

Criminal threats in Latvia raised by Russian aggression in Ukraine

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Abstract

On 24 February 2022, Russia's aggression against Ukraine escalated into a broader armed invasion of the Ukrainian territory and a subsequent protracted war. This event significantly impacted various social, political, legal and other processes worldwide. This global upheaval not only influenced international processes but also had an impact on various national-level processes, including the introduction of changes within the spectrum of criminal threats. Upon realising the extent of interests being criminally violated, the author of the research chose to narrow the research focus exclusively to the Latvian level. Moreover, the range of interests violated at the Latvian level can be quite extensive, as the commission of any criminal offence outlined in the Criminal Law can be indirectly linked to the war in Ukraine. With this in mind, the study aims to identify the criminal threats in Latvia stemming from Russia's aggression in Ukraine by analysing statistical indicators of registered criminal offences, the activities of lawmakers in the development of criminal law norms and case law in situations where Ukraine is mentioned in the description of the alleged criminal offence.

Keywords

criminal threat • violation of sanctions • hate crime • crimes against the state

INTRODUCTION

On 24 February 2022, Russia's aggression against Ukraine escalated into a much broader armed invasion of the Ukrainian territory and the ensuing protracted war, which inevitably determined various social, political, legal and other processes around the world. This global upheaval affected not only international processes in many ways but also various processes at the national level, including changes in the spectrum of criminal threats to interests. Upon realising the extent of interests criminally violated, the author decided to limit the subject of the study to the Latvian level. To be more precise, this study will not focus on the criminal aspects of Russia's military aggression, which in many respects touch upon the dimension of international law, but will instead reveal the criminal aspects of Russia's aggression in Ukraine at the Latvian level only.

It should be acknowledged that the spectrum of interests affected at the level of an individual country can also be very broad, as the commission of any criminal offence under the Criminal Law may be indirectly linked to the war in Ukraine. For example, in its Public Report 2022, the State Police

states that 'between 24 February and 31 December 2022, 202 criminal proceedings were initiated which may be related to the hostilities in Ukraine or involve Ukrainian citizens, representing 0.67% of the total number of criminal proceedings initiated by the State Police. More than 57% of these are criminal offences against property, 17%—criminal offences against road safety, 4%—criminal offences against personal health, 4%—criminal offences against administrative order, as well as 6%—criminal offences qualified under Chapter IX of the Criminal Law' (State Police, 2022). These criminal threats existed even before 24 February 2022 in many respects. In order to identify the criminal threats in Latvia raised by the Russian aggression in Ukraine, the study will analyse

- statistics on recorded criminal offences;
- legislative innovations in criminal law provisions;
- case law in cases where Ukraine is mentioned in the description of the criminal offence.

In the following, the grammatical, systemic, historical and teleological methods of interpretation of the provisions of the Criminal Law will be applied to criminal law issues related to the identified criminal offences, which were raised by the Russian aggression in Ukraine.

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RESEARCH RESULTS AND DISCUSSION

Criminal threats in Latvia raised by the Russian aggression in Ukraine, based on statistical indicators

Looking at the statistics on recorded criminal offences compiled by the Information Centre of the Ministry of the Interior, it can be seen that in 2022, compared to previous years, the number of crimes against the State under Chapter X of the Criminal Law increased most significantly (see Table 1 for information compiled by the author from the criminal statistics on recorded criminal offences of the Information Centre of the Ministry of the Interior for the period from 1 January 2017 to 31 December 2022).

A total of 27 crimes against the State were recorded in 2017, 18 in 2018, 11 in 2019, 11 in 2020, 16 in 2021 and 136 in 2022. Accordingly, it can be concluded that 10 times more crimes against the State were recorded in 2022 than in previous years on average.

In order to determine whether this increase in recorded crimes against the State is linked to the military aggression of the Russian Federation in Ukraine, attention should be paid to which recorded crimes against the State increased.

According to statistics provided by the Information Centre of the Ministry of the Interior, the increase in crimes against

the State in 2022 was due to a significant increase in crimes under Section 84 of the Criminal Law. Namely, 116 crimes under Section 84 of the Criminal Law were recorded in 2022. For comparison, only one crime under Section 84 of the Criminal Law was recorded in 2021, two crimes in 2020, five crimes in 2019, four crimes in 2018 and four crimes in 2017 (Criminal statistics of the Information Centre of the Ministry of the Interior, 2022).

Section 84 of the Criminal Law provides for criminal liability for a violation of sanctions imposed by international organisations and the Republic of Latvia. Accordingly, the significant increase in crimes under Section 84 of the Criminal Law can, in many respects, be explained by the fact that, in connection with the military aggression in Ukraine, many different sanctions were imposed on legal and natural persons of the Russian Federation by international organisations and the Republic of Latvia.

