

UDC 34

DOI: 10.56215/naia-herald/1.2023.33

Collaborationism as an object of criminological research

Oleksandr Dzhuzha

Doctor of Law, Professor
National Academy of Internal Affairs
03035, 1 Solomianska Sq., Kyiv, Ukraine
<https://orcid.org/0000-0003-1347-4937>

Vitalii Vasylevych*

Doctor of Law, Professor
National Academy of Internal Affairs
03035, 1 Solomianska Sq., Kyiv, Ukraine
<https://orcid.org/0000-0001-9351-4219>

Dmytro Tychyna

PhD in Law, Senior Researcher
National Academy of Internal Affairs
03035, 1 Solomianska Sq., Kyiv, Ukraine
<https://orcid.org/0000-0002-9430-6101>

■ **Abstract.** With the onset of the war initiated by the Russian Federation against Ukraine, collaborationist activity has become a matter of national security for the country. Collaborationist activity, which involves cooperation or assistance to another country or organisation, can have an impact on the national security of a country, including armed or cyber influence, influence on information flows, and citizen safety. The purpose of this study is to identify the dynamics of changes and distinguish collaborationist activity from other types of criminal offences within the context of criminology and criminal law in Ukraine. The research methods used in this study included analysis and synthesis, which were used to identify pertinent issues in society that arise during the process of identifying the criminal activity of collaborators. Methods of historical analysis, specification, and classification are applied. The main methods used in the study were the analysis and synthesis of scientific and theoretical materials and legal norms. Collaborationism in the context of international law is defined. The main acts in the field of international humanitarian law that define the legal status of populations in occupied territories are analysed. Based on key characteristics, various types of criminal activity are identified. The issue of the need to improve criminal law norms, the definition of crime, and the responsibility for collaborationist activity are addressed. The study explored the issue of collaborationism in Ukraine, which emerged as a result of the armed aggression of the Russian Federation. An analysis of the changes made to the Ukrainian Criminal Code regarding the definition of the crime related to collaborationist activity and the responsibility for such actions is conducted. The dynamics of court verdicts over the past year concerning the application of the criminal code provision in real time is summarised. The practical value of this study lies in the fact that identifying current problems and their resolution methods will enhance the effectiveness of law enforcement activities in detecting individuals engaged in collaborationist activity and holding them accountable. This, in turn, will contribute to reducing the level of criminality in this sphere

■ **Keywords:** war crimes; national security; occupation; enemy; high treason

■ Suggested Citation:

Dzhuzha, O., Vasylevych, V., & Tychyna, D. (2023). Collaborationism as an object of criminological research. *Scientific Journal of the National Academy of Internal Affairs*, 28(1), 33-43. doi: 10.56215/naia-herald/1.2023.33.

■ *Corresponding author

■ Received: 15.12.2022; Revised: 24.02.2023; Accepted: 28.03.2023.



Copyright © The Author(s). This is an open access article distributed under the terms of the Creative Commons Attribution License 4.0 (<https://creativecommons.org/licenses/by/4.0/>)

■ Introduction

For Western Europe, a lawful and internationally recognised practice of prosecuting war criminals is characteristic. The concept of criminal collaboration emerged during World War II. During this period, the term “collaborationism” took on forms of moral and political involvement for those who cooperated with the cruel Nazi regime, thereby committing crimes against their own population. To distinguish between favourable and unfavourable collaborationists, it is necessary to understand the underlying ideas pursued by these individuals.

P. Digeser (2022) explored the issue of collaboration as an undefined concept, which led to political abuse and manipulation, and also formulated the concept of gender collaborationism. Throughout Europe, Germany's Nazi ideology created various combinations and forms of cooperation with occupiers, ranging from military to economic collaboration. In this sense, it is challenging to differentiate between collaborationism and the ordinary survival of the population during wartime.

S. Kalyvas (2018) investigated two types of collaboration: military and armed collaboration. The author also examined the theoretical underpinnings of the phenomenon, such as indirect rule, civil war, and endogenous dynamics. In the paper by T. Austad (2022), the role of national identity and religious beliefs of the population in the process of combating collaborators was examined, using the example of the Norwegian events during World War II.

Having examined mass killings that occurred during the armed conflict in East Java, G. Leksana (2021) & M. Galvis (2022) analysed the main features of genocide and highlighted collaborationist actions' peculiarities beyond the context of war. The unstable political situation in the state led to successful collaboration between the population and the military, as it had its intentions during the violence. Civilian populations were driven by motives such as political revenge against communist neighbours or economic attempts to acquire land. These motivations include rewards individuals received from violence, such as obtaining property or employment in the civil service. In the author's view, the participation of civilians in mass violence leading to genocide in Indonesia in 1965-66 is an expression of collaboration supported by the military.

E. Benmelech & E.F. Klor (2020) conducted an analysis of the phenomenon of foreign fighters joining the Islamic State in Iraq and Syria (ISIS). They investigated the reasons and motivations behind the

collaboration of foreign citizens with ISIS. It was established that the influx of fighters to ISIS is driven not only by economic or political conditions but also has ideological and religious underpinnings. The ethnic homogeneity and the Muslim population's size provide an impetus for individuals from countries with high levels of economic development and advanced political institutions to join opposition forces or rebels.

