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THE PROPORTIONALITY OF CRIMINAL LIABILITY FOR SOME CRIMINAL OFFENCES UNDER MARTIAL LAW

Лілія Тимофєєва. ПРОПОРЦІЙНІСТЬ КРИМІНАЛЬНОЇ ВІДПОВІДАЛЬНОСТІ ЗА ДЕЯКІ КРИМІНАЛЬНІ ПРАВОПОРУШЕННЯ В УМОВАХ ВОЄННОГО СТАНУ. У статті досліджуються питання пропорційності кримінальної відповідальності за деякі кримінальні правопорушення в умовах воєнного стану. З урахуванням аналізу тексту закону про внесення відповідних змін, пояснювальної записки до відповідного законопроекту та практики ВС з'ясовано, що обтяжуюча обставина «з використанням умов воєнного або надзвичайного стану» за п.11 ч.1 ст. 67 КК України та кваліфікуюча обставина «в умовах воєнного або надзвичайного стану» санкцією у ч. 4 ст. 185, ч. 4 ст. 186, ч. 4 ст. 187 ч. 4 ст. 189, ч. 4 ст. 191 КК України мають однакову правову природу. На основі судової практики Верховного Суду встановлено, що кваліфікація крадіжок в умовах воєнного стану у будь-якому розмірі (зокрема у мінімальному) за ч. 4 ст. 185 КК України є не пропорційним засобом впливу

Умови воєнного стану існують по всій території України до закінчення війни. Але це не означає нівелювання основного складу та інших кваліфікуючих ознак складу. Запропоновано уточнити редакцію статті, зокрема з використанням умов воєнного або надзвичайного стану, з використанням безпорадного стану мешканців або інших умов, створених воєнними діями, що полегшують вчинення кримінальних правопорушень в ступені, що значно відрізняється від обставин звичайного життя.

Встановлено, що заходи реагування на військові кримінальні правопорушення мають бути пропорційними та співвідносними з іншими кримінальними правопорушеннями. Обмеження щодо можливості застосування звільнення від кримінальної відповідальності видаються недоцільними та такими, що суперечать Конституції. Поступово до цього списку обмежень можна буде додати всі кримінальні правопорушення виходячи з трендів протидії. Це нівелює існування інституту звільнення від кримінальної відповідальності як такого та порушують принципи кримінального права.

Ключові слова: принцип пропорційності, умови воєнного стану, використання умов воєнного стану, принцип необхідності, принципи кримінального права.

Relevance of the study. Principles are the foundation of any branch of law, including criminal law. They have many purely practical aspects that are overlooked. In addition, there is a question regarding the specifics of the implementation of the principles, in particular the principle of proportionality connected with changes related to the theft of property under martial law, as well as increased liability for military criminal offenses.

Recent publications review. A number of scientists and scholars studied the problems related to the application of provisions of criminal law in the conditions of martial law. O. Obodovsky researched the theory and practice of military criminal offenses [2]. O. Ostroglyad examined judicial practice in the Ivano-Frankivsk region regarding the imposition of punishment for theft committed during martial law [3]. N. Savinova investigates the issue of the balance of humanity, justice and non-discrimination [12]. V. Tulyakov studied the issue of regimes of criminal law regulation [15]. M. Khavronyuk investigated the feasibility of introducing amnesty laws in the transitional justice system, in particular regarding military

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personnel [19].

In addition, the issue of applying the provisions of criminal law in the conditions of martial law is studied in the works of: D. Balobanova, N. Gutorova, O. Dudorov, R. Movchan, V. Navrotskyi, Yu. Ponomarenko et al.

However, these questions need further research. Taking into account already existing studies, it is planned to investigate applied issues of the implementation of the principle of proportionality in criminal law in modern conditions.

The article's objective is the optimization of criminal legislation, the formation of a unity of approaches in the practice of law enforcement in terms of the implementation of the principle of proportionality in criminal law.

Discussion. According to the Law "On Amendments to the Criminal Code of Ukraine on Strengthening Liability for Looting" No. 2117-IX dated 03.03.2022, the qualifier "under conditions of war or state of emergency" was added to some articles of the Criminal Code. This, in particular, concerns the commission of theft (Part 4 of Article 185 of the Criminal Code of Ukraine), robbery (Part 4 of Article 186 of the Criminal Code of Ukraine), the commission of robbery (Part 4 of Article 187 of the Criminal Code of Ukraine), extortion (Part 4 of Article 189 of the Criminal Code of Ukraine), committing appropriation, embezzlement of property or possession of it by abuse of official position (Part 4 of Article 191 of the Criminal Code of Ukraine), etc.

