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Forensic characteristics of exceeding authority or official powers by a military official, committed under martial law or in a combat situation

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Abstract

The relevance of the subject matter under investigation was due to the need to improve the methodology for investigating criminal offences committed by military personnel in armed conflict. This will contribute to the establishment of the rule of law by adhering to the norms of national legislation and international legal standards for conducting hostilities and ensuring the protection of the civilian population during armed conflict. The aim of the study was to form a comprehensive forensic characteristic of military personnel exceeding their authority or official powers in order to develop effective and efficient mechanisms for their investigation. The methodological toolkit of the study encompassed a complex of general scientific and special methods that ensured a comprehensive study of the causes and conditions of military personnel exceeding their authority and official powers, and also contributed to the formation of scientifically sound approaches to their investigation, including: the comparative legal method for analysing legislative norms regulating legal relations in the military sphere; the formal-logical method for clarifying legal definitions on the research topic; the context analysis method for systematic processing of scientific approaches to investigating military offences, and also the inductive method for generalising the obtained results. The main elements of the forensic characteristic of the investigated criminal offence have been identified and analysed. These elements are divided into general and special, or contextual. They include: the place, time, and period of commission the unlawful acts, the identity of the offender; the purpose, motives, and conditions that contributed to the commission of the criminal offence, the methods of implementing criminal acts (intentions), the identity of the victim, the socially dangerous consequences of the offence, the degree of their danger, and also the connection of the investigated criminal offence with actions that imply a different criminal legal qualification

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or exclude criminal liability for the committed act. The scientific significance of the obtained results lies in the improvement of the *five* as a basis for creating methodological guidelines for investigating these types of criminal offences

Keywords:

serviceman; military criminal offences; military discipline; forensic analysis; military legal relations; criminal liability

Introduction

The concept of forensic characteristics is not new in legal literature. It developed as a result of a long evolutionary process in forensic science and, in particular, its fourth section – investigative methodology. In scientific literature, it is suggested that this term was first used in 1967 by the Ukrainian forensic scientist O. Kolesnichenko (Orzhynska, 2021; Artyukhova, 2023). The relevance of the researched topic remains to this day. The main discussions around it focus on defining a unified structured approach to systematising the elements of forensic characteristics. The main reason for disagreements is the lack of unity among theorists and practitioners in formulating a single structured approach to defining the elements of forensic characteristics, as it can be analysed not only from the perspective of the name of a specific forensic doctrine but also as an integral part of the methodology for investigating criminal offences.

According to A. Volobuev (2024), this circumstance not only contributed to the development of scientific discussions but also influenced the process of teaching the academic course of forensics. In this regard, V. Zhuravel (2021) notes that different theoretical and applied approaches to defining the elements of forensic characteristics, as well as existing discrepancies in scientific views regarding their significance, negatively affect law enforcement practice. As a result, this complicates the practical application of criminal offence investigation methodology and causes ambiguity in the use of scientifically sound recommendations.

In a general sense, forensic characteristics are an abstract concept reflecting the initial data and characteristic features of specific types or groups of criminal offences, methods of their commission, concealment, likely participants in illegal activities, their motives, as well as the time, place, and other circumstances that contributed to the commission of the criminal offence, and other components or elements that have a clearly defined structure. According to V. Guseva (2019), an obligatory condition for forming the elements of forensic characteristics is the generalisation of investigative practice materials. Without this, as the scholar notes, forensic characteristics are a theoretical model devoid of applied value. She considers forensic characteristics as a system of forensically significant information about a criminal offence, formed on the basis of generalising investigative practice. This system is used to identify the features of a specific type, kind, or subtype of criminal offence, to determine the methods and means of its

investigation, and to model individual circumstances of its commission.

Despite this, forensic characteristics are based not only on applied aspects. They integrate theoretical approaches aimed at developing appropriate investigation methodologies. Through this systemic approach, new methods and techniques are formed that can be applied in practice to increase the effectiveness of the activities of authorised participants in criminal proceedings. This achieves a balance between scientific pragmatism and practical necessity, making the methodology for investigating criminal offences a useful and reliable tool for pre-trial investigation bodies.

As Yu. Chaplinska (2019) notes, the use of forensic characteristics is a necessary condition for the initial stage of investigation, especially when there is a deficit of information about the criminal offence, which serves as the basis for making a procedural decision. Thanks to stable correlational links between its individual elements, an extended analysis of available data on the mechanism of the offence can be carried out, its circumstances modelled, investigative versions put forward, and motives and likely participants identified.

However, not all elements of forensic characteristics have equal significance for every type of offence. Some of them may play a key role, while others may be entirely uncharacteristic of a particular unlawful case. That is why forensic characteristics provide a comprehensively structured approach to analysing and describing the key features of a criminal offence, increasing the effectiveness of law enforcement agencies in combating crime. Firstly, it contributes to the systematisation of forensic knowledge about different types, groups, kinds, or subtypes of offences, helping to navigate the specifics of their commission. Secondly, it facilitates the identification of traces and evidence characteristic of a particular offence, which is necessary for constructing investigative versions and putting forward hypotheses in the investigation process. Thirdly, it contributes to establishing the circumstances of the offence, including the methods, means, and motives of its commission, characterising the offender, victim, etc. And fourthly, it guides participants in criminal proceedings in forming the necessary evidentiary basis for proving the accused's guilt in court.

An analysis of modern scientific discourse gives grounds to assert that the forensic understanding of the criminal offence provided for in Article 426-1 of the

Criminal Code of Ukraine (CC of Ukraine)¹, is at the initial stage of theoretical and methodological development. Its state of affairs is due to the relative novelty of this offence within the system of military criminal violations, which, in turn, has resulted in a lack of scholarly attention and the absence of established investigative approaches.

