

Collaborationism and War Crimes as Phenomena in the Information Society

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ABSTRACT

The article deals with the importance for Ukraine, in the context of the hybrid war, of the implementation of international and humanitarian law in the Criminal Code of Ukraine. The authors argue the problem of war crimes and collaboration in the modern information society and its resolution is important for Ukraine, especially in the context of a powerful information confrontation between the Russian Federation and Ukraine as part of a hybrid war. Based on the processed documents and literature, the authors propose their own definition of collaboration and its manifestations by definition and typology. It was concluded that the Soviet totalitarian system had morally maimed many generations of people. The ideological and political uncertainty, confusion, social amorphism of a certain part of Ukraine's population, the pro-Kremlin orientation of a part of Ukrainian politicians are still the main cause of collaboration and war crimes in Ukraine. Western Europe is characterized by the lawful and generally accepted international practice of prosecuting war criminals. In the former Soviet Union, this process was accompanied by mass violations of human rights, politicization of the judiciary, the application of collective responsibility, ignoring the principle of the presumption of innocence, and so on. In today's Ukraine, in the face of the 6-year hybrid war, collaborative politicians are holding down on the legislative level responsibility for collaboration and war crimes.

Keywords: *collaborationism, information society, human rights, military crime, hybrid war, the Rome Statute, international legal crimes, the International Criminal Court, the Constitution of Ukraine, the Criminal Code of Ukraine, implementation of regulations of the international and humanitarian law*

1. INTRODUCTION

The actuality of theme. The problem of collaboration and war crime as phenomena in the modern information society is urgent in the context of the modern hybrid Russian-Ukrainian war, which has been going on for the sixth year in Eastern Ukraine. The questions of whom to consider as a collaborator, what actions should be qualified as war crimes, and what punishment should be borne by criminals, what signs in the activities of the military, population, politicians are signs of collaboration, war crimes, etc. remain debatable and acute for the modern Ukrainian society. Without a clear answer to these questions, it is impossible to overcome those established stamps and stereotypes, barriers that exist today in the relationship between the population of different regions of Ukraine - western and eastern, between the Ukrainian military and the population of Luhansk region and Donetsk region in the east of Ukraine, etc. The problem of the legal basis, qualification of activities and crimes of collaborators, military actions in the east of Ukraine will be raised anyway and will have to be solved.

Goal. The authors of the article have set themselves the task of finding out the state of scientific development of

the topic in contemporary historiography; to give a historical and legal analysis of the source base of the problem of collaboration and war crime as phenomena-phenomena in the Ukrainian modern information society in the conditions of hybrid war; to find out the basic forms of war crimes, typical and special manifestations of collaboration in the east of Ukraine; to determine in which articles of the Criminal Code of Ukraine there is a discrepancy with the laws and customs of war enshrined in customary international law as a source of international humanitarian law for armed conflicts.

From standpoint of general international criminal and humanitarian law, collaborationism is a military crime – violation of a set of basic rules – “war laws”, rules and regulations of international criminal and humanitarian law. As it is known, under article 6 of the Statute of the International Military Tribunal passed on August 8, 1945 the international law crimes are as follows: crimes against peace, military crimes, and crimes against mankind. According to this Statute, military crimes are violations of such laws and customs of war as murder, torture, and enslavement of prisoners of war, civil population or for other purposes, hostage situation, plundering, aimless destruction of cities and villages, other crimes [1, p.1]. According to the Rome Statute of the International

Criminal Court of July 17, 1998 signed by Ukraine on January 20, 2000, under article 5 (1) among the crimes subject to jurisdiction of the International Criminal Court are as follows: a) crimes of genocide; b) crimes against mankind; c) military crimes; d) crimes of aggression [2, p. 256]. Under article 8 of the “Military crimes”, military crimes are as follows: (article 8 (2) (a) of the Rome Statute: “Gross violations of Geneva Conventions of August 12, 1949, namely any crimes against persons and property used by the international protection applied to the international military conflicts”, (i-viii), such as: intentional homicide, tortures or inhuman attitude; intentional physical cruelty; forcing of a prisoner of war or another person to serve in the enemy military forces; holding of hostages etc. Article 8 (2) (b) of the Rome Statute stipulates: “Other serious violations of laws and customs of war applied to the international military conflicts under the established boundaries of international law, namely any of the following actions”, (i-xxvi), such as: intentional purposeful attack against civil population or separate civilians not directly involved into military actions; intentional attacks of civilian objects, robberies, intentional murders, offence of human dignity, assault, enrolment or recruitment of children under fifteen years of age to the national defence forces or their usage for active participation in military actions etc. Article 8 (2) (c) of the Rome Statute is dedicated to actions not of international character: “In case of a military conflict not of international character, gross violations of article 3 common for four Geneva Conventions of August 12, 1949, namely: any of the following actions implemented against persons not taking part in military actions, including military men, who laid down arms, and persons incapable to take part in military actions anymore because of disease, wound, delay or any other reason”: “I) trespass to life and person, in particular, murder in any form, causing bodily harm, abusive treatment and tortures; II) offence of human dignity, in particular, humiliating and degrading treatment; III) holding of hostages; IV) imposition of sentences and punishments without preliminary delivery of judgements resolved by court established under the established procedure ensuring observation of all court guarantees obligatory by general definition”. Article 8 (2) (e) of the Rome Statute discloses: “Other gross violations of laws and customs of war applied to the military conflict not of international character within the limits of international law, namely any of the following actions”, (I-XIIIi), such as: intentional purposeful striking of blows against civil population and intentional attack on separate civilians; robbery, assault, intentional striking of blows against buildings, historical monuments and others, provided that they are not military targets; declaration that mercy will not be shown to anyone and others [1, p. 2; 2, pp.259-265]. Ukraine joined almost all international agreements – international rules of conducting combat struggle, such as: four Geneva Conventions Relative to the Protection of War Victims of 1949 and Protocols Additional to them of 1977, the Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954, the Convention on the Non-Applicability of Statutory

