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# Criteria for distinguishing looting from other crimes: A comparative analysis

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## Abstract

With the beginning of the Russian-Ukrainian war, increasingly often crimes of a general criminal nature are instead qualified by Article 432 of the Criminal Code of Ukraine, where the composition of crimes is entirely different. The purpose of this study was a comprehensive analysis of the structure of the criminal offence of looting by comparing it with other crimes, as well as formulating a unified practice of understanding and qualification in the aspect of the subject of the study. According to the set purpose of the study, a complex of scientific methods was used, namely, general scientific and special ones: the method of statistical research – to analyse and compare the dynamics of committing criminal offences related to looting; dialectical – within the framework of investigating the theory and practice of contradictions related to the incorrect qualification of looting; comparative legal – in the context of analysing the positions of other scientists regarding the understanding of the essence of looting; formal logical – when defining the legal category “looting”. It was established that the need for the correct application of the specified provision is conditioned upon such circumstances as the increase in the number of cases of looting that become known from open sources of information, which are not properly registered and not investigated by law enforcement officers, which is due to the lack of experience in working with criminal offences of such specificity and complexity of their registering in the occupied territories; the need to distinguish such crime as “looting” under Ukrainian legislation from cases of robbing civilians, their living quarters, vehicles, shops, and other infrastructure for profit and satisfying one’s personal needs. The practical significance of this study lies in the fact that the main statements and conclusions can be used in methodological recommendations for the development of an algorithm for the investigation of criminal offences related to criminally illegal actions, prescribed by Article 432 of the Criminal Code of Ukraine, and are also valuable for the subjects of criminal justice in their activities to eliminate misunderstandings and different interpretations of the current legislation revealed by practice; considered when improving the legislation aimed at the prevention and fight against this type of crime, by making corresponding amendments

## Keywords:

martial law; qualification; battlefield; military; war

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## Introduction

Since 2014, the topic of looting has gained special importance in the territory of Ukraine (International humanitarian law, 2022). The social danger of these actions began to increase substantially after the introduction of martial law. Since then, there has been an armed conflict, hostilities, and de facto war, and therefore law enforcement agencies encountered war crimes of this scale for the first time: in terms of number, mass, intensity, and characteristics. In this regard, the investigators have no experience working in conditions of war or state of emergency and with criminal offences of such specificity: there is a lack of advanced training, skills, and abilities to analyse and evaluate a considerable amount of various information.

War, war crimes, and the problem of understanding looting specifically became the subject of study by many researchers, among whom the following can be singled out.

O. Kaluzhna & K. Shunevych (2022) outlined the scope of war crimes, which are a type of international crimes, along with crimes against humanity and genocide, which Russia commits in Ukraine. In conclusion, the authors note the lack of systematization due to Ukraine's non-ratification of the Rome Statute, which significantly complicates the qualification of crimes for practicing lawyers. S. Hretsa *et al.* (2022) point to the problems of international humanitarian law caused by the loss of effectiveness of international legal regulation. The analysis of the organizational and administrative problems of the regulation of the law of war carried out in the work of the latter, proved that institutional guarantees in a military conflict also need revision.

The authors of the study investigating Russia's hybrid war in Ukraine, M. Baker *et al.* (2023), believe that looting is committed by the Russian military on the territory of Ukraine, reflecting Russian military policy, leadership, and command. O. Maltsev & I. Lopatiuk (2022), providing cases of looting, define as the subject of a criminal offence a soldier who steals something under certain circumstances.

Valuable for the subject of the study are interdisciplinary approaches to defining looting, which help clarify the essential meaning and moral dimension of looting, primarily by servicemembers of the Russian army, which they resort to en masse in temporarily occupied territories (Fil & Khoynatska 2022). The historical context of the specified issue is also important (Stiazhkina, 2022). Thus, researcher D. Hopkin (2002) mentions the emergence of looting as such in France, noting that while foreign soldiers were condemned for such actions, French soldiers were praised for their looting talent. Looting was depicted as part of a military re-education program wherein rural recruits were taught to despise their peasant origins and rob their compatriots. S. Orlyk (2022) describes the cases of looting, robbery, and banditry against the civilian population of Eastern Galicia and Northern Bukovina, which were committed during

the Great War by Russian troops and the Russian civilian occupation authorities established in the interior areas, drawing attention to their massiveness, which caused the impoverishment and famine among the local population. Researcher A. Zborowska (2021) extensively describes the cases of looting that took place after the Second World War. The author claims that the looter's internal resistance is weaker than against ordinary theft. A noteworthy study by C. Gaherity & P. Birch (2021) examines looting in the context of two examples of natural disasters, namely a tsunami and a forest fire. These scholars determine that such cases promote and create opportunities for looting and consider preventive measures that may lead to a reduction in these crimes in the future.

