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On the Basis of Ideological Diversity

On the Legislation against Crimes which are Illustrative of Fascism

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Fascism as a political sect and its negative practical impact on human history are studied. Due to the absence of the definition of 'fascism' in national and international legal acts, it must be stressed that it can only be defined on the basis of interpretations given in judicial and political scientific literature. The political subtext, appearing when the term 'fascism' is used in Ukraine, does not indicate the existence of a social foundation for uprisal, formation and development of the proper phenomenon. The analysis of current Ukrainian legislation proves that the latter's provisions enable the countering of fascist crimes.

Keywords: fascism, fascist ideology, Nazism, defascisation, denazification, political ideology

At the current stage, jurisprudence has few legal terms, the meanings of which are as uncertain as the categories of 'fascism', 'fascist ideology', 'Nazi symbols', and so on. The primary reason for their uncertainty is the lack of judicial definitions explaining the nature of these terms within the framework of international legal acts. However, the phenomenon of fascism and fascist ideology were condemned by the relevant decisions of the Nuremberg Tribunal back in 1946, and this allowed for the conducting of the processes of defascisation, denazification, de-militarization and democratization of postwar Germany.

The current legislation of Ukraine also does not provide a definition in the 'fascism' category.

According to the most general scientific interpretation, fascism is the most reactionary of the dictatorships of the representatives of financial and militarist clans. In the eyes of scientists exploring the phenomenon of fascism, this category is basic since it covers political, ontological, epistemological and ethical aspects of human coexistence. Today, however, the labels of 'fascist', 'fascism' and 'propagandist of

fascist ideology' are indiscriminately pinned on individuals, politicians, political parties and organizations, and that a priori deprives these categories of their original meaning. In practice, it often refers to political parties and leaders who are in political and legal conflict with state authorities [4: 34].

In the international dimension, the term 'fascism' is used only in certain acts of the UN General Assembly. However, these documents do not discover its contents and, moreover, are not legally binding in accordance with the UN Charter. For instance, the UN General Assembly Resolutions No. 162 of 16 December 1981, No. 99 of 16 December 1983, and No. 148 of 13 December 1985 under the common title 'Measures to be taken against Nazi, Fascist and neo-Fascist activities and all other forms of totalitarian ideologies and practices based on racial intolerance, hatred and terror' and the UN General Assembly Resolution No. 150 of 8 December 1988 'Measures to be taken against Nazi, Fascist and neo-Fascist activities and all other forms of totalitarian ideologies and practices based on apartheid, racial discrimination and racism, and the

systematic denial of human rights and fundamental freedoms' interpret the phenomenon of fascism in a single plane with various political regimes (e.g., apartheid, racism, totalitarianism, etc.) relating it to the repeated violations of human rights. Although, using the established legal definitions of the concepts of apartheid, genocide or crimes against humanity, the international regulations do not contain a definition of the term 'fascism'. In addition, these Resolutions do not intend to criminalize the latter.

Many scientific definitions of fascism are bound to ideology and are not legally distinct. The provisions of Article 15 of the Constitution of Ukraine seem to be the most important ones: "Social life in Ukraine is based on the principles of political, economic and ideological diversity". In accordance with Article 23 of the Basic Law, "everyone has the right to the free development of his/her personality so long as it does not violate the rights and freedoms of other people, and has obligations to the society where a free and comprehensive development of his/her personality is ensured". Article 24 of the Constitution emphasizes that citizens cannot have "privileges or restrictions based on race, colour, political, religious or other beliefs, sex, ethnic and social origin, property status, place of residence, linguistic or other characteristics". The category 'fascism' itself is used rather in the political than in the legal area [1].

The study of the essence of 'fascism', 'fascist propaganda', 'the establishment of fascist organizations and participation therein', and the categories of 'fascist ideology' and 'fascist symbolism' are very poorly represented in national judicial literature as it focuses on their ideological aspect. Developing theories on the reasons for the conceptual and practical stability of fascist ideology, scientists do not pay proper attention to the complex study of fascism as a social and political phenomenon. In particular, they do not concentrate on the preconditions for its appearance and social base. Besides, the issues of the international legal definition of fascism and its interpretation in the national laws of some states remain unresolved.

So, currently it is quite important to analyze the category of 'fascism' within historical and legal frameworks and to study the national laws of Ukraine concerning the provisions which aim at the effective combating of the manifestations of fascism in practice.

In fact, amongst many generalized interpretations of the investigated phenomenon existing in modern literature, the most fundamental, universal and accurate one is as follows: fascism (from Italian *fascio* – a bundle, a bunch, an association) is an ideology, a political movement and a social practice characterized by these next features:

- the separation by a racial sign and proclamation of the superiority of one nation over the others;
- the intolerance and discrimination against other nations and national minorities;
- the denial of human rights;
- the imposition of a regime based on the principles of totalitarian statehood, one-party system and autocracy;
- the justification of violence and terror for the suppression of political opponents;
- the militarization of society, the establishment of paramilitary units, and the justification of war as a means of solving existing international problems.

According to this list, the denial of the rights and freedoms of man and citizen can be considered as the main feature of fascism [3: 45]. Indeed, the prohibition of discrimination and the right for protection from discrimination of any kind are generally recognized principles of international law which are fixed in many international legal acts, in particular, in the General Declaration of Human Rights (Articles 2 and 7), the International Covenant on Civil and Political Rights (Article 26), the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 26), etc.

