SUBJECTIVE SIGNS OF COLLABORATIVE ACTIVITY

The author characterises the features of the subject of collaboration activity and confirms the correctness of establishing the age of criminal liability for its commission - 16 years. The author identifies a mandatory subjective feature of the composition of collaboration activity - a particular subject who is only a citizen of Ukraine. The author concludes that a citizen of the State whose territory is under occupation should be considered a subject of collaboration. The author proves that the intentional form of guilt of collaboration is mandatory, and the formal composition of the analysed criminal offence confirms this.

Keywords: subjective signs of a criminal offence; citizen of Ukraine; guilt; collaboration; purpose of collaboration

Statement of the problem. In the relatively short period since the introduction of martial law in Ukraine in 2022, the Verkhovna Rada of Ukraine has adopted more than ten laws aimed at eliminating the relevant gaps in criminal law regulation. The Law of Ukraine, "On Amendments to Certain Legislative Acts of Ukraine on Criminalisation of Collaboration Activities," of 03.03.2022 supplemented the Criminal Code of Ukraine (from now on - the CC) with a new Article 111-1, "Collaboration Activities". Since the introduction of liability for collaboration, the Verkhovna Rada of Ukraine has already registered more than ten draft laws to improve this provision, which indicates its imperfection and the need to identify application problems.

Recent research and publications analysis. A significant contribution to the study and development of the issues of criminal liability for collaboration is made by M. Akimov, A. Andrushko, P. Berzin, I. Bogatyrev, M. Bondarenko, A. Vozniuk, O. Dudorov, V. Kuznetsov, R. Mochnov, E. Pysmenskyi, M. Havroniuk, S. Cherniavskyi, and N. Yarmysh. However, the issue raised in our study has not been systematically considered, which determines its relevance.

The purpose of the study is to determine the subjective features of collaboration activities, including the features of general and special subjects and forms of guilt. It also aims to characterise the optional features of the subjective side of the analysed act and find ways to resolve them.

Summary of the primary material. The issue of the subjective features of the criminal offence under Art. 111-1 of the CC is highly relevant given the unresolved issues: possible criminal prosecution of persons who at first glance are not the subjects of the said act, determination of the forms of guilt and types of intent of the analyzed act, regulation of the motive and purpose of committing collaboration.

When analyzing the subject of collaboration, it is worth referring to the provisions of Part 1 of Article 18 of the CC, which sets out the characteristics of the subject of a criminal offence: an individual, age of criminal responsibility, and sanity. This position in the criminal law theory is generally accepted, although it has been repeatedly criticized [1; 2].

Among the general features of the subject of a criminal offence (individual, sanity, age) in the context of Art. 111-1 of the CC is worth briefly mentioning the age. Part 2 of Article 22 of the CC does not include collaboration (Article 111-1 of the CC) among the list of acts for which liability arises from age 14. Persons who were 16 years old before committing the criminal offence are liable for these acts. This approach to establishing
the age of criminal liability seems justified since the analyzed offences are characterized by a high degree of public danger. Thus, criminal liability for collaboration is not typical for persons aged 14 to 16. Even if we assume that a person under the age of 16 could commit such socially dangerous acts, it is controversial whether he or she would be aware of the objective side of the act and the unlawfulness of the actions.

This is also confirmed by the fact that a person aged 14 cannot properly identify the enemy or perceive the current situation in the state as valid [3, p. 105]. Therefore, setting the age at which criminal liability for collaboration may arise at 16 is a fully justified decision.

A particular subject of a criminal offence is a person with unique characteristics. From the content of Part 1 of Art. 111-1 of the CC, it becomes clear that this criminal offence can be committed only by a particular subject. This conclusion is based on the analysis of the said disposition, which indicates an additional feature characterising the offence's subject - Ukrainian citizenship. In our opinion, it is worth listening to the position that it is correct to refer not to a particular subject but to an exceptional performer since accomplices in such crimes (organisers, instigators, aiders) may be persons who are not citizens of Ukraine [4, p. 150].

By specifying an additional special feature of the subject (citizenship of Ukraine) in the disposition of Art. 111-1 of the CC, the legislator confirms that collaboration can be committed by virtually any person with the general characteristics of a criminal offence and is a citizen of Ukraine since only a citizen of Ukraine as a special subject can be held liable for collaboration. Thus, a citizen of the state whose territory is under occupation should be considered a subject of collaboration activities [5, p. 114]. Given the affinity between collaboration and treason, a citizen of Ukraine should be recognised as the subject of the relevant criminal offences [6, p. 386; 7, p. 142].

Thus, only a citizen of Ukraine can be a subject of collaboration under Article 111-1 of the CC. At the same time, he believes that the reference in the disposition of Art. 111-1 of the CC to such a feature of the subject of collaboration as having only Ukrainian citizenship somewhat narrows the circle of persons who may commit the act in question. This proposal is justified, in particular, because some Ukrainian citizens have dual citizenship. Therefore, we propose to abandon the term "citizen of Ukraine" in the disposition of Art. 111-1 of the CC considers the subject of collaboration to be "a person who has the citizenship of Ukraine and the citizenship of another state (other states) at the same time".

