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# Forensic classification of military criminal offences and the place of abuse of power or authority by a military official

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## Abstract

The relevance of the study lies in the need to develop a forensic classification of military criminal offences, in particular, those related to abuse of power or authority by senior military personnel. This study aimed not only to improve the effectiveness of investigations, but also to provide legal protection for participants in military legal relations, which gives it significance in theoretical and practical contexts. The methodological approaches included comparative analysis, classification methods, and typology, which were used to divide military criminal offences into appropriate categories, types, and subtypes, considering their legal and forensic characteristics. As a result of the conducted research, several key conclusions were substantiated. Given the specifics of public relations in the military sphere, it was proposed to consider criminal offences against the established procedure for military service as a separate type of forensic classification. This type covers a wide sector of socially dangerous acts united by common generic features. Within the specified type, groups and forms of offences were identified, characterised by specific features depending on the object of illegal encroachment. When classifying the types of such offences, the emphasis was placed on a detailed structured form that reflects the specific features or conditions of committing a particular type of action. Highlighting the subtypes of criminal offences related to abuse of power or official authority by military personnel, attention was focused on the methods of their commission and socially dangerous consequences. This approach enabled a systematic study of the legal mechanism for committing military offences and their impact on the observance of discipline and the rule of law in the military environment. The results obtained contribute to improving the forensic classification of military criminal offences, which is important for their effective investigation and prevention

## Keywords:

criminal offences; military service; investigation methodology; forensic characteristics; official crime; martial law; combat situation

## Introduction

The relevance of this study is conditioned by the need to improve theoretical and practical approaches to the investigation of military criminal offences, the analysis of which becomes particularly important in the context of armed conflict and the reform of the security and defence sector. One of the most difficult aspects of this process is the definition of the forensic classification of the

studied offences, which contributes to the development of clear elements of their forensic characteristics. In this context, forensic methodology consists of elements that provide a systematic approach to the investigation process, where forensic characterisation, as noted by G. Chogpui (2020), acts as an information model that contains important features inherent in certain groups,

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types, or specific cases of criminal offences. To provide a reasonable forensic description of military criminal offences, it is primarily necessary to carry out their forensic classification. Of particular scientific interest in this area is the determination of the place in the system of this classification for abuse of power or authority by a military official. This is explained by the fact that illegal actions committed by senior military personnel directly affect the legal stability of the military sphere. Therefore, this study contributes not only to the development of new approaches to the prevention and effective investigation of military criminal offences, but also ensures the observance of discipline and legality among the personnel of military units, which as a result affects their combat capability.

According to E. Orzhynska (2021), the process of systematisation and differentiation in forensic classification is based on general and characteristic features that allow distinguishing criminal offences into appropriate categories, groups, types and subtypes based on characteristic criteria. In this context, as stated by V. Guseva (2019a), each category of forensic classification has unique and common features that change depending on its position in the system. This helps to better understand the differences and similarities between different categories of criminal acts and helps to explain their complex relationships within a single system. Therefore, according to O. Pchelina & V. Pchelin (2022), forensic classification should be understood, on the one hand, as a process, but simultaneously, as a result of using a typological approach. This approach allows dividing objects into subclasses according to certain criteria. Such classification is the result of ordering processes and phenomena, or individual facts into a system based on features that simultaneously characterise their similarities and differences.

As noted by S. Tatarenko (2023), forensic classification, although borrowing some aspects of criminal law, focuses on a more specialised methodology. If the criminal law classification focuses on the legal aspects and elements of the composition of a criminal offence, then the forensic classification focuses on the practical aspects of disclosure, investigation, and prevention of illegal activities. This contributes to its better adaptation to the operational needs of law enforcement, since its main goal is to differentiate criminal offences according to criteria that facilitate their identification and investigation. Therefore, according to G. Bershov (2020), this contributes to the development of a theoretical and applied approach to the fight against criminal offences, allows applying the criteria of forensic analysis.

That is, forensic classification focuses on patterns that are significant from a forensic standpoint. The investigative methodology is used to study the links and interactions between certain types of offences regulated

in different sections of the Special Part of the Criminal Code of Ukraine<sup>1</sup> (CCU). This approach is aimed at integrating criminal offences into a single classification system, which allows optimising the process of developing complex forensic characteristics and methods for investigating certain categories of criminal offences. Such classification units include scientifically based concepts of forensic classification of offences in the field of official activity, crimes that encroach on environmental safety, and economic security (Paleshko *et al.*, 2020), mercenary and violent crimes, crimes related to sexual freedom and sexual integrity of minors (Nikitina-Dudkova, 2021), criminal offences related to domestic violence (Komarinska, 2022), criminal offences against property (Volikov, 2024), crimes in the military sphere, etc.

