DEVELOPMENT OF NATIONAL LAW IN THE CONTEXT OF INTEGRATION INTO THE EUROPEAN LEGAL SPACE

2018

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SECTION VIII

IMPROVEMENT OF CRIMINAL AND LEGAL PROTECTION OF THE BASIS OF NATIONAL SECURITY OF UKRAINE IN THE CONTEXT OF EURO INTEGRATION

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Annotation

The article deals with the complex special scientific research of crimes against the bases of national security of the state in which the author's concept for improving the current normative prescriptions was substantiated and the appropriate boundaries of criminal encroachments on the basis of national security of Ukraine were determined, taking into account the current geopolitical realities. The legal regulation of responsibility and regularities of taxonomy of considered crimes in the context of the current Ukrainian legislation is substantiated.

The author concept was developed in the part of perfection of the existing criminal legislation in the sphere of protection of the foundations of national security of Ukraine; established a specific list of crimes that undermine the foundations of Ukraine's national security.

It is emphasized that it is a question of absolutely "new" criminal-law regulations, as well as updated norms of the current criminal law. Taking into account the developed conceptual provisions, as well as taking into account the existing threats to the bases of national security of Ukraine, updated versions of Art. 109, 110, 111, 114 of the Criminal Code of Ukraine. The basis of such provisions was the conceptual development of authoritative domestic researchers in this field of knowledge (O. M. Kostenko, O. F. Bantysheva, O. V. Shamara, S. V. Djakova, etc.), including foreign experience in parts of the systematization and criminalization of socially dangerous encroachments on the basis of state security.

A system of socially dangerous encroachments that directly or indirectly encroaches on the foundations of national security of Ukraine is formulated, where such bases can serve as the main or additional object of such crimes.

§ 1. Topical issues of criminal-law policy in the sphere of national security of Ukraine

In the existing conditions at that time, in which threats to the constitutional system, sovereignty, territorial integrity and inviolability (taking into account recent events in the south-east of Ukraine) became more acute in Ukraine, an urgent objective need arises in the adequate counteraction of the state to such anti-state manifestations. In order to effectively address such problems, the state has a natural burden in developing a set of measures and means aimed at the localization of such crime. The main directions of such state activity are the content of its policy in the field of counteracting crime, which traditionally covered by the phenomenon of criminal policy widely provided in legal literature [1, p. 180]. It is not difficult to see that such a phenomenon is formed by the corresponding reaction of the state only on such antisocial phenomenon as a crime. A similar circumstance is explained by the fact that it is reflected in various types of normative prescriptions, which are directly aimed at counteracting socially dangerous acts in one or another sphere, that is, crimes. However, in the existing doctrine of domestic criminal law it is difficult to identify a comprehensive, unified concept of criminal policy, given that the need for its presence is more urgent than ever.

In this regard, it is rightly noted by P. L. Fris that the actual situation with the criminal law policy can today be characterized as anarchic. Proposed and often adopted anti-scientific, groundless laws on criminal liability, which contradict the postulates of criminal-law policy, the basics of the theory of criminal law [2, p. 34]. This circumstance is also explained by the fact that, in particular, the political foundations of the relevant areas of state activity in the field of public relations protection from criminal offenses have not yet been developed. Such a concept should become a fundamental legal basis for other types of such policies, among which a criminal law policy in the field of safeguarding the foundations of Ukraine's national security plays a special role.

In our opinion, the effectiveness and effectiveness of criminal policy in this area are determined not so much by the choice of a vector of conceptual development, but by the level of quality of content and the degree of productivity of the implementation of normative prescriptions of the current criminal law, which, taking into account the existing threats and political situation in Ukraine, is in need of cardinal change. It is at this time that it is obvious that

the current system of criminal law protection of the foundations of national security needs to be reconsidered, and accordingly, in some modification, which would allow adequately to counteract the existing and potential threats in this important sphere of vital activity of the state. In support of this, the testimony of VN Kubalsky shows that the current system of criminal law protection of state sovereignty must definitely cover all existing and possible significant threats to the state sovereignty of Ukraine [3, p. 378]. Consequently, the updated system of criminal legal measures to counter criminal offenses on the basis of Ukraine's national security must be in line with a fundamentally new level capable of neutralizing such attacks both at the present stage of defense of our statehood and in the future.

However, taking into account all of the above provisions, it should be noted that the necessary principles, criteria which allow to visually identify the limits of a range of socially dangerous encroachments that completely damage or can harm the fundamentals of national security of Ukraine have not yet been developed, in principle This is due to their impersonal proliferation. In this regard, within this unit, we will attempt to develop an author's concept for improving the existing norms and determine the appropriate boundaries of criminal encroachments on the basis of national security taking into account the current geopolitical realities, and therefore, the establishment of a specific list of crimes that undermine the foundations of national security Of Ukraine. The basis of the proposed concept will be based on the basic principles developed on the basis of the achievements of science of domestic criminal law.

In order to more effectively protect the foundations of national security, it is necessary to identify a range of socially dangerous encroachments that can directly or even indirectly damage the designated object of criminal law protection. Accordingly, the definition of the socio-legal essence, the legal nature of the object under consideration allows for a greater degree to be resolved by a similar problem. As Professor O. M. Kostenko rightly notes, "the more precise the signs of the object of a criminal offense (in this case, state sovereignty) will be determined, the more effective it will be its criminal law" [4, p. 232].

