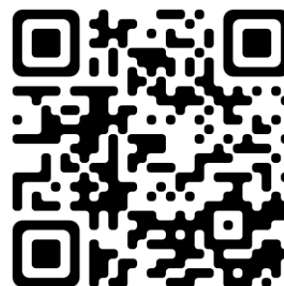




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## PROBLEMS OF DEFINING THE CONCEPT OF MILITARY PROPERTY AS THE SUBJECT OF MILITARY CRIMINAL OFFENSES

*The concept of «military property» is investigated, and several shortcomings of its normative definition are identified. Based on the analysis of the Law of Ukraine «On the legal regime of property in the Armed Forces of Ukraine,» laws of Ukraine regulating the activities and legal status of other military formations, some bylaws contradictions were revealed regarding the recognition of the military property of the National Guard of Ukraine, the Security Service of Ukraine, the State Border Guard Service of Ukraine, the State Service for Special Communication and Information Protection of Ukraine, as well as the property of the State Special Transport Service, in addition to the weapons and ammunition assigned to its units. In addition, the problem of interpretation of «the concept of «military property» is formed by the use in its normative definition of the phrase «assigned to ...», which calls into question the recognition as military property, material property, property transferred as charitable assistance, property received as a result of economic activity, «trophy» property, etc. These problems may make it difficult to apply the norms on criminal liability provided for in Articles 410–413 of the Criminal Code of Ukraine. The study also found that property may lose its military status if written off or alienated from the moment of approval or signing of the relevant official documents. At the same time, the write-off of property does not lead to the loss of its military status if, as a result of the write-off, it is transferred to another accounting category. Separate property is subject to write-off immediately after its transfer to use. Therefore,*

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*from the moment of such write-off, it loses its military status and cannot constitute the subject of criminal offenses provided for in Articles 410–413 of the Criminal Code of Ukraine. Based on the study results, we propose to introduce amendments to regulatory legal acts regulating the legal regime of military property, which would extend their effect to all military formations created under the legislation of Ukraine. Changes to the normative definition of the «military property» concept are also proposed, which consist of recognizing any property in the records of a military formation or any property that has come into the possession of such a formation.*

**Keywords:** property of the Armed Forces of Ukraine, military property, consolidation of military property, military formation, criminal liability, subject of a criminal offense, criminal legislation, qualification of criminal offenses.

**Problem statement.** Military property is the subject of criminal offenses for which liability is provided in Articles 410–413 of the Criminal Code of Ukraine. At the same time, there are grounds to assert that there is no unambiguous normative, scientific, and law enforcement understanding of this concept.

First of all, it should be noted that the content of this concept is defined in the Law of Ukraine «On the legal regime of property in the Armed Forces of Ukraine», which states that military property is state property assigned to military units, institutions, institutions and organizations of the Armed Forces of Ukraine [1]. The law includes to such property all types of weapons and combat and other equipment, ammunition, as well as food, technical, tangible, household, cultural and educational, medical, veterinary property, fuel and lubricants, communication property, technical, airfield and skipper's property, engineering and chemical property, buildings and structures [1]. At the same time, the specified law provides for the possibility of assigning to military and other types of property, from which it can be concluded that the critical criterion for recognizing military property is its attachment to the relevant entities.

In addition, the definition of this concept is also found in some other regulatory legal acts, and the content and scope of the analyzed concept are somewhat different. In particular, the resolution of the Cabinet of Ministers of Ukraine, «On approval of the procedure for the withdrawal and transfer of military property of the Armed Forces», refers to property assigned only to military units [2]. Neither institutions nor organizations of the Armed Forces of Ukraine are mentioned here.

At the same time, the Methodology for determining military losses caused to Ukraine as a result of the military aggression of the Russian Federation, on the contrary, defines a broader list of entities that can be used to secure state property. Then, such property will receive the status of military property. In addition to military units, institutions, organizations, and institutions of the Armed Forces of Ukraine, such entities can be the Ministry



of Defense of Ukraine, the Main Intelligence Directorate, the state Special Transport Service, and any other military formations formed per Ukrainian legislation.

The above demonstrates the need to determine what property, secured by which subjects, can be considered military property. In addition, the very essence of securing property must be determined, as well as the moment until which the property retains its military status.

**Analysis of recent research and publications.** Specialists from various branches of law actively studied various aspects of the concept of military property. In particular, S. Ivanov [4], V. Kisel [5], and V. Shcherbyna [6] studied the problems of the legal regime of military property. The works of O. Buhaiova [7], V. Kozadaiev [8], I. Piskun, and M. Sokolovskiy [9] are devoted to the concept and normative definition of military property. S. Riabchuk studied certain aspects of the legal regime of military property in the criminal law policy of Ukraine [10], etc.

