

CRIMINAL LAW AND CRIMINOLOGY

UDC 343.74:347.191.6

Makar Marchuk

INTERNATIONAL EXPERIENCE OF TOTALITARY MODES AND INSTALLING CRIMINAL RESPONSIBILITY FOR THEIR PROPAGAND

Secretariat of the Constitutional Court of Ukraine
Zhilyanska street, 14, 01033, Kyiv, Ukraine
E-mails: makarmarchuck@gmail.com

Abstract.

Purpose: the main task of this scientific research is to study the international experience of condemnation totalitarian regimes. The article also covers the issues of criminal responsibility prosecution for the propagation of totalitarian regimes in European countries and in Ukraine. **Methods:** the using of international experience to improve blighty legislation, providing criminal responsibility for a perpetration. **Results:** suggestions for the prevention of totalitarian regimes renewal, which resulted in violations of civil rights, as one of the priorities of state political people, aimed to protect national interests and to insure Ukrainian citizens in safety. **Discussion:** based on comparison of the main international regulations issues aimed to totalitarian regimes conviction, harmonization of the norms of national criminal legislation with international norms and standards in the relevant sphere.

Keywords: totalitarian regime, human rights, propaganda, condemnation of totalitarian regimes, national security, criminal liability.

1. Introduction

The Parliamentary Assembly of the Council of Europe in the Resolution „The Need for an International Condemnation of the Crimes of Totalitarian Communist Regimes“ 1481 (2006) [1] (further – Resolution 1481) stated all totalitarian communist regimes, which prevailed in Central and Eastern Europe in the last century and remains stable in some countries of the world, are characterized by numerous violations of human rights (paragraph 2). Among them are individual or mass murder and executions, death in concentration camps, holodomors, deportations, tortures, forced labor and other forms of mass physical terror, ethnic or religious persecution, freedom conscience, opinion and self-expression violation, press freedom violation, and also the absence of political pluralism. The relevant crimes were justified by the theory of class struggle and the proletariat dictatorship principles (paragraph 3 of Resolution 1481). That is why, most Eu-

ropean countries accepted the regulations that criminalizes such regimes and establish the responsibility for their propaganda.

2. Problem and its connection with scientific and practical tasks

Unfortunately, the collapse of totalitarian regimes in Central and Eastern Europe has not always been accompanied by an international investigation of their crimes. As for given above, a new totalitarian regimes assessment and their condemnation is necessary, including through the improvement of criminal liability in national legislation for justifying or promoting such regimes.

3. Analysis of result research

The main research in this area refers to:

- condemning repression of totalitarian regimes and promoting differentiation from terrorist methods of public administration;
- elimination of the consequences of arbitrariness and civil rights violations;

– legislative consolidation of compensatory indemnification of material and moral damage caused by illegal repression to rehabilitated persons and their families;

– criminal liability improvement.

4. Setting objectives

The objectives of the article are to express suggestions concerning measures of propaganda counteractions of the totalitarian regime in Ukraine, based on international experience, in particular, to improve the prosecution mechanism for such actions.

5. Presenting main materials

Totalitarianism is usually regarded as a system of political domination, in which the state power, concentrated in the hands of a narrow circle of persons, eliminates constitutional guarantees of human rights and freedoms through violence, police methods of influence on the population, spiritual enslavement, finally absorb all forms and spheres of human life. It is characterized by a comprehensive authority control over the purposes and the obligatory ideology [2; c. 465].

Despite the significant human rights and freedoms violations, the relevant regimes have been abolished and condemned in most countries.

The Federal Republic of Germany established criminal liability for the use of symbols and dissemination of propaganda materials related to the Nazism ideology. In particular, the Criminal Code of the Federal Republic of Germany prohibits the production, usage for commercial purposes and distribution of unconstitutional national (flags, uniforms, signs, greetings, etc.) party or organization symbolic [3].

The Republic of Latvia adopted the Declaration „On Conviction of the Totalitarian Communist Occupation Regime of the Union of Soviet Socialist Republics, which was carried out in Latvia“ on May 12, 2005 [4]. Law of the Republic of Latvia „On the safety of public, entertaining and festive events“, which came into force on June 16, 2005 [5], prohibited the use, in particular, in stylized form, of flags, coats of arms, anthems and symbols of the former USSR, the LSSR, and Nazi Germany, uniforms, Nazi swastika, signs „SS“, soviet sickle and hammer and a five-pointed star. The relevant

law also provides for exceptions to prohibitions, in particular, when the purpose of using this symbolism is not connected with the glorification of totalitarian regimes or the justification of their crimes, for example, in cinematography.

