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Criminal liability for establishing or spreading criminal influence in the context of armed aggression against Ukraine

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Abstract

The aim of this study was to analyze the criminal legal system to establish criminal influence during the armed aggression against Ukraine. Since the beginning of Russia's armed aggression in Ukraine, the number of war crimes committed by the Russian military has increased. Investigating criminal influence during the war is a completely new area of work for law enforcement. General methods of scientific investigation and special methods of legal investigation were used. The author examines the types of criminal influence in the context of Russian aggression against Ukraine according to the Rome Statute and the Criminal Code of Ukraine. Common criminal offenses in 2021 and 2022 are identified. The low effectiveness of the judiciary in holding perpetrators of criminal influence criminally accountable is determined. It is concluded that the amendment of criminal legislation by shortening the terms of investigation and abbreviated procedure of prosecution of minor criminal

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offenses will ensure their prompt investigation and prosecution, which, in turn, will relieve the investigative bodies and the judiciary from the burden of dealing with serious and particularly serious criminal offenses.

Keywords: large-scale warfare; criminal liability legislation; Russian crimes against Ukraine; military law; international criminal law.

Responsabilidad penal por establecer o difundir una influencia criminal en el contexto de una agresión armada contra Ucrania

Resumen

El objetivo de este estudio fue analizar el sistema jurídico penal para establecer la influencia criminal durante la agresión armada contra Ucrania. Desde el comienzo de la agresión armada de Rusia en Ucrania, ha aumentado el número de crímenes de guerra cometidos por los militares rusos. Investigar la influencia criminal durante la guerra es un área de trabajo completamente nueva para las fuerzas del orden. Se utilizaron métodos generales de investigación científica y métodos especiales de investigación jurídica. El autor examina los tipos de influencia criminal en el contexto de la agresión rusa contra Ucrania según el Estatuto de Roma y el Código Penal de Ucrania. Se identifican los delitos penales comunes en 2021 y 2022. Se determina la escasa eficacia del poder judicial a la hora de exigir responsabilidades penales a los autores de influencia criminal. Se concluye que la modificación de la legislación penal mediante la reducción de los plazos de instrucción y el procedimiento abreviado de enjuiciamiento de los delitos penales menores, garantizará su pronta instrucción y enjuiciamiento, lo que a su vez aliviará a los órganos de instrucción y al poder judicial de la carga que supone ocuparse de los delitos penales graves y especialmente graves.

Palabras clave: guerra a gran escala; legislación sobre responsabilidad penal; crímenes de Rusia contra Ucrania; derecho militar; derecho penal internacional.

Introduction

The full-scale military invasion of the territory of Ukraine by the Russian Federation has led to the development of new draft laws in the

area of defining additional types of criminal liability. This, in turn, regulates the spread of criminal influence in the context of armed aggression against Ukraine, which is a threat and unacceptable. On February 24, 2022, in accordance with the Law of Ukraine “On the Legal Regime of Martial Law” (Law of Ukraine, 2015), Ukraine introduced martial law.

This law defines the content of the legal regime of martial law, the procedure for its introduction and cancellation, legal measures of activity of public authorities, military command, military administrations, local self-government bodies, enterprises, institutions, and organizations under martial law, guarantees of human and civil rights and freedoms and the rights and legitimate interests of legal entities (Hatseliuk, 2021).

- **Research Problem**

The criminal influence in the context of Ukraine’s armed aggression is the commission of war crimes, genocide, and crimes against humanity. As of the end of October 2022, the National Police had opened more than 39409 criminal proceedings related to crimes committed by the Russian military and collaborators on Ukrainian territory (Almost 40 thousand ..., 2022). In the eight months since the full-scale invasion of Ukraine by Russian aggression, the police have registered 212,000 crimes, of which almost 40,000 are war crimes committed by the Russian occupation and terrorist forces (Almost 40 thousand ..., 2022). In order to maintain law and order and prevent illegal actions during the Russian armed aggression, it is necessary to analyze the norms of criminal liability.

- **Research Focus**

The notion of establishing or spreading criminal influence was added to the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on Liability for Crimes Committed by a Criminal Community” (Article 255) on June 04, 2020 (Law of Ukraine, 2020). At the 52nd session of the Human Rights Council, the Independent International Commission of Inquiry on Violations in Ukraine published the results of the criminal impact of Russian aggression (The report of the independent, 2023).

It shows that during the full-scale war, Russian troops violated international human rights law and international humanitarian law in many regions of Ukraine. For the most part, these violations can be classified as war crimes (in particular, intentional killings, attacks on civilians, unlawful deprivation of liberty, torture, sexual violence, and forced relocation of adults and children). However, the commission of armed influence under the direction of a military commander or the government does not exempt the perpetrator from criminal liability if he or she knowingly carried out the order. It is the analysis of criminal law and regulations that is of scientific interest in this article.