The law refers not only to looting, but also to general criminal offenses against property, but "under conditions of war or state of emergency". Looting is provided for in Art. 432 of the Criminal Code of Ukraine. The article provides for criminal liability for theft on the battlefield of things found with the killed or wounded. If the abduction is not related to the battlefield, then the abduction is treated as a property offense. Article 432 of the Criminal Code of Ukraine was also amended to increase liability. Before the mentioned changes, the sanction of this article provided for liability in the form of deprivation of liberty for a period of 3 to 10 years. The sanction became from 5 to 10 years after the changes.

Law of Ukraine "On Amendments to the Criminal and Criminal Procedural Codes of Ukraine Regarding the Elimination of Contradictions in the Punishment of Criminal Offenses" dated July 13, 2023 No. 3233-IX [4] also amends Art. 190 of the Criminal Code of Ukraine ("fraud"). In particular, part 3 of Art. 190 of the Criminal Code of Ukraine is formulated in the following editing: "Fraud committed in conditions of war or state of emergency, which caused significant damage to the victim". Before such changes the Art. 190 of the Criminal Code of Ukraine didn't have qualified corpus delicty connected with conditions of war.

With regard to general criminal offenses against property under conditions of martial law and state of emergency (Part 4 of Article 185, Part 4 of Article 186, Part 4 of Article 187, Part 4 of Article 189, Part 4 of Article 191 of the Criminal Code of Ukraine), in particular, it seems disproportionate to qualify any theft that caused damage in minimal amounts (more than 0.2 of the tax-free minimum income of citizens (minimum social benefit for qualification), i.e. UAH 268.4 in 2023) under a specially qualified corpus delicty with the corresponding sanction.

Such ambiguity of the law caused problems in the practice of its application. In particular, by the Verdict of the Sokyrian District Court of the Chernivtsi Region of Ukraine dated May 25, 2022, the person was convicted under Part 3 of Art. 185 of the Criminal Code of Ukraine to the penalty of imprisonment for a term of 3 years, according to Part 4 of Art. 185 of the Criminal Code of Ukraine – for a term of 5 years of imprisonment. On the basis of Art. 70 of the Criminal Code of Ukraine, for a set of criminal offenses, the punishment in the form of 5 years of imprisonment was finally imposed. On the basis of Articles 75 and 76 of the Criminal Code of Ukraine, the person was released from serving the sentence of probation with a probationary period of 3 years. Thefts of other people's property were committed on February 8, March 8 and 9, 2022 in the territory of the village of Belousivky, Dnistrovsky district, Chernivtsi region.

According to paragraph 32 of the Resolution of the Supreme Court of March 28, 2023, case No. 722/594/22, proceedings No. 51-3186km22, the panel of judges of the Supreme Court of Ukraine believes that "the clearly expressed intention of the legislator does not give grounds to believe that the purpose of this law was to exclude the possibility of applying parts 1-3 of articles 185-187, 189, 191 of the Criminal Code of Ukraine in circumstances that have nothing to do with the use of the helpless state of residents or other conditions created by military actions that facilitate the commission of crimes to a degree that is significantly different from

the circumstances of ordinary life" [16].

The Board of Supreme Court judges (paragraphs 27-32) refers to the Explanatory Note to the draft law, which states that such changes are made in the context of the situation provided for in Art. 33 of the Geneva Convention on the Protection of the Civilian Population in Time of War (in particular, "robbery is prohibited"). In the justification of the need to adopt the law, it is also stated that military actions "force people to leave their homes and property". Often, such circumstances are used by attackers with the aim of virtually unimpeded possession of this property by breaking into apartments, residential buildings, offices or trade establishments. The conclusion also reflects the intention of the members of the Committee with the help of these changes "to establish a fair punishment for persons who use the helpless state of residents of certain territories during hostilities for robbery and robbery, as well as appropriate other people's property on the battlefield, using tragic circumstances for their own profit" [16].