Limitations to War Crimes and Crimes against Humanity of 1968, the Convention on Conventional Weapons of 1980, the Rome Statute of the International Criminal Court of 1988 and others. Under article 3 of the Constitution of Ukraine one of priority directions of activity of sovereign and independent Ukraine is as follows: “Human being, its life and health, honour and dignity, immunity and security are acknowledged the highest social value in Ukraine [4, p. 3].” Modern Ukrainian lawyers state that “there are no essential differences anymore in whole host of legal issues as a result of political and ideological contradictions [3, p. 4].” Thus, there are no “essential differences”; at the same time, in authors’ opinion, the problem of harmonization of Ukrainian legislation with the Rome Statute and the international criminal and humanitarian law remains on the agenda. Under article 18 of the Constitution of Ukraine it is confirmed that “foreign economic activity of Ukraine is directed for provision of its national interests and security by maintaining peaceful and mutually beneficial cooperation with the international commonwealth members by generally acknowledged principles and provisions of international law [4, p. 6]”. According to article 9 of the Constitution of Ukraine: “Valid international agreements, consent for which binding authority was granted by the Verkhovna Rada of Ukraine, are a part of national Ukrainian law [4, p. 4].” Consequently, the mentioned articles of the Constitution of Ukraine state that the national law system of modern Ukraine is a part of the unified international law system. Besides, in the “Conclusion of the Constitutional Court of Ukraine” of July 11, 2000 No.3-v/2001 in case No1-35/2001 it has been established that the nature of military crimes “as felonious under art.18 of the Constitution of Ukraine does not depend on Ukraine’s accession to the Statute and its validation”.

2. Our Contribution

Over time the “hybrid war” against Ukraine in spring 2014 the problem of the “military crime” and collaborationism remains on the agenda before sovereign Ukraine. As far back as April 17, 2014 the Ukrainian Government filed an Application to the International Criminal Court under art.12 “Conditions of implementing jurisdiction” (3) of the Rome Statute as the state that cooperates and acknowledges jurisdiction of the Court relative to probable crimes committed in the territory of Ukraine within the period from November 21, 2013 up to February 22, 2014. In April 2014 at first the Court Prosecutor initiated the preliminary examination of the situation concerning establishment “whether the situation in Ukraine conforms the criteria for opening proceedings stipulated by the Rome Statute”. As it is known, on September 8, 2015 the Ukrainian Government filed the second Application to the International Criminal Court, having recognized jurisdiction of the Court relative to probable crimes committed in the territory of Ukraine “starting from February 20, 2014 and further”. Consequently, the International Criminal Court and its Prosecutor should