A. Vozniuk (2022), stating the absence of court decisions under Article 432 of the Criminal Code of Ukraine (the CCU), explains this by such a circumstance as the active civil position of the citizens of Ukraine, who demonstratively detained persons who committed thefts, calling them "marauders". Ya.H. Lyzohub (2022) provides a comparative analysis of the signs of looting under Article 432 of the CCU with some criminal offences committed against property. The researcher singles out the features of the legal structure common to all socially dangerous acts of this type, as well as specific, inherent purely to looting, which proves the relevance of the subject under study in the current conditions. Moreover, considering all factual data of a person's actions is important for the qualification of specified illegal acts such as looting. In addition, numerous attempts by scientists to analyse the controversial aspects of the legislative regulation of the qualification of looting from the experience gained during the martial law in Ukraine are known in practice (Malysheva, 2022; Movchan, 2022; Koval & Samoilenko, 2023).

In general, the correct qualification of a criminal offence serves as a precondition for the implementation of the constitutional principle of legality, and therefore the punishment for the actions of the guilty person depends on it. Given the lack of judicial practice, namely the uniform understanding and application of the correct qualification of such facts by the courts, and the insufficient number of relevant scientific studies, the importance of looting in the legal field stays relevant. The purpose of this study was to conduct a general analysis of the structure of the criminal offence under Article 432 of the CCU, by comparing it with other related crimes, as well as establishing unity regarding the understanding and qualification of this offence.

The following methods of scientific cognition were used in this paper: the method of statistical research – to analyse the number of acts of criminal offences related to looting. The dialectical method was used to investigate the practice of contradictions related to the misqualification of looting. The comparative legal method was used to analyse the works of other researchers

regarding the interpretation of the cause and purpose of looting. The formal logical method determined the legal category of the term “looting”.

### Interpretation of looting in Ukraine and foreign countries

Looting in the Oxford Dictionary is defined as the theft of things from shops or buildings after a riot, fire, etc. (Oxford Advanced..., n.d.). According to Article 48 of the Australian Defence Force Discipline Act (1982) as amended in 2007 (“Looting”)<sup>1</sup>, a person who is a member of the armed forces or a civilian is guilty of an offence if while acting against the enemy or in the course of operations carried out by the Defence Forces to maintain law and order or otherwise in aid of public authorities, it: (a) takes away any property which has been left exposed or unprotected; or (b) takes any property from the body of a person who has been killed or who has been wounded or taken prisoner; or (c) seizes any vehicles, equipment or supplies captured or abandoned by the enemy. In Article 463 (chapter 2) of the California Penal Code<sup>2</sup>, looting is defined as the use of an emergency to commit burglary, grand larceny or petit larceny.

Thanks to this, a significant public resonance is reflected in the media and official sources of state authorities, which highlight articles with headlines about the facts of the so-called “looting”: by civilians, Russian soldiers who are on the territory of Ukraine, representatives of illegal armed formations that conduct hostilities on the side of the so-called “DPR” and “LPR”, PMC (private military company) “Wagner”, namely by stealing/seizing goods from shops, or personal property from private premises. From the above information, one can conclude that for the Russian military, war serves as a means of enrichment. Thus, they considered the so-called “special operation” to clear houses as a priority task during military operations.