The Grand Chamber of the Supreme Court, by its decision dated May 25, 2023, in criminal case No. 722/594/22 (proceedings No. 13-27кc23) refused, on procedural grounds, to consider the question put before it by the Criminal Court of Cassation of the Supreme Court regarding the interpretation and application of Part 4 of Art. 185 of the Criminal Code, which establishes criminal liability for committing theft "under martial law".

According to the decision of the Supreme Court of Ukraine dated January 17, 2023 (case No. 404/3367/22, proceedings No. 51-207sk23) [17] the court refused to open cassation proceedings based on the cassation appeal of the defense attorney against the verdict of the Kirovsky District Court of Kirovohrad dated July 28, 2022 and the ruling of the Kropyvnytskyi Court of Appeal of Ukraine dated October 11, 2022 regarding the convicted PERSON_5 for theft by taking away food and low-alcohol beverages for a total amount of 578 UAH from the hypermarket. According to the Supreme Court, the court of first instance correctly stated that the theft was committed under martial law, that is, during the period of martial law on the territory of Ukraine. At the same time, he emphasized that the reasons for the requalification of the actions of PERSON_5 on part 1 of Art. 185 of the Criminal Code of Ukraine does not have, since the commission of a crime under martial law, as a qualifying feature, is not the same concept of the circumstances of the commission of a crime using the conditions of martial law, and therefore the actions of PERSON_5 should be qualified under Part 4 of Art. 185 of the Criminal Code of Ukraine.

It seems that theft under martial law should be distinguished from looting. It seems disproportionate to qualify any theft, in particular, which caused damage in minimal amounts (268.4 UAH in 2023) by a specially qualified corpus delicty with the corresponding sanction in Part 4 of Article 185 of the Criminal Code. Martial law conditions exist throughout Ukraine until the end of the war. But this does not mean the leveling of the main corpus delicty and other qualifying features. The editing of the article should be clarified, in particular with the use of conditions of war or state of emergency, with the use of the helpless condition of residents or other conditions created by military actions that facilitate the commission of crimes to a degree that is significantly different from the circumstances of ordinary life [13].

In May, 2023, the author of the article prepared the Conclusion of the Department of Criminal Law on the letter of the Kherson region of the Prosecutor's Office dated 05 April 2023 No 09/2-297 issue-23. The request referred to the need to clarify the aggravating circumstances "using martial law conditions", "under martial law conditions" in the General and Special parts of the Criminal Code of Ukraine. Taking into account the analysis of the text of the law on the introduction of relevant amendments, the explanatory note to the corresponding draft law and the practice of the Supreme Court of Ukraine, it appears that the aggravating circumstance "using the conditions of martial law or a state of emergency" under point 11, part 1 of Art. 67 of the Criminal Code of Ukraine and the qualifying circumstance "under conditions of war or a state of emergency" by sanction in Part 4 of Art. 185, Part 4 of Art. 187 part 4 of Art. 189, Part 4 of Art. 191 of the Criminal Code of Ukraine have the same legal nature.

Not every commission of a criminal offense during the period of martial law in Ukraine will constitute a qualifying feature of a specific crime or an aggravating circumstance provided for in point 11, Part 1 of Art. 67 of the Criminal Code of Ukraine. Application of point 11, Part 1, Art. 67 of the Criminal Code of Ukraine will depend on the specific circumstances of a specific case. Such a circumstance is applicable in case that specific criminal offenses were committed precisely "with the use of the conditions of martial law or a state of emergency" and

the resulting consequences are in a causal relationship with the use of the relevant circumstance. Such a circumstance cannot be taken into account and blamed automatically just because martial law has been declared on the entire territory of Ukraine.

In a number of decisions of the Constitutional Court of Ukraine, attention is repeatedly drawn to the application and interpretative characteristics of the principles of criminal law, in particular the principles of individualization of responsibility, proportionality, proportionality, justice of punishment, and humanism.

According to the decision of the Constitutional Court of Ukraine in the case of the court imposing a milder punishment No. 15-пр/2004 dated November 2, 2004, the court noted: "A separate manifestation of justice is the question of the appropriateness of the punishment to the committed crime; the category of justice provides that the punishment for the crime should be commensurate with the crime... The law cannot put guilty persons who have committed crimes of minor gravity in a more unfavorable position compared to guilty persons who have committed more serious crimes" [11].