establish “whether jurisdiction of the Court extends to the events occurred in Ukraine during the mentioned period and whether among such events are those that can be qualified as crimes under the Rome Statute [1, p.5]”. In the meantime, the valid Criminal Code of Ukraine [5] does not contain the concept of “military crimes”, as it is defined by the Statute of Nuremberg Tribunal, Geneva Conventions of 1949 and Protocol Additional I to them of 1977, the Rome Statute etc., but in chapter I “Crimes against basics of national security of Ukraine” (articles 109, 110, 110.2, 111, 112, 113, 114, 114.1) this entails the crimes directed for violation of foreign territorial integrity and inviolability of Ukraine, high treason, sabotage, spying etc. In articles 401 – 435 of chapter XIX of the valid Criminal Code of Ukraine “Crimes against establishment of the procedure of military service deployment (military crimes)” this entails not only the concept of “military crime” (art.401), “desertion” (art.408), “disclosure of information of military nature that is state secret” (art.422), “surrender or abandonment of warfare means to the enemy” (art.427), “voluntary surrender into captivity” (art. 430), “felonious actions of a captive military man” (art.431), “pillaging” (art.432, but military crimes, such as: “violence against population in the region of military actions” (art.433), “ill-treatment of prisoners of war” (art.434), “illegitimate usage of symbols of Red Cross, Red Crescent, Red Crystal and their misuse” (art.435). In articles 436 – 447 of chapter XX “Crimes against peace, human security and international legitimacy” this entails such military crimes as “propaganda of war” (art.436), “production, distribution of Communist, Nazi symbols and propaganda of Communist and National Socialistic (Nazi) totalitarian regimes” (art. 4361), “planning, preparation, initiation and prosecution of aggressive war” (art.437), “infringement of laws and customs of war” (art.438), “mercenary” (art.447) etc. As it is known, at the beginning of 2020 Ukraine has not ratified the Rome Statute yet. This is a reminder that the international crimes – genocide, crimes against humanity, military crimes, crimes of aggression – are under jurisdiction of the International Criminal Court. For several years since the beginning of the “hybrid war” Ukrainian human rights advocates keep demanding from the Verkhovna Rada to pass the law on military criminals that must “harmonize Ukrainian law” with the Rome Statute and the International criminal and humanitarian law. For Ukraine it is important to pass the articles disclosing the concept of crimes against humanity, because for the time being we are not ready to investigate such crimes even on the

Under the Rome Statute the International Criminal Court investigates only “actions of important persons”. In June 2019 the Verkhovna Rada in the first reading voted for draft bill No. 08092, but the early parliamentary election in Ukraine prevented to make appropriate amendments before the second reading. At the end of 2019, according to human rights advocates’ reports on December 27, 2019 the Draft Bill No.2689 “On making changes in several legislative acts of Ukraine relative to the implementation of regulations of the International criminal and humanitarian law” has been registered [6, p.1; 7, p.1]

intended to implement whole host of the Rome Statute regulations within the Criminal Code of Ukraine. The people’s deputies of Ukraine of IX convocation D. Monastyrskiy, O. Bakumov, G. Mykhaylyuk, V. Areshonkov, A. Osadchuk, S. Minko, V. Neklyudov, V. Medyanyk initiated this project important for our state. The people’s deputies explain the significance and necessity of passing Draft Bill No.2689 with the fact that the guilty of the crimes committed during the military conflict in the East of Ukraine succeed to avoid criminal punishment and it is mostly caused by “missing components of correspondent crimes in the Criminal Code of Ukraine as grounds for criminal responsibility”. The Criminal Code of Ukraine “does not stipulate criminal responsibility for crimes against humanity and military crimes that are violations of customary, but not of contractual international humanitarian law”, as it is stated in the Draft Bill. Hence, initiators of the draft bill offer “to bring the Code into conformity with the requirements of the Rome Statute and the Convention on the Prevention and Punishment of the Crime of Genocide of 1948”. For this purpose, it is foreseen to make changes in article 8 of the CC, by which the universal jurisdiction principle relative to crimes of aggression, genocide, crimes against humanity, military crimes is introduced that cannot be connected to the crime scene, citizenship, permanent place of residence of suspect or victim, damage to national interests of the state. Necessity to exclude some articles of the Criminal Code of Ukraine, replacement with other articles and inclusion of the Code’s articles for such crimes as “military crimes against property”, “military crimes consisting in implementation of the prohibited fighting methods”, “military crimes consisting in implementation of the prohibited warfare means”, “military crimes against humanitarian operations and usage of symbols”, “crimes against humanity”, “military crimes against mobile and immobile values, buildings and centres protected by the international humanitarian law” and others are conditioned by a set of reasons. Firstly, in the period after World War II the definition of “aggression” in the international law was seriously transformed. Secondly, “bringing of the used... terminology to the requirements of the international humanitarian law” is important. Thirdly, it is impermissible when in the articles of the valid Criminal Code of Ukraine only general instructions are stated, only separate violations of laws and customs of war are listed, that, as a whole, in opinion of the initiators of Draft Bill No.2689, just “roughly violates the principle of legal certainty”. Thus, valid article 438 of the Criminal Code “ignores violations of laws and customs of war stipulated in the customary international law that is the main source of the international humanitarian law for international military conflicts”. Besides, authors of the Draft Bill mention that today an absolute majority of states takes this article 8 of the Rome Statute as the standard in rulemaking of responsibility for military crimes. On December 30, 2019 a new version of draft bill No.0892 about military criminals [8, p.2; 9, p.1-2] was submitted to the Verkhovna Rada of Ukraine that stipulates changes in a set of articles and supplementation of the valid Criminal Code of

Ukraine with three new articles. One of them – is article 311 “stipulating implementation of the institution of responsibility of commanders and other superiors regulated by article 2 of the Rome Statute”. An authoring team of several people’s deputies, among whom V. Groysman, initiator of the draft bill, and D. Monastyrskiy, head of the Law Enforcement Activities Committee, considers that this institution of the criminal responsibility “is of vital importance for efficient prosecution of international crimes that significantly differ by substantiation technique and its capabilities from other crimes committed by association.” Two articles - 438 and 4381 “extend to all types of military crimes stipulated by article 8 of the Rome Statute and other serious violations of Geneva Conventions Relative to the Protection of War Victims of August 12, 1949 and Protocols Additional to them”. People’s deputies as authors of draft bill No.0892 explain its passage by the fact that the international military conflict with the Russian Federation lasting for more than six years requires to bring the provisions of Ukrainian law on criminal responsibility in conformity with the requirements of the international criminal law, its implementation in the national law systems of Ukraine [9, p.2].