In this context, the theoretical foundations for investigating crimes related to military personnel exceeding authority or official powers under martial law or in a combat situation remain insufficiently conceptualised. This complicates the formation of a holistic forensic methodology and the implementation of effective mechanisms to counter such offences. Scientific discourse in this area is mainly focused on researching the psychological and criminological factors of deviant behaviour of military personnel. For example, E. Pashchenko (2020) analyses approaches to defining the concept and features of violent crimes committed by representatives of military formations, particularly in the context of the armed aggression of the Russian Federation against Ukraine (Pashchenko, 2024). Among modern developments, it is also worth noting the research of S. Stetsenko (2024), who indirectly considers the forensic characteristics of a serviceman as a subject of official crimes. In addition, the works of foreign researchers, in particular Ch. Salvatore & T. Taniguchi (2021), as well as T.L. Kweilin *et al.* (2022), who focus on the psychological features of military service as a social institution capable of forming conditions that contribute to illegal behaviour, remain relevant in the scientific sphere.

Considering the above, the aim of this Article was to clarify the forensic characteristics of a military official exceeding authority or official powers committed under martial law or in a combat situation. To achieve this goal, the content of the forensic characteristics of this subtype of offence was defined, its key structural elements were identified, and their comprehensive theorisation was carried out.

Materials and Methods

The main materials used in the study were legal norms regulating liability for exceeding authority and official powers in the military sphere. These include specific provisions of Ukrainian criminal law². Norms regulating

the activities of military personnel in both national and international contexts, establishing standards of conduct, rights, and duties under martial law and in combat situations^{3,4,5,6}. Provisions detailing the procedure for performing official duties in the military sphere were also examined. Among them were laws and statutes defining internal service activities, and regulating its discipline and legality^{7,8}. This provided a regulatory basis for a better understanding of the specifics of the investigated offence and assisted in defining individual elements of its forensic characteristics.

The methodological toolkit was based on a complex of general scientific and special methods. Thus, the systemic-structural method allowed the subject of research to be considered as an ordered system encompassing information about the offence committed. Among the special methods used, the comparative legal method ensured the analysis of norms regulating the aspects of military activity under investigation. The formal-logical method facilitated the clarification of legal definitions pertaining to the subject of research. The content analysis method contributed to the study and systematisation of scientific approaches regarding the peculiarities of investigating official criminal offences in the military sphere.

In the process of forming conclusions, an inductive method was used, which made it possible to generalise the results obtained and formulate the concept of a forensic medical characterisation of a military serviceman who exceeded his authority or official powers during martial law or in a combat situation. The comprehensive application of relevant materials and methods ensured the scientific validity and reliability of the conclusions and contributed to the creation of a comprehensive forensic medical characterisation of this type of abuse of authority in the context of armed conflict.

Results and Discussion

Structural elements of the forensic characteristics of the criminal offence under investigation. In legal literature, two main periods in the development of the concept of forensic characteristics are distinguished (Bernaz, 2017). The first covers the Soviet past, which is considered foundational in its establishment. It was within this period that the modern vision of forensic

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

² Ibidem, 2001.

³ Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

⁴ Law of Ukraine No. 3543-XII "On Mobilisation Training and Mobilization". (October, 1993). Retrieved from <https://zakon.rada.gov.ua/laws/show/3543-12#Text>.

⁵ Law of Ukraine No. 389-VIII "On the Legal Regime of Martial Law". (May, 2015). Retrieved from <https://zakon.rada.gov.ua/laws/show/389-19#Text>.

⁶ Law of Ukraine No. 1932-XII "On the Defense of Ukraine". (December, 1991). Retrieved from <https://zakon.rada.gov.ua/laws/show/1932-12#Text>.

⁷ Law of Ukraine No. 551-XIV "On the Disciplinary Statute of the Armed Forces of Ukraine". (March, 1999). Retrieved from <https://zakon.rada.gov.ua/laws/show/551-14#Text>.

⁸ Law of Ukraine No. 2232-XII "On Military Duty and Military Service". (March, 1992). Retrieved from <https://zakon.rada.gov.ua/laws/show/2232-12#Text>.

characteristics was formulated as an independent legal category used to describe and systematise the key features and peculiarities of certain types of criminal offences or their classified groups. During this period, the theoretical foundations of forensic characteristics were formed, and its study was integrated into the academic course on forensics (Chernyavskiy & Yusupov, 2021).

At this stage, the main goal of forensic characteristics became the modelled-systemic analysis of information, aimed at identifying typical features and properties of criminal offences in order to develop effective methods for their investigation. Forensic characteristics are considered as an informational model that systematises the key elements of a criminal offence necessary for its detection, disclosure, investigation, and prevention (Chornyy, 2020). That is, it acts as a scientifically sound tool that provides a comprehensive approach to analysing criminal activity and contributes to increasing the effectiveness of investigative practice.

In this regard, it should be noted that military criminal offences are serious violations of the order of military service by relevant participants in military legal relations. This legal order is defined by national legislation and international acts regulating the activities of military personnel in domestic and international contexts. The subjects of military legal relations, on the one hand, are the state, and on the other, citizens of Ukraine and, in some cases, foreigners or stateless persons. The state acts as the main organiser and regulator of military legal relations, defining the legal framework for military activity, the order of military service, the rights and obligations of its participants, and also ensures the fulfilment of military duty through authorised bodies responsible for the organisation and management of military affairs.