This connection is also highlighted by the Prosecutor General of the Republic of Latvia, who acknowledges, in his annual report, that 'following the (expanded) sanctions imposed by the Republic of Latvia and international sanctions against the Russian Federation and the Republic of Belarus following the armed invasion of Ukraine by the Russian Federation on 24 February 2022, tens of cases of non-compliance with the sanctions were established at control points on the eastern border of the Republic of Latvia, for which tens of criminal

Table 1. Criminal statistics on recorded criminal offences compiled by the Information Centre of the Ministry of the Interior (Criminal statistics of the Information Centre of the Ministry of the Interior, 2022)

Chapter in the Criminal Law	Year	2017	2018	2019	2020	2021	2022
Section IX		9	12	12	13	6	46
Chapter IX ¹		-	0	1	0	3	0
Chapter X		27	18	11	11	16	136
Section XI		458	407	394	356	260	232
Section XII		153	185	116	144	120	120
Section XIII		2,861	2,483	2,229	2,013	2,002	2,108
Section XIV		143	156	119	133	88	80
Section XV		117	86	60	85	53	53
Section XVI		507	534	614	582	675	675
Section XVII		505	763	1,228	1,252	1,999	1,824
Section XVIII		27,047	25,818	23,228	22,409	16,469	17,541
Section XIX		4,484	4,867	4,144	4,616	4,416	3,937
Section XX		3,367	3,440	3,122	2,797	2,194	2,015
Section XXI		2,823	2,800	2,560	2,475	2,396	2,635
Section XXII		765	769	765	604	789	796
Section XXIII		771	714	945	1,069	1,120	1,211
Section XXIV		208	254	352	202	208	295
Section XXV		5	3	6	5	6	3

proceedings were initiated. Investigating criminal proceedings of this kind and supervising the investigation was a great challenge for investigators and prosecutors, as there was no such practice in the country before' (Report of the Prosecutor General of the Republic of Latvia, 2022).

Somewhat contrary to this, it should be pointed out that there was little practice in cases concerning the criminal offence under Section 84 of the Criminal Law, as sanctions by international organisations, including in relation to Russia's aggression against Ukraine, had already been in place before 24 February 2022. For example, on 17 March 2014, the Council of the European Union adopted Decision 2014/145/CFSP concerning restrictive measures in respect of acts undermining or threatening the territorial integrity, sovereignty and independence of Ukraine. Taking Decision 2014/145/CFSP into account, on 17 March 2014, Council of the European Union Regulation No. 269/2014 of the same name 'concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine' was adopted. Regulation No. 269/2014 is implemented by Council of the European Union Regulation No. 284/2014 of 21 March 2014.

By the judgement of Riga City Court of 26 June 2023 in criminal case No. 12502002122, a person who was found guilty of committing a criminal offence under Section 84(1) of the Criminal Law (hereinafter—convicted person) was held criminally liable for violating the sanctions established by the afore-mentioned international normative acts. According to the description of the criminal offence in the judgement, the convicted person entered into agreements with a sanctioned legal entity in which a natural person, also sanctioned by the European Union, held a leading position. Based on the agreements entered into, the convicted person provided a service for the creation and distribution of information content to a sanctioned legal entity. During the term of the agreement and on the website specified in the agreement, the convicted person edited and translated material posted on a website financed by a sanctioned legal entity. For the provision of services, the convicted person received remuneration of EUR 32,700.00 in a current bank account during the term of the agreement, from 10 May 2017 to 15 November 2019, and subsequently received the remuneration in a current account opened at the Kaliningrad branch of the public joint-stock company Sberbank. In this way, the convicted person fulfilled the objectives set out in Chapter 2 of the Articles of Association of the sanctioned legal entity—to strengthen Russia's national interests in the information space and the creation, publishing and distribution of mass media, as well as the creation and distribution of online multimedia portals.

It should be noted that it is apparent from the description of the criminal offence in the judgement that the object of the criminal offence was the creation by the convicted person of various

materials and information for the needs of a sanctioned legal entity in the performance of a contractual service in a European Union country. The materials created during the term of the agreements were considered an economic resource within the meaning of Regulation No. 269/2014 as they were used to support the activities of the sanctioned legal entity, including the creation of national propaganda and an appropriate information space (Judgement No. 12502002122, 2023).

In many respects, a similar description of a criminal offence can be found in the judgement of Riga District Court of 28 January 2022 in criminal case No. 11840002219. In particular, the sanctions imposed by the afore-mentioned international laws and regulations on restrictive measures against acts that undermine or threaten the territorial integrity, sovereignty and independence of Ukraine have been violated. However, unlike the judgement of 26 June 2023, the judgement of 28 January 2022 already referred to money amounting to EUR 14,022,583.00 as the object of the criminal offence, which was made available to a sanctioned natural person, and the criminal offence was committed by a group of persons (Judgement No. 11840002219, 2022).

As can be seen, both in the case where the criminal offence is committed by a single person and the object of the criminal offence is economic resources that could be indirectly estimated at EUR 32,700.00, and in the case where the criminal offence is committed by a group of persons and the object of the criminal offence is EUR 14,022,583.00, the offence should be classified under Section 84(1) of the Criminal Law. This is because the value or amount of the object of the criminal offence has no bearing at all on the qualification of the offence, despite the fact that these examples show that in such criminal offences, it is the object of the criminal offence and not the consequences that are relatively easy to determine. Moreover, Section 84(3) of the Criminal Law, which provides for the qualifying element of a group by prior agreement, is linked to Section 84(2) of the Criminal Law, which provides for the qualifying element of substantial harm. Respectively, in the legislator's understanding, an offence committed by a group of persons by prior agreement only becomes more harmful when the offence has consequences.

