Ukraine, 15 May 2024.

66 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977: https://zakon.rada.gov.ua/laws/show/995_199#Text

67 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977, art. 15, 16: https://zakon.rada.gov.ua/laws/show/995_199#Text

68 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977, Article 62: https://zakon.rada.gov.ua/laws/show/995_199#Text

"Carrying out activities by a citizen of Ukraine on the temporarily occupied territory that are not carried out by a governmental body (at an enterprise, institution, organisation; individual entrepreneurship, etc.) or performing work ***that is not related to holding a position (doctor, pharmacist, housing and communal services worker, firefighter, rescue service or cemetery worker, lawyer, etc.****) does not constitute criminal offences under Parts 2, 5 and 7 of Article 111-1 of the CCU".*[69]

In practice, however, the conviction of persons performing functions, in particular, of civil defence in the TOT of Ukraine continues.

The accused voluntarily took up a position in an illegal law enforcement agency established in the temporarily occupied territory no earlier than 08.04.2022, namely a firefighter-rescuer of the 70th fire and rescue unit of the state budgetary institution "Volnovakha Fire and Rescue Unit of the Ministry of Civil Protection, Emergencies and Disaster Management of the Donetsk People's Republic", established by representatives of the aggressor state in the territory of the temporarily occupied Volnovakha city territorial community of Volnovakha district. The person was sentenced in absentia to 14 years of imprisonment with deprivation of the right to hold positions in state and local government for a period of 12 (twelve) years with confiscation of all his property. He was also deprived of the rank of junior sergeant of the Civil Protection Service.[70]

A separate issue, which has also been raised earlier, is the assessment of the actions of persons who performed certain administrative functions in areas falling under the category of civil defence or medical care[71]. In the above decision, the Supreme Court appears to have completely separated the performance of an exclusively medical or civil defence function from any administrative support of this process. The practice in the courts of first instance and appellate courts also reflects this trend – persons holding the positions of "chief doctor", "chief of fire station", "commander of a fire station department", etc. are held liable.

During the period analysed in the research, 6 proceedings were considered in which the convicts took positions in the medical or HCS sector. Thus, these cases concern the chief doctor, deputy head of the acting head of the department of housing and communal services, deputy head/acting head of the department of HCS, directors of communal enterprises for ensuring the vital activity of the population.

The person, according to the verdict, gave his voluntary consent and, starting from 17 March 2022, took up the position of "chief doctor" in an illegal authority established in the temporarily occupied territory, namely the so-called "State Institution "Shchastia City Hospital" of the Luhansk People's Republic". The person was sentenced in absentia for 9 years with deprivation of the right to hold any positions in state authorities, local self-government bodies, including positions related to the performance of organisational-administrative and/or administrative-economic functions in bodies providing public services and in medical institutions for a period of 15 years with confiscation of all property belonging to him on the right of private ownership.[72]

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69 Ruling in case No. 953/7182/22 of 20.06.2024: https://reyestr.court.gov.ua/Review/119961119

70 Verdict in case No. 463/5697/24 of 10.12.2024: https://reyestr.court.gov.ua/Review/123617723

71 Analytical report "Survival or crime: how Ukraine punishes collaborationism" / Syniuk O., Deputat D., Vyshnevska I., Volkovynska V., Chervonna V., Yelihulashvili M.; edited by Lunova O. — Kyiv, 2024, p.31-32: https://zmina.ua/wp-content/uploads/sites/2/2024/07/colaboratz_print_ukr.pdf

72 Verdict in case No. 194/934/23 of 17.09.2024: https://reyestr.court.gov.ua/Review/121649361

This also concerns the conviction of firefighters in leadership positions. Below are two new cases concerning the conviction of firefighters/rescuers with administrative functions:

Example 1: in the period from 29.03.22 to 08.04.22, while holding the position of commander of the 94th State Fire and Rescue Unit of the 11th State Fire and Rescue District of the SES of Ukraine in the Donetsk region, during the invasion of the Russian troops into the territory of Donetsk region and active hostilities in the territory of the Volnovakha city territorial community, the person intentionally did not leave with other employees of the 94th State Fire and Rescue Unit of the 11th State Fire and Rescue District of the SES of Ukraine in the Donetsk region and voluntarily took up a position in a law enforcement body established in the temporarily occupied territory of Ukraine, namely, "Commander of Department 71 of the Fire and Rescue Unit of the State Budgetary Institution "Volnovakha Fire and Rescue Unit of the Ministry of Civil Defence, Emergencies and Elimination of Consequences of Natural Disasters of the Donetsk People's Republic". The person was sentenced in absentia to 14 years of imprisonment with deprivation of the right to hold positions in state and local government for a period of 12 (twelve) years with confiscation of all his property.[73]

