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Storia Militare Contemporanea



Società Italiana di Storia Militare

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The banner, shown courtesy of the Schwind Collection to Pēteris Cedrinš, is the personal banner of prince Avalov, commander of the West Volunteer Army (Западная добровольческая армия), a White Russian anti-Bolshevik and pro-German force created by Germany Gen. von der Goltz in August 1919 merging the rest of German Freikorps in the Baltic States and some Russian POWs with the Special Russian Corps raised in November 1918 by Gen. Graf Fëdor Arturovič Keller and by Cossack Gen. Pavel Bermond, later Prince Avalov, both Knights of the Russian Branch of the Sovereign Order of Saint John of Jerusalem (SOSJJ). The Corps lent allegiance to Kolchak's white government and later to a Latvian puppet government supported by Berlin, and fought against both the Bolshevik and the Latvian democratic government supported by the Entente, being disbanded in December 1919. The Banner front shows the imperial coat of arms. On the reverse, the Black Maltese Cross with Crown of Thorns memorializes General Graf Keller, murdered by the Bolsheviks

<http://www.theknightsofsaintjohn.com/History-After-Malta.htm>;

<http://www.vexilloграфия.ru/russia/beloe.htm>;

<http://lettonica.blogspot.com/2007/11/bear-slayers-day.html> (Pēteris Cedrinš, *Bear Slayer's Day*, 11 November 2007). Cedrinš posted the image of the Flag's recto on wikipedia commons.

Persons Who Commit Military Property Theft

A Legal and Social Survey in Wartime Ukraine

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ABSTRACT. The purpose of the article is to analyse the characteristics of individuals who commit military property theft while the country is at war. For nearly two years, Ukraine has been at war and for nearly nine years, the country has been under the regime of an anti-terrorist operation, later transitioning to the operation of combined forces. However, certain people's attitudes towards military property and its preservation have not changed. Thus, the article examines key issues in characterising the subject who commits military property theft and may be responsible for their actions, providing general definitions. The emphasis was on the cognition methods used and the attitudes of Ukrainian researchers towards analysing the characteristics typical of an individual who allows themselves to appropriate military property during the war. Additionally, the normative-legal framework regulating the concepts that may serve as subjects of theft crime is explored. It is argued that the specific norm under Ukraine's criminal responsibility law is chosen based on the subject matter to which the person will subsequently be held accountable. According to the general rule, only a person who has reached the age of 18 can be considered a military entity; however, the article challenges this position and suggests alternative possibilities for holding a person accountable based on age. The article also examines the issue of holding foreign military personnel accountable, which is particularly relevant for a country in a state of war. The age and

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social status of individuals committing property theft are examined using statistical indicators from the Office of the Prosecutor General from 2018 to 2022, that allowed for tracking the dynamics of changes in the commission of a specific type of criminal offence involving the theft of military property. These trends are also represented visually in diagrams. The article delves into individuals who commit administrative offences involving the misappropriation or unlawful use of military property, that is the subject of special administrative liability under Article 172-13 of Ukraine's Administrative Offences Code. Following that, data from surveys of 200 specialised prosecutor's office employees and 1073 civilians are presented. Along with these aspects, the article discusses the issue of an accomplice between military personnel and civilians and provides court decisions as examples. It also was made recommendations for increasing the accountability of individuals who commit offences involving the misappropriation of military property.

KEYWORDS: THE SUBJECT OF A CRIMINAL OFFENSE; DISPOSAL OF PROPERTY; MILITARY PERSONNEL; MILITARY PROPERTY; ABUSE.

1. Introduction

The processes of global reforming of the economic, political, and social systems, which have been actively taking place in Ukraine in recent years, inevitably affect the military environment, where alongside positive changes, corrupt phenomena associated with abuses of power and embezzlement of military property are infiltrating and spreading. At the same time, it is clear the application of criminal legislation in protecting military property from unlawful encroachments is currently far from the level required for effectively ensuring the country's and the public's interests in national security. This is also facilitated by the fact that any criminal offence committed by a serviceperson not related to disrupting the order of military service is classified as a general criminal offence rather than a crime against military service.

Given the aforementioned, special attention should be paid to the subjects of law relations in the military sphere. Scholars who have studied this issue have widely differing perspectives. Some authors classify this category as including, on the one hand, individuals performing military duties and, on the other, an undefined group of citizens who may suffer as a result of breaches in military service obligations. The country is also identified as a subject of these relations, represented by relevant bodies with a specific status and individual citizens.

When considering the existing researches on our topic, we believe it is worth

paying attention to the position of V.V. Ustymenko, who noted in his work back in 1989 that the subjects of embezzlement of military property through use of official positions are specific subjects of law, which, along with age and sanity, also possess a range of exceptional (facultative) characteristics (Ustymenko, 1989). However, the current scientific position on the concept of subjects of self-interested criminal activity involving military property is slightly different.

For example, in accordance with the above, P.A. Vorobey, in his works, considers a serviceperson the subject of a criminal offence under Article 410 of the Criminal Code. Furthermore, depending on the nature of the criminal offence and the method of acquisition, the specified actions committed by conscripts during their participation in training or special exercises must be classified under Articles 185-187, 189-191, 262, 289, 308, 312, 313, 357 of the Criminal Code (Vorobey & Grudzur, 2016).

In his monograph, another researcher, M.I. Karpenko, stated that the subjects of self-interested encroachments on military property can only be military personnel, conscripts, and reservists during their participation in gatherings - a specific subject (Vorobey & Grudzur, 2016; Karpenko, 2018).

S.O. Kharitonov also believes that the criminal offender should be a serviceperson or conscript, including military service personnel (Kharitonov & Panov, 2015). Nonetheless, he points out that, according to the current Ukrainian Criminal Code, the subject of the investigated criminal offence under Article 410 is solely a serviceperson. A conscript who commits actions specified in Article 410 of the Criminal Code bears responsibility under Articles 262, 185-191, 308, and 313 (Kharitonov & Panov, 2015).

Finally, in his dissertation research on the term 'subject', I.O. Khar pays attention to the concept of the servicer (Khar, 2017). The term 'servicer' is defined in the Ukrainian language dictionary as any individual engaged in any form of service involving intellectual or physical labour related not to production but to the provision of service to someone or something. This also includes individuals who fulfil their constitutional duty to defend the Homeland, independence, and territorial integrity of Ukraine. A servicer's service entails a specific duty related to a position, work, or occupation as a source of income (Busel, 2001).

Analysis of the provided views has allowed us to identify a general position, which entails considering both individuals and legal entities as legal subjects en-

dowed with specific rights and responsibilities. On the other hand, including an undefined group of individuals as subjects of legal relations who may suffer as a result of being unable to fulfil military servicepersons' of their duties is unjustified, given that social relations are intended to regulate interactions among a very specific group of individuals.