Accepting a similar axiom, LD Gauchman emphasizes that the value of the object of the attack lies in the fact that he: "1) corresponds to social relations that embody the essence of the socio-economic formation and state, which are favorable and desirable to the ruling class, the most valuable and important; 2) allows us to understand the socio-political and legal nature of the crime; 3) is

a criterion for the construction of the system of the Special Part of the Criminal Code; 4) defines in many ways the qualification of a crime; 5) provides for the delineation of crimes "[5, p. 78]. Consequently, such provisions indicate that the definition of a clear and, possibly, exhaustive range of crimes encroaching on the relevant object, is strictly dependent on the possibility of determining the essential characteristics and nature of such an object. In our case, this is a social relationship in the field of safeguarding the foundations of Ukraine's national security, as evidenced by the comprehensive and systematic scientific analysis of the nature of the object under consideration, which we conducted in the previous chapters of this study.

Thus, the definition of the range of specific socially dangerous encroachments on the basis of national security of Ukraine is explained by the natural need of criminal-law science and practice. This circumstance can reveal a systemic approach in the part of localization and counteraction to the most dangerous encroachment on the basis of national security of Ukraine. For this purpose, in the current criminal law, the Ukrainian legislator concentrated a group of similar homogeneous socially dangerous encroachments in Section I of the Special Part of the Criminal Code of Ukraine. However, taking into account already existing new challenges, the problem of filling this section of the Criminal Code of Ukraine with the relevant content, that is, the criminal-law requirements that correspond to modern threats, is no less acute and rather relevant.

In order to establish the probable range of such socially dangerous acts it is necessary to specify which objects of specific socially dangerous acts are the basis of national security of Ukraine, as well as which warehouses, contained in Section I of the Criminal Code of Ukraine, require additional comprehension, amendments or additions. As rightly pointed out by O. F. Bantishev and O. V. Shamara, a comprehensive analysis of a certain type or types of criminal activity and legal measures to combat them often indicates the need for the simultaneous improvement or design of other legal norms, their redeployment to other chapters of the Special Part The Criminal Code of Ukraine [6, p. 39].

In our opinion, such normative prescriptions, which provide criminal liability for the commission of the crimes in question, should be rules that contain signs of only those acts that actually constitute a corresponding threat to the fundamentals of national security of Ukraine. They can be as completely "new" criminal-law orders, and to some extent, updated, but still existing legislative provisions of Section I of the Special Part of the Criminal Code of Ukraine. In a

certain sense, such reformatted provisions, as in the part of systematization, and in the part of the restoration of the analyzed normative prescriptions, we have studied in more detail in the previous chapters, which seems equally useful in the formation of these conceptual provisions of the investigated sphere of criminal-legal knowledge.

It should be noted that the availability of an effective mechanism for the qualitative formation of such provisions seems extremely important, as it will allow to exclude in the legislative practice cases of hasty criminalization of potentially dangerous acts for the object under consideration, which as a result may lead to solid scientific discussions in relation to the establishment, which specific social relations (interest, good or social value) are damaged as a result of their implementation, which, in turn, promotes the activation of relevant problems as among scientific-theoretical classification of such acts and in the training of their practitioners.

In order to minimize the controversial provisions regarding the scientific differentiation of such crimes, it is necessary to precisely specify the immediate objects of the encroachments under investigation in order to avoid their expanded interpretation.

In our opinion, one of the main reasons for the lack of identical scientific systematization of crimes against the basis of Ukraine's national security is the ignoring by the legislator of the epistemological rules of legal technology due to the lack of an objective understanding of concrete social relations existing in the present day, interests or goods in need of proper criminal legal protection. Such manifestations are possible in cases where certain social phenomena are interpreted in legislative acts by means that are inappropriate to the basic linguistic guidelines, which as a result complicates or makes impossible the process of knowing the legal nature of the syllables of crimes contained in Section I of the Special Part of the Criminal Code of Ukraine. This circumstance may also be an inexplicable lack of the same understanding of the essential characteristics of the species object of the crimes in question, and, accordingly, the presence of all sorts of controversial interpretations of their scientific differentiation.

It should be noted that the number of types of investigated crimes, which have been developed by domestic scientists, depending on their species (group), does not have any independent scientific, theoretical or practical significance. As a rule, such systematization allows more substantively to understand the legal nature of each of them, and only if only if the social nature of the two or

more encountered encounters coincides, there is a real possibility for their scientific classification.

In each of the classifications provided in the scientific literature, in each individual group of such crimes, it is possible to identify complexes of direct objects, which are typical of each crime of a particular group. Such identification of direct objects in a similar system enables to appropriately establish a range of direct or alternative public relations, for which there is a real or potential threat of a corresponding socially dangerous encroachment. In other words, the existence of such homogeneous complexes of social relations is in direct dependence on the corresponding homogeneous sources of danger, which, in turn, forms such objects.

Consequently, such complexes of direct objects of each type of such crimes can be considered as the most important areas of the main interests of the state, which, as a result, must be taken by the state through the application of criminal law measures, in this case – the norms of the Special Part of the criminal law.

Thus, previously investigated scientific hypotheses on the classification of such crimes allow us to develop a scientifically based concept – a system of knowledge, which, in turn, allows us to establish as a legal algorithm for the distribution of the crimes under consideration for individual types and the range of criminal encroachments potentially dangerous for a specific ' the object of criminal law protection – the basis of national security of Ukraine.

As noted earlier, the system of crimes constituting Section I of the Special Part of the Criminal Code of Ukraine has a need for its qualitative modification, and some of its normative provisions – in a certain improvement. After all, the procedure for improving criminal law is the main direction in the development of the subject of criminal-law science. The science of criminal law, as M. I. Bazhanov rightly notes, studying criminal law and ascertaining its social purpose, the nature of all its institutes, their effectiveness, studying the practical significance of each norm, gaps in legal regulation, investigating problems of improving criminal law [7, p. 18].

