

Strengthening criminal liability for committing property and some other offences under martial law in Ukraine

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Abstract. The relevance of the chosen subject is dictated by the fact that countering criminal offences during the war is one of the most important problems that the legislator should respond to. Not only the level of the criminal situation in the state but also the effectiveness of the functioning of criminal law in general depends on how timely and correct decisions will be made in this area. The purpose of the study is to conduct a legal analysis of legislative initiatives to introduce new qualification circumstances, strengthen criminal liability by introducing new punishments and increasing the current sanctions for certain criminal offences. For this purpose, formal-logical, dialectical, logical-semantic, hermeneutical, comparative-legal, and other methods of scientific knowledge were used in the study. The study clarifies that legislative changes to strengthen responsibility for committing property and some other criminal offences under martial law are insufficiently justified and may lead to an excessive expansion of the current Criminal Code of Ukraine, a violation of its consistency. It is noted that this approach raises a number of doubts and requires the search for other, more effective ways of legal regulation. The expediency of applying a comprehensive approach in the formulation of criminal law norms, which provides for considering the tools of both the Special and General parts of the Criminal Code of Ukraine, is justified. The applied aspect of this scientific analysis is determined by the dynamics of lawmaking in this area and provides justification for the need to introduce appropriate legislative changes, and outlines the prospects for their application in practice. The practical importance of the study lies in the fact that strengthening criminal liability for certain criminal offences during martial law is a subject that goes far beyond purely theoretical importance

Keywords: special legal regime; punishability of the act; criminal offence; penalisation of criminal legislation; circumstances aggravating the punishment; qualification features

Introduction

The process of functioning and development of society is inextricably linked with many socio-economic, political, legal, cultural, and other factors that lead to both positive and negative changes in society. Such changes often take on signs of a crisis that requires timely regulation by state institutions. The ways of such regulation are not always evident and consist both in changing the current legislation and in introducing special legal regimes.

An example of the social crisis that has become a driving force in the search for new ways to regulate public relations is the unprecedented steps that have been taken to spread the COVID-19 pandemic around the world. Thus, for example, as some researchers note, during the COVID-19 pandemic,

there was a need to develop a large number of regulations that relate to all areas of public administration, including medical care (Baratashvyly *et al.*, 2020).

However, the events of February 2022 – full-scale military invasion of the Russian Federation on the territory of Ukraine have set new challenges for the Ukrainian legislator. Introduction of the martial law as a special legal regime on the territory of Ukraine actualised the need to find new mechanisms for regulating public relations. The current Criminal Code of Ukraine can hardly be recognised as one that was ready for a full-scale war and contained all the necessary norms that would meet the requirements of wartime. Today, the current criminal legislation of Ukraine can be

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considered in conditions of “turbulence”. Legislative initiatives, such as Draft Law of Ukraine No. 9112 (2023) on the introduction of new qualifying circumstances (in particular, such as “committing an act under martial law”), strengthening criminal liability by introducing new punishments and increasing existing sanctions for certain types of criminal offences are so quickly introduced into the current criminal legislation that this process is not always properly justified, which in turn entails a number of practical problems. This calls into question the desire of the legislator to make the criminal law more stringent and requires the search for such methods of legal regulation that would not only meet the requirements of today but also be as effective as possible.

Although the increase in crime is one of the most acute problems of our time, which affects almost all aspects of public life and, in particular, creates an immediate threat to economic and political transformation (a factor of social destabilisation of society), in the context of war, this problem takes on new aspects (Poltava *et al.*, 2020). The urgency of countering and combating it in these turbulent circumstances is due to the public demand for the inadmissibility of the facts of using officials of their official position for the purpose of committing criminal offences; an increased threshold of sensitivity of society to the facts of committing criminal offences related to corruption, theft, and illegal use of humanitarian aid, which gives rise to citizens’ despondency in defeating the enemy; an increase in the level of public sensitivity to criminal offences related to corruption as the increase in the number of offences against property is particularly unacceptable and cynical in war conditions. Among the criminal offences that have become more frequent since the beginning of Russia’s full-scale invasion of Ukraine, there are also those related to the field of land relations and encroaching on the peace and security of humanity and international law and order (Klochko & Kishinets, 2022). More than twenty thousand criminal offences are investigated on the facts of execution, murder, torture, rape, which were committed during the Russian-Ukrainian war, and on the facts of illegal deportation, eviction, or relocation of the civilian population of Ukraine to the Russian Federation (Hopkins, 2022).

In such conditions strengthening responsibility for existing criminal offences seems to be quite a logical and justified reaction on the part of the legislator to relevant socially substantial events. Intimidation of a potential criminal as a conventional method of influencing public relations is completely correlated with a heightened sense of justice in society and is generally perceived with approval. Therewith, the limit of punishability of an act in war conditions must meet the democratic standards that Ukraine sought in the pre-war period. Otherwise, there is a risk of legal degradation and a return to the times when lynching was the standard of social behaviour, which, by the way, was observed in the first days of the war in Ukraine.

Therefore, the problem of forming and implementing an adequate strategy for protecting society is becoming urgent. The central place here is occupied by the state’s choice of the right vector of criminal-legal policy, which would meet the requirements of today. From the standpoint of the legislator, it is the strengthening of criminal liability for certain socially dangerous acts, which in general is quite logical and justified in war conditions.

In the scientific community, there are supporters of the tendency to increase criminal liability (Gorokh & Kolomiets,

2022) and those who believe that in the desire to put up criminal barriers, parliamentarians have achieved an unjustified and substantial strengthening of the already repressive nature of the law on criminal liability (Orlov & Pribytkova, 2022).

Recently, many papers have appeared that are devoted to the specific features of bringing to criminal responsibility for committing criminally illegal acts during the war (Vartyletska & Sharmar 2021); legal analysis of martial law as a special regime (Kravchuk & Mykhailo, 2022), and a special procedure for resolving the issue of criminal liability during its introduction (Vozniuk, 2022); on the problem of martial law as a catalyst for criminalisation of acts (Shevchuk & Bodnaruk, 2022), issues of martial law and property regulation are widely discussed with a focus on forced seizure and compensation for damages (Prytyka *et al.*, 2022); problems of criminalisation of offences in the field of information security (Mazepa, 2022), etc.

The legislator is also involved in solving the problems covered in the papers, which in recent months has introduced a number of legislative changes regarding criminal liability for certain criminal offences to the Criminal Code of Ukraine (2001) (hereinafter referred to as the CC of Ukraine). Focusing on the latest Draft Law of Ukraine “On Amendments to the CC of Ukraine and the Code of Ukraine on Administrative offences on Strengthening Liability for Committing Property and Certain Other offences in Conditions of War or State of Emergency” (2023), it is advisable to outline general considerations regarding specifically these and similar legislative changes and additions that are designed to strengthen criminal liability for committing criminal offences during martial law.

A comprehensive disclosure of the subject of this study is achieved through the use of a system of philosophical, special scientific, and general scientific methods of cognition. Thus, in particular, the dialectical method allowed examining the dynamics of the development of the current criminal legislation on strengthening criminal liability during martial law. The study analyses legislative initiatives that later established their objectification in the norms of the CC of Ukraine. Due to hermeneutical and comparative legal methods, the difference in approaches to solving the problem of strengthening criminal liability for criminal offences committed under martial law, both in the scientific and law enforcement fields, was identified. The logical-semantic method allowed identifying the terminological imperfection of the key concepts of this study, namely, the difference in the meaning of the phrase “under martial law” and “using martial law conditions”.

Criminal law policy on liability for certain acts during martial law

Criminal law policy is considered part of the national policy in the field of combating crime and is implemented through a set of criminal law tools and methods embodied in such phenomena as criminalisation and decriminalisation, penalisation and depenalisation (Cullen *et al.*, 2021; Ramadani *et al.*, 2021). Based on the above-mentioned understanding of legal policy, S. Hadpagdee *et al.* (2021) explained in detail the scope of the criminal-legal policy and defined it as a policy line outlining: a) how much it is necessary to change or update the existing criminal provisions; b) What can be done to prevent crimes; c) how the investigation, prosecution, trial, and enforcement of a court decision should be conducted.

In addition, efforts to combat crime by the adoption of criminal laws is also an integral part of social security measures.

Thus, it can be concluded that the policy of criminal law is an attempt to determine in which area to apply criminal law in the future, considering its current application (Haaland *et al.*, 2020), and the central place in it is occupied by the processes of criminalisation (decriminalisation), penalisation (depenalisation).