The analysis of this scientific literature shows that criminologists are still discussing the definition of criteria for classifying criminal offences. Additional interest in the subject of this research is caused by the lack of a sufficient number of scientific developments devoted to the forensic classification of military criminal offences. Most existing studies focus on individual elements of their forensic characteristics, which limits the development of a holistic methodology for their investigation (Karpenko *et al.*, 2022), or relate to certain aspects of criminal law analysis and qualification problems of their individual types (Piano & Rouanet, 2020).

Therefore, the purpose of this study was to develop forensic approaches to the classification of military criminal offences and, on this basis, determine the place for abuse of power or authority by a military official in its system. This helped to identify the key elements of the forensic characteristic of this type of criminal offence and will provide the basis for their comprehensive forensic analysis.

## Materials and Methods

The methodological principles or approaches used in the study should include the interpretation of legal norms and the legal functional method that were applied to investigate the essence of military criminal offences and structure their components for classification purposes. The comparative legal method was used to analyse laws and regulations governing military legal relations and to investigate theoretical concepts related to the subject of research. The system and structural methods were used to build a classification system of military criminal offences and determine in this system the place for abuse of power or official authority by a military official. The method of classification and typology was used to differentiate military criminal offences into the corresponding categories, types, and subtypes, considering their legal and forensic aspects. The modelling method was used in the context of providing conclusions and formulating further research directions.

<sup>1</sup> Criminal Code of Ukraine. (2001, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/2001-05#Text>.

The theoretical basis of this study was the scientific research by Ukrainian legal scholars on the problematic aspects of forensic classification and forensic characterisation of criminal offences. Among them, special attention should be paid to the work of those researchers whose publications laid the methodological foundations for further study of the specifics of military criminal offences and the specifics of their investigations. These researchers include G. Chogpui (2020), who investigated the theoretical problems of forensic characterisation of crimes, E. Orzhynska (2021), who considered the theoretical and applied foundations of forensic characterisation of criminal offences, and V. Guseva (2019b), who studied the scientific and practical aspects of forensic classification of crimes. Separately, it is worth noting the scientific developments of G. Bershov (2020), who carried out a scientific analysis of military criminal offences in the context of their forensic characterisation, O. Pchelina & V. Pchelin (2022), who considered problematic issues of the scientific and practical nature of the forensic classification of war crimes and criminal offences committed in the field of official activity, and O. Obodovsky (2021) and N. Stefaniv (2023), who investigated general aspects of the characterisation of military criminal offences and the like.

The theoretical conclusions of the researchers served as the basis for constructing the methodological basis for this study. In the process of development, certain provisions set out by these researchers were expanded and clarified, which allowed them to be adapted to the specific context of military criminal offences. In turn, this contributed to the appearance of new scientific approaches and provisions that develop and deepen the general concept of forensic classification of military criminal offences.

The legislative basis of the legal analysis conducted in this study was the relevant provisions of the Constitution of Ukraine<sup>1</sup>, Criminal Code of Ukraine<sup>2</sup>, Laws of Ukraine “On the Disciplinary Statute of the Armed Forces of Ukraine”<sup>3</sup>, “On the Statute of the Internal Service of the Armed Forces of Ukraine”<sup>4</sup> “On the Legal Regime of Property in the Armed Forces of Ukraine”<sup>5</sup>. The legislative norms of the above-mentioned acts were used in the context of legal regulation of various aspects of military legal relations, covering the specifics of relations between the state and military personnel, between military personnel of different ranks and positions, and between military personnel and the civilian population. The analysis of these aspects contributed to the

systematisation of military criminal offences into a single classification system and its differentiation within the framework of forensic analysis, which helps to determine in more detail the specifics of military offences and approaches to their investigation.

Thus, the methodological principles laid down in this study served as the basis for building classification systems for military criminal offences. They provided both theoretical and practical aspects in the creation of organised structures aimed at streamlining, systematising, and analysing information about illegal activities of military personnel. This helped to further develop a clear forensic description of military criminal offences for the methodology of their investigation, which will contribute to strengthening preventive measures to reduce the risks of committing criminal acts by senior military personnel.

## Results and Discussion

**Importance of forensic classification in the investigation of military criminal offences.** A general analysis of the forensic literature distinguishes three main approaches to the classification of criminal offences. The first approach is based on the classification of criminal offences exclusively on criminal law grounds. However, from the standpoint of criminalistics, this model is ineffective, since its structure depends entirely on changes and additions to the norms of substantive law. It is assumed that the reform of the law on criminal liability, or the decriminalisation of individual acts, eliminates forensic developments regarding the methods of their investigation. Such dependence of forensic science on changes in substantive law is unjustified, since it limits the possibilities of applying universal methods and reduces the effectiveness of investigations and prevention of criminal offences. Therefore, by agreeing with Yu. Vengerova (2019), classification of criminal offences solely on criminal grounds does not always meet the needs of practice, since it does not consider the importance of forensic analysis.