The given information is confirmed by a considerable number of court decisions already passed by judges of Ukraine. The analysis of the mentioned court decisions helps single out the decision of the Pecherskyi District Court of Kyiv dated September 26, 2022 (case No. 757/26018/22-k, proceedings 1-кк-24420/22), wherein it was established that the servicemen of the Russian Federation violated the provisions of international treaties, the laws and customs of war and

committed a criminal offence prescribed in Part 1 of Article 438 of the Criminal Code of Ukraine, acting for personal enrichment and realizing that there is an ongoing international armed conflict between the Russian Federation and Ukraine, independently, arbitrarily, and unhindered entered the territory of private home ownership, after which illegally took possession of someone else’s personal property. Considering the above, the latter was aware that the specified items could not be used for military purposes, their seizure was not justified by military necessity, and their possession took place exclusively for lucrative purposes<sup>3</sup>.

However, as of December 2022, according to the Unified report on criminal offences across the State of the Prosecutor General’s Office, only one crime under Article 432 of the CCU has been registered<sup>4</sup>. The legal term in Ukrainian legislation refers to the crime specified under Article 432 of the CCU to Chapter XIX<sup>5</sup>, which automatically assumes that the suspect/accused has military status. In the mentioned Article, the term “looting” is defined as “theft on the battlefield of things that are with the killed or wounded”<sup>6</sup>.

At the same time, the analysis of the content of the mentioned concept allows asserting that the interpretation prescribed in Ukrainian legislation is narrower than that presented in international treaties, such as the Rome Statute and the Geneva Convention. Specifically, the Rome Statute defines looting as taking any property without the owner’s consent for personal use. In Article 82 of this legal act<sup>7</sup>, it is noted that “war crimes” are, among other things, large-scale destruction, and appropriation of property, not justified by military necessity, which is carried out illegally and without grounds. The Convention on the Laws and Customs of Land War<sup>8</sup> notes that private property is not subject to confiscation. This phenomenon in a city or area, even if it was carried by assault, is officially prohibited.

Investigating the composition of the criminal offence of looting under the CCU, the criteria for qualifying the criminal offence as looting were identified as follows: the time, circumstances of taking possession of someone else’s property, and the clear localization of the crime scene; the subject of criminal encroachment; the person who committed this offence – a serviceperson (Murzo, 2022). In general, there are three guidelines for the correct qualification of this criminal offence:

<sup>1</sup>Law of Australia No. 152. “On Defence Force Discipline”. (1982, December). Retrieved from <https://www.legislation.gov.au/Details/C2016C00811>.

<sup>2</sup>Penal Code of US “Chapter 2. Burglary”. (1984). Retrieved from [https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=463.&lawCode=PEN](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=463.&lawCode=PEN).

<sup>3</sup>Decision of the Pechersk District Court of Kyiv No. 757/26018/22-к. (2022, September). Retrieved from <https://reyestr.court.gov.ua/Review/106536576>.

<sup>4</sup>Order of General Prosecutor’s Office of Ukraine No. 100 “On Registered Criminal Offenses and the Results of their Pre-Trial Investigation”. (n.d.). Retrieved from <https://data.gov.ua/dataset/5e034040-3b4a-4c11-86f4-2cf346a95423>.

<sup>5</sup>Criminal Code of Ukraine No. 2341-III. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

<sup>6</sup>Ibidem, 2001.

<sup>7</sup>Rome Statute of the International Criminal Court. (1998, November). Retrieved from <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>.

<sup>8</sup>IV Convention of the Verkhovna Rada of Ukraine No. 995\_222 “On the Laws and Customs of War on Land and its Annex: Provisions on the Laws and Customs of War on Land”. (1907, October). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_222#Text](https://zakon.rada.gov.ua/laws/show/995_222#Text).

1) the main immediate object of looting is the combat glory of the Armed Forces of Ukraine and the honour of a serviceman, as well as the order of observing the customs and rules of war; an additional mandatory object is property (object of a criminal offence, quantity, value, belonging to the killed or injured person). An analogous position is highlighted in the studies of some scientists (Diachuk, 2005; Melnyk & Havroniuk, 2019);

2) the objective side, which consists of actions, namely, the theft of things that are with the killed or wounded; a mandatory sign of the composition is the time, the circumstances of taking possession of someone else's property, and the clear localization of the place of the crime;

3) a person who has committed a criminal offence is a military serviceman. These criteria are listed in Table 1 below.