By the decree of the Parliament of the Republic of Moldova „On the historical and political-legal assessment of the totalitarian communist regime in the Moldavian Soviet Socialist Republic“ dated August 12, 2012, № 191 [6], convicts the totalitarian communist regime in Moldova, which is a crime against humanity, and also prohibits the propagation of totalitarian ideologies on the territory of the country and the use of symbols of a totalitarian communist regime with a political and propagandistic purpose: a sickle and a hammer.

In order to prevent crimes against the state, terrorism, crimes against the bases of state security on May 31, 2011, the Parliament of Georgia adopted the Law „Charter of Freedom“ № 4717-IC, which provided for preventive measures against the proliferation of the foundations of Soviet and fascist ideologies, the elimination of Soviet and fascist symbols, religious buildings, monuments, monuments, bas-reliefs, inscriptions, names of streets, squares, stadiums, villages, settlements and districts, and also imposed a ban on those or other means of propaganda carrying the Soviet and fascist ideology [7].

In Poland, on January 24, 1991, the Parliament adopted the Law „On combatants and some persons victims of war and post-war repressions“ Dz.U. 1991 Nr 17 poz. 75 [8]. He installed, that the authorities of the Third Reich of Germany, as well as the power of the USSR and the communist repressive apparatus in Poland, are responsible for causing great suffering to the citizens of the Polish state for their personal, political and religious beliefs. The law, in particular, sets out the list of persons who are considered combatants and identifies the special merits of those inhabitants, who fought for the sovereignty and independence of the fatherland in the Polish Army, allied army, underground independent organizations or in the ordinary life and who were subjected to repression. For the persons set a number of social and other guarantees and benefits.

At the interstate level, the condemnation of the respective regimes was established by the Resolution of the Parliamentary Assembly of the Council of Europe 1652 (2009) „Attitude monuments with conflicting historical interpretations in the states – members of the Council of Europe“ [9]. Assembly calls on states – members of the Council of Europe launch the widest possible debate among historians and other experts regarding the history of the monuments that have conflicting historical interpretations in the states – members of the Council of Europe, their importance for the various segments of society, in the domestic and, if necessary, international level (item 7).

As for the condemnation of totalitarian regimes in Ukraine, this process took back in the 90s of the twentieth century.

So, on April 17, 1991, the Verkhovna Rada of Ukraine adopted the Law of Ukraine „On Rehabilitation of the Victims of Political Repressions in Ukraine“ No. 962-XII [10]. The Preamble to this Law states, that the Verkhovna Rada of Ukraine condemned the repressions and deters from the terrorist methods of governance, expressed commiseration to the repression’s victims and their relatives, announced the strong intention to achieve justice, eliminate the consequences of arbitrariness and human rights violations, announced the desire to provide possible compensation for the material and moral damage caused by illegal repressions, rehabilitated people and their families, and guaranteed Ukrainian people, that will never be the same, that human rights and legality will be respected.

The Law of Ukraine „On the restoration of the rights of persons deported on Ethnic grounds“ dated April 17, 2014, No. 1223-VII, defines the status of persons deported on national grounds, guarantees of the state concerning rehabilitation of the deported persons forcibly displaced from their places of residence, and restoration of their rights (Preamble) [11].

On April 9, 2015, the Verkhovna Rada of Ukraine adopted 4 laws aimed at counteracting propaganda of totalitarian regimes, in particular:

– Law of Ukraine „On the Legal Status and Honoring the Memory of the Fighters for Ukraine’s Independence in the 20th Century“ No. 314-VIII;

– Law of Ukraine „On the Perpetuation of the Victory over Nazism in the Second World War of 1939-1945“ No. 315-VIII;

– Law of Ukraine „On access to archives of repressive bodies of the communist totalitarian regime of 1917-1991“ No. 316-VIII;

– Law of Ukraine „On Conviction of the Communist and National-Socialist (Nazi) Totalitarian Regimes in Ukraine and Prohibition of the Promotion of Their Symbols“ of April 9, 2015, No. 317-VIII (hereinafter – Law No. 317).

Each of the four laws fulfills its function: the first proclaims the recognition and honor of the fighters for the independence of Ukraine, the second restores historical justice in the issues of the Second World War, the third opens for the archives of communist special services for people.