In general, much attention was paid to the classification of military property, considering that not all property has a military purpose, the specifics of the powers of military formations regarding the property assigned to them, and the content of the right to operational management of such property. The problem of securing property for the Ministry of Defense and military Management Bodies, military associations, and formations was raised [7; 9]. The issue of acquiring military status by property was actively discussed [4; 6]. However, in the works of the listed authors, the raised issues have not been exhausted, and the problems mentioned above have not been resolved.

**The purpose** of the article is to clarify the scope of the concept of «military property» as a subject of criminal offenses, the responsibility for the commission of which is provided for by the articles of Chapter XIX of the Special Part of the Criminal Code of Ukraine, and to develop proposals for improving the regulation of the content of this concept in legislation.

**Presentation of the main research material.** As already noted, the definition of the concept of military property provided for in the law refers only to such property assigned to the Armed Forces of Ukraine. However, there are many other military formations in Ukraine.

Thus, according to Part 2 of Article 401 of the Criminal Code of Ukraine, under Article 410–413 of the Criminal Code of Ukraine, military personnel of the National Guard of Ukraine, the State Border Service of Ukraine, the Security Service of Ukraine, the State Service for Special Communications and Information Protection of Ukraine and the State Special Transport Service are also responsible [11].

The law of Ukraine «On the State Border Guard Service of Ukraine» refers only to the property assigned to the central executive authority that implements state policy in the field of State Border Protection, State Border Guard Service Bodies of Ukraine, educational institutions, and organizations of the State Border Guard Service. However, it is worth noting that in the



article devoted to the regulation of the grounds for the use of firearms, the term «military property» is used [12].

The concept of «military property» is not mentioned in the Law of Ukraine «On the National Guard of Ukraine» [13]. However, this term is widely used in the Order of writing off military property in the National Guard of Ukraine, specifying to use it in the meaning established by the law of Ukraine «On the legal regime of property in the Armed Forces of Ukraine» [14]. Accordingly, in this part, the procedure contradicts the law to which it refers, because the law clearly states about the property assigned to the Armed Forces of Ukraine, and not a word about the National Guard of Ukraine.

Article 19 of the Law of Ukraine «On the State Special Transport Service» establishes that weapons and ammunition are subject to the Law of Ukraine «On the legal regime of property in the Armed Forces of Ukraine» [15]. Therefore, we can only assume that such weapons and ammunition belong to military property. It turns out that other property of the State Special Transport Service cannot be considered a military one.

In addition, Article 22 of the Law of Ukraine «On the State Service for Special Communications and Information Protection of Ukraine» refers to property belonging to the State Service for Special Communications and Information Protection of Ukraine, although one of the Service's duties, in Article 14, specifies the definition of its own needs for military property for a special period [16]. The status of property of the Security Service of Ukraine is not regulated.

So, from the analysis of the mentioned normative legal acts, it follows that only some property of the State Special Transport Service can be considered military, and even then — only with a particular reservation. However, such a conclusion from the position of Articles 410–413 of the Criminal Code of Ukraine is illogical.

Meanwhile, the resolution of the Cabinet of Ministers of Ukraine «On approval of the regulation on the procedure for accounting, storage, write-off, and use of military property in the Armed Forces» notes that the regulation specified in the title applies to other military formations created under Ukrainian legislation, and to the State Service for Special Communications and Information Protection [17]. Although no matter how paradoxical it may sound, when defining the concept of military property, this resolution refers us to the Law of Ukraine «On the legal regime of property in the Armed Forces of Ukraine», where the scope of this concept is limited to the property assigned to the Armed Forces of Ukraine.

From the point of view of the possibility of applying criminal liability for encroachment on military property, the described situation is unacceptable because military property is the subject of relevant criminal offenses and a mandatory feature of their composition. Therefore, this concept should have a clearly defined content and scope. Otherwise, there will be an opportunity to avoid criminal liability, selective prosecution, or other abuses. In addition, if we recognize as military all the property secured by the Armed Forces of Ukraine, then it will be logical to recognize as such the property secured or in the possession of all other military formations. After all, all military formations



are more or less involved in repelling aggression against Ukraine, and the defense capability of the state as a whole depends on their combat readiness.