Citizens of Ukraine undergo military service as servicemen or reservists, including during military training camps. The concept and types of military service, its beginning and end, categories of participants in military legal relations, their rights and obligations, the procedure and conditions of their selection or admission, as well as other important aspects related to military activity, are defined by separate regulatory legal acts. In essence, to answer questions regarding the exceeding of the established order of military service by participants in military legal relations, it is necessary to first analyse the subjects of these legal relations, the scope of their rights and obligations, as well as the methods and limits of their exceeding of granted powers. The seriousness of the committed offences is determined by their public danger, which manifests itself in the destabilisation of national security and the state's defence capability through violations of military discipline. That is why, as N. Dmytrenko & O. Shkuta (2022) note in their research, criminal offences against the established order of military service can formally be considered as crimes against the state.

That is, if consider military criminal offences against the established order of official duties, their subjects can only be military personnel endowed with authority or official powers (German, 2021). Features that increase the degree of public danger of such offences include not only the severity of the damage caused or the consequences incurred, but also the presence of special or contextual circumstances under which the criminal offence was committed, such as a special period, including martial law or a combat situation. These circumstances are fully justified, as the emergence of extraordinary conditions requires maximum coordination, moral stability, high responsibility, and unwavering discipline from military personnel of all ranks and positions.

This issue is particularly relevant in cases involving the activities of military commanders. Military commanders (superiors) bear increased responsibility for ensuring law and order among subordinates. They are not only the embodiment of discipline and legality but are also obliged to maintain high standards of moral and legal conduct. Their ability to organise and control the performance of official duties affects the overall state of discipline and legality in the military environment, especially in extraordinary conditions when maximum responsibility and determination in making lawful decisions are required.

Thus, the forensic characteristics of a military official exceeding authority or official powers committed under martial law or in a combat situation consist of elements that characterise: the subject of the criminal offence (a serviceman who has authority or official powers); the object of the criminal encroachment (social relations regulating the order of subordination and performance of duties in the military sphere); the motives and goals of illegal activity (use of official position to satisfy one's own needs, achieving certain results by unforeseen methods); circumstances affecting qualification (committing acts under martial law or in a combat situation); methods and means of implementing criminal intentions (specific actions that go beyond official powers, such as illegal orders, use of coercive measures, weapons, etc.); and evidence found necessary to establish the guilt of the accused (illegal orders, assignments, other instructions, regulatory and law enforcement acts, witness testimonies, video recordings from surveillance cameras, mobile communication devices, weapons, etc.). To better understand these elements, it is necessary to analyse each of them.

Place, time and period of commission of unlawful acts. This element is crucial for qualifying the offender's actions and determining their responsibility in terms of their violation of legislation regulating social relations in the military sphere. Since the subjects of military offences can only be persons who, at the time of their commission, are undergoing military service under contract, by assignment, or by conscription, as well as persons who are in reserve or military reserve and

are undergoing military training or exercises (Art. 401 CC of Ukraine¹), the place of commission of the investigated offence can be defined as an organisational-staff unit of a specific military formation, in particular, the territory of a military unit, its structural subdivisions, or other places of military service or duty.

The concept of a military unit is widely used in normative legal acts regulating social relations in the military sphere. However, in none of them is its definition concretised. An analysis of scientific and methodological sources on this matter allows a military unit to be defined as an organisational-staff, territorial entity that includes barracks, camp, or field forms of deployment in a certain area of terrain allocated for military purposes (Kisel, 2005; Shkuropatskyi, 2014). According to V. Sokurenko (2015), it is at least characterised by the presence of a security and access control regime, which is ensured by a guard, detail, or other forms, methods, and means in accordance with the requirements established by the commander or higher command. For example, in the context of the navy, a vessel can be considered the territory of a military unit. In border troops, this territory includes both the area where the border unit is located and the deployment site of border outposts, etc.

By "other place of military service or duty" should be understood the actual territory where a serviceman performs their duties, as defined by the commander (superior) or higher command. That is, the place where a serviceman performs their duties is not limited to the territory of a military unit. Military leadership can designate specific deployment locations for servicemen to perform assigned tasks, which constitutes the actual place of duty.

This issue becomes relevant when servicemen perform their duties under a special period of martial law or in a combat situation. The definition of "special period" has a clear legislative definition that is interconnected with categories such as mobilisation, demobilisation, and martial law². However, there is no need to reproduce already well-known aspects. The main goal in this part of the study is to clarify the essence, content, and meaning of martial law in the context of a military official exceeding authority or granted powers. In view of this, analysing the concept of martial law³, attention is drawn to the term "legal regime". In scientific literature, this category is interpreted as a system of legal norms and mechanisms that define the order and conditions of functioning of individual subjects of social relations in clearly defined cases (Vakaryuk, 2016; Kovalenko, 2019). In other words, it refers to a set of rules

of conduct, rights and obligations, and restrictions for certain categories of subjects within relevant legal relations and/or types of activities.

The classification of legal regimes is carried out according to various criteria, but in a general context, special and extraordinary legal regimes can be distinguished. They differ in terms of their intended use, field of application and level of restrictions imposed. For example, special legal regimes may be applied in individual cases to ensure certain types of activities that require increased control and security (passport regime, customs regime, detention regime, internal regulations, etc.).

At the same time, the introduction of extraordinary legal regimes occurs exclusively in conditions of emergency circumstances that pose a threat to security, public order, the system of state administration, sovereignty, and/or territorial integrity of the state. The scale of such regimes is determined by the nature and consequences of the relevant circumstances, which determines their application both throughout the country and in a separate part of it. During periods of emergency legal regimes, the legal status of individuals and legal entities is subject to increased regulation through the introduction of additional restrictions. This approach is due to the need for prompt, large-scale, and effective response to crisis situations that require increased impact and control. That is why the key reason for introducing an extraordinary legal regime is extraordinary circumstances that pose a threat to national security, public order, health of citizens, the population, or disrupt the balance of the normal functioning of the environment. This refers to situations where the usual conditions for the functioning of the state are violated as a result of accidents, catastrophes, natural disasters, dangerous events of an unconstitutional nature, or other destabilising social and/or military factors. As a result of the interaction of such circumstances, extraordinary conditions are formed, necessitating the introduction of a state of emergency or martial law (Kostiuk & Sakovskyi, 2024).