• Research Aim and Research Questions

The purpose of the study is to carry out a systematic analysis of the criminal law system for establishing and spreading criminal influence during the armed aggression against Ukraine. The realization of this goal involves the following tasks:

- 1) to define the concept of “criminal influence”;
- 2) to classify the types of criminal influence in the context of Russian aggression against Ukraine;
- 3) to identify frequent criminal offenses in 2021-2022;
- 4) to analyze court verdicts on the criminal prosecution of persons who have committed criminal influence against Ukraine.

1. Literature review

Military law is the main part of the legal regime during martial law in Ukraine (Gorinov *et al.*, 2022). Scholars have identified theoretical and practical problems in the study of the phenomenon of military law in Ukraine from the beginning of the war in Donbas to the full-scale invasion.

Kaplina (2022) analyzed war crime in terms of criminal liability and the exchange of prisoners of war. She also revealed the issues of Ukrainian legislation during a full-scale war; proved the need to develop special legal norms during martial law.

Shevchenko (2022) analyzed Article 255¹ of the Criminal Code of Ukraine. The author reveals the definition of the concepts of “establishment” and “dissemination” in the context of criminal influence.

Hajdin (2022) noted that criminal influence and punishment in international criminal law is determined through the material (*actus reus*) and mental (*mens rea*) components. The author concluded that only if there is a reasonable evidence base indicating the voluntary participation of a person in the planning, preparation, and implementation of criminal influence with the use of armed force, such a person can be recognized as an offender and prosecuted.

In the context of Russia’s armed aggression against Ukraine, the protection of the rights, freedoms, and interests of citizens is a pressing issue. This issue was considered by N. Melnychenko (2021), who emphasized the need to update the legal framework in the field of lawsuits. An important task in criminal proceedings during a full-scale war is the prompt processing of civil claims.

Balobanova (2022) studied the dynamics of criminal law development. According to the author, during the full-scale war, 13 laws were adopted to regulate criminal liability. Balobanova (2022) briefly listed the legislative framework on criminal liability and identified the main changes.

Logvinenko (2019) analyzed the main provisions of criminal liability for war crimes in international law. The author emphasized that in Ukrainian legislation, the Criminal Code usually lists the elements of a crime and determines the type and extent of punishment in each case. The norms of international law define the criminality of certain acts, first of all, what constitutes a crime, but often do not have clear explanations of the type and extent of punishment.

Rohatynska (2022) analyzed the specifics of the distinction between the concepts of “war crime”. Baladyha (2022) analyzed the complexity of investigating war crimes committed by Russia against Ukraine. The author cited the signs of war crimes under Ukrainian and international law. He also studied the statistics of war crimes committed on the territory of Ukraine during the six months of the full-scale war. He analyzed the Ukrainian legislation on liability for war crimes.

2. Research Methodology

The scientific material for this article was selected using the ranking method. This method helped to prioritize the material (legislative acts of Ukraine, statistical data) and less important material (works of other scholars). The study used analysis and synthesis (when processing the latest publications on the research topic). The concept of “criminal influence” was defined using the logical and semantic method, and the international response to Russia’s crimes against Ukraine was analyzed. Specific sociological methods were used (in particular, analysis of official documents and statistical data collection and study).

The method of grouping was used to identify groups of establishing or spreading criminal influence. The systemic analysis led to the identification of changes in criminal liability in legal documents. The discussion method was also used to compare the author’s own research with the results of other scholars, and the graphical method was used to present the statistical data of the study.

Sample / Participants / Group

The theoretical basis of the study is the scientific work of Ukrainian and foreign scholars. The factual material that forms the basis of this study is based on legal documents and publications from official statistical websites

on the establishment and spread of criminal influence. The empirical part of the study is based on court verdicts on war crimes of Russian aggression against Ukraine.

Instrument and Procedures

The search for scientific publications on the research topic was conducted using the following keywords: full-scale war, spread of criminal influence, establishment of criminal influence, legislation on criminal liability, Russia's crimes against Ukraine, military law, court verdicts on establishing criminal liability for criminal influence in the context of war, criminal misconduct, countering Russia's crimes, protection of human rights and freedoms.

Data Analysis

The presentation of statistical observation data on the establishment and spread of criminal influence in the context of armed aggression against Ukraine is presented in a graphic material created using the built-in tools of MS Word.