**Table 1.** Basic qualification issues and criteria for distinguishing looting from related criminal offences (in the Criminal Code of Ukraine)

		Article 185	Article 189	Article 191	Article 432
The structure of the criminal offence	Object	The main immediate object is ownership; <i>optional feature</i> : the subject of the criminal offence, the types and sizes of this thing – money, securities, precious stones, etc., the value of which exceeds 0.2 of the tax-free minimum income of citizens. The amount of theft of someone else's property is specified in the Note to the specified Article of the CCU. For instance, a criminal offence prescribed by Article 188-1 of the CCU ("Theft of water, electricity, or thermal energy through its arbitrary use"), since the subject of the crime must contain a physical (material) feature.	The main direct object is the right of ownership, and its additional mandatory objects are relations in the sphere of life safety, honour, dignity, mental and physical integrity of the person, personal freedom, health of the victim; <i>optional feature</i> : the subject of extortion as part of a criminal offence may not be related to things that are someone else's property, but to the right to property and the commission of property-related actions.	The generic object of the crime is social property relations. <i>optional feature</i> : the object is the property that was in the legal possession of the guilty party.	The immediate object of the crime is the military glory of the Armed Forces of Ukraine and the honour of a serviceman, as well as the observance of the customs and rules of war. At the same time, property is an additional mandatory object of theft on the battlefield of things found with the killed and wounded; <i>optional feature</i> : the object (the minimum size of the theft of someone else's property is prescribed by Article 51 of the Code of Ukraine on Administrative Offences <sup>1</sup> , and therefore, for the size of the object in Article 432 of the CCU, the size of the stolen item must exceed 0.2 of the non-taxable minimum income of citizens) and possessions that are stolen when killed or wounded <sup>2</sup> .
	Objective side	Acts designated as "theft" <sup>3</sup> and positive material damage; <i>optional feature</i> : crime scene – the territory where a person lives or engages in a certain activity (building or structure, other premises, storage). Contrary to Article 432 of the CCU, seizure of someone else's property must be secret, while during looting the victim may be injured, i.e., still alive and aware, witness the fact of theft of their belongings.	An act designated as a "requirement to transfer" property, rights to property, and the performance of property-related actions. Mandatory sign is the method of extortion – threatening the victim (gesturing, verbally, displaying arms). And unlike Article 432 of the CCU, where the property is alienated immediately, under Article 189 of the CCU, the subject of the crime requires the transfer of property or the right to property or the performance of property-related actions in the future (in a day, a month, etc.).	An act referred to as "appropriation". Law-enforcing guideline: "appropriation of someone else's property... lies in the illegal transfer of someone else's property to one's own benefit or to the benefit of other persons..." (Item 23 of the Resolution dated November 6, 2009, No. 10 <sup>4</sup> ). The said Resolution does not specify the methods of such appropriation and possible forms that are not related to the illegal conversion of someone else's property	Acts related to the theft of things from a killed or injured person; <i>optional feature</i> : place, situation of theft of someone else's property – "on the battlefield". Demarcating the terms "theft" and "appropriation", one has two approaches: 1) narrow – theft in Article 432 of the CCU provides only the meaning inherent in this concept, which is also established in other norms of the CCU. That is, a narrowly normative illegal appropriation is not theft (an act that is designated only as "theft" in the CCU, and not by other terms); 2) broad, which provides that theft can also manifest itself in the appropriation of someone else's property, since appropriation is a concept the scope of which is greater than the scope of theft and assumes the presence of its illegal nature (violation of the norms of a certain act of legislation, committing in violation of the established order) and particular methods of its commission. That is, illegal appropriation can manifest itself in theft (theft has a more particular meaning).

<sup>1</sup>Code of Ukraine No. 8073-X "On Administrative Offenses". (1984, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/80732-10#Text>.

<sup>2</sup>Resolution of the Supreme Court of Ukraine No. 10 "On Judicial Practice in Cases of Crimes Against Property". (2009, November). Retrieved from <https://zakon.rada.gov.ua/laws/show/v0010700-09#Text>.

<sup>3</sup>Code of Ukraine No. 8073-X "On Administrative Offenses". (1984, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/80732-10#Text>.

<sup>4</sup>Resolution of the Supreme Court of Ukraine No. 10 "On Judicial Practice in Cases of Crimes Against Property". (2009, November). Retrieved from <https://zakon.rