

## Research Article

## CRIMINAL LAW PROTECTION OF THE UKRAINIAN EXTERNAL VOTING TO THE STATE AUTHORITIES IN POST-WAR CONDITIONS (A CASE STUDY OF POLAND)

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### ABSTRACT

**Background.** *The article explores the potential of conducting elections for state authorities of Ukraine in the foreign electoral district (external voting) in the conditions caused by the full-scale invasion of Ukraine by the Russian Federation on 24 February 2022. According to the United Nations High Commissioner for Refugees (UNHCR), with the caveat that the real numbers may be higher due to not all migrants from Ukraine being able to register as refugees, 6.2 million Ukrainians currently reside abroad, with 5.8 million of them situated in Europe. The Republic of Poland hosts the largest number of Ukrainian refugees with temporary protection status, exceeding 1.5 million. Therefore, the research focused on the case of the Republic of Poland, expecting that its findings could be extrapolated to other states where a significant number of Ukrainian citizens reside.*

*Considering that about 20% of Ukrainian citizens reside abroad, including both refugees and those who permanently lived abroad until 24 February 2023, Ukraine must devise effective mechanisms for organising external voting; otherwise, if measures are not taken, less than 0.5% of voters abroad will be able to vote. In particular, it is necessary to develop models ensuring the criminal legal protection of external voting, as election abuses can affect voting outcomes significantly, distort the process, and even lead to the usurpation of power.*

**Methods.** *Throughout the research, various methods, including logical (analysis, synthesis, generalisation, extrapolation, analogy, modelling, hypothesis), historical, systemic-structural, comparative-legal, and dogmatic methods, have been used. Logical methods played a crucial role in analysing the operation of the Criminal Code of Ukraine, the Code of Ukraine on Administrative Offenses, regarding possible electoral offences committed outside Ukraine during Ukrainian elections held abroad. The historical method was utilised to analyse the experience of the Ukrainian parliamentary elections in 2019. The system-structural method has been applied to formulate proposals for ensuring the legal protection of elections to state*

authorities outside of Ukraine. The comparative legal method was applied when comparing provisions in the criminal legislation of Ukraine and the Republic of Poland, specifically those pertaining to liability for election offences. The dogmatic method has been used in the interpretation of the norms of the Penal Code of the Republic of Poland establishing liability for election offences, in the understanding of the norms of the Criminal Code of Ukraine, the Code of Ukraine on Administrative Offences regarding their application to election offences committed outside Ukraine.

The article delves into two primary aspects. Firstly, it examines the jurisdiction under which criminal liability for election offences in Ukrainian external voting is imposed, explicitly identifying the relevant legislation of the involved state. Secondly, it addresses the problems of applying the principles of the operation of the Criminal Code of Ukraine in space concerning the prosecution of electoral criminal offences, including foreigners.

**Result and conclusions.** The authors substantiate the necessity of creating supplementary election precincts within the territory of the Republic of Poland, designated for conducting Ukrainian elections beyond the premises of diplomatic institutions of Ukraine and equating them in terms of legal status to the premises of diplomatic institutions of Ukraine. The latter is possible by concluding a bilateral agreement between Ukraine and the Republic of Poland on assistance in conducting Ukrainian external voting on the territory of the Republic of Poland.

## 1 INTRODUCTION

War is an immense tragedy in the life of the people and the country. The war profoundly impacts the organisation of most social relations in the state. This requires an immediate and appropriate reaction in effecting necessary changes to legal regulation. Russian Federation's full-scale invasion of Ukraine on 24 February 2022, has presented many challenges to the country. One pressing issue is the need to ensure active voting rights of Ukrainian citizens residing abroad in the upcoming parliamentary or presidential elections. If the elections in the foreign electoral district are held on the premises of diplomatic missions and consular institutions of Ukraine, as usually happens, not everyone will be able to vote. It is evident that this arrangement may only accommodate a fraction, likely less than 1%, of Ukrainians living abroad. Consequently, there is a critical need to develop effective mechanisms for overcoming this challenge.

According to the Ptukha Institute of Demographics and Social Research of the NAS of Ukraine, relying on data from the State Border Guard Service of Ukraine, the estimated number of Ukrainians residing abroad as of March 2023 stood at approximately 5 million people. This number includes persons who departed both during the ongoing war and in the period shortly before it started.<sup>1</sup>

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1 'It Became Known How Many Ukrainians Left and Stayed Abroad' (*Tvoje Misto [Your City: Lviv Now]*, 12 March 2023) <[https://tvoemisto.tv/news/stalo\\_vidomo\\_skilky\\_ukraintsiv\\_vyihaly\\_ta\\_zalyshylysa\\_za\\_kordonom\\_145039.html](https://tvoemisto.tv/news/stalo_vidomo_skilky_ukraintsiv_vyihaly_ta_zalyshylysa_za_kordonom_145039.html)> accessed 25 September 2023.

The Republic of Poland has emerged as hosting the largest number of refugees from Ukraine, making it a focal point for research. The findings of this research, conducted within the Republic of Poland, can be extrapolated to any other state with a significant number of Ukrainians.

According to Polish mass media based on statistics from the Ministry of Internal Affairs and Administration, in February 2023, about 1.3 million citizens of Ukraine permanently lived in Poland, and 1.5 million applied for a PESEL number.<sup>2</sup>

According to the study 'Media Consumption and Public Activism of Ukrainians Who Found Temporary Refuge in Poland' conducted by the Kyiv International Institute of Sociology from 26 October– 30 November 2022, in the Republic of Poland, the majority of survey respondents (82%) expressed a desire to participate in national elections if they were to be held in Ukraine during the respondents' stay in Poland.<sup>3</sup> This research was commissioned by the Civil Network OPORA and received support from the International Foundation for Electoral Systems (IFES). The data indicates a strong inclination among the majority of Ukrainian refugees in Poland to actively engage in the democratic process. Compared to the turnout in the most recent national elections in Ukraine (parliamentary elections in July 2019), respondents are now more eager to participate in the elections. At the same time, supporters of voting in person hope for the opening of a sufficient number of election precincts in Poland to avoid large crowds. During in-depth interviews, participants repeatedly expressed their fear of possible queues in front of consulates, as evidenced by previous experience.<sup>4</sup>

Therefore, it is important to ensure Ukrainians in Poland (as well as in other states) have the opportunity to be broadly involved in Ukraine's political life, notably by enabling them to exercise their electoral rights effectively.

Along with the development of more efficient models for organising elections abroad, a related and independent set of issues is ensuring the legal protection of the elections through criminal law. It is evident that varying degrees of electoral misconduct during the elections can impact outcomes and significantly distort them, particularly given the substantial number of Ukrainian citizens residing abroad. Therefore, it is extremely important to analyse the real possibility of bringing offenders to justice, outline clear algorithms (models) of law enforcement activities in this regard, identify gaps in legal regulation, and improve legislation. This constitutes an essential aspect of early and thorough preparation for the

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2 Nazarij Soroka, 'How Many Ukrainians Live in Poland on a Permanent Basis Today' (*Channe 24 Zakordon*, 2 February 2023) <[https://zakordon.24tv.ua/skilki-ukrayintsiv-sogodni-zhivut-polshhi-postiyniy-osnovi\\_n2262234](https://zakordon.24tv.ua/skilki-ukrayintsiv-sogodni-zhivut-polshhi-postiyniy-osnovi_n2262234)> accessed 25 September 2023.