The second approach involves classification solely on forensic grounds. Proponents of this model argue that the criteria for differentiating criminal offences should be considered signs that are determined by forensic science. V. Guseva (2019b) and O.A. Bilichak & A.I. Makarov (2020) refer elements of forensic characteristics to these traits, which in their opinion are the main areas of research, providing an opportunity to get as close as possible to the practical conditions of

<sup>1</sup> Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

<sup>2</sup> Criminal Code of Ukraine. (2001, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/2001-05#Text>.

<sup>3</sup> Law of Ukraine No. 551-XIV “On the Disciplinary Statute of the Armed Forces of Ukraine”. (1999, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/551-14#Text>.

<sup>4</sup> Law of Ukraine No. 548-XIV “On the Statute of the Internal Service of the Armed Forces of Ukraine”. (1999, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/548-14#Text>.

<sup>5</sup> Law of Ukraine No. 1075-XIV “On the Legal Regime of Property in the Armed Forces of Ukraine”. (1999, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/1075-14#Text>.

investigative activity, having developed effective forensic methods for investigating certain types of criminal offences. According to V. Guseva (2019b), it is the forensic characteristic, together with investigative activities in the field of criminal proceedings that should form the forensic classification of criminal offences. According to this model, forensic classification is based on elements of forensic characteristics. It is carried out at all stages of investigative work during pre-trial proceedings and contributes to forensic optimisation in methodological, tactical, and technical aspects.

This statement must be partially agreed upon. Admittedly, the forensic classification of criminal offences is important not only for the theory of criminalistics, but also for the applied foundations of its activities in the investigation of criminal offences. However, as noted by V. Tishchenko (2007), with the help of forensic analysis, forensic classification contributes to the specification and detail of forensic characteristics, not only identifying the corresponding categories of criminal offences in general, but also their varieties (subcategories) in particular. However, considering the relevant features in the mechanism of identified socially dangerous acts, forensic characteristics provide an opportunity to develop practical recommendations for the prevention, detection, suppression, disclosure, and investigation of relevant classification groups of criminal offences.

Another approach is a combination of criminal law and forensic aspects of the classification of criminal offences. Support for this concept is appropriate because, according to O. Pchelina (2014), it allows considering all the mechanisms of criminal activity. In this regard, V. Synchuk (2003) notes that a purely forensic classification of criminal offences cannot exist in an isolated form, since it objectively integrates elements and objects of criminal law and criminological classifications. Features that are important from the standpoint of criminal law and criminology serve as the basis for the development of a forensic classification, which indicates a combination of provisions of various sciences of criminal law profile.

The criminal law classification can serve as a reference point for forensic analysis of criminal offences. Moreover, forensic classification should also be based on criminalistically significant features, considering the patterns of development and functioning of research objects. This opinion is shared by other researchers. O. Oderiy (2015) notes that the criminal law classification serves as the basis for forming the object of forensic classification, which is the corresponding criminal offence or groups thereof. Considering the needs of practice, forensic science carries out a comprehensive analysis of illegal activities and, on its basis, develops its own classification systems for criminal offences. However, this classification is based on the identification

and study of patterns caused by common features of certain types of socially dangerous acts. That is, most of the criminal offences related to various sections of the special part of the CCU<sup>1</sup>, from the standpoint of the investigation methodology, have forensic similarities. As noted by V. Shepitko (2006), this is conditioned by the need to conduct a comprehensive study of such offences to classify them criminally, provide forensic characteristics and, on this basis, develop integrated methods for their investigation.

Thus, when developing methods for investigating criminal offences, criminal-legal, criminological, and criminalistic aspects and patterns related to the detection, disclosure, and investigation of specific types of criminal offences are considered. In this context, as noted by A. Pastukh (2023), forensic classification allows conducting a comprehensive analysis of criminal offences, identify their general categories, synthesise their criminalistically significant properties and provide them with appropriate forensic characteristics to develop effective recommendations for their investigation and prevention.

Forensic classification serves as the basis for analysing criminal offences, defining the category to which a particular criminal act belongs. This makes it easier to understand the forensic characteristic and the specific features on which it is based. Forensic characteristics, in turn, are based on this classification, including a detailed analysis of the properties and features of criminal offences within a certain category. The implementation of this classification enables a thorough investigation of each criminal offence, its type, group, or category, which contributes to the development of appropriate methodological recommendations for their investigation and prevention.

According to O. Pchelina (2014), the definition of forensic criteria for the classification of criminal offences is impossible without a preliminary analysis of their criminal law and criminological classifications. In the criminal law classification, structured elements of the composition of a criminal offence are taken as a basis, where an obvious advantage is given to the object of illegal encroachment. This model is also used by the legislator when structuring a special part of the criminal legislation of Ukraine, where crimes and criminal offences are distributed depending on the generic object.