Example 2: not earlier than 19.04.2022, the person voluntarily took up a position in an illegal law enforcement agency established in the temporarily occupied territory, namely the head of the 28th fire and rescue unit established in the territory of Bilovodsk of the Bilovodsk settlement territorial community of the Luhansk region of the so-called Ministry of Civil Defence, Emergency Situations and Disaster Relief of the Luhansk People's Republic. The person was sentenced in absentia to 14 years of imprisonment with deprivation of the right to hold positions in state and local government for a period of 12 (twelve) years with confiscation of all his property.[74]

This distinction, however, seems artificial. Is it possible to perform medical care or civil defence functions without organisational support for this process? The aforementioned provisions of international humanitarian law, which provide for respect and protection of civil defence organisations and personnel, directly include complementary activities necessary to carry out any of the tasks, including, but not limited to, planning and organization.[75] When assessing the actions of such persons and considering bringing them to justice, it is advisable to at least assess the need for them to exercise administrative powers to perform medical and civil defence functions, and the correlation of these actions with the public danger of the act. This issue, in turn, leads us to the next question – the sufficiency of the fact of "holding a position", without analysis and consideration of the direct performance of functions to the detriment of national security, to qualify an act as collaborationism.

4.2. Broad and formal interpretation of the disposition of Article 111-1 of the Criminal Code of Ukraine

A formal approach to the qualification of an act as a collaborative activity has been formed and established in judicial practice, based on the understanding that the law establishes liability for the mere fact of holding a position in an occupation authority, and not for the

73 Verdict in case No. 463/1666/23 of 17.06.2024: https://reyestr.court.gov.ua/Review/119854767

74 Verdict in case No. 461/3033/24 of 25.06.2024: https://reyestr.court.gov.ua/Review/119973147

75 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977, Article 61(a)(15): https://zakon.rada.gov.ua/laws/show/995_199#Text

specific activities of a person during their work. This approach was confirmed in the Supreme Court decision.

Example: the case concerned an appeal against judgements of the court of first instance and the court of appeal regarding the conviction of a person under Part 7 of Article 111-1 of the CCU, namely for holding the position of a patrol police officer in an illegal law enforcement agency. In the cassation appeal, the defence counsel requested that the judgements be quashed on the grounds of incorrect application of the law of Ukraine on criminal liability and that a new consideration be ordered in the court of appeal, given that the convict "*did not understand the content of the documents he signed during his employment, did not actually perform the functions of a patrol police officer, ... was not allowed to work and did not receive any monetary remuneration for it*".

The court of first instance found that the collaborative activity had been proven beyond a reasonable doubt, having analysed the defendant's testimony about his selfish motives, voluntary signing of the employment contract, signing the certificate, submitting an application for financial assistance and actually performing the duties of a security guard.

The Supreme Court noted that the mere fact that a citizen of Ukraine voluntarily holds a position in an illegal law enforcement agency is sufficient to qualify the relevant actions under Part 7 of Article 111-1 of the CCU. According to the court, such conclusions follow from the fact that the social danger of the act under Part 7 of Article 111-1 of the CCU is to help "*the aggressor create a hierarchy of illegal authorities, which is the basis for the functioning of the state mechanism in general*". Such a "*form of collaborative activity, compared to others provided for in parts 2 and 5 ... is recognised by the legislator as the most socially dangerous*".

The Supreme Court also noted that it is not necessary to relate the commission of an act under Part 7 of Article 111-1 of the CCU with the content of the work actually performed, since liability is established "*precisely for holding a position in such a body, and not for the specific activities of a person during the work performed by them*".[76]

This approach raises a number of problems, in particular:

1 Interpretation of the wording "holding a position in illegal authorities"

The legislator does not specify which institutions fall under the 'illegal authorities' in Parts 2 and 5 of the Article, except for the direct mention of the occupation administrations. At the same time, the Supreme Court determines that an enterprise, institution, or organisation does not fall under this concept. This approach, however, contradicts the judicial practice – people are held liable under Parts 2 and 5 of Article 111-1 for holding positions at enterprises[77] and institutions[78].

The formal approach to assessing the actions of a person in their position also leads to the incorrect qualification of the offence committed. In particular, in some cases, despite

76 Ruling in case No. 953/7182/22 of 20.06.2024: https://reyestr.court.gov.ua/Review/119961119#

77 Verdict in case No. 948/627/23 of 21.03.2023: https://reyestr.court.gov.ua/Review/109673900 under Part 2 of Article 111-1 of the CCU; Verdict in case No. 485/1116/24 of 10.12.2024: https://reyestr.court.gov.ua/Review/123638459 - under Part 5 of Article 111-1 of the CCU.