Research Results

According to the Rome Statute of the International Criminal Court (Article 8bis(1)), there are four stages of the crime of aggression: 1) planning; 2) preparation; 3) initiation; 4) execution (Rome Statute of the International ..., 1998). The Criminal Code of Ukraine (Articles 255, 2551, 2553) defines "criminal influence"; the establishment or spread of criminal influence; request for the use of criminal influence, but these articles regulate criminal influence in the area of distribution of funds, property or other assets (income from them). At present, the current legislation of Ukraine does not have a clear definition of "criminal influence" in the context of armed aggression against Ukraine. Therefore, we will try to define the meaning of this concept on our own.

A criminal influence is an influence that is criminal in nature. Accordingly, the person who commits the act is criminal and is found to have a direct effect on a specific person (e.g., causing bodily harm); an object (e.g., stealing property); a person and an object (e.g., robbery or assault). This definition applies to war crimes and crimes against humanity. Or "criminal influence" - influence during which a crime is committed against the state and society.

In the context of a full-scale war, the following types of criminal influence are distinguished: a crime of aggression, a war crime, and a crime against humanity. The crime of aggression is Russia's armed attack on Ukraine and is an international crime against peace and security. Russia was the first to

take the initiative and use weapons, which is called aggression against the sovereignty, territorial integrity, and political independence of Ukraine.

War crimes are a deliberate violation of the current legislation and rules of war, which makes the perpetrators (military personnel and those who give them orders) criminally liable, which is imposed by a decision of the judicial authorities (Articles 115, 127 of the Criminal Code of Ukraine, etc.). Crimes against humanity are crimes committed deliberately and violating the safety of citizens (Art. 115, Part 1, Art. 127, 152, Part 1, Art. 438).

The war has led to the massive departure of millions of Ukrainian citizens from their permanent places of residence where military operations are taking place to other regions or abroad, they left their homes, property, and vehicles often unattended, which has led to the commission of many criminal offenses, including criminal misdemeanors: violation of the inviolability of private housing (part 1, Article 183 of the Criminal Code of Ukraine), theft (Article 185, part 1, of the Criminal Code of Ukraine), fraud (Article 190, part 1, of the Criminal Code of Ukraine), causing property damage by deception or breach of trust (Article 192 of the Criminal Code of Ukraine), misappropriation of found or stolen property that accidentally came into a person's possession (Article 193 of the Criminal Code of Ukraine), evasion of conscription for regular military service, military service by conscription of officers (Article 335 of the Criminal Code of Ukraine), evasion of military registration or special training (Article 337 of the Criminal Code of Ukraine), arbitrariness (Article 356 of the Criminal Code of Ukraine), unauthorized assignment of authority or rank of an official (Article 353, part 1, of the Criminal Code of Ukraine), etc. Table 1 shows the number of people convicted of criminal offenses:

Table 1. Comparative numbers of people convicted of criminal offenses in 2021 and 2022.

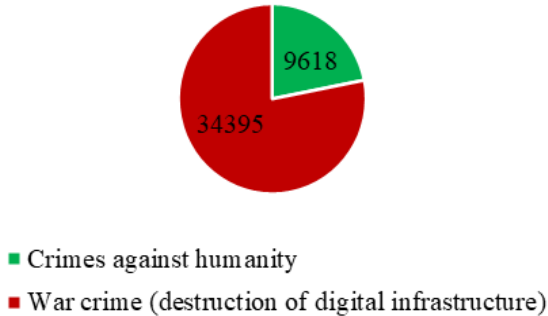
Type of crime	2021	2022
violation of the inviolability of private housing (part 1 of Article 183 of the Criminal Code of Ukraine)	0	2
theft (part 1 of Article 185 of the Criminal Code of Ukraine)	24 629	15 505
fraud (part 1 of Article 190 of the Criminal Code of Ukraine)	1 698	1 247
Causing property damage by deception or breach of trust (Article 192 of the Criminal Code of Ukraine)	2	2
Misappropriation of found or stolen property that accidentally came into a person's possession (Article 193 of the Criminal Code of Ukraine)	1	0

Evasion of conscription for regular military service, military service by conscription of officers (Article 335 of the Criminal Code of Ukraine)	152	112
Evasion of military registration or special training (Article 337 of the Criminal Code of Ukraine)	34	12
Arbitrariness (Article 356 of the Criminal Code of Ukraine)	5	9
Unauthorized appropriation of authority or the title of an official (part 1 of Article 353 of the Criminal Code of Ukraine)	0	1

Source: developed by the authors' based on (Supreme Court, 2022).

In the context of Ukraine's armed aggression, approximately 44,000 crimes against Ukraine were recorded (Ukrainian Helsinki Human Rights Union, 2022). Figure 1 shows the ratio of the most common criminal outcome during a full-scale war.

