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CAUSES AND CONDITIONS OF THE CREATION OF NON-EXPRESSED LAWS OF FORGOTTEN OR ARMED FORMATION

The article explores the main causes and conditions for the creation of paranoid or armed formations not provided by law. The consequences of the activities of paramilitary or armed formations not provided by the law on the territory of the state are analyzed. The ways of limiting the possibilities for the creation and operation of non-statutory paramilitary or armed formations are considered.

Keywords: not foreseen by law paramilitary or armed formations, criminal association, the causes of the crime, conditions of a crime, arsenal, crime prevention, volunteer battalions.

The current situation with violation of the territorial integrity of the borders of Ukraine and the corresponding consequences of such actions led to an absolute rethinking of approaches to building an effective system of defense and security of our state in all directions. As practice has shown, Ukraine was not ready to invade its territory. And the reason for such «unpreparedness», in our opinion, was, first of all, the lack of duly secured financial and technically armed forces. This can be traced in detail, by gradually examining the situation in the East of Ukraine from the very beginning of the armed conflict.

That is why, with the onset of the Anti-Terrorist Operation, Ukraine faced the problem of the creation and operation of paramilitary or armed units not provided for by law in the controlled territory and temporarily occupied territories. The lack of a capable Ukrainian army, territorial defense systems and the weakening of the law-enforcement system only contributed to their successful start-up and further development. The activities of such a kind of illegal unions led to violation of the territorial integrity of our state, restriction

and violation of the rights and freedoms of Ukrainian citizens, as well as other grave consequences.

Some scholars in their works investigated the criminal-law, criminological aspects and separate problems of the creation and operation of non-statutory paramilitary or armed formations. The aforementioned problems were investigated in the works of V. Abduhamitov, A. Adzhiev, M. Akimov, D. Badusheva, Y. Baulin, B. Beybulatov, A. Dmitrenko, M. Khavornuk, M. Korzhansky, T. Magomedov, V. Navrotsky, A. Pavlinova, V. Robak, I. Smirnov, A. Siginbayeva, V. Tikhogo, F. Uzbekova, A. Voznyuk and others. However, the problems of the creation of militarized and armed units not provided by law in modern conditions, the reasons and conditions that predetermine the activities of such associations were not fully investigated.

The purpose of the article is the definition of a set of key causes and conditions that contribute to the creation of militarized and armed units not provided for by law, as well as the substantiation of proposals for limiting the possibility of their creation and activities in the territory of Ukraine.

The practice of using illegal paramilitary and armed formations during the conduct of the so-called «hybrid war» is by no means new, and has been used successfully in recent years, in particular during the war in Afghanistan, during the conflict in Transnistria, Yugoslavia, Tajikistan, Kosovo, Georgia. Unfortunately, today we can state the fact that such practice is used in the territory of Ukraine.

Despite the fact that Art. 260 of the Criminal Code of Ukraine establishes liability for the creation of unpowered paramilitary or armed units, today our state has a number of problems with the creation and activity in its territory and temporarily occupied territories of such kind of illegal associations. This state of affairs is primarily due to a number of reasons and conditions that influenced the development and activities of the latter in the territory of Ukraine. At the same time, participants of illegal militarized or armed formations committing socially dangerous acts in order to protect state sovereignty, constitutional order, territorial integrity and inviolability of Ukraine should not be brought to criminal liability within the circumstances that exclude criminal acts [1, p. 42–47].

In order to fully understand the essence of the problem, it is first of all necessary to refer to the Constitution of Ukraine. In its

provisions, namely in part 6 of Art. 17 states that «the territory of Ukraine prohibits the creation and operation of any armed formations not provided for by law». At the same time, illegal formations, the creation of which is prohibited by the Constitution, as well as paramilitary and other forms of armed formations, the creation and existence of which are not foreseen by the laws of Ukraine, are considered illegitimate.

In turn, under paramilitary should be understood formations that have an organizational structure of a military type, namely: unitedness, subordination and discipline, and in which military or artisan or physical training is carried out. Armed units should be understood as paramilitary groups that are illegally possessing firearms, explosives or other types of weapons suitable for use [2].

However, regardless of their organizational form, they represent a serious threat to public safety in general, regardless of the purpose for which they are created, and whether they participate in committing various types of criminal offenses. Therefore, it is extremely important to understand what causes and conditions contribute to the creation of paramilitary or armed units not provided for by law. After all, the causes are those factors that give rise to crime as a consequence. And conditions, although they do not directly produce crime, but open the way for the causes of actions, facilitate the onset of socially dangerous consequences [3, p. 59–60].