Let's try to comment on the attitude of workers in special military service units towards military personnel stealing military property. For example, John Strong, an FBI special agent in North Carolina, notes that former soldiers have used their positions as government officials to steal supplies and equipment for personal financial gain. Such violations not only cost valuable army resources but also impact taxpayers. The FBI will continue to work with its investigation partners to combat this corruption (Military Justice Attorneys, 2023).

The same viewpoint is shared by the Responsible Special Agent of the Defence Criminal Investigative Service (DCIS), John F. Hinn, Southeast Field Office, who stated that an officer who stole essential supplies and equipment from their unit for personal gain betrayed their trust, military code of conduct, and their comrades in service. Corruption and theft on such a large scale undermine the Department of Defence's integrity, waste precious money from American taxpayers, and seriously impair soldiers' ability to perform military operations (Stratonov, 2023).

The subject of a criminal offence – the unlawful theft of military property committed by military personnel using their official position - is, according to the general rule, a mandatory component of the criminal offence's composition. The prevailing view in the science of criminal law is that the subject of a criminal offence in real life is always an individual person (a physical human) who has not only the mandatory (specified by law) characteristics but also other qualities that may have specific criminal-legal significance. This includes biological and social characteristics such as gender (which will likely lose its meaning soon), health status, marital status, level of education, official position, and others that determine a person's social state.

Alongside the concept of "the subject of a criminal offence" in criminal law and criminology, there exists the notion of "offender", which reveals the individual characteristics of each subject of a criminal offence. Distinguishing these concepts, it is important to emphasize that while the characteristics of the subject of a criminal offence primarily affect determining whether a criminal offence has been committed, the data describing the offender is of significant value for the in-

dividualization of criminal responsibility, including the imposition of punishment.

According to criminal law, the subject of a criminal offence cannot be just any person but only one who has certain characteristics. These include the age established by law, reaching which enables criminal liability, and sanity. Both attributes ensure the ability of an individual who has committed an action dangerous to society to be recognized as guilty of committing a criminal offence and to bear the legally established responsibility. These are the general features that identify a subject of a criminal offence.

The characteristic mentioned in the Constitution, in particular, indicates that a military serviceperson as a subject of a criminal offence is an individual who has committed a socially dangerous act against the order of performing military duties, specifically their presence in military service.

Following Articles 1 and 2 of Ukraine's Law "On Military Duty and Military Service", military service in the Armed Forces of Ukraine and other military formations, as well as special purpose law enforcement agencies and the Country's Special Transport Service, which are filled by military personnel, constitutes a special type of state service. It entails a professional activity related to Ukraine's defence, suitable for Ukrainian citizens, foreigners, and persons without citizenship, in terms of health and age.

According to the Law of Ukraine "On Military Duty and Military Service", there are the following types of military service:

1. conscript military service;
2. conscript military service during mobilisation or special periods;
3. contract military service for enlisted personnel;
4. contract military service for non-commissioned officers and warrant officers;
5. military service (training) for cadets from higher military educational institutions, as well as higher education institutions with military institutes, faculties of military training, departments of military training, and military training divisions;
6. contract military service for officer personnel;
7. officers are drafted into the military (Verkhovna Rada of Ukraine, 1992).

In accordance with Article 401 of the Criminal Code of Ukraine, being a military serviceperson is a mandatory characteristic of criminal offences specified in

Section XX “Criminal Offenses against the Established Order of Military Service (Military Criminal Offenses)”. In this regard, we would like to remind you that a conscript cannot be a subject of a criminal offence under Article 410 of the Criminal Code of Ukraine, which states explicitly that only military service is included. A conscript who commits actions during training, as defined in Article 410 of the Criminal Code of Ukraine, will be held accountable based on the nature of the criminal offence under Articles 185–191, 262, 308, 313 etc. Therefore, the subject of the criminal offence specified in paragraphs 2–4 of Article 410 of the Criminal Code of Ukraine is only military service personnel who abuses their official position. The concept of military service personnel, mentioned in paragraph 2 of Article 410 of the Criminal Code of Ukraine, is also included in paragraph 1 of the note to Article 425 of the Criminal Code of Ukraine.

Military commanders, leaders of military formations, units, establishments, commanders of subdivisions, heads of departments, directions, divisions, squads, and faculties, and other analogous positions in the Armed Forces and similar military structures who permanently or temporarily hold positions, related to the performance of organisational and administrative duties, are frequently found in the military services. Furthermore, military officers are often prosecutors, military investigators who are not division heads, operational and investigative subdivision employees, operative and some other Armed Forces subdivisions etc., who perform organisational and administrative duties (Khavronyuk, 2019). It is also important to note that there is a category of military officials, which includes military service personnel, who hold positions related to administrative and managerial duties on a permanent or temporary basis.

Military property managers can be officers and warrant officers who deal with food, material, and financial aspects of military units and similar roles. Property preservation positions are not always held by military personnel; for instance, quartermasters, storekeepers, and other individuals whose property management actions are factual rather than legal in character are not included. In cases of unlawful appropriation of military property, their actions will be classified as crimes committed not by official personnel under Part 2 of Article 410 of the Criminal Code but as illegal appropriation or misappropriation of military property or violation of duties related to property protection under the general rule of Part 1 of Article 410 of the Criminal Code of Ukraine.

Individuals temporarily performing property management duties or engaged

in organisational, administrative, and managerial functions are also considered military personnel. For example, there is no mention of military personnel holding positions solely related to specific duties within military units and establishments in Note 1 to Article 425 of the Criminal Code of Ukraine. Therefore, a serviceperson's temporary assignment to another public authority should be interpreted as a special mandate from competent command to carry out certain duties in the interest of the country beyond the military establishment. Meanwhile, individuals serving in disciplinary battalions are not considered military personnel as they are rank-and-file. According to Article 410 of the Criminal Code of Ukraine, the perpetrator of military property theft through abuse of military office can only be a military official; however, co-perpetrator and other participants can include both military officials and a military service, as well as civilians with or without official status (Khavronyuk, 2019).

In accordance with Article 19 of Ukraine's Criminal Code, a person who was in a state of non-imputability or was unable to comprehend or control their actions (inaction) during the commission of a socially dangerous act stipulated by this Code due to chronic mental illness, a temporary disorder of mental activity, confusion, or other pathological mental condition, shall not be subject to criminal sanity (Verkhovna Rada of Ukraine, 2001). Thus, criminal sanity is an inherent characteristic of a subject of a criminal offence in any criminal violation and is especially required for any military official who is a specific subject under Part 2 of Article 18 of Ukraine's Criminal Code.

At the same time, the issue of non-imputability is rarely raised in cases of theft of military property using official positions.