Until 2 December 2015, the qualifying element of a criminal offence under Section 84(2) of the Criminal Law was not only the cause of substantial harm but also the commission of an offence by a group of persons by prior agreement and the special subject of the criminal offence—a public official. Moreover, these qualifying elements were not interrelated. Namely, in cases where the offence is committed by a group by prior agreement or by a public official, it was not necessary to establish that the offence caused substantial harm. Until 2 December 2015, Section 84(2) of the Criminal Law prescribed the following:

(2) For the commission of the same acts, if committed by a group of persons by prior agreement or by a public official, or if they have caused substantial harm, –

By the Law of 29 October 2015, Amendments to the Criminal Law, which entered into force on 3 December 2015, the legislator deleted the words 'if committed by a group of persons by prior agreement or by a public official, or' from Section 84(2) of the Criminal Law and added Paragraph three to the section: (3) For the criminal offence provided for in Paragraph two of this section, if it has been committed by a group of persons according to a prior agreement or if it has been committed by a public official. These amendments were justified as follows: 'Taking into account the fact that the intentional violation of laws and regulations governing the operation of sanctions imposed by the United Nations Security Council, the European Union and other international organisations in Latvia, causing significant harm, is much more dangerous if committed by a group of persons by prior agreement or by a public official, the draft law provides for more severe liability for such acts in the new Section 84(3) of the Criminal Law' (Draft law No. 187/Lp12, abstract). As can be seen, the legislator did not provide any justification at all for decriminalising a formal criminal offence with the qualifying elements 'a group of persons by prior agreement' and 'if committed by a public official', only providing for these elements if the criminal offence has a substantive element.

It is noteworthy that the Law of 29 October 2015 on Amendments to the Criminal Law provided for changing the wording of the articles of the Criminal Law's special part with regard to the qualifying elements: small scale, significant scale, large scale, substantial harm and serious consequences. However, these changes bumped up against one illogical conclusion. Namely, the authors of the draft law believed that the concepts of 'small scale', 'significant scale' and 'large scale' refer to the consequences. The abstract says, 'By defining the harmful consequences of criminal offences such as small scale, significant scale, large scale, substantial harm and serious consequences, it is also necessary to amend certain sections of the special part of the Criminal Law, prescribing the harmful consequences corresponding to the nature of the offence' (Draft law No. 187/Lp12, abstract). In particular, the legislator considered the object of the criminal offence to be the consequences. However, in cases of violations of sanctions in general, it is difficult to model a situation in which these types of criminal offences can have specific consequences.

The Latvian Courts portal (available at: <https://manas.tiesas.lv/eTiesasMvc/nolemumi>) does not contain any anonymised court judgements in which a person has been found guilty of a criminal offence under Section 84(2) or (3) of the Criminal Law.

Statistics provided by the Information Centre of the Ministry of the Interior indicate that criminal offences under Section 84(2) and (3) of the Criminal Law were recorded in 2022. Namely, in 2022, 109 criminal offences under Section 84(1) of the Criminal Law, 6 criminal offences under Section 84(2) of the Criminal Law and 1 criminal offence under Section 84(3) of the Criminal Law were recorded.

In practice, therefore, the enforcers of the normative provisions were able to detect substantial harm in at least seven cases of sanction violations. These criminal proceedings have yet to reach final rulings. Practice may be able to justify the existence of consequences in the case of such offences.

However, the author believes that the scale of the object of the criminal offence could serve as a more accurate indicator of the harmfulness of the criminal offence. Violating a sanction in the amount of several million euros is a far more harmful offence than violating a sanction in the amount of a few tens of euros. Currently, both such offences would be qualified under Section 84(1) of the Criminal Law. To deal with this situation, Section 84(2) of the Criminal Law should provide for a significant scale as a qualifying element of the criminal offence. Section 84(3) of the Criminal Law, on the other hand, should provide for large scale as being a qualifying element of the criminal offence.

Moreover, it is not clear why the legislator provided for substantial harm as a qualifying element in Section 84(2) of the Criminal Law, while serious consequences are not mentioned in Section 84(3) of the Criminal Law. If the qualifying element of consequence is retained, this shortcoming should also be addressed by expressing Sections 84(2) and 84(3) of the Criminal Law as follows:

(2) For the acts provided for in Paragraph one of this Section, if committed on a substantial scale or if they have caused substantial harm;

(3) For the acts provided for in Paragraph one of this section, if committed on a large scale or with serious consequences; or for the criminal offence provided for in Paragraph two of this section, if it has been committed by a group of persons according to a prior agreement or if it has been committed by a public official.

With regard to the qualifying element 'if committed by a public official', it should be noted that Section 84(3) of the Criminal Law does not provide that this element only exists in situations where a public official uses their official position in the commission of a criminal offence. Namely, it is sufficient that the perpetrator of the criminal offence is a public official. For comparison, Section 285(2) of the Criminal Law (Illegal Movement of a Person Across the State Border) could be mentioned, where the qualifying element is formulated as follows: 'For the commission of the same acts, if they have been committed by a public official, using its official position [...]'.

It should also be mentioned that the illegal movement of a person across the state border is also a criminal offence, which has become more acute, including as a result of Russia's aggression in Ukraine. However, before turning to the analysis of Section 285 of the Criminal Law, it is necessary to provide some insight into how this criminal offence is related to the war in Ukraine.

Criminal threats in Latvia arising from the activities of the legislator raised by the Russian aggression in Ukraine

Between 24 February 2022 and November 2023, five laws were adopted to amend the Criminal Law. Although none of these laws is directly based on the Russian aggression in Ukraine in the initial impact assessment reports (abstracts), the moment when the amendments were initiated, their content and the opinions expressed by experts during the discussions on the amendments, including in the Saeima commissions, indicate that several amendments to the Criminal Law are indirectly related to the Russian aggression in Ukraine.

For example, on 20 October 2023, the Law of 5 October 2023 on Amendments to the Criminal Law entered into force, increasing the penalties and introducing new qualifying elements for criminal offences against the administration of justice, relating to the illegal movement of a person across the state border and providing opportunities for unlawful presence in the country.