Today, at the beginning of 2020, when military resistance between Ukraine and the Russian Federation keeps lasting, continues to be relevant examination of the international and domestic experience and determination of legal basis, qualification of criminals, collaborators, abettors, not only of World War II of 1939 – 1945, but of the modern hybrid war started against Ukraine in spring 2014, as a result of which a part of Lugansk, Donetsk regions and the Crimean Peninsula were occupied by Russian armed forces. The problem of legal basis, qualification of collaborators’ activity and crimes, in view of modern events in Ukraine, military actions in the East of Ukraine, will arise sooner or later and should be settled. When these territories are returned to Ukraine, the following issues will become aggravated: who criminals are and what should be done with traitors, how to punish them etc. Unfortunately, horrible historical scenarios repeat, if bitter experience of the past is not comprehended in due time and not prevented.

As it is known, until the end of 1980th in Ukraine the problem of collaborationism has never been investigated before, because in Soviet period it has been considered prohibited for the researchers. There are many definitions of collaborationism as phenomenon. At present this term is mostly used in the wide sense and explained as “cooperation of population or citizens of the state with enemy in interests of the enemy-invader to the detriment of the state itself or its allies [10, p.1].”

It is worth paying attention to the “working formula” of this phenomenon in the context of the modern hybrid war of Igor Losev: “collaboration is cooperation with enemy states against native country, struggle against own state in aggressor’s interests, assistance to the invaders and participation in prosecution of patriots of the state, which citizen the collaborator is [11, p.1]”.

In the context of the topic of research over the past ten years, the works of Valentina Sheikan, Valery Shaikan, Andrii Shaikan, Vitalii Stetskevich, Roman Shlyakhtich, Sergey Parkhomenko, Yevgeniya Levchenko, and others have been published. The scientific works investigated the causes of the phenomena-phenomena of Hitler’s occupation period in Ukraine, the everyday life of Ukrainians during the years of Hitler’s occupation [12; thirteen; 14; 15]. The assertion of dominant Bolshevik ideology, ideological confrontation during the Second World War, and the informational and psychological influence of the Nazis on the troops, the population is mentioned in the writings of Valery and Valentina Shaikan [16; 17; 18; 19]. Problems of qualification of war crimes, the punishment of collaborators, accomplices, punitive and repressive measures of the Soviet authorities, issues of Ukrainian separatism at the beginning of the 21st century were considered in the works of Andrii Shaikan, Valentina Shaykan, Sergey Parkhomenko [20; 21; 22; 23; 24].

It has been generally acknowledged that in the years of World War II this phenomenon existed almost in every country invaded by the Third Reich or its satellites. In our opinion, by definition the collaborationism is a complex and multidimensional social and psychological phenomenon arising as a result of cooperation of communication process subjects – separate individuals, certain part of population with occupants, i.e. cooperation with the enemy in terms of the occupation regime; collaborationism is a voluntary or forced cooperation with the enemy in any life spheres: political, military, economic, domestic, cultural and others, having signs of crime (service in the enemy’s administrative, repressive institutions, provision of military or state secrets to occupants; direct participation in punitive expeditions and campaigns against partisans and patriots; prosecution and betrayal of military men, partisans, activists and their family members; participation in acts of outrage or murders, robberies (pillaging), destruction of citizens’ property, cooperative and public organizations, state etc.) It is necessary to differentiate collaborationism from collusion that, in our opinion, also is a voluntary or forced assistance to the enemy (its military or civil administration) in holding military, political, economic, cultural activities directed for strengthening of the occupation regime (for instance, in organization or carrying out works during reconstruction of industrial enterprises and public utilities, transport, collection of food, things and forage for needs of the enemy’s army, direct promotion of the occupation regime in massacres and acts of outrage relative to civilians and prisoners of war etc.) At the same time, authors consider that labour activity of workers, peasants, officials, administrative and other institutions, doctors, teachers, agronomists and other specialists, whose public activity in the period of occupation of Ukrainian territory, was directed for survival and due to lack of signs of crime in it is not subject to prosecution and is not collaboration. In authors’ opinion, by typology the collaborationism is displayed in a wide range – from political (including individual-political), military, economic, cultural (including religious) to