Criminal law refers to those branches of public law that are endowed with a large list of restrictions on human rights and freedoms. The very nature of this branch of law presupposes the possibility of interference in a person's life and is such that it gives any measure of criminal-legal influence such strength of potential legal restrictions that it should cause unwillingness to violate the criminal law prohibition by committing a criminal offence (Hazdayka-Vasylyshyn, 2021). However, to avoid unjustified interference, society and the state must guarantee the protection of human and civil rights and compliance with the standards established by the United Nations Convention against Transnational Organised Crime (2000) (Balobanova *et al.*, 2020).

The groundless establishment of a criminal ban entails its "devaluation", which can be objectified both in criminalising certain behaviour and in punishing it. When discontent is directed against individuals, it is directed at an exaggerated need for punishment or the need to create a new but completely unnecessary *corpus delicti*. If the dissatisfaction concerns legislative trends, the appointment and execution of punishments, then usually "exceeding the criminal law" or "excessively severe punishment" are concealed (Hazdayka-Vasylyshyn *et al.*, 2021).

Given that criminal law is primarily designed to protect human rights, it is difficult to agree with the thesis of individual authors that the introduction of appropriate changes and additions to the current legislation, despite their quality, should be timely (Pasyeka *et al.*, 2022). The law was created not only to punish the perpetrators of crimes but should also be a substantial deterrent (Pasyeka *et al.*, 2021). Therefore, the criminalisation of acts should be assessed not only from the standpoint of the urgency of regulating certain social relations but above all – from the standpoint of their validity, and the process of penalisation must be devoid of haste.

For an adequate consideration of the subject, it is also necessary to focus on a general description of the changes that the current criminal legislation has undergone regarding criminal liability for certain criminal acts committed during the war and a legal assessment of the validity of such changes.

One of the latest attempts to bring the current criminal legislation to the military and political requirements of the time is the Draft Law of Ukraine "On Amendments to the Criminal Code of Ukraine..." (2023). Notably, this is not the first attempt by the legislator to strengthen criminal liability under martial law.

For example, the Law of Ukraine "On Making Changes to Some Legislative Acts of Ukraine Regarding the Establishment of Criminal Liability for Collaborative Activity" (2022), and also Law of Ukraine "On the Introduction of Amendments to the Criminal and Criminal Procedure Codes of Ukraine Regarding the Improvement of Responsibility for Collaborative Activities and the Features of the Application of Preventive Measures for Committing Crimes Against the Foundations of National and Public Security" (2022) in the first months of the war, responsibility was not only

established for the acts provided for in the provisions of Article 111-1 and Article 111-2 of the CC of Ukraine, namely for collaboration and complicity with the aggressor state but also a new type of punishment was introduced. With the adoption of this law, for the commission of these criminal offences, the court may impose a penalty in the form of deprivation of the right to hold certain positions or engage in certain activities for a period of 10 to 15 years.

The Law of Ukraine "On the Introduction of Amendments to the CC of Ukraine Regarding the Strengthening of Responsibility for Crimes Against the Foundations of the National Security of Ukraine under the Conditions of Martial Law" (2022) increased criminal liability for offences under Articles 111 and 113 of the CC of Ukraine, namely, high treason and sabotage committed under special conditions of the legal regime of martial law. In particular, these articles are supplemented in Part 2 by such a qualifying feature as their commission under martial law and provide for punishment in the form of imprisonment for a term of at least fifteen years or life imprisonment with confiscation of property.

Besides, the Law of Ukraine "On Amendments to the Criminal Code of Ukraine Regarding Increased Liability for Looting" (2022) provides for a number of criminal offences against property, namely: theft, robbery, robbery, extortion, misappropriation, embezzlement of property, or taking it by abuse of official position, which are provided for in articles 185, 186, 187, 189, 191 of the CC of Ukraine, the commission of which under martial law has the consequence of increased criminal liability.

However, the result of such an active legislative process is not without drawbacks and skepticism during its critical analysis. Attention is drawn to at least two problems that may negatively affect law enforcement and require scientific expertise.