78 Verdict in case No. 766/10855/23 of 23.11.2023: https://reyestr.court.gov.ua/Review/115137039 - under Part 2 of Article 111-1 of the CCU; Verdict in case No. 199/6225/23 of 05.12.2024: https://reyestr.court.gov.ua/Review/123808408 - under Part 5 of Article 111-1 of the CCU.

being appointed to a position that involves the performance of organisational-administrative or administrative-economic functions, the person did not actually perform them, but carried out completely different activities – for example, while holding the position of head of the legal department in the occupation administration, the person actually only processed and registered incoming correspondence, received applications for resolving social and domestic issues, which were submitted to the leadership of the occupation administration.[79] Given that the characteristic of the position, which provides for the performance of organisational-administrative or administrative-economic functions, is the distinguishing element between Parts 2 and 5, it is imperative to take into account the functions that were actually performed. Especially given the significant difference in the social danger of the acts, since Part 2 provides for liability for a misdemeanour, and Part 5 – for an offence.

On the other hand, in another case the court recognised the fact that the person held the position on the basis of witness testimony and that the person "actually took up their employment duties in this body to ensure its functioning".[80] In the absence of an employment contract, the question arises whether the testimony of witnesses, most of which is hearsay, is sufficient to establish the fact of employment. The general rule regarding witness testimony is that a person testifies only to facts that they personally perceived.[81] When recognising hearsay evidence as admissible, the court shall take into account the significance of the explanations and testimony, if true, for clarifying a particular circumstance and their importance for understanding other information, other evidence on the issues provided for in Paragraph 1 of this part, that have been or may be submitted, the circumstances of the initial explanations that give rise to confidence in their reliability, the convincing nature of the information regarding the fact of the initial explanations, the difficulty of refuting the explanations and hearsay evidence for the party against whom they are addressed.[82]

At the same time, the fact of organising the cleaning of the forestry territory and repair of the roof, without hiring other persons and paying for this work, is recognised as "ensuring the functioning of the body".

In this context, it is worth highlighting the practice of bringing to justice "street, block representatives, neighbourhood heads and/or their deputies".[83] The research of July 2024[84] already drew attention to this issue.

In January 2025, one of the cases of a street representative was considered in the first instance, appeal and cassation. In the first instance, the person was sentenced to 5 years in prison under Part 5 of Article 111-1, i.e. holding a position in an illegal authority that involves the performance of organisational, administrative or administrative and economic functions.

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79 Collaborationism in the temporarily occupied territories: problems of legal assessment, guaranteeing human rights and freedoms and reintegration of territories: monograph / [M. Rubashchenko, I. Yakoviuk, N. Shulzhenko, O. Zaitsev, S. Kharytonov] ; edited by M. Rubashchenko; National Research Foundation of Ukraine. Yaroslav Mudryi National Law University - Kharkiv: Pravo, 2024, p.407.

80 Verdict in case No. 642/1980/22 of 11.10.2024: https://reyestr.court.gov.ua/Review/122229031

81 Criminal Procedure Code of Ukraine, ed. of 26.12.2024, Article 95: https://zakon.rada.gov.ua/laws/show/4651-17#Text

82 Criminal Procedure Code of Ukraine, ed. of 26.12.2024, Article 97: https://zakon.rada.gov.ua/laws/show/4651-17#Text

83 Active residents, usually women, who keep order and contact the "mayor's office" on behalf of the citizens

84 Analytical report "Survival or crime: how Ukraine punishes collaborationism" / Syniuk O., Deputat D., Vyshnevska I., Volkovynska V., Chervonna V., Yelihulashvili M.; edited by Lunova O. — Kyiv, 2024: https://zmina.ua/wp-content/uploads/sites/2/2024/07/colaboratz_print_ukr.pdf , p.37-38

In this case, the responsibilities included appointing and coordinating the work of other street representatives, as well as accepting applications for solid fuel from local residents of the microdistrict.[85]

Both the appellate[86], and cassation instances upheld the verdict. The issue raised by the defence regarding the justification of the qualification of the "street representative" job as holding a position in the occupation administration, given that it was a body of self-organisation of the population that existed before the occupation, the absence of a job description or any remuneration, was not considered in the appeal.[87] The Supreme Court, in turn, approached the issue formally – without commenting on the absence of an employment contract, job description, remuneration, the existence of a "position" held by the accused before the occupation, the court determined that the holding of the position and the performance of organisational and administrative functions by the person had been proven. It is noteworthy that the court did not provide any explanation of the concept of "organisational-administrative functions".

Moreover, the court's position reaffirmed the formal approach – "certain purpose and motive of the said actions of the person are not specified in the disposition as mandatory qualifying signs of this criminal offence".[88] In this proceeding, none of the instances considered the context: the conditions in which the population in the TOT was living, whether they had access to information, whether they had means of survival (drinking water, food, medicine, heat, etc.) and how to obtain them, whether representatives of the Ukrainian local authorities/ military administration informed people about the algorithm of actions in the event of occupation, in particular, whether people should continue to perform their functional duties in their positions/workplaces, who and how can communicate with the occupation authorities, etc.