In addition, in our opinion, it is necessary to understand the difference between legitimate paramilitary and armed formations and not legally foreseen by militarized or armed formations, because, firstly, this will enable them to understand the difference between them and what the causes are for the creation of the latter; Secondly, the situation in Ukraine today has developed in such a way that a number of formations, in particular legal ones, were created on a voluntary basis by citizens, and subsequently became subordinate to certain security agencies and today take part in the ATO – for the majority of ordinary citizens of our The state is «unknown», and quite often people do not understand what the battalion is, to whom it is subordinated, what functions it is assigned to it, and so on.

In accordance with the current legislation, the following lawful armed formations have been created and operate in Ukraine: the Armed Forces of Ukraine, the Security Service of Ukraine, the State Border Guard Service of Ukraine, the National Police of Ukraine, and the National Guard of Ukraine. In addition, they can form various

forms of formation, the procedure for the creation and operation of which is regulated by departmental, interdepartmental and other normative-legal acts. The Laws of Ukraine impose respective tasks and responsibilities, namely: the defense of Ukraine, ensuring the state security of Ukraine, ensuring the inviolability of the state border and protecting the sovereign rights of Ukraine in its exclusive (maritime) economic zone, as well as the protection of human rights and freedoms, counteraction crime, maintenance of public safety and order. At present, the vast majority of volunteer units are part of the Ministry of Internal Affairs (Kyiv-2 battalion, the Dnipro regiment, the Azov regiment, the Svityaz battalions, «The Peacemaker», «Kherson»), including the National Guard (for example, «Battalion» the name of «General Kulchytsky», where many members of the «Self-defense of the Maidan», Donbass battalion serve, and are subject to the Ministry of Defense of Ukraine (Battalion «Aidar»).

Accordingly, all other paramilitary or armed units, provided that they are not formed in accordance with the requirements of the current legislation of Ukraine, are considered illegal, and those involved in their creation, participate in their activities, provide any kind of assistance, etc. – should be liable, provided by law. The latter include the Volunteer Ukrainian Corps «Right Sector» (DUK), the «OUN Battalion», which is part of the DAC structure, the «Doha Dudayev Battalion», which brings together immigrants from Chechnya and the Caucasus, as well as so-called unions «The fighters of the DPR and LNR», for example Luhansk Guard, the «People's Militia of Donbass», «Army of the South-East», «Russian Orthodox Army», battalions «Vityaz», «Rus», «Somalia», «Ghost», «East» and so on.

Regarding the scientific approach, the content of the notion «non-statutory paramilitary or armed formations» is not clearly defined today, and is treated differently by scholars. Thus, for the purpose of its designation, the term «irregular armed formations», as well as «terrorist formations», «partisan (rebel) formations», «extremist formations», «band gangs», «fighters» are more and more commonplace. Terminological analysis of various sources has shown that the same armed formation can be simultaneously illegal in terms of legitimacy, irregular in the way of manning, terrorist for their purposes and guerrilla – by way of action. Therefore, in each case, it is necessary to clearly identify which type of formation is committed by one or another offense in the territory of the state,

under what conditions it was created and what reasons served as the basis for its formation.

However, the key difficulty with regard to the causes and conditions for the creation of paranoid or armed units not provided by law is that such formations are presently present on the territory under the control of the authorities and local self-government of Ukraine and on the territory which, by virtue of occupation, is temporarily occupied. And from this point of view, the reasons and conditions for the creation of such associations are different, since they are created for different purposes, in different ways, differing in structure, activity and a number of other factors.

Considering the causes and conditions of a specific crime, it is first and foremost to understand that they are the causes and conditions of crime in general.

The causes of crime are socio-psychological circumstances that directly generate and reproduce crime and crimes as their own natural consequence. In turn, the terms of crime are a complex of phenomena that in themselves can not give rise to crime, but serve as certain circumstances contributing to its occurrence and existence. The latter are divided into three main groups: concomitant (forming a general background of events and events, circumstances of place and time); necessary (without such conditions the event could not come); sufficient (a set of all necessary conditions) [4, p. 45–46].

The concept of the causes and conditions of a specific crime, as a rule, also includes the features of the formation of a person, his social and psychological status, activities and the complex of objective external circumstances in which he is.