Regarding the criminalisation of an act under martial law and a state of emergency

The above-mentioned Draft Law of Ukraine "On Amendments to the Criminal Code of Ukraine..." (2023) proposes amendments to 85 articles of the CC of Ukraine in terms of strengthening sanctions that provide for liability for the commission of certain criminal and administrative offences. It is proposed to supplement the articles with new parts, which provide for qualifying signs of acts "in conditions of martial law or a state of emergency" to do this. However, the changes proposed in the draft law generally seem insufficiently justified, groundless, and cannot be implemented for a number of reasons.

First of all, the thesis that the qualifying signs of any criminal offence perform the function of differentiating criminal liability, establishing new, increased limits of standard punishment in comparison with the provided sanctions for criminal offences with the main composition is generally recognised in the science of Ukrainian criminal law. Through the construction of a qualified composition, another type of specific criminal offence is actually identified. Taking this into account, the introduction of a qualified type of criminal offence should be accompanied by weighty arguments that unquestioningly indicate the substantial public danger of the latter and the need to establish in the event of its commission such an exceptional, especially severe measure of state coercion as criminal liability and punishment. Therefore, the introduction of a new qualifying feature obliges the legislator to observe the principle of balance and avoid a casuistic approach and oversaturation of criminal law norms.

In the explanatory note to the draft law, its authors state that in the context of the introduction of the legal regime of martial law, there is an increase in quantitative indicators of the commission of a number of criminal offences, including, in particular:

- 1) criminal offences against property (articles 186, 187, 189, 190, 191, 192, 198 of the CC of Ukraine);
- 2) criminal offences in the field of economic activity (articles 199, 200, 201-1, 201-2, 203-2, 206, 206-2, 210, 211, 212, 212-1, 213, 218-1, 220-2, 222, 222-1, 222-2, 224, 233 of the CC of Ukraine);
- 3) criminal offences against the environment (articles 239-1, 239-2, 240, 240-1, 246 of the CC of Ukraine);
- 4) criminal offences against public safety (articles 255, 256, 257, 258-5, 262, 268, 270-1 of the CC of Ukraine);
- 5) criminal offences against traffic safety and operation of transport (articles 278, 289, 290 of the CC of Ukraine);
- 6) criminal offences against public order and morality (articles 298, 303, 304 of the CC of Ukraine);
- 7) criminal offences in the field of trafficking in narcotic drugs, psychotropic substances, their analogues, or precursors and other criminal offences against public health (articles 305, 306, 307, 308, 310, 311, 312, 313, 314, 317, 318, 319, 320, 321, 321-1, 322, 327 of the CC of Ukraine);
- 8) criminal offences in the field of protecting state secrets, inviolability of state borders, ensuring conscription and mobilisation (Article 332 of the CC of Ukraine);
- 9) criminal offences against the authority of state authorities, local self-government bodies, associations of citizens, and criminal offences against journalists (articles 354, 355, 357, 358, 360 of the CC of Ukraine);
- 10) criminal offences in the field of official activity and professional activity related to the provision of public services (articles 364, 364-1, 365, 365-2, 367, 368, 368-2, 368-3, 368-4, 369, 369-2 of the CC of Ukraine);
- 11) criminal offences against justice (articles 371, 372, 373, 374, 376, 376-1, 388 of the CC of Ukraine).

It is these elements of criminal offences that the authors of the bill propose to supplement with qualifying features, namely, to strengthen criminal liability for their commission “under martial law.”

Therewith, the authors of the draft law do not provide any arguments that would really point to qualitative or quantitative indicators of changes in crime in these areas and the direct impact of the special legal regime of martial law in Ukraine on its intensification.

In particular, the main argument for the need to introduce these legislative changes is the “unacceptability”, “inadmissibility” and “cynicism” of committing the above-mentioned criminal offences during martial law. Although indeed the tolerance of public opinion to the commission of certain types of criminal offences during martial law is quite low, this in itself cannot serve as the basis for lawmaking, moreover, in the volumes proposed by the authors of this bill.

The negative dynamics of the adoption of such insufficiently justified legislative initiatives can be illustrated by the example of the recently adopted amendments to the current CC of Ukraine (2001) mentioned above, which in their content and essence are similar to those proposed by this draft law and relate to other types of criminal offences.

For example, legislative changes in the approach to strengthening criminal liability for certain criminal offences that encroach on the property of citizens during the war

have not established positive feedback either in law enforcement practice or in the scientific community.

A substantial problem that the pre-trial investigation bodies had to face in connection with the adoption of the legislative changes outlined above was a substantial increase in the workload. In particular, due to the change in the severity of certain criminal offences against the property from misdemeanours to crimes, upon their commission, investigative units need to conduct a pre-trial investigation instead of an inquiry.

O. Marmura (2022) notes the legal absurdity caused by the introduction of these legislative changes in one of the papers. In particular, the author comes to the conclusion that theft committed under martial law, in terms of severity, mostly does not differ from ordinary theft. Legal analysis of court sentences adopted under Part 4 of Article 185 of the CC of Ukraine suggests that, as a rule, the value of stolen goods is relatively small and ranges from UAH 483.33 for a VCR to UAH 15,000.00 for a bicycle. Therewith, the author notes that such abductions are mostly not directly related to the war, and therefore, as the authors of this article may agree, they point to an excessive expenditure of resources of the law enforcement and judicial systems.

Another disadvantage of the introduced changes can be called the fact that during the imposition of punishment in practice, the courts have difficulties in determining the true, real degree of severity of a criminal offence, which does not depend solely on the time or situation of its commission, as in war or in war conditions, but must be really determined by the degree of public danger, which is a much broader concept and includes other additional factors. It also depends on the extent to which the court correctly determines the gravity of the criminal offence to observe the principle of proportionality of the imposition of such a penalty, which would not be too severe and which would correspond to the real gravity of the crime committed, when assigning a sentence. In practice, the courts have to apply all possible methods, among which, as O. Marmura (2022) highlights, is the imposition of a sentence in accordance with the limits provided for in the sanction article and the subsequent release of the person from serving it.

The second aspect that should be discussed is that paragraph 11 of Article 67 of the CC of Ukraine refers to circumstances that aggravate the punishment, “commission of a crime using the conditions of martial law, a state of emergency, or other extraordinary events”. This circumstance, which aggravates the punishment, is common to all types of criminal offences and indicates an increased public danger of what was committed, and therefore gives the court grounds to impose a more severe punishment. Such a legislative structure is actually the lever that protects the current CC of Ukraine from a casuistic approach and excessive detail of its norms, and, accordingly, from their artificial, groundless accumulation and expansion.

Circumstances that aggravate punishment differ in their content and nature from the qualifying signs of a criminal offence in that they are a tool for increasing the scope of criminal liability and individualising punishment. Consequently, the use of such an aggravating circumstance as the commission of a crime using the conditions of martial law or a state of emergency seems to be quite sufficient and effective criminal-legal means of countering crime under martial law when the court decides on the imposition of punishment

for acts that a person commits using martial law or other extraordinary events.

Moreover, the wording proposed in Article 67 of the CC of Ukraine of such a circumstance that aggravates punishment as “using the conditions of a state of war or emergency, other emergency events” is more accurate and correct from the standpoint of criminal-legal technology than that proposed by the draft law and implemented over the past year in the already existing norms of the special part of the CC of Ukraine “in a state of war or emergency”.

Logically, any criminal offence committed from the beginning of a full-scale invasion of Ukraine should be considered committed “in a state of war or emergency”, because this is the state that has been introduced on the territory of state. In this case, a reasonable question arises as to why, in the opinion of the authors of the draft law, the proposed qualifying feature should be determined only in certain, selected criminal offences. Ultimately, the offences specified in the draft law are no more socially dangerous if they are committed during war than others provided for in the current CC of Ukraine. Therefore, it seems that the level of public danger of criminal offences defined in the draft law changes regardless of being “under martial law”, and due to the fact that the person who commits it uses the conditions of martial law to commit a criminal offence. Only in the conditions of the use of tragic circumstances or military operations for their own profit or the satisfaction of other illegal interests, the act committed by a person becomes more socially dangerous. The proposed wording “under martial law” is appropriate and correct only for a certain category of acts – criminal offences against the established procedure for military service.

Such considerations are not new to the theory of criminal law and are supported by other researchers. In Particular, Yu. Orlov and N. Pribytkova (2022) emphasise that the mechanism for correctly assessing the degree of public danger of committing a criminal offence under martial law existed even before the introduction of the legislative changes discussed above. Researchers believe that the application of the provisions of Article 65 of the CC of Ukraine was and remains a fairly effective mechanism that can be applied to any criminal offence, while most of them remained outside the processes of criminalisation and penalisation – in a number of self-serving criminal offences, such a qualifying feature as martial law is not defined. Therefore, the exclusion of this feature from the qualified elements of individual criminal offences against property is, in the author’s opinion, logical and justified.

Problems of the difference between the concept “under martial law” and “on the use of martial law conditions”

Martial law as a circumstance that affects the qualification of an act and performs the role of a catalyst for the introduction of new prohibiting norms into the current criminal legislation, is used in the CC of Ukraine in different ways. Among the main phrases that actually contain this concept are “during martial law”, “under martial law”, and “using martial law conditions”. Questions arise: whether these circumstances are the same and do not affect the differentiation of criminal liability, and whether such a difference in terminology creates problems in judicial practice. The answer to these questions fully corresponds to the opinion of

V. Navrotskyi (2022). The researcher analysed the novelties of criminal legislation, namely the addition of the list of qualifying signs of individual criminal offences against property (theft, robbery, robbery, extortion) with such a feature as the commission of relevant acts “under martial law”. He stressed the need to force people to solve the riddle: “in conditions” and “using conditions” are the same thing or not.

The analysis of these concepts gives grounds to assert that these are different constructions in their content, which, although similar to each other, are not identical. Subject to a different understanding, the commission of any criminal offence during the period of martial law will form either a qualifying feature of a specific act or an aggravating circumstance provided for in Article 67 of the CC of Ukraine.

If the phrase is “using the conditions of martial law”, then this construction actually means the circumstance provided for in paragraph 11 of Part 1 of Article 67 of the CC of Ukraine that aggravates the punishment. The use of martial law conditions indicates that a person who commits a criminal offence intentionally uses the peculiarity of the situation, for example, in a war zone or in the occupied territories (lack of protection or property owner, the ability to hide a criminal offence or avoid criminal prosecution), and the legal regime has been introduced for their own illegal interests.

Therefore, it is incorrect to assume that any criminal offence committed during such a special period as martial law is committed “using” its conditions. Ultimately, for example, the theft of a phone from a store in a city that is not in a war zone should be distinguished from such theft, which was committed in a store that was left without security, for example, in one of the cities of the occupied Luhansk region. In the first case, there is no use of the conditions of martial law, while in the second situation, the commission of a criminal offence was facilitated by the relevant circumstances, which the person took advantage of.

Regarding an act committed “under martial law”, then the authors of this study believe that here, as in the construction “during martial law”, this refers to a certain time period for which such a regime is introduced. That is, the commission of a criminal offence during the period of martial law gives grounds to believe that it was committed either “in the conditions” or “during” martial law. Therewith, it does not matter whether the corresponding legal regime is introduced on the territory of the entire state, or only in certain territories, that is, where and in what situation the act was committed.

Consequently, to acts that, although committed “in the conditions” or “during” the operation of the martial law regime, but without any use of the conditions of such a legal regime, in the opinion of the authors of this study, the application of the appropriate qualifying feature aggravating the punishment is groundless.

It is enough to leave such two constructions as “during” and “using the conditions” of martial law to avoid confusion. Given that the latter is already used to denote a circumstance that aggravates punishment, the phrase “during martial law” can serve as a qualifying feature of individual criminal offences. However, then the question arises about the validity of strengthening criminal liability only for the fact that the acts defined by the legislator were committed during the period of martial law, without using those conditions that would facilitate their commission or otherwise were beneficial for the person who committed such acts, which, according to the authors of this publication, is a negative trend.

For the commission of a criminal offence, the application of such sanctions is provided that correspond to the degree of danger of a criminal offence. However, based on the degree of public danger, for example, responsibility for theft committed during martial law, according to the type and measure of punishment can not be equated to liability for a qualified type of premeditated murder. The degree of public danger of these acts is qualitatively different, they encroach on substantially different objects of criminal legal protection, and therefore the sanction for their commission should also differ. In addition, the ability to maintain law and order and public security, preventing the commission of various kinds of criminal offences during a state of war (or emergency), is provided for in paragraph 11 of Article 67 of the CC of Ukraine.

