COLLECTION "COLLECTION OF SCIENTIFIC JOURNAL OF THE SCIENTIFIC RESEARCH INSTITUTE OF PRE-JUDICIAL PROBLEMS INVESTIGATION 2023-2
ISSN 2786-7900
https://doi.org/10.61417/2786-7900.2023.2.4

STRENGTHENING CRIMINAL LIABILITY FOR WAR CRIMES: CONDITIONS, CAUSES, CONSEQUENCES

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UDC 343.14

The article is devoted to the study of the issue of the definition of a war crime in the aspect of making changes to the law on criminal responsibility, which relate to the strengthening of criminal responsibility for the specified category of criminal offenses. The author investigates the question of the conditionality of the legislator's review of punishments and the conditions of their application for this category of criminal offenses, studies the theoretical and practical aspects of the consequences of the amendments adopted by the legislator to the Criminal Code of Ukraine.

Key words: war crimes, criminal punishment, special subject, causes, conditions, consequences

ISSN 2786-7900

Introduction. On January 24, 2023, the President of Ukraine signed the Draft Law on Amendments to the Criminal Code of Ukraine, the Code of Ukraine on Administrative Offenses, and other legislative acts of Ukraine regarding the specifics of military service under martial law or combat conditions [1].

The purpose of the draft law, as stated in the explanatory note to it, is "to improve the state of military discipline and the specifics of military service in conditions of martial law or in a combat situation, as well as to empower the Military Law and Order Service in the Armed Forces of Ukraine to combat the illegal circulation of narcotics, alcoholism in military units, combating the spread of drug addiction in military teams, maintaining the proper level of military discipline and law and order, increasing the combat readiness of military units and the ability to perform specified tasks for the protection of the Motherland."

In order to achieve this goal, the draft law proposes to add to the Criminal Code of Ukraine (hereinafter - the Criminal Code), the Code of Ukraine on Administrative Offenses (hereinafter - the Criminal Code of Ukraine), the Labor Code of Ukraine (hereinafter - the Labor Code of Ukraine) and the Law of Ukraine "On the Military Service of Law and Order in the Armed Forces of Ukraine" a number of changes, which: 1) establish stricter liability for voluntarily leaving a military unit or place of service, as well as failure to report for duty on time without valid reasons, committed by a serviceman under martial law or in a combat situation (amendments to Article 407 CC, 172-11 of the Code of Criminal Procedure); 2) the term of imprisonment for failure to comply with an order is increased (Article 403 of the Criminal Code); 3) the amount of the fine as an administrative penalty is increased in Art. Art. 172-10 – 172-12, 172-14-172-20 KUpAP, etc. [2]. The specified draft law also proposes to make changes to the Code of Labor Laws, the Code of Ukraine on Administrative Offenses, the Law of Ukraine "On the Military Service of Law and Order in the Armed Forces of Ukraine", which may complicate the process of implementation (execution) of the specified provisions.

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Analysis of the results of recent studies. Such domestic and foreign scientists as: P.S. Berzin, M.M. Hnatovskyi, O.O. Dudorov, O.V. Zadorozhnyi, M.V. Poddubna, M. Rubashchenko, V.Ya. Tatsii, V.I. Tyutyugin, Yu.S. Shemshuchenko and many others.

The mentioned scientists studied war crimes and provided a criminological characterization of war criminals, investigated the conditions and reasons for the commission of military criminal offenses, the issue of application and non-application of the statute of limitations of the criminal law, investigated the objective and subjective characteristics of individual war crimes, etc. The issue of increasing criminal liability for the commission of the considered category of criminal offenses was not investigated by the mentioned scientists.

The purpose of this article is to investigate the existence of grounds for strengthening criminal liability for military criminal offenses and predict the impact of the consequences of such a decision of the legislator on the state of implementation of the law on criminal liability.

Presenting main material. At the beginning of the study, I would like to note that the article will focus specifically on the group of criminal offenses contained in Chapter 19 of the Criminal Code of Ukraine "Criminal offenses against the established order of military service (military criminal offenses)". In accordance with the provisions of Art. 401 of the Criminal Code of Ukraine "Criminal offenses provided for in this section against the procedure for military service established by law, committed by military personnel, as well as conscripts and reservists during military service" [3].