administrative and domestic levels. Consequently, political (and individual – political) collaborationism – is cooperation with the enemy on basic ideologies. Military collaborationism is voluntary and forced service in military troops of the enemy and its satellites. Economic collaborationism means cooperation in any economic spheres in favour of the enemy. Cultural collaborationism is cooperation with occupants in spiritual sphere, as a whole, promoting distribution of loyalty, propaganda of the enemy's superiority (in the years of World War II – Arian race), high mindset of occupants among civil and non-civil population. Domestic collaborationism is related to establishment of good-neighbourly relations between occupants and local population that are not of criminal nature (for example, warning of occupants about mined houses, roads, provision of services as guides and proposition of foodstuffs, invitation to family holidays and others). Administrative collaborationism is a form of cooperation of loyal local people with the enemy in governing bodies of different levels, which activity is guided and controlled by occupants. Authors of the article suppose that, as a whole, collaborationism as the complex phenomenon in the history of mankind reconstructs socio-psychological and ethical reality in society in the state of martial law, induces and regulates behaviour of separate individuals and the whole population that has been in the state of compliancy, initiates appearance of different forms of cooperation and relations with occupants. We agree with Vladyslav Grynevych's opinion, who asserts that "in Soviet times ... rather ambiguous and controversial Ukrainian military experience was silenced as well: cooperation of a part of population with the occupation regime [25, p.1]"; in the years of World War II those countries and political forces fought on side of Nazi Germans, who "were trying to defend" their statehood and independence, but were not traitors: "By no means all of them can be called betrayers of the nation. Their idea of state system of their native country differed from the idea of those, who blamed them for betrayal" [26, p.2].

In authors' opinion, today it is important not to repeat the mistakes of Soviet justice system, as a whole, during World War II and in the post-war period. Long before World War II the Soviet government violated the principle of presumption of innocence as one of the basic principles of democratic jurisdiction. Today this is not a secret that repressive actions were taken against Soviet prisoners of war, their families that is a gross violation of regulations of the International criminal and humanitarian law. There were no concepts "collaborator", "collaborationism", "abettor" in the Criminal Code of the USSR before and during the war. All crimes committed by collaborators were qualified as "treason of nation". Soviet justice system formulated rigid principles of responsibility and punishment of military criminals and applied them in practice with analogous rigidity. Here are only several orders to confirm these facts.

By the Order dd. August 16, 1941 signed by Y. Stalin, V.Molotov, S. Budyonnyi, K. Voroshylov, S. Tymoshenko, B. Shaposhnikov, G. Zhukov the commanders and commissars were empowered to execute

military absentees on the spot and arrest their families, to deprive relatives of Red Army men, who yielded themselves prisoners, of state allowance [27, p.358-362]. During the war and post-war period, the Soviet system continued using the illegal principle of conspiracy of silence that had been actively used for struggle against "enemies of the people" in the interwar period of 1920th – 1930th. In addition, one cannot claim that Soviet justice system ignored misuses, violations in struggle against traitors. Thus, under Order of the Prosecutor of the USSR No.66 cc of May 15, 1942 "On qualification of crimes of persons who went to service of Nazi German occupants in the regions, temporarily occupied by the enemy" it was impermissible "unreasonably to bring to justice Soviet citizens for suspicion of collusion to the enemy" and the categories of population – betrayers of the nation - were indicated to whom severe punishment under art. 581 "a" – shooting – was administered [28, p.44-45]. In summer 1942 Soviet repressive authorities increased responsibility of families of "military absentees", "traitors", "Nazi collaborators", "spies". According to the Decree of the State Defence Committee No.GOKO-1926 cc of June 24, 1942 [28, p. 107] it was defined who exactly should be considered "traitor's" family members. According to this decree both family members of full age of military men and citizens, who had been sentenced to the supreme penalty, and families of persons, who had been sentenced in their absence to the supreme penalty for voluntary departure with occupation armed forces during liberation of the territory occupied by the enemy, were subject to arrest and exile to the remote regions of the USSR for 5 years. As soon as liberation of Soviet territory occupied by Nazi troops began, an attempt to classify the crimes of "betrayers of the nation" was made and the changes in legislation were brought because of rise in rate of Nazi occupants' crimes committed with the aid of the representatives of local population. Under the Order of the Presidium of the Supreme Council of the USSR of April 19, 1943 "On punitive measures for Nazi German wrongdoers guilty of murders and tortures of Soviet civil population and Red Army prisoners of war, for spies, betrayers of the nation from Soviet citizens and their abettors" [28, p.145-147] it was established that from now on betrayers, spies, military criminals were executed by hanging. Under this order the abettors were exiled for 15 – 20 years' hard labour. Due to conceptually new historical and socio-political works, dissertations, fundamental scientific works of scientists from the NASU Institute of History of Ukraine and many others that have been published in large quantities for the last 20 – 25 years, today society is aware of shocking materials, documents, facts about punitive and repressive activities of Soviet system. To be fair, it is necessary to determine that the war was the circumstance forcing military tribunals, for example, and other bodies to increase the level of repressive measures relative to the crimes defined in the Soviet criminal law as counterrevolutionary. It is no coincidence that, as a result, in the years of the war the stern wordings relative to responsibility and punishment of military criminals and abettors appeared. In addition, it is