However, the forensic classification is based not only on the criteria of criminal law, but also uses the criminological classification of criminal offences. This is conditioned by the fact that the latter provides an understanding of criminal offences not only from a legal but also from a practical standpoint. In this relationship, as noted by M. Kolodyazhnyi (2013), criminological classification complements criminalistic including in its structure the analysis of information about the socially

<sup>1</sup> Criminal Code of Ukraine. (2001, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/2001-05#Text>.

dangerous act itself, its quantitative and qualitative indicators, dynamics and structure, geography of commission, price of consequences, and information about the subject of the offence. Thus, forensic classification is a synthesis of criminal law and criminological knowledge aimed at a comprehensive analysis of criminal activity.

**Forensic classification of military criminal offences.** Agreeing with O. Obodovsky (2021), the generic object of military criminal offences is the social relations that arise between the state and citizens undergoing military service, that is, they are military personnel or reservists during the performance of military service duties. From the above, specific features inherent in military criminal offences can be distinguished. Firstly, the object of encroachments of military criminal offences is the procedure established by law for performing or performing military service. Secondly, the subject of these offences is military personnel or those liable for military service or reservists who undergo organised training activities to practice various military skills and tactics (military exercises, military manoeuvres). And, thirdly, the criminal illegality of military criminal offences is determined only if they are directly provided for in Section 19 of the Special Part of the Criminal Code of Ukraine<sup>1</sup>.

In the military sphere, public relations cover the relationship between its participants in the process of performing official duties and exercising relevant rights. This can be a relationship, firstly, between military personnel and the state, including prohibitions, obligations, rights and duties, social guarantees, and other aspects of legal regulation, and support. Secondly, between military personnel of different ranks and positions, in particular, issues related to subordination, discipline, chain of command, interaction within the military hierarchy and the execution of orders. Thirdly, between military personnel and the civilian population, which may relate to law enforcement, civil protection, control, and interaction in emergency situations. Fourthly, relations on the management and disposal of military property, including issues of ownership of military property, the preservation and use of resources, and liability for violations of the rule of law in this area of legal relations. Fifthly, relations during military operations or as a result of the introduction of a special legal regime of martial law, which may include interaction with allied forces, confrontation with the enemy, compliance with international humanitarian law, customs of war, etc.

These relations are regulated by special provisions defined both by national legislation and international regulations that form the legal basis for activities in the military sphere. This ensures a clear legal regulation of the actions of participants in military relations, contributing to compliance with the norms of law both in a special or special period, and in peacetime. This

approach is important for ensuring the rule of law and order, and for protecting the rights and freedoms not only of military personnel, but also of society as a whole. It is this model that should be used as the basis for the forensic classification of military criminal offences, since it contributes to the systematisation of approaches to their investigation, ensuring that legal actions are in line with international standards for compliance with international humanitarian law and the requirements of national legislation.

There are several other concepts in the scientific literature regarding the forensic qualification of war crimes. In particular, G. Bershov (2020) proposes to classify the studied acts, firstly, depending on the characteristics of the criminal's personality, into those committed by military personnel of the Armed Forces of Ukraine, security agencies, the State Border Service, the National Guard, and other military formations established in accordance with the laws of Ukraine. In addition to military personnel, persons liable for military service and reservists during training are also considered. Secondly, depending on the focus of the criminal's actions on those that have violent or mercenary motives, those that are related to damage, destruction or loss of military property, illegal acts in the field of military service, and those that are related to evasion from military service or violation of the rules of its performance. Thirdly, depending on the circumstances of the commission of a criminal offence against those committed in a special period, martial law, and combat situation. Fourthly, depending on the method of committing the criminal offence, there are those committed by failing to comply with or violating orders of a superior, those that cause harm to life or health of a person, those aimed at stealing or damaging military property, violating the established rules of military service, and those aimed at disclosing military information (military secrets), including information constituting a state secret.

However, the main point of this differentiation is that it does not allow military criminal offences to be grouped according to criteria that make it possible for them to be grouped into common groups of similar content. This makes it difficult to form a forensic characteristic of these offences and develop appropriate methodological approaches to their investigation based on it. Therefore, there is a need to analyse various approaches to determining the criteria for forensic classification of criminal offences and, based on them, develop a classification that best meets the specifics of military criminal offences.

In this context, analysing crimes in cyberspace, O. Samoilenko (2018) classifies them according to criteria based on the motives and areas of public relations that they relate to. Considering criminal offences related to the seizure of land plots and objects of corporate

<sup>1</sup> Criminal Code of Ukraine. (2001, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/2001-05#Text>.

property, V. Berezhnyak (2020) classifies them depending on the specifics of economic activity and ways to implement illegal intentions. In turn, A. Pastukh (2023), carrying out a forensic classification of crimes related to violation of environmental safety rules, bases its division on the methods of their commission and the consequences caused. A similar classification of criminal offences against the environment is observed by S. Tarenko (2023), offering their division into those that caused the death of people, mass diseases, pollution of territories, danger to people and the environment, mass death of flora and fauna, negative impact on the health of people, animals and plants, the amount of material damage, etc.