2. Materials and Methods

The research methodology for the topic primarily includes formal-logical and systematic approaches, which are used to conduct an analysis of the standpoints of various Ukrainian scholars. These methods were also applied to the research of legislative regulation at the constitutional and other normative legal levels. The comparative legal method is used to examine legislation in a range of areas of Ukrainian law, including constitutional, administrative, and criminal law. The main methods used in the article are statistical and empirical, with which crime indicators related to individuals who committed criminal offences, including

quantitative and qualitative aspects such as age, education, and position, were analysed. The empirical method was used to conduct a survey of specialized prosecutor's office employees and civilians regarding their attitudes towards embezzlement and the reasons for committing the criminal offense.

3. *Results*

According to statistics, senior officer personnel committed more than 28.8% of military property thefts in 2021. That is, it is not addressing regular military personnel, but rather individuals with "major" or higher military ranks.

As per the scheduled protocol for recruitment and, subsequently, at intervals of every six months, officers need to undergo a military medical assessment to ascertain their suitability for military duty, including their mental state. Consequently, it is necessary to identify individuals who exhibit characteristics associated with the illegal misappropriation and theft of military property at this stage.

It is evident that allowing individuals who are mentally and physically unfit for military service to perform military duties is contrary to the interests of both the country and its military forces (Rediger, 1982). To regulate this, the Ministry of Defence of Ukraine issued Order No. 402 on August 14, 2008, which approved the Regulations on Military Medical Examination in the Armed Forces of Ukraine. This document determines the suitability of military conscripts for various types of military service during specific time periods, whether in peacetime or wartime (Ministry of Defence of Ukraine, 2008). However, it is clear that listed measures will not solve the problem of theft of military property completely.

Responsibility for criminal offences committed by military personnel, according to Article 18 of the Criminal Code of Ukraine, begins at the age of 16. Part 2 of Article 18, on the other hand, considers specific subjects and focuses on specific characteristics of military personnel, one of which is age: individuals can only serve in military formations once they reach the age of 18. Thus, while the general rule states that criminal responsibility begins at the age of 16, some scholars believe that subjects of certain criminal offences (related to official duties) may only be individuals over 16.

As a result of the abovementioned, numerous questions arise regarding the age at which criminal liability can arise under Article 410 of Ukraine's Criminal Code. After all, liability for a corruption-related criminal offence can arise only

if the individual has administrative and managerial functions, which are unlikely to be entrusted to anyone under the age of 18, let alone someone under the age of 16. However, let's examine the following scenario: a cadet at a military academy is entrusted with responsibilities such as managing uniforms or having access to storage and then steals military items. The question of his or her criminal responsibility under Part 1 of Article 410 of the Ukrainian Criminal Code arises.

In general, citizens aged 18 to 27 are conscripted for compulsory military service under Ukraine's Law No. 2232-XII "On Military Duty and Military Service", enacted on March 25, 1992. Contract military service is available to Ukrainians, foreigners, and persons without citizenship aged 18 to 40. Individuals between the ages of 17 and 30 are admitted for military service to higher military educational institutions, including those who turn 17 during the year of enrolment.

Therefore, according to Ukrainian law, a person who is 16 years old and will turn 17 by December 31st can be a military serviceperson, but only after enrolling, which can take place from July to December 31st. A 16-year-old person is considered a serviceperson and can be subject to criminal liability in criminal offences related to the abduction of military property.

According to Part 2 of Article 22 of the Criminal Code of Ukraine, a person who commits theft (Article 185, Article 186, Article 187) can be a 14-year-old individual. So, if a 17-year-old steals from the inventory (military property) in secret, they should be held accountable under Criminal Code Article 185. If, on the other hand, that person is a cadet of a military educational institution, then Part 1 of Article 410 of Ukraine's Criminal Code should be applied.

Case: 521/10256/22, dated February 24, 2023, is an example of such a decision. The Malinovsky District Court of Odesa heard the case of INDIVIDUAL_6 in an open court session for committing criminal offences outlined in Part 4 of Article 410 and Part 1 of Article 263 of Ukraine's Criminal Code. The accused, INDIVIDUAL_6, is a military lyceum cadet, born in the village of Vasilinove, Vaselinivsky district of Mykolaiv region, Ukraine citizen, with secondary education, unmarried, a military serviceperson in the military rank of "soldier," and has no previous convictions. On April 10, 2022, at an unspecified time, INDIVIDUAL_6 appropriated a hand grenade RGD-5 and a hand grenade F-1, issued to him for use, by concealing them in his personal belongings with the intent of further distribution. The court determined that he was acting on purpose, knowing the socially dangerous nature of his actions, anticipating their socially harmful

consequences while staying on the territory of the Lyceum, and desiring their occurrence during the country's state of martial law. Then, on April 16, 2022, INDIVIDUAL_6 unlawfully obtained the shrapnel grenade RGD-5 and the igniter UZRGM (UZGGN13371UZ4P) for it, that is an explosive device. He was acting on purpose, aware of the socially dangerous nature of his actions, and anticipating their socially dangerous consequences. Desiring the occurrence of these consequences, INDIVIDUAL_6 sold this stolen military property for 1500 hryvnias to a fellow first-year cadet, INDIVIDUAL_8, despite the grenade is an explosive device, thereby selling an explosive device without the required legal permission. INDIVIDUAL_6 was found guilty of committing criminal offences as outlined in Part 4 of Article 410 and Part 1 of Article 263 of the Criminal Code of Ukraine. The following punishments were imposed: under Part 4 of Article 410 of the Criminal Code of Ukraine, applying the provisions of Article 69 of the Criminal Code of Ukraine, 2 (two) years of imprisonment; under Part 1 of Article 263 of the Criminal Code of Ukraine, applying the provisions of Article 69 of the Criminal Code of Ukraine, he got 1 (one) year and 6 (six) months of imprisonment.

In accordance with the explanations provided in paragraph 8 of the Resolution of the Plenum of the Supreme Court of Ukraine dated October 24, 2003, No. 7 "On the Practise of Imposing Criminal Penalties by Courts", the application of a primary penalty less severe than the legally defined minimum for the specific crime, a shift towards an alternate, less stringent form of primary punishment, or the omission of obligatory supplementary penalties (stipulated in Article 69 of the Criminal Code) is only admissible under the condition that there exists multiple (at minimum two) factors, considering the perpetrator's identity, that serve to mitigate the punishment and notably diminish the gravity of the committed crime. In each such case, the court is required to specify in the verdict's motivational part which particular cases' circumstance or information about the defendant's person it considers to be factors that significantly reduce the severity of the committed crime and influence the mitigation of the punishment. The operative part should refer to Part 1 of Article 69 of the Criminal Code. It is critical to consider not only the person's purpose and motives for committing the crime, but also their role among co-perpetrators, behaviour during and after the crime, and so on (Plenum of the Supreme Court of Ukraine, 2003).

