

THE DEVELOPMENT OF UKRAINE'S CRIMINAL LAW POLICY UNDER MARTIAL LAW AND EXPERT REFLECTIONS ON IT

VÝVOJ TRESTNOPRÁVNEJ POLITIKY UKRAJINY V OBDOBÍ STANNÉHO PRÁVA A ODBORNÉ ÚVAHY O ŇOM

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ABSTRACT

The study addresses the development of Ukraine's criminal law policy under martial law, introduced due to the war waged by the Russian Federation against Ukraine, and aims to ascertain the state and prospects of the formation and implementation of such a policy under the influence of war-related factors. To determine the peculiarities of the formation and implementation of this policy during the first two years of the high-intensity war, which began on 24 February 2022, experts (legal professionals involved in resolving criminal law and criminological issues at the level of law enforcement and legal interpretation) were interviewed, with a survey mechanism developed beforehand. Based on these findings, it was determined how the war, in its most aggressive form, has altered Ukraine's criminal law policy: what achievements and mistakes have been made, what opportunities can be leveraged for further development, and what threats may hinder progress.

ABSTRAKT

Štúdia sa zaoberá vývojom trestnoprávnej politiky Ukrajiny v podmienkach vojnového stavu, ktorý bol zavedený v dôsledku vojenskej agresie Ruskej federácie proti Ukrajine. Cieľom štúdie je analyzovať aktuálny stav a perspektívy formovania a realizácie tejto politiky pod vplyvom vojnových faktorov. S cieľom identifikovať osobitosti formovania a realizácie tejto politiky počas prvých dvoch rokov vysoko intenzívnej vojny, ktorá sa začala 24. februára 2022, boli uskutočnené rozhovory s odborníkmi (právnikmi špecializujúcimi sa na riešenie trestnoprávných a kriminologických otázok na úrovni presadzovania práva a právneho výkladu), pričom bol vopred vypracovaný mechanizmus prieskumu. Na základe získaných zistení sa zistilo, ako vojna vo svojej najagresívnejšej podobe ovplyvnila ukrajinskú trestnoprávnu politiku: aké úspechy a nedostatky boli dosiahnuté, aké príležitosti môžu byť využité na ďalší rozvoj a aké hrozby môžu brzdiť pokrok.

I. INTRODUCTION

During the first two years of martial law in Ukraine (February 24, 2022–February 24, 2024), the entities responsible for shaping criminal-legal policy collectively enacted 24 laws that have come into force and are operational in the realm of implementing this policy. Although the number of these laws indicates generally high productivity in legislative activity, their quality, against the backdrop of persisting gaps that remain unaddressed, raises concerns about the effectiveness of such activity and its capacity to impact the achievement of the objectives of

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criminal law. Among these objectives, ensuring the protection of national security, state security, and the maintenance of peace and security for humanity holds evident priority.

In turn, the state of application of criminal law over the same period is characterised by changes in the established indicators of law enforcement and judicial activities. Throughout 2022, there was a sharp increase in the number of criminal offences against the foundations of national security of Ukraine (Section I of the Special Part of the Criminal Code of Ukraine). A similar trend is observed concerning criminal offences against peace, the security of humanity, and international order (Section XX of the Special Part of the Criminal Code of Ukraine)². A selective content analysis of conviction sentences conducted in these categories of cases reveals several serious issues in law enforcement.

These are merely superficial changes that have occurred in Ukraine's criminal law since the full-scale invasion of Russian forces. However, they have been sufficient to raise deeper questions concerning the development of the state's criminal-legal policy, which is suffering from a high-intensity war of aggression. This necessitates research dedicated to determining the dynamics and identifying the trends in the formation and implementation of such a policy under the influence of wartime factors.

There is no doubt that the criminal-legal policy of a state at war is altered by its factors to effectively counter the respective challenges and threats (the desired state). The actual situation shows that, although these changes have occurred, they are not fully and sufficiently capable of ensuring effective counteraction to criminal offences under wartime conditions (the actual state). Given this, the main research question concerns the alignment of the desired and actual states, establishing how the most aggressive form of war has altered Ukraine's criminal-legal policy.

The ongoing Russian-Ukrainian war objectively impacts the agenda of the state's legal policy, one element of which is the policy of combating crime. The agenda of the criminal-legal policy of a state engaged in such a type of war inevitably expands and becomes more complex due to this factor. Indeed, the wartime factor affects all social relations and connections existing within the state. These transform, with changes occurring in the functions and roles of the entities involved in the formation and implementation of criminal-legal policy. A state at war inevitably faces challenges associated with developing new strategies and tactics for combating crime. Ukraine's experience has shown that wartime factors have influenced the revision of criminal legislation, leading to the criminalisation of certain behaviours and additional differentiation of criminal liability, among other changes. Thus, the content of criminal-legal policy has evolved, and its overall direction indicates an effort to primarily counter more significant risks and threats to national interests and state interests (the community of states) that have arisen and developed under the conditions of full-scale war, both directly and indirectly related to the war.

One of the initial steps towards establishing an effective system of interaction among all stakeholders in the process of formulating and implementing Ukraine's criminal-legal policy under martial law and improving political measures could be the expert discussion of current issues within this policy. The results of such discussions can form the basis for specific political decisions in the legal sphere.

Expert discussion should be recognised as the most appropriate methodology for examining the issues of Ukraine's criminal-legal policy, which is evolving under martial law, based on the following considerations:

² Conversely, traditionally prevalent criminal offences against property in Ukraine have shown a decrease in all indicators (registration, referral to court, and conviction).

1. Expert discussion enables a comprehensive analysis of the problem under study and ensures the integration of professional knowledge, considering the diverse experience and legal expertise of the participating experts. Ultimately, this approach aims to develop a deep and thorough understanding of the impact of wartime factors on Ukraine's criminal-legal policy. The integration of varied expert knowledge facilitates the acquisition of a holistic view of the issue under investigation.

2. The involvement of experts makes sure that the data obtained will be highly reliable and up-to-date. Experts are the ones who possess narrow sectoral knowledge and skills, which makes it possible to obtain the most relevant information about the legal and practical aspects of criminal law policy in wartime and to conduct a qualitative assessment.

3. Experts can identify non-obvious, veiled factors related to the formation and implementation of criminal law policy. Their experience and professional perception of the real situation make it possible to highlight issues that may be left out of traditional research.

4. A significant advantage of expert discussion is the possibility of developing practical recommendations for improving criminal law policy. Experts can offer concrete proposals for the actors involved in the formation and implementation of criminal law policy, which will contribute to the effectiveness of their activities in wartime³.

Therefore, expert discussion is among the most appropriate methodologies for researching Ukraine's criminal-legal policy under the influence of wartime factors, as it ensures an in-depth analysis, relevance, and practicality of the obtained data while also enabling adaptation to dynamic changes.

It is anticipated that addressing the raised issue using data from expert surveys will yield new insights into contemporary criminal-legal policy (a key component of crime prevention policy) during the period following the introduction of martial law and the commencement of the full-scale invasion of Ukraine by Russian forces. This approach will generally assess the effectiveness of crime prevention during the active phase of the war and identify vulnerable practical areas, with the potential for addressing these weaknesses.

II. THE GENERAL IDEA BEHIND THE STUDY OF THE PROBLEMS OF CRIMINAL LAW POLICY OF UKRAINE UNDER MARTIAL LAW

The theoretical foundations of criminal-legal policy can be considered well-developed in the literature. Numerous Ukrainian and foreign scholars have studied criminal-legal policy at the theoretical level⁴. Their achievements allow for a clear understanding of the contemporary conception of criminal-legal policy, its objectives, sources, and principles, its current place in the state's internal policy, and its interrelation with other elements of crime prevention policy.

A well-established approach recognises that criminal-legal policy is implemented in both legislative and enforcement forms. In this regard, V. Borisov and P. Fris note that it is indisputable that the subject of criminal-legal policy encompasses not only law-making but also

³ BURNS, R. B. *Introduction to Research Methods*. 4th ed. SAGE Publications, 2000. ISBN-13: 978-0761965923; YIN, R. K. *Case Study Research and Applications: Design and Methods*. 6th ed. SAGE Publications, 2017. ISBN 9781506336169; BOGNER, A., LITTIG, B., AND MENZ, W., eds. *Interviewing Experts*. Palgrave Macmillan, 2009. ISBN 978-0230-20680-9.

⁴ NEWBURN, T., ed. *Handbook of Policing*. 3rd ed. Routledge, 2017. ISBN 9781843923237; GARLAND, D. *The Culture of Control: Crime and Social Order in Contemporary Society*. University of Chicago Press, 2018. ISBN-13 978-0226283845; TONRY, M., ed. *Crime and Justice: A Review of Research*. Vol. 48. University of Chicago Press, 2019. ISBN-13 978-0226644912; FRIS, P. L. *Criminal-Legal Policy of the Ukrainian State: Theoretical, Historical, and Legal Issues*. Kyiv: Atika, 2005. ISBN 966-326-110-2 [in Ukrainian]; *Suchasna kryminal'no-pravova systema v Ukraini: realii ta perspektyvy* [The Modern Criminal-Legal System in Ukraine: Realities and Perspectives]. Kyiv: VAITE, 2015; KOZYCH, I. V. *Criminal-Legal Policy: Functions and Functioning*. Ivano-Frankivsk: Suprun V. P., 2020. ISBN 978-617-7468-59-1 [in Ukrainian].

law enforcement activities⁵. Reflecting on this, Yu. Orlov argues that criminal-legal policy should focus not only on law-making but also, at the very least, on law implementation and enforcement. Real policy cannot and should not end with the legislative element; it must extend to law enforcement, connecting at this level with other components of state policy⁶.

In the *legislative process*, criminal law policy defines the strategy and tactics of criminal law's impact on crime, the boundaries of criminally punishable behaviour, and the legal consequences of such behaviour to implement them in the relevant sphere of law enforcement. This policy, in its legislative form, is always connected to the normative and legal reflection of its content. It is primarily realised in legislation that determines which socially dangerous acts are criminal offences and what criminal law measures are applied to those who commit them. In Ukraine, criminal legislation is fully encompassed by the Criminal Code, adopted in 2001.

Criminal law-making in Ukraine is the prerogative of the parliament (the Verkhovna Rada of Ukraine), whose role in improving criminal law regulation is rightly regarded by researchers as crucial and decisive⁷. However, it is difficult to agree that the parliament alone bears full responsibility for the quality of the current criminal law⁸. Although the Verkhovna Rada of Ukraine is tasked with passing laws, including criminal ones, the legislative process procedurally requires the approval (signing) of adopted laws by the President of Ukraine, who can influence criminal law-making, particularly by vetoing laws passed by parliament.

As a necessary means of transforming universally binding normative provisions into the realm of specific life situations, the *law enforcement form* of criminal law policy is embodied in acts applying criminal law norms to a personalised circle of individuals.

The conceptual development of criminal law policy in legal science allows for expert analysis of its evolution, considering the influence of various factors, one of which, as shown above, may be the factor of aggressive war.

The current Russian-Ukrainian war⁹ began on February 20, 2014, and continues to this day. It is possible to distinguish two phases of this war. The first phase was characterised by the predominance of unconventional (hybrid) methods of warfare over traditional ones and concluded on February 24, 2022, with the onset of a full-scale invasion of Ukrainian territory by Russian aggressors. From this moment on, the second phase began, marked by the predominance of traditional methods of warfare over hybrid ones (direct capture of sovereign Ukrainian territories)¹⁰.

Criminal law policy, shaped and implemented under the influence of wartime factors, has become the subject of study for many Ukrainian researchers during 2022–2023. Primarily, legal

⁵ BORYSOV, V. I., FRIS, P. L. *The Concept of Criminal-Legal Policy*. Bulletin of the Association of Criminal Law of Ukraine, Visnyk Asotsiatsii kryminal'noho prava Ukrainy, 1, 24, 2013. [in Ukrainian].

⁶ ORLOV, Yu. V. *Crime and Counteraction During Wartime: Criminal-Legal and Criminological Dimensions*. Kharkiv: Pravo, 2023. ISBN 978-966-998-563-7 [in Ukrainian].

⁷ OSTROHLIAD, O. V. *The Impact of Political Conjuncture in Verkhovna Rada's Lawmaking on Rendering Fair Court Decisions*. Ukrainian Military and Postwar Criminal Justice: Proceedings of the IX (XXII) Lviv Criminal Justice Forum (Lviv, October 26–27, 2023), compiled by I. B. Gazdaika-Vasylyshyn. Lviv: LvivDUVS, 2023. [in Ukrainian].

⁸ Ibid.

⁹ *Ministry of Foreign Affairs of Ukraine*. Key Q&A on Russia's Aggression. 22 July 2022. [online] [accessed 10.10.2024]. Available at: <https://mfa.gov.ua/en/countering-russias-aggression/key-questions-answers-on-russias-aggression>.

¹⁰ IVANEL, B. *Puppet States: A Growing Trend of Covert Occupation*. Yearbook of International Humanitarian Law. 2015, vol. 18, pp. 43–65; PARAKHONSKYI, B. O., YAVORSKA, H. M. *Ontolohiia viiny i myru: bezpeka, stratehiia, smysl* [Ontology of War and Peace: Security, Strategy, Meaning]. Kyiv: NISD, 2019. ISBN 978-966-554-311-4 [in Ukrainian]; MADLOVICS, B., MAGYAR, B. *Russia's Imperial Endeavor and Its Geopolitical Consequences: The Russia-Ukraine War*, vol. 2. 2023. ISBN: 978-963-386-651-1; OFITSYNSKYI, Y. *The Modern Russian-Ukrainian War (Based on the Materials of the Newspaper The New York Times, 2013–2017)*. Uzhhorod: RikU, 2018. ISBN 978-617-7692-01-9; *The Modern Russian-Ukrainian War: Historiographical, Socio-Political, Socio-Economic and Cultural-Spiritual Dimensions*. Riga: Baltija Publishing, 2024. ISBN 978-9934-26-450-4; KOVAL, M. (Ed.). *Theoretical and Applied Aspects of the Russian-Ukrainian War: Hybrid Aggression and National Resilience*. Kharkiv: Technology Center PC, 2023, 372 p. DOI: 10.15587/978-617-8360-00-9.

scholars have focused their efforts on examining the amendments to Ukraine's criminal legislation. These developments are actively discussed in legal literature, analysing both the normative provisions and the initial practice of applying criminal law, showcasing their advantages and innovative solutions. Firstly, the key emphasis has been placed on commenting on and interpreting the criminal law norms enacted during the period of martial law¹¹. Secondly, based on this, many experts go further to identify and highlight the shortcomings in legislative and law enforcement work in their publications. Among other things, an analysis of such works indicates that, despite the legislator's efforts and attempts to improve the criminal law, achieving this adequately has not been successful, nor has ensured the effective operation of law enforcement agents. At the same time, some legislative decisions are generally sound, while others are characterised by poor normative reflection, leading to errors and the formation of inconsistent practices¹².

The main issues currently addressed in legal literature in the context of the raised questions can be summarised as follows: criminal law populism as a leading trend in the formation of criminal law policy; poor quality of criminal legislation; violations of fundamental legal principles in the amendments and additions to the Criminal Code of Ukraine; the formation of law enforcement practice occurs in a contradictory manner, with errors and gaps in the application of criminal law norms; the functioning of the criminal law protection mechanism in certain areas is carried out in a simplified manner, leading to the imitation of crime prevention¹³.

¹¹ See, for instance: Collection of Proposals and Explanations on Current Legal Issues During Wartime by Experts of the Sector for the Study of Criminal-Legal Problems of Combating Crime of the Research Institute for the Study of Crime Problems named after Academician V. V. Stashys of the National Academy of Legal Sciences of Ukraine, compiled by L. M. Demydova, M. V. Shepitko, N. V. Shulzhenko et al. Kharkiv: Pravo, 2022, 68 p. [in Ukrainian]; MALIUK, V. V. (ed.), *Zlochynna kolaboratsiia v umovakh zbroinoi ahresii: praktychnyi poradnyk z kryminal'no-pravovoi otsinky ta rozmezhuvannia* [Criminal Collaboration During Armed Aggression: Practical Guide for Criminal-Legal Assessment and Differentiation]. Kyiv: Alerta, 2023. ISBN: 978-617-566-760-6 [in Ukrainian]; MOVCHAN, R. O., *Voenni novely Kryminal'noho kodeksu Ukrainy: pravotvorchi ta pravozastosovni problemy* ["Wartime" Novels of the Criminal Code of Ukraine: Legislative and Law Enforcement Issues]. Kyiv: Norma prava, 2022. ISBN: 978-617-7850-47-1 [in Ukrainian]; VOZNIUK, A. A., MOVCHAN, R. O., CHERNIA, V. V. (eds.), *Novely kryminal'noho zakonodavstva Ukrainy, pryiniati v umovakh voiennoho stanu: naukovo-praktychnyi komentarii* [Novels of Criminal Legislation of Ukraine Adopted Under Martial Law: Scientific and Practical Commentary]. Kyiv: Norma prava, 2022. ISBN: 978-617-7850-52-5 [in Ukrainian].

¹² See, for instance: *Kolaboratsionizm na tymchasovo okupovanykh terytoriiakh: problemy pravovoi otsinky, harantuvannia prav i svobod liudyny ta reintegratsii terytorii* [Collaborationism in Temporarily Occupied Territories: Problems of Legal Assessment, Ensuring Human Rights and Freedoms, and Reintegration of Territories]: materials of the scientific-practical round table, Kharkiv, 6 October 2023. Odesa: Oldi+, 2023. DOI: 10.32782/06092023 [in Ukrainian]; *Kryminal'ne zakonodavstvo voiennoho chasu: pravotvorchi ta pravozastosovni problemy* [Wartime Criminal Legislation: Legislative and Law Enforcement Issues]: materials of the All-Ukrainian scientific-practical conference, "Wartime Criminal Legislation: Legislative and Law Enforcement Issues", 26 May 2023, Vinnytsia: Vasyl Stus Donetsk National University, 2023. [in Ukrainian]; *Kryminal'no-pravovi vidpovidi na vyklyky voiennoho stanu v Ukraini* [Criminal-Legal Responses to the Challenges of Martial Law in Ukraine]: materials of the international scientific conference, Kharkiv, 5 May 2022, edited by Yu. V. Baulin and Yu. A. Ponomarenko. Kharkiv: Pravo, 2022. ISBN 978-966-998-417-3 [in Ukrainian]; LISOVA, Yu., *Analiz sudovoi praktyky za stattiamy 111, 111-1, 111-2 KK Ukrainy za 2016 – 2022 roky* [Analysis of Judicial Practice Under Articles 111, 111-1, 111-2 of the Criminal Code of Ukraine for 2016 – 2022]. Just Talk, 13 November 2023. [online] [accessed 10.10.2024]. Available at: <https://bit.ly/4fz3btz> [in Ukrainian]; OSTROHLIAD, O. V. *Kryminal'no-pravova polityka v umovakh viiny: zakonodavchyi aspekt* [Criminal-Legal Policy During Wartime: Legislative Aspect]. Analytical and Comparative Jurisprudence, 2022, 1, 286-290. DOI 10.24144/2788-6018.2022.01.53 [in Ukrainian]; OSTROHLIAD, O. V. *Kryminal'no-pravova polityka protydyi kryminal'nym pravoporushenniam proty vlasnosti v umovakh voiennoho stanu: ochikuvannia ta real'nist'* [Criminal-Legal Policy of Counteracting Criminal Offenses Against Property During Martial Law: Expectations and Reality]. In: *Kryminal'na yustytisia v Ukraini: realii ta perspektyvy*: materials of the round table, 23 September 2022, edited by I. V. Hloviuk, N. R. Lashchuk, V. V. Navrotska, I. R. Serkevych, N. I. Ustryt'ka. Lviv: Lviv State University of Internal Affairs, 2022, 65-68. [in Ukrainian]; How Does Legislation on Accountability for Collaboration Work? Just Talk, 28 September 2023. [online] [accessed 10.10.2024]. Available at: <https://bit.ly/4fz311X> [in Ukrainian]; HLOVIUK, I. *Vyroky za st. 438 KK Ukrainy: porushennia zakoniv ta zvychai viiny (z 24 liutoho 2022 r.)* [Sentences Under Article 438 of the Criminal Code of Ukraine: Violations of the Laws and Customs of War (since February 24, 2022)]. Higher School of Advocacy NAAU, 17 November 2023. [online] [accessed 10.10.2024]. Available at: <https://tinyurl.com/yfe75zw2> [in Ukrainian].

¹³ PYS'MEN'S'KYI, Ye. O. *Formuvannia kryminal'no-pravovoi polityky Ukrainy v umovakh voiennoho stanu: doslidzhennia nehatyvnykh tendentsii* [Formation of Ukraine's Criminal-Legal Policy During Martial Law: Study of Negative Trends]

III. THE RESEARCH METHODOLOGY

This study aims to ascertain the current state and development prospects of Ukraine's criminal law policy under the influence of wartime factors by examining the positions of experts in the field of criminal law (criminologists) and determining how the actual situation in this sphere aligns with expectations (the desired state).

At the level of social cognition, the object of this study can be identified as the state's policy sphere for combating crime, of which criminal law policy is a component. At the empirical level, the object of research is considered to be the carrier of the problem under study. Given the purpose and objectives of the study, such carriers are persons who are most competent in matters related to the problem under consideration and can be objective and impartial (experts).

Experts who can competently perceive and evaluate the current dynamics and trends in the formation and implementation of criminal law policy are proposed to be considered legal professionals who are professionally engaged in addressing criminal law and criminological issues at various levels of the relevant activity.

Experts in the field of the formation and implementation of criminal law policy, taking into account the needs of this study, include

- *researchers and academic staff* who teach and/or professionally research the problems of criminal law and criminology, including the formation and implementation of criminal law policy;
- *judges of the Supreme Court* (the highest judicial body of Ukraine), who by their powers have the greatest influence on the process of implementing criminal law policy, and at the same time, *specialised staff of the Supreme Court apparatus* who are fully engaged in the problems of its formation.

The level of professional training, competence, and awareness of the experts was based on the availability of a series of academic papers on the issues of criminal law policy of Ukraine in the context of war (doctrinal experts) and the core activity profile (for practical experts). The main factor in the selection of respondents was their affiliation with the category of lawyers who are familiar with specific terminology and understand it to a sufficient degree. The determination of the expertise of a particular specialist was also influenced by their willingness to participate in this study and their ability to be objective and impartial.

In the course of the research, an expert survey was conducted in the form of a questionnaire and an expert (standardised) interview, which together are intended to provide a qualified assessment of the studied issue. The opinion of experts who are researchers and academic staff (10 respondents) was recorded in the form of informal data collected as a result of a specially prepared interview, and the position of staff of the Supreme Court (10 respondents) was recorded in the form of formalised assessments in the questionnaire. The survey of the first respondents preceded the survey of the second, and the analysed results of the interviews were used to prepare the questionnaires.

The use of different tools to elicit the opinions of doctrinal experts (interviews) and practical experts (questionnaires) is because practical experts are usually more involved in their

Naukovi visnyk L'vivs'koho derzhavnogo universytetu vnutrishnikh sprav. Seriiia Yurydychna, 2024, 1, 43-52. DOI: 10.32782/2311-8040/2024-1-6 [in Ukrainian]; PYS'MENS'KYI, Ye. O. *Pro problemy formuvannia ta realizatsii kryminal'no-pravovoi polityky Ukrainy v umovakh voiennoho stanu (na prykladi odnoyi spravy pro kolaboratsiinu diial'nist')* [On the Problems of Formation and Implementation of Ukraine's Criminal-Legal Policy During Martial Law (Based on One Case of Collaboration)]. Visnyk Luhanskoho navchal'no-naukovoho instytutu imeni E. O. Didorenka, 2024, 1, 130-144. DOI: 10.33766/2786-9156.105.130-144 [in Ukrainian]; PYS'MENS'KYI, Ye. O. *Realizatsiia kryminal'no-pravovoi polityky Ukrainy v umovakh voiennoho stanu: doslidzhennia nehatyvnykh tendentsii* [Implementation of Ukraine's Criminal-Legal Policy During Martial Law: Study of Negative Trends]. Naukovo-informatsiinyi visnyk Ivano-Frankivs'koho universytetu prava imeni Korolia Danyla Halyts'koho: Seriiia Pravo, 2024, 17 (29), 300-310. DOI: 10.33098/2078-6670.2024.17.29.300-310. [in Ukrainian].

activities, not prone to detailed and arbitrary conversations, more concrete, closed in communication, and focused on solving current tasks. At the same time, doctrinal experts, as persons engaged in creative and intellectual activities, have more opportunities for free, flexible, and long-term interaction.

The subject matter of this study is the personal experience of experts, who are specialists in the field of criminal law and criminology, in assessing the dynamics and trends in the formation and implementation of Ukraine's criminal law policy under the influence of military factors. As part of the logical analysis of the subject matter of the study, its key concepts were selected, which defined the scope of the problem analysis, were interpreted (a detailed explanation of each of the key concepts was given), and were operationalised (the decomposition of concepts into simpler and more unambiguous terms). All this made it possible to develop the following research hypotheses.

1. *The descriptive hypothesis*, which involves establishing an understanding of the real state of the criminal law policy of Ukraine at the levels of its formation and implementation as well as the changes that have occurred to it under the influence of military factors (it consists of four sub-hypotheses: 1.1 – 1.4¹⁴).

2. *The explanatory hypothesis*, which involves clarifying the existing and prospective threats to the formation and implementation of criminal law policy. This hypothesis is an element of criminal law forecasting and makes it possible to identify the challenges that the criminal law system of Ukraine is facing and may face in the future in the context of war (it consists of two sub-hypotheses: 2.1 – 2.2).

3. *The constructive hypothesis*, which involves finding out what opportunities exist for the formation and implementation of criminal law policy to undergo positive changes (it consists of two sub-hypotheses: 3.1 – 3.2).

To test the hypotheses stated, a SWOT analysis¹⁵ of the criminal law policy of Ukraine and the prospects for its development in the context of war is provided, based on the results of studying and summarising expert opinion. According to M. Karchevskiyi, the SWOT analysis (*Strengths, Weaknesses, Opportunities, and Threats*) method should be recognised as quite a perspective within the scope of the management of criminal law regulation. This type of strategic planning involves assessing the internal and external resources of a particular project from the standpoint of the negative and positive prospects for its development¹⁶.

¹⁴ The essence of these and further sub-hypotheses is covered in the following publications: PYS'MENS'KYI, Ye. O. *Zakonodavchi rishennia z formuvannia kryminal'no-pravovoi polityky Ukrainy v umovakh voiennoho stanu: kluchovi zdobutky* [Legislative Decisions on the Formation of Ukraine's Criminal-Legal Policy During Martial Law: Key Achievements]. In: *Materialy IV Yatsenkiivskiykh chytan'*, edited by A. A. Stryzhevs'ka, S. D. Shapchenko, K. P. Zadoia. Kyiv, 2024, 34-38. [online] [accessed 10.10.2024]. Available at: <https://drive.google.com/file/d/1iRX19j1oOjT2-FNRRRFjH9qxJ3sdVooZ/view> [in Ukrainian]; PYS'MENS'KYI, Ye. O. *Formuvannia ta realizatsiia kryminal'no-pravovoi polityky Ukrainy v umovakh voiennoho stanu: osnovni problemy ta faktory, shcho yikh zumovliuiut'* [Formation and Implementation of Ukraine's Criminal-Legal Policy During Martial Law: Main Problems and Factors]. In: *Mizhnarodna ta natsional'na bezpeka: teoretychni i prykladni aspekty: materialy VIII Mizhnarodnoi naukovo-praktychnoi konferentsii* (Dnipro, 15 March 2024), Part 1, Dnipro: Dnipropetrovsk State University of Internal Affairs, 2024, 48-50. DOI: 10.31733/15-03-2024/1/48-50. [in Ukrainian].

¹⁵ PICKTON, D. W., & WRIGHT, S. *What's SWOT in strategic analysis?* *Strategic Change*, 1998, 7(2), 101-109. DOI: 10.1002/(SICI)1099-1697(199803/04)7:2<101::AID-JSC332>3.0.CO;2-6; HELMS, M. M., & NIXON, J. *Exploring SWOT analysis – where are we now?: A review of academic research from the last decade.* *Journal of Strategy and Management*, 2010, 3(3), 215-251. DOI: 10.1108/17554251011064837; GUREL, E., & TAT, M. *SWOT Analysis: A Theoretical Review.* *Journal of International Social Research*, 2017, 10 (51), 994-1006. DOI: 10.17719/jisr.2017.1832.

¹⁶ KARCHEVSKYI, M. *Stratehichne planuvannia kryminal'no-pravovoho rehuliuвання: postanovka problemy* [Strategic Planning of Criminal-Legal Regulation: Problem Statement]. *Nauka i pravo okhorona*, 2015, 2(28), 137. [in Ukrainian]; *Efektivnist' kryminal'no-pravovoho rehuliuвання v Ukraini: informatsiino-analitychni materialy za rezultaty opytuvannia ekspertiv* [Effectiveness of Criminal-Legal Regulation in Ukraine: Information-Analytical Materials Based on Expert Surveys], compiled by M. V. Karchevskiyi, A. S. Kudinov. Ministry of Internal Affairs of Ukraine, E. O. Didorenko Luhansk State University of Internal Affairs. Sievierodonetsk: RVV LDUVS im. E. O. Didorenka, 2016. ISBN 978-617-616-071-7 [in Ukrainian]; AZAROV, D. S. *Rozuminnia suspil'noi nebezpeky zlochyynu (za rezultatyami sotsiologichnoho*

Given the different levels of Ukraine's criminal law policy (law-making and law enforcement), the following content of the elements of the SWOT matrix of the formation and implementation of criminal law policy under the influence of war-related factors (identification of the advantages and disadvantages of these processes, threats, and opportunities from the perspective of expert assessment) is proposed.

Figure 1. Description of the external and internal environment of the of criminal law policy in wartime (SWOT analysis)		
Internal environment	S (Strengths)	W (Weaknesses)
	<i>The descriptive hypothesis 1.1.</i> Positive trends (changes) in the formation of criminal law policy of Ukraine (achievements)	<i>The descriptive hypothesis 1.2.</i> Negative trends (changes) in the formation of criminal law policy of Ukraine (achievements)
External environment	O (Opportunities)	T (Threats)
	<i>The constructive hypothesis 3.1.</i> Factors that can influence the quality of criminal law	<i>The explanatory hypothesis 2.1.</i> Challenges that may deteriorate the quality of criminal law (persistence of negative trends)

Figure 2. Description of the external and internal environment for the implementation of criminal law policy in wartime (SWOT analysis)		
Internal environment	S (Strengths)	W (Weaknesses)
	<i>The descriptive hypothesis 1.3.</i> Positive trends (changes) in the implementation of the criminal law policy of Ukraine (achievements)	<i>The descriptive hypothesis 1.4.</i> Negative trends (changes) in the implementation of the criminal law policy of Ukraine (shortcomings, losses)
External environment	O (Opportunities)	T (Threats)
	<i>The constructive hypothesis 3.2.</i> Factors that can influence the effectiveness of law enforcement activities	<i>The explanatory hypothesis 2.2.</i> Challenges that may affect the ineffectiveness of law enforcement (persistence of negative trends)

Based on these matrices, questions for the first stage of the expert survey were developed to test the hypotheses. The same questions, but in a different form, were addressed to the experts during the second stage of the survey, taking into consideration the preliminary results.

The processing of the expert survey data involved reconciling the opinions of the respondents. For this purpose, the rule of average assessment was used, in which the experts' positions on each of the questions asked are reduced to a common denominator.

In the first stage, qualitative information was processed by this rule, namely, first, the opinions of experts on each of the questions were fully collected and then summarised. For this purpose, if necessary, the generic criterion was applied, according to which the final position

eksperymentu) [Understanding the Social Danger of Crime (Based on the Results of a Sociological Experiment)]. Naukovi zapysky NaUKMA. Yurydychni nauky, 2019, 3, 3-18. DOI: 10.18523/2617-2607.2019.3.3-18 [in Ukrainian].

reflecting an individual survey result may reflect several similar opinions within a wider range. Responses that, despite different lexical approaches, are essentially the same were also combined. That is, based on the assessment provided by each expert independently (regardless of the position of other experts), they were reconciled, and then these assessments were combined into one coherent position. Consequently, a single database of respondents' answers was formed through averaging.

For each of the questions asked, a worksheet was developed based on the research hypothesis. The worksheet categorised the interview results into three groups: those that confirmed the hypotheses, those that were not covered by the hypotheses, and those that did not match the hypotheses. Data not considered by the experts, along with additional survey results, were verified in the next stage of the work.

During the second stage, quantitative information was processed using the average rule. Each answer option, representing the generalised opinions of doctrinal experts, was rated on a scale from 1 to 5 to indicate its level of significance. A score of 1 indicated minimal positive value or disagreement, while a score of 5 indicated maximum positive value or full agreement. This approach allowed for the determination of an average significance coefficient for each answer option¹⁷.

The higher the coefficient, the more valid the statement should be considered, according to practitioners. Conversely, the lower the coefficient, the less valid the statement should be considered. Responses with a coefficient below 2.5 are considered to have minimal or no significance and little influence. On the other hand, responses with a coefficient of 2.5 and above are regarded as important and have the maximum influence on the issue being addressed.

IV. THE RESULTS

The expert interviewing of doctrinal experts made it possible to verify the hypotheses put forward regarding the formation and implementation of criminal law policy, to compare them with the positions of other researchers in the field of criminal law and criminology who study the relevant issues, and to create a basis for the next stage of the study. The data obtained made it possible not only to develop a standardised questionnaire for further use during the second stage of the survey (functional result) but also to formulate a generalised approach of Ukrainian leading scholars to the key problems that exist under martial law in the field of criminal law policy, taking into account the unique experience gained by Ukraine (substantive result).

Based on the first stage of the study, the data from the survey of practical experts (the second stage of the survey) were compiled, which made it possible to determine the results for each of the hypotheses and their sub-hypotheses, which are presented in Figures 3 and 4.

Figure 3. SWOT-analysis of the formation of criminal law policy in wartime (2022 – 2024)		
	S (Strengths)	W (Weaknesses)
Internal environment	<i>The formation of the criminal law policy of Ukraine under martial law, which characterise this process as most positive (results of checking the descriptive sub-hypothesis 1.1):</i>	<i>The formation of the criminal law policy of Ukraine under martial law, which characterise this process as most negatively as possible</i>

¹⁷ For example, one of the answer options received a total of 40 points out of 50 possible (expert No. 1 assigned it 1-point, expert No. 2 – 3, expert No. 3 – 4, expert No. 4 – 5, expert No. 5 – 3, expert No. 6 – 5, expert No. 7 – 5, expert No. 8 – 5, expert No. 9 – 4, expert No. 10 – 5), and therefore this option has its significance coefficient of 4.0.

	<p>Establishment of a new circumstance that excludes the criminal unlawfulness of an act in the form of fulfilment of the duty to protect the motherland, independence, and territorial integrity of Ukraine (Article 43-1 of the Criminal Code of Ukraine).</p> <p>The criminalisation of the unauthorised dissemination of information on the sending, movement of weapons, armaments, and ammunition to Ukraine, movement, relocation, or deployment of the Armed Forces of Ukraine or other military formations established by the laws of Ukraine, committed under martial law or a state of emergency (Article 114-2 of the Criminal Code of Ukraine).</p> <p>Refusal to consider and adopt substandard amendments and additions to the Criminal Code, which express a manifestation of criminal law populism/</p> <p>Introduction of grounds for release from serving a sentence for persons exchanged as prisoners of war (Article 84-1 of the Criminal Code of Ukraine)/</p> <p>Establishment of an independent provision on collaborative activity (Article 111-1 of the Criminal Code of Ukraine).</p> <p>Criminalisation of justification, recognition as lawful, denial of the armed aggression of the Russian Federation against Ukraine, and glorification of its participants (Article 436-2 of the Criminal Code of Ukraine)</p>	<p><i>(results of checking descriptive sub-hypothesis 1.2)</i></p> <p>Continuation of the policy of restricting the use of incentive provisions for certain types of criminal offences (e.g., of some offences committed by members of the armed forces).</p> <p>Failure to eliminate obvious gaps in criminal legislation and delays in improving those provisions that are relevant in the context of war</p> <p>Unsuccessful differentiation of criminal liability for offences against property, implemented by establishing such an aggravating feature as their commission under martial law (regardless of the use of its conditions).</p> <p>Significant shortcomings in the drafting of the criminal law provision on collaborative activity against the background of the ongoing occupation of the territory of Ukraine.</p> <p>The introduction of a criminal law provision for aiding the aggressor state, which has led to duplication, uncertainty, and conflicts.</p> <p>Erroneous establishment of an independent ground for criminal liability for the illegal use of humanitarian aid, charitable donations, or free aid for profit, as well as poor presentation of the relevant provision in the law.</p>
External environment	O (Opportunities)	T (Threats)
	<i>The main measures (factors) that can significantly improve the quality of criminal law and the process of forming criminal law</i>	<i>The main factors that can significantly deteriorate the quality of criminal law and generally negatively affect the process of</i>

	<p><i>policy from a short-term perspective (results of checking constructive sub-hypothesis 3.1):</i></p> <p>Correcting the legislative mistakes promptly, such as: solving the problem of establishing a feature that aggravates a criminal offence as committed “under martial law”; removing conflicting norms; improving Section XX of the Special Part of the Criminal Code of Ukraine, which is currently too outdated; filling in gaps, including criminalisation of evasion of restrictive measures (sanctions).</p> <p>Expand the right to legislative initiative by providing it to the Supreme Court.</p> <p>Constant monitoring of the crime situation using the <i>Data Science</i> methodology to study crime trends with further consideration of the results obtained to improve the Criminal Code of Ukraine</p> <p>Strengthening the role and institutionalisation of the academic-parliamentary partnership, which primarily involves leading criminal law experts conducting criminological expertise on draft laws and taking its results into account by members of parliament when adopting laws.</p> <p>Improving the Verkhovna Rada of Ukraine's Rules of Procedure by increasing the involvement of in-house parliamentary experts' opinions, and enhancing the skills of parliamentary staff participating in the preparation of draft laws.</p> <p>Establishing barriers to groundless amendments to laws and preventing such amendments outside the set procedures, in particular by introducing a compulsory take into account of the conclusions of the parliamentary experts.</p>	<p><i>forming the criminal law policy of Ukraine under martial law (results of checking the explanatory sub-hypothesis 2.1):</i></p> <p>Flaws in the legislative procedure, non-compliance with the rules of lawmaking, including disregard for academic opinions of in-house parliamentary experts, hasty consideration of draft laws (impulsiveness of the legislator), excessive frequency, and instability of legislative amendments.</p> <p>Low professional level of criminal law policymakers, which, among other things, leads to poor substantiation of draft laws, attempts to solve any problems using methods of criminal law policy, ignoring doctrinal achievements.</p> <p>Influence of political expediency on the formation of criminal law policy (manifested in criminal law populism); lack of a strategy (concept) for the development of criminal law.</p> <p>Failure to take into account the needs of law enforcement practice, expert opinions, available research potential in the process of formulating criminal law policy, and lack of proper discussion of amendments to the criminal law in the professional environment</p> <p>Lack of sufficient objective (statistical) information on the quantitative and qualitative parameters of criminal offences and crime prevention activities in general</p> <p>The inability (unwillingness) of the President of Ukraine to veto obviously erroneous decisions of the legislator, in particular due to the lack of a proper mechanism of expert assessment at the appropriate level of criminal law policy-making</p>
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From the point of view of practical experts, based on the generalised data of the survey of doctrinal experts (hereinafter), the most positive characteristic of the process of forming the criminal law policy of Ukraine under martial law is the state decision to establish a new circumstance excluding criminal unlawfulness of an act in the form of fulfilment of the duty to protect the motherland, independence, and territorial integrity of Ukraine¹⁸. It is noteworthy that this option with an average coefficient of 4.5 was not covered by the formulated descriptive hypothesis and emerged as a result of processing the opinions of doctrinal experts.

The most negative characteristic of the process of formation of the criminal law policy of Ukraine under martial law is the official decision to continue the policy of limiting the application of incentive rules (in particular, release from serving a sentence with probation) regarding certain types of criminal offences¹⁹. It is significant that this option, with an average coefficient of 4.2, although covered by the formulated descriptive hypothesis, was not reflected in the opinions of doctrinal experts.

The most significant factor that can deteriorate the quality of criminal law and generally negatively affect the process of forming the criminal law policy of Ukraine under martial law is the flaws in the legislative procedure, non-compliance with the rules of lawmaking, including neglect of academic opinions of in-house parliamentary experts, hasty consideration of draft laws (impulsiveness of the legislator), excessive frequency, and instability of legislative amendments. This answer option has the highest average coefficient (3.9) and is fully covered by hypothesis 2.1.

As we can see, the majority of the surveyed practical experts consider the key problem in the formation of criminal law policy in Ukraine to be the excessive isolation of the subjects performing this function and their detachment from those who ultimately implement criminal law policy. Parliamentarians and other actors in criminal law policy are overconfident, consider themselves self-sufficient, and mostly do not involve narrow specialists in the relevant activities, do not notice their mistakes, ignore the rules of lawmaking, etc. All this leads to the creation of low-quality amendments and additions to the Criminal Code of Ukraine. This

¹⁸ The circumstance that excludes criminal unlawfulness of an act in the form of performing the duty to defend the motherland, independence, and territorial integrity of Ukraine is established in Article 43-1 of the Criminal Code of Ukraine by the Law of Ukraine of March 15, 2022, "On Amendments to the Criminal Code of Ukraine and Other Legislative Acts of Ukraine on Determining the Circumstances Excluding Criminal Unlawfulness of an Act and Providing Combat Immunity in the Conditions of Martial Law." H. Andrusiak considers the distinction between the right to defend the motherland and the independence and territorial integrity of Ukraine in the necessary defence to be quite logical. In her opinion, harm to the national security of Ukraine directly violates human and civil rights and freedoms. Therefore, every person has the right to self-defence in all components of national security, namely the constitutional order, sovereignty, territorial integrity and inviolability, and defence capability, which are inherently necessary and imperative for ensuring the rights and freedoms of Ukrainian citizens (ANDRUSIAK, H. M. *Shchodo problem novelty statii 43-1 KK Ukrainy (vykonannia obov'iazku shchodo zakhystu vitchyzny, nezalezhnosti ta terytorial'noi tsilnisty Ukrainy)* [Regarding the Problems of the Novel of Article 43-1 of the Criminal Code of Ukraine (Fulfillment of the Duty to Protect the Motherland, Independence, and Territorial Integrity of Ukraine)]. *Istoryko-pravovyi chasopys*, 2023, no. 1 (20), p. 100. DOI 10.32782/2409-4544/2023-1/13 [in Ukrainian]).

¹⁹ The continuation of the policy of restricting the application of incentive provisions of criminal law was manifested in the adoption of the Law of Ukraine of December 13, 2022, "On Amendments to the Code of Ukraine on Administrative Offences, the Criminal Code of Ukraine, and Other Legislative Acts of Ukraine on the Peculiarities of Military Service in Martial Law or a Combat Situation," according to which the application of criminal law provisions is prohibited to persons who have committed military criminal offences in martial law or a combat situation. Before the full-scale invasion of Ukraine by Russian troops, similar restrictions were imposed on those who committed corruption criminal offences, corruption-related criminal offences, violations of road safety rules or operation of transport by persons driving under the influence of alcohol, drugs, or other intoxicants or under the influence of drugs that reduce attention and reaction time, and torture. Gradually, this list began to expand, thereby artificially restricting the ability of the court to ensure an individualised approach to each convicted person, which may violate the basic criminal law principle of justice.

situation was predictable²⁰ and was considered in the factor analysis of criminal law policy-making, and therefore it is no coincidence that it was successfully verified.

The state's policy in lawmaking should aim to produce high-quality and effective legislation, and should focus on improving the lawmaking process itself. The law-making policy should be based on the objective need for legal regulation in a particular area of social relations and the choice of those legal means that will ensure the desired (positive) result²¹. Having reflected the essence of the foundations of lawmaking, it is again reasonable to mention the urgent need to use science-based, evidential methods of criminal law regulation²².

The main measure (factor) that can significantly improve the process of criminal law policy-making in the short term is correcting the legislative mistakes promptly, such as: solving the problem of establishing a feature that aggravates a criminal offence as committed “under martial law”; removing conflicting norms; improving Section XX of the Special Part of the Criminal Code of Ukraine, which is currently too outdated; filling in gaps, including criminalisation of evasion of restrictive measures (sanctions). Notably, this option, with an average coefficient of 4.0, was not covered by the constructive hypothesis and was formed based on the results of processing the opinions of doctrinal experts.

The majority of the surveyed practical experts consider the main challenge in the field of criminal law policy-making to be the fastest possible correction of previously made (gross) mistakes, which have already shown enough, as well as the solution of those criminal law problems that are directly related to the war and hinder effective counteraction to criminal offences committed against its background. So far, unfortunately, the subjects of formulation of the criminal law policy of Ukraine, on the contrary, demonstrate their inertia in this aspect.

Figure 4. SWOT-analysis of the implementation of criminal law policy in wartime (2022 – 2024)		
	S (Strengths)	W (Weaknesses)
Internal environment	<p><i>The positive features of the implementation of the criminal law policy of Ukraine (law enforcement), which characterise this process under martial law (results of checking the descriptive sub-hypothesis 1.3):</i></p> <p>The formation of the Supreme Court's legal positions on the</p>	<p><i>The negative features of the implementation of the criminal law policy of Ukraine (law enforcement), which characterise this process under martial law (results of checking the descriptive sub-hypothesis 1.4):</i></p>

²⁰ PYS'MENS'KYI, Ye. O. *Formuvannia ta realizatsiia kryminal'no-pravovoi polityky v umovakh voiennoho chasu: postanovka problemy v ukrains'komu konteksti* [Formation and Implementation of Criminal-Legal Policy During Wartime: Problem Statement in the Ukrainian Context]. International Scientific Conference “Scientific Innovations in Law Amidst the Impact of the Russian-Ukrainian War on the Legal System”: Conference Proceedings (Riga, Latvia, February 7–8, 2024). Riga, Latvia: Baltija Publishing, 2024, 136. DOI: 10.30525/978-9934-26-409-2-30 [in Ukrainian].

²¹ TERNAVS'KA, V. M., *Pravotvorcha polityka Ukrainy* [Legislative Policy of Ukraine]. Odesa: Vydavnychiy dim «Hel'vetyka», 2022. ISBN 978-617-554-074-9 [in Ukrainian].

²² V. Rashkovan's comments highlighting the importance of implementing evidence-based policymaking (EBPM) are valid. This involves creating policies based on evidence and data, and it is crucial to establish the necessary institutional foundations for public policies. Both the government and professional society play essential roles in this process and should cease producing impulsive and poorly thought-out policies. It is imperative to have a method in place rather than acting in a chaotic and disorganised manner (RASHKOVAN, V. *Shchob ne bulo yak z koval'em i traktorystom. Shcho ne tak z ukrains'koiu politykoiu?* [So It Doesn't End Up Like with the Blacksmith and the Tractor Driver. What's Wrong with Ukrainian Politics?]. Liga.net, January 3, 2024. [online] [accessed 10.10.2024]. Available at: <https://www.liga.net/ua/all/opinion/dvi-osnovni-problemy-ukrainskoi-polityky> [in Ukrainian]).

	<p>qualification of high treason, collaborative activity, etc. has been launched</p> <p>Formation and accumulation of the evidence base for the crime of aggression, which, in time, will allow for the operation of a special international tribunal</p> <p>Combating war-related crimes is at a stable level; primary guidelines for the qualification of such crimes are being formed</p> <p>Priorities in criminal law qualification in the context of armed conflict have changed – the emphasis has shifted to war crimes and collaboration as expressions of international conflict</p> <p>The practice has shown the ability to overcome some mistakes of the legislator and other subjects of criminal law policy-making</p>	<p>Excessive application of Articles 69²³ and 75²⁴ of the Criminal Code of Ukraine about thieves, given the legal position of the Supreme Court on the understanding of the feature “under martial law...” solely as relating to the commission of the relevant act in the face of such a situation.</p> <p>Unequal application of certain criminal law provisions on war-related offences.</p> <p>Negative impact on the effectiveness of law enforcement agencies of the lack of proper experience in investigating new offences, the continued practice of “chasing indicators,” and attempts to use criminal law in opportunistic interests.</p> <p>Applying a formal approach and favouring a literal interpretation of the criminal law in the light of significant deficiencies in the Criminal Code of Ukraine.</p> <p>Influence of public opinion, which is currently characterised by repressive and cruel treatment of offenders, on legal decision-making regarding war-related criminal offences.</p>
External environment	O (Opportunities)	T (Threats)
	<p><i>The main measures (factors) that can significantly affect effective law enforcement in the field of criminal justice from a short-term perspective (results of checking constructive sub-hypothesis 3.2):</i></p> <p>Developing a mechanism whereby the actors implementing criminal law policy will be able to make effective appeals to the actors formulating criminal law policy with</p>	<p><i>The main factors that significantly affect the ineffectiveness of law enforcement and the persistence of negative trends in the implementation of Ukraine's criminal law policy under martial law (results of checking the explanatory sub-hypothesis 2.2):</i></p> <p>Personnel and organisational problems affecting the activities of the subjects of criminal law policy implementation, namely: lack of the required number of judges and their</p>

²³ Sentencing to a punishment that is less severe than that provided for by law.

²⁴ Release from serving a sentence with probation.

	<p>justification of the need for changes to criminal legislation</p> <p>Eliminating the key flaws in criminal legislation that emerged during martial law is a priority and the most crucial factor that will contribute to effective law enforcement</p> <p>Improving the activities of the actors implementing criminal law policy, such as: ensuring an objective pre-trial investigation with minimisation of cases of delay or unjustified extension of procedural terms; effective counteraction to corruption; abandoning the practice of dismissal of “unwanted” highly qualified professionals in the criminal justice system.</p> <p>Implementation of an approach to assessing the effectiveness of the activities of the actors implementing criminal law policy in a comprehensive manner, taking into account different but equivalent factors.</p> <p>Introduce mandatory and regular professional training for all key actors involved in the implementation of criminal law policy.</p> <p>More active and wider use of the resources of the highest judicial authority in solving current problems of law enforcement, particularly about: forming a unity of judicial practice beyond legal positions; generalisation and unification of the practice of applying novelties of criminal law; interpretation of its ambiguous provisions; providing explanations on the application of legislation in court cases.</p> <p>Wide involvement of academics, representatives of leading NGOs, and human rights defenders in providing explanations and comments on new criminal</p>	<p>specialisation in war-related criminal offences; weakness of certain law enforcement agencies; staff shortage in the law enforcement system.</p> <p>External factors in the form of the lack of a clear criminal law policy; unsystematic and poor-quality changes to the criminal law (legislative inflation); further increase in the scope of criminal law repression in the legislative process; low level of legal culture of the citizens.</p> <p>Deficit of adequate resources (material, technical, and financial) for the organisation of full and high-quality activities in the application of criminal law in the conditions of war.</p> <p>Inadequate professional level (lack of proper knowledge and experience) of law enforcement agents, which, among others, is manifested in their unwillingness to grow professionally and improve their skills; lack of willingness to face new challenges; and rushing to achieve results at any cost.</p>
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	legislation and its application, along with providing incentives for such activities.	
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The most positive feature of the implementation of the criminal law policy of Ukraine (law enforcement), which characterises this process under martial law, is that the Supreme Court has begun to formulate legal positions on the qualification of high treason, collaborative activity, and other criminal offences related to war conditions. It shows that this option, with an average coefficient of 4.7, received the highest support not only within hypothesis 1.3 but also in general compared to all other answers²⁵.

The role of the Supreme Court in implementing criminal law policy under martial law in Ukraine is crucial, especially considering the various changes to criminal legislation and the introduction of new prohibitions. After all, one of the tasks of the Supreme Court is to form a unified judicial practice so that the provisions of the law are interpreted equally by all participants in the process and, therefore, are embodied in the stability of court decisions²⁶. As the European Court of Human Rights rightly emphasised in one of its judgements, one of the fundamental aspects of the rule of law is the principle of legal certainty, which, among other things, guarantees certain stability in legal situations and promotes public confidence in the courts. At the same time, conflicting court decisions can create a state of legal uncertainty that can reduce trust in the judiciary, and such trust is one of the main components of a state based on the rule of law²⁷.

The most negative feature of the implementation of the criminal law policy of Ukraine (the sphere of law enforcement), which characterises this process under martial law, is the excessive application of Articles 69 and 75 of the Criminal Code of Ukraine about thieves, given the legal position of the Supreme Court on understanding the feature “under martial law...” exclusively as relating to the commission of the relevant act in the face of such a situation²⁸. It is noteworthy that this option with an average coefficient of 3.4 received the lowest level of support compared to all other answers to the questions whose maximum significance was determined during the

²⁵ This result can be explained first and foremost by the expert environment in which the respondents are located, as they are all employees of the Supreme Court and are directly involved in the key processes of its operation. In this way, there is a certain “workplace” interest of the experts, who, choosing the appropriate solution, emphasise their achievements. Unfortunately, this can hardly be consistent with the real situation in law enforcement. Therefore, the conclusion of the practical experts presented here requires further verification and reflection.

²⁶ Verkhovnyi Sud, *Kryminal'ne pravo ta protses pid chas povnomashtabnoi viiny: suddi Verkhovnoho Sudu doluchylysia do obhovorennia aktual'nykh pytan'* [Criminal Law and Process During Full-Scale War: Supreme Court Judges Joined the Discussion of Current Issues], June 26, 2024. [online] [accessed 10.10.2024]. Available at: <https://supreme.court.gov.ua/supreme/pres-centr/news/1628083/> [in Ukrainian].

²⁷ European Court of Human Rights, *Case of Vincic and Others v. Serbia*. [online] [accessed 10.10.2024] Available at: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-95959%22%5D%7D>.

²⁸ The Law of Ukraine of March 3, 2022, “On Amendments to the Criminal Code of Ukraine on Strengthening Liability for Looting” recognises certain criminal offences against property (theft, burglary, robbery, etc.) as aggravating circumstances under martial law or a state of emergency. This decision of the subjects of criminal law policy-making immediately led to professional discussions, which were mainly limited to clarifying whether “committed under martial law or a state of emergency” means time as a sign of a criminal offence (committing a delict under martial law or a state of emergency = committing a delict during martial law or a state of emergency) or whether the relevant provisions of the Criminal Code of Ukraine require a different interpretation. The Supreme Court has put a definite end to this issue, as noted in the answer (MAMCHENKO, N., *Ob "iednana palata KKS VS postavyla krapku u pytan'ni zastosuvannia oznaky «v umovakh voiennoho stanu» pry pryznachenni pokarannia za kradizhku* [The Joint Chamber of the Criminal Cassation Court of the Supreme Court has Put an End to the Issue of Applying the Feature “In the Conditions of Martial Law” When Imposing a Punishment for Theft]. *Sudovo-iurydychna hazeta*, January 28, 2024. [online] [accessed 10.10.2024]. Available at: <https://sud.ua/uk/news/publication/291566-obedinennaya-palata-kus-vs-postavila-tochku-v-voprose-primeneniya-priznaka-v-usloviyakh-voennogo-polozheniya-pri-naznachenii-nakazaniya-za-krazhu> [in Ukrainian]), but practice has shown that courts regularly try to “get around” the increased punishment of these offences by applying some incentive provisions to the perpetrators, and at least in this way, trying to ensure proper individualisation of criminal liability.

survey (within the framework of verification of all the hypotheses). This result can again be explained by the expert environment in which the practical respondents are operating, as they are all involved in the process of implementing the criminal law policy of Ukraine, extrapolating its flaws onto themselves.

The main measure (factor) that can significantly affect effective law enforcement in the field of criminal justice in the short term is the development of a mechanism whereby the actors implementing criminal law policy will be able to make effective appeals to the actors formulating criminal law policy with justification of the need for changes to criminal legislation. This option, with an average coefficient of 4.1, was proposed as a constructive hypothesis but was not supported by doctrinal experts' opinions.

As we can see, most of the surveyed practical experts consider the main challenge in the implementation of the criminal law policy of Ukraine to be the ability of relevant actors to influence the course and results of the activities of those who formulate this policy (inclusiveness). The activity of law enforcement agencies under martial law provides a good basis for identifying weaknesses in criminal law, which, in turn, allows for accumulating the experience gained and transforming it into concrete recommendations for improving the Criminal Code of Ukraine. Such proposals from stakeholders must be considered by the parliament, not formally, as it can happen now with a conclusion such as “taken into account.”

During the research, not all components of the hypotheses tested through expert surveys were confirmed. The components reflecting certain facts or phenomena and identified as unreliable are as follows:

1) within the descriptive hypothesis, the inability of the highest judicial authority to fully utilise its potential during wartime was not verified as a negative aspect of the implementation of Ukraine's criminal law policy, characterising this process under martial law conditions;

2) within the explanatory hypothesis, it was not proven that one of the main factors significantly affecting the inefficiency of law enforcement activities and the persistence of negative trends in the implementation of Ukraine's criminal law policy under martial law conditions is organised corruption (meaning that criminal communities from the political elite or state leadership have a significant influence on the criminal justice system);

3) within the constructive hypothesis, the truthfulness of the statement has not been established, according to which one of the main measures (factors) that can significantly improve the quality of the criminal law and the process of forming criminal law policy shortly is the swift adoption of the new Criminal Code of Ukraine (its draft has already been developed), as the current criminal law requires complete and radical renewal.

V. CONCLUSION

1. Based on the results of the conducted research in the context of verifying each hypothesis, it can be stated that the involvement of experts and the developed mechanism for their survey enabled the resolution of the raised issue—to determine the dynamics and identify trends in the formation and implementation of Ukraine's criminal law policy under the influence of wartime factors. This made it possible to establish how, in reality, the war in its most aggressive form has altered Ukraine's criminal law policy: what achievements and miscalculations exist in this regard, what opportunities can be utilised for further development, and what threats could hinder this.

2. The results of the conducted research provide an opportunity to highlight the phenomena that reveal the essence of Ukraine's criminal law policy under martial law conditions.

Regarding the formation of criminal law policy:

1) The introduction of a new circumstance in the Criminal Code of Ukraine (Article 43-1), which excludes the criminal unlawfulness of an act in the form of fulfilling a duty to protect the

motherland, independence, and territorial integrity of Ukraine, most positively characterises the process of forming Ukraine's criminal law policy under martial law conditions. This result demonstrates the critical importance of incentivising criminal law norms during wartime, and their application is essential in the process of transitional justice.

2) The continuation of a policy restricting the application of incentivising norms (particularly those provided for in Article 69 and Article 75 of the Criminal Code of Ukraine) to certain types of criminal offences most negatively characterises the process of forming Ukraine's criminal law policy under martial law conditions. This result echoes the previous finding and indicates insufficient attention by the entities responsible for forming Ukraine's criminal law policy to those criminal law provisions aimed at individualising criminal responsibility and ensuring a fair response to committed criminal offences.

3) The shortcomings in the legislative procedure, non-compliance with the rules of legislative activity, including the disregard of scientific conclusions by in-house parliamentary experts, the hasty consideration of draft laws (impulsiveness of the legislator), and the excessive frequency and instability of legislative amendments should be considered the most significant factor capable of negatively affecting the process of forming Ukraine's criminal law policy under martial law conditions. This pertains to a classic and well-known problem to many researchers, which has developed in the activities of the entities forming criminal law policy and poses a significant challenge for them in the future. Without addressing this threat, it is impossible to develop high-quality criminal legislation based not on political expediency or populism but on an evidence-based approach, which is extremely important both in the context of Ukraine's European integration processes and considering wartime threats.

4) The prompt rectification of the set of legislative errors is the primary measure (factor) capable of significantly improving the process of forming criminal law policy shortly. There is no doubt that the current state of the implementation of criminal law policy is such that it can signal numerous legislative flaws identified in the practice of applying the Criminal Code of Ukraine. The deficiencies that hinder the process of effective law enforcement are more than evident. Today, there are opportunities to comprehensively analyse these problems and, on this basis, make the necessary changes and amendments to criminal legislation as soon as possible.

Regarding the implementation of criminal law policy:

1) The start of forming legal positions by the Supreme Court regarding the qualification of treason, collaborative activities, and other criminal offences related to wartime conditions is the most positive aspect of the implementation of Ukraine's criminal law policy (the field of law enforcement), characterising this process under martial law conditions. Despite the reservations made about the emergence of certain doubts regarding the reliability of this opinion and the need for its additional verification, nevertheless, under the conditions of unsatisfactory work by the entities forming criminal law policy, carried out without the application of scientifically grounded approaches, it is the Supreme Court as the highest judicial authority with highly qualified lawyers that must take on the leading role in ensuring the stability of law enforcement. This is the only correct option for resolving the issue of the functioning of the criminal justice system against the backdrop of poor (imperfect) legislation. The formation of legal positions by the Supreme Court in this aspect constitutes the most effective method for overcoming the deficiencies in legislative activity. At the same time, this is possible only if justified decisions are made based on the achievements of criminal law doctrine and consistent with its principles.

2) The excessive application of Articles 69 and 75 of the Criminal Code of Ukraine to thieves, given the Supreme Court's legal position on interpreting the characteristic "under conditions of martial law or a state of emergency" as exclusively about the commission of the relevant act during the existence of this state, constitutes the most negative aspect of the implementation of Ukraine's criminal law policy (the field of law enforcement) under martial

law conditions. These provisions of the Criminal Code of Ukraine are encouraging, and their application is intended to ensure an individualised impact on offenders. Thus, the artificial, excessive, and unjustified imposition of a lighter penalty than that provided for by the sanction of the article of the Special Part of the Criminal Code of Ukraine (Article 69 of the Criminal Code of Ukraine), as well as similar probationary release (Article 75 of the Criminal Code of Ukraine), disrupts the criminal-legal balance, negates the true essence of the relevant norms, and represents an adaptation to the situation. However, this situation is caused by the erroneous decisions of the entities forming criminal law policy, and the correction of this error is primarily dependent on the successful resolution of the identified problem.

3) Personnel-organisational problems, manifested in the lack of a sufficient number of judges and their specialisation in war-related criminal offences, the weaknesses of certain law enforcement agencies, and the shortage of personnel in the law enforcement system, are the most significant factors affecting the inefficiency of law enforcement activities and the persistence of negative trends in the implementation of Ukraine's criminal law policy under martial law conditions. This result indicates that the insufficiency of personnel resources to perform new and non-trivial tasks in wartime conditions, as well as their low quality, creates a serious threat to the future. This is especially relevant considering the scale of the occupied territory and the prospective need to perform law enforcement functions in this territory after its liberation.

4) Developing a mechanism whereby the entities responsible for implementing criminal law policy can effectively appeal to the entities responsible for forming criminal law policy, providing justifications for the need for changes to criminal legislation, is the primary measure (factor) capable of significantly enhancing the effectiveness of law enforcement in the field of criminal justice shortly. This research outcome strongly resonates with a similar factor identified in the context of forming criminal law policy. Entities responsible for implementing criminal law policy based on a properly developed mechanism regulated by legislation should obtain a real, rather than nominal, opportunity to influence the formation of criminal law policy. They should be empowered to initiate specific legislative changes, among other things.

3. A comprehensive analysis of the research results can be conducted by the pre-developed SWOT analysis matrix, which shows the strengths and weaknesses of Ukraine's criminal law policy under the conditions of wartime factors, as well as the opportunities and threats that exist in this area.

Firstly, there are several strengths identified and assessed by the surveyed experts regarding the formation and implementation of Ukraine's criminal law policy under martial law conditions. This constitutes the foundation for further successful development. The identified advantages highlight the criminal-political directions of activity that have been successfully implemented to the maximum benefit of the state, society, and each individual. These approaches should be maintained in the future, as they will enable effective progress towards achieving the strategic goal of effective counteraction to crime under conditions of high-intensity warfare. However, such progress is complicated without synthesising it with the opportunities of the external environment, the utilisation of which ensures more rapid advancement of the system towards the stated goal. Therefore, the identified opportunities for further formation and implementation of Ukraine's criminal law policy require consideration by the relevant stakeholders.

Secondly, the research results vividly demonstrated a range of weaknesses in the formation and implementation of Ukraine's criminal law policy. These weaknesses hinder the process of development. They obstruct the achievement of the state's strategic goal in the field of criminal law. As it is known, the significance of the negative factors of the organisational system intensifies when merged (synthesised) with external environmental threats, and these threats

can escalate over time considering the large-scale war against Ukraine depletes all its resources. Thus, the identified weaknesses require serious attention and prompt elimination. Currently, there are sufficient opportunities to address these issues. At the same time, the threats that are currently actualised in the conditions of war, if not adequately addressed by the state, can lead to a significant deterioration in criminal law policy, and the strategic goal will not be achieved. Therefore, improving the quality of legislative work and the effectiveness of law enforcement activities under martial law conditions is expected through the utilisation of the identified opportunities by criminal law policy actors and the neutralisation of the indicated threats.

Thirdly, the positions established during the research and their substantive analysis allow for a characterisation of the identified factors from a general perspective, revealing certain patterns. Specifically, a comprehensive examination of the obtained results indicates the necessity for state institutions, which are created and function to combat crime, to change and transform more rapidly in response to current challenges, addressing complex issues by involving those who are knowledgeable about such problems and employing a scientifically grounded approach. Even this research can serve as a micro-model for making criminal-political decisions by: a) consulting experts from various fields and categories to address current (or at least extraordinary) problems; b) ensuring their positions are considered; c) implementing real inclusivity through a mechanism of mandatory interaction between entities involved in forming criminal law policy and those involved in its implementation; d) introducing the possibility for entities involved in the implementation of criminal law policy to directly influence its formation. Utilising the theoretical knowledge of highly qualified specialists and the accumulated experience of applying this knowledge in practical activities, along with adhering to all appropriate procedures that ensure transparency and openness, is crucial for forecasting the development of various events in the field of combating crime. This will ensure a high level of probability under conditions of uncertainty, which is particularly characteristic of the current wartime situation.

KEY WORDS

Criminal law policy, crime, war-related crime, counteraction to crime, Criminal Code of Ukraine, expert opinion, state of war, Russian-Ukrainian war

KLÚČOVÉ SLOVÁ

trestnoprávna politika, trestný čin, vojnový trestný čin, boj proti trestnej činnosti, Trestný zákonník Ukrajiny, znalecký posudok, vojnový stav, Rusko-ukrajinská vojna

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