According to the decision of the Constitutional Court of Ukraine in the case of constitutionality of certain provisions of the second paragraph of Article 471 of the Customs Code of Ukraine dated July 21, 2021 No. 3-р(II)/2021, the court established: "the principle of the rule of law, in particular such a requirement of it as the principle reasonableness, are interconnected fundamental principles of the functioning of the entire legal system of Ukraine, including the regulatory establishment of administrative responsibility by the legislator. Therefore, specific sanctions for administrative offenses must be fair and correspond to the principle of appropriateness, that is, the legislator must determine administrative penalties taking into account their justification and need to achieve a legitimate goal, taking into account the requirements of the adequacy of the consequences caused by such sanctions (including for a person, to which they are applied), the damage that occurs as a result of an administrative offense" [10].

According to the decision of the Constitutional Court of Ukraine dated June 15, 2022, in the case regarding the compliance with the Constitution of Ukraine (constitutionality) of Article 485 of the Customs Code of Ukraine (regarding the individualization of legal responsibility), the Constitutional Court of Ukraine noted: "The punishment imposed by the court must correspond to the degree of public danger of the crime, the circumstances of its commission and take into account the person guilty, that is, to be fair. The establishment by the legislator of a non-differentiated punishment and the impossibility of reducing it does not allow the punishment to be applied to persons who have committed crimes of minor gravity, taking into account the degree of gravity of the crime committed, the amount of damage caused, the form of guilt and motives of the crime, the property status of the defendant and other significant circumstances, which is a violation of the principle justice of the punishment, its individualization and appropriateness... The principle of individualization of legal responsibility in the procedure of bringing a person to administrative responsibility on the basis of Article 485 of the Code must be manifested not only in bringing to responsibility the person guilty of committing an offense, but also in assigning him the type and amount of punishment must take into account the nature of the committed illegal act, the form of guilt, the characteristics of this person, the possibility of compensation for the damage caused, the presence of circumstances mitigating or aggravating responsibility" [9].

Based on the position stated in the decision of the Supreme Administrative Court of Ukraine dated November 2, 2004, the panel believes that the principle of individualization and proportionality of punishment also requires not to put persons who have committed crimes of different severity in the same position. Person who took advantage of the actual circumstances of a state of war or emergency and person who committed crimes under normal circumstances are in a significantly different situation. The non-discriminatory application of the same punishments to them not only does not pursue the goal stated by the legislator, but also does not ensure reasonable proportionality of the measures taken and the goal, even if such a goal were stated.

O. Ostroglyad analyzed the decisions of the courts of the Ivano-Frankivsk region, as remote from the zone of direct hostilities for the period July 1 – September 1, 2022. During this period, 56 verdicts were handed down (not all of them related to acts committed after March 6, 2022) accused of committing acts provided for in Art. 185 of the Criminal Code of Ukraine. According to one verdict dated July 1, 2022, "PERSON_1 should be found guilty of the criminal offense provided for in Part 4 of Art. 185 of the Criminal Code of Ukraine and punish

him with the application of Art. 69 of the Criminal Code of Ukraine in the form of imprisonment for a term of 2 (two) years". Moreover, Person 1 has part of the unserved sentence from the previous sentence. In total, there are 11 analyzed sentences of this type, the punishment ranges from a fine of 17,000 hryvnias, 3 months' imprisonment, to 4 years' imprisonment. In most cases, 3 years of imprisonment. Another verdict already with the appointment of a punishment within the scope of the sanction of Part 4 of Art. 185 of the Criminal Code up to 5 years of imprisonment, but further "On the basis of Art. 75 of the Criminal Code of Ukraine, PERSON_1 should be released from serving a sentence of imprisonment with probation, setting a probationary period of one year and six months". There were 6 such sentences, all of them were sentenced to 5 years of imprisonment, a probationary period from 1 year 6 months to 3 years, in most cases – 2 years. In the analyzed judgments there is also a combination of Articles 69 and 75 (sometimes 79) [3].

This problem applies to different regions and different circumstances. But the general qualification of absolutely all thefts under part 4 of Art. 185 of the Criminal Code of Ukraine, taking into account the existence of martial law conditions.

In addition, it is necessary to pay attention to the proportionality of criminal liability for military criminal offenses. According to the Law of Ukraine "On Amendments to the Code of Ukraine on Administrative Offenses, the Criminal Code of Ukraine and other legislative acts of Ukraine regarding the peculiarities of military service under martial law or in a combat situation" dated December 13, 2022 No. 2839-IX [5], a number of changes were made to the Criminal Code of Ukraine.