In the example considered above, based on Article 70, Part 1 of Ukraine's Criminal Code, the final punishment for INDIVIDUAL_6 was determined for the

aggregate of crimes by absorbing a less severe punishment into a more severe one, resulting in a sentence of 2 (two) years of imprisonment (Case: 521/10256/22). Thus, in this case, the court's decision supports our position that the age of criminal responsibility arises not at 18 years old but during the swearing of the oath at 16-17 years. Hence, the assertion that criminal responsibility for military criminal offences begins at the age of 18 is incorrect.

In the previous situation, we believe there is a gap in the Criminal Code of Ukraine due to the fact that Article 410 encompasses all of its sections regarding corruption-related criminal offences without exception. As a result, a 17-year-old who is not a military serviceperson may be released on probation or placed under court supervision. However, according to our legislation, a 17-year-old cadet cannot be released on probation or in any other way, as Article 45 of the Criminal Code of Ukraine and Article 75 of the Criminal Code of Ukraine prohibit the release on probation of individuals who have committed corruption-related criminal offences. Nonetheless, despite this explicit prohibition, courts continue to release individuals on probation. We had one such instance, for example. On September 6, 2021, at approximately 5:00 PM, the commander of the howitzer artillery battery of military unit NUMBER_1, Senior Lieutenant INDIVIDUAL_4, being a military serviceperson, in violation of the requirements of the legislation and regulations, clandestinely carried out an Acer Core i3 Extensa EX 2540-30LY laptop S/N: NXEFHEU03381006B13400 from the office of the commander of the howitzer artillery battery of barracks NUMBER_3, located on the territory of military unit NUMBER_1. Then he stole this military property by taking it outside the premises of military unit NUMBER_1. He committed this act with direct intent, against the interests of the armed forces service, fully aware of the socially harmful nature of his actions and foreseeing their socially hazardous consequences while pursuing personal enrichment motives, intending to steal military property without the intent of returning it, and fully aware that the Acer Core i3 Extensa EX 2540-30LY laptop S/N: NXEFHEU03381006B13400 was assigned to military unit NUMBER_1, as well as that the material responsible person for it is Senior Lieutenant INDIVIDUAL_8, the commander of the airborne assault platoon of military unit NUMBER_1. According to Article 75 of the Criminal Code of Ukraine, this INDIVIDUAL_4, INFORMATION_1 may be exempted from serving a sentence if, during a one-year probationary period, he does not commit a new crime and, in accordance with Article 76 of the Criminal

Code of Ukraine, he fulfils his duties assigned by the court, including not leaving the territory of Ukraine without the consent of the authorised body responsible for probation (during the period of military service of the commander of the military unit) (Case Number 725/1747/23).

Our investigation into the age of the subject of criminal responsibility for military property theft will be incomplete if we focus solely on the minimum prescribed age and do not attempt to determine the maximum prescribed age.

In general, the maximum duration of military service varies depending on the category of service: 1) Conscripted servicemen must serve for 28 years; 2) Enlisted personnel, sergeants, warrant officers, and junior officers must work for 45 years; 3) For senior officers it takes: for the majors (captains of the third rank), lieutenant colonels (captains of the second rank) – 50 years, and colonels (captains of the first rank) – 55 years; 4) Finally, senior officers of the highest rank have to serve for 60 years (Kharitonov, 2018).

In addition, military service members whose contracts have expired and who have reached a certain age of service can choose to stay in upon the conclusion of a new contract for a period of up to 5 years; however, officers of the Armed Forces of Ukraine and other military formations who have advanced professional training and practical work experience in their positions, and who have been deemed fit for military service by the military-medical commission due to their health condition, can be allowed to stay in military service beyond the maximum age by 5 years by the Ministry of Defence of Ukraine and the higher command of other military formations on their request; therefore, individuals up to the age of 65 are predominantly, though not always, to be the subjects of military legal relations (Verkhovna Rada of Ukraine, 1992)

Further, individuals who engage in the theft of military property using their military service position can also be citizens undergoing military training. On the other hand, recognising foreign citizens serving in military units under international agreements as subjects of criminal offences against military service is still debatable. It is known that foreigners and individuals without citizenship can be enlisted in the Ukrainian Armed Forces if they only have no prior convictions. Another limitation for this category of individuals is a controversial legality of their presence on Ukrainian territory (Verkhovna Rada of Ukraine, 1992)

The age criterion we discussed above for recognising an individual as a sub-

ject of law relations in the military sphere in cases of unlawful military property theft by military service personnel using their official position, in our opinion, should be considered in conjunction with a range of other specific criteria (characteristics). These characteristics can be classified in relation to military service and service with an official position. Therefore, in order to identify a person as a suspect in a theft of military property by abusing position, it is critical to determine if this person is in military service (i.e. they has the status of a military serviceperson).

According to the judicial authority of Ukraine's statistics from 2019 to 2022, a total of 76 individuals were convicted under Article 410 within 4 years. All 76 of them are Ukrainian citizens, with 19 being part of a group. Among them, there are 24 individuals aged 18 to 25, 19 between the ages of 25 and 30, 27 from 30 to 50, and 6 are in age between 50 to 65.

An analysis of statistical indicators regarding the occupations of the convicted individuals at the time of committing the criminal offence specified in Article 410 of the Ukrainian Criminal Code was conducted. 70 of the 76 convicted individuals were a military serviceperson, one was a worker, one was a pensioner, and four were able to work individuals who were neither employed nor studying at the time of the crime. In terms of a characterization of the subject of the criminal offence, their education at the time of committing the criminal offence was as follows: higher education - 19 individuals, basic higher education - 3 individuals, vocational-technical education - 24 individuals, complete secondary education - 21 individuals, and basic secondary education - 9 individuals. Meanwhile, the following information about prior convictions appears: At the time of the crime, two people had expunged or extinguished convictions, and three individuals had unextinguished convictions. All three of these individuals had prior convictions even earlier; in two cases, the convictions were for property crimes, and in one case, – for drug trafficking. Additionally, one person was exempted from punishment due to amnesty, and another committed a criminal offence under Article 410 of Ukraine's Criminal Code while on probation (Judicial Authority of Ukraine, 2022). Diagrams depicting statistics over the years provide more detailed information.

Preliminary conclusions about the subject of a criminal offence can be drawn based on the statistics provided. It has been discovered that 92% of all criminals are military servicemembers. Only 4% had a prior criminal record, with 2.6% involved with property-related crimes and 1.4% related to narcotic drugs, psychotropic substances, and analogue trafficking (fig.1).