In the literature, you can find such a definition - "War crime (eng. war crime) is a deliberate gross violation of the laws and customs of war.

A collective concept in international law that unites a group of serious violations of the rules of hostilities ("law of war") and the norms and principles of international humanitarian law, committed deliberately or due to gross negligence.

A war crime is one of the crimes under international law (crimes under general international law), which also include the crime of genocide, crimes against humanity, and the

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crime of aggression" [4]. At the same time, the mentioned definitions refer more to the crimes referred to in Chapter 20 of the Criminal Code of Ukraine "Criminal Offenses Against Peace, Human Security and International Legal Order", and not to war crimes within the meaning of Art. 401 of the Criminal Code.

As for the issue raised by us, first of all, military service in the Armed Forces of Ukraine is regulated by the Law of Ukraine "On Military Duty and Military Service" and consists in the professional activity of citizens of Ukraine suitable for it due to their health and age. associated with the protection of the Motherland, -secondly, the subjects of war crimes can be soldiers, sailors, sergeants, foremen, ensigns, midshipmen, officers, cadets and trainees of military educational institutions and conscripts during training (or inspection) or special meetings (articles 5, 29 of the Law of Ukraine "On Military Duty and Military Service" of March 25, 1992, as amended by the Law of April 4, 2006 // VVRU. - 2006. - No. 38. - Article 34).

Thirdly, conscripts are not subjects of war crimes; rank and file police officers; conscripts; senior staff of institutions for the execution of criminal punishments; non-military conscripts - persons not included in the military register or removed from it; a special staff of the state security service, persons working under an employment contract (contract) - workers and employees of the Armed Forces; employees of departmental paramilitary security; persons serving in international UN peacekeeping forces who are not part of the Armed Forces of Ukraine; students of military lyceums, schools, persons undergoing alternative (non-military) service [5].

Therefore, in accordance with the amendments made to the law on criminal liability, courts are prohibited from reducing punishments or giving suspended terms to military personnel convicted of certain types of crimes:

- disobedience (Article 402)
- failure to comply with an order (Article 403)

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- threats or violence against the boss (Article 405)
- voluntary abandonment of a military unit (Article 407)
- desertion (Article 408)
- voluntary abandonment of the battlefield (Article 429)

According to this law, military personnel are placed in a separate group of citizens, who are not subject to a whole series of criminal law norms that can mitigate criminal liability.

From the point of view of the theory of domestic criminal law, the law defines certain groups of citizens (persons) for whom stricter measures of a criminal-legal nature are provided for in the event of their committing criminal offenses (for example, for persons in positions of responsibility, civil servants, law enforcement officers, etc.) or, on the contrary, more lenient conditions of bringing to criminal responsibility or serving a sentence (pregnant women, elderly persons, minors, etc.). War crimes are separated into a separate section, which means that in addition to the special subject for which this section is intended, the legislator, when establishing criminal responsibility, also took into account: the subject of the commission of the criminal offense, and the specifics and types of criminal offenses, which are committed by military personnel and the punishments that may be imposed on them, and the circumstances of the commission of the criminal offense, and the place, etc.

For example, the law provides for the commission of criminal offenses in the conditions of a special period, martial law, in a combat situation (Articles 401-405 of the Criminal Code of Ukraine). Martial law is a special legal regime introduced in Ukraine or in some of its localities in the event of armed aggression or a threat of attack, a threat to the state independence of Ukraine, its territorial integrity, and provides for the granting of the necessary powers to the relevant state authorities, military command and local self-government bodies to avert a threat and ensure national security, as well as a temporary threat-induced restriction of the constitutional rights and freedoms of a person and a citizen and the rights and legal interests of legal entities with an indication of the period of validity of these restrictions (Article 1 of

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the Law of Ukraine "On the Defense of Ukraine" dated December 6, 1991 .). That is, this is the period when Ukraine was actually at war with a foreign state. The beginning of martial law is the day and time of declaring a state of war or an attack (aggression) on Ukraine. The end of martial law is considered the day and time of the announcement of the cessation of hostilities. If military actions actually continue after the announcement of their termination, then the actual end of such actions should be considered the end of martial law.

Combat situation - the period of stay of a military unit, unit, individual servicemen in direct contact with the enemy, preparation or conduct of battle (combat operation). A combat situation can arise both in wartime and in peacetime, for example, when repelling an attack on the state border of Ukraine.

The battlefield, as the place where a criminal offense was committed, is a part of the territory of the land, air or water space on which an armed conflict with the enemy takes place, took place or should take place.

The area of military operations includes the territory occupied by the troops during hostilities within the limits from the front edge of the front to the location of the rear units of the front.

Then a legitimate question arises: what reasons befell the legislator before making the specified decision? Indeed, the introduction of martial law in Ukraine is decisive. At the same time, according to the dispositions of the articles placed in the section under consideration, this condition, as we see, is taken into account as a circumstance that burdens responsibility (a qualifying feature). In addition, numerous regulatory acts, in connection with the fact that the norms of the specified section have a blanket character, defined all terms ty, which are used to describe the objective side of the criminal offenses under consideration, take into account all points related to the conditions and grounds for bringing persons to justice for committing the criminal offenses under consideration.

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Despite the information-rich space about the military events taking place in Ukraine today, about the difficult conditions for the survival of the population and directly those who defend our state from invaders, human rights cannot be forgotten and neglected, especially given the fact that most of them are otherwise limited by declared martial law. But it is obvious that within a year from the moment of its announcement in the country, changes of this kind must be justified, substantiated, urgent, necessary for society and the state. In our opinion, for the successful entry of Ukraine into the European commonwealth (community), the proposed legislative changes should bring undeniable benefits to society and inspire confidence in the future. That is, the norms under consideration must contain the expected mechanism of their implementation. This is due to the fact that legal subjects (law enforcement agencies and ordinary citizens) must anticipate their lawful behavior and count on the stability of legal regulation and perceive such changes in the current legislation as expected and extremely necessary. At the same time, in judicial practice, in court decisions, it is noted that such a situation (position) "does not prohibit making changes to legislative acts, but at the same time, the state must maintain a reasonable balance between the confidence of individuals in the existing legal order and the interests of public policy, to ensure which changes are made . Thus, according to the practice of the ECtHR, a person can count on "legitimate expectations" if they have a substantial basis in national law (paragraph 35 of the decision in the case "N.K.M. v. Hungary of November 4, 2013") [6]. Also, in the decision of the ECtHR in the case "Soldatenko v. Ukraine" (Soldatenko v. Ukraine) dated October 23, 2008, which is often cited by national courts and refers to the fact that: "The court must find out whether the national law itself complies with the Convention and, in particular, whether the general principles formulated in it or derived from it correspond to it. With regard to such principles, the Court emphasizes that when it comes to punishment, and in particular its type as deprivation of liberty, an extremely important condition is to ensure the general principle of legal certainty.

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Conclusions. So, in our opinion, if we proceed from the position of the principles of legality and the rule of law, which are defined not only theoretically, but also fixed at the legislative level, namely directly in the Basic Law and in the norms of the CPC (Articles 8, 9) [7] , the Criminal Code of Ukraine (Articles 1, 2) [3], etc., then neglecting the fundamental principles even during the period of martial law declared in the country is dangerous and may have unforeseen consequences. Addressing the legislator, I would like to point out that not always the strengthening of criminal liability or the application of a more severe punishment to persons will have the desired effect or achieve the set goal. In our opinion, the indication in the explanatory note to the draft in the form of: "taking into account the ongoing phase of the war and the declared state of war in Ukraine" as the reason for increasing criminal responsibility and punishment is an insufficiently substantiated position, even in view of all the events that are taking place today in country. In order to achieve a positive result in this direction, the legislator needs to approach the solution of individual issues more carefully, especially considering the specifics of the reaction of the vulnerable stratum of our society, on the provision of whose activities today depends: will Ukraine exist as a state tomorrow? At the same time, the understanding and attitude to solving this issue should be as balanced, understandable and acceptable as possible for everyone who considers or wants to consider himself a member of such a society.

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