In particular, according to the changes provided for by this law, person who has committed criminal offenses provided for in Articles 403, 405, 407, 408, 429 of the Criminal Code of Ukraine, committed under martial law or in a combat situation, for torture committed by a representative of a state, including a foreign one it is impossible to impose a milder punishment than that prescribed by law in the presence of several circumstances that mitigate the punishment and significantly reduce the severity of the committed criminal offense (Article 69 of the Criminal Code of Ukraine); the application of exemption from serving a probationary sentence is limited (Article 75 of the Criminal Code of Ukraine).

In addition, the sanction of Part 3 of Art. 403 of the Criminal Code of Ukraine "from three to seven" to "from five to eight". And also the editing of Part 5 of Art. 407 of the Criminal Code of Ukraine, and is formulated as follows: "Unwillingly leaving a military unit or place of service, as well as failure to report on time for duty without valid reasons by a serviceman, committed under martial law or in a combat situation" [5].

In the Explanatory Note to the draft law of December 13, 2022 No. 2839-IX, the need for such changes was justified by the fact that during the ongoing phase of the war and the declaration of martial law in Ukraine, a significant number of cases are being considered for the specified offenses (voluntarily leaving a military unit or place of service by a serviceman), both in criminal and administrative proceedings. According to the developers of this draft law, this judicial practice of handling cases simulates negative behavior among military personnel and nullifies the principle of the inevitability of fair punishment for committing offenses related to the voluntary abandonment of a military unit during the performance of military service duties.

Law of Ukraine "On Amendments to the Criminal and Criminal Procedural Codes of Ukraine on Eliminating Contradictions in the Punishment of Criminal Offenses" dated July 13, 2023 No. 3233-IX again amended Art. 407 of the Criminal Code of Ukraine. In particular, part 4 and part 5 of Art. 407 of the Criminal Code of Ukraine is set out in the following editing: "4. Voluntary abandonment of a military unit or place of service by a serviceman, as well as his failure to report on time for duty without valid reasons for more than three days, committed in the conditions of a special period, except for martial law"; "5. Arbitrarily leaving a military unit or a place of service by a serviceman, as well as his failure to report on time for duty without valid reasons, committed in a combat situation, as well as the same actions lasting more than three days, committed under martial law". That is, responsibility was differentiated depending on the situation in which such actions were committed. The sanction is different if such actions were committed under the conditions of a special period, except for martial law or in a combat situation, or under martial law (lasting more than three days) [4].

At the same time, the admission of relevant exceptions nullifies constitutional norms and principles, in particular, it discriminates against this group of criminal offenses. For such actions, bringing to criminal responsibility without the possibility of transition to a lighter

punishment or exemption from criminal responsibility appears to be a disproportionate measure. The means of criminal law should be perceived as a last resort, and not a way to influence any situation, especially if it concerns "hot" issues for a certain period of time.

As for restrictions on the application of incentive norms regarding specific criminal offenses, they began with their introduction regarding corruption offenses under Part 1 of Art. 45, 46, 47 and 48, Part 4 of Art. 74, p. 1, part 3, art. 81, part. 1, part 4, art. 82 of the Criminal Code of Ukraine according to the Law of Ukraine "On the National Anti-Corruption Bureau of Ukraine" dated October 14, 2014 No. 1698-VII [7]. According to the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Strengthening Liability for Certain Offenses in the Field of Road Traffic Safety" dated February 16, 2021 No. 1231-IX [6], restrictions on the application of the provisions of Art. 45, 46, 47, 48, Part 4 of Art. 74, Part 1 of Art. 75, points 1, 2, part 3 of Art. 81, points 1, 2, part 4 of Art. 82, Part 4 of Art. 86, Part 3 of Art. 87 of the Criminal Code of Ukraine was introduced regarding violations of traffic safety rules or the operation of transport by persons who drove vehicles under the influence of alcohol, drugs or other intoxication or were under the influence of drugs that reduce attention and reaction speed.