impossible to deny almost total presumption of guilt in Soviet repressive authorities' activity that, in reality, is an unappeasable fact. Errors, distortions, law violations, fairly frequent application of unfair repressive actions relative to citizens, who were unreasonably sentenced for cooperation with the enemy, families of punished persons, who were blamed only for civil cognation, came at a high price for Soviet society, including Ukrainian population. Number of the arrested for accusations in "betrayal of the nation" and "collusion to Nazi occupants" was extremely high, because following the published archive data of the Security Service of Ukraine during 1946 – 1957 there were 35 561 persons (this is 30.7% from the punished persons total number throughout Ukraine for this period) [29, p.206-207, 363-364, 510-513]. As to requalification of crimes committed by betrayers and abettors, there has been observed correction process of all repressive bodies' rights and, first of all, military tribunals, which in course of time were entrusted with broader authorities and had the right, in every particular case, to take an independent decision on qualification and requalification of crimes by court cases of this category of punished persons. As a result, there were misuses, errors, unfair sentences. Cases of the convicted persons testify of frequent overruns beyond the limits of brought accusations on the part of court bodies, which failed to indicate signs qualifying the case as "betrayal of the nation", "collusion to occupants". During the war and post-war period, the Soviet punitive and repressive system treated "betrayers of the nation" differently. But former policemen, secret state police agents, soldiers of Ukrainian and other national military troops, who not only served in German army, but participated in commitment of crimes against peaceful population, prisoners of war, partisans and relatives of the abovementioned collaborators got almost equal punishment for this crime. Soviet government unambiguously breached the principle of presumption of innocence as one of the basic democratic legal principles of justice, according to which the punished person is considered innocent until his or her guilt would be proven in court. Guarantee of legitimacy was seriously violated during consideration of criminal cases for persons who were arrested as "betrayers", "abettors" and not only for that. Captivity was legally unreasonably regarded by Soviet government within the framework of criminal law. Unfair repressive actions were taken against former Soviet prisoners of war and their families. Gross violations of international law provisions were partially remedied and condemned only after Y. Stalin's death. During the war Soviet punitive authorities, as never before, used anti-human method of struggle against "enemies of the nation" – collective responsibility. In spite of the decree of the USSR Prosecutor of May 15, 1942 not to allow "unreasonable bringing to justice" of citizens for suspicion of collusion to the Nazi, Special Councils with People's Commissariat for Internal Affairs, military field courts, military tribunals frequently ignored it and arrested innocent people. After long-term investigation of court cases they were frequently released. Unfortunately, the repressive bodies ignored moral and psychological losses.

It could not be repeated anew. In the meantime, today in Ukraine if not particularly public discussion of collaboration and collaborationism keeps lasting [30;31; 32; 33], but, more likely, political struggle in the Verkhovna Rada. One can unambiguously conclude that absence of political will of the majority of people's deputies slows down settlement of this problem. As far back as 2015 while discussing the Law of Ukraine "On providing rights and freedoms for citizens and legal regime in the temporarily occupied territory" the Verkhovna Rada's deputies were going to include criminal responsibility for collaborative activity into article 111 of the valid Criminal Code of Ukraine, but in the last wording during passage of the Law on April 15, 2015 the responsibility for collaborationism had never been recorded by the majority of people's deputies' votes [5, p.54]. During 2017 the people's deputies of Ukraine submitted to the Verkhovna Rada a set of Draft Bills related to responsibility for collaborationism. Thus, I. Lapin, people's deputy of Ukraine of VIII convocation, as law subject of legislative initiative registered Draft Bill No.6170 of 09.03.2017 "On prohibition of collaborationism" [34, p. 1]. This draft bill was withdrawn on 29.08.2019. From the "Conclusion on the anticorruption expertise results of the draft normative legal act" signed by Ye. Sobolev, Head of Committee for preparation and preliminary consideration – Committee for legal support of law enforcement activities it is known that, as a whole, in the draft the "corruptogenic facts have not been found - the draft bill meets the anticorruption law requirements (decision of the Committee of 06.09.2017, minutes No. 109 [35]). Alongside with that, the Committee rejected Draft Bill No.6170 "On prohibition of collaborationism", considering that it is "inexpedient to introduce criminal responsibility for all forms of collaborationism". The available articles of the Criminal Code of Ukraine are enough to bring to responsibility for such actions (arts. 111, 258-5 of the Criminal Code of Ukraine). Besides, the Committee made a set of comments as to content of the Draft: firstly, it is unclear what kind of cooperation with occupation power should be considered a crime; secondly, in Committee's opinion, such definition as "any forms of cooperation" may lead to "ambiguousness of interpretation and corruption wrongdoings". Thirdly, it remains an open question "whether residents of the Autonomous Republic of Crimea, Donetsk and Lugansk regions, who have to collaborate with occupation administrations while settling domestic issues, drawing up social allowance and others, fall into this category". It is partially so. Nevertheless, authors of the article do not share the Committee's conclusion on, firstly, "sufficient" amount of the "available articles of the Criminal Code of Ukraine", and, secondly, forms of collaborationism specified in the Draft Bill itself. In authors' opinion, instead of forms of collaborationism the law subject of