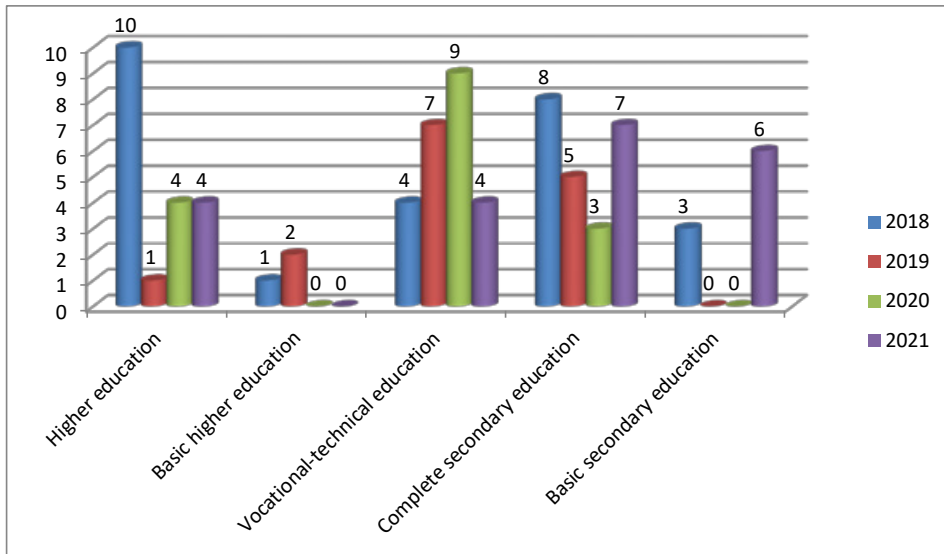


Figure 1. The data concerning the educational background of individuals who have committed a criminal offence is outlined in Article 410 of the Criminal Code of Ukraine with-in the period spanning from 2018 to 2022

When considering the count of individuals who engaged in the crime outlined in Article 410 of the Criminal Code of Ukraine, the results are significantly unfavourable. Within the overall occurrences of criminal infractions according to Article 410 of the Criminal Code of Ukraine, during 2018 - 100%, in 2019 - 93.3%, throughout 2020 - 93.75%, and in 2021 - 100%, the responsible parties were identified as military personnel (fig. 2).

Here are some instances from court practise. On April 7, 2022, the Ordzhonikidzevsky District Court of Zaporizhzhia city held an open court session to hear a criminal proceeding, case number 42022081370000034. The case involved the accusation of INDIVIDUAL_4, INFORMATION_1, a resident of Poliakhova village in Teofipol district of Khmelnytskyi region, Ukraine, with higher education, unmarried, serving as the deputy commander of the first patrol squad for personnel management in the first patrol battalion of military unit NUMBER_1

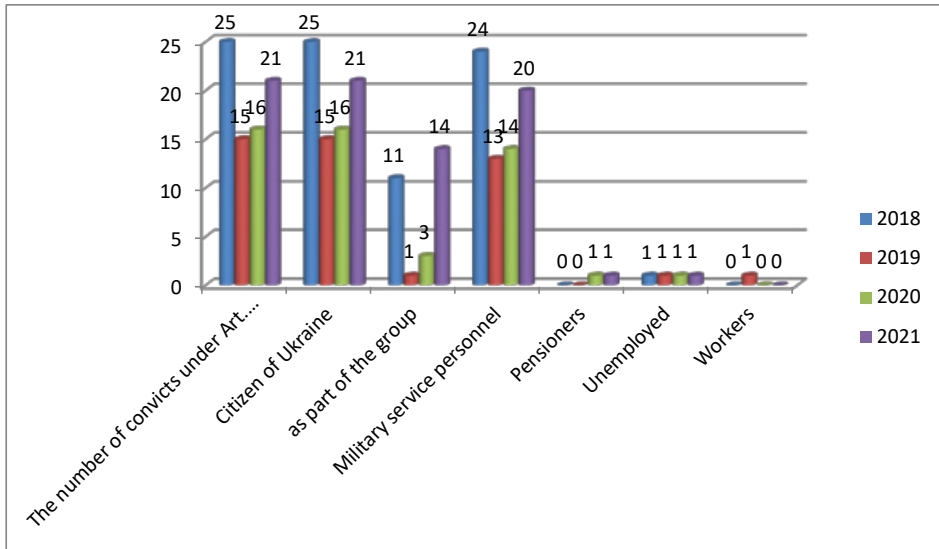


Figure 2. Information on subject of criminal offence committed under Art. 410 of the Criminal Code of Ukraine from 2018 to 2022

of the Ukrainian National Guard, with the rank of senior lieutenant, and with no prior convictions. During the afternoon of March 2, 2022 (with the specific time not precisely determined), INDIVIDUAL_4 committed the theft of a firearm – specifically, a Makarov 9 mm pistol with the serial number LU 5100, produced in the year 1974. This firearm had an assessed value of 349.00 hryvnias and had been allocated to a military member of military unit NUMBER_1 belonging to the National Guard of Ukraine. This individual held the position of the first patrol squad’s commander within the first patrol battalion of unit NUMBER_2, which operated under the Odesa Regional Directorate of the State Border Guard Service of Ukraine. In addition to the pistol, INDIVIDUAL_4 stole 16 rounds of 9mm ammunition for the it, amounting to a total value of 99.20 hryvnias. This ammunition was part of the inventory controlled by military unit NUMBER_1 of the National Guard of Ukraine. After that, INDIVIDUAL_4 hid it in a desk in office number 402, located on the 4th floor of the Zaporizhzhia Regional State Administration, intending to use it at his discretion. Thus, INDIVIDUAL_4 committed a criminal offence, as defined in Part 4 of Article 410 of the Criminal Code, namely the theft of weapons and ammunition by a military serviceperson while in a state of war. INDIVIDUAL_4 was recognized guilty of committing this criminal offence, according to the definition of Part 4 of Article 410 of the Criminal Code of

Ukraine. Using Part 1 of Article 69 of the Criminal Code of Ukraine, he was sentenced to 5 (five) years in prison with probation under Article 75 of the Criminal Code of Ukraine (Case Number 335/2010/22).

We propose to examine another case, 607/1764/21, investigation number 1-kp/607/262/2022. The subject of criminal responsibility for military property theft is a city Lutsk native, a Ukrainian citizen with secondary education, not married, has one minor child under care, is unemployed due to Article 89 of Ukraine's Criminal Code, and has no previous convictions. Having authoritative powers, being a military serviceperson, and serving in the military under a contract as the chief of communication - the commander of the communication platoon in the military unit, realising the socially harmful nature of his actions, anticipating their socially hazardous consequences, and desiring their occurrence, motivated by a selfish motive of enrichment through the use of another's property and having unrestricted access to the communication platoon in the military unit during a specific period, in December 2019 (with a more precise date and time not determined by pre-trial investigation), took military property worth a total of 286,939.74 hryvnias outside the military unit. This collection of property encompassed a set of 12 specialized handheld radio devices branded as "Motorola DP 4400," each marked with unique serial numbers: 807TVD6463, 807TVD8140, 807TVD0905, 807TVD6904, 807TUZM030, 807TUZ7456, 807TUZL839, 807TUZL897, 807TUZL571, 807TUZL709, 807TUZL515, 807TUZL416. These radio units were assessed at a value of 17,572.80 hryvnias each. Moreover, he took 3 units of specialized portable radio stations designated as "Motorola DP 4800," each identified by serial numbers: 871TVHR233, 871TVHR181, and 871TVHR793. The individual valuation of these radio stations was 19,915.38 hryvnias per unit. Additionally, among the stolen property was a solitary unit of computer hardware, specifically a Dell Vostro 3581 laptop equipped with software bearing the serial number 91FPDX2, and appraised at 16,320 hryvnias. Subsequently, the individual used these items at his own discretion (Smokov et al., 2022).

During the hearing at the Ternopil City District Court, the accused INDIVIDUAL_4 refused to admit guilt to the criminal offence charged against him under Part 3 of Article 410 of the Ukrainian Criminal Code. The court was informed that in 2019, INDIVIDUAL_4 was serving in the military as the chief of communications and commander of the communication platoon in military unit NUM-

BER_1. He was in charge unit's property, which included a laptop and radio stations provided for the unit's use. The mentioned items were kept in a room in the unit's headquarters' basement, accessible through an entrance where the duty officer was stationed. INDIVIDUAL_4 was found guilty of the crime outlined in Part 3 of Article 410 of the Ukrainian Criminal Code, and he was sentenced to 6 (six) years in prison (Case Number 607/1764/21).

In every of the mentioned case examples, it has been established that the subject is military serviceperson, where neither age nor education affects service duties but only material management instructions. However, cases of the specified criminal offence being committed by military service personnel who does not have material management functions are not excluded. The case considered by the Desnianskyi District Court of Chernihiv on April 24, 2023, under number 42022271320000149 in the Unified Register of Pre-Trial Investigations as of August 22, 2022, is an example of the latter. On July 9, 2022, around 04:00, INDIVIDUAL_4, with a complete general secondary education, while on duty as part of the shift guarding the object "Headquarters of the 'Chernihiv' Detachment" of military unit NUMBER_1, located at ADDRESS_2, being in the duty room where weapon and ammunition boxes were stored, and acting with direct intent, for-profit motives, taking advantage of the absence of any observation of his actions, secretly opened one of the boxes for storing weapons and stole an AKS-74U automatic rifle, serial number NUMBER_3, with a magazine and 30 rounds of 5.45 mm calibre ammunition. On July 10, July 16, and August 16, 2022, he repeated the same actions. The accused INDIVIDUAL_4 fully admitted his guilt in committing the incriminated criminal offence and confirmed the circumstances in the indictment during the court session, expressing genuine remorse. INDIVIDUAL_4 was found guilty under Part 4 of Article 410 of the Ukrainian Criminal Code and sentenced to ten (ten) years in prison (Case Number 750/141/23).

Thus, the primary characteristic of a military serviceperson as a subject of the investigated unlawful thefts of military property is their use of their position, which includes general, official, and specialised duties (Golovin et al., 2022).

To prove the mentioned theory, let's also examine the subject of an administrative offence under Article 172¹³ of the Code of Ukraine on Administrative Offenses: "Abuse of Power or Official Position by a Military Serviceman". According to the provision's content, it addresses "illegal use of vehicles, structures,

or other military property by a military service personnel, employing a military service for tasks unrelated to military service, as well as other abuses of power or official position committed for personal gain or other personal interests or the interests of third parties”. The aforementioned article is very similar in its content to the Article 410 of Ukraine’s Criminal Code, which we are examining (the distinguishing features will be discussed in the article’s third section). We are especially interested in our analysis of the administrative offender, who, according to the Note, is a military serviceperson, specifically: military commanders and other military service personnel who hold permanent or temporary positions associated with the execution of organizational-administrative or administrative-economic duties or perform such duties by specific assignment of the authorised command (Verkhovna Rada of Ukraine, 1984).

According to the analysed statistics, over 4 years (from 2018 to 2022), 46 individuals in total were held administratively liable under Article 172¹³ of the Code of Ukraine on Administrative Offenses (CUAoAO). Among them, 42 were military personnel, constituting 91.3% of the total number subjected to administrative liability. Only one individual was an official, and 2 had other occupations (Judicial Authority of Ukraine, 2023) (fig.3).

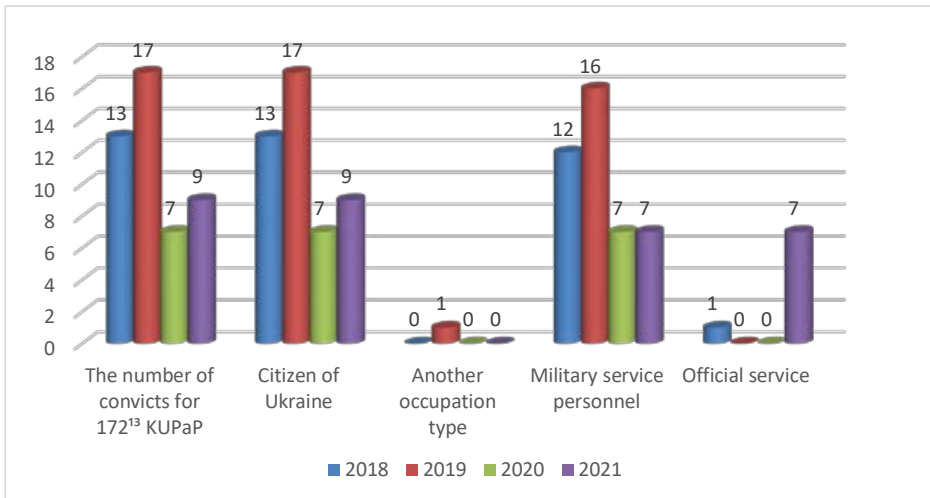


Figure 3. An information diagram for the subject of an administrative offence committed under Art. 172¹³ KUPaP “Abuse of power or official position by a military official” from 2018 to 2022

To clarify this feature, we propose defining characteristics inherent in the specialised subject of theft.

Firstly, this characteristic is an individual being in military service and having an official position, which means the performance of specific functions according to the rights, authority, and duties assigned in the Armed Forces of Ukraine or other military units and formations (Korniienko et al., 2020).

Second, it includes the individual who is permanently, temporarily, or by special authorization in a service position, and therefore, the corresponding establishment of this through regulatory documents, namely:

a) the subject's status should be regulatory formalised (by appointment order, temporary performance of duties order, inclusion in the composition of the inspecting commission, etc.). It is necessary to ensure that the person appointed to the position follows the law and carries out duties based on an act issued by an authorised person;

б) the detailed determination of the subject's specific powers and duties through regulatory acts defines both general and special duties (considering the specifics of the occupied position). They are regulated in detail by military statutes, guidelines, instructions, regulations, directives, and written orders of commanders (chiefs).