Figure 1. Numerical indicators of crimes committed during a full-scale war



Source: developed by the authors' based on data from the Ukrainian Helsinki Human Rights Union, 2022.

This data is not exhaustive, as it shows statistics from February 24, 2022, to January 24, 2023.

Currently, there is a problem with investigating war crimes and bringing perpetrators to justice. Ukrainian legislation needs to be updated to define and investigate war crimes. Currently, these issues are regulated by international documents, including the Geneva Conventions and their protocols and the Rome Statute. As of January 30, 2023, a control test of the updated Criminal Code of Ukraine was conducted (Control text of the project, 2023).

Yuriy Belousov, Head of the Department for Combating Crimes Committed in the Context of Armed Conflict of the Prosecutor General's

Office, said: “As of March 14, 71,147 war crimes committed by Russians during the year since the beginning of the full-scale invasion were registered in Ukraine... As of today, there are 29 verdicts of Ukrainian national courts on war crimes” (Prosecutor General’s Office, 2023).

Investigating war crimes is a completely new field for law enforcement, as the vast majority of personnel have never investigated such crimes, so it is important to quickly adapt to modern realities and effectively conduct investigations of such crimes. In the future, the materials obtained by law enforcement agencies can also be used in national and international courts to bring senior officials of the Russian Federation to justice for crimes.

3. Discussion

Part 1 of the note to Article 255 of the Criminal Code of Ukraine defines “criminal influence” as follows: “any actions of a person who, due to authority, other personal qualities or capabilities, promotes, encourages, coordinates or otherwise influences criminal activity, organizes or directly carries out the distribution of funds, property or other assets (income from them) aimed at ensuring such activity”. However, in the context of the armed aggression against Ukraine, this concept needs to be supplemented and clarified. The author’s definition of “criminal influence” is given in the results.

A similar position is supported by Nikitin (2020). Rohatynska (2022) also provided a similar definition of “criminal influence”, which means any actions (usually conscious) that violate the law, the rules established by society, the rules of engagement reflected in international legal acts. The issue of legal nihilism was considered by Rezvorovych (2022), who understood it as a deformed state of legal consciousness of an individual, group, or society characterized by a deliberate disregard for the requirements of the law, its value, disregard for legal principles and traditions, and excluding criminal influence.

In addition to the criminal offenses defined in this one, N. Rohatynska (2022) added looting (Article 432 of the CCU); violence against the population in the area of hostilities (Article 433 of the CCU); ill-treatment of prisoners of war (Article 434 of the CCU); illegal use and abuse of the symbols of the Red Cross, Red Crescent, Red Crystal (Article 435 of the CCU).

Table 1 shows frequent criminal offenses in 2021 and 2022, but this list is not exhaustive. Khavroniuk (2022) considered a criminal liability for collaborationism (Article 111-1 of the Criminal Code of Ukraine). O. Dudorov et al (2022) analyzed criminal liability for disseminating information in

wartime (Article 114-2 of the Criminal Code of Ukraine). In this context, an important issue is a cybersecurity and the effective functioning of cyber law (Gushchyn *et al.*, 2022).

There is no analysis of court verdicts on criminal prosecution for criminal influence. The author's position on the problematic nature of investigating criminal influence on the territory of Ukraine and bringing individuals to criminal liability for their commission is supported by Baladyha (2022). The European community supports Ukraine during a full-scale war in accordance with the principle of subsidiarity (Kumar, 2021).

Conclusions

The authors examine the specifics of criminal influence in the context of Russia's armed aggression against Ukraine. The analysis of current legislation has shown that the current definition of this concept is not fully applicable in the context of a full-scale war. The current definition in Ukrainian legislation refers to the distribution of funds and property. Therefore, the author's own definition of the concept of "criminal influence" was developed with clarifications and additions. The author also presents opinions on the definition of this concept by other scholars.

The authors analyze the types of criminal influence under international documents: war crimes and crimes against humanity. The authors provide a list of articles of the Criminal Code of Ukraine under which criminal offenses were often committed in 2021 and 2022 and the total number of convicted persons. The authors' results are also supplemented by a discussion of other articles of the Criminal Code of Ukraine conducted by other scholars. Based on the statistics, the total number of war crimes and crimes against humanity was calculated and a chart was created.

The readiness of the judiciary to investigate war crimes was studied. It was found that these institutions need additional professional training in the rapid disclosure of such crimes. Prospects for further research are to develop recommendations for amending and updating the Criminal Code of Ukraine in accordance with the experience of the European Union.

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