It seems to us that certain improvements require a regulatory requirement stipulated in Art. 111 of the Criminal Code of Ukraine ("State treason"). This provision contains the main legal features of such a crime, but does not completely determine the legal nature, its legal nature, which may not correspond to those threats, those challenges that exist in the present-day objective reality. In connection with this, in order to more concretely clarify the essence and legal

content of treason, it seems necessary to reformat its legislative definition, taking into account the provisions that formed the basis for the formulation of such a crime that we have developed.

Thus, in the course of the earlier scientific analysis of the basic characteristics and conceptual categories of this crime, it was proposed to formulate it, containing a group of mandatory characteristics necessary for a complete and complete clarification of its essence and legal nature. Namely: state betrayal is committed intentionally, together with a foreign state, a foreign organization or their representatives, a socially dangerous act (act or omission) of a Ukrainian citizen who violates the sovereignty, territorial integrity and inviolability, defense, state, economic or informational security of Ukraine.

In the study of the subjective features of such a crime, we offer in the disposition of Art. 111 of the Criminal Code of Ukraine indicate the presence of a specific objective by analogy with such compositions of the considered section of the Criminal Code of Ukraine, as Art. 109, 110, 113 of the Criminal Code of Ukraine, which would exclude the possibility of indirect intent in such acts and would decide the existing in the science of criminal law contradiction in terms of establishing the nature of the intent of such a crime. A similar circumstance will allow, among other things, to resolve a lot of controversial issues that arise when qualifying such crimes by law enforcement agencies.

Consequently, the following version of the legislative provision, stipulated in Part 1 of Art. 111 of the Criminal Code of Ukraine:

"Article 111. State treason

State treachery, that is, an act committed intentionally by a Ukrainian citizen for the purpose of causing damage to the sovereignty, territorial integrity and inviolability, defense, state, economic or informational security of Ukraine, namely: the transition to the enemy's side in conditions of martial law or during armed conflict, espionage, provision of assistance to a foreign state, a foreign organization or their representatives in carrying out subversive activities against Ukraine".

No less acute is the problem of establishing the subject and separate forms of the objective side of the "State betrayal" (Article 111 of the Criminal Code of Ukraine) and "Espionage" (Article 114 of the Criminal Code of Ukraine). Moreover, in today's conditions, the solution of such a problem becomes of the utmost importance and importance in the part of preventing and localization of increasingly frequent illegal encroachments on the basis of state security.

In accordance with the current criminal legislation, the subject of crimes provided for in Art. 111 of the Criminal Code of Ukraine ("State treason in the form of espionage") and 114 of the Criminal Code of Ukraine ("Espionage"), there may be only information that constitutes state secrets. However, it is not difficult at present to imagine such a situation when foreign intelligence or its representatives can obtain (obtain) and then use information that does not contain state secrets in the course of carrying out their hostile activities against Ukraine, but a substantive analysis and generalization of which may contribute to get the desired result. That is, it can be assumed that the use of such information can lead to no less severe consequences than the use of information containing state secrets. In this case, the so-called other information of the secret nature, which is not subject to state betrayal and espionage, may be referred to, but it is obtained, extracted, used in accordance with the tasks of a foreign state and its intelligence in order to use them to the detriment of our country's interests. So, it seems to us, at the legislative level, it is necessary to consolidate both the subject of the crimes under consideration and other information that is not a state secret.

Equally important is the question of the criminalization of some unlawful acts in the context of existing forms of the objective aspect of the crimes in question. Thus, we proposed a provision according to which, in the process of committing state betrayal in the form of espionage (Article 111 of the Criminal Code of Ukraine) and espionage (Article 114 of the Criminal Code of Ukraine), responsibility should come not only for the transmission and collection of classified information, but also for their preservation. It seems to us that the criminalization of the preservation of such information to some extent should help to neutralize the criminal activity of foreign intelligence services aimed at attracting our citizens to engage in hostile activities against Ukraine, while preserving classified information facilitates the secret of their hostile activity. This circumstance is an indisputable proof of the need for criminalization and the considered form of hostile activity.

In view of this and the previous provision, we propose the following wording of Part 1 of the article. 114 of the Criminal Code of Ukraine ("Espionage"):

"Transfer, collection or preservation of foreign intelligence information of information that does not contain state secrets to use them to the detriment of Ukraine's interests or to carry out the same actions for the purpose of transferring information to the foreign state, foreign organization or their represen-

tatives containing state secrets, if these an action was taken by a foreigner or stateless person – ".

Similar provisions are also characteristic of treason, taking into account the fact that espionage is one of the forms of its objective side, with the exception of some features of the subject of this form.

In the process of developing a modern domestic concept of criminal law protection of the basis of national security, the foreign experience of systematization and criminalization of socially dangerous encroachments in the criminal legislation of such states is equally important.

It should be noted that foreign criminal law also considers state crimes as one of the most dangerous, adversely affecting the constitutional order, sovereignty, territorial integrity and inviolability. This circumstance is explained, first of all, by the nature of the generic object of such crimes, which covers both the external and internal security of the state, as well as its most important interests. This is evidenced by the structure of criminal legislation of such states, where chapters containing state crimes are headed by special parts of such criminal codes, and the sanctions foreseen for committing such acts are the most severe in comparison with the normative requirements of other chapters. Such criminal laws can be considered appropriate parts of the criminal codes of Denmark [8, p. 73], China [9, p. 59], Norway [10, p. 108], Cuba [11, p. 92], FRG [12, p. 229], Republic of Korea [13, p. 82], Italy [14, p. 128], Turkey [15, p. 114], the Netherlands [16, p. 238], Bulgaria [17, p. 54], Belgium [18, p. 80] and other states.