This concept is used in the classification of criminal offences by A. Repchonok (2020). When analysing criminal offences in the field of economics, the researcher recommends dividing them by generic object. When classifying crimes in the field of tourism activities, a similar model is used by Yu. Vengerova (2019), additionally highlighting such criteria as the construction of the crime, the place of commission or end of the crime, the division into main, additional, or supine crimes, the sector of functioning of the tourism sector where the crime was committed and the identity of the perpetrator.

According to the authors of the study, this classification is too complex, which complicates its perception and practical application in investigative practice, which requires clarity, accuracy, efficiency, and effectiveness of making procedural and tactical decisions. It should not be understated that all investigative activities are ultimately aimed at the judicial process, and therefore, the forensic classification of criminal offences, as an integral part of the investigation methodology, should be based on criteria that allow, taking into consideration forensic aspects, to characterise the relevant classification groups of offences to better understand them when proving and maintaining charges in court.

In view of the above, attention should be paid to the forensic classification proposed by O. Pchelina (2014). Investigating the problematic aspects of the criminalistic classification of criminal offences in the sphere of official activity, the researcher divides them according to: specific features of the objects of the offence into those that depend on the type of public relations that the offence encroaches on; the branch of public activity in which the offence is committed; the sphere of official activity where offences are committed; the subject of legal relations whose interests are encroached on by the offence and the subject of illegal encroachment; the objective side of the offence is those that depend on: the method of implementation and the scale of illegal activities; the subject of the offence is those that depend on: the nature of the criminal's personality and the main

goals of criminal activity; the subjective side on those that depend on: the subjective attitude (form of guilt) of the perpetrator to the committed offence.

The above classification uses a mixed approach, which allows combining criminal-legal, criminological, and criminalistic aspects of criminal offences, providing a unified division for a comprehensive analysis of similar illegal acts. This makes it possible to consider both legal and practical aspects of the proof process and, on this basis, develop a classification system that increases the effectiveness of solving the problems of criminal proceedings.

Thus, for example, according to this classification, criminal offences of an official nature committed in the military sphere (articles 423-426)<sup>1</sup>, were classified as those that depend on the specific field of official activity. This approach is not accidental because illegal encroachments in the sphere of official or professional activity are associated with the performance of state functions by officials and their violation of the established procedure for the exercise of official powers (rights and obligations). These acts harm the rights, freedoms, and legitimate interests of citizens, and state and public interests, undermining the authority of the government.

In turn, military service is a state service of a special nature, which provides for the professional activity of citizens who are able to fulfil the military or constitutional duty to defend the state, protect its independence and territorial integrity. In this regard, the period of military service, for citizens of Ukraine, is counted in the length of public service, and therefore, offences subject to which is a military official can be attributed to the forensic classification of criminal offences of an official nature.

Thus, the criminal offences provided for in certain articles of sections 17 and 19 of CCU<sup>2</sup>, are combined by O. Pchelina (2014) into a single classification system of socially dangerous acts that encroach on the established order of public relations in the sphere of official and professional activities related to the performance of state functions. In this context, comparing the criminal offences provided for in articles 365 (Abuse of power or authority by a law enforcement officer) and 426-1 (abuse of power or authority by a military official), it can be concluded that the main difference between them lies in the special status of the subject. This status is regulated by special regulations that define the specifics of the official activities of the relevant persons and affect the place, time, and conditions of committing offences, their motives and purpose, and the ways of implementing criminal intentions. These regulations also define the scope of rights and obligations of officials, the characteristics of the victim's personality, the socially dangerous consequences of the offence and its

<sup>1</sup> Criminal Code of Ukraine. (2001, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/2001-05#Text>.

<sup>2</sup> Ibidem, 2001.

degree of danger, and possible alternatives to legal liability in the absence of signs of a criminal offence.

The differentiation of these criminal offences by the legislator is not accidental. Each of these illegal acts covers specific aspects of official activity that require separate legal regulation and assessment. Firstly, law enforcement and military service operate in different legal contexts and perform different tasks. Secondly, differences in the legal status of officials in the law enforcement and military spheres require an individual approach to qualifying the actions of the subject as criminal or legal. Thirdly, the purpose and consequences of these actions can vary significantly, which means that the process of proving guilt and responsibility considers various aspects of legal regulation that ensure an accurate legal assessment of each criminal case and the fairness of the punishments imposed.

Thus, the legislator sought to ensure adequate punishment in each of these areas of legal relations, based on their unique characteristics and needs. Given the special nature of public relations in the military sphere, it is worth considering criminal offences against the established procedure for military service within a separate type (kind) of forensic classification, covering a wide range of socially dangerous acts united by common generic characteristics. Within this type, it is advisable to distinguish its separate groups, types and subtypes of criminal offences that have characteristic features based on the object of illegal encroachment.

#### **Groups and types of military criminal offences.**

The first group covers criminal offences against the order of subordination and military dignity, and includes such types as: disobedience; failure to comply with an order; resistance to a superior or forcing him/her to violate official duties; threat or violence against the superior; violation of the statutory rules of relations between military personnel in the absence of a relationship of subordination.

Scientific literature contains variations of this classification group. In particular, G. Anisimov *et al.* (2011) identify this group of offences as crimes against the order of subordination and military dignity. The authors of this interpretation obviously use the term “dignity”, avoiding possible misunderstandings regarding the word “honour”. However, in this context, it is more appropriate to use the category of “honour”, since it is associated with a public assessment of the behaviour of military personnel as representatives of a particular social group and performers of a specific social role. Honour reflects social standards and assessments that relate to the observance of moral and ethical standards in military service. Dignity, on the other hand, refers to

a person’s internal self-esteem and self-respect, which does not depend on external evaluation. Therefore, when it comes to threats or violence against a military commander, it is primarily a violation of moral and ethical norms that undermine the authority of the military command and relate specifically to “military honour” in the context of serious violations of the moral and ethical standards of military service.

In other words, “military honour” does not mean ethical and moral values of a person in a broad sense, but rather those related to a particular social group and its importance in society. In this context, “honour” is considered as an ethical category that is associated with public assessment, determination of moral merits and virtues of a person as a representative of a particular social group, part of a collective or professional community. Instead, dignity refers to a person’s inner sense of self-esteem and self-respect. This is an internal aspect that determines how a person perceives themselves and their value, regardless of external assessment. Actually, this narrative can be traced in the provisions of the Disciplinary Charter of the Armed Forces of Ukraine<sup>1</sup> and the Internal Service Charter<sup>2</sup>, which states that a serviceman must be a model of high culture, modesty and endurance, protect military honour, protect their own and respect the dignity of other people (paragraph 49).

Military discipline, in turn, requires each serviceman to observe the rules of relations between the military and contribute to the strengthening of the military team. Military personnel should behave with dignity and honour, prevent negative actions, both on the part of themselves and others. In addition, it is necessary to show respect for senior military ranks, respect the honour and dignity of colleagues, and observe the norms of military politeness, behaviour, and military greeting, etc. (paragraph 3)<sup>3</sup>.

The second group covers criminal offences against military service, and includes such types as: unauthorised leaving of a military unit or place of service; desertion; evasion from military service by self-mutilation or other means. The third group should include criminal offences against the order of use, storage, and exploitation of military property (military property), namely: theft, misappropriation, extortion by a serviceman of weapons, military supplies, explosives or other military substances, vehicles, military and special equipment or other military property, as well as their possession by fraud; intentional destruction or damage to military property; careless destruction or damage to military property; loss of military property; violation of the rules for handling weapons, as well as substances and

<sup>1</sup> Law of Ukraine No. 551-XIV “On the Disciplinary Statute of the Armed Forces of Ukraine”. (1999, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/551-14#Text>.

<sup>2</sup> Law of Ukraine No. 548-XIV “On the Statute of the Internal Service of the Armed Forces of Ukraine”. (1999, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/548-14#Text>.

<sup>3</sup> *Ibidem*, 1999.

objects that pose an increased danger to the environment; violation of the rules for driving or operating vehicles; violation of flight rules or preparation for them; violation of navigation rules.

G. Anisimov *et al.* (2011) divide this classification category into two separate groups against the procedure for storing and using military property and against the procedure for operating military equipment. However, considering the legislation that defines the legal regime of military property and the powers of military administration bodies and officials to manage this property, it is advisable to combine these offences into one classification group. This position is that according to Article 1 of the Law of Ukraine “On the legal regime of property in the Armed Forces of Ukraine”<sup>1</sup> the concept of “military property” has a broad meaning, which covers all material values, both movable and non-movable, that are on the balance sheet of military units, institutions, and organisations of the Armed Forces. Thus, military property includes all material values used by the military forces to perform the tasks assigned to them, including ships, aircraft, vehicles, weapons, ammunition, equipment, uniforms, and other equipment and infrastructure that is owned or used by military units and is used for the needs of their activities, including the defence of the country.

The fourth group covers criminal offences against the order of combat duty and other special services, and includes such types as: violation of the statutory rules of guard service or patrol; violation of the rules of border service; violation of the rules of combat duty; violation of the statutory rules of internal service. The fifth group of criminal offences should include those related to violation of the protection of state secrets, namely: disclosure of military information constituting a state secret, or loss of documents or materials containing such information. In legal sources, there are different approaches to the name of this classification group. In particular, N. Stefaniv (2023), providing a general description of military criminal offences, classifies offences in the field of state secret protection committed by military personnel as socially dangerous acts against the established procedure for storing military secrets.