A relatively simple and effective solution may consist in making changes to the title and text of the Law of Ukraine «On the Legal Regime of Property in the Armed Forces of Ukraine», as well as to the titles and text of other normative legal acts, the effect of which applies or should apply to the property of all military personnel formations (primarily, we are talking about some Resolutions of the Cabinet of Ministers of Ukraine), which will consist in the use of the wording «property of the Armed Forces of Ukraine and other military formations provided for by law» in the appropriate cases.

At the same time, it is necessary to understand that only formal additions cannot be dispensed with because there are differences in the legal regime of the property of different military formations, arising, in particular, from the peculiarities of their structure and subordination. However, for the most part, such features can be considered through the adoption by the relevant departments of their regulatory legal acts.

*On securing property for military formations.* According to the regulation on the procedure for accounting, storage, write-off, and use of military property in the Armed Forces, the issuance by the Ministry of Defense of Ukraine of acts on the determination of the belonging of military property to particular military units should be considered as the attachment of military property. Based on these acts, the use of military property for its intended and functional purpose is carried out [17]. However, according to O. Melnyk, military property is diverse, which is why numerous normative legal acts regulate relations in the field of protection of military property, which contradict each other and form gaps [18]. Article 2 of the Law of Ukraine «On the legal regime of property in the Armed Forces of Ukraine» establishes that the Ministry of Defense of Ukraine assigns property to military units in cases of their formation or reformation and also decides on the redistribution of military property between military units of the Armed Forces of Ukraine [19].

It seems that this provision does not apply to the current support of the Armed Forces of Ukraine, and the Ministry of Defense of Ukraine does not decide to assign the corresponding property to military units. For example, the Armed Forces of Ukraine are provided with tangible property according to the scheme: «The Central Directorate of Material Support of the Rear Command of the Logistics Forces of the Armed Forces of Ukraine — operational command — the Joint Support Center — compound — military unit — subdivision — serviceman» [20]. Although such property is ordered centrally by the Department of State Procurement and Supply of Material Resources of the Ministry of Defense of Ukraine, it is not directly transferred to the balance of military units. After all, the legislation provides for the possibility of decentralized procurement [20].

The property can also be used in military units through the direct provision of charitable assistance. In particular, the Laws of Ukraine «On the Armed Forces of Ukraine» (Article 15), «On the National Guard of Ukraine» (Article 22), «On the State Border Service of Ukraine» (Article 27), «On the State Special Transport Service» (Article 17) provides for the possibility of



financing at the expense of non-budgetary funds. The Decree of the Cabinet of Ministers of Ukraine «On approval of the Procedure for financial provision of the needs of the national defense of the state, mobilization training, mobilization measures and the Armed Forces at the expense of charitable donations of individuals and legal entities» states that not only the Ministry of Defense but also military units, institutions and organizations of the Armed Forces of Ukraine, military educational institutions open special registration accounts at the Treasury to receive charitable donations [21]. That is, the property can go directly to military formations. In the literature, in particular, it is noted about the problems of recognizing funds belonging to military formations as military property [22].

In addition, you can recall the «captured» property.

Under the indication of consolidation in the normative definitions of the concept of military property and the normative definition of the very concept of «consolidation of property», in all the cases described, it is possible to question whether the property is military and, therefore, the very possibility of applying the norms on criminal liability for encroachment on military property. Given the above, using the phrase «assigned to ...» in the definition of «military property» seems unsuccessful.

At the same time, clause 7 of the regulation on the procedure for accounting, storage, write-off, and use of military property in the Armed Forces states that all military property is subject to accounting, regardless of the sources of receipt and intended purpose [17]. We are talking about all the property owned (in the civil and legal sense) by a military unit, institution, or organization of the Armed Forces of Ukraine. Therefore, it would be more effective to define military property as property that has entered the possession of a military formation or as property registered (accounting) of military units. Such wording is clear, and accounting documents confirm the relevant facts.

*Regarding the loss of military status by property.* According to the Law of Ukraine, «On the Legal Regime of Property in the Armed Forces of Ukraine», military property can be written off or alienated [1]. Write-off of military property can be carried out according to acts of qualitative (technical) condition, according to inspection certificates, according to acts, including unified acts of write-off. These documents give grounds for making entries in accounting documents [17]. At the same time, from the moment of approval of the relevant documents, property, if it physically continues to be in possession of a military formation, does not permanently lose its military status but instead passes into another category of accounting. This conclusion follows, in particular, from the provisions of paragraph 27 of the regulation on the procedure for accounting, storage, write-off, and use of military property in the Armed Forces. Such property can be further used for educational purposes, sorted into components, parts, aggregates, or materials for further use, or considered as scrap metal or other secondary resources [17]. In this case, the property is transferred to another accounting category, and its revaluation is carried out. Therefore, only the sale of such property terminates its status as



military, and the moment of termination of this status is the signing of relevant acts of acceptance and transfer of property.