The issue of collaboration in Ukraine was addressed by O. Diachok (2017). She elucidated the concept of collaborationist activity since the beginning of Russia's military invasion and the annexation of Crimea in 2014. The task then arose to prevent individuals responsible for crimes against Ukraine's national security from assuming state management roles. Analysing national legislation in relation to international human rights instruments, it was found that individuals implicated in criminal collaboration could not be held criminally responsible due to the absence of mechanisms to do so. There is now a need to amend Ukraine's criminal legislation.

The question of criminal collaboration with an occupying state remains open for society. War crimes, espionage, and high treason always take place during military operations. The problem of this study was the absence of practical application of this concept in modern society, as the notion of occupation is absent in most countries. As a result of the armed aggression of the Russian Federation, Ukraine has become the founder of new norms that take their place in international humanitarian law, which actualises the conduct of this study.

The purpose of the study was to examine new forms of collaborationist activity and methods to combat it in contemporary society. The objective is to identify the signs of collaborationist activity and address the responsibility for such a type of offence.

■ Materials and Methods

For a comprehensive and in-depth study, an analysis of a series of papers published in journals and collections on the subject of collaborationist activity with the enemy during the occupation was conducted. Familiarity with normative acts in the field of international humanitarian law that regulate the legal status of the population during the occupation, such as the IV Geneva Convention on the Laws and Customs of War on Land¹, the IV Geneva Convention for the Protection of Civilian Persons in Time of War², and the European Convention on Human Rights, was

¹IV Convention No. 995_222 “On the Laws and Customs of War on Land and Its Annex: Provisions on the Laws and Customs of War on Land”. (1907, October). Retrieved from https://zakon.rada.gov.ua/laws/show/995_222#Text.

²Convention No. 995_154 “On the Protection of the Civilian Population in Time of War”. (1949, August). Retrieved from https://zakon.rada.gov.ua/laws/show/995_154#Text.

undertaken¹. An analogy was drawn between international acts and the practice of imposing criminal punishment for collaborationist activities during the Second World War period. Using an analysis of changes in criminal legislation over the recent period, particularly regarding defining the elements of the crime of collaborationist activity and legal accountability for such actions, was accomplished.

Employing the method of specification, historical examples from European countries and the East concerning collaborationist activity during wartime and occupation periods were identified. The practices of various countries aimed at holding individuals accountable for treason were explored.

Based on dialectical and systemic methods, historical conclusions were drawn from foreign countries, indicating the need for the global community to address issues of state treason during wartime conflicts, mass killings, and political repressions. The concept of collaborationist activity was isolated from other criminal offences. The impact of propaganda from the aggressor state during war, which can shift the situation from collaborationism to national resistance and the fight for independence in totalitarian regimes, was analysed.

Using analysis and synthesis, general principles of law enforcement activities in Ukraine aimed at preserving state sovereignty within the framework of international humanitarian law based on national legislation were determined.

Through typological analysis, types of collaboration were categorised for criminal justice purposes. Conclusions about the specifics of collaborationist actions and criminal punishment for their commission in individual cases were derived using deduction methods. The importance of defining collaborationist activity as a distinct criminal offence for application in international legal practice was emphasised. Problems at the international level were synthesised using the method of generalisation.

■ Results and Discussion

Despite the fact that collaborationist activity poses a high level of societal danger, such actions are not always identified as criminal acts. This is due to the insufficient readiness of criminal legislation. To address this, it is necessary to identify types of offenses that deliberately harm national security, viewed from the perspective of state treason, while still falling outside

the scope of criminal liability (Antonyuk, 2022). The issue of improving the existing criminal and criminal procedural legislation is particularly relevant in the territory of Ukraine during the introduction of a state of war. In such conditions, society requires new approaches to defining the elements of the crime and streamlining procedural actions. The dynamics of criminal processes demand changes to the current legislation, considering the future development direction of criminal legislation (Balobanova *et al.*, 2022).

To understand the concept of collaborationism, it is necessary to analyse the main features of this phenomenon. The experience of the Chinese in Yokohama during the Second Sino-Japanese War demonstrated how easily the concept of friendship can be manipulated between two nations. The contemplations of the Chinese in Yokohama about friendship during the war highlighted the disconnect between its rhetorical concept and its use by the Japanese government for its own purposes. The consequences of such political manipulations persist in Chinese-Japanese relations to the present day. Diplomatic statements of friendship do not align with the factual distrust and hostility between the Chinese and Japanese people (Hretsa *et al.*, 2022).

In accordance with the foundational acts in the field of international humanitarian law that define the legal status of the population in occupied territories, a territory is recognized as occupied if it is effectively under the control of the enemy's army. The IV Hague Convention² on the Laws and Customs of War on Land proclaims the principle of humanity, which obliges the occupier to ensure the normal livelihood on the occupied territory, a proper humanitarian situation, and adherence to rules of conduct with the civilian population and prisoners of war. This implies that the occupant is obligated to take measures to restore and ensure public order and the safety of the peaceful population. The Geneva Conventions³ regulate the treatment of prisoners of war and civilian populations during armed conflicts. The importance of the humanitarian sphere during armed conflict is difficult to overestimate. An individual who, due to an insurmountable situation, finds themselves in occupied territory is protected by the Convention. Regardless of the location, whether it is a region undergoing armed conflict or occupation and whether it is under the jurisdiction of a conflicting party or an occupying state, individuals are entitled to receive humane treatment.

¹European Convention No. 995_004 "On the Protection of Human Rights and Fundamental Freedoms". (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004#Text.