Although this did not affect the verdict in the case, one of the judges of the Supreme Court who considered the case provided a dissenting opinion to the decision. The judge, in particular, draws attention to the issues raised: no proper and admissible evidence has confirmed the fact of the defendant's appointment to the position, their performance of organisational-administrative functions, and the fact that the position was a part of the occupation administration. In addition, the dissenting opinion states that the previous instances did not take into account the provisions of international humanitarian law, and that the proceedings were conducted formally, without a full and objective investigation of the circumstances of the proceedings regarding the conditions in which the accused and other residents of Lyman found themselves during the occupation, which violated their right to a fair trial.[89]

85 Verdict in case No. 202/3884/23 of 15.08.2023: https://reyestr.court.gov.ua/Review/112856417

86 Court order in case No. 202/3884/23 of 16.05.2024: https://reyestr.court.gov.ua/Review/119160121

87 "I just couldn't leave people behind". The Court of Appeal sentenced the head of the street committee from Lyman, who became the "head of the microdistrict" during the occupation, to five years in prison / Graty, 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/

88 Ruling in case No. 202/3884/23 of 29.01.2025: https://reyestr.court.gov.ua/Review/124904191

89 Dissenting opinion in case No. 202/3884/23 of 29.01.2025: https://reyestr.court.gov.ua/Review/125028818

2 Interpretation of the wording "holding a position in law enforcement agencies"

The understanding of the concept of "holding a position in law enforcement agencies" in practice also continues to expand. The qualification of holding the position of a "driver" as falling under this wording has already been mentioned in connection with the broad interpretation of this concept by the Supreme Court[90]. Thus, according to the judges of the Supreme Court, since Part 7 of Article 111-1 of the CCU does not contain the concept of "law enforcement officer", the very act of "holding a position in a law enforcement agency", even if the function performed is not law enforcement-related, constitutes a criminal offence.

Within the current analysed period, proceedings were recorded where, under Part 7 of Article 111-1 of the CCU, the occupation of a position at a forestry and hunting enterprise ("the state unitary enterprise of the LPR "Svatovo forestry") was qualified as a crime.

In Ukrainian legislation, the situation with the legal status of a forester is as follows: employees of the state forest protection are considered law enforcement officers.[91] In addition, the state forest protection includes, in particular, enterprises subordinated to the State Forest Resources Agency.[92] In other words, foresters/assistant foresters who hold positions in state-owned enterprises subordinated to the State Forest Resources Agency are considered law enforcement officers.

However, it is unclear why the assessment of the place of the illegal authority created in the occupation system of the so-called "LPR" and its qualification as a law enforcement agency was carried out on the basis of Ukrainian legislation and the Ukrainian system, to which this body does not belong. Liability under Part 7 of Article 111-1 of the CCU is provided for 'holding a position in illegal judicial or law enforcement bodies established in the temporarily occupied territory', respectively, the recognition of the forestry and hunting enterprise as belonging or not belonging to the law enforcement system should be based on an analysis of the occupation system of the so-called "LPR", in which the enterprise is subordinated to the so-called "Ministry of Natural Resources and Ecology of the LPR".[93]

In addition, the question arises whether it is appropriate to equate the public danger and consequences of the actions of persons who took up positions in the prosecutor's office, police, and joined armed groups with the actions of those who only formally fall under the concept of persons who took up a position in a law enforcement agency, such as foresters or drivers. Of course, according to the practice of the Supreme Court and the above-analysed ruling, holding a position of a forester in the state forest protection is one of the most socially dangerous forms of action, as it helps "the aggressor to create a vertical of illegal authorities, which is the basis for

90 Analytical report "Survival or crime: how Ukraine punishes collaborationism" / Syniuk O., Deputat D., Vyshnevska I., Volkovynska V., Chervonna V., Yelihulashvili M.; edited by Lunova O. — Kyiv, 2024, p.33: https://zmina.ua/wp-content/uploads/sites/2/2024/07/colaboratz_print_ukr.pdf

91 Law of Ukraine "On State Protection of Judicial and Law Enforcement Officers", as of 01.01.2024, Article 2: https://zakon.rada.gov.ua/laws/show/3781-12#Text, The Forest Code of Ukraine, as amended on 15.11.2024, Article 89: https://zakon.rada.gov.ua/laws/show/3852-12#Text

92 Resolution of the Cabinet of Ministers of Ukraine of 16 September 2009 No. 976 "On Approval of the Regulation on State Forest Protection, Forest Protection of Other Forest Users and Forest Owners": https://zakon.rada.gov.ua/laws/show/976-2009-п#Text

93 State Unitary Enterprise of the Luhansk People's Republic "Svatovo forestry" / Rusprofile:: https://www.rusprofile.ru/id/1229400033477

the functioning of the state mechanism in general".[94] However, the question arises as to whether such a broad interpretation of the law is appropriate and justified, since it de facto does not take into account the public danger, but simply applies a formalistic approach.

As a result, during the analysed period, there were two controversial proceedings in one of which a person was convicted for holding the position of director of the illegal executive body "SE "Balakliia Forestry" of the Military-Civilian Administration of the Balakliia District of Kharkiv Region' under Part 5 of Article 111-1 of the CCU[95], and in the other, a person was convicted for holding the position of "director of the state unitary enterprise of the LPR "Svatovo forestry" under Part 7 of article 111-1 of the CCU[96]. Although in two cases the court found that the persons took up positions in a law enforcement agency, in the first case it seems that the court focused more on the managerial functions of the director than on the fact that he was the head of a law enforcement agency.

This is of significant importance for law enforcement practice, as under Part 7, the person was sentenced in absentia to imprisonment for 14 years with deprivation of the right to hold positions in law enforcement agencies of Ukraine and in state authorities, local self-government bodies, public service bodies for 15 years with confiscation of all property belonging to them. Under Part 5, the person was sentenced to imprisonment for a term of 6 years and 6 months with deprivation of the right to hold positions related to the performance of organisational-administrative and administrative-economic functions for a term of 12 years, with confiscation of all property that is their personal property.

3 Insignificance of Acts

The sufficiency of "holding a position" to qualify an act as a collaborative activity essentially allows for no assessment of the actual activities of the person in the position held and their consequences. However, it is doubtful that the damage caused by the activity can be ignored. As well as to qualify the offence solely on the basis of "holding a position", without assessing the acts of the person in that position. The concept of a criminal offence itself implies that the formal elements of a criminal offence are not sufficient. If the action was insignificant, does not pose a public danger, i.e. did not and could not cause significant harm to an individual or legal entity, society or the state,[97] such an act is not a criminal offence.

It is difficult to agree with the presumption that holding any position (parts 2, 5 and 7 of Article 111-1 of the CCU), in itself, reaches the threshold of public danger and significant harm. This is especially true when these broad concepts are applied in practice to representatives of rescue services, medical and social services. For proper qualification of the acts of persons in positions of authority, an individualised approach with a realistic assessment of the damage caused by the actions of such persons is required.

In this context, it is also worth mentioning the cases of the "street representatives". In addition to the qualification of their activities as "holding a position in illegal authorities", the

94 Ruling in case No. 953/7182/22 of 20.06.2024: https://reyestr.court.gov.ua/Review/119961119#
95 Verdict in case No. 642/1980/22 of 11.10.2024: https://reyestr.court.gov.ua/Review/122229031
96 Verdict in case No. 712/5188/24 of 29.08.2024: https://reyestr.court.gov.ua/Review/121287067
97 The Criminal Code of Ukraine, ed. of 01.02.2025, Part 2 of Article 11: https://zakon.rada.gov.ua/laws/show/2341-14#Text

assessment of actions such as demanding humanitarian aid, means of heating private homes (coal), compiling lists of residents in need of such assistance, and caring for vulnerable members of the community[98] as posing a significant public danger that should be qualified as an offence is also questionable.

4.3. Presumption of direct intent

Another essential element of collaborative activity is the direct intent. This issue has also already been considered by the Supreme Court.

Example: The defence counsel's cassation appeal was filed against the court decisions of the courts of first instance and appeal regarding the conviction of a person under Part 7 of Article 111-1 of the CCU, namely for holding the position of a prosecutor in an illegal law enforcement agency – the prosecutor's office. The defence counsel requested a less severe sentence, since the convicted person did not have a direct intent to commit the criminal offence charged, but only wanted to make a professional career out of the fact that more successful categories of the population had left the temporarily occupied territories.

The Supreme Court agreed with the conclusions of the courts of previous instances, which refuted the arguments of the defence, noting that the accused has a higher legal education, and, accordingly, a sufficient level of specialised knowledge in the field of law. Accordingly, holding the position of deputy prosecutor of the Markivskyi district of the Prosecutor General's Office of the "LPR" in an illegal law enforcement agency, **he was aware of the socially dangerous nature of his actions, foresaw their socially dangerous consequences and wished them to occur, i.e. acted with direct intent.**[99]

The practice shows that "direct intent" is mentioned in the proceedings under consideration mainly formally, without any additional investigation of this feature. The prosecution presumes the existence of direct intent without providing any justification for this position. Even mentioning the fact that the actions were committed "guided by ideological and selfish motives",[100] – the case does not address this aspect.

The issue of direct intent also arises acutely in proceedings concerning street representatives.

"I have been involved in social activities for a long time, about 15 years. I just couldn't leave people, I couldn't. I grew up there, I had no moral right [to resign], being among these elderly people who came to me for help. Some of them cursed: why don't I have humanitarian aid, who will bring it to me? Bedridden people asked me where to get medicines. I had no malicious intent, no material gain for myself. On the contrary, all this was to the detriment of my family". - Tetiana Potapenko, microdistrict representative in Lyman[101]

98 "I am guilty of staying alive". The Supreme Court sentenced a resident of Lyman, who coordinated the heads of street committees during the occupation, to 5 years in prison / Graty, 21.02.2025: https://graty.me/ya-vinna-v-tomu-shho-zalishilasya-zhivoyu-verhovnij-sud-priznachiv-5-rokiv-koloniï-meshkanczi-limanu-yaka-koordinuvala-goliv-vulichnih-komitetiv-pid-chas-okupaczii/

99 Ruling in case No. 161/12980/22 of 08.02.2024: https://reyestr.court.gov.ua/Review/116955673

100 Verdict in case No. 485/1116/24 of 10.12.2024: https://reyestr.court.gov.ua/Review/123638459

101 "I just couldn't leave people behind". The Court of Appeal sentenced the head of the street committee from Lyman, who became the "head of the microdistrict" during the occupation, to five years in prison / Graty, 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/

Given the nature of the work, the acts committed by the accused and her understanding of these acts, the assertion that they were of a socially dangerous nature and the person had an understanding of such a nature seems doubtful. At the same time, the prosecution's position is based on the presumption of direct intent, which does not require additional proof. In the aforementioned Supreme Court Ruling, apart from the statement that "purpose and motive" are not mandatory elements of the disposition, the issue of intent was not considered.

4.4. Coercion and voluntariness under conditions of occupation

In the previous research, we have already drawn attention to the position of the Supreme Court regarding a narrow approach to the interpretation of voluntariness of an act, in particular, consideration of the issue of voluntariness only in the context of possible application of Articles 39, 40 of the CCU[102]. This position was reaffirmed in the new proceeding.

Example: the defence counsel's cassation appeal was filed against the judgements of the court of first instance and the court of appeal on the conviction of a person under Part 5 of Article 111-1 of the CCU, namely for holding the position of "head of the social security department of the Military-Civilian Administration". In the cassation appeal, the defence counsel noted that the courts of previous instances had not taken into account a video with a fragment of television news, which showed that soldiers of the aggressor country were looking for the defendant's nephew, allegedly for cooperation with the Ukrainian military.

The Supreme Court noted that the accused performed her duties voluntarily, as there was no evidence of coercion by the occupiers to take up the position. Thus, the ruling states that "*an act is considered to be voluntary if it is possible to choose several options for behaviour, taking into account the set of circumstances that may exclude criminal unlawfulness under Articles 39 and 40 of the CCU*". The Supreme Court came to the conclusion that the convicted person consciously took up the managerial position of the head of the social security department, "*performed duties related to the performance of organisational-administrative functions and received remuneration in the Russian monetary unit, which was not a way of survival under the occupation*".[103]

Accordingly, a narrow interpretation of coercion and voluntariness continues to be established in practice, despite the position of the Prosecutor General's Office that in each case, the general atmosphere of fear and the imposition of Russian systems on the temporarily occupied territories, which may have constituted relevant coercion or pressure on a person, should be taken into account.[104]

In general, the judicial practice ignores the conditions of occupation, which in themselves create an atmosphere of fear due to the presence of the Russian military and the absence of Ukrainian authorities that could ensure proper protection of the rights of the population. Also, the facts of violations of international humanitarian law by Russian representatives, in particular,

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102 Analytical report "Survival or crime: how Ukraine punishes collaborationism" / Syniuk O., Deputat D., Vyshnevska I., Volkovynska V., Chervonna V., Yelihulashvili M.; edited by Lunova O. — Kyiv, 2024, p.39: https://zmina.ua/wp-content/uploads/sites/2/2024/07/colaboratz_print_ukr.pdf

103 Ruling in case No. 83/426/23 of 03.12.2024: https://reyestr.court.gov.ua/Review/123659134

104 Letter of Guidance on Peculiarities of Criminal Prosecution for Collaborative Activity to Heads of Regional Prosecutor's Offices, Prosecutor General's Office of Ukraine, 15 May 2024.

illegal detentions, enforced disappearances, ill-treatment and torture, etc. against the civilian population in the TOT of Ukraine, are not properly assessed. Under these circumstances, it seems inappropriate to justify the absence of proof of coercion when the fact that the accused did not seek medical care during the occupation[105], is used as evidence, and there was no attempt to collect and record evidence of the violence committed against the accused (take a photo of the beatings, hide the things they were wearing during the torture, keep items related to the crime, etc.)[106].