As for Law No. 317, it is aimed at condemning the communist and national-socialist (Nazi) totalitarian regimes as criminal, introducing a ban on public denial of the criminal nature of these totalitarian regimes, prohibiting the public use and promoting their symbols, introducing the obligation of the state to investigate and disclosure of information about the crimes committed by representatives of these totalitarian regimes in order to prevent such crimes in the future, eliminating the threat of the sovereign unity, territorial integrity and national security of Ukraine and also establishing historical justice (paragraph 6 of the preamble of the Law number 317).

Law No. 317 establishes criminal liability for the production, dissemination and public use of these symbols (including souvenirs), public performance of the anthem of the USSR, the Ukrainian SSR (USRR), other union or autonomous Soviet Republics, or their fragments are outlawed in Ukraine in addition to the five exceptions, given above, that punish by restraint of liberty for a term up to 5 years, or imprisonment for the same term with or without the confiscation of property. If these acts are committed by a person representing the authorities or committed repeatedly, either by an organized group or using the massmedia, they are punishable by imprisonment for a term of 5 to 10 years, with or without the confiscation of property [12].

6. Conclusions

Based on the comparison of international experience of totalitarian regimes condemnation, it can be concluded that national legislation on this issue is broadly complies with the principles of democracy, the rule of law and the protection of human rights.

At the same time, some improving recommendations should be announced:

– The Law No. 317 requires the identification of an exclusive list of prohibited symbols, as opposed to the existing fuzzy list;

– The term „propaganda“ should be clearly defined, especially when it is used to criminalize certain acts;

– As for sanctions (especially imprisonment), only those actions that constitute a real threat to society should fall under them, and criminal liability should be proportional to the committed crime severity.

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**МІЖНАРОДНИЙ ДОСВІД ЗАСУДЖЕННЯ ТОТАЛІТАРНИХ РЕЖИМІВ ТА
ВСТАНОВЛЕННЯ КРИМІНАЛЬНОЇ ВІДПОВІДАЛЬНОСТІ ЗА ЇХ ПРОПАГАНДУ**

Секретаріат Конституційного Суду України, вул. Жилинська, 14, 01033, Київ, Україна

E-mails: makarmarchuck@gmail.com

Мета: основним завданням цього наукового дослідження є вивчення міжнародного досвіду засудження тоталітарних режимів. Також у цій статті розкриваються питання притягнення до кримінальної відповідальності за пропаганду тоталітарних режимів у Європейських країнах та в Україні. **Методи дослідження:** використання міжнародного досвіду для вдосконалення вітчизняного законодавства, що передбачає кримінальну відповідальність за це злочин. **Результати:** пропозиції щодо запобігання поновлення тоталітарних режимів, які призводили до порушень громадянських прав, що є одним із пріоритетів державної політики, спрямованих на захист національних інтересів і гарантування в Україні безпеки громадян. **Обговорення:** порівняння положень основних міжнародних нормативних актів, спрямованих на засудження тоталітарних режимів, узгодження норм національного кримінального законодавства з міжнародними нормами та стандартами у відповідній сфері.

Ключові слова: тоталітарний режим, права людини, пропаганда, засудження тоталітарних режимів, національна безпека, кримінальна відповідальність.

**МЕЖДУНАРОДНЫЙ ОПЫТ ОСУЖДЕНИЯ ТОТАЛИТАРНЫХ РЕЖИМОВ И
УСТАНОВЛЕНИЯ УГОЛОВНОЙ ОТВЕТСТВЕННОСТИ ЗА ИХ ПРОПАГАНДУ**

Секретариат Конституционного Суда Украины, ул. Жылянская, 14, 01033, Киев, Украина

E-mails: makarmarchuck@gmail.com

Цель: основной задачей этого научного исследования является изучение международного опыта осуждения тоталитарных режимов. Также в этой статье раскрываются вопросы привлечения к уголовной ответственности за пропаганду тоталитарных режимов в Европейских странах и в Украине. **Методы исследования:** использование международного опыта для совершенствования отечественного законодательства, предусматривающего уголовную ответственность за это преступление. **Результаты:** предложения по предотвращению возобновления тоталитарных режимов, которые приводили к нарушениям гражданских прав, являются одним из приоритетов государственной политики, направленных на защиту национальных интересов и гарантирование в Украине безопасности граждан. **Обсуждение:** сравнение положений основных международных нормативных актов, направленных на осуждение тоталитарных режимов, согласования норм национального уголовного законодательства с международными нормами и стандартами в соответствующей сфере.

Ключевые слова: тоталитарный режим, права человека, пропаганда, осуждению тоталитарных режимов, национальная безопасность, уголовная ответственность.