²IV Convention No. 995_222 "On the Laws and Customs of War on Land and Its Annex: Provisions on the Laws and Customs of War on Land". (1907, October). Retrieved from https://zakon.rada.gov.ua/laws/show/995_222#Text.

³Convention No. 995_154 "On the Protection of the Civilian Population in Time of War". (1949, August). Retrieved from https://zakon.rada.gov.ua/laws/show/995_154#Text.

As of 2023, European legislation does not define the elements of a crime related to collaborationist activity. Overall, international humanitarian law establishes responsibility only for individuals who engage in active activities such as espionage, sabotage, and intelligence in favour of an enemy country or its citizens. Based on these norms, support for an occupying authority that is not accompanied by active actions is not considered collaboration with the enemy. There is no direct prohibition on collaboration with the enemy or voluntary involvement of residents of occupied territories in such collaboration. The only limitation for individuals engaging in activity detrimental to state security is that the Convention's protection does not extend to them.

According to Article 6 of the European Convention on Human Rights¹, the occupying authority must ensure effective judicial proceedings in the occupied territory. For this purpose, it is necessary to ensure the operation of non-political courts on this territory, and in case of violations of provisions on criminal liability, transfer the accused to them. The principles

of non-political nature and ensuring a fair procedure and practical realisation of the right to a fair trial are crucial in the activities of judicial bodies in the occupied territory.

Large-scale judicial processes for war crimes took place in Asian countries and were related to state treason. Based on the nationality of the criminals and victims, it was difficult to establish a boundary between forced behaviour to support daily life and collaborationism. This raised doubts about whether such actions could be considered war crimes and led to societal dissatisfaction with judicial verdicts (Lingen & Cribb, 2017).

Contemporary collaborationism encompasses various forms of betrayal of the state, cooperation of the population with occupying authorities and their representatives, and collaboration with the aggressor nation in various aspects of life such as military, economic, political, informational, and others. Through scholarly analysis, several types of collaboration have been identified based on their distinguishing characteristics (Table 1).

Table 1. Types of collaborationism

Type	Characteristic features	Example
Forced collaborationism	Cooperation is not voluntary	A resident of the Burynska United Territorial Community (UTC) in Sumy Oblast, Ukraine, at the end of March 2022, when Russian forces occupied the UTC and established a checkpoint on the route to Oleksandr's workplace, agreed to provide the Russians with "material resources in the form of water and cigarettes". The court issued a verdict considering the fact that the decision on cooperation was made to "avoid checking documents and a simplified crossing of the checkpoint" to get to work ²
Voluntary collaborationism	Cooperation with the aim of harming the state sovereignty and territorial integrity of the country voluntarily	A person who is liable for military service, currently in reserve with the military rank of Senior Sergeant, holding the military position of Weapons Master, and subject to conscription through mobilisation, received a summons to report for military service through mobilisation at their permanent place of residence, and acknowledged this by signing the document "acknowledgment of summons." After that, he left Zaporizhzhia and travelled to Mariupol in Dnipropetrovsk Oblast, and then proceeded to enter the area of the anti-terrorist operation, specifically to the temporarily occupied territory of Donetsk city. There, he joined the ranks of an unlawful armed terrorist group known as the "Vostok" battalion, which was under the control of the self-proclaimed "Donetsk People's Republic" ³

¹European Convention No. 995_004 "On the Protection of Human Rights and Fundamental Freedoms". (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004#Text.

²Verdict of the Buryn District Court on Case No. 574/369/22. (2023, January). Retrieved from <https://reyestr.court.gov.ua/Review/107991214>.

³Verdict of the Pavlograd District Court on Case No. 185/3792/15-k. (2015, September). Retrieved from <https://reyestr.court.gov.ua/Review/49532141>.

Table 1, Continued

Type	Characteristic features	Example
Ideological collaborationism	Occurs through ideological beliefs	The pre-trial investigation authorities classify crimes in accordance with Part 1 of Article 111-1 of the Criminal Code of Ukraine regarding individuals who, on their personal page on a social internet network under their nickname, posted publications and personal video materials that led to criminal liability ¹
Military collaborationism	Service in enemy law enforcement agencies, police agencies, punitive structures, intelligence, provision of certain military information	The court imposed punishment on the accused in accordance with the sanction of Article 260 Part 2 of the Criminal Code of Ukraine, in the form of imprisonment at the lowest limit, on an individual who, for monetary compensation, decided to join a military formation of the self-proclaimed so-called “DNR” while possessing firearms or explosive weapons, realising that the armed formation is unlawful ²
Political and administrative		The case was opened against Serhiy Khortiv, the former mayor of Rubizhne city in the Luhansk region. On May 16, 2023, the court found him guilty of collaborationism and sentenced him to 10 years of imprisonment with property confiscation and a ban on holding public office ³
Everyday collaborationism	Cooperation with the occupation authorities	Individuals who received instructions from representatives of the RF armed forces, using an official cargo vehicle, assisted the enemy country’s armed formations in constructing checkpoints, transporting various types of cargo, as well as providing fuel for military equipment. They also provided information about military personnel, representatives of territorial defence in the towns of Hostomel and Irpin, Kyiv region, participants in combat actions, and citizens with active pro-Ukrainian positions. The actions of the accused are classified by the pre-trial investigation authority under Part 4 of Article 1111 of the Criminal Code of Ukraine ⁴
Economic collaborationism	Establishment of friendly relations between occupiers and the local population	Implementing their criminal intent, an individual located at their workplace within the premises of the state institution “Zhytomyr Regional Center for Disease Control and Prevention of the Ministry of Health of Ukraine”, situated at the address: 64 Velyka Berdychivska Street, Room No. 65, in Zhytomyr, intentionally, with the motive of supporting informational influences of the aggressor state to the detriment of Ukraine’s information security and with the aim of disseminating them among an unspecified group of individuals, in the presence of medical personnel of the institution, publicly called for the support of decisions and actions of the aggressor state – the Russian Federation. Thus, the individual is accused of, under the aforementioned circumstances, intentionally and motivated by ideological-political preferences, being aware of the unlawfulness of their actions and being a citizen of Ukraine, publicly calling for the support of decisions and actions of the aggressor state, i.e., committing a criminal offence as stipulated in Part 1 of Article 111-1 of the Criminal Code of Ukraine ⁵

¹Verdict of the Krasnogvardiy District Court on Case No. 204/6874/22. (2022, October). Retrieved from <https://reyestr.court.gov.ua/Review/106339886>.

²Verdict of the Dobropil District Court on Case No. 227/4/15-k. (2015, September). Retrieved from <https://reyestr.court.gov.ua/Review/45297278>.

³Verdict of the Kirov District Court of Kirovohrad No. 185/4425/22. (2023). Retrieved from <https://reyestr.court.gov.ua/Review/110875902>.

⁴Verdict of the Shevchenkiv District Court on Case No. 761/13954/22. (2022). Retrieved from <https://reyestr.court.gov.ua/Review/106554991>.

⁵Verdict of the Korolovsky District Court on Case No. 296/6171/22. (2022, November). Retrieved from <https://reyestr.court.gov.ua/Review/106395178>.

Table 1, Continued

Type	Characteristic features	Example
Cultural and spiritual collaborationism	Propaganda and cultural and ideological work with the population	On May 11, 2023, the Lenin District Court of Kropyvnytskyi found Metropolitan Ioasaf (Petro Hubenia), the former head of the Kirovohrad Diocese of the Ukrainian Orthodox Church of the Moscow Patriarchate (UOC-MP), and Roman Kondratyuk, the secretary of the same diocese, guilty of inciting religious hostility ¹

Source: Summarised by the authors

Based on the fundamental principles of criminal procedural legislation, the object of collaborationist activity is to inflict harm on the sovereignty, territorial integrity, external and internal sovereignty of Ukraine, its defence capability, economic, and information security. The subjective aspect involves the perpetrator's awareness of the socially dangerous consequences of their actions. Motivations for such activity may include personal gain, revenge, or ideological beliefs of the individual (Yanishevska & Krysko, 2022).

International humanitarian law aims to regulate relations during armed conflicts and establish preventive measures to prevent them. In the context of global experience in combating collaborationist activity, it has been established that the modern system of international legal regulation contains declarative norms that demonstrated their inefficiency during military operations and the occupation of territories. This includes the functions of the United Nations Security Council and the International Committee of the Red Cross. During the Russian Federation's invasion of Ukraine, they proved ineffective in the conditions of a full-scale military conflict. There is a need to enhance norms in various areas of law, including criminal law, by defining new forms of crimes and their accountability (Kalyvas, 2018).

The attack by the Russian Federation challenged state sovereignty, territorial integrity, and independence of Ukraine. The socio-political situation in Eastern Ukraine during the military operations initiated the emergence of collaborationist activity in that territory and is indicative of treason. This phenomenon required an immediate update of criminal legislation to specifically define this crime as a separate criminal offence. The Ukrainian authorities promptly responded to societal demands by amending the Criminal Code of Ukraine to introduce criminal liability for collaborationist activity, targeting individuals who assist the Russians and collaborate with the occupying administration to the detriment of Ukraine. The new provisions in the Criminal Code align with the principles of international humanitarian law (Bondarenko *et al.*, 2022).

On March 15, 2022, the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Regarding the Establishment of Criminal Liability for Collaborationist Activity"² came into effect, amending the Criminal Code of Ukraine³ to introduce Article 111-1. This article significantly heightened criminal liability for criminal cooperation with an aggressor state. Starting from that moment, criminal liability for collaborationist activity in Ukraine has been in effect (Table 2).

Table 2. Analysis of Article 111-1 of the Criminal Code of Ukraine

Acts	Punishment
Occupying a position that does not involve performing organisational, administrative, or managerial functions within the authorities established on illegal grounds in occupied territories	Entails prohibiting engagement in certain activities and holding specific positions for a period ranging from ten to fifteen years, with the possibility of property confiscation
Occupying a position in unlawful entities established in occupied territories, which involves performing organisational, managerial, administrative, or economic functions	Provides for imprisonment from 5 to 10 years and a prohibition from holding certain positions or engaging in specific activities for a period of 10 to 15 years, with the possibility of property confiscation
Activities that involve organising and conducting elections, calling for elections, and participating in the election of officials to illegal authorities established in occupied territories	

¹Verdict of the Leninsky District Court on Case No. 405/2078/23. (2023). Retrieved from <https://reyestr.court.gov.ua/Review/110901228>.

²Law of Ukraine No. 2108-IX "On Amendments to Certain Legislative Acts of Ukraine on Establishing Criminal Liability for Collaborative Activities". (2022, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/2108-20#Text>.

³Criminal Codex of Ukraine No. 2341-III. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

Table 2, Continued

Acts	Punishment
Transferring material resources to the armed forces of the aggressor state or the occupying authority	Fines up to 170,000 UAH. Imprisonment from 5 to 10 years + prohibition from holding certain positions and engaging in specific activities for 10 to 15 years with property confiscation
Engaging in economic activities with the occupying authority	
Holding positions in law enforcement or judicial bodies established in the occupied territory	Imprisonment from 12 to 15 years and prohibition from holding certain positions and engaging in specific activities for 10 to 15 years with the possibility of confiscation
Participating in militarised groups or armed formations of the aggressor state established in the occupied territory	
Providing assistance in conducting combat operations against the Armed Forces of Ukraine, territorial defence units, and other volunteer formations	
Activities that involve publicly supporting aggression against Ukraine or denying these facts	Prohibition from holding certain positions and engaging in specific activities for 10 to 15 years
Urging support for the occupying administration, cooperating with it, and endorsing decisions and actions of the enemy state	
Denying the sovereignty of Ukraine over temporarily occupied territory	Prohibition from holding certain positions and engaging in specific activities for 10 to 15 years
Organising and conducting political events in support of the aggressor state and the occupying authority, and active participation in such activities (congresses, gatherings, rallies, marches, demonstrations, conferences, round tables)	Imprisonment from 12 to 15 years and prohibition from holding certain positions and engaging in specific activities for 10 to 15 years with property confiscation
Information activities – creating, collecting, obtaining, storing, using, and disseminating information – in collaboration with the aggressor state or occupying authority and active participation in such activities	
Activities that involve promoting the military aggression of the aggressor state against Ukraine in educational institutions	Correctional labour up to 2 years; arrest up to 6 months; imprisonment up to 3 years; prohibition from holding certain positions and engaging in specific activities for 10 to 15 years
Activities that involve supporting the aggressor country and the occupying authority	
Activities that involve implementing the standards of the aggressor state in the field of education	

Source: Criminal Code of Ukraine¹

In the Ukrainian language, “collaborationism” comes from French “collaboration,” which is defined as conscious, voluntary, and intentional cooperation with the enemy for one’s own interests and to the detriment of one’s own state and its allies. When interpreting this phenomenon, certain distinctions between collaborationism and espionage are made. Before the changes were introduced into the Criminal Code of Ukraine, the concept of “collaborationist activity” was only discussed in legal doctrines and draft laws. Therefore, such dynamic changes can be considered a significant breakthrough not only in the criminal legislation of Ukraine but also beyond.

Analysing the characteristics of actions provided in Articles 111-1 and 114 of the Criminal Code of

Ukraine, certain differences in the description of the criminal elements can be identified. Collaborative activities do not involve committing actions related to the collection and transmission of information that could constitute state secrets to the aggressor state. The concept of espionage involves an actively purposeful collection of information that constitutes state secrets. An analysis was conducted on 70 verdicts rendered during the wartime period up until the end of August 2022. As a result, it was determined that judicial verdicts under Article 111-1 for collaborationist activities, among actions closely resembling it in terms of their characteristics, account for 45%, verdicts for state treason constitute 48%, verdicts under Article 114-2 for unauthorised dissemination

¹Criminal Code of Ukraine No. 2341-III. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

military formations, amount to only 6%, and verdicts for obstructing the lawful activities of the Armed Forces of Ukraine and other military formations under Article 114-1 account for 1% (Fig. 1).

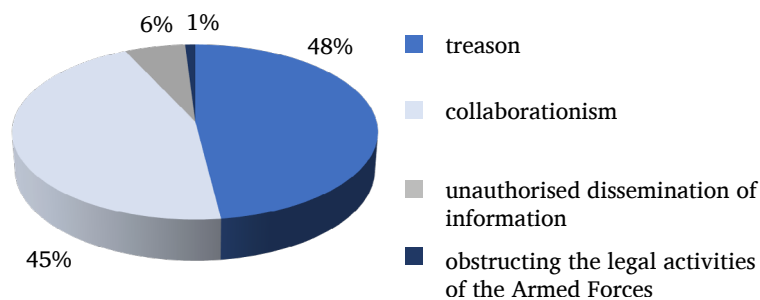


Figure. 1. Analysis of the dynamics of court sentences (as of the end of August 2022)

Source: Compiled by the authors

There is a problem in the qualification of actions of Ukrainian citizens related to collaborationism. Criminal proceedings are initiated by law enforcement agencies under Articles 111 (State Treason), 111-1 (Collaborationist Activities), and 111-2 (Aiding the Aggressor State) of the Criminal Code of Ukraine. The application of one or another article in these cases is essential for the individual. The practice of applying these articles indicates a lack of legal certainty in these norms. This means that the same act can be qualified under several articles. International standards of law stipulate that the legal rights of individuals should be determined by legal norms, not by discretionary powers of state authorities (Myslyvyi, 2022). Such vagueness may lead to the annulment of verdicts at the national level and to decisions against Ukraine in the European Court of Human Rights. For instance, in the decision of the Supreme Court, the panel of judges of the Second Judicial Chamber of the Cassation Criminal Court in case No. 760/6265/22¹, verdicts of the lower courts were annulled. In this case, a man was found guilty of acquiring and storing firearms, ammunition, and explosives without the required legal permit at his place of residence. He was convicted of illegal possession of weapons and ammunition and sentenced to actual imprisonment. When the Cassation Court made its decision, it expressed the position that if the actions of an individual are proven to be an extreme necessity, such actions are not a criminal offence according to Part 1 of Article 39 of the Criminal Code². Consid-

ering the practice of the European Court of Human Rights, citizens should have the opportunity to report to competent state officials about the behaviour of public servants that they find unlawful or illegal³.

In contemporary international conflicts, many parties are involved, including civilians. As is known, they are not allowed to participate in combat activities. Modern International Humanitarian Law cannot provide a clear answer as to whether such actions constitute violations of humanitarian law in cases of war crimes or whether such activities are subject to ordinary criminal responsibility. The question of the compatibility of state programmes with international law was raised during the political crisis in Syria from 2015 to 2018. Due to the internal political crisis in the country, protests aimed at overthrowing the regime of President Bashar al-Assad arose, accompanied by violent events. In support of the Syrian rebels, the government of the Netherlands adopted a programme of “non-lethal aid.” Despite the fact that the programme was developed within the framework of international law, the principle of non-intervention and the prohibition of the use of force were violated (Ruys & Ferro, 2020). International Criminal jurisdictions have developed a so-called “loyalty” test to determine the relationship between the concept of loyalty and high treason. The test itself has no legal effect, but it exists as an interpretive tool to prevent arbitrary and unjustified judicial legislation for the protection of individuals under the Fourth Geneva Convention⁴.

¹Resolution of the Supreme Court of Ukraine on the Case No. 760/6265/22. (2023). Retrieved from https://reyestr.court.gov.ua/Review/110749408?fbclid=IwAR1jLirxbDpHGArmQ6Ilk7d4xlpMqshQVWaJyvtMWBF5FkTHV3r5EkPo_w25.%202023.

²Criminal Codex of Ukraine No. 2341-III. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

³Case of Rogalski v. Poland No. 5420/16. (2023). Retrieved from [https://hudoc.echr.coe.int/eng/%7B%22itemid%22:\[%22001-223656%22%7D](https://hudoc.echr.coe.int/eng/%7B%22itemid%22:[%22001-223656%22%7D)].

Convention No. 995_154 "On the Protection of the Civilian Population in Time of War". (1949, August). Retrieved from https://zakon.rada.gov.ua/laws/show/995_154#Text.

As of 2023, the world is actively discussing the extreme danger of Nazism and totalitarianism. If such ideas win, humanity will face ideological decline, humanitarian catastrophe, and post-war repression. In this context, it is vital to define a line between the criminal actions of collaborators that pose a threat to national interests and actions aimed at preserving fundamental humanitarian human rights and preventing the prosecution of innocent people.

V. Voisin (2017) explores the issue of punishing female collaborators in the Soviet state who had sexual relations with an invader. This behaviour causes condemnation from the local population from a moral standpoint. The state utilised this for social-political purges of the population.

Civil War researchers V. Bauer *et al.* (2022) examined the involvement of militants in Pakistan to reduce cooperation with the United States. The analysis results indicated that killing collaborators using drones led to a decrease in espionage as a whole. Defining the concept of a collaborator and their motivation to cooperate with the enemy is the subject of analysis in the book by J. Espindola & L. Payne (2022). The authors delve into whether cooperation is harmful or whether it leads to an increase or decrease in violence, whether it is always evil or if it can be viewed in light of mitigating injustice. The study is based on various types of cooperation in different times, countries, political systems, political and cultural conflicts. S. Bozanich (2022) identified key factors that give rise to collaborationism. According to him, these are violent actions by the aggressor country or occupying totalitarian power. Under the influence of special events, disputes on religious topics and ethnicity arise on an ideological basis. For instance, during the Yugoslav War, there was a threat of genocide against Bosnian Muslims, ethnic Albanians, Croats, and other nations. Amid internal conflict and Nazi occupation, questions arose about mass violence and genocide. The diversity of political, ideological, and cultural perspectives does not provide a clear understanding of the boundary between collaborationism and national liberation resistance or the struggle for independence. The model of European behaviour during the war is characterised by a paradigm between resistance and cooperation with the occupation authorities.

The interconnection principles of the political, social, economic, and military spheres during war with totalitarian regimes and the significance of gender as an analytical category were explored by V. Drapac & G. Pritchard (2015). Currently, historians and jurists agree that the issue of collaborationism is not limited solely to the context of military actions and territorial occupation during wartime. J. Espindola (2023) described manifestations of collaboration beyond the scope of warfare. He investigated this issue

from a philosophical and moral perspective, assessing the risks of cooperation between state authorities and criminals involved in drug-related crimes in Mexico. In exchange for leniency in sentencing and protection from retaliation, these wrongdoers are required to leave their criminal organisation and strike a deal with law enforcement agencies to share information about their activities. The author questions the permissibility of using collaborators in the state justice system.

Based on the general concept of criminal law and specific historical examples, one can conclude that the phenomenon of collaboration occupies a distinct place in criminal legislation. Given that modern hybrid warfare involves a wide spectrum of society, traditional concepts such as treason, espionage, sabotage, and genocide no longer fit neatly within the confines of current jurisprudence. An important point is not only the amendment of Criminal Legislation but also the continued exploration of these processes to prevent the manifestation of genocide, mass violence, and other grave violations of human rights.

■ Conclusions

Collaborationism has been discussed and studied by historians and sociologists in their works; however, the legal practice of holding collaborators criminally responsible is relatively limited. It is based solely on the application of general international acts and has not yet been incorporated into national criminal legislation. This legal gap is rooted in the absence of precedents in world history since the end of World War II. The Nazi regime left a considerable impact on the development of contemporary Europe and its citizens' political and ideological perspectives on societal life. The Nuremberg Trials were centred around war crimes and crimes against humanity in general. The complex historical past and the establishment of Ukrainian statehood in the context of the Russo-Ukrainian war prompted innovations in criminal legislation. However, there is no clear legal stance on regulating the behaviour of Ukrainian citizens residing in occupied territories who collaborate with the enemy or occupying authorities.

The question of treason becomes particularly acute during times of war, regardless of where it occurs, whereas collaborationism is a type of behaviour that must necessarily manifest on occupied territories and is demonstrated during the occupation. Progressive humanity faced a new challenge in the form of Vladimir Putin's imperialistic totalitarian regime. Society, especially the population of Ukraine, proved unprepared for the new threat to humanity that unexpectedly arose from the Russian Federation. Therefore, the introduction of new provisions into the Criminal Code of Ukraine should only mark the beginning of new research in the field of criminal legal issues related to collaborationism.

This matter requires further study, a scientific approach to the issue that will enable bridging gaps in law enforcement activities, particularly in the context of collaborationist activity during military operations, mass killings, other manifestations of genocide, and gaining new theoretical and practical insights. The timely incorporation of changes into criminal legislation to minimise the consequences of collaborationist activity and prevent it in occupied territories is of particular importance.

The scientific originality of this paper lies in identifying new characteristics when defining the elements of the crime of collaborationist activity in the context of hybrid warfare.

■ Acknowledgements

None.

■ Conflict of Interest

None.

■ References

- [1] Antonyuk, N. (2022). A criminal and legal assessment of collaborationism: A change of views in connection with Russia's military aggression against Ukraine. *Access to Justice in Eastern Europe*, 5(3), 137-145. doi: [10.33327/AJEE-18-5.3-n000312](https://doi.org/10.33327/AJEE-18-5.3-n000312).
- [2] Austad, T. (2022). [National youth service. The struggle for children and youth in Norway during the occupation of 1940-1945](#). *Danish Journal of Theology and Church*, 49(2), 101-118.
- [3] Balobanova, D., Hazdayka-Vasylyshyn, I., Shekhavtsov, R., Avramenko, O., & Lashchuk, N. (2022). Dynamics of criminal law and process in conditions of special legal regimes. *Amazonia Investiga Journal*, 11(54), 208-218. doi: [10.34069/AI/2022.54.06.20](https://doi.org/10.34069/AI/2022.54.06.20).
- [4] Bauer, V., Reese, M., & Ruby, K. (2022). Does insurgent selective punishment deter collaboration? Evidence from the drone war in Pakistan. *Journal of Conflict Resolution*, 27(2), 297-326. doi: [10.1177/00220027211041158](https://doi.org/10.1177/00220027211041158).
- [5] Benmelech, E., & Klor, E.F. (2020). What explains the flow of foreign fighters to ISIS? *Terrorism and Political Violence*, 32(7), 1458-1481. doi: [10.1080/09546553.2018.1482214](https://doi.org/10.1080/09546553.2018.1482214).
- [6] Bondarenko, O., Reznik, O., & Utkina, M. (2022). Novelization of the Criminal Code of Ukraine during the 2022 Russian invasion. *Journal of International Legal Communication*, 4(1), 31-38. doi: [10.32612/uw.27201643.2022.1](https://doi.org/10.32612/uw.27201643.2022.1).
- [7] Bozanich, S. (2022). *For king and datherland: Collaboration and genocide in wartime Yugoslavia*. Retrieved from https://www.academia.edu/77281558/For_King_and_Fatherland_Collaboration_and_Genocide_in_Wartime_Yugoslavia.
- [8] Digeser, P. (2022). Collaboration and its political functions. *American Political Science Review*, 116(1), 200-212. doi: [10.1017/S0003055421000745](https://doi.org/10.1017/S0003055421000745).
- [9] Drapac, V., & Pritchard, G. (2015). Beyond resistance and collaboration: Towards a social history of politics in Hitler's empire. *Journal of Social History*, 48(4), 865-891. doi: [10.1093/jsh/shv006](https://doi.org/10.1093/jsh/shv006).
- [10] Diachok, O. (2017). [Regarding the legislative limitation of the legal status of persons who have committed crimes against the foundations of national security of Ukraine](#). *Legal Position*, 2(19), 138-150.
- [11] Espindola, J. (2023). Bargaining with criminals: The morality of witness collaboration in Mexico's "war on drugs". *National Autonomous University of Mexico*, 27(1), 5-22. doi: [10.1177/13624806211072859](https://doi.org/10.1177/13624806211072859).
- [12] Espindola, J., & Payne, L. (2022). *Collaboration in authoritarian and armed conflict settings*. Oxford: British Academy Scholarship Online. doi: [10.5871/bacad/9780197267059.001.0001](https://doi.org/10.5871/bacad/9780197267059.001.0001).
- [13] Galvis, M. (2022). The "allegiance" test: Judicial legislation and interpretation of GCIV. *Journal of Conflict and Security Law*, 27(1), 21-51. doi: [10.1093/jcsl/krab019](https://doi.org/10.1093/jcsl/krab019).
- [14] Han, E. (2013). A true Sino-Japanese amity? Collaborationism and the Yokohama Chinese (1937-1945). *Journal of Asian Studies*, 72(3), 587-609. doi: [10.1017/S0021911813000533](https://doi.org/10.1017/S0021911813000533).
- [15] Hretsa, S., Tykhomyrov, D., Olashyn, M., Rudanetska, O., & Bogoniuk, H. (2022). Transformation of the legal system in a time of war: International, administrative, and criminal aspects. *Cuestiones Politicas*, 40(75), 879-900. doi: [10.46398/cuestpol.4075.53](https://doi.org/10.46398/cuestpol.4075.53).
- [16] Kalyvas, S. (2018). Armed collaboration in Greece, 1941-1944. *European Review of History: Revue Européenne D'histoire*, 15(2), 129-142. doi: [10.1080/13507480801931051](https://doi.org/10.1080/13507480801931051).
- [17] Leksana, G. (2021). Collaboration in mass violence: The case of the Indonesian anti-leftist mass killings in 1965-66 in East Java. *Journal of Genocide*, 23(1), 58-80. doi: [10.1080/14623528.2020.1778612](https://doi.org/10.1080/14623528.2020.1778612).
- [18] Lingen, K., & Cribb, R. (2017). [War crimes trials in Asia: Collaboration and complicity in the aftermath of war](#). *Debating Collaboration and Complicity in War Crimes Trials in Asia, 1945-1986*.
- [19] Myslyvyi, V. (2022). Collaborative activities and espionage: Distinction criteria. *Legal Scientific Electronic Journal*, 12, 370-374. doi: [10.32782/2524-0374/2022-12/87](https://doi.org/10.32782/2524-0374/2022-12/87).