About the discriminatory nature such provisions have already been noted in previous works [14]. According to Art. 24 of the Constitution of Ukraine, citizens have equal constitutional rights and freedoms and are equal before the law. In the decision of the Constitutional Court of Ukraine, in the case No. 1-33/2004 dated November 2, 2004, No. 15-rp/2004 (the case on the appointment of a milder punishment by the court) [11], the provision of Part 1 of Art. 69 of the Criminal Code of Ukraine in the part that makes it impossible to assign to persons who have committed crimes of minor gravity a milder punishment than provided by law, as this violates the principle of equality of citizens before the law in the process of differentiation of criminal responsibility, however, the law should establish uniform principles of application of such responsibility

In the Conclusion of the General Directorate for Human Rights and the Rule of Law of the Council of Europe regarding the draft Law of Ukraine No. 2897 "On Amendments to Certain Legislative Acts of Ukraine Regarding the Introduction of Criminal Misdemeanors", prepared on the basis of research by experts Jeremy McBright, Peter Pavlin and Iva Pushkarova-Gocheva dated 6 of December 2016 indicated the need to revise the restriction on the impossibility of applying exemption from criminal liability for corruption crimes as inconsistent with Protocol 12 to the Convention on the Protection of Human Rights and Freedoms, which prohibits discrimination [1].

As N. Savinova noted, "it is necessary to explain the action of criminal law to the general public, to transform criminal law in the minds of the population into a means of protection and, accordingly, humane, but also fair treatment of criminals. With all criminals. Without discrimination" [12, p. 26].

According to the comment of M. Khavronyuk on his Facebook page dated January 27, 2023, such changes are discriminatory against military personnel, the punishments are disproportionate, and they also add uncertainty. In addition, these provisions equate war crimes with corruption, and treat them on the same level as murders and assaults by the aggressor, based on sanctions. This does not stimulate military personnel to perform their duties effectively.

Also in another work M. Khavronyuk notes that an amnesty for Ukrainian military personnel will become practically necessary, based on the fact that amnesty has not been implemented since 2016, and the number of military personnel convicted by the courts of Ukraine in 2017-2022 is 15,435, most of them convicted of evading military service [19, p. 261].

According to V. Tulyakov, general (separated on the grounds of responsibility), special (separated on the status and social role of the offender) and special (emergent) regimes (separated on the basis of temporal international obligations or features of the political and social situation) can be attributed to individual types of regimes in the country and society). Special regimes that are separated depending on the socio-role characteristics of the perpetrator of the criminal offense, which affect the specifics of prosecution and realization of criminal responsibility. What is more, in this case we are not talking about general or exclusive (in the case of crimes against voting rights) rules of differentiation and individualization of criminal liability, but rather a specific complex regime for dealing with criminal offenders. Among them V. Tulyakov separates: the regime of responsibility for corruption criminal offenses (Article 46

of the Criminal Code of Ukraine); regime of responsibility for criminal offenses of minors (articles 97-108 of the Criminal Code of Ukraine); the regime of responsibility for violations of traffic safety rules or the operation of transport by person who drove vehicles under the influence of alcohol, drugs or other intoxication or were under the influence of drugs that reduce attention and reaction speed, and corresponding to the latter features of exemption from responsibility, punishment, and its execution (Articles 45-48, 55, 74, 75, 81-82, 86-87 of the Criminal Code of Ukraine); regime of quasi-criminal liability of legal entities (Articles 96-3-96-11 of the Criminal Code of Ukraine) [15]. The scientist refers to the restrictive legal regimes: the regime of responsibility for a criminal offense committed under martial law or in a combat situation; extraordinary criminal law regime in the temporarily occupied territory; state of emergency.

According to the draft of the new Criminal Code of Ukraine, developed by the Working Group on the Development of Criminal Law (text as of October 14, 2023) [8], typical sanctions are provided. The Special Part provides for the category of criminal offense (1st degree, 2nd degree, etc.), and there are no sanctions. The General Part provides categories of criminal offenses and punishments that can be provided within the framework of one or another category. In addition, aggravating and mitigating circumstances can change the category of the criminal offense. That is, qualified and mitigating clauses are not provided for in the Special Part. Therefore, we do not duplicate the same aggravating and mitigating circumstances in the General and Special parts. In addition, it contributes to the effective implementation of the principles of differentiation, individualization of criminal responsibility, and proportionality. The presence of standard sanctions would eliminate the problems of culpability in "conditions of martial law" and "with the use of conditions of martial law" in the General and Special parts.