The regulation on the procedure for accounting, storage, write-off, and use of military property in the Armed Forces also defines an exhaustive list of cases of write-off of property, and some of them should be paid attention to for a complete understanding of the scope of the concept of military property. In particular, it is specified that the property is written off in case of irrevocable transfer to ensure the movement of resistance, the use of fuel for refueling automobiles and other equipment, and small mechanized equipment for the performance of the tasks of the armed forces [17]. Certain items of property, as well as consumables such as gloves and mittens (except for fur and leather ones), socks, covers for caps, ties, uniform collars, ribbons for caps without visors, insignia, special individual earplugs, fabrics, threads, accessories, repair materials, detergents and soap, naphthalene, shoe cream, ropes, brushes for clothes and shoes are debited from the books and cards of the primary account of military units as a direct expense immediately after issuance, within the limits of established norms [20]. In such cases, obviously, the property ceases to be military from the moment of approval of the relevant documents on write-off, and from that moment it can no longer be the subject of criminal offenses, responsibility for which is provided for in Articles 410–413 of the Criminal Code of Ukraine.

**Conclusions.** Therefore, the legislative definition of the concept of military property is unsuccessful, giving rise to specific law enforcement problems and may be an obstacle to bringing military personnel to criminal responsibility for criminal offenses in Articles 410–413 of the Criminal Code of Ukraine. To solve this problem, the legislator should define the analyzed concept so that it equally covers the property of all military formations, regardless of their subordination. At the same time, adopting regulatory legal acts that would equally regulate the legal regime of property of all military formations provided by law would be favorable.

The wording «secured by ...» used in the normative definition of military property also requires replacement. Based on the study's results, it is proposed to define military property as one that has entered in possession of a military formation or is registered with a military formation.

It is established that the military property status is retained until the moment of its alienation (signing of the act-acceptance of transfer) or write-off if, according to its results, the property is not transferred to another accounting category (approval of the act of qualitative condition or the act of technical condition, inspection certificate, or the act of write-off or a single act of write-off).

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## ВОЙЦЕЩУК Артур

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### Проблеми визначення поняття військового майна як предмета військових кримінальних правопорушень

Досліджено поняття «військове майно» та встановлено низку недоліків його нормативного визначення. На основі аналізу Закону України «Про правовий режим майна у Збройних Силах України», законів України, що регулюють діяльність та правовий статус інших військових формувань, низки підзаконних нормативно-правових актів виявлено суперечності щодо визнання військовим майна, Національної гвардії України, Служби безпеки України, Державної прикордонної служби України, Державної служби спеціального зв'язку та захисту інформації України, а так само майна Державної спеціальної служби транспорту, окрім закріпленої за її підрозділами зброї та боєприпасів. Окрім цього, проблему тлумачення «поняття «військове майно» утворює вживання в його нормативному визначенні формулювання «закріплене за ...», що ставить під сумнів визнання військовим речового майна, майна переданого як благодійну допомогу, майна, одержаного внаслідок господарської діяльності, «трофейного» майна тощо. Вказані проблеми можуть утруднювати застосування норм про кримінальну відповідальність, передбачених ст.ст. 410–413 Кримінального кодексу України. У ході дослідження також встановлено, що майно може втрачати статус військового в разі його списання чи відчуження з моменту затвердження чи підписання відповідних офіційних документів. Водночас списання майна не призводить до втрати ним статусу військового, якщо за результатом списання воно



переводиться до іншої облікової категорії. Окреме майно підлягає списанню відразу після його передачі в користування, а відтак — з моменту такого списання втрачає статус військового і не може становити предмет кримінальних правопорушень, що передбачені ст.ст. 410–413 КК України. За результатами дослідження пропонується внесення змін до нормативно-правових актів, що врегулюють правовий режим військового майна, які б поширили їхню дію на всі військові формування, створені згідно із законодавством України. Також запропоновано зміни нормативного визначення поняття «військове майно», що полягають у визнанні таким будь-якого майна, що перебуває на обліку військового формування, або ж будь-якого майна, що надійшло у володіння такого формування.

**Ключові слова:** майно Збройних сил України, військове майно, закріплення військового майна, військове формування, кримінальна відповідальність, предмет кримінального правопорушення, кримінальне законодавство, кваліфікація кримінальних правопорушень.