

18. Про військовий обов'язок і військову службу: Закон України від 25.03.1992 р. № 2232-XII. Офіційний веб-портал Верховної Ради України. URL: <http://zakon5.rada.gov.ua/laws/show/2232-12/print1515566541222706> (дата звернення: 06.04.2018).

#### REFERENCES

1. Kryminalnyi kodeks Ukrainy: zakon Ukrainy vid 05.04.2001 r. № 2341-III [Criminal Code of Ukraine: the law of Ukraine of 05.04.2001 № 2341-III]. zakon5.rada.gov.ua. Retrieved from: <http://zakon5.rada.gov.ua/laws/show/2341-14/print1515566541222706> [in Ukrainian].
2. *Anisimov H.M., Dziuba Yu.P., Kasyniuk V.I.* ta in. (2011). Zlochyny proty vstanovlenoho poriadku nesennia viiskovoi sluzhby (viiskovi zlochyny) [Offenses against the established order of military service (war crimes)]. Kh.: Pravo [in Ukrainian].
3. Pro vnesennia zmin do Kryminalnoho kodeksu Ukrainy shchodo posylennia vidpovidalnosti za okremi viiskovi zlochyny: zakon Ukrainy vid 12.02.2015 №194-VIII (2015) [Amendments to the Criminal Code of Ukraine concerning the strengthening of liability for individual war crimes]. Vidomosti Verkhovnoi Rady. 16. St.113 [in Ukrainian].
4. Konstytutsiia Ukrainy: zakon Ukrainy vid 28.06.1996 № 254к/96-ВР (2015). [The Constitution of Ukraine]. zakon5.rada.gov.ua. Retrieved from: <http://zakon2.rada.gov.ua/laws/show/254к/96-вр>. [in Ukrainian].
5. Navrotskyi.V.O. (2013). Ukrainske kryminalne pravo. Zahalna chastyna: pidruchnyk [Ukrainian Criminal Law]. K. Yurinkom Inter [in Ukrainian].
6. *Iatsenko S.S.* (2003). Naukovo-praktychnyi komentar do Kryminalnoho kodeksu Ukrainy [Scientific and Practical Commentary of the Criminal Code of Ukraine]. K. A.S.K. [in Ukrainian].
7. *Aleksandrov Yu.V.* (2008). Kryminalne pravo Ukrainy. Osoblyva chastyna: pidruchnyk. [Criminal Law of Ukraine. Special part]. K.: Atika [in Ukrainian].
8. *Azarov D.S.* ta in. (2016). Naukovo-praktychnyi komentar do Kryminalnoho kodeksu Ukrainy [Scientific and Practical Commentary of the Criminal Code of Ukraine]. K. Yurinkom Inter [in Ukrainian].
9. *Khavroniuk M.* (1995). Viiskovi zlochyny [War crimes]. K. Ukrainska akademiia vnutrishnikh sprav [in Ukrainian].
10. *Panov M.I., Kasyniuk V.I., Kharytonov S.O.* (2006). Zlochyny proty vstanovlenoho poriadku nesennia viiskovoi sluzhby (Viiskovi zlochyny) [Offenses against the established order of military service (War crimes)]. Kharkiv. Kharkiv yurydychni [in Ukrainian].
11. *Chernyshova N.V., Volodko M.V., Khazin M.A.* (1995). Kryminalne pravo Ukrainy. [Criminal Law of Ukraine]. K. Naukova dumka [in Ukrainian].
12. *Nikolaienko T.B., Sych V.O.* (2012). Kryminalne pravo. Osoblyva chastyna [Criminal Law of Ukraine. Special part]. Khmelnytskyi: Vydavnytstvo NADPSU [in Ukrainian].
13. *Kuznetsov V.V., Savchenko A.V.* (2011). Kryminalne pravo Ukrainy [Criminal Law of Ukraine]. K. Tsentр uchbovoi literatury [in Ukrainian].
14. Navrotskyi V.O. (2000). Kryminalne pravo Ukrainy. Osoblyva chastyna [Criminal Law of Ukraine. Special part]. Kyiv. Znannia [in Ukrainian].
15. *Kharytonov S.O.* (2016). Obiekt i systema viiskovykh zlochyniv [The object and system of war crimes]. Visnyk Natsionalnoi akademii pravovykh nauk Ukrainy [Bulletin of the National Academy of Legal Sciences of Ukraine]. 3 (86). P.243-253 [in Ukrainian].
16. *Buhaev A.A.* (2001). Voynskye prestupleniya y nakazaniya [War crimes and punishments]. Odessa-Symferopol [in Ukrainian].
17. *Melnyka M.I., Khavroniuka M.I.* (Eds.). (2012). Naukovo-praktychnyi komentar Kryminalnoho kodeksu Ukrainy [Scientific and Practical Commentary of the Criminal Code of Ukraine]. K. Yurydychna dumka [in Ukrainian].
18. Pro viiskovi oboviazok i viiskovu sluzhbu: Zakon Ukrainy vid 25.03.1992 r. № 2232-XII. zakon5.rada.gov.ua. Retrieved from: <http://zakon5.rada.gov.ua/laws/show/2232-12/print1515566541222706> [in Ukrainian].

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#### CONCEPTS AND SIGNS OF WAR CRIME

Paper analyzes scientific approaches to the interpretation of the concept of a war crime, with a distinction between general and special features that determine its essence.

Adhering to the position of the integrity of the understanding of criminal responsibility, the author stated that the concept of a war crime is characterized by features that characterize it as a crime in general and is marked by special, revealing its peculiarities features. On the basis of an analysis of the current legislation on criminal liability, the most acceptable to the author seemed to be the position that the general features of a war crime are criminal wrongdoing, social danger, guilt, punishment and subjectivity. Considering special features, the object, subject and criminal (military) wrongfulness with the revealing of the essence and conditions of their existence are distinguished.

Taking into the specificity of military legal relations, it was formulated military law and order as an object of a war crime, which is a set of social relations that arise and exist in the case of military service by various categories of servicemen (military and reservists) in the course of their official or combat activity and are regulated by law of Ukraine and is a subject to protection by means of criminal legal influence.

It is proved that the peculiarity of the character of the subject of a war crime formulates the position of the definiteness of the potential of a person as a subject of a war crime for observing the conditions of staying in the system of military legal relations and affiliation of a person to the category envisaged by law. The criminal misconduct of a war crime is the certainty of its punishment as a war crime and violation of the norms of military law, which determine the procedure for military service.

On the basis of the analysis, the author's concept of a war crime is formulated, which should be understood as a crime, envisaged by section XIX of the Criminal Code of Ukraine, which violates the procedure for carrying or conducting military service established by military legislation, committed by a serviceman, as well as a person liable to military service or a reservist during the passage of their charges.

**Keywords:** the notion of military crime, general elements of a military crime, specific elements of a military crime, military, one bound to service, nonregular, military service order.

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