It seems that in the presence of certain features of criminal responsibility for specific categories of persons, there should be uniform approaches to the implementation of the principles.

Conclusions. To sum up, taking into account the analysis of the text of the law on the introduction of relevant changes, the explanatory note to the relevant draft law and the practice of the Supreme Court of Ukraine, it appears that the aggravating circumstance "using the conditions of martial law or a state of emergency" under point 11, part 1 of Art. 67 of the Criminal Code of Ukraine and the qualifying circumstance "under conditions of war or a state of emergency" by sanction in Part 4 of Art. 185, Part 4 of Art. 186, Part 4 of Art. 187 part 4 of Art. 189, Part 4 of Art. 191 of the Criminal Code of Ukraine have the same legal nature.

It seems disproportionate to qualify any theft, in particular, which caused damage in minimal amounts (268.4 UAH in 2023) by a specially qualified corpus delicty with the corresponding sanction in Part 4 of Article 185 of the Criminal Code of Ukraine. Martial law conditions exist throughout Ukraine until the end of the war. But this does not mean the leveling of the main corpus delicty and other qualifying features. The editing of the article should be clarified, in particular with the use of conditions of war or state of emergency, with the use of the helpless state of residents or other conditions created by military actions that facilitate the commission of crimes to a degree that is significantly different from the circumstances of ordinary life.

Not every commission of a criminal offense during the period of martial law in Ukraine will constitute a qualifying feature of a specific crime or an aggravating circumstance provided for in point 11, Part 1 of Art. 67 of the Criminal Code of Ukraine. Application of point 11, Part 1, Art. 67 of the Criminal Code of Ukraine will depend on the specific circumstances of a specific case. Such a circumstance is applicable in case that specific criminal offenses were committed precisely "with the use of the conditions of martial law or a state of emergency" and the resulting consequences are in a causal relationship with the use of the relevant circumstance. Such a circumstance cannot be taken into account and blamed automatically just because martial law has been declared on the entire territory of Ukraine.

Military criminal offenses require an appropriate response from the state. However, such measures should be proportionate and proportionate to other criminal offenses. Restrictions on the possibility of applying the exemption from criminal responsibility seem inappropriate and contrary to the Constitution. Gradually, it will be possible to add all criminal offenses to this list of restrictions, based on countermeasure trends. This nullifies the existence of the institution of exemption from criminal responsibility as such and violates the principles of criminal law.

Conflict of Interest and other Ethics Statements

The author declares no conflict of interest.

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ABSTRACT

The article examines the issue of proportionality of criminal responsibility for some criminal offenses under martial law. Taking into account the analysis of the text of the law on the introduction of relevant amendments, the explanatory note to the corresponding draft law and the practice of the Supreme Court of Ukraine, it was found that the aggravating circumstance "using the conditions of martial law or a state of emergency " under point 11, part 1 of Article 67 of the Criminal Code of Ukraine and the qualifying circumstance "in conditions of war or state of emergency" of sanction in Part 4 of Article 185, Part 4 of Article 186, Part 4 of Article 187 part 4 of Article 189, Part 4 of Article 191 of the Criminal Code of Ukraine have the same legal nature.

On the basis of the judicial practice of the Supreme Court of Ukraine, it was established that the qualification of theft under martial law in any amount (in particular, in the minimum amount) according to part 4 of Article 185 of the Criminal Code of Ukraine is a disproportionate means of influence

Martial law conditions exist throughout Ukraine until the end of the war. But this does not mean the leveling of the main corpus delicty and other qualifying features of the corpus delicty. It is proposed to clarify the editing of the article, in particular, using the conditions of war or a state of emergency, using the helpless state of residents or other conditions created by military actions that facilitate the commission of criminal offenses to a degree that is significantly different from the circumstances of ordinary life.

It is established that measures to respond to military criminal offenses must be proportionate and proportionate to other criminal offences. Restrictions on the possibility of applying the exemption from criminal responsibility seem inappropriate and contrary to the Constitution. Gradually, it will be possible to add all criminal offenses to this list of restrictions, based on countermeasure trends. This nullifies the existence of the institution of exemption from criminal responsibility as such and violates the principles of criminal law.

Keywords: *principle of proportionality, martial law conditions, use of martial law conditions, principle of necessity, principles of criminal law.*