In the Special Part of the Criminal Legislation of the Republic of Latvia [19, p. 118], Poland [20, p. 50], Uzbekistan [21, p. 135], Estonia [22, p. 88] and other countries, crimes committed are immediately after military crimes or crimes against peace and humanity.

In the Criminal Code of Belarus [23, p. 200], Austria [24, p. 43], Kazakhstan [25, p. 237], France [26, p. 6], Switzerland [27, p. 43], Spain [28, p. 59], the Russian Federation [29, p. 756], Georgia [30, p. 323], Moldova [31, p. 354], and a number of other countries, crimes against the life and health of the individual are prevalent. However, regardless of the political or ideological expediency that foreign lawmakers guided in systematizing their national legislation, a special place in them still occupies state crimes, as evidenced by the sanctions of such norms, which indicate their increased social danger. Moreover, it is noteworthy that often foreign lawmakers sometimes encounter different types of crimes that do not coincide in their own affiliation.

In the United States of America, the most dangerous are crimes against state security. This circumstance is due to the existence of sufficiently severe sanctions for their commission: for the commission of some such acts, life imprisonment or even execution is provided for.

Very interesting is the fact that in the Federal Criminal Code (Section 18 of the United States of America Code of Conduct, such acts are not traditionally concentrated in an independent section, but "scattered" in different sections of the criminal law, for example, Section 115 "Betrayal, call to revolt , subversion "implies responsibility for betrayal (§ 2381), concealment of betrayal (§ 2382), rebellion or rebellion (§ 2383), rebellion (§ 2384), and Section 37, Espionage and Censorship, governs the responsibility for the collection, transfer or loss of defense information (§ 793), the collection or transmission of information of a defensive nature to assist the foreign government (§ 794), photographing and sketching of constructions of a defensive meaning (§ 795), disclosure of classified information (§ 798) [32, pp. 189], etc. etc. Thus, all state crimes in the United States of America can be divided into two groups: 1) "Betrayal, call for revolt, subversion", and 2) "Separate types of spyware activities."

Current UK criminal law is covered by the 11th volume of the "Collection of English Laws." The most dangerous state crimes are generally recognized as "Crimes against the Crown and the Government" (various forms of betrayal, incitement to insurgency, attack on the king, etc.), as well as other state crimes: espionage, terrorism, disclosure of state secrets, etc.

English scholar-lawyer B. Hallbury identifies a separate group of crimes – against the government and society. To these, he considers appropriate 18 categories of crimes: against the royal power; against public calm (call for revolt and disobedience, the creation of illegal societies, the illegal wearing of military uniforms, etc.); illegal possession of firearms; disclosure of state secrets; crimes against: officials, justice, property and powers of royal power, foreign states, religion, marriage and family, honor and morals, public health and safety, trade unions and entrepreneurs, as well as vagrancy, etc. [33, p. 291].

In the 9th edition of the English course Cros and Jones, "Introduction to Criminal Law" (1980), published after the death of the authors of the editorship of Karda, an independent chapter "Political Crimes", which combines treachery, terrorism, incitement to rebellion, is singled out. and the disclosure of state secrets [34, p. 153]. According to the analysis of such provisions, it can be assumed that in the English criminal law, normative prescriptions which include

liability for state crimes consist of a group of "crimes against government and society", as well as other normative regulations dispersed in various legislative acts of a similar nature.

A special part of the Criminal Legislation of the Federal Republic of Germany is headed by the rules on criminal offenses against the interests of the state. The system of socially dangerous encroachments on the interests of the state consists of the following groups of crimes: betrayal of peace; high treason; a threat to a democratic, rule-of-law state; betrayal of the homeland and threat to external security; criminal acts against foreign states; criminal acts against constitutional bodies, as well as related to elections and voting; criminal acts directed against the country's defense; resistance to state authority.

Section 1 of the Special Part of the Criminal Code of the Federal Republic of Germany – an independent component of the general system of criminal law, constituting a group of crimes – "betrayal of peace, treason and the threat to a democratic state governed by the rule of law." Accordingly, this section of the Special Part consists of the following chapters: "Betrayal of Peace" (80-80a), "State Treason" (81-83a) and "The Threat to a Democratic Legal State." The law-protected blessing in Chapters I and II of Section I recognizes the territorial and constitutional integrity of the Federation and federal lands. These norms define the following criminal acts: the preparation of an aggressive war (80); incitement to an aggressive war (80a); state betrayal of the Federation (81); state betrayal of federal land (82); preparing for state betrayal (83) [33, p. 298].

Section II of the Special Part of the Criminal Code of the Federal Republic of Germany is entitled: "Betrayal of the Motherland and the threat to external security". The crimes of this section can be divided into such subtypes: crimes related to treacherous extradition and disclosure of state secrets, as well as similar actions (94-97b, 100a) with various forms of espionage associated with treason to the Motherland (98– 100). Protected by these norms the legal good is the external security and international relations of the Federal Republic of Germany with foreign states [33, p. 299].

Given the fact that crimes that directly encroach upon the state security of the Federal Republic of Germany, enshrined in the first two sections of the group of attacks against the interests of the state, as well as taking into account their species object, the crimes under consideration can be divided into "Crimes against Territorial and the constitutional integrity of the Federation

and the federal states "(Section I) and" Crimes against Foreign Security and International Relations of the Federal Republic of Germany with Foreign States "(Section II).