On 19 September 2023, at a meeting of the Subcommittee on Criminal Law and Sentencing Policy of the Saeima Legal Affairs Committee, justifying the need for these amendments to the Criminal Law, Lauma Paegļkalna, Parliamentary Secretary of the Ministry of Justice, stated, 'When working with the legal framework, it is evident that the context is often forgotten both in the political and legal sense. Latvia is Ukraine's ally in the fight against the aggressor state, which has resulted in hybrid attacks on the country's borders. The flooding of borders with migrants is actually being used as a tool against Latvia as an ally of Ukraine. Context is important when considering whether the current legal framework for national security matters is sufficient. The Ministry of Justice assessed the proposal by members of parliament, took into account the context and looked at the current statistics on the cases in question. It was concluded that the existing legal framework does not prevent people, groups, or organised crime from taking advantage of the situation and helping aggressor countries by smuggling migrants across the border' (Minutes No. 141.1.9/3/1-16-14/23 of the Legal Affairs Committee of the 14th Saeima of the Republic of Latvia, 2023).

Thus, in order to combat the hybrid attack, it was decided to amend the sanctions of Section 285 (Illegal Movement of a Person Across the State Border), Article 285¹ (Ensuring the Possibility to Residing Illegally in the Republic of Latvia) and Article 285² (Ensuring, in Bad Faith, a Possibility to Acquire the

Right to Stay in the Republic of Latvia Legally, other Member State of the European Union, Member State of the European Economic Area or Swiss Confederation) and supplement the qualifying elements of criminal offences under this section.

Initially, it might seem—how can practice be changed if only the upper limit of penalties is increased? That is, if the enforcers (courts and prosecutors) have not, until the amendments under analysis, run into the upper limit of the sanction when punishing persons for these offences, it should be assumed that raising the upper limit of the sanction will not make any difference. However, the point and substance of the amendments lie not in the upper limits of the sanction but in the new qualifying element.

On 3 October 2023, at a meeting of the Saeima Legal Affairs Committee, Indra Aizupe, a representative of the Criminal Law Department of the Ministry of Justice, explained the following regarding amendments to Section 285 of the Criminal Law: '[...] in line with the discussions in the Committee and the Criminal Law Working Group, it is proposed to create Paragraph 3¹—with a separate part for the qualifying element: '(3¹) For the same acts, if committed during a period of reinforced border security regime or during a state of emergency declared due to a threat to the inviolability of the state border, regardless of the place where the offence was committed in the territory of Latvia, [...] a slightly higher maximum penalty (from 'two to eight years' to 'two to ten years') is also proposed'. However, the most important point made by I. Aizpute is that '[...] in connection with the illegal movement of persons across the state border, a special regime for the operation of the border protection system has been declared in several regions in Latgale, which means that persons who, until such amendments, were held liable under Paragraph one of the section (in the absence of qualifying elements), will be held liable under this new Paragraph 3¹ (which provides for a much higher sanction) during the period of the reinforced border security regime and the state of emergency (declared due to the threat to the inviolability of the state border)' (Minutes No. 141.1.9/3-47-14/23 of the Legal Affairs Committee of the 14th Saeima of the Republic of Latvia, 2023).

It should be acknowledged that while the Russian aggression in Ukraine is active and widespread, the reinforced border security regime and the state of emergency declared due to the threat to the inviolability of the state border are a permanent situation in Latvia. Therefore, the illegal movement of a person across the state border was punishable until 19 October 2023 by the deprivation of liberty for up to 2 years or temporary deprivation of liberty, probationary supervision, community service or a fine, and after 20 October 2023, by deprivation of liberty for 2–8 years with or without the confiscation of property and with or without probationary supervision for up to 3 years.

In particular, before the amendments to Section 285 of

the Criminal Law, the maximum possible penalty was the deprivation of liberty for up to 2 years; after the amendments, the minimum possible penalty is the deprivation of liberty for up to 2 years.

Publicly available court decisions that do not anonymise the nationality of the convicted person show that perpetrators of the criminal offence under Section 285 of the Criminal Law are often nationals of another country or holders of a permanent residence permit in another country. For example,

- In criminal case No. 18240002123, a Ukrainian citizen was sentenced to the temporary deprivation of liberty for 85 days for attempting to commit the unlawful movement of several persons across the state border at one time (Sections 15(4) and 285(2) of the Criminal Law) (Judgement in criminal case No. 18240002123, 2023).

- In criminal case No. 11829003621, an Iraqi citizen was sentenced to the deprivation of liberty for 4 months and expulsion from the Republic of Latvia with a 5-year entry ban for the illegal movement of several persons across the state border at one time (Section 285(2) of the Criminal Law) (Judgement No. 11829003621, 2023).

- In criminal case No. 11822002018, a citizen of the Russian Federation was sentenced to the temporary deprivation of liberty for 2 months and expulsion from the Republic of Latvia with a 3-year entry ban for the illegal movement of several persons across the state border at one time (Section 285(2) of the Criminal Law) (Judgement No. 11822002018, 2023).

- In criminal case No. 11829000118, two citizens of the Republic of Belarus were sentenced to the temporary deprivation of liberty for 2 months for attempting to illegally move persons across the state border in a group of persons by prior agreement (Sections 15(4) and 285(2) of the Criminal Law) (Judgement No. 11829000118, 2023).

If the offence for which the persons were convicted was committed after 20 October 2023, they could no longer be sentenced to the temporary deprivation of liberty for a few months. Instead, in analogous situations, persons will either be given a suspended sentence or, pending expulsion from the Republic of Latvia, will have to spend at least 2 years in Latvia serving a custodial sentence.