Some categories of actors may be characterised by additional features, depending on the nature and specifics of the collaboration activity. For example, the subject of such activity in the form of implementation of the education standards of the aggressor state in educational institutions (part 3 of Article 111-1 of the CC) is a citizen of Ukraine authorised by the occupation administration of the aggressor state to implement education standards (this includes heads of educational institutions, deputy heads of educational institutions, heads of structural units of educational institutions whose competence includes the implementation of education standards, members of methodological, pedagogical and academic councils) [5, p. 116].

In addition, the absurdity of the possible application of Part 4 of Article 111-1 of the Criminal Code to all business entities in the territory of the Russian Federation that "conduct business activities in cooperation with the aggressor state" is noteworthy. It should also be agreed that if the facts of voluntary economic activity in cooperation with the aggressor state are established, it is necessary to determine who acted and who made decisions on behalf of such a business entity: the head, the person performing his/her duties, or another person acting on behalf of the business entity. Persons performing technical functions, depending on their intent, may be accomplices, or their actions may not have signs of the objective side of such an act [8, p. 148].

The subjective side is the internal side of a criminal offence, and it is a mental activity that represents the affiliation of a person's consciousness and will to the socially dangerous act committed by the perpetrator and to the consequences [9, p. 124]. Although the disposition of Article 111-1 of the CC does not contain any specific indication of the form of guilt, based on the analysis of its disposition, it can be concluded that collaboration is committed exclusively with an intentional form of guilt. This is confirmed by the fact that the criminal offence under Article 111-1 of the CC has a formal composition, and the consequences are outside its scope.

The legislative definition of negligence focuses on the socially dangerous consequences of an act that is not part of the structure of the objective side of the collaboration. Therefore, the commission of collaboration with a negligent form of guilt is excluded [10, p. 36].

Thus, any form of collaboration can be committed
only intentionally, and the intent must be direct: the subject must be aware of the socially dangerous nature of his act (action or inaction), foresee its socially dangerous consequences in the form of strengthening the capabilities or expanding specific capabilities of the aggressor state, occupation authorities or armed formations involved in armed aggression against Ukraine, and desire the occurrence of such consequences [8, p. 148]. This position has been repeatedly highlighted in scientific publications: the subjective side of the collaboration activities provided for in Parts 1-7 of Article 111-1 of the CC is characterised by direct intent [11, p. 134].

We support the position that some criminal offences with formal elements may be committed with direct and indirect intent because under any construction of their elements, the content of intent is revealed through the person's internal attitude to all external features (including the object of the offence, which always reflects the potential or actual harmfulness of the act): for those citizens of Ukraine who have a political and ideological motivation in cooperation with the enemy, the commission of collaboration is characterised by direct intent; for another category of persons acting for mercenary motives, the commission of such actions is more characteristic of indirect intent [5, p. 117].

The motive and purpose are optional features of the subjective side of criminal offences. They are direct circumstances subject to mandatory proof (establishment) during the commission of each socially dangerous act. Paragraph 2 of Part 1 of Article 91 of the Criminal Procedure Code of Ukraine stipulates that in criminal proceedings, the guilt of the accused in committing a criminal offence, the form of guilt, and the motive and purpose of the criminal offence are subject to proof [13]. At the same time, as noted above, there is an opinion that all crimes against the foundations of national security of Ukraine are committed only with direct intent and that the motive and purpose are mandatory features of their subjective side. Even if the motive and purpose are not specified in the articles' disposition, researchers believe they are mandatory features of these crimes. We are talking about an anti-state motive, which should be considered a desire to commit an act to the detriment of the interests of Ukraine and the goal of harming the national security of Ukraine [14]. In our opinion, these ideas of researchers have the right to exist, but they contradict the basic ideas and rules for determining the elements of any criminal offence and its signs.

Conclusions and Prospects for Further Research. Thus, criminal liability for committing collaborative activity is borne by a sane citizen of Ukraine who is 16 years old at the time of the criminal offence. The subject of collaboration in all forms of this criminal offence is particular - only a citizen of Ukraine can be such a subject [8, p. 148].

At the same time, the analysis of the elements of the act under Art. 111-1 of the CC shows that it is committed exclusively with deliberate guilt in direct or indirect intent. As a general rule, the motives do not affect the qualification, while the purpose of the criminal offence has a fairly broad meaning.

Promising areas of scientific research on the signs of collaboration (Article 111-1 of the CC) relate to further development of proposals for improving the provisions of the current CC, taking into account the study of positive foreign experience of criminal liability for similar acts, as well as taking into account the results of scientific discussions and debates with their subsequent legislative consolidation. Such areas of further scientific research in the context of the materials presented should include information on interpreting the signs of a general or special subject (citizen of Ukraine) and the specifics of the forms of guilt of collaboration.

References