Another controversial approach is the use of the absence of a report to law enforcement agencies about a crime committed against a person as a proper confirmation of the absence of coercion and non-use of physical force. According to a survey conducted by the Kharkiv Institute for Social Research, 71% of war-affected persons surveyed do not know or are not sure that they know how to obtain the necessary protection from the state. The majority of citizens (60%) do not consider the existing state protection to be effective, and another 6% are convinced that there is no such protection at all. In addition, trust in the justice system among war victims is also low. While international (48%) and non-governmental organisations (42%) and the SBU (43%) are considered the most effective in investigating war crimes, the courts (28%), the prosecutor's office (28%) and the police (28%) are considered the least effective. In general, victims' distrust of institutions is based on their corruption and inadequate performance of their duties, as well as the fact that the outcome of an appeal often depends on the management of a particular institution or even on a particular specialist.[107]

Most decisions on the absence of coercion and voluntariness of an act are made on the basis of the testimony of defence and prosecution witnesses. It is worth noting that when considering witness testimony, the court also fails to take into account the conditions of the occupation. In particular, the failure to report the use of violence against the accused to a wide range of people is considered evidence that no violence was used, and the testimony of family members is automatically characterised as exclusively aimed at justification. In addition, the use of violence seems to be considered as the only type of coercion that can be taken into account, and threats of violence against a person or their relatives in the context of the occupation and the presence of the Russian military on the territory are generally not considered. Also, the conclusions that the use of violence against family members of the accused is not related to the coercion of the accused to cooperate with the occupation authorities raise questions.[108]

As in the previous research period, the courts continue to justify the voluntariness of the act by the fact that the person "did not intend to leave the occupied territory, despite the opportunity to do so".[109]

105 Verdict in case No. 953/2936/23 of 09.07.2024: https://reyestr.court.gov.ua/Review/120248522

106 Verdict in case No. 650/2222/23 of 24.06.2024: https://reyestr.court.gov.ua/Review/119973391

107 Attitudes of the population to international war crimes in Ukraine. Research results / Kharkiv Institute for Social Research. – Kyiv, 2024, pp.27-31: https://ulag.org.ua/uk/reports-and-materials/ставлення-населення-до-воєнних-злочи/

108 Verdict in case No. 646/4255/23 of 24.12.2024: https://reyestr.court.gov.ua/Review/124002675

109 Verdict in case No. 185/10508/23 of 24.06.2024: http://reyestr.court.gov.ua/Review/120303608

CONCLUSIONS

1. The analysis of judicial practice in the consideration of proceedings related to collaborative activity in the new period shows both the preservation of previous trends and the emergence of new ones. In particular, without changes to the legislation, the practice of investigation and court proceedings also continues to reflect a broad and formal approach to the interpretation of legislation, which, among other things, leads to a violation of the principle of legal certainty, non-uniform application of the law and questions about the proportionality of the offence and punishment. The absence of consideration in the legislation of the standards of international humanitarian law on the protection of persons performing life-support functions in the TOT continues the practice of bringing to justice firefighters, HCS workers, and especially those persons who hold certain positions in the execution of such functions. The trends of ignoring the study of the presence of direct intent in the acts of individuals, the social danger of such acts, as well as difficulties with considering the issues of coercion and voluntariness also persist. There is still a growing trend in the number of proceedings considered in absentia.

2. With the increase in the number of proceedings, the number of appeals, in particular by the defence, is also growing. However, the number of complaints filed does not affect the increase in the number of acquittals – only four acquittals have been delivered under Article 111-1 over the entire period of its application. This is also the first research period in which more verdicts were handed down in cases involving parts defining liability for felonies (Parts 5 and 7) than misdemeanours (Parts 1 and 2). There was also a significant decrease in the number of verdicts for statements on social media that were qualified under Part 1 of Article 111-1. A new factor is also a decrease in the number of plea agreements concluded, which is also likely to be related to the increase in the number of proceedings considered in absentia. At the same time, in the context of Part 4 of Article 111-1, the number of plea agreements, on the contrary, has increased significantly.

3. The trend of applying detention in proceedings on collaborative activity without bail continues. Likewise, the duration of such detention continues to be lengthy – on average, over one year. Only the verdicts under Part 3 show some variation – in several cases, a milder measure of restraint was applied: house arrest or personal recognisance.