Admittedly, the author has not yet observed such a significant change in criminal sentencing policy as occurred with the criminal offence under Section 285 of the Criminal Law (with amendments to the law changing the practice from 2 months of temporary deprivation of liberty, which was usually imposed by the courts in practice, to 2 or more years of deprivation of liberty, which will have to be imposed) in any other case. It is likely that such amendments should not be rushed through two readings in the Saeima in an urgent manner. From the submission of the draft law on 20 September 2023 to the promulgation of the law on 11 October 2023, 21 days

elapsed. For comparison, more than 2 years passed after Cabinet Order No. 518 of 10 August 2021 on Declaring a State of Emergency, which declared a state of emergency due to a sharp increase in the number of illegal border crossings.

The increase in the penalties provided for in the articles of the special part of the Criminal Law is an understandable reaction of the legislators to the changes that took place after 24 February 2022. It has to be concluded that these changes have significantly increased the harmfulness of many criminal offences. In the context of Russia's aggression in Ukraine, the President of Latvia also initiated amendments to the Criminal Law on 27 September 2023, which, among other things, provide for increased penalties for several crimes against the State. It must be admitted that these amendments to the Criminal Law, which increase the penalties provided for in the sanctions, are quite well-founded, pointing out that 'The international security situation has changed significantly and irreversibly since 24 February 2022, when the Russian Federation carried out an unlawful, unprovoked, full-scale military invasion of Ukraine. The war that Russia has launched and the war crimes it has committed are proof of the aggressor's willingness to use force against other countries and to use all available means to satisfy its imperialist desires. Russia's war in Ukraine has a direct negative impact on Latvia's national security. Russia's actions also confirm that the crimes contained in Chapter X of the Criminal Law are not merely a theoretical construct, but that liability for criminal offences against the national security of our country, as defined in this chapter, is an important instrument for the protection of the State and society as a whole. In the case of the criminal offences covered by this chapter of the Criminal Law, the harm done may be irreversible. This harm most directly affects not just the interests of one individual but the interests of the Latvian State and society as a whole, and in particular, Latvia as an independent, democratic, lawful state that belongs to the Western world. National security is a state of affairs in which the independence of the State, its constitutional order and territorial integrity, the prospects for the free development of society, its prosperity and stability are guaranteed, as a result of unified, purposeful action by the State and society. In light of the above, the legal framework contained in the Criminal Law must also be proportionate to the existing threat; it must not be disproportionately weak in relation to the potential harm to the interests of the State and society, or disproportionately restrictive in relation to new manifestations of harmful behaviour by individuals' (Letter by the President of the Republic of Latvia No. 197, 2023).

In the context of the legislator's activities, it must be concluded that the harmfulness of a criminal offence is not static but a variable and fluctuating element. In the case of global events such as war, the harmfulness of some offences increases significantly. This should result not only in increased activity

by the legislator in raising the penalties provided for in the sanctions but also in practice, for example, in the application of Sections 46(2) and 46(3¹) of the Criminal Law.

The author does not doubt that the legislator will also increase the penalties provided for in the sanctions prescribed in the sections of the special part of the Criminal Law in this case. As for the rest of the amendments to the Criminal Law initiated by the President of Latvia, this should be discussed further.

For example, a new type of criminal offence is proposed. Namely, it is proposed to add Article 95² to the Criminal Law, as follows:

'Section 95². Military and tactical training

For organising or participating in individual or collective training for the purpose of developing combat capabilities and skills, except for where such training is organised and carried out for the purpose of national defence, public order and security or the performance of other functions provided for by the law [...]

As can be seen, this provision, in addition to the training for terrorism provided for in Section 79⁴ of the Criminal Law, further expands the range of criminalised training.

Even before the first reading in the Saeima, Edmunds Teirumnieks, a member of the Subcommittee on Criminal Law and Sentencing Policy, has drawn attention to Airsoft as military and tactical training (Minutes No. 141.1.9/3/1-17-14/23 of the meeting of the Subcommittee on Criminal Law and Penal Policy of the Legal Affairs Committee of the 14th Saeima of the Republic of Latvia, 2023). It must be admitted that the proposed norm may lead to a ban on Airsoft in practice. The need for Article 95² of the Criminal Law is linked to Section 3² of the National Security Law: 'The organisation and carrying out of individual or collective training for the development of combat capabilities (performance of military tactical tasks) and skills necessary for the capture of persons, buildings and objects or occupation of populated areas and territories, freeing of detained, arrested and convicted persons, and also planning and implementation of attack, defence and combat support operations, as well as participation in such training is prohibited, except for when such is organised and carried out for ensuring State defence, public order and the safety and fulfilment of other functions provided for in the law'. It has to be admitted that the formulation of this prohibition is not sufficiently clear, as it refers to other unknown functions. This proposal is not accompanied by a comprehensive justification. On 5 June 2018, the inclusion of this prohibition in the National Security Law was proposed by Kārlis Seržants, a Member of the Saeima, who submitted it for consideration of the draft law in the second reading (Proposal for Amendments to the National Security Law (1262/Lp12) 2nd reading, 2023). From the explanation given by the Ministry of Justice, it can be concluded that this prohibition was, in many respects, related to the non-allowance of military training of children that was relevant at that time. Moreover, at the time, the Ministry of

Justice did not see the need to introduce new elements of criminal offences in the Criminal Law (Ministry of Justice Letter No. 1-11/1628, 2018).