3 OPORA NGO, *Media Consumption and Public Activity of Ukrainians Who Found Temporary Shelter from the War in Poland: Report on the Diary Study and In-Depth Interviews, November 2022* (Kyiv International Institute of Sociology 2022) 16.

4 *ibid*, 96.

forthcoming elections. Ukraine's readiness for this challenge reflects the state's ability to work proactively to address anticipated issues, prevent confusion and disorder, and uphold its international image of the state and trust in its institutions.

**The objectives** of this article are to answer the following questions:

- In which state's legislation is an individual subject to criminal liability for election offences committed outside of Ukraine, particularly in a foreign electoral district?
- How does the Criminal Code of Ukraine (hereinafter referred to as the CC of Ukraine) apply to election offences during elections to the state authorities of Ukraine committed on the territory of election precincts located in the premises of diplomatic institutions of Ukraine?
- Where on the territory of Poland, in accordance with the current election legislation of Ukraine, can election precincts be organised?
- What criminal election offences (due to their nature (mechanism)) can be committed outside Ukraine (in particular, on the territory of foreign election precincts, and what - outside the election precincts)?
- Does the CC of Ukraine apply to criminal election offences committed outside Ukraine's diplomatic mission or consular institution of Ukraine, which can potentially be committed outside the election precinct?
- How must be qualified the actions of foreign citizens, stateless persons which contain signs of criminal election offenses committed in the Republic of Poland outside the territory of diplomatic missions and consular institutions of Ukraine? Does the CC of Ukraine apply to them?
- To which criminal election offences does the real principle of the operation of the CC of Ukraine apply?
- Which criminal election offences do not apply to the real principle of operation of the CC of Ukraine?
- Is it possible to apply other principles of the operation of CC of Ukraine to criminal election offences committed on the territory of the Republic of Poland?
- Is it necessary to create election precincts on the territory of the Republic of Poland for holding elections to the state authorities of Ukraine in addition to the premises of diplomatic institutions? What legal status might they have?
- What additional legislation must be adopted to facilitate elections for state authorities of Ukraine in places or premises for voting beyond the diplomatic institutions of Ukraine?
- What challenges exist in holding accountable administrative election offences committed in a foreign electoral district?

## 2 THE OPERATION OF THE CRIMINAL LAW WITH REGARD TO CRIMINAL ELECTION OFFENCES COMMITTED ON THE TERRITORY OF THE REPUBLIC OF POLAND

### 2.1. The criminal legislation of which state must be applied to the election offences committed regarding the elections to the state authorities of Ukraine abroad?

Let us commence by acknowledging that, in the course of this research, we have frequently encountered opinions, notably from legal experts, that the prosecution and investigation of criminal and administrative election offences committed on the territory of Poland during the elections to the state authorities of Ukraine will be conducted under Polish legislation and the Polish police.

Such opinions, even among specialists knowledgeable in electoral matters, underscore the significance of developing accurate perceptions concerning the application of Polish and Ukrainian criminal law to Ukrainian elections in Poland. Our assessment reveals that these conjectures are based on the first misleading impression (*prima facie*), suggesting that election offences during the Ukrainian elections in the Republic of Poland will be prosecuted under the laws of Poland and investigated by Polish authorities. However, this is not the case.

The present Criminal Code of Poland of 1997 (Kodeks karny) includes section XXXI in the Special Part, titled 'Offences against elections and referendums' (Art. 248 - 251).<sup>5</sup> It is essential to emphasise that the Penal Code of the Republic of Poland cannot be applied to criminal election offences. The reason for this lies in the fact that the criminal offences outlined in Chapter XXXI of the Criminal Code of the Republic of Poland have another object - public relations regarding the conduct of elections to the parliament (the lower – Sejm and the upper – Senate), President of the Republic of Poland, elections to the Parliament of the European Union, elections of local self-government bodies, and a referendum. The operation of Section XXXI of the Polish Criminal Code is clearly outlined in Part 1 of Art. 248 of the Criminal Code of Poland.

This approach taken by the Criminal Code of Poland (as well as the criminal legislation of any state) is entirely logical and predictable, as it aligns with the principle of state sovereignty and the principle of non-intervention (non-interference in domestic affairs of the state) as outlined in Art. 7, Art. 2 of the UN Charter.<sup>6</sup> These principles assert that no state or group of states possesses the right to interfere in the internal affairs of another state. Therefore, a foreign state hosting elections for the state authorities of another foreign state (Ukraine) lacks the authority to organise and hold elections for the state authorities of that

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5 Penal Code of the Republic of Poland of 6 June 1997 'Kodeks karny' [1997] DzU 88/553.

6 United Nations Charter (signed 26 June 1945) <<https://www.un.org/en/about-us/un-charter>> accessed 25 September 2023.

foreign state (Ukraine). Similarly, it does not have the authority to impose criminal and administrative liability for election offences regarding the elections of the authorities of a foreign state (Ukrainian elections).

The logical consequence of these two conceptual foundations is that each state independently:

- organises elections abroad for its state authorities (external voting)
- establishes criminal and administrative liability for election offences during external voting and prosecutes them. The foreign state on whose territory external voting is held must assist it based on international treaties and in accordance with the procedure of international legal assistance in civil and criminal cases. It is worth noting that the elections abroad (external voting) are organised by the authorised authorities of Ukraine, specifically the precinct election commissions.

As per Part 1, 3 Art. 26 of the Electoral Code of Ukraine (hereinafter referred to as the EC of Ukraine),<sup>7</sup> a single nationwide constituency encompasses the entire Ukraine along with the foreign constituency. The latter includes all foreign election precincts established under the provisions of the EC of Ukraine. These foreign election precincts are designated for the preparation and conduct of voting in national elections (Art. 31 of the EC of Ukraine) – for the President of Ukraine and Members of Parliament of Ukraine. The foreign election precinct is intended for the organisation and voting of voters residing or present on the territory of a foreign country on the day of voting.

A foreign election precinct has its index number, address of the voting premises, and address of the premises of the precinct election commission of a foreign election precinct. Foreign election precincts shall be established by the Central Election Commission at Ukraine's diplomatic institutions abroad or military units (formations) deployed outside Ukraine. A foreign election precinct shall have its voting premises located at a diplomatic institution of Ukraine or the location of a military unit (formation) deployed outside Ukraine.

According to Part 4 of Art. 5 of the Law of Ukraine 'On Diplomatic Service',<sup>8</sup> the out-of-country diplomatic institutions of Ukraine include:

- The Embassy of Ukraine;
- The Embassy of Ukraine with the residence of the Ambassador Extraordinary and Plenipotentiary of Ukraine in Kyiv;
- Permanent Mission of Ukraine to the International Organization;
- Delegation of Ukraine to an international organisation;
- Mission of Ukraine to an international organisation;
- Consular institution of Ukraine (Consulate General of Ukraine, Consulate of Ukraine, Vice Consulate of Ukraine and Consular Agency of Ukraine).

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7 Electoral Code of Ukraine no 396-IX of 19 December 2019 [2020] Vidomosti of the Verkhovna Rada of Ukraine 7-9/48.

8 Law of Ukraine no 2449-VIII of 7 June 2018 'On Diplomatic Service' [2018] Vidomosti of the Verkhovna Rada of Ukraine 26/219.

At the same time, not all types of diplomatic institutions can organise elections (election precincts) for public authorities of Ukraine based on their main purpose and diplomatic functions (representation and protection of the interests of Ukraine either in the host state or with an international organisation). Thus, among the institutions listed in Part 4 of Art. 5 of the Law of Ukraine 'On Diplomatic Service', elections to the state authorities of Ukraine shall not be organised by: a) the Embassy of Ukraine with the residence of the Ambassador Extraordinary and Plenipotentiary of Ukraine in Kyiv; b) the Permanent Mission of Ukraine to an international organisation; c) the Delegation of Ukraine to an international organisation; d) the Mission of Ukraine to an international organisation.

According to the Central Election Commission Resolution No. 118 of 25 June 2020, a total of 102 foreign election precincts were formed on a permanent basis, with 100 located in foreign diplomatic institutions and 2 in military units (formations) stationed outside Ukraine.<sup>9</sup>

It is important to clarify that according to Part 7 of Art. 7 of the EC of Ukraine, citizens of Ukraine living abroad are considered not to belong to any territorial community and are ineligible to participate in local elections. Therefore, current Ukrainian legislation does not provide the option of establishing election precincts beyond the territory and premises of diplomatic institutions of Ukraine and military units (formations) deployed outside Ukraine.

Given the established context that criminal-law protection of the elections abroad (external voting) and prosecution of election offenders are carried out by Ukraine, and elections (external voting) to the state authorities of Ukraine on the territory of a foreign state are held in the premises and territory of diplomatic institutions of Ukraine, where, accordingly, foreign election precincts are formed, it becomes essential to find out exactly how Ukrainian legislation on liability for criminal election offences operates on the territory of Poland (as well as any other foreign state).

Hence, the conclusion is as follows: the peculiarities of the application of the CC of Ukraine regarding election offences on the territory of the Republic of Poland will depend on where exactly the offence was committed — within a diplomatic institution or beyond it.

## 2.2. How do the Criminal Code of Ukraine and the Code of Ukraine on Administrative Offenses apply to the election offences for public authorities of Ukraine, committed in the territory of foreign election precincts located in the premises of Ukrainian diplomatic institutions abroad?

According to Part 3 of Art. 31 of the EC of Ukraine, a foreign election precincts shall have a voting room in the premises of a foreign diplomatic institution of Ukraine or in the place of deployment of a military unit (formation) outside Ukraine.

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<sup>9</sup> Resolution of the Central Election Commission no 118 of 25 June 2020 'On the Formation of Foreign Polling Stations on a Permanent Basis' <<https://zakon.rada.gov.ua/laws/show/v0118359-20#top>> accessed 25 September 2023.

From the perspective of the criminal law of Ukraine and the law of Ukraine on administrative offences, this specific provision should not pose problems in bringing offenders to criminal and/ or administrative responsibility by Ukraine.

According to Art. 6 of the CC of Ukraine, the territorial principle of the criminal law shall be applied to offences committed on their territory — persons committing criminal offences on the territory of Ukraine shall be brought to criminal liability.<sup>10</sup>

The operation of the legislation of Ukraine on administrative liability in space is regulated in Art. 8 of the Code of Ukraine on Administrative Offences.<sup>11</sup> In particular, a person committing an administrative offence shall be brought to liability under the law acting at the time and place of the offence commission. Proceedings in cases of administrative offences shall be conducted on the basis of the law operating during and at the place of settlement of the case on the offence (Parts 1, 3 of Art. 8 of the Code of Ukraine on Administrative Offences). Therefore, the legislation of Ukraine on administrative liability applies to administrative offences committed in the premises and on the territory of diplomatic missions and consular offices of Ukraine abroad.

The premises and territory of diplomatic missions and consular institutions are considered objects that are not part of the territory of Ukraine. However, they fall under the jurisdiction of Ukraine (Part 2 of Art. 4 of the Criminal Procedural Code of Ukraine (hereinafter referred to as the CPC of Ukraine)).<sup>12</sup>

Therefore, the criminal law of Ukraine and the legislation of Ukraine on administrative responsibility apply to, respectively, criminal and administrative offences committed on the premises and the territory of diplomatic missions and consular institutions of Ukraine abroad.

The territory of Ukraine is determined by Art. 1 of the Law of Ukraine 'On State Boundary of Ukraine',<sup>13</sup> which defines the concept of the state boundary of Ukraine as a line and a vertical surface passing along this line, encompassing the boundaries of the territory of Ukraine including land, waters, subsoil, and airspace. At the same time, diplomatic institutions of Ukraine and military units (formations) stationed outside Ukraine are not directly qualified as the territory of Ukraine designated by the state border of Ukraine, as indicated in Art. 1 and 3 of the mentioned law

Beyond the physical territory of Ukraine, some objects, such as the territory of diplomatic missions and consular offices of Ukraine abroad, shall be subject to the jurisdiction and

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10 Criminal Code of Ukraine no 2341-III of 5 April 2001 [2001] Vidomosti of the Verkhovna Rada of Ukraine 25–26/131.

11 Code of Ukraine on Administrative Offences no 8073-X of 7 December 1984 [1984] Vidomosti of the Verkhovna Rada of Ukraine SSR 51/1122.

12 Criminal Procedural Code of Ukraine no 4651-VI of 13 April 2012 [2013] Vidomosti of the Verkhovna Rada of Ukraine 9-10–13/88.

13 Law of Ukraine no 1777-XII of 4 November 1991 'On State Boundary of Ukraine' [1992] Vidomosti of the Verkhovna Rada of Ukraine 2/5.



scope of application of criminal and criminal procedural legislation of Ukraine. This is stipulated under the conditions provided for by international law and the legislation of Ukraine. This follows from the provisions of Art. 22 of the Vienna Convention on Diplomatic Relations of 18 April 1961, Art. 31 of the Vienna Convention on Consular Relations of 24 April 1963, and Part 2 of Art. 4 of the CPC of Ukraine.

According to item 1 of Art. 22 of the 1961 Vienna Convention on Diplomatic Relations,<sup>14</sup> the premises of a diplomatic mission shall be inviolable. The agents of the receiving State may not enter them except with the consent of the head of the mission. In accordance with Part 3 of this Article, the premises of the mission, their furnishings and other property thereon, and the means of transport of the mission shall be immune from search, requisition, attachment or execution.

The inviolability of consular premises is limited to that part of the premises used exclusively for the purpose of the work of the consular post. The authorities of the receiving State shall not enter these premises except with the consent of the head of the consular post, or of his designee, or the head of the diplomatic mission of the sending State. Consular premises, their furnishings, the property of the consular post, and its means of transport shall be immune from any form of requisition for purposes of national defence or public utility (Parts 2, 4 of Art. 31 of the 1964 Vienna Convention on Consular Relations).<sup>15</sup>

In general, these basic provisions of the legislation are sufficient for law enforcement and the conclusion that if the elections are held on the territory of the diplomatic mission or consular office of Ukraine abroad, the offences committed on the territory of the mentioned diplomatic institutions shall be subject to Ukrainian legislation, including the CC of Ukraine and the Code of Administrative Offenses.

The nuances of the territorial and extraterritorial principles of criminal law in the territory of diplomatic institutions are reflected in international judicial practice — in particular, in the legal positions set out in the decisions of the European Court of Human Rights (ECHR) and the judicial practice of certain foreign states.<sup>16</sup>

In the case of *M. v Denmark*, an individual filed a complaint to the European Court of Human Rights related to the fact that he was seeking the possibility to leave the former German Democratic Republic (GDR) and move to the Federative Republic of Germany and enter the premises of the Embassy of Denmark in (East) Berlin in 1988. Upon request of the ambassador of Denmark, the GDR police entered the embassy and detained the claimant. Eventually, he was given a suspended jail sentence after 33 days in custody. *M.* filed a complaint to the ECHR concerning the violation of his right to the freedom of movement.

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14 Vienna Convention on Diplomatic Relations (done at Vienna 18 April 1961, entered into force 24 April 1964) 500 UNTS 95.

15 Vienna Convention on Consular Relations (done at Vienna 24 April 1963, entered into force 19 March 1967) 596 UNTS 261.

16 ECtHR, *Guide on Article 2 of Protocol no 4 to the European Convention on Human Rights: Freedom of Movement* (CoE 2022).

He complained that he was denied the right to free movement on the territory of Denmark when the GDR police removed him from the premises of the embassy upon request of the ambassador of Denmark. The ECHR, in their decision of 14 October 1992<sup>17</sup> ruled that the contested act of the ambassador transferred the claimant to the jurisdiction of Denmark. As a result, Art. 2 of Protocol No. 4 did not apply to his case. Thus, the ECHR de facto recognised Denmark's jurisdiction extending to these relations, although they concluded that the territory of the diplomatic mission could not be deemed the territory of Denmark since the 'authorised representatives of the state, including diplomatic or consular agents, transferred other people or property to the jurisdiction of this state to the extent they exercised the power over them.'<sup>18</sup>

There are other positions on the extension of the jurisdiction of the state to the territory of diplomatic missions and consular institutions representing it. This view is that the territories of diplomatic missions and consular offices of the state they represent abroad have a special legal regime but are not under the sovereignty of the state and are not the territory of the state they represent. Thus, J. Paust says that the inviolability of the premises does not mean that they are subject to the extraterritorial principle. Actions committed in these premises stay within the territorial jurisdiction of the receiving state, and the representative office is obliged to comply with local legislation. Although the territorial jurisdiction of a foreign state remains, its capacity to enforce its laws is significantly limited but not abolished by the treaty and doctrines of customary international immunity law.<sup>19</sup>

In Ukraine, a similar approach is maintained by O. Dudorov and M. Khavronjuk. In particular, they insist that the territories of diplomatic missions and consular offices of Ukraine abroad have a special legal regime but are not under the sovereignty of Ukraine. According to their perspective, these territories are not considered the territory of Ukraine in the context of laws governing criminal liability.<sup>20</sup>

In general, this approach is based on Art. 41 of the Vienna Convention on Diplomatic Relations of 18 April 1961: 'Without prejudice to immunities and privileges, all persons enjoying such immunities and privileges are bound to respect the laws and regulations of the receiving State. ... The premises of the mission shall not be used for a purpose incompatible with the functions of representation provided for in this Convention or other rules of general international law or with any special agreements concluded between the sending State and the receiving State.'<sup>21</sup>

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17 *M v Denmark* App no 17392/90 (ECtHR, 14 October 1992) <<https://hudoc.echr.coe.int/eng?i=001-1390>> accessed 25 September 2023.

18 ECtHR, *Extra-Territorial Jurisdiction of States Parties to the European Convention on Human Rights* (Press Unit, ECtHR July 2018) <[https://www.echr.coe.int/documents/d/echr/fs\\_extra-territorial\\_jurisdiction\\_eng](https://www.echr.coe.int/documents/d/echr/fs_extra-territorial_jurisdiction_eng)> accessed 25 September 2023.

19 Jordan J Paust, 'Non-Extraterritoriality of "Special Territorial Jurisdiction" of the United States: Forgotten History and the Errors of *Erdos*' (1999) 24(1) *The Yale Journal of International Law* 305.

20 OO Dudorov and MI Khavronjuk, *Criminal Law* (Vaite 2014) 102.

21 Vienna Convention on Diplomatic Relations Vienna Convention on Diplomatic Relations (n 14).

The diplomatic mission and its personnel are by all means bound by the laws of the receiving State, general international law and legality, all while acting in the legitimate interests of the sending State. Therefore, the significance of Art. 41 of the 1961 Vienna Convention lies in its critical caveat, highlighting ‘without prejudice to immunities and privileges.’<sup>22</sup>

The principle of extraterritoriality extends to the diplomatic institutions, representing a set of privileges stipulated by treaties between countries granted to foreign heads of state, diplomatic representatives, military units, ships, etc.<sup>23</sup> These privileges provide immunity from the jurisdiction of the receiving State.

S. Shherycja writes that extraterritoriality signifies that the laws of a given state do not apply to certain special territories. He proposes distinguishing between the following types of extraterritoriality (territorial immunity), including a) extraterritoriality (immunity) of the diplomatic representation of a foreign state; b) extraterritoriality of military units, aircraft and ships located in the territory of a foreign state with special permission.<sup>24</sup>

The principle of extraterritoriality applies to certain persons not covered by the law of the receiving state and certain places (territories).

T. Ljashhenko asserts that the functioning of diplomatic missions is organised in such a way that they resemble the concept of a state within the state (legally, this is the extraterritorial theory of the justification of diplomatic privileges and immunities). The ties between them are reduced exclusively to housekeeping needs and official contacts. That is why one of the most controversial and pressing issues related to diplomatic representation is the theoretical justification for the necessity and boundaries of diplomatic privileges and immunities.<sup>25</sup> These immunities and privileges derive from the principle of the sovereign equality of states. It is in its power that diplomatic representation, as a public body of the state, is exempted from the jurisdiction of the state because its immunity extends to both property and ownership.<sup>26</sup>

The terms ‘extraterritoriality’ and ‘extraterritorial jurisdiction’ refer to the competence of a State to make, apply and enforce rules of conduct in respect of persons, property or events beyond its territory. Such competence may be exercised by way of prescription, adjudication or enforcement. This provides the State’s authority to lay down legal norms, decide competing claims, and enforce compliance with its laws.<sup>27</sup>

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22 *ibid.*

23 IK Bilodid, PP Docenko and LA Jurchuk (eds), *Dictionary of the Ukrainian Language*, vol 2 (Naukova Dumka 1971) 465.

24 SI Shherycja, ‘Exterritoriality as an Exception to the Territorial Principle of Effect of the Criminal Procedure Law’ (2015) 5 *Law and Society* 200.

25 TM Ljashhenko, *Legal Status of Diplomatic Missions* (National Academy of Management 2008) 45.

26 *ibid* 49.

27 Menno T Kamminga, ‘Extraterritoriality’ in R Wolfrum (ed), *Max Planck Encyclopedia of Public International Law* (OUP 2020) <<https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1040>> accessed 25 September 2023.

Such normative prescriptions (as noted above) are Art. 22 of the Vienna Convention on Diplomatic Relations of 18 April 1961, Art. 31 of the Vienna Convention on Consular Relations of 24 April 1963 and Part 2 of Art. 4 of the CPC of Ukraine, which allows applying the criminal and criminal procedural legislation of Ukraine in proceedings for criminal offences committed on the territory of a diplomatic mission or consular office of Ukraine.

In other words, while the CC of Ukraine does not directly determine its effect on the territories of diplomatic institutions of Ukraine abroad, such as any special (clarifying) provision, the CPC of Ukraine brings some clarity to the matter. Part 2 of Art. 4 determines that the criminal procedural law of Ukraine shall apply when conducting proceedings with respect to criminal offences committed on the territory of a diplomatic mission or consular post of Ukraine abroad.

The corresponding (mirroring) provision, under the reciprocity principle of states in international relations, is Part 2 of Art. 6 of the CPC of Ukraine: criminal proceedings against a person who has diplomatic immunity may be carried out under the rules of this Code only with the consent of such a person or with the consent of the competent authority of the state (international organisation) represented by such a person, in the manner prescribed by the legislation of Ukraine and international treaties of Ukraine. The provision of Art. 6 of the CPC of Ukraine is an implemented provision of Art. 32 of the 1961 Vienna Convention on Diplomatic Relations, providing that 'the immunity from jurisdiction of diplomatic agents and of persons enjoying immunity may be waived by the sending State. Waiver must always be express.'<sup>28</sup>

This brief insight into the academic polemics regarding the operation of the criminal and criminal procedural law of Ukraine on the territory of diplomatic and consular institutions abroad leads us to the basic conclusion: if elections to the public authorities of Ukraine in the external electoral district take place on the territory of diplomatic institutions of Ukraine abroad, there should not be conflicting interpretations regarding the extension of the Ukrainian legislation, in particular the CC of Ukraine, to the offences committed there (in view of the territorial principle of validity — Part 1 of Art. 6 of the CC of Ukraine) and the Code of Ukraine on Administrative Offences. If any such variant readings arise, they can be refuted by the norms and doctrinal arguments mentioned above.

Hence, in our opinion, in a possible future agreement between Ukraine and the Republic of Poland to regulate the holding of elections to the public authorities of Ukraine, it is worth mentioning (declaring) the provisions on the extension of Ukrainian legislation governing the election procedure, as well as legislation on administrative offences, the CC of Ukraine, criminal procedural legislation for the premises of diplomatic missions and consular institutions of Ukraine in the Republic of Poland and the territory adjacent to them, as well as for the premises of additional election precincts where elections (voting) will be held outside diplomatic missions and consular institutions of Ukraine (if an agreement on the latter is reached).

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28 Vienna Convention on Diplomatic Relations (n 14).

### 2.3. What kind of criminal election offences due to their nature (mechanism) can be committed outside Ukraine (in particular, on the territory of external election precincts, or outside election precincts)?

Our next research phase aims to identify which criminal election offences are committed (or can potentially be committed) directly at election precincts abroad (that is, on the territory of diplomatic institutions of Ukraine) and which criminal election offences can be committed outside the diplomatic institutions.

Section V of the Special Part of the Criminal Code of Ukraine establishes liability for criminal election offences, including those that may occur during elections outside Ukraine, such as at foreign election precincts within a diplomatic institution (see Fig. 1).

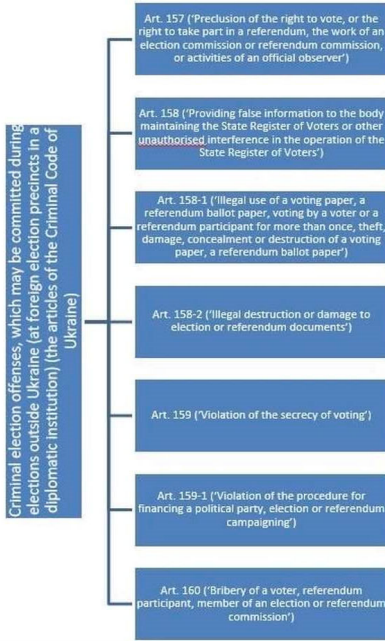
In particular, the following are provided for in Art. 157 ('Preclusion of the right to vote, or the right to take part in a referendum, the work of an election commission or referendum commission, or activities of an official observer'), Art. 158 ('Providing false information to the body maintaining the State Register of Voters or other unauthorised interference in the operation of the State Register of Voters'), Art. 158-1 ('Illegal use of a voting paper, a referendum ballot paper, voting by a voter or a referendum participant for more than once, theft, damage, concealment or destruction of a voting paper, a referendum ballot paper'), Art. 158-2 ('Illegal destruction or damage to election or referendum documents'), Art. 159 ('Violation of the secrecy of voting'), Art. 159-1 ('Violation of the procedure for financing a political party, election or referendum campaigning'), Art. 160 ('Bribery of a voter, referendum participant, member of an election or referendum commission').

Criminal election offences against the electoral rights of Ukrainian citizens may be committed during elections outside Ukraine, specifically in a foreign constituency outside a diplomatic institution (see Fig. 2). The same set of offences listed above, as provided in Art. 157, 168, 158-1., 159, 159-1 and 160 of the Criminal Code of Ukraine applies in this context.

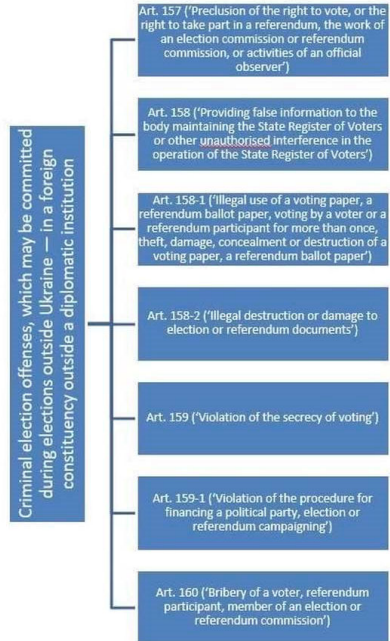
### 2.4. Does the CC of Ukraine apply to criminal election offenses committed outside the diplomatic institutions of Ukraine?

This question is another step in the logical chain of this research and is important for clarifying the answers to the following questions:

- How does the CC of Ukraine operate regarding criminal election offences committed outside the diplomatic institution?
- In the future, the possibility of voting in non-extraterritorial premises (in other premises outside the diplomatic institutions of Ukraine) might be provided by the international treaty between Ukraine and the Republic of Poland and accordingly implemented in Ukraine's national legislation. In such a case, would these premises not be equated in terms of legal status to the premises of diplomatic institutions?



**Fig. 1**



**Fig. 2**

In some cases, the CC of Ukraine applies to such offences since the principle of citizenship and, sometimes, the principle of reality applies.

**The principle of citizenship** is enshrined in Art. 7 of the CC of Ukraine. According to Part 1, citizens of Ukraine and stateless persons permanently residing in Ukraine, who have committed offences outside Ukraine, shall be criminally liable under this Code, unless otherwise provided for by the international treaties of Ukraine, ratified by the Verkhovna Rada of Ukraine. As a general rule (unless an international treaty provides for an exception), regardless of the territory (within or outside diplomatic institutions) where citizens of Ukraine and stateless persons permanently residing in Ukraine have committed a criminal offence, they will be subject to criminal liability under the CC of Ukraine. However, if they have undergone criminal punishment outside Ukraine, they may not be prosecuted for these criminal offences in Ukraine – in accordance with Part 2 of Art. 7 of the CC of Ukraine.

As part of the response to question 1.4, it is crucial to consider how to qualify the actions of foreign citizens and stateless persons who are not permanent residents of Ukraine but engage in activities that exhibit characteristics of criminal election offences and committed in Poland outside the territory of diplomatic institutions of Ukraine? Is the CC of Ukraine applicable to them?

Art. 8 of the CC of Ukraine provides for two principles of the criminal law operation in the space relating to acts recognised as criminal offences, in the case of their committing outside Ukraine by foreigners or stateless persons not permanently residing in Ukraine: the universal principle and the real principle. The real principle of the criminal law in the space posits that foreigners or stateless persons who do not permanently reside in Ukraine and have committed criminal offences abroad are liable in Ukraine under the CC of Ukraine in cases where they have committed grave or special grave crimes against the rights and freedoms of citizens of Ukraine or against the interests of Ukraine. Thus, the provision which provides for the principle of reality of the Criminal Code of Ukraine can be applied only to grave criminal election offences, whereas special grave crimes of this kind are absent in the CC of Ukraine.

## 2.5. To which criminal election offences does the real principle of operation of the Criminal Code of Ukraine apply?

Continuing with our research, the subsequent focus is to identify the grave election crimes that may be committed abroad and to which the real principle of operation of the CC of Ukraine can be applied.

Considering the criterion specified in Part 5 of Art. 12 of the CC of Ukraine, wherein ‘a grave crime shall mean an action (act or omission) provided for by this Code, the commission of which shall be punishable by a fine not exceeding twenty-five thousand tax-free minimum incomes or imprisonment for a term of up to ten years - grave election crimes include:

- Parts 3 and 4 of Art. 157 of the CC of Ukraine (Part 3 — only on such a qualifying ground as the acts provided for in Part 1 or 2 of this Article committed by a group of persons upon their prior conspiracy; Part 4 — if such acts were committed by an official who is a foreigner (this can be assumed in cases provided for in Part 4 of Art. 18 of the CC of Ukraine));
- Part 2 of Art. 158 of the CC of Ukraine (unauthorised actions with the information contained in the database of the State Register of Voters, or other unauthorised interference with the database of the State Register of Voters, committed repeatedly or by a group of persons upon their prior conspiracy);
- Part 3 of Art. 158-1 of the CC of Ukraine (actions provided for in Part 1 or 2 of this Article (provision or receipt of a ballot or a ballot for voting at a referendum by a person who does not have the right to provide or receive it, or provision to a voter, a referendum participant of a completed ballot or a ballot for voting at a referendum, theft, damage, concealment or destruction of a ballot, a ballot for voting at a referendum), committed repeatedly or by a group of persons on prior conspiracy, or if such actions led to the impossibility of counting votes at election precincts or precincts of a referendum or to the invalidation of a vote at election precincts or precincts of a referendum — Part 3);



- Part 2 of Art. 158-3 of the CC of Ukraine (forgery or illegal production of electoral documentation, referendum documentation, use or storage of illegally produced or forged electoral documentation, referendum documentation, as well as the inclusion of knowingly false information in electoral documentation or referendum documentation);
- Part 3 of Art. 158-3 of the CC of Ukraine (theft, damage, concealment, destruction of the seal of the election commission, the referendum commission, the ballot box, the list of voters or referendum participants or the protocol on the counting of votes of voters or referendum participants, on the results of voting within the relevant election district at elections or referendum, on the results of elections or referendum);
- Part 4 of Art. 158-3 of the CC of Ukraine (actions provided for in Part 2, 3 of this Article, committed repeatedly or by a group of persons upon their prior conspiracy, or by an official using his/her official position, or where such actions have made it impossible to count votes at an election or referendum precinct, to establish the results of voting in the respective election or referendum district, to establish the results of the election or referendum, or before the vote at the election or referendum precinct is declared invalid);
- Part 2 of Art. 160 of the CC of Ukraine (proposing, promising or granting to a voter or referendum participant, a candidate, or a member of an election or referendum commission an improper advantage for committing or failure to commit any actions related to the direct exercise of his/her suffrage, the right to participate in a referendum);
- Part 3 of Art. 160 of the CC of Ukraine (providing voters, referendum participants, and legal entities with improper advantages, accompanied by pre-election or referendum campaigning, mentioning the name of a candidate, the name of a political party that nominated the candidate in the election, or using the image of the candidate, symbols of the political party that nominated the candidate for respective elections);
- Part 4 of Art. 160 of the CC of Ukraine (the actions provided for in Part 2 or 3 of this Article committed repeatedly or by a group of persons upon their prior conspiracy).

Other criminal offences committed outside Ukraine and outside the territory of the diplomatic mission, consular offices of Ukraine by foreigners or stateless persons who do not permanently reside in the territory of Ukraine are not subject to the real principle of the operation of the CC of Ukraine, since they do not belong to grave or special grave crimes.

## 2.6. Which criminal election offences do not apply to the real principle of operation of the CC of Ukraine?

This constitutes a crucial phase in our research. Addressing this question allows us to outline criminal election offences that can be committed by foreigners and stateless persons not permanently residing in Ukraine on the territory of a foreign state (Republic of Poland),



and for which it is generally impossible to bring to criminal responsibility under the CC of Ukraine. Furthermore, it is also impossible under the criminal law of a foreign state since it has another object of criminal law protection. Therefore, based on the provisions of the Criminal Code of Ukraine, such offences are the following:

- Parts 1, 2 of Art. 157 of the CC of Ukraine ('Preclusion of the right to vote, or the right to take part in a referendum, the work of an election commission or referendum commission, or activities of an official observer');
- Part 1 of Art. 158 of the CC of Ukraine (regarding such actions as unauthorised actions with information contained in the database of the State Register of Voters or other unauthorised interference with the database of the State Register of Voters);
- Art. 158-1 of the CC of Ukraine (regarding such actions that may be committed by foreigners or stateless persons as the providing or receiving a voting paper or a referendum ballot paper by a person who is not entitled to provide or receive it, or providing a voter, a referendum participant with a completed voting paper or referendum ballot paper (Part 1), theft, damage, concealment or destruction of a voting paper, a referendum ballot paper (Part 2));
- Part 1 of Art. 159 of the CC of Ukraine (intended violation of the secrecy of voting during the election or referendum, which resulted in the disclosure of the will of a citizen who took part in the election or referendum);
- Part 2 of Art. 159-1 of the CC of Ukraine (intended contribution to the support of a political party by a person who is not entitled to do it, or on behalf of a legal entity that is not entitled to do it, intended contribution for the benefit of a political party by an individual or on behalf of a legal entity in large amount, intended providing financial (material) support for election or referendum campaigning by an individual or on behalf of a legal entity in significant amount or by a person who is not entitled to do it, or on behalf of a legal entity who is not entitled to do it, as well as intended receipt of a contribution in favour of a political party from a person who is not entitled to make such a contribution, or in large amount, intended receipt of financial (material) support large amount in the conduct of election or referendum campaigning, intended receipt of such financial (material) support from a person who is not entitled to provide such financial (material) support);
- Part 3 and 4 of Art. 159-1 of the CC of Ukraine (actions provided for in Part 2 of this Article, repeatedly committed (Part 3), by a group of persons upon their prior conspiracy, by an organised group or accompanied with the demand for a contribution or financial (material) support in the conduct of election or referendum campaign (Part 4)).

## 2.7. Is it possible to apply the universal principle of the operation of the Criminal Law of Ukraine to the criminal election offences committed on the territory of the Republic of Poland?

The universal principle means that foreigners or stateless persons who do not reside permanently in Ukraine and have committed criminal offences abroad are liable in Ukraine under the CC of Ukraine in cases provided for by international treaties (Part 1 of Art. 8 of the CC of Ukraine).

However, this principle does not extend to criminal election offences, as they fall within the category of offences for which each state establishes its national legal countermeasures to the extent it considers justified. The universal principle of operation of the criminal law applies to those criminal offences that are capable of harming the interests of all states to the same extent. Criminal election offences, distinct from international crimes (such as crimes against peace and humanity - planning, preparation and waging of aggressive war, genocide, etc.), and crimes of an international nature (contradicting and preventing which international treaties and conventions have been adopted, and the provisions of which are implemented in the national legislation of the signatory states, such as counterfeiting, cybercrimes, domestic violence, acts of corruption, etc.) possess a notable feature and a striking feature. This lies in their special object of criminal law protection - relations of holding the elections to the authorities of a particular state. Consequently, their criminalisation and persecution fall within the exclusive sovereign rights of each state, and all-out (interstate) counteraction to them bears signs of interference in the internal affairs of a state.

Hence, criminal election offences committed outside Ukraine (in particular, outside the premises and territories of diplomatic institutions of Ukraine in the Republic of Poland) by foreigners or stateless persons who do not permanently reside in Ukraine are subject exclusively to the real principle of the operation of the criminal law in space.

Simultaneously, socially dangerous acts that can occur outside the diplomatic institutions of Ukraine significantly jeopardise the proper conduct of elections, endangering their impartial outcomes. Moreover, taking into account the legal gap in the legislation - the non-criminal liability of foreigners and stateless persons who do not permanently reside in Ukraine - various criminals might purposefully take advantage of this gap and involve foreigners in the performance of the objective aspects of these crimes. As a result, the criminal offences in Clause 1.6 of this article may be committed using persons known to the perpetrator not to be criminally responsible for what they have committed. Therefore, these types of criminal offences fall into the category where so-called intermediate (indirect) execution can occur.

Intermediate (indirect) execution of a criminal offence refers to a scenario where a physically sane person who has reached the age of criminal liability carries out the objective part of the offence by employing (or mobilising) other persons who, under the law, cannot be held criminally liable for their involvement in the act.

In this connection, the question may arise: should the issue of intermediate (indirect) execution be considered in such cases?

Researchers indicate the following cases when intermediate (indirect) execution may be possible when:

- the perpetrator realises that the person they influenced to commit the crime is insane or has not reached the age of criminal liability;
- such a person commits an act while directly under the influence of physical coercion by the perpetrator or under the influence of hypnosis, rendering them unable to control their actions;
- a person commits an act in a state of extreme necessity, arising as a result of physical coercion by the perpetrator, during which he retains the ability to control their actions, or under mental coercion;
- the perpetrator is conscious that they are giving a criminal order or instruction to a person who is not aware and cannot be aware of its criminal nature;
- a person commits an act, being misled by the perpetrator, or the perpetrator uses the person's mistake to realise a criminal intent;
- the perpetrator uses a person who committed the crime due to carelessness.<sup>29</sup>

V. K. Ghryshhuk refers to the indirect execution of a criminal offence when the perpetrator uses an innocent person, animal or plant to commit a criminal offence.<sup>30</sup> In contrast, V. O. Navrocjkyj wrote that there is no intermediate (indirect) execution of a criminal offence when using for the committing of a criminal offence persons who, in general, are the subjects of a criminal offence, endowed with will and consciousness when performing the relevant actions.<sup>31</sup>

Indeed, the situation we are examining presents an atypical case. The perpetrator uses a person who is formally endowed with the characteristics of a subject of a criminal offence but, due to the norms on the operation of the criminal law in space, is not subject to liability either under the CC of Ukraine or the criminal law of the Republic of Poland. Such scenarios have not emerged previously, neither in theory nor in practice. Nevertheless, during post-war Ukraine elections, they are probable, which allows us to distinguish a new form of indirect execution.

In addressing this matter, the philological interpretation of the criminal law should be applied. In accordance with Part 2 of Art. 27 of the CC of Ukraine, the principal offender (or co-principal offender) shall mean a person who, in association with other criminal offenders, has committed a criminal offence under this Code, directly or through other persons, who cannot be criminally liable, in accordance with the law, for what they have committed. Based on this provision, there are grounds for distinguishing one more form of

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29 IA Zinovieva, 'The Principal Offender Acting Through an Innocent Agent: Concepts and Types' (2016) 31 *Issues of Crime Prevention* 200-1.

30 VK Ghryshhuk, *Criminal Law of Ukraine: General Part* (2nd edn, LvSUIA 2019) 292.

31 VO Navrocjkyj, *Fundamentals of Criminal Law Qualification* (Jurinkom Inter 2006) 229-30.

indirect execution - when a person deliberately uses, involved in the commission of a criminal offence, other persons who are not liable for what has been committed.

It is possible to outline the following options for the qualification of such acts based on the provisions of the current CC of Ukraine:

1. In cases where the subject of an election criminal offence is a citizen of Ukraine or a stateless person who permanently resides on the territory of Ukraine, and such a person commits an election crime through another person - a foreigner or a stateless person who does not permanently reside on the territory of Ukraine - and both act outside of Ukraine, it constitutes intermediate (indirect) execution. In such cases, a person who uses another person not liable to commit a crime must be held responsible as the perpetrator of the criminal offence.
2. Another situation takes place when at least one of these persons, endowed with the characteristics of a subject of a criminal offence, acted on the territory of Ukraine (a citizen of Ukraine or a stateless person permanently residing on the territory of Ukraine, who attracted another person, from the one side, and a foreigner or a stateless person, who does not permanently reside in the territory of Ukraine, who directly commits a socially dangerous act, from another side). In this case, there is a criminal complicity, and both of these persons are liable for this criminal offence committed in complicity. In these cases, the territorial principle of the operation of the criminal law in space is applicable. In particular, in accordance with Part 3 of Art. 6 of the CC of Ukraine, an offence shall be deemed committed in the territory of Ukraine if the principal to such offence, or at least one of the accomplices, has acted in the territory of Ukraine.