- [20] Ruys, T., & Ferro, L. (2020). [The enemy of my enemy](#). Dutch non-lethal assistance for ‘moderate’ syrian rebels and the multilevel violation of international law. *Netherlands Yearbook of International Law*, 50, 1-33.
- [21] Voisin, V. (2017). The soviet punishment of an All-European crime, “horizontal collaboration”. *Traitors, Collaborators and Deserters in Contemporary European Politics of Memory*, 241-264. [doi: 10.1007/978-3-319-66496-5_10](#).
- [22] Yanishevskaya, K., & Krysko, A. (2022). General theoretical aspects and classification of collaborative activity as a criminal-legal phenomenon. *Bulletin of the National Technical University of Ukraine “Kyiv Polytechnic Institute”*, 4(56), 16-19. [doi: 10.20535/2308-5053.2022.4\(56\).269622](#).

Колабораціонізм як об’єкт кримінологічного дослідження

Олександр Джу́жа

Доктор юридичних наук, професор
Національна академія внутрішніх справ
03035, пл. Солом’янська, 1, м. Київ, Україна
<https://orcid.org/0000-0003-1347-4937>

Віталій Василевич

Доктор юридичних наук, професор,
Національна академія внутрішніх справ
03035, пл. Солом’янська, 1, м. Київ, Україна
<https://orcid.org/0000-0001-9351-4219>

Дмитро Тичина

Кандидат юридичних наук, старший науковий співробітник
Національна академія внутрішніх справ
03035, пл. Солом’янська, 1, м. Київ, Україна
<https://orcid.org/0000-0002-9430-6101>

■ **Анотація.** З початком війни, яку розгорнула російська федерація проти України, таке явище в суспільстві, як колабораційна діяльність, стало належати до питань національної безпеки країни. Колабораційна діяльність, яка включає співпрацю або допомогу іншій країні або організації, може мати вплив на національну безпеку країни, збройний або кібернетичний вплив, вплив на інформаційні потоки та безпеку громадян. Метою роботи є виявлення динаміки змін і відмежування колабораційної діяльності від інших видів кримінальних правопорушень у контексті кримінології та кримінального права України. Методами наукового дослідження слугували аналіз і синтез, за допомогою яких визначено актуальні проблеми в суспільстві, що виникають у процесі виявлення злочинної діяльності колаборантів. Застосовано методи історичного аналізу, конкретизації та класифікації. Основним методом, використаним у роботі, став метод аналізу та синтезу науково-теоретичних матеріалів і правових норм. Визначено поняття колабораційної діяльності в контексті міжнародного права. Проаналізовано основні акти в галузі міжнародного гуманітарного права, які визначають правове становище населення на окупованих територіях. На підставі основних ознак визначено різновиди злочинної діяльності. порушено питання щодо необхідності вдосконалення норм кримінального права, регламентації складу злочину та відповідальності за колабораційну діяльність. Досліджено питання колабораціонізму в Україні, що виник унаслідок збройної агресії російської федерації. Здійснено аналіз змін, внесених до кримінального кодексу України щодо визначення складу злочину за колабораційну діяльність і відповідальність за такі дії. Узагальнено динаміку судових вироків за останній рік, щодо застосування норми кримінального кодексу в реальному часі. Практичне значення дослідження полягає в тому, що визначення актуальних проблем і способів їх вирішення дозволить підвищити ефективність правоохоронної діяльності з виявлення осіб, які провадять колабораційну діяльність, та притягнення їх до відповідальності, що дозволить знизити рівень злочинності в цій сфері

■ **Ключові слова:** воєнні злочини; національна безпека; окупація; ворог; державна зрада