4. In practice, taking into account the position of the Supreme Court, a formal approach to the interpretation of Article 111-1, in particular, in Parts 2, 5 and 7 on "holding positions", has become firmly established – the mere fact of "holding a position" is sufficient to qualify an act under these parts, regardless of the specific actions performed by the person. This approach leads to a number of problems that are already manifested in practice: "holding a position in illegal authorities" is interpreted extremely broadly, including not only administrations, but also institutions and enterprises, as well as bodies of self-organisation of the population – "street representatives"; the difference in the title of the position and the actual functions performed is not taken into account, which in some cases leads to a disproportionate punishment; at the same time, the analysis of the "functions performed" is actually used to prove the "holding of a position" in the absence

of other appropriate evidence – an employment contract, job description, remuneration. The formal approach to interpreting "holding a position in a law enforcement agency" has also persisted – during the reporting period, this qualification was applied to the holding of a position at a "forestry and hunting enterprise". In addition to creating new inconsistencies in practice, as in two cases involving almost similar positions, their qualifications were different (in one case – under Part 5, in the other – under Part 7 of Article 111-1), this approach also raises questions about the proportionality of the offence and the punishment imposed. The absence of a proper study of the functions performed by the persons in their positions also ignores the main elements of the offence, namely the assessment of the social danger of the act.

5. The trend in proceedings on collaborative activity is also formal consideration and the absence of real investigation of the existence of direct intent, which is a part of the crime. The predominant approach in practice is based on the presumption of direct intent in the actions of a person, their awareness of the social danger of the act and the desire for the consequences to occur, without individualising these elements in separate proceedings.

6. One of the most difficult issues is the voluntariness and coercion in acts that qualify as collaborative activity. The practice tends to maintain the trend of narrow interpretation of coercion solely through the application of Articles 39 and 40 of the CCU, without taking into account the conditions of occupation, the atmosphere of coercion and fear that exist in the TOT of Ukraine. In the absence of access to the occupied territory at the time of the acts, the assessment of voluntariness and coercion is based mainly on witness testimony, including hearsay. Questionable, however, is the argumentation of the absence of coercion due to the fact that the person did not seek medical care during the occupation, reporting the violence to a wide range of people, attempts to record evidence of the offence committed against the person, ignoring the connection between the use of violence against family members and the coercion of the person to commit the offence and failure to attempt to leave the TOT. In this context, the quality of legal assistance provided to suspects (at the pre-trial investigation stage) and defendants (during the trial), in particular, the activity/passivity of the defence counsel: recording violations during the pre-trial investigation and trial, using opportunities to appeal against unlawful acts, etc needs to be additionally studied.

7. Despite the obvious need to amend Article 111-1 of the CCU, these amendments do not occur. Instead, the practice of the court, in particular, the Supreme Court, leads to the "cementing" of the practice established in the first and second instances regarding the presumption of voluntariness and direct intent, and a formal approach in the practice of considering cases of collaborative activity. This causes a number of problems and will have long-term consequences. At the same time, the responsibility for cooperation with the occupation authorities cannot be considered in isolation from the duration of the occupation, the conditions in which Ukrainian citizens live in the TOT of Ukraine, the crimes committed by representatives of Russia and those whose actions are truly aimed at establishing Russian rule against Ukrainian citizens, and an understanding of the processes of reintegration. The current judicial practice of considering cases of collaborative activity contributes to the formation and reinforcement of the stereotype that staying and surviving in the TOT of Ukraine constitutes a violation of the law, which entails criminal liability. However, justice

must be reflected in the detailed and individualised examination of each case, including an assessment of the direct intent of the individuals and the social danger of their acts, with due consideration of the realities in the TOT of Ukraine – rather than being measured by the number of accused and convicted persons.

RECOMMENDATIONS

1. To develop and amend the legislation 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 provisions of international humanitarian law and the necessity of ensuring the functioning of life-sustaining services in the temporarily occupied territories; (2) take into account the general atmosphere of fear and coercion in the TOT; (3) clarify the existing forms of collaboration provided for in Article 111-1 of the CCU to avoid wording that allows for an overly broad interpretation of the provision, which in turn violates the principle of legal certainty; (4) consider removing the least serious category of offences from the criminal justice system and ensure lustration measures and consider developing amnesty legislation.

2. To ensure the effective investigation of proceedings for crimes under Article 111-1 of the CCU, a unified approach (strategy) should be developed within the framework of the current legislation for the investigative and prosecution authorities dealing with this category of cases. Such a strategy should provide for a framework for cooperation between different agencies to prevent duplication of actions, clearly define the distinction between qualifications between different articles, parts of Article 111-1, in particular, regarding "holding positions" and interpretation of broad concepts to reduce the discretion of a particular executor (investigator, prosecutor) and the inconsistency of application of the legislation in its current version. It should also include criteria for proving direct intent, voluntary cooperation with the enemy, 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. It is also necessary to take into account the obligation to prove the social danger of an act to qualify it as an offence.

3. In the course of judicial consideration of proceedings under Article 111-1 of the CCU, take into account and refer to the norms of international humanitarian law regarding the occupation regime, the right of certain categories of persons to perform their assigned tasks, as well as the general realities, atmosphere of intimidation and coercion in the occupied territory of Ukraine. Continue advanced training for the judiciary of all instances on international humanitarian law, including a focus on the legal regime of occupation.