Italy's Criminal Law in Section I of the Special Part contains a system of crimes against the state, which are divided into separate types: crimes against foreign security, internal security of the state, political rights of a citizen, foreign states, their heads and representatives.

Crimes against external and internal security that directly encroach on state security can be divided into two groups. The first group (internal security) can be considered proper "Encroachment on the integrity, independence and unity of the state" (Article 241), "Espionage" (Article 257), "Collection of information relating to the security of the state and are secret" (Art. 256), "Extraction for the purpose of political or military espionage of information that according to the decision of the competent authority can not be disseminated" (Article 287 of the Criminal Code), "Secret penetration into places of military significance" (Article 260 of the Criminal Code) [14, p. 148].

The second group consists of crimes against foreign security in Italy: "Disclosure of state secrets" (Article 261), "Disclosure of information that can not be disseminated" (Article 262) [14, p. 149].

In the criminal law of France, responsibility for state crimes is provided for in Book IV "Crimes and Offenses Against the Nation, State and Public Rest". The chapter headed this book, which provides for responsibility for betrayal and espionage. The main difference between such crimes, as in the current criminal law of Ukraine, is in the subject. So, if a similar crime was committed by a citizen or serviceman of France, then it is a betrayal if any other person is espionage (Article 410^1).

The same chapter also provides for liability for such crimes as: establishing relations with a foreign state in order to cause military actions or acts of aggression against France (Article 411^4 of the Criminal Code); providing a foreign state with funds for hostilities or acts of aggression against France (Article 411^4 of the Criminal Code); sabotage (Article 411^9 of the Criminal Code); providing false information to the civilian or military authorities of France in order to assist the foreign state, which can harm the basic interests of the nation (Article 411^{10} of the Criminal Code), and some others [26, p. 339-342].

In the chapter of the second book "Other attacks on the republican institutes of state power or the integrity of the national territory", there are the fol-

lowing types of state crimes, such as encroachment, conspiracy, participation in the uprising, etc.

State offenses also include attacks on the security of the French Armed Forces: incitement of French servicemen to transition to service in a foreign state, to disobedience, demoralization of the army, obstruction of the movement of personnel or military equipment, etc. It follows that certain types of state crimes in accordance with the French Criminal Code, in a sense, are related to crimes in the field of military service [33, p. 297].

Consequently, according to such chapters, all state crimes can be divided into "Particularly dangerous encroachments on state security" and "Other attacks on state security".

Analysis of foreign criminal law in the field of state security shows that in one way or another, criminal acts, as a rule, are various forms of treacherous actions and all kinds of manifestations of espionage. However, along with this, a special place is taken by anti-state crimes connected with the rebellion (rebellion): the call for rebellion, rebellion, rebellion, rebellion (the United States of America); incitement to rebellion, call for revolt (Great Britain); conspiracy, participation in the uprising (France), etc.

The above circumstance shows that in foreign criminal law the priority attention is paid to the protection of the foundations of the constitutional system and state power as an indispensable condition for ensuring political security. After all, crimes of this kind are, in a sense, encroachments on the legal and democratic foundations of the functioning of state power and the constitutional system. As a result of such attacks, the state may or may cease to exist, or it will contribute to the approval of the anti-democratic form of government, which basically interprets the increased public danger of such crimes.

Thus, in connection with the increasing trend towards globalization, – notes BD Leonov, – armed conflict has become an influential factor in international relations, which expanded the boundaries of the object of regulation of international law, the content of which is covered by relations between the state and a certain social group of the population , which, with the help of weapons, exerts influence in order to forcibly change or overthrow the constitutional order, seize state power or other political goals [35, p. 69].

A similar problem of counteraction to the existing state power, the state system existed even in earlier periods of development of our statehood (at the end of the XIX – the beginning of XX century), when in the struggle of demo-

cratic forces with the tsarist autocracy began to develop different tendencies: intellectuals and other progressive circles have already opposed existing power. So, on the one hand, "settled" utopian tendencies about the gradual modernization of the existing society, the enlightened monarch, following the path of European democratic states, freeing people from serfdom. On the other hand, there is hope for the enlightenment of the masses, for transforming them into an independent force that resolutely overthrows autocracy. And on the third hand, radical, extremist views that exclude peaceful and gradual solving of painful problems and their calculations under construction, on the activity of a narrow circle of justice fighters, able to seize state power and rebuild the society on its own plan [36, p. 207]. What has happened to such phenomena (in the historical context) has long been known ... In today's conditions, our state also has to face a similar dilemma: either to develop such "progressive" democratic processes or to use rigid means of law to withstand them.

At the same time, the problem of the validity and necessity of criminal law protection of a democratic form of government in the theory and philosophy of criminal law is a rather interesting discussion inasmuch as the presence of such criminal-legal prohibitions in the domestic legislation, on the one hand, is natural and sufficiently substantiated, and from the other – the material component of the acts considered is characterized by a greater degree of political than legal expediency.

Similar provisions are also characteristic of individual measures taken to localize and stop sabotage and terrorist activities. It is believed that one of the most rational methods of combating any manifestations of international terrorism and sabotage is the application of the conventional mechanism, that is, the results of individual conventions that have as their object the fight against each individual form of terrorist or sabotage activity. Thus, the results of the study of foreign experience in counteracting these socially dangerous phenomena have shown that in the main states there are two ways.

The first is characterized by the fact that most of them have separate rules of criminal legislation, which provide for responsibility for terrorism and sabotage.

The second indicates that in other states, the terrorist nature of the act is regarded as a qualifying attribute, which is the basis for increasing the punishment for crimes in this direction [37, p. 278-280].

§ 2. Ways to improve the criminal law protection of the foundations of national security

Of course, the problem of creating an active legal model in the field of ensuring the protection of democratic foundations of a lawful state is one of the most priority and at the same time unresolved problems of modern national science of criminal law. The question of the form in which such protection should be carried out – say Swiss scholars G. Statenwert and F. Bommer in the context of the legal description of "crimes against the existence and constitution of the state" – whether it criminal or legal means, leads to profound considerations [38, s. 262].

For example, in such a leading state of the European Union as Germany, along with criminal law, constitutional and legal liability is applied, which indicates the existence of a peculiar state doctrine in the field of the protection of democratic ideology. This circumstance is explained by the provisions of Art. 18 of the Basic Law of the Federal Republic of Germany dated 23 May 1949, according to which everyone who abuses the freedom of expression, in particular freedom of the press, freedom of teaching, freedom of assembly, freedom of association, the right to confidentiality of correspondence, postal, telegraph and telephone communications, the right to property or the right to shelter to fight against a free democratic system ("freiheitliche demokratische Grundordnung"), deprives such constitutional rights [39].

It should be noted that virtually no constitution of any democratic state is similar in its content of the provisions are not contained. This kind of success of German scholars in the protection of democratic institutions from all kinds of unlawful encroachments is largely due to the fact that Germany itself has suffered the consequences of the tragic events of the first half of the XX century. And in order to exclude the possibility of repetition, such German lawyers and political scientists first developed and implemented an appropriate mechanism of state legal policy in the field of the protection of democratic institutions. But in the process of forming such a doctrine, they had to solve a wide range of problems, including the question of determining the acceptable legal limits of the protection of democracy in an open society (the antipode of the non-democratic "closed societies" by him – offene Gesellschaft – the term introduced by him in 1945 by philosopher Karl R. Popper) and the question of how much the stated constitutional provision in essence does not contradict itself (that is, is it consistent with the concept of a free democratic system in general) [40, s. 493].

In this section, it should be noted that in the Federal Republic of Germany, at the federal and regional levels, there are special government structures for the protection of the constitution (German-Verfassungsschutzbehöden), which, according to Schiller Kylitz, make a significant contribution to the protection of democracy [41, s. 214].

Thus, the presence of such practice gives to some extent a certain idea of the essence of the constitutional and legal protection of a democratic law-governed state, which makes it possible to compare the constitutional-legal and criminal-legal mechanisms of such protection. This, in turn, helps to identify the main differences between them, which are determined not only by their belonging to different types of legal responsibility, but also by the differences in the approach itself, the choice of a strategy to neutralize potential threats to the investigated object of criminal law protection.

In particular, if one considers the criminal law protection of the state as the full content, according to G. Statenwerta and F. Bommer, there is always a danger that this or that form of its implementation will lead to violations of the rights and freedoms of citizens, to which, however, he originally built up [38, s. 262].

In this regard, it seems not entirely clear, given the principles of the basic democratic categories of liberal justice, how our state, in the context of the ongoing ongoing military threat, the political crisis and rampant separatist sentiment, can "adapt" the modern Ukrainian society to the liberal democratic values, political culture of a new type. Accordingly, what legal instruments will it be able to neutralize the activity of extremist, ultralight or ultra-right elements that seek to replenish their followers in order to carry out in the future actions of an extremist, separatist nature, the implementation of another formally "legitimate", "democratic" power change (coup d'état) and so on.

In their aspirations to localize such a radical, destructive anti-state ideology from the public consciousness, the legislator, contrary to the principles of political freedom enshrined in the Constitution, has to counteract such manifestations by strengthening the measures of criminal-legal influence in the sphere of the functioning of public organizations of anti-state (anti-constitutional) orientation, including propagandist -aggitation activity of this kind.

As a result, the fate of legislative suppression of opponents in a democratic society reaches a strange paradox: if it is reasonably able to lead to a goal, then it is usually unnecessary; but if suppression becomes apparent due to any seri-

ous threat to the democratic system, the German scientist O. Kirchheimer rightly states that then his value (suppression) is most often limited and it conceals the rudiments of new, perhaps even great, dangers for democracy [42, s. 256].

Of course, such processes can lead to the gradual abolition of democratic principles proclaimed at the constitutional level and the violation of the existing socio-political equilibrium, and hence the emergence and spread of authoritarian and repressive ideology, which denies the natural principles of democracy. On the other hand, the lack of adequate measures of legislative response to the emerging threats to the rights and legitimate interests of the individual, the constitutional system, sovereignty, territorial integrity and immunity of Ukraine, as well as the untimely (in such cases) the use of appropriate measures of criminal repression can lead to the establishment of an anti-democratic regime, which subsequently calls into question the further existence of such a statehood, and hence the imminent death of it.

Such contradictions testify to the existence of various internal disagreements and controversial provisions in terms of conceptual understanding of democracy as the most perfect form of political organization of society. Without any doubt, the democratic principles of the formation of modern society are not flawless, but at the present moment of development of our state, neither the socio-legal nor the political-philosophical conceptions of the development of society have offered a more effective mechanism of organization of society, which guarantees the protection of inalienable natural rights and freedoms of man and citizen.