Thirdly, defining the essence of the official position or duties concerning the discussed thefts, misappropriations, embezzlements, or frauds involving military property and setting the limits of its application when qualifying under the criterion of "person using an official position". This criterion is crucial for revealing the essence of the examined unlawful takings, their proper qualification, and distinguishing them from related forms of criminal offences. Therefore, it is worth to be discussed in the third section of this study.

The characteristics of the specific subject of a criminal offence, as well as the military service personnel's status, that was listed above, as we believe, play a significant role in resolving issues of criminalization and differentiating criminal liability between general and specific subjects of military property theft.

To illustrate the above, we present the results of the survey in which 200 employees of specialised prosecution authorities, 1570 employees of territorial law enforcement agencies, 300 contract military servicemen, 186 civilian personnel of military units and institutions, and 230 citizens participated, for a total of 1073

individuals. 87 (43.5%) employees of specialised prosecution authorities, 63 (40.1%) law enforcement officers, 63 (21%) contract military service personnel, 98 (52.7%) civilian personnel, and 157 (68.3%) citizens demonstrated a preference for the legislative establishment, along with elevating the status of military servicepersons and increasing their criminal liability for criminal offences related to military property under Article 410 of Ukraine's Criminal Code. Additionally, 88.2% of military personnel believe that contract civilian personnel of military units and institutions should bear equal criminal responsibility with them for military property theft (fig. 4).

Which category of service personnel, in your opinion, commits the most large-scale theft of military property the most often?



Figure 4. The results of the survey of employees of the specialized prosecutor's office (200 people) and 1073 civilians.

In response to the question of whether criminal liability for the theft of military property should be differentiated and by which criteria, more than half (51.5%) of the employees of specialized prosecution authorities chose the criterion of differentiation based on the professional activity of the subject (i.e., the official position, financial responsibility, access to the property being stolen, etc.) out of the five proposed answer options. This criterion was also indicated by over a third (36.3%) of the surveyed law enforcement officers and by 39.4% of the citizens.

Based on the conducted research survey, it was established that over a third (38.5%) of the surveyed employees of specialized prosecution authorities experi-

enced difficulties in practice when qualifying theft of military property under the characteristic of “using their official position” (Stratonov, 2023).

In response to the question of whether the use of one’s official position should be interpreted in cases of Article 410 of the Criminal Code of Ukraine regarding the military property of their jurisdiction, justified solely by the fact of their position, 69.5% of the surveyed employees of specialised prosecution authorities responded positively. The same opinion was shared by 121 out of 157 (77%) law enforcement officers. According to 60.5% of surveyed employees of specialised prosecution authorities and 76.4% of employees of other law enforcement agencies, the actions of a person who, when committing the crime under Article 410 of the Criminal Code of Ukraine by stealing military property, has access to it due to their service, necessitate additional legal qualification (Kovalova et al., 2019).

During the survey, out of all 1073 respondents, 62.6% selected establishing priority criminal legal protection for military property by introducing special provisions, 69.4% supported the actual increases in military personnel income, 43% supported improving the effectiveness of supervisory bodies, and 16.3% chose implementing oversight by civil organizations (fig. 5).

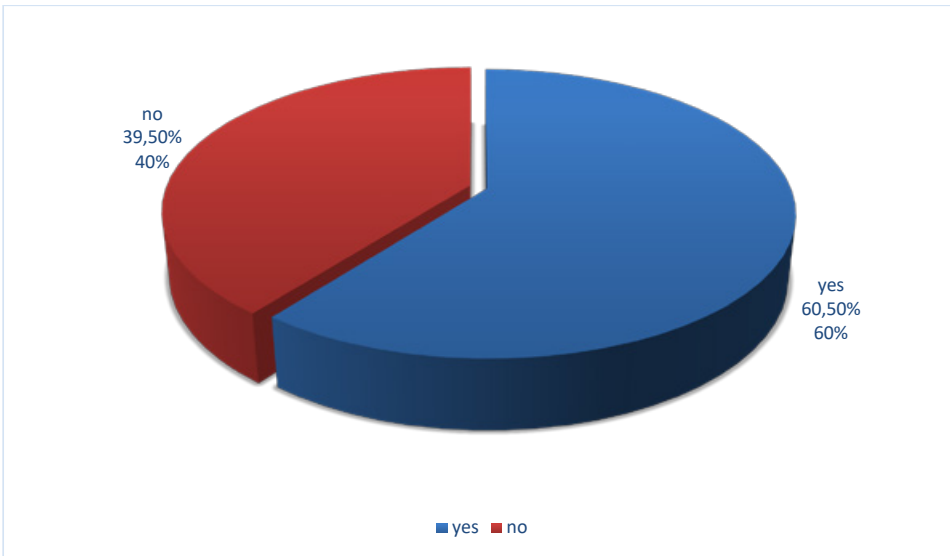


Figure 5. Do the actions of a person who commits theft of military property under Article 410 of the Criminal Code of Ukraine require additional qualification if the person has access to it due to their position?

Regarding the factors that contribute to military property theft by military personnel, 40.7% state access to it, 29% referred to a culture of impunity in the army, 43.3% pointed out inadequate protection of military property, and 39.3% mentioned a lack of oversight from supervisory bodies. One of the reasons cited by 57.6% of all respondents was an insufficient number of effective criminal legal norms to prevent violations of Article 410 of Ukraine's Criminal Code regarding military property.

According to survey data provided about the factors contributing to the commission of crimes defined in Article 410 of Ukraine's Criminal Code and protective measures for military property against unlawful encroachments, more than 60% of all respondents indicated the need for special legal norms aimed at the effective protection of military property from criminal offences in various cases of responses.

Overall, it is important to note that the data analysis from the conducted survey largely confirms the main findings of this study. The number of responses and percentage of respondents from this category are indicated in brackets opposite the proposed answer options in the samples of questionnaires below (Sobko et al., 2023).

4. Discussion

During the survey, we were able to obtain the following information that confirms our opinions. Thus, 68% of those polled believe that, in addition to raising military personnel's status, increased criminal liability for military criminal offences, particularly theft of military property, is also needed.

Similarly, 52% of civilian personnel of military units, 43.5% of employees of military prosecution authorities, 40.1% of personnel from other law enforcement agencies, and 21% of contract-based military service members share the same opinion.

It is worth noting that 88.2% of military personnel believe that civilian personnel employed by military units and establishments should bear the same criminal responsibility as them for the theft of military property.