In a general sense, a state of emergency is an exceptional measure introduced to eliminate the consequences of emergency circumstances caused by certain events, in order to normalise the socio-political life of the country, including restoring law and order⁴. Since achieving these goals through ordinary mechanisms (methods) of public administration is extremely difficult, depending on the nature of the emergency circumstances, special legal regimes are temporarily established – a state of emergency or martial law⁵. Such military situations arise as a result of armed aggression

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

² Law of Ukraine No. 3543-XII "On Mobilisation Training and Mobilisation". (October, 1993). Retrieved from <https://zakon.rada.gov.ua/laws/show/3543-12#Text>.

³ Law of Ukraine No. 389-VIII "On the Legal Regime of Martial Law". (May, 2015). Retrieved from <https://zakon.rada.gov.ua/laws/show/389-19#Text>.

⁴ Law of Ukraine No. 1550-III "On the Legal Regime of the State of Emergency". (March, 2000). Retrieved from <https://translate.google.com/?hl=ru&sl=en&tl=uk&text=March%202000&op=translate>.

⁵ Law of Ukraine No. 389-VIII "On the Legal Regime of Martial Law". (May, 2015). Retrieved from <https://zakon.rada.gov.ua/laws/show/389-19#Text>.

or other military events that cause serious social and infrastructural consequences, including mass casualties and disruption of state functioning. In response to these circumstances, martial law is introduced as a temporary special legal regime, the purpose of which is to implement a complex of special measures aimed at guaranteeing national security, mobilising resources, strengthening control, and effectively coordinating the actions of state authorities in responding to military threats.

In the context of studying the category “combat situation”, it is worth noting that its definition has not only legislative regulation (Art. 401 CC of Ukraine¹), but also scientific substantiation (Bondarevskii, 2013; Gurchenko, 2023). Analysing different approaches to understanding this concept, it can be concluded that a combat situation is derived from military operations. It arises as a consequence and at the same time reflects active combat operations that significantly affect the situation in the areas of hostilities. The combat situation is primarily shaped by military actions, which determine the deployment of forces, changes in strategy and tactics, interaction with the civilian population, and other relevant factors.

Obviously, in the context of military criminal offences, the legislator sought to draw a line between a military official exceeding authority or official powers under martial law outside the areas of hostilities, and similar actions committed in a combat situation, i.e., within the areas of military operations. This distinction allows for a more precise determination of qualifying circumstances that are important for the investigated criminal offence by evaluating the situation that affects the degree of public danger and the severity of the consequences caused by the serviceman’s unlawful actions.

Thus, during the investigation of criminal proceedings concerning the abuse of power or official authority by a military serviceman committed under martial law or in a combat situation, particular attention should be paid to establishing the time of the offence. In particular, two key aspects must be clarified: first, whether the military personnel was on active duty at the time of the unlawful actions, and second, what time period the offence covers. This will make it possible to determine the legality of his behaviour within the limits of his official powers, as well as to ascertain whether the suspect acted in accordance with his functional duties. The establishment of these circumstances concerns not only the suspect but also the victim, since their legal status at the time of the incident may significantly affect the legal classification of the act. In addition, the validity of the relevant legal regime at the time of the commission of the acts directly affects the classification of the offence and

the degree of responsibility. Proper correlation of the defendant’s actions with the conditions of the legal regime is a necessary prerequisite for forming an objective, balanced legal assessment and imposing a fair punishment.

The declaration of martial law or a state of emergency has a clear legal context based on constitutional provisions and special normative legal acts. They are usually accompanied by significant public resonance and informational support. At the same time, the period of military service often has an ambiguous nature, which is associated with legal uncertainty of certain categories of servicemen, especially in emergency circumstances. This issue requires detailed analysis due to possible legal conflicts or non-standard situations that may arise during the introduction of such regimes. In this context, it is necessary to analyse the duration of military service under contract, conscription, and assignment by servicemen, as well as the period of military training for reservists. It is also important to highlight the significant differences and similarities between these categories of persons regarding the beginning and end of their service.

This means that during the investigation of cases of a military official exceeding authority or official powers, pre-trial investigation bodies must have sufficient information about the participants in this criminal offence, particularly regarding their belonging to military service and the duties assigned to them. The blanket nature of Art. 426-1 CC of Ukraine², necessitates referring to normative legal acts regulating the issue of military service by relevant subjects of military legal relations. The complexity of this issue lies in the fact that the time, duration, and procedure for military service in Ukraine are regulated by various legislative acts, which depend on the type of military structures and paramilitary formations. In each of them, the specifics of military service are regulated by both general legislation and special normative legal acts that define the peculiarities of military service depending on the functional purpose and organisational structure of paramilitary formations. However, in most cases, military service falls under the general provisions of the Laws of Ukraine “On Military Duty and Military Service”³ and “On Mobilisation Training and Mobilisation”⁴. These acts actually contain fundamental provisions that define the key aspects of military service by subjects of military legal relations in Ukraine.

Identity of the offender (perpetrator). When examining a serviceman as the subject of a criminal offence under Article 426-1 of the Criminal Code of Ukraine⁵, four mandatory criteria must be highlighted. First of all,

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

² Ibidem, 2001.

³ Law of Ukraine No. 2232-XII “On Military Duty and Military Service”. (March, 1992). Retrieved from <https://zakon.rada.gov.ua/laws/show/2232-12#Text>.

⁴ Law of Ukraine No. 3543-XII “On Mobilisation Training and Mobilisation”. (October, 1993). Retrieved from <https://zakon.rada.gov.ua/laws/show/3543-12#Text>.

⁵ Criminal Code of Ukraine. (May, 2001). Retrieved from <https://zakon.rada.gov.ua/laws/show/2001-05#Text>.

the person must have the status of a military serviceman and be duly authorised as part of a military unit or military command body. Secondly, this person must hold a military position, be a serviceman, or have an equivalent status. Thirdly, this position must be provided for by the staffing table, confirming its legal status and subordination during military service. Fourthly, the person must be authorised to perform organisational-administrative or administrative-economic duties related to the leadership or organisation of military activities or administrative work of the respective military unit.

In this context, a serviceman acts as a subject of legal relations combining a number of mandatory characteristics. Firstly, their status is determined by the military position held in accordance with the requirements of military service legislation. Secondly, the powers vested in them involve the performance of tasks related to the defence of the state, its sovereignty, territorial integrity, defence, participation in combat operations, and command of military units. Thirdly, the actions of a serviceman are clearly regulated by legal norms established by military legislation and internal statutes of military formations. Fourthly, they possess specific rights and obligations assigned to the military position, which determine their functional purpose. Fifthly, in addition to legal capacity and legal competence, a serviceman must also have delictual capacity, which defines responsibility for exceeding their granted authority or official powers.

Scope of official powers of the guilty person (offender). In legal literature, “powers” usually refer to the totality of official rights and duties granted to officials or bodies for the proper performance of their assigned functions (Mayorov, 2020). In the sphere of public administration, powers encompass the rights and duties of subjects aimed at implementing their functions and tasks. In accordance with the specifics of a particular subject’s activity, the scope and limits of powers must be clearly regulated in a normative aspect, which is particularly emphasised in the provisions of the Constitution of Ukraine (Articles 6, 19)¹.

Despite the lack of a single interpretation, this term is actively used in regulatory and administrative activities and is combined with various forms of public administration, such as authoritative, delegated and self-governing powers (Kovbasyuk *et al.*, 2010). An analysis of these categories provides grounds for defining official powers as a system of rights and duties granted to officials to perform their official functions (areas of activity) within the established competence. These powers must have normative reflection, aimed at ensuring the effective functioning of state authorities, as well as the implementation of state policy tasks.

A specific type of official powers is authoritative powers. These powers are related to the ability to influence the activities and behaviour of other persons (Dem’yanova, 2023). That is why all authoritative powers are by nature official, but not all official powers have an authoritative character.

Official powers are closely related to categories such as “civil service” and “civil servant”, which are defined in Article 1 of the Law of Ukraine “On Civil Service”². An analysis of these concepts leads to the conclusion that the sphere of civil service is encompassed by the scope of official activity carried out within the granted rights and duties. That is, the functioning of the civil service must be carried out within a clearly regulated legal system that ensures compliance with official discipline, accountability, and responsibility of civil servants during the performance of their powers.

In this context, an integral part of civil service is official discipline. This circumstance also applies to servicemen and military service, where responsibility is determined by a negative assessment of their behaviour. Such behaviour is a violation of the requirements of military discipline and legality, and depending on the consequences, may lead to the application of disciplinary or criminal measures.

Military discipline is one of the key elements of the functioning of the Armed Forces of Ukraine and implies the unconditional observance by servicemen of the requirements of the Constitution of Ukraine, state laws, military statutes, and lawful orders of commanders (superiors)³. Its substantive content is based on the awareness by personnel of the duty of military service, personal responsibility for ensuring the state’s defence capability, preserving its sovereignty and territorial integrity, and adhering to the principles of fidelity to the military oath. The implementation of these requirements demands conscientious performance of functional duties by servicemen, adherence to the provisions of current legislation, and ensuring an adequate level of protection of military and state secrets.

In the context of military service, this category closely correlates with the institution of disciplinary power, which is one of the main mechanisms for maintaining law and order in military formations. Disciplinary power is exercised through the authorisation of commanders (superiors) to apply prescribed disciplinary measures against servicemen who have violated established norms and regulations of military service. In the investigation of criminal offences related to military officials exceeding authority or official powers, there is a need for a clear distinction between this disciplinary competence and general statutory measures of influence.

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

² Law of Ukraine No. 889-VIII “On Civil Service”. (December, 2015). Retrieved from <https://zakon.rada.gov.ua/laws/show/889-19#Text>.

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

Thus, disciplinary power implies the commander's functions of holding liable for violations of military discipline norms, which has a legal character and a correspondingly regulated procedure for implementation. In contrast, statutory measures of influence are a broader concept and include organisational, administrative, and educational tools aimed at ensuring a proper level of military service. A clear distinction between these categories contributes to the effective functioning of the military service management system, allows avoiding abuses of power, and creates a basis for the lawful application of means of influence within the granted powers.

Thus, official powers in the sphere of military activity are determined by a system of special normative legal acts and administrative documents, including job descriptions, functional duties, regulations, military statutes, orders, and directives that regulate the rights and duties of servicemen. In case of violation of established legal norms, servicemen may be brought to legal responsibility, which, depending on the nature of the act and its consequences, may be qualified as a criminal offence under Article 426-1 of the Criminal Code of Ukraine¹. This indicates that, from a constructive-legal point of view, the composition of the specified criminal offence covers a number of key categories, including: official and authoritative powers, requirements of military discipline, principles of legality, and the institution of disciplinary power, which includes disciplinary and statutory measures of influence. Collectively, these elements form the conceptual basis of the legal mechanism of control and responsibility in the system of military service.

Purpose, motives, and conditions contributing to the commission of a criminal offence. Although purpose and motives belong to the subjective elements of a criminal offence, they can influence the objective evaluation of the committed act. In certain cases, the purpose, motives, and circumstances that contributed to the commission of the criminal offence may be taken into account when analysing the objective side of a socially dangerous act (Komarynska, 2022). In the context of a military official exceeding authority or official powers, establishing these elements is crucial for the correct legal assessment of the investigated criminal offence, as the criminal excess can only be carried out with direct intent aimed at satisfying personal interests, illegally achieving a set goal, or consciously violating established limits of official powers to the detriment of the interests of the service, the state, or individuals.

Motives themselves are not unlawful. Their unlawfulness is determined by the behaviour of the offender, which depends on the chosen method of their implementation. The method of implementing criminal

intentions is conditioned by the offender's internal impulses to achieve a specific criminal result. In the context of military officials exceeding authority or official powers, the main purpose of this act is to achieve a specific result that corresponds to personal interests or the interests of third parties, namely: maintaining or strengthening control over subordinates through the illegal use of violence or threats; achieving personal gain due to mercenary motives, such as concealing one's own mistakes, improving one's financial situation, or satisfying personal needs; maintaining discipline or reputation through a demonstration of power or force over subordinates, often with the aim of suppressing possible resistance or forcing compliance with orders (lawful or unlawful).

In this context, two main groups of motives for the criminal offence provided for in Article 426-1 of the Criminal Code of Ukraine² can be distinguished. The first includes mercenary motives, such as the desire to obtain personal gain, hide work deficiencies, or realise other forms of individual interest (e.g., careerism or other personal interests). The second group of motives is violent and aimed at demonstrating power or suppressing or subjugating subordinates through the use of violence for various reasons, such as revenge, envy, or personal animosity.

That is, mercenary motives involve a serviceman committing actions that clearly exceed the limits of their powers with the aim of achieving personal or professional gain. This may include active actions aimed at satisfying one's own ambitions, needs, or desire for control, including increasing one's authority among subordinates, gaining advantages in the military collective, its hierarchy, gaining recognition, obtaining material benefits, etc. (Bereznyak, 2020; Brusso & Tarasenko, 2022). Violent motives involve committing actions that clearly go beyond authoritative or official powers, including the use of physical or psychological pressure on a subordinate. Such actions may serve as a means of achieving specific goals or satisfying personal ambitions (needs).

Taking into account various aspects of military activity, the conditions that contribute to the commission of the criminal offence provided for in Article 426-1 of the Criminal Code of Ukraine³, are diverse and primarily associated with organisational, socio-psychological, and systemic factors that facilitate the implementation of such actions. The main among them are those that create fertile ground for exceeding official powers and stimulate the commission of this offence. These factors include: insufficient control and oversight of military officials' activities by senior management or higher command bodies; unsettled or unclear assigned official duties and powers; low level of discipline among

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

² Ibidem, 2001.

³ Ibidem, 2001).

subordinates; excessive workload or stressful situations; existence of conflicts between management and subordinates; mercenariness; social and/or cultural factors.

Methods of implementing criminal intentions.

The methods of implementing criminal intentions during the investigated criminal offence largely depend on the sphere of defined powers. This means that specific actions that can be qualified as exceeding authority or official powers vary depending on the functions, tasks, and duties enshrined in legislative or subordinate normative legal acts, as well as in internal regulations or statutes of relevant military formations. Thus, for a proper assessment of servicemen's actions, it is important to consider a contextual analysis of the specific acts regulating their activities.

The methods of implementing criminal intentions for the investigated offence can be differentiated into two main groups. The first covers situations involving the use of violence. The second includes methods that do not involve violent actions. In each of these cases, the forms of committing the offence can be classified into several main types. Firstly, this is the application of non-statutory measures of influence, which include actions that go beyond the statutory norms of internal service. Secondly, this is the abuse of disciplinary power, which consists of the illegal use of disciplinary levers.

Forms of exceeding authority or official powers can vary depending on specific circumstances and spheres of official activity, which determine the specifics of such offences. The main ones include: the use of physical violence; the use of psychological violence; illegal disposal or use of material resources; coercion to obey orders; using official position for personal gain, exceeding granted powers; illegal application of disciplinary measures of influence; applying non-statutory measures of influence, including the use of weapons; unduly severe or unlawful punishment; illegal deprivation of rights; using disciplinary power for one's own benefit; unlawful interference in official activities; ignoring internal regulations (procedures); abuse of trust. All these forms can manifest in various combinations and vary in severity, requiring a thorough analysis for proper qualification of servicemen's actions as exceeding their authority or official powers.

Identity of the victim. The identity of the victim as an element of the forensic characteristics of a criminal offence under Article 426-1 of the Criminal Code of Ukraine¹, must be considered taking into account the peculiarities of military relations. In such cases, the victim acts as a subordinate to the offender, who holds a command or superior position. An important aspect is establishing the fact of subordination relations between the victim and the suspect. The presence of such relations can significantly complicate the evidentiary process due to possible psychological pressure from

the perpetrator on the subordinate victim or the latter's fear of potential negative consequences for reporting the committed act.

The military sphere is a hierarchical structure that implies the existence of two main forms of subordination. The first concerns relations between servicemen by military rank, the second – by official position. Thus, depending on military rank and position, some servicemen act as superiors, and others as subordinates. In cases where the nature of official relations is not defined, during joint performance of official tasks, the superior is determined by the higher position, and for equivalent positions – the higher military rank.

Similar provisions apply to the correlation of the powers of superiors regarding commanders. In the system of military legal relations, a commander is a serviceman who heads a military unit, subdivision, or other organisational-staff unit of the Armed Forces or other military formations and is responsible for its overall condition, level of combat readiness, performance of assigned tasks, as well as for the moral and psychological climate, training, and discipline of personnel. The commander is endowed with permanent administrative-executive and organisational-management powers over subordinate servicemen. At the same time, the term "superior" refers to any official who, within the scope of their functional duties, is authorised to manage other servicemen. Unlike a commander, the powers of a superior can be exercised on both a permanent and temporary basis. Thus, any serviceman who holds a higher position or has a senior military rank can act as a superior, regardless of whether they perform the functions of a unit commander (Fig. 1).