Notably, the amendments proposed by the analysed draft law, and any other attempt to strengthen criminal liability for committing a criminal offence only for the reasons of its commission under (i.e. during) martial law, do not contribute to the formation of Ukraine as a democratic state governed by the rule of law, devoid of an excessive repressive component in its criminal legislation. Without denying the need to differentiate criminal liability for committing a criminal offence during martial law, in general, it is more appropriate to apply a comprehensive approach. In contrast to the construction of qualified compositions of an indefinite range of criminal offences and the “inflating” of the current CC of Ukraine, the use of the legal tools of the General part of the CC of Ukraine is necessary.

Conclusions

The study proves that because of the war, which is a powerful determinant of crime, there was a need to form a new legal framework and special legal mechanisms for countering crime in the context of the introduction of a special legal regime of martial law. The study supports the thesis that

strengthening criminal liability in war conditions can really be one of the most effective levers of preventive influence on the commission of criminal offences and ensure compliance with the requirements of the law. Therewith, the legal analysis of recent legislative changes on strengthening criminal liability for certain criminal offences committed during the war indicates excessive, unsystematic, and often groundless criminalisation, which in turn can serve as a factor that, on the contrary, paralyses the application of criminal law in practice. The difference between such concepts as “under martial law” and “using martial law conditions”, which are erroneously interpreted in the same way during the law enforcement of criminal law norms, was proved. Attention was drawn to such problems as the selectivity of criminal law norms, which are undergoing changes in terms of strengthening criminal liability and unjustified changes in the severity of individual criminal offences to crimes, which negatively affects the work of law enforcement and judicial bodies, and creates a number of controversial issues in the field of criminal-legal science. It is proposed to avoid the accumulation of criminal law norms during the differentiation of criminal liability and abandon the construction of new elements of criminal offences, instead of using already existing effective tools of criminal response in criminal law, including circumstances that aggravate punishment to resolve these problems.

The prospect of the conducted study may be the review of court sentences, which will use analytical and statistical methods to identify the main problems of law enforcement of legislative innovations related to strengthening criminal liability.

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None.

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Посилення кримінальної відповідальності за вчинення майнових та деяких інших правопорушень в умовах воєнного стану в Україні

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Анотація. Актуальність обраної тематики продиктована тим, що протидія кримінальним правопорушенням під час війни – одна з найважливіших проблем, на яку повинен реагувати законодавець. Від того, наскільки вчасними та коректними будуть ухвалені рішення в цій сфері, залежить не лише рівень криміногенної ситуації в державі, а й ефективність функціонування кримінального права загалом. Мета статті полягає в здійсненні правового аналізу законодавчих ініціатив щодо запровадження нових кваліфікаційних обставин, посилення кримінальної відповідальності шляхом запровадження нових покарань та збільшення чинних санкцій за окремі кримінальні правопорушення. Для цього під час дослідження використовувалися формально-логічний, діалектичний, логіко-семантичний, герменевтичний, порівняльно-правовий та інші методи наукового пізнання. У статті з'ясовано, що законодавчі зміни щодо посилення відповідальності за вчинення майнових та деяких інших кримінальних правопорушень в умовах воєнного стану – недостатньо обґрунтовані та такі, що можуть призвести до надмірного розширення обсягу чинного Кримінального кодексу України, а також до порушення його системності. Зауважено, що такий підхід викликає низку сумнівів та вимагає пошуків інших, більш ефективних способів правового регулювання. Обґрунтовано доцільність застосування комплексного підходу під час формулювання кримінально-правових норм, який передбачає врахування інструментів як Особливої, так і Загальної частини Кримінального кодексу України. Прикладний аспект цього наукового аналізу зумовлено динамікою законотворення у вказаному напрямі та передбачає обґрунтування необхідності запровадження відповідних законодавчих змін, а також окреслює перспективи їх застосування на практиці. Практичне значення статті полягає в тому, що посилення кримінальної відповідальності за окремі кримінальні правопорушення під час воєнного стану – це тема, яка виходить далеко за межі суто теоретичного значення

Ключові слова: особливий правовий режим; карність діяння; кримінальне правопорушення; пеналізація кримінального законодавства; обставини, що обтяжують покарання; кваліфікаційні ознаки