Earlier, the issue of the operation of the criminal law of Ukraine on liability for such offences committed by foreigners and stateless persons had not arisen sharply due to objective reasons (low turnout, a significantly smaller number of voters out of the country, etc.). However, the war posed new challenges to Ukraine, particularly regarding protecting the election order in the out-of-country electoral district.

The solution to this problem might be the conclusion of an international agreement between Ukraine and the Republic of Poland, which would determine the peculiarities of the operation of the CC of Ukraine regarding all election offences committed in Poland by foreigners and stateless persons who do not permanently reside in Ukraine. In this additional agreement, it may be determined that the provisions of the CC of Ukraine establishing liability for criminal election offences also apply to foreigners and stateless persons who do not permanently reside in the territory of Ukraine and who have committed relevant criminal offences in the territory of the Republic of Poland.

### 3 ANTICIPATING THE POSSIBILITY OF CREATING ADDITIONAL FOREIGN ELECTION PRECINCTS IN THE REPUBLIC OF POLAND OUTSIDE THE PREMISES OF DIPLOMATIC INSTITUTIONS AND DETERMINING THEIR (TEMPORARY) PUBLIC LEGAL STATUS

The problem of the capacity of the election precincts in foreign constituencies, organised within the limits of diplomatic missions and consular institutions, has existed for the last few years.

The full-scale invasion of the Russian Federation into Ukraine caused the appearance of a huge number of Ukrainian refugees in Europe. According to various data (official and unofficial), there are 5 to 8 million Ukrainian citizens abroad, including temporarily displaced persons.

Hence, establishing additional places or premises for voting outside diplomatic institutions is one of the obvious ways to ensure the expression of the will of a significantly larger number of voters abroad, in contrast to previous elections.

In line with The Central Election Commission's Resolution No. 102 of 27 September 2022, titled 'On Proposals to Improve the Legislation of Ukraine, Aimed at Ensuring the Preparation and Holding of Elections After the Termination or Abolition of Martial Law in Ukraine',<sup>32</sup> the prospect of conducting future elections abroad outside the premises of diplomatic institutions is being considered. At the same time, voting outside diplomatic institutions accentuates the concern of combating administrative and criminal election offences, consequently giving rise to jurisdictional complexities. Specifically, the extension of Ukrainian legislation to encompass legal relations regarding elections on the territory of the Republic of Poland, including criminal, criminal procedural and administrative legislation.

Hence, the issue of the status of places or premises for voting organised outside diplomatic institutions is important:

- for organising the elections and
- for bringing criminal and administrative liability for election offences.

This issue is in the realm of public international law. It should be settled based on the principles of non-interference in domestic affairs of the state (no state or group of states has the right to interfere in the internal affairs of any state (para. 7 of Art. 2 of the UN Charter).

Elections abroad are organised by the authorised authorities of Ukraine — precinct election commissions. Therefore, establishing additional voting locations or premises outside

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32 Resolution of the Central Election Commission no 102 of 27 September 2022 'On Proposals to Improve the Legislation of Ukraine, Aimed at Ensuring the Preparation and Holding of Elections After the Termination or Abolition of Martial Law in Ukraine' <<https://zakon.rada.gov.ua/laws/show/v0102359-22#Text>> accessed 25 September 2023.

diplomatic institutions should be done with due consideration to the principles of state sovereignty and non-interference in internal affairs.

To minimise jurisdictional challenges, the application of the principle of extraterritoriality to voting places or premises outside diplomatic institutions, equating them with the legal status of diplomatic institutions, could alleviate numerous organisational issues of elections. This includes countering and preventing various abuses during voting and bringing offenders to administrative and/or criminal liability.

The issue of the temporary public legal status of additional premises and/or places for voting on the territory of Poland beyond the premises of Ukrainian diplomatic institutions necessitates discussions with the Republic of Poland. The potential future Supplementary Agreement between the Republic of Poland and Ukraine should address issues like the procedure for renting these premises, the interaction of the state authorities and local self-government of Poland with the diplomatic missions and consular institutions of Ukraine, and the protection and maintenance of order at the election precincts etc.

## 4 CONCLUSIONS

In accordance with the principle of state sovereignty and the principle of non-intervention (non-interference in domestic affairs of the state) as stated in para. 7 of Art. 2 of the UN Charter, each state holds the authority to a) conduct elections abroad for its state authorities, referred to as external voting, and b) enact laws establishing criminal and administrative liability for electoral offences during external voting and to prosecute those responsible.

Furthermore, a foreign state on the territory of which external voting is held may assist Ukraine in organising and holding elections. This collaboration may be extended by bringing election criminals to justice in Ukraine based on international treaties and in the order of international legal assistance.

Foreign election precincts and voting premises are established in a foreign diplomatic institution of Ukraine or the location of a deployed military unit outside Ukraine (Art. 31 of the Election Code of Ukraine).

How the Criminal Code of Ukraine is applied to criminal election offences committed on the territory of a foreign state depends on where the offence was committed — in a diplomatic institution or outside its borders.

Criminal offences related to Ukrainian elections and committed within the premises of Ukrainian diplomatic institutions fall under the territorial jurisdiction of the Criminal Code of Ukraine (Part 1, Art. 6 of the CC and Part 2, Art. 4 of the CPC of Ukraine).

In the event of committing an electoral criminal offence regarding the Ukrainian elections on the territory of a foreign state outside the premises of diplomatic institutions of Ukraine, prosecution is possible according to the principle of citizenship – the real principle of the operation of the criminal law in space. It is essential to note that the real principle solely

relates to grave election crimes, as no special grave election offences are outlined in the Criminal Code of Ukraine. Consequently, the jurisdiction of the Criminal Code of Ukraine does not extend its validity to cases where the criminal election offence does not belong to the category of grave offences and is committed outside the territory of diplomatic institutions of Ukraine by foreigners or stateless persons who do not permanently reside in Ukraine.

Addressing these and other problematic issues may be the subject of consensus between the Republic of Poland and Ukraine through a possible Supplementary Agreement on holding Ukrainian elections on the territory of Poland.

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in the premises of diplomatic institutions of Ukraine abroad? – 2.3. What kind of criminal election offences due to their nature (mechanism) can be committed outside Ukraine (in particular, on the territory of external election precincts, or outside election precincts)? – 2.4. Does the CC of Ukraine apply to the criminal election offences committed outside the diplomatic institutions of Ukraine? – 2.5. To what criminal election offences can the real principle of operation of the Criminal Code of Ukraine be applied? – 2.6. To which criminal election offences the real principle of the CC of Ukraine may not be applied? – 2.7. Might the universal principle of the operation of criminal law of Ukraine be applied to the criminal election offences committed on the territory of the Republic of Poland? – 3. Anticipating the possibility of creating additional foreign election precincts in the Republic of Poland outside the premises of diplomatic institutions and determining their (temporary) public legal status. – 4. Conclusions.

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