Next Draft Bill No. 7425 "On protection of Ukrainian statehood from collaborationism displays" was submitted to the Verkhovna Rada on 20.12.2017 (alternative Draft Bill under registration No. 7425-1 of 28.12.2017 "Draft

Bill on establishment of justice and punishment of the guilty in military crimes related to the events in the territory of Donetsk and Lugansk regions”), the draft was withdrawn on 29.08.2019 [36, p.1-2; 24, p. 1-12]. In our opinion, this Draft Bill provoked more comments than the previous one. As a result, thoughts and proposals of Maryna Kuraptseva – news room editor Informator. media [31, p.1-4], who calls in question expediency of functioning of special “truth commissions”, which illegally should assume functions of courts and even more – establish rules of such checks. She pays attention to “absence of clear definitions, punishment criteria” that, in reality, one way or another will result into misuses of both “truth commission” members and judges themselves and it is difficult to deny it. In our opinion, it refers to at least item 5, article 11 “Basics for holding checks as to collaborationism” of Draft Bill No.7425, where it touches upon “Collaborationism check of a single person can be conducted only once. In the cases stipulated in article 3 of the Law check of a person should not be conducted, if the Commission has already taken a decision under the results of the check concerning collaborationism [37, p. 6]”.

Draft Bill No.7426 of 20.12.2017 “On making changes to the Criminal Code of Ukraine (relative to collaborationism and strengthening of responsibility for state betrayal)” also was withdrawn on 29.08.2019 [38, p. 1-2; 26, p.1-2]. While discussing this Draft new interesting exchanges of thoughts took place. In authors’ opinion, special attention should be paid to reasonable analysis of Draft Bill No.7426 made by Oleksandr Illarionov – senior scientific officer of the department of economic and legal support of economic state security of the NASU Economic and Legal Researches Institute [30, p. 1-13]. Alongside with analysis of this Draft Bill the author remarked a set of “inaccuracies” in two previous Drafts – No. 6170 of 09.03.2017 and No. 7425 of 20.12.2017. O. Illarionov

3. CONCLUSION

The information war scale keeps rising quickly and instead of stopping the discussion on in the Verkhovna Rada’s wall about “providing the LPR and DPR special status”, “legitimize amnesty” and so on, we have an opposite situation: passage of laws on military crimes’ punishment is being delayed.

Unfortunately, historians, economists, journalists, and almost no lawyers at all, have been discussing the problem of collaboration and war crime as phenomena-phenomena on the pages of the media. On the other hand, it is worth noting that Ukrainian lawyers are currently working in the Verkhovna Rada on draft laws. However, not always these Bills become Laws.

As a result, it is worth remembering at least “unsuccessful” Draft Bill No. 7354 of 05.12.2017 “On making changes in several legislative acts of Ukraine (concerning criminal responsibility for prohibition of the fact of military aggression of the Russian Federation against Ukraine)” [42; 43]. This Draft Bill submitted by people’s deputies A. Gerashchenko, A. Teteruk, and others

counted a set of remarks as “inaccuracies” that are really essential and require correction. Thus, he offers and it is expedient from legal standpoint to replace the concept “occupation body” with “occupation administration body”; to broaden definition of the concept “collaborationism” itself, because in the “narrow” definition there is no place for occupation state-financed institutions, enterprises, scientific institutions, lawyers, employees of mass media, law enforcement agencies etc. In his opinion, such formulation as “functions typical for state authorities or local self-governing authorities” – it’s a “hint upon legitimization of occupation administrations and their transformation into the “representatives of Donbas”, “state authorities or local self-governing authorities”. Do you think that is possible not to agree with O. Illarionov in this case? What about an alternative designation can be chosen for these occupation authorities? It is possible to deny this version, but other ones must be offered. It is entirely justifiably to remark “incorrect appeal to the supremacy of law”, when it simultaneously involves to out-of-court restraint of legal (constitutional) rights of citizens by the “Commissions”, out-of-procedure collection of citizens’ personal data by the “Commissions”, establishment of term of check of persons “for collaborationism features in their actions” and so on, that is violation of human rights. All this comes into collision, as it has been mentioned before, with basic regulations of the Constitution of Ukraine, the Criminal Code of Ukraine, it contradicts article 17 “Presumption of innocence and provision of guilt proving” of the valid Criminal Procedural Code of Ukraine [40, 41], and does not harmonize with practice of the European Court of Human Rights, regulations of International Criminal and Humanitarian Law.