According to the authors of this study, the use of the category “military secrecy” in this context is erroneous. Military secrecy is a type of professional secrecy of military personnel and may include information that does not fall under the definition of state secrets but access to which is restricted. In fact, this is information with restricted access for military use, which does not necessarily have to contain classified information, the legal regime of which is determined by a separate legislative

act. In explanatory dictionaries, this term is interpreted as information related to the armed forces and military formations of the state (about the organisation, number, deployment, combat capability, military inventions, etc.) and should be kept secret (Shemsuchenko *et al.*, 1998). In other words, the word “military” in this context certifies only the professional affiliation of the information. It includes information and/or data of an official, economic, technical, tactical, strategic, personnel or other nature that is important for the defence of the country and other state interests, and which is specially protected by the state from unauthorised access or illegal disclosure.

The sixth group covers criminal offences related to the violation of the order of performance of official duties in the military sphere, and includes such types as: theft, misappropriation, extortion by a serviceman of weapons, military supplies, explosives or other military substances, vehicles, military and special equipment or other military property, or taking them by fraud committed by a military official with abuse of office; negligent attitude of a military official to service; inaction of the military authorities; abuse of power or authority by a military official.

Providing a general description of military criminal offences N. Stefaniv (2023), erroneously classifies these socially dangerous acts as official criminal offences. In the context of military service, especially when it comes to military personnel who hold senior positions or perform duties at the command or commanding levels, it is more appropriate to use the term “official criminal offences”. This is conditioned by the fact that it emphasises the specifics of offences related to the performance of official duties in the framework of military service. According to the legal doctrine and criminal legislation of Ukraine (Section 17)<sup>2</sup>, official offences cover acts committed by persons in the performance of their official duties within the limits of the powers granted.

Unlike the term “officials”, which is usually used in the context of referring to offences committed by officials of state authorities, local governments, enterprises, institutions or organisations, regardless of the form of ownership, the category “service” includes a wide range of acts characteristic of military service. It includes, but is not limited to, violations of military discipline, failure to perform or improper performance of official duties, abuse of power or position, etc. Thus, the use of the term “official criminal offences” is more accurate in the context of military personnel who hold commanding positions or perform duties at the commanding level, as this reflects their specific duties and responsibilities within the framework of military service.

<sup>1</sup> Law of Ukraine No. 1075-XIV “On the Legal Regime of Property in the Armed Forces of Ukraine”. (1999, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/1075-14#Text>.

<sup>2</sup> Criminal Code of Ukraine. (2001, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/2001-05#Text>.

The seventh group covers criminal offences against the order of military service on the battlefield and in the area of the introduction of hostilities, and includes such types as: surrender or abandonment of means of warfare to the enemy; abandonment of a dying warship; unauthorised abandonment of the battlefield or refusal to act with weapons; voluntary surrender; criminal actions of a serviceman in captivity; looting. The eighth group of criminal offences should include those related to violation of the order of compliance with the laws and customs of war, namely: violence against the population in the area of military operations; ill-treatment of prisoners of war; illegal use of symbols of the Red Cross, Red Crescent, Red Crystal and abuse of it.

**Subtypes of abuse of power or official authority by a serviceman.** In the process of classifying subtypes of criminal offences, it should be noted that they are characterised by a more detailed form, which focuses on the specifics and conditions under which a particular offence is committed. This study does not aim to analyse in detail each of the identified types or groups of military criminal offences, as this is beyond the scope of the subject matter. However, when identifying subtypes of criminal offences related to abuse of power or official authority by military officials, it is necessary to focus on the methods of committing such excesses and their consequences. This approach helps to identify the main components (elements) of the forensic characteristics of the studied types of criminal offences and further determine their specific features.

Subtypes of abuse of power or official authority by a military official should include, firstly, abuse of power or official authority, accompanied by the use of violence or the threat of its use. This subtype covers actions committed by military officials who exceed their authority over subordinates by using violence or threatening to use it to achieve personal interests. This may include obvious intimidation, forcing the victim to meet certain requirements, or subjugating them through the use of a psychoemotional state as a result of psychological or physical pressure. Secondly, abuse of power or official authority using official position for personal needs. This subtype covers cases when a military official, using their official position, commits actions that contradict the interests of the service and violate the established legal norms governing the rules of official activity of military personnel to obtain undue benefits for themselves or others. Thirdly, abuse of power or official authority, which leads to serious consequences. This subtype covers cases when, as a result of abuse of authority by a military official, significant damage is caused to state or public interests, or to individuals, including damage to life, health, property, or the environment. Fourthly, abuse of power or official authority committed during a special period, in particular, martial law or in a combat situation. This subtype covers cases of violation of power or official authority that occurred

during a special period, considering the specific conditions of military frequency or situations of a military nature. Fifthly, abuse of power or official authority, resulting in gross violations of human and civil rights and freedoms. This subtype covers cases when, as a result of abuse of official authority by a military official, there is a significant violation of human rights and freedoms guaranteed by the Constitution and laws of Ukraine.