At the moment, while the Saeima is only deciding on the need to amend the Criminal Law, the author can only hope that if the legislator decides to include Section 95² in the Criminal Law, in practice, children will not be prosecuted, for example, for military or tactical tasks simulated in the computer game Minecraft, which the law enforcers will recognise as training to develop combat skills and abilities.

Criminal threats arising from the case law in Latvia raised by the Russian aggression in Ukraine

When searching for anonymised court decisions in the Latvian Courts portal (available at: <https://manas.tiesas.lv/eTiesasMvc/nolemumi>) in criminal cases in which the word 'Ukraine' is mentioned in the description of the criminal offence, it can be concluded that these criminal offences are basically qualified under either Section 74¹ of the Criminal Law (Acquittal of Genocide, Crime against Humanity, Crime against Peace and War Crime) and Section 78 (Triggering of National, Ethnic and Racial Hatred) or Section 231 (Hooliganism) of the Criminal Law.

For example, in criminal proceeding No. 11840001322 (Judgement No. 11840001322, 2023, Judgement No. 11840001522, No. 11840004722, 2023 and Judgement No. 11840004722, 2023), persons were found guilty of criminal offences under Section 74¹ of the Criminal Law and the relevant part of Section 78 of the Criminal Law and were punished for offences of triggering hatred between Latvians, Ukrainians and Russians by mentioning the war in Ukraine in comments to articles on social networks or websites.

Under the relevant part of Section 231 of the Criminal Law, persons were found guilty and punished for acts, violent in many ways, which took place outside the online environment, in which hatred against Ukraine or Ukrainians was displayed. For example, in criminal proceeding No. 11181058322, a person was found guilty of a criminal offence under Section 231(2) of the Criminal Law and punished for targeted shooting at a house with a pneumatic pistol no less than 10 times while loudly shouting: 'Where are the khokhols hidden; where are the khokhols; let them come out' (Judgement No. 11181058322, 2022). The widely publicised event of 20 May 2022, when a person punched a man with a Ukrainian flag around his shoulders, saying 'What kind of fascist rag do you have there?', also qualified under Section 231 of the Criminal Law (Liholaja, 2022). The author will focus on this case in more detail a little later, commenting on the findings of Professor Liholaja (2022) of the University of Latvia.

In general, it must be admitted that these criminal offences can be certainly classified as hate crimes. Namely, they are hate speech, which is criminalised in Sections 74¹ and 78 of

the Criminal Law, and hate-motivated criminal offences, in which, in addition to Section 231 of the Criminal Law, there should also be an aggravating circumstance provided for in Section 48(1)(14) of the Criminal Law—the criminal offence was committed due to racist, national, ethnic or religious motives or due to social hatred.

The Public Report of the State Police 2022 states that 'In 2022, the State Police registered 6 criminal offences for 'hate crimes' under Section 74¹ of the Criminal Law (Acquittal of Genocide, Crime against Humanity, Crime against Peace and War Crime) (1 criminal offence related to damaging the Ukrainian flag, 1 criminal offence related to stealing the Ukrainian flag, 2 criminal offences related to damaging banners expressing support for Ukraine, 1 criminal offence related to painting the letter 'Z' on the facade of a building and 1 criminal offence related to expressing a negative attitude towards Ukrainians by placing bullets behind car window wipers), 8 criminal offences under Section 78 of the Criminal Law (3 criminal offences for damaging the Ukrainian flag, 2 criminal offences for verbal comments to Ukrainian nationals, 1 criminal offence related to painting the letter 'Z' on the facade of a building, 1 criminal offence for hate speech on the social website TIKTOK, and 1 criminal offence related to damaging a car with a Ukrainian licence plate by writing the letter 'Z' on it in black paint), and 6 criminal offences under Section 150 of the Criminal Law (6 criminal offences were registered, including 2 criminal offences involving discriminatory online comments about sexual orientation, 3 criminal offences involving illegal online comments). The events registered with the State Police are mainly related to the Russian-led war in Ukraine—the Ukrainian flag is being desecrated, Ukrainian nationals are being harassed, letters 'Z' are being painted on the facades of buildings and vehicles' (Public Report of the State Police, 2022).

The investigation of a crime under Sections 74¹ and 78 of the Criminal Law is the responsibility of the State Security Service in accordance with Section 387(2) of the Criminal Procedure Law. In this context, it should be mentioned that on 28 September 2023, the National Information Agency LETA published the following statistics: 'Since the Russian invasion of Ukraine on 24 February last year, the State Security Service (VDD) has initiated a total of 40 criminal proceedings and taken over four criminal proceedings from the State Police related to activities in support of Russia's aggressive foreign policy, the LETA news agency was informed. In 20 of the 44 criminal proceedings, the State Security Service found in the persons' activities the elements of two criminal offences at the same time, namely public glorification and acquittal of genocide, crimes against humanity, crimes against peace and war crimes, as well as triggering of national and ethnic hatred or enmity against Latvians and Ukrainians. Nine criminal proceedings have been initiated for the triggering of national

and ethnic hatred or enmity. In one criminal proceedings, the State Security Service found the possible simultaneous triggering of national hatred and enmity and violation of sanctions imposed by the European Union (Section 84 of the Criminal Law) in the activities of a person. Eight criminal proceedings have been initiated for public glorification and acquittal of genocide, crimes against humanity, crimes against peace and war crimes. One criminal proceedings has been initiated for aiding the collection of funds and other property with the intention of transferring it to Russian soldiers involved in the hostilities in Ukraine. Two criminal proceedings have been initiated simultaneously for alleged acts against Latvia and for providing assistance to a foreign state in an act against Latvia. Two criminal proceedings have been initiated for providing assistance to a foreign state in an act against Latvia, for one of which, in the course of the investigation, the State Security Service changed the qualification of the criminal offence to a more serious one—leading a criminal organisation and participating in crimes committed by such an organisation. One criminal proceedings has been initiated for alleged illegal participation in Russia's war against Ukraine' (Kristovskis, 2023).