Fascism as a political sect arose in 1919 in Italy. Initially, it was used by the state authorities to embody their revanchist intentions cherished after the defeat in the World War I. Within a short period of time, it gradually spread over Western Europe, ideologically captured the general public and, ultimately, triggered World War II [Rudych, 2011: 44].

The majority of modern domestic and foreign social scientists recognize that since the mid-20th century, the myths and psychological guidelines and the ideology and political practice of radical ethnic nationalism have become the main characteristics of fascism. Consequently, scientific and journalistic literature classifies and terminologically describes it using the criteria of militarism, right-wing extremism, extreme right ideologies, and chauvinism.

Nowadays, the term 'fascism' is often used to define a political regime characterized by typical anti-liberal, anti-democratic, and totalitarian features. Simultaneously, the original Italian contra-socialist 'state-corporation' version of the fascist ideology is not considered to be the most widespread type of its social and political institutionalization and specificity of political activities. Such a role belongs to its offshoots, i.e. the German national socialist regime (Nazism). The main instrument of the latter's establishment was the usage of a racial component that is a kind of myth concerning the 'racial purity and cultural superiority' of the individual nation as an ethnic and racial formation (or as a number of 'blood related' close ethnic communities). Its historic mission presupposed the politicization and self-actualization of the civilization to be performed via armed violence, terror, physical annihilation of socially, spiritually and racially 'inferior' peoples, as well as the establishment of total hegemony in a particular country, region or the world as a whole [2: 105].

Therefore, one can define fascism as a political ideology based on the superiority of some races or nations over the others (racism), and a specific type of totalitarian state regimes characterized with an open dictatorship suppressing progressive social movements.

In the broad sense, fascism/national socialism is a type of state and social system which is the opposite of a constitutional pluralistic democracy. In the European continent during the 20th century these types of regimes were established in Portugal at the time of Salazar (1926 to 1933), in Spain during the rule of Franco (1939 to 1975), in Italy governed by Mussolini (1922 to 1943), and in the Germany of Hitler's period (1933 to 1945). The implementation of fascism as a specific social and political system is based on the denial of a multi-party principle in the interests of an anti-democratically and anti-liberally oriented ruling party or group, i.e. a minority which has captured power and identifies itself with the state.

Thus, the Portuguese fascist ideology allowed for the rejecting of the idea of popular representation in the form of parliamentarianism. Italian fascism relied on the state party and conferred the government with unlimited power. The primary platform for Hitler's fascism became not the state but the materially embodied ideal of a nation, or even a race (it served as a background to overcome the destructive class heterogeneity of the society).

Furthermore, the term 'fascism' must be distinguished from the phenomenon of nationalism. The latter is based on a liberal and democratic Western model of a nation, the ideas of a national state, national identity and civic nationalism to represent republican self-awareness and civic patriotism [Herdehen, 2008: 80].

According to many national scientists, politicians, and journalists, the spectrum of statutory anti-fascist sanctions in Ukraine should take into account its historical experience gained during the 20th century. Meanwhile, legal responsibility should be claimed not only for the promotion and dissemination of fascist or Nazi ideas but also for the establishment of the relevant institutions to implement them [McBride, 2010: 85].

Taking into account the variation of fascism expressions throughout all the period of modern history and the diversity of its ideological doctrines and organizationally structured entities at the modern stage, a set of classification criteria for this phenomenon can be extended and elaborated.

In recent years, the Verkhovna Rada of Ukraine has been presented several bills to combat fascism (particularly, 'On the prohibition of propaganda of fascism and Nazism in Ukraine', 'On the foundations of preventing and combating Nazism and fascism promotion in Ukraine', etc.) but legal uncertainty of the concepts of 'fascism', 'fascist symbols', 'fascist ideology', and the absence of fascist organizations in Ukraine has prevented their approval.

The provisions of the legal acts and constitutions of several countries, notably European ones (Austria, Germany, Italy, Portugal and others), are focused on the mechanisms which draw inferences from their historical experience. Therefore, these laws envisage the prohibition and criminal prosecution for the propaganda of fascist ideas and values, as well as for the usage and promotion of the relevant symbols [Banchuk, 2013: 76].

This issue is also properly addressed in the legislation of our state. Thus, in accordance with Articles 36 and 37 of the Constitution of Ukraine, its citizens have the right to associate in political parties and civil society organizations for the implementation and protection of their rights and freedoms and for the satisfaction of their political, economic, social, cultural and other interests. The Ukrainian legislation prohibits "the foundation of political parties and public organizations whose programme goals or actions are aimed at the elimination of the independence of the state, the forceful change of its constitutional order, the violation of its sovereignty and territorial integrity, the undermining of its security, the illegal seizure of state power, the propaganda of war, violence, the fomentation of ethnic, racial and religious hostility, the infringement of human rights and fundamental freedoms, and public health" (Article 37 of the Constitution of Ukraine) [Banchuk, 2012: 93].

As a result, it should be noted that the Ukrainian individualistic mentality does not contain traits which could serve as grounds for the origination and development of fascist ideology in the public mind. Therefore, there are no fascist manifestations or objective and subjective prerequisites for the origination of fascism as a political idea or political movement in our country.

The effective Criminal Code of Ukraine contains a series of articles which provide for criminal liability for fascist crimes such as the violations of the equality of citizens by their race, nationality or religion (Article 161); the planning, preparation, launching and maintaining an aggressive war (Article 438); genocide (Article 442), etc.

Taking that into consideration, one can state that the applicable Ukrainian laws envisage the liability for pro-fascist crimes at large.

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