In Ukraine, in the process of developing a modern democratic state, the pro-Western (pro-European) vector of development predominantly dominates. However, our state (in the person of its legislator), taking into account the existing priorities of European values, including those related to the protection of democratic institutions, regulates the most stringent form of legal responsibility for committing socially dangerous attacks on democratic principles of the development of Ukrainian statehood. In the conditions of modern objective reality, when the threat to the external and internal security of Ukraine, as never before, is relevant, in our opinion, it is precisely the criminal-law tools that appear to be the most effective tools for protecting the foundations of the political system of society as an integral part of modern Ukrainian democratic statehood from various kind of anti-democratic criminal manifestations (separatism, extremism, political terrorism, etc.). It is with this circumstance that it finds its motivated

explanation of the criminalization of the Criminal Code of Ukraine such acts as actions aimed at violent change or overthrow of the constitutional order or the seizure of state power (Article 109), an attack on the territorial integrity and inviolability of Ukraine (Article 110) , financing of actions taken for the purpose of violent change or overthrow of the constitutional system or the seizure of state power, changes in the boundaries of the territory or the state border of Ukraine (Article 1102), an attack on the life of the state or the public th figure (p. 112) propaganda for war (art. 436), the planning, preparation, unleashing and conducting an aggressive war (Art. 437), attempts on the life of a representative of a foreign state (Art. 443) and others.

Certainly, the criminalization of such socially dangerous attacks can undermine a lot of liberal-democratic values, and hence the democratic nature of such a political regime. On the other hand, similar priorities in criminal policy are inherent not only to the Ukrainian state. According to Sh. Kayilitz, and in some highly developed democratic legal states (for example, in the Federal Republic of Germany), along with constitutional law, there is also the criminal-law protection of democracy [41, s. 215]. And this, in turn, means that the substantial (adequate) use of the criminal legal instrument for the effective protection of democratic institutions as an inalienable ideological basis of the constitutional system of Ukraine is in fact incapable of leveling out the fundamental foundations of a democratic rule-of-law state and identifying it with an authoritarian form of organization of power.

It should be noted that not so much the problem of choosing the necessary conceptual direction in the field of study determines the legitimacy and effectiveness of the criminal policy, as well as the availability of the mechanism in place to effectively develop and implement some of the regulatory requirements, which constitute Section I of the Special Part of the Criminal Code of Ukraine, who need a deep rethink. Consequently, the criminalization of only these criminal manifestations in the context of existing threats does not entirely correspond to all the tasks facing the modern criminal policy of Ukraine. In this regard, it seems to us, there is an objective need to reinforce this responsibility.

Such provisions indicate, in the main, that some kind of changes and additions require some crimes in the sphere of internal (political) security. So, in our opinion, the name of the syllables of crimes provided by Art. 109 and 110 of the Criminal Code of Ukraine ("Actions aimed at the forcible change or overthrow of the constitutional order or the seizure of state power" and "Attack on the ter-

ritorial integrity and inviolability of Ukraine") do not fully reflect their current political and legal essence, that is, the version of their names, however, and content, do not quite correspond to the threats and challenges that exist in our time. Moreover, taking into account the circumstance of the extent to which the threats of extremist and separatist manifestations, accompanied by physical and mental violence, the widespread use of all kinds of modern weapons by various criminal groups, and so on.

In this regard, we offer the title of Art. 109 of the Criminal Code of Ukraine "Actions aimed at forcible change or overthrow of the constitutional order or the seizure of state power" should be renamed "Political extremism". This name is motivated by the desire to preserve the inviolability of the political and ideological foundations of the constitutional system of Ukraine, especially in the period of a deep internal political crisis and a significant activation of all kinds of political forces of extremist orientation. The use of the latest unstable political (sometimes revolutionary) situation may ultimately result in the unlawful overthrow of state power or the change in the constitutional order and the approval of an authoritarian regime in Ukraine. Consequently, the new name will most adequately reflect the socio-political essence of the act in question.

In addition, as practice shows, indicated in the disposition of Art. 109 of the Criminal Code of Ukraine often can be combined with the use of firearms or cold weapons. Similar actions may be committed with the use of specially prepared weapons by individual participants in such manifestations, and with the participation of illegal armed groups that joined in the execution of these actions. In this regard, it is proposed to make certain additions to the specified regulatory requirements, which, in particular, will entail and change the structure of the considered norm. So, in our opinion, ch. 3, 4 and 5 st. 109 of the Criminal Code of Ukraine should be endowed with the following content:

3. "Organization of an armed uprising in order to forcibly change or overthrow the constitutional order or the seizure of state power, as well as armed resistance to government military units called to restore the constitutional order, as well as active participation in an armed uprising or a conspiracy to commit the said actions".

4. "Public calls for an armed uprising in order to forcibly change or overthrow the constitutional order or seize state power or armed resistance to government military units called for the restoration of constitutional order, as well as the dissemination of materials with appeals for such actions -".

5. "Actions provided for in paragraphs 1, 2, 3, or 4 of this article, committed by a representative of the government, or repeatedly, or by an organized group, or with the use of the mass media -".

It also seems fair, in our opinion, to give the considered regulation a part of the sixth – an encouraging norm, which should facilitate the perpetrator's refusal to continue the criminal offense by guaranteeing her release from criminal prosecution subject to the necessary conditions:

6. "The person who committed a crime envisaged by this article shall be released from criminal liability if it has timely and voluntarily informed the state authorities of what has been done, thereby contributing to the prevention of further damage to the interests of Ukraine, and also if its actions do not contain evidence of another part of the crime."

As regards Part 3, which occupies a central place in the innovation under consideration, it forms the basic forms of the objective side of such an offense, namely: "Organization of an armed uprising" and "Active participation in an armed uprising".

