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LIMITED CRIMINAL JURISDICTION IN INTERNATIONAL PRACTICE

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Considering the types of discretionary powers of Ukraine within the application of the concept of legal space [1], it should be noted that the principles and components of modern criminal policy, especially the implementation of criminal law in different characteristics of the territorial definition of the sovereign rights of the state jurisdictions, change in the conditions of determining the domination of legal or non-legal regimes in the respective territories.

Legal space is determined primarily in the framework of the communicative activities of individuals. Reflecting the behavior of people in the context of the term, it is the interpretation of the relative assessment of the norm and deviations from them in a particular spatial continuum. The term «legal space» covers a whole range of interactions in society, controlled by law. The term is delimited by different spheres and local subject borders [2].

That gives us possibility to consider that in some circumstances the limits of criminal jurisdiction should be changed fully or partially. The territory with limited jurisdiction of the state is an integral part of the national legal area where the powers to exercise sovereignty are limited in accordance with international legal treaties (the UN Convention on the Law of the Sea, UN Convention on struggle with transnational organized crime, etc.), interstate conflicts, intrastate or hybrid conflicts, the development of abuses in information or deviations in other virtual space (illegal sea broadcasting, Darkweb deals, etc).

The mechanism of formation of the institute of criminal liability for crimes committed by persons in areas with limited jurisdiction in the criminal law of concrete state and international law is different both in essence and in the main models of application.

It is of great interest that International Criminal Court in its Appeals Chamber decision on Jordan Case stated that the existence of jurisdiction depends on its own source. Since customary international law is not known to confer jurisdiction on international courts, it means that the jurisdiction of an international court is prescribed in a written instrument. If that instrument is a treaty, then that treaty binds only those that are party to it. The Rome Statute is a treaty that binds the parties to it. But the written instrument that prescribes the jurisdiction of an international court can also be a Security Council resolution adopted under Chapter VII of the UN Charter, such as was the case of Al Bashir where the Court clarified that, in any event, Mr. Al-Bashir did not enjoy

immunity as a Head of State vis-à-vis the ICC under customary international law, including in respect of an arrest by a State Party to the Rome Statute at the request of the ICC. The question then arises, if neither the Rome Statute nor the Security Council resolution expressly provides for immunity, where then must we look for that immunity? The natural place to look is in customary international law: hence, the need to discuss customary international, to see whether indeed it supports the idea of immunity from the jurisdiction of the ICC [3]. In *Jaloud v. Netherlands* [4] the ECHR considered that individuals injured by shots from the checkpoint at Iraque fell within the jurisdiction of the Netherlands envisioned by Security Council Resolution 1483 to control the checkpoint.

The impossibility of applying the norms of national law on the grounds of an international legal nature (the UN court decision on the distribution of jurisdictional powers, acts in high seas, in maritime economic zone, the enclaves, etc.) corresponds to additional obligations of state. Moreover, not all provisions of the existing national criminal law can be applied precisely for the conflict between national law and international obligations.

For example, the application of the law of innocent passage makes it possible to use the flag State's law when committing an offense on a ship passing by the territorial waters.

The limitation of the criminal punishment for crimes and abuse of power in areas with limited jurisdiction that arose in connection with the exit of part of the territory from the control of the government for external or internal reasons is considered in the conditions of the peculiarities of the state of development of the interstate conflict, the state of political and legal ideology in the state – victims of aggression, the degree of permission to enforce both the state and the consent of civil society to the use of coercion against its individual members.

The *Ilașcu and Others* [5] case contained the concept of effective control under which Russia, was found to have offered political and military support to the separatist “Moldavian Republic of Transdniestria”, therefore the applicants came within the “jurisdiction” of the Russian Federation for the purposes of Article 1 of the Convention. There was a bunch of such a cases with last *Stomatii v Respublic of Moldova and Russia* [6] having the same arguments due to that military action, political, military support or local governing foreign territory whether that was done directly, through agressor's armed forces, or through a subordinate local administration formats concept of effective control in determining the jurisdiction [7].

Thus the criminal policy on a territory with limited jurisdiction is considered a system of strategic and tactical measures that ensure the proper development, timely implementation and effective application of national criminal law, aimed at protecting against dangerous encroachments of social relations, which are carried out on the territory of sovereign rights of the state in limited features of the legal regime. We have confidence that the criminal law treatment of persons who committed crimes in a limited jurisdiction circumstances should be based on the

principles of strict liability of officials and private sector employees, as well as the transparency of social control over abuse of power.

In resolving issues of jurisdictional powers of the state in criminal law should use the notion of the regime of criminal-legal space, which refers to the description of criminal legal relations in relation to the criminal law in the conditions of full or limited sovereignty of the state. The concept a «legal vacuum» or on a «zone of lack of Law» to which the provisions of the Convention do not apply de facto should be considered as null.

Unfortunately, nowadays, there are limited possibilities to ensure real protection of the basic fundamental rights of citizens by Ukraine (right to life, property) in the temporarily occupied territory, taking into account the realization of real jurisdictional powers by the aggressor state, and imposing responsibility for abuse of power by the state-aggressor and its organs.

This requires an additional analysis of the issues of the implementation of criminal policy in areas with limited jurisdiction and clarification of the prospects for the implementation of criminal policy in the areas of restored sovereignty.

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