## Conclusions

Criminal offences against the order of military service in their legal nature have much in common with other types of illegal encroachments, in particular, those related to property or official activities. However, considering the specifics of military legal relations and the key role of the military sphere in ensuring the security and defence capability of the country, these socially dangerous acts were included in a separate category of illegal encroachments as military criminal offences. This category focuses on their specifics and professional affiliation to military service, which reflects the specifics of the legal regulation of the activities of military personnel and establishes increased requirements for their compliance with discipline and legality, especially in conditions when ensuring the country's defence capability is a priority.

In the military sphere, public relations cover the relationship between its participants in the process of performing official duties and exercising relevant rights, in particular, it can be the relationship between military personnel and the state, military personnel of various ranks and positions, military personnel and the civilian population, relations on the management and disposal of military property, and relations that arise during military operations or in connection with the introduction of a special legal regime of martial law. These relations are regulated by special provisions defined both by national legislation and international normative legal acts regulating the activities of participants in military relations, contributing to the observance of legal norms both in conditions of a special legal regime and in peacetime. This approach is important for ensuring the rule of law and order, and for protecting the rights and freedoms not only of military personnel, but also of society as a whole. The authors suggest that this model should be the basis for the forensic classification of military criminal offences, since it contributes to the systematisation of approaches to their investigation, ensuring compliance of legal actions with international standards and requirements of national legislation.

Given the special nature of public relations in the military sphere, it is worth considering criminal offences against the established procedure for military service within a separate type of forensic classification, which covers a wide sector of socially dangerous acts united by common generic characteristics. Within the

framework of this type of criminal offences, separate groups and types of them are distinguished, which have characteristic features depending on the object of illegal encroachment. When classifying subtypes of such offences, a more detailed form is used, reflecting the specific features or conditions of committing a particular type. Highlighting subtypes of criminal offences related to abuse of power or official authority by military personnel, it is worth focusing on the methods of commission and their socially dangerous consequences. In the future, this allows determining the key elements of the forensic characteristics of the type of criminal offences under study and highlighting their features.

Considering the above provisions in the further study, it is necessary to analyse the forensic characteristics of abuse of power or official authority by a military official, identify its elements, and provide them with a comprehensive detailed analysis.

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### Conflict of Interest

None.

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# Криміналістична класифікація військових кримінальних правопорушень і місце в ній перевищення влади чи службових повноважень військовою службовою особою

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## **Анотація**

Актуальність дослідження полягає в необхідності розроблення криміналістичної класифікації військових кримінальних правопорушень, зокрема тих, що стосуються перевищення влади чи службових повноважень військовослужбовцями керівної ланки. Це дослідження мало на меті не лише підвищити ефективність розслідувань, а й забезпечити правовий захист учасників військових правовідносин, що надає йому значущості в теоретичному та практичному контекстах. Методологічний інструментарій дослідження становили порівняльний аналіз, методи класифікації та типології, які застосовано для поділу військових кримінальних правопорушень на відповідні типи, види й підвиди, з огляду на їх юридичні та криміналістичні характеристики. Унаслідок проведеного дослідження обґрунтовано кілька ключових висновків. Ураховуючи специфіку суспільних відносин у військовій сфері, запропоновано розглядати кримінальні правопорушення проти встановленого порядку несення військової служби як окремий тип криміналістичної класифікації. Цей тип охоплює широкий сектор суспільно небезпечних діянь, що об'єднані спільними родовими ознаками. У межах зазначеного типу виокремлено групи й види правопорушень, які характеризуються специфічними ознаками залежно від об'єкта протиправного посягання. Під час класифікації видів таких правопорушень акцентовано на детально структурованій формі, що відображає специфічні особливості або умови вчинення конкретного виду дій. Виокремлюючи підвиди кримінальних правопорушень, пов'язаних із перевищенням влади чи службових повноважень військовослужбовцями, зосереджено увагу на способах їх вчинення та суспільно небезпечних наслідках. Цей підхід дав змогу системно дослідити правовий механізм вчинення військових правопорушень та їх вплив на дотримання дисципліни й законності у військовому середовищі. Отримані результати сприяють удосконаленню криміналістичної класифікації військових кримінальних правопорушень, що має важливе значення для їх ефективного розслідування та попередження

## **Ключові слова:**

кримінальні правопорушення; військова служба; методика розслідувань; криміналістична характеристика; службовий злочин; воєнний стан; бойова обстановка