offered to supplement the Criminal Code of Ukraine with new article 4421 “Public denial of military aggression of the Russian Federation against Ukraine” and establish criminal responsibility for public denial of military aggression of the Russian Federation against Ukraine, the same for production and distribution of the materials with such denial etc. Besides, it was offered to make changes to article 216 of the Criminal Code of Ukraine for granting right to pursue pre-trial investigation of these crimes by investigation security agencies of Ukraine. “Explanatory note” to the Draft Bill, rather reasonable and expedient, was written by the people’s deputy of the Verkhovna Rada A.Yu. Gerashchenko. He emphasized that “provocative attempts take place to deny the facts of military aggression of the Russian Federation against Ukraine, capture of the temporarily occupied territory of Ukraine in 2014 as a result of military aggression of the Russian Federation”. Proceeding from A.Yu. Gerashchenko’s “Explanatory note” such provocative information is distributed by “agents of information influence of the Russian Federation on Ukraine”. Information attack aimed, among others, to distort historical memory of Ukrainian people, issue of protection of Ukrainian national memory becomes more urgent”. This is one of basic prerequisites for preservation

of Ukrainian sovereignty and restoration of territorial integrity of our nation. But, in our opinion, special attention should be paid to the “Conclusion” of Chief scientific and expert administration, which “considers impossible to support its acceptance in view of the following. 1. ... In opinion of the Chief administration, approval of this proposal by the parliament would be legally wrong step. Firstly, the action indicated in the abovementioned formulation, ..., is nothing more than a form of implementation of constitutional human right for freedom of thought and speech, for free expression of one’s visions and thoughts. The mentioned action cannot be considered as the crime, because it does not imply public insecurity by itself, necessary and sufficient for recognition as the crime. Crimes against peace and human safety are socially dangerous and criminally punishable, ..., but not judgments whether such crimes have been examined by certain persons or organizations and whether the act of aggression took place on the part of one or another state...[44, p.1-2].” In our opinion, such “Conclusion” of Chief scientific and expert administration of Ukraine is extremely disputable and then – in 2017 – 2018, and now – at the beginning of 2020, taking into account military resistance between two states, duration of hybrid war and powerful information attack.

Thus, the contribution of the authors to the study of this problem is, first, the identification and introduction into scientific circulation of documents unknown to researchers, modern draft laws on collaboration in Ukraine, proposed for discussion and adoption at different times by the deputies of the Verkhovna Rada of Ukraine of VIII, VIII of their convocation. Secondly, it is new to formulate and interpret the authors' question on the survival strategy of the Ukrainian population in the extreme conditions of both the last world war and the modern hybrid war. Third, the author's conclusions, theoretical propositions, and generalizations reveal the contradictory dialectics of such phenomena as information society phenomena such as collaboration and a war crime, their influence on the fate of the modern population of Ukraine and future generations. The analysis of the legislative documents of the Soviet punitive and repressive system and its jurisprudence make it possible to state that the principle of the presumption of innocence as one of the fundamental democratic legal principles of justice has been violated for a long time. Guarantees of legality were ignored in the process of criminal proceedings against persons who were convicted as "traitors to the Motherland" or "accomplices of the enemy." Legally unfounded, the prisoner was considered a criminal offense by the Soviet justice system. Frequent were the revision of the rights of judicial institutions and the re-qualification of crimes as "treachery of the Motherland", "aiding the enemy", "desertion", which received political color. The gross violations of international law were condemned and partially corrected only after Stalin's death. In the 1990s, at the beginning of the 21st century, Ukraine managed to get rid of several significant differences in the domestic Criminal Code. The jurists, initiators of the Collaboration and War Crimes Bills have defined articles and

amendments to the current Criminal Code of Ukraine that will bring the Code in line with the requirements of the Rome Statute. All that is required is the political will of the people's deputies - deputies of the Verkhovna Rada of Ukraine. Therefore, the problem of harmonization of Ukrainian legislation with the Rome Statute and international criminal and humanitarian law remains urgent. Suggestions and practical recommendations of the authors to intensify the process of solving this problem are as follows: 1. To overcome the moral and psychological contradictions between different politically oriented sections of Ukrainian society and to prepare the Ukrainian political community and society as a whole for the perception of the future protection of the Ukrainian state from the manifestations of collaborationism, activating advocacy through mass media, holding regional seminars, conferences for pupils and students, teachers and staff and the public. 2. To activate the "historical front" as a powerful force of confrontation and debunking the doctrine of "Russian world", "federalization of Ukraine", "granting special status to the Donbas", etc. 3. Unleashing Kremlin propaganda fakes with the help of PRO format and powerful patriotic activity among the younger generation.

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