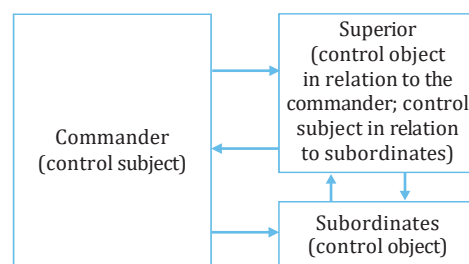


Figure 1. Schematic model of a military command and control system
Source: developed by the authors

Depending on the specifics of the organisational structure, which are determined by the tasks, position and nature of official activities, the superior may be subordinate to the commander within the hierarchical management system. Such subordination is carried out within the scope of official powers, with the commander bearing full responsibility for the effective functioning of the unit or military unit. At the same time, the

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

nature of these relations may vary depending on specific circumstances and operational needs of the service. In particular, in combat conditions, when an operational response is required, the superior may act autonomously, which illustrates the flexibility and dynamism of hierarchical relations in the military management system.

Socially dangerous consequences of the offence and the degree of their danger. An obligatory element of the forensic characteristics of the investigated criminal offence is establishing a causal link between the offender's unlawful actions and the consequences caused. This offence can have an intentional or negligent form of guilt, which is realised exclusively through active actions. The consequences, in this case, perform two important functions: they differentiate a criminal offence from a disciplinary misconduct and influence the legal qualification of the committed act.

In this context, criminal law establishes evaluative concepts such as "significant harm" and "grave consequences" (Art. 364 CC of Ukraine¹). In both cases, these negative consequences reflect the material aspect, according to which the crime is considered completed from the moment of the occurrence of the corresponding financial (material) damage within the limits and/or amounts defined by law.

It should be recognised that unlawful actions in the form of military personnel exceeding their powers may violate the rights of citizens protected by law and adversely affect state or public interests. These negative consequences can manifest not only in the form of material (property) damage but also in the form of immaterial harm, or in combination. In this context, this refers to moral harm, which manifests itself in psychological suffering or emotional stress; physical harm, which is associated with bodily injuries or other traumas; environmental harm, which arises as a result of environmental pollution; social or ideological harm, which consists in violating social norms, values, and ideals, which can lead to the disorganisation of society or loss of public trust in military or other state institutions and as a result – call into question the justice in the actions of authorities and justice, which are interdependent with such a category as the protection of citizens.

This issue gains particular attention when it comes to a commander (superior) using violence or weapons against a subordinate, or when this act is committed in a special period, including martial law and in a combat situation. In such circumstances, the exceeding of authority or official powers by a military official acquires not only new content but also a distinct resonance, as such actions can directly affect the combat readiness of the unit, the moral and psychological state of personnel, and the overall outcome of hostilities.

Unlawful actions of a commander (superior) can undermine the trust of subordinates, which is critically important in situations where cohesion and discipline are decisive factors for success on the battlefield. This highlights the need to adhere to legal norms and principles of command, especially during military operations, when any deviation from legal powers can lead to serious consequences for individual servicemen or the unit where they serve, and for the state as a whole.

The severity of these consequences requires careful evaluation, taking into account the specific circumstances of the committed act. In some cases, the use of violent methods of influence on subordinates (part 2), including the use of weapons (part 3), can lead to serious consequences in the form of physical or moral suffering. However, if such actions are committed under a special period (part 4), martial law, or during a combat situation (part 5), they are capable of causing even greater harm to both the state and its citizens, including grave consequences of a social or ideological nature that can negatively affect the country's defence capability and its national security.

In other words, the commission of any unlawful acts by a military serviceman of the leadership in a special period or combat situation can create a cascading effect, where some negative consequences become a prerequisite for the emergence of others. This can lead not only to a violation of military discipline, mass desertion, evasion of orders, and committing criminal acts for revenge, but also undermine citizens' trust in the country's military-political leadership. In a broad sense, this can cause citizens' unwillingness to participate in the country's defence, mass dismissal of professional servicemen, desertion, an increase in anti-war sentiments, etc.

Connection of the offence with socially dangerous acts that imply a different qualification or exclude liability for the committed act. In a practical sense, the connection of the investigated criminal offence with other socially dangerous acts that have a different qualification or exclude criminal liability is manifested by the characteristics of the investigated elements.

In all these aspects, the category of "combat immunity" has key importance. In Ukrainian legislation, this concept is relatively new. Its emergence was a consequence of the full-scale invasion and military actions on the territory of Ukraine, which necessitated supplementing Article 1 of the Law of Ukraine No. 1932-XII² with this term. The content of this category allows concluding that combat immunity is a legal mechanism that protects servicemen and other persons involved in performing combat tasks from criminal liability for actions committed during the performance of official duties in a combat situation.

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

² Law of Ukraine No. 1932-XII "On the Defense of Ukraine". (December, 1991). Retrieved from <https://zakon.rada.gov.ua/laws/show/1932-12#Text>.

Classifying this legal category, two main aspects can be distinguished. Firstly, from the subjective side, combat immunity covers a range of persons from among servicemen, law enforcement officers, and other subjects participating in performing tasks of national defence. Secondly, the objective aspect of combat immunity implies actions carried out within the scope of official duties that are subject to immunity, provided that they were committed within the limits of necessary defence or in conditions of extreme necessity.

This means that the relationship between combat immunity and exceeding authority or official powers is an important aspect of legal regulation. However, combat immunity is not absolute. Its application does not cover actions that go beyond official duties or are committed with an obvious intent to cause harm. That is, if a serviceman exceeds authority or official powers, the effect of combat immunity may be called into question, and such persons may be held liable if it is proven that the offender's actions do not meet the requirements of legality, proportionality, and humanity. Thus, combat immunity is important for ensuring the effectiveness of performing tasks in armed conflict, as it contributes to the proper performance of official duties without fear of being held liable, provided that legality, proportionality, and humanity are observed, including under martial law or in a combat situation.

Conclusions

The forensic characteristics of a military official exceeding authority or official powers, committed under martial law or in a combat situation, represent a system of features describing the mechanism and methods of committing the offence, as well as data that facilitate the investigation. This characteristic includes information about the offender, their motives and goals, the object of the criminal encroachment, circumstances affecting the qualification of the act, methods of committing the offence, and information that influences proper qualification.

A number of elements can be identified within the forensic characteristics of the investigated criminal offence. The first of these is the place, time, and period of the unlawful acts. This data allows for the precise establishment of the circumstances of the criminal offence, which is important for the subject of proof in terms of defining the circumstances of the criminal offence, establishing alibis, and linking the event to a specific special period. Furthermore, military actions often occur in specific conditions and in certain territories, which affects the course and effectiveness of the investigation.

The second element is the identity of the offender. Identifying the offender, including their military service status, helps to understand the context and motives of the unlawful encroachment. This is also important for identifying potential accomplices to the offence. Accordingly, the third element should be the purpose, motives,

and conditions that contributed to the commission of the criminal offence. Analysing these aspects helps to clarify the causes and circumstances that contributed to the commission of the criminal offence, which is an important condition for developing effective strategies for preventing similar cases.

The next element is the methods of committing criminal acts. Defining the methods used to commit the criminal offence helps to identify characteristic features that may be useful for investigating other similar cases. Next, the scope of the offender's official rights and duties should be identified. Understanding the limits of the offender's powers allows for precise determination of whether and how these limits were exceeded, which is critically necessary for qualifying the act under investigation. The sixth element is the identity of the victim. Information about the victim can provide additional evidence regarding the motives and methods of committing the offence and determine the extent of the harm caused.

The socially dangerous consequences of the offence and the degree of their danger are the next element, as evaluating the consequences helps to determine the gravity of the socially dangerous act and justify the necessity of applying certain legal response measures and penalties. The final element is the links of the offence to actions that imply a different qualification or exclude criminal liability. Establishing a connection with other actions that may have a different qualification or exclude criminal liability allows for a more precise determination of the legal nature of the act committed.

These elements provide a comprehensive approach to investigating military criminal offences committed under martial law or in a combat situation. They ensure a comprehensive understanding of the context, motives, and circumstances of the act committed, making them relevant for inclusion in the forensic characteristics of the criminal offence provided for in Article 426-1 of the Criminal Code of Ukraine. In the future, this will allow for the development of effective mechanisms for investigating and preventing the acts under investigation, and will also ensure a fair and justified legal response in this area of legal relations. In further research, attention should be focused on analysing initial and subsequent investigative actions during the investigation of the criminal offence under study, taking into account the methods and motives of its commission, as well as the socially dangerous consequences.

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Conflict of Interest

None.

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Криміналістична характеристика перевищення влади чи службових повноважень військовою службовою особою, вчиненого в умовах воєнного стану або бойової обстановки

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Анотація

Актуальність досліджуваної тематики зумовлена необхідністю вдосконалення методики розслідування кримінальних правопорушень, учинених військовослужбовцями в умовах збройного конфлікту. Це сприятиме утвердженню верховенства права шляхом дотримання норм національного законодавства й міжнародно-правових стандартів ведення бойових дій та забезпечення захисту цивільного населення під час збройного конфлікту. Метою дослідження було формування цілісної криміналістичної характеристики перевищення владних чи службових повноважень військовослужбовцями задля розроблення дієвих та ефективних механізмів їх розслідування. Методологічний інструментарій дослідження охоплював комплекс загальнонаукових і спеціальних методів, що забезпечили всебічне вивчення причин та умов перевищення владних і службових повноважень військовослужбовцями, а також сприяли формуванню науково обґрунтованих підходів до їх розслідування, серед них: порівняльно-правовий метод для аналізу законодавчих норм, що регулюють правовідносини у військовій сфері; формально-логічний метод для уточнення правових дефініцій за темою дослідження; метод контекст-аналізу для системного опрацювання наукових підходів до розслідування військових правопорушень, а також індуктивний метод для узагальнення отриманих результатів. Виокремлено та проаналізовано основні елементи криміналістичної характеристики досліджуваного кримінального правопорушення. Ці елементи розподілено на загальні та спеціальні, або контекстуальні. До них належать: місце, час і період вчинення протиправних дій, особа злочинця, мета, мотиви й умови, що сприяли вчиненню кримінального правопорушення, способи реалізації злочинних дій (намірів), особа потерпілого, суспільно небезпечні наслідки правопорушення, ступінь їх небезпечності, а також зв'язок досліджуваного кримінального правопорушення з діями, які передбачають іншу кримінально-правову кваліфікацію або виключають кримінальну відповідальність за вчинене. Наукова значущість отриманих результатів полягає в удосконаленні криміналістичної методики розслідування кримінальних правопорушень, що полягають у перевищенні владних або службових повноважень військовою службовою особою в особливий період воєнного стану або в умовах бойової обстановки. Ці рекомендації можуть слугувати основою для створення методичних рекомендацій щодо розслідування зазначених видів кримінальних правопорушень.

Ключові слова:

військовослужбовець; військові кримінальні правопорушення; військова дисципліна; криміналістичний аналіз; військові правовідносини; кримінальна відповідальність