Under the armed uprising, one should understand the implementation of various preparatory actions aimed at the active armed opposition to legitimate authorities in Ukraine. Such actions may be expressed in: planning such unlawful actions, violating in society a very negative attitude to the existing lawful power, recruiting future participants in such an uprising, providing material support to the participants of such an uprising, providing such participants with the necessary types of weapons, etc.

Active participation in an armed uprising involves the immediate commission of all kinds of violent actions combined with the use or attempt to use the weapon to achieve the desired criminal result.

Such an addition should also be made in the provision of Art. 110 of the Criminal Code of Ukraine – "Attack on the territorial integrity and integrity of Ukraine". In the new wording, such a norm, in our opinion, should be called "Separatism." This wording in modern conditions, as never before, rightly emphasizes the legal nature of this crime. This axiom, among other things, finds its logical confirmation in the scientific developments of domestic researchers V.S. Batyrrareyeva and N.Vetes Neves, who study the phenomenon of separatism, as well as the problems of determining the criminal forms of separatism as one of the most dangerous threats to state sovereignty in any -any country of the world [43, p. 65-69].

At a careful analysis of the considered norm, some discrepancies in the legal formulation of the legal features of such a crime are drawn to attention. So, in part 3 of Art. 110 of the Criminal Code of Ukraine, the legislator indicates the possibility of an offense of such a crime of consequences in the form of "death of people" or "other grave consequences". However, it is difficult to imagine that such effects are possible without the use of violent acts, which are not mentioned in the previous paragraphs of this article. Consequently, in our opinion, it is necessary in Part 2 of the article to indicate the possibility of committing it through the use of violence. From here we get the following wording of this part of this article:

2. "The same actions, if combined with the use of physical or mental violence, or committed by a representative of the government, either repeatedly or by prior conspiracy by a group of persons, or connected with the incitement of national or religious hatred -".

Moreover, it is difficult to imagine that separating unconstitutional parts of the territory of Ukraine (for example, self-proclaiming an independent territory of Ukraine by an independent state) will not lead to armed confrontation of separatists with government forces. Consequently, as in the case with the previous norm (Article 109 of the Criminal Code), such an addendum needs and is considered a norm. In this regard, it is proposed to lay out parts of the third, fourth and fifth st. 110 of the Criminal Code of Ukraine in the following wording:

3. "The organization of actions envisaged by part one of this article, combined with the use of weapons or threats of use of weapons, as well as armed resistance to government military units designed to restore the territorial integrity of Ukraine, as well as public appeals to such actions or participation in them, – »

4. "Actions provided for by the third part of this article, committed by a representative of the authorities, either repeatedly, or by an organized group, or with the use of mass media -".

5. "Actions provided for in parts one, two, three or four of this article, which resulted in the death of people or other grave consequences -".

Also, as in the preceding case, and for the same reason, it is proposed to give the article under consideration the incentive provision set forth in part 6 of this article:

6. "The person who committed a crime provided for by this article shall be released from criminal liability if it has timely and voluntarily informed the state

authorities of its actions, which contributed to preventing further damage to the interests of Ukraine, and also if its actions do not contain evidence of another aspect of the crime."

In our opinion, the provisions will strengthen the criminal reprisals against the anti-state encroachments considered in this case, and, accordingly, reorient the methodological principles of the existing criminal policy of our state in terms of the severity of the measures of criminal repression in order to localize such anti-state criminal manifestations in modern conditions.

In addition, these provisions allow to distinguish in the current criminal law of Ukraine the types of socially dangerous attacks, in which the bases of national security of Ukraine can act as the main or additional objects. Thus, taking as a basis the type of the considered object, it is possible to differentiate such crimes (as foreseen by the current Criminal Code of Ukraine) into the following groups: 1) crimes directly encroaching on the basis of the national security of Ukraine (the basis of the national security of Ukraine is the main object) and 2) crimes encroaching indirectly (indirectly) on the basis of national security of Ukraine (the bases of national security of Ukraine act as an additional object).

Thus, we have identified the types of socially dangerous encroachments in which the bases of national security of Ukraine can act as the main or additional objects: 1) crimes that directly encroach on the basis of the national security of Ukraine (the basis of the national security of Ukraine is the main object): .st 109, 110, 110^2, 111, 112, 113, 114, 114^1, 258, 258^1, 258^2, 258^3, 260, 294, 328, 329 of the Criminal Code of Ukraine; 2) crimes encroaching indirectly (indirectly) on the basis of the national security of Ukraine (the bases of national security of Ukraine act as an additional object): Art. 258^4, 258^5, 335, 336, 337, 436, 437, 438, 439, 440, 442 of the Criminal Code of Ukraine.

Taking into account the group of crimes of anti-state orientation that we have provided and the author's conception accordingly, we consider that the basic and additional objects of such socially dangerous encroachment should be considered at the basis of the scientific classification of the analyzed group of crimes.

Conclusions to Section VIII

Summing up the conceptual situation in the part of improving the criminal-law protection of the foundations of national security, it should be emphasized that the effectiveness and high level of criminal legal action are mainly determined by the possibility of establishing an exhaustive range of socially dangerous encroachments of anti-state orientation. We believe that the basis of their formation is the main and additional object of the attack, which allows to distinguish in the current criminal law the system of crimes: who directly encroach on the specified object of criminal-legal protection; which indirectly (indirectly) encroach on such an object. The given provision allows to some extent unify and differentiate the existing criminal legislation in the part of counteracting the unlawful encroachment on the basis of national security of Ukraine, and, therefore, significantly improve the effectiveness of combating them at the present stage of such protection of the object under consideration.

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