As several criminal proceedings on hate crimes have already come to court and case law has emerged, lawyers have also started to pay more attention to such criminal offences. For example, one of the questions raised by lawyers is whether a person's motives can be both of a personal and a hooligan nature. In relation to the events of 20 May 2022, Professor Liholaja (2022) of the University of Latvia pointed out that 'the motives for a criminal offence can be diverse, including both hooligan motives and personal relationships. While some criminal offences may combine motives that are distinct in their meaning and role, for example, murder may be motivated by envy and greed, it is hard to imagine a situation where a person's motives were both personal and hooligan, which are practically mutually exclusive.

Committing criminal offences because of a personal relationship is usually motivated by resentment, anger, jealousy, revenge, envy and similar feelings that the perpetrator has because of a personal relationship with the victim, as a result of their specific behaviour or actions. Moreover, in such cases, the criminal offence is directed against the life, health, property or other legally protected interests of another person, who is the direct object of the criminal offence, the threat to which is the perpetrator's objective.

In the case of criminal hooliganism, the fact of gross disturbance of public order, i.e., the order in society that complies with legal norms and rules of everyday life and ensures the smooth functioning of institutions, enterprises and organisations, the peaceful life, work and rest of people, as well as the protection of property and other rights, must be established. By grossly disturbing the public order, the

generally accepted norms of behaviour are ignored, the peace of people, the work of institutions, enterprises (companies) or organisations are disturbed' (Liholaja, 2022).

As can be seen, the professor describes personal motives by mentioning a wide variety of motivating feelings, emotions and passions, including resentment, anger, jealousy, revenge and envy. However, the explanation of hooligan motives does not mention any motivating feeling, emotion or passion but only what the person does. The author will not try to fill the hooligan motive with content in the article, as he considers that it has no content and is only established, for example, to distinguish between hooliganism under Section 231 of the Criminal Law, if it involves damage to or destruction of property, and the intentional destruction of and damage to property under Section 185 of the Criminal Law. Practically, a hooligan motive is one where there is no personal motive, but it cannot otherwise be fulfilled at all in terms of content. It is noted in Professor Liholaja's (2022) article explaining the hooligan motive: 'without good reason or with a frivolous pretext'. The professor then turns her attention to Section 78 of the Criminal Law, suggesting that Section 78 of the Criminal Law competes with Section 231 of the Criminal Law. Moreover, the professor linked the application of Section 78 of the Criminal Law to the existence of a hate motive. The author considers this to be a misconception, as Section 78 of the Criminal Law does not provide for a hate motive as a qualifying element. It provides for liability for triggering hatred. One does not have to feel hatred to commit an act aimed at triggering hatred. Acts triggering hatred may not be motivated by hate. If a person has committed an act aimed at triggering national hatred and such was motivated not by hatred but, for example, by superstitious beliefs, fears or phobias, such an offence may also be qualified under Section 78 of the Criminal Law.

The criminal offence under Section 78 of the Criminal Law is also committed by those who do not feel national, ethnic, racial or religious hatred but trigger it because, for example, they were paid money.

If the professor's conclusions are accepted as correct, then under this concept, the aggravating circumstance provided for in Section 48(1)(14) of the Criminal Law—the criminal offence was committed due to racist, national, ethnic or religious motives or due to social hatred—should not be recognised as an aggravating circumstance in the case of hooliganism. The author recognises this as a misconception. This is obviously due to the fact that hate speech is still not sufficiently distinguished from hate-motivated criminal offences (Pyo and Hayes, 2023).

In hate speech, hatred is part of the objective elements of the offence, i.e. the acts are committed with the intent to trigger hatred. In other words, there will be hatred in the future, when it is triggered (liability is provided for in Sections 78 and 150 of the Criminal Law, among others).

In hate-motivated offences, hatred is part of the subjective elements of the offence, i.e. hatred motivates the commission of the offence. In other words, hatred exists before a criminal act is committed (Motive is provided for in Section 48(1)(14) of the Criminal Law).

Taking this into account, the author also sees no obstacle to the application of Section 48(1)(14) of the Criminal Law in cases where persons are punished for criminal offences under Sections 78 or 150 of the Criminal Law. That is, when hatred is the motive and actions are taken to trigger hatred in others. As has already been argued, the motive of hatred cannot be considered as a constituent element of offences that trigger hatred, and it would therefore be inappropriate to refer to Section 48(4) of the Criminal Law in these cases, which provides that a circumstance which is provided for in this Law as a constituent element of a criminal offence shall not be considered an aggravating circumstance.

In concluding the analysis of issues related to hate crimes, it should be mentioned that Sections 78, 150 and 231 of the Criminal Law were also the subject of legislative attention, but this did not result in the entry into force of the specific amendments to the law. These sections were brought to attention in the consideration of draft law No. 1412/Lp13 Amendments to the Criminal Law, which initially envisaged only one amendment—to replace the words 'or reservist' in Section 282¹(2) (Evading Mobilisation) of the Criminal Law with the words 'reservist, or national guardsman'. Namely, Kaspars Ģirģens, member of the 13th Saeima, had submitted proposals for the second reading of draft law No. 1412/Lp13 to supplement Section 231 of the Criminal Law with new qualifying elements, including if the hooliganism was committed using an automated data processing system. He also proposed to delete Sections 78 and 150 from the Criminal Law, effectively merging the offences under both sections into a new provision 'Section 95². Triggering of Social Hatred and Enmity', in which the offence in Paragraph one was provided with the formal composition: 'For an act orientated towards the triggering of hatred or enmity depending on the gender, age, disability, race, nationality, ethnicity or religious affiliation of a person or any other characteristics' (Draft Law No. 1412/Lp13, 2022). These amendments were not approved by the Saeima Legal Affairs Committee.

Admittedly, the author is not aware of the reason why the use of an automated data processing system should be considered a qualifying element of hooliganism under Section 231 of the Criminal Law. However, if such amendments are made, the legislator should make it clear that this does not criminalise a new offence. Even without the proposed but not supported amendments to Section 231 of the Criminal Law, the author does not see any obstacle to the recognition of offences committed on the Internet as hooliganism. In other words, if the legislator mentions the virtual Internet environment in

Section 231(1) of the Criminal Law, in addition to institutions and enterprises (companies) where hooliganism can be committed, such an amendment would be made *expressis verbis*.

As regards the amendments that aim to merge the criminal offence under Section 78 of the Criminal Law (Triggering of National, Ethnic and Racial Hatred) with the criminal offence under Section 150 of the Criminal Law (Incitement of Social Hatred and Enmity), in the author's opinion, they conceal the intention to abandon substantial harm as a qualifying element under Section 150(1) of the Criminal Law. The author strongly disagrees with these amendments, as the triggering of national, ethnic, racial or religious hatred has been criminalised in formal composition because it is far more harmful than incitement of social hatred and enmity. In particular, if one looks at the title of Chapter IX of the Criminal Law, it can be concluded that the object of the group of criminal offences under Section 78 of the Criminal Law is also peace. Namely, the triggering of national, ethnic, racial or religious hatred or enmity can lead to war. It is difficult for the author to imagine how the incitement of hatred or enmity depending on the gender, age, disability of a person or any other characteristics, including sexual orientation, as provided for in Section 150 of the Criminal Law, can lead to war.

CONCLUSION

To summarise the article, the following can be concluded:

- the analysis of statistical indicators on registered criminal offences revealed the criminal threats to State interests raised by the Russian aggression in Ukraine in the area of compliance with sanctions imposed by international organisations and the Republic of Latvia;
- the analysis of the legislators' activities in the development of new criminal law provisions revealed the criminal threats to the administrative order and State interests raised by the Russian aggression in Ukraine in the area of border crossing and defence against a hybrid attack by a foreign state;
- case law in cases where Ukraine is mentioned in the description of the criminal offence revealed hate crimes raised by the Russian aggression in Ukraine, as criminal threats to public order and fundamental personal rights in Latvia.

The author is aware that the methods used in the study to identify the criminal threats in Latvia raised by the Russian aggression in Ukraine do not allow the detection of traditionally latent criminal offences, the growth of which can only be guessed at for the time being, for example, trafficking of people leaving Ukraine, corruption in the military and property crimes in connection with the provision of financial and other material support to Ukraine.

Overall, it must be admitted that the Russian military aggression in Ukraine is a very strong determinant of crime, which has had a significant impact on the quantitative increase in specific offences. The war in Ukraine has also raised the issue of the qualification of various criminal offences. The author would like to highlight the following as the most important insights presented in the article:

- In cases of the violation of sanctions imposed by international organisations and the Republic of Latvia, it is almost impossible to establish any consequences that would amount to substantial harm.
- Violation of sanctions imposed by international organisations and the Republic of Latvia in the amount of several million euros is a far more harmful offence than violating a sanction in the amount of a few tens of euros. Therefore, the scale of the object of the criminal offence could serve as a more accurate indicator of the harmfulness of the criminal offence under Sections 84(2) and 84(3) of the Criminal Law, providing for significant scale and large scale as qualifying elements of the criminal offence.
- The harmfulness of a criminal offence is not static but a variable and fluctuating element. In the case of global events such as war, the harmfulness of some offences increases significantly. This must also be taken into account in the application of Sections 46(2) and 46(3¹) of the Criminal Law.
- The amendments to the Criminal Law, which entered into force on 20 October 2023, substantially increased the penalty for committing the criminal offence under Section 285 of the Criminal Law (Illegal Movement of a Person Across the State Border). Namely, the penalty for this criminal offence was changed from 2 months of temporary deprivation of liberty, which was usually imposed by the courts in practice, to 2 or more years of deprivation of liberty, which will have to be imposed. Such amendments should not be rushed through two readings in the Saeima in an urgent manner.
- Triggering of national, ethnic, racial or religious hatred or enmity provided for in Section 78 of the Criminal Law can lead to war. It is difficult for the author to imagine how the incitement of hatred or enmity depending on the gender, age, disability of a person or any other characteristics, including sexual orientation, as provided for in Section 150 of the Criminal Law, can lead to war.
- The criminal offence under Sections 78 or 150 of the Criminal Law is also committed by those who do not feel the hatred specified in the sections but only trigger it because, for example, they were paid money for it. In other words, the motive of hatred is not a qualifying element of a criminal offence under Sections 78 and 150 of the Criminal Law, and therefore, Section 48(1)(14) of the Criminal Law may also be applied in cases where persons are punished for criminal offences under Sections 78 or 150 of the Criminal Law.

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