Thus, the causes and conditions of a specific crime are: an environment that forms disharmony or deforms the needs, interests, values of a particular person, which become the basis of criminal motivation; criminogenic motivation itself; situations in which the person is in the process of formation, life activity and directly during the commission of a crime, and which contribute to the emergence and implementation of criminal behavior motivation (conditions conducive to a specific crime); psychophysiological and psychological peculiarities of the person who increase her sensitivity to the external criminal influences and stimulate their transformation into an internal position [5, p. 38].

In general, the situation around the creation and operation of non-law-based paramilitary or armed formations in Ukraine today is

extremely complicated. In our opinion, the reasons and conditions for the establishment of such associations are extremely numerous, but the following should be singled out:

1. The absence of an effective mechanism for the formation of volunteer paramilitaries in power agencies, which would enable citizens who wish to protect the interests of the state and society «with arms in their hands» to exercise their right guaranteed by the Constitution of Ukraine. After all, the formation of volunteer battalions, already during the active phase of the ATU, took place at a rapid pace at the Ministry of Internal Affairs through the formation of units of the special police patrol service, which, after their formation, were sent to the ATO zone. These formations have come a lot in the fight against terrorist threats. For example, the Azov volunteer battalion liberated Mariupol and now continues to defend this city as a regiment of the National Guard. The transfer of the regiment to the disposal of the National Guard allowed the latter to be in the possession and use within the limits prescribed by law, armored vehicles and other heavy weapons. However, in our view, the mechanism for the formation of such battalions is not fully developed and needs to be improved.

In turn, battalions of territorial defense have been created and operate in the Armed Forces of Ukraine. As you know, they were created in accordance with the president's decree «On partial mobilization» of March 17, 2014. Subsequently, the battalions of territorial defense were transformed into separate motorized battalions and included in the combined-arms, tank and artillery units of the Armed Forces of Ukraine. However, the mechanism for the formation of battalions of territorial defense originates from the Soviet era, and taking into account the conditions of the present, including the conduct of the ATO in the territory of the state, again the need arises in the legislative settlement of the aforementioned issue.

2. The conduct of the ATO has activated many illegal routes for the transportation and sale of firearms and other weapons, ammunition, explosives, and the like. Despite all the measures taken by the authorities, the illegal rampaging of weapons is constantly increasing, thus «stimulating» certain criminal «elements» to the creation of militarized and armed units not provided for by law.

3. The general weakening of the law-enforcement system and individual security agencies as a result of their reform, which led to

the outflow of personnel and a decrease in the number of law-enforcers in the total population.

4. The interest of individuals who have significant financial and material capital, criminal ties and have corruption links at higher levels of power, including law enforcement agencies, which enables them to create such illegal formations, to properly finance them, to equip equipment, weapons for solving one or another problematic issues through forceful violent influence.

The way out of this situation is to create a permanent system of volunteer paramilitary forces that, under the example of the Baltic defense systems, will assume the functions of territorial defense, assistance to law enforcement agencies on the ground, voluntary fire brigades, and the elimination of the consequences of natural disasters. Among other things, such an approach will enable the active involvement of civil society to be widely involved in the formation of the country's security system, including in the context of the ATO.

For practical implementation of the proposed concept, it is considered appropriate to develop and adopt a law «On the formation of a system of volunteer paramilitary forces in Ukraine». The law should clearly define the status of such volunteer paramilitary formations, their organizational structure, the order of submission and interaction with all law enforcement agencies, and so on. At the same time, volunteer paramilitary forces should become permanent structures that will operate according to the model of analogous units of self-defense of the Baltic States, for example Kaitseliit in Estonia, Zemessardze in Latvia, and the National Defense Volunteer Forces in Lithuania.

Thus, taking into account the complex socio-political situation in the state, as well as analyzing a number of problems regarding the activities of illegal militarized and armed units on the territory of Ukraine, the creation of a system of volunteer paramilitaries that will assume the functions of territorial defense, will help to resolve the issue of rules and the order of creation of such kind of divisions in the state, thus giving the opportunity to legally and legally create militarized armed formations for volunteers. It will also allow to significantly unload regular units of the Armed Forces, improve the territorial protection of individual regions.

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Причини та умови створення не передбачених законом воєнізованих або збройних формувань

Визначено головні причини та умови створення не передбачених законом воєнізованих або збройних формувань. Проаналізовано наслідки їх діяльності на території держави. Розглянуто способи обмеження можливостей щодо створення та функціонування не передбачених законом воєнізованих або збройних формувань.

Ключові слова: не передбачені законом воєнізовані або збройні формування, злочинне об'єднання, причини злочину, умови злочину, озброєність, запобігання злочинам, добровольчі батальйони.