In response to the question of whether criminal liability for the illegal theft of military property should be differentiated and by what criteria, more than half

(51.5%) of employees of specialised prosecution authorities chose the criterion of differentiation based on the subject's professional activity (i.e., based on the official position, presence of financial responsibility, the subject's ability to access the stolen property) out of the proposed 5 answer options. Over a third (36.3%) of surveyed territorial law enforcement officers and 39.4% of civilians agreed on this criterion.

This article's final topic is co-perpetratority with a specific subject. Thus, in cases of co-perpetratority in military criminal offences involving individuals who are not specified in Article 410 of Ukraine's Criminal Code, they are held accountable under the norms of Section XIX of the Special Part of the Criminal Code, according to Part 3 of Article 401 of Ukraine's Criminal Code. As a result of this provision, the legislator establishes the principle of accountability for co-perpetrators in criminal offences involving a specific subject of a criminal offence. The perpetrator of the crime specified in Article 410 of Ukraine's Criminal Code can only be a military serviceperson, while all other co-perpetrators can be civilians. As a general rule, the civilian cannot be a co-perpetrator in military criminal offences. In such cases, the military serviceperson is held responsible for the military offence, while the civilian is held accountable under general principles (criminal offences against property). However, we disagree with this rule and believe that it leads to unjustified mitigation of responsibility, particularly in terms of the subjective aspect of the criminal offence when a person realises, they are a co-perpetrator in a military crime. Furthermore, the element of "by prior conspiracy of a group of individuals" cannot be applied, which does not conform to formal logic.

In the proceedings of the Desniansky District Court of Kyiv on July 14, 2017, concerning the accusation of INDIVIDUAL_1 under Article 27, Part 2 of Article 410 of the Criminal Code of Ukraine, this individual was implicated as an accomplice in the illegal appropriation of military property by a military serviceperson through abuse of official position through fraud. The case revolved around the fact that the military serviceperson INDIVIDUAL_2, who held a position consistently associated with organisational, administrative, and economic responsibilities, with the assistance of INDIVIDUAL_1, organised the supply of beef to military units of the National Special Transport Service of Ukraine's Ministry of Infrastructure. For the meat supply, INDIVIDUAL_1 and INDIVIDUAL_2 agreed on a price of 26.50 UAH per kilogramme. Meanwhile, in a phone con-

versation, INDIVIDUAL_2 negotiated with INDIVIDUAL_1 to set an inflated price for the beef to profit from the price difference further illegally, to which INDIVIDUAL_1 agreed.

Therefore, the court classified INDIVIDUAL_1's actions as violating Article 27, Part 2 of Article 410 of the Ukrainian Criminal Code, as they got involved (as an accomplice) in the misappropriation of military property by a military serviceperson through fraud, with abuse of official position, as part of an organised group of individuals (Desniansky District Court, 2017).

However, we believe the actions should be classified under Part 2 of Article 27 and Article 410 of the Ukrainian Criminal Code, referencing co-perpetratority. We understand that this might refer to Article 29, which states that the perpetrators' actions are classified under the specific section of the Criminal Code that corresponds to the objective aspect of their actions. Thus, we propose amending Article 29 of the Criminal Code to address the actions of a co-perpetrator.

Furthermore, we propose amending Article 29 "Criminal Liability of Accomplices," in the following wording: "1. The perpetrator (a co-perpetrator) shall be subject to criminal liability under the article of the Special Part of this Code that corresponds to the criminal offence committed by them. When the crime involves a specific individual and is related to corruption, the actions of a co-perpetrator involved in the corruption offence will be classified according to the section under which the specific individual responsible for the criminal offence is prosecuted. This classification is based on their participation in the crime as a co-perpetrator, as defined in Part 2 of Article 27 of the Criminal Code". For example, the perpetrator is the specific subject under Part 2 of Article 410 of the Ukrainian Criminal Code, whereas the co-perpetrator, who is not a specific subject (official) but a civilian, is held accountable under Part 2 of Article 27 and Part 2 of Article 410 of the Ukrainian Criminal Code. As a result, the legislator will fill the gap concerning unjustified punishment mitigation".

The military serviceperson is aware that their actions are illegal as they arbitrarily confiscate and/or take possession of someone else's (military) property for their own or the benefit of others, foreseeing the inevitability of causing harm to the state (military unit) and intending to do so.

5. Conclusions

Following a study of the notion of a subject of legal relations and a comparison with the concept of a specific subject from Article 410 of Ukraine's Criminal Code, the following conclusions were drawn:

Any military serviceperson, regardless of administrative or managerial responsibilities, can be the subject of Part 1 of Article 410 of the Ukrainian Criminal Code. Accordingly, they are not considered an official, and thus Part 1 of Article 420 of the Criminal Code of Ukraine does not apply to corruption-related criminal offences. Therefore, the proposed changes to Note to Article 45 of Ukraine's Criminal Code are as follows:

Note. Corruption-related criminal offences under this Code are considered criminal offences under Articles 191, 262, 308, 312, 313, 320, 357, Part 2, 3, 4 of Article 410, when committed through abuse of official position, as well as criminal offences under Articles 210, 354, 364, 364⁻¹, 365⁻², 368-369⁻²;

A person who has reached the age of 16 is the subject of a criminal offence, but only if they are a cadet at a military academy and will reach the age of 17 by December 31 of the current year;

Age and education do not affect the commission of Article 410 of the Criminal Code of Ukraine; only the presence of material and managerial functions matters;

The conceptual framework is also problematic. Part 1 of Article 401 of the Ukrainian Criminal Code lists the criminal offences that fall under military service, namely those committed by military personnel, conscripts, and reservists during training sessions. In Part 2 of Article 410 of the Criminal Code of Ukraine, the term "military official" is used to specifically refer to an individual in a position associated with administrative and managerial functions rather than a military serviceperson. However, the legislator does not provide clarification or definitions in Article 401 of the Ukrainian Criminal Code, making it understandable only theoretically. As a result, we believe it is necessary to provide a definition of "military serviceperson" or even an alternative legislative designation, such as "military official" in the explanatory provision of Part 5 of Article 401 of the Ukrainian Criminal Code, that would significantly distinguish it from terms that sound similar.

Part 5 of Article 401 of the Ukrainian Criminal Code should be phrased as follows: "Military service personnel (military officials) are individuals who are

military servicepersons and hold permanent or temporary positions associated with the execution of administrative and managerial duties”, instead of the note to Article 425 of the Ukrainian Criminal Code;

We propose changes to Article 29 “Criminal Liability of Accomplices,” in the following wording: “1. The perpetrator (a co-perpetrator) shall be subject to criminal liability under the article of the Special Part of this Code that corresponds to the criminal offence committed by them. When the crime involves a specific individual and is related to corruption, the actions of a co-perpetrator involved in the corruption crime will be classified according to the section under which the specific individual responsible for the criminal offence is prosecuted. This classification is based on their participation in the crime as a co-perpetrator, as defined in Part 2 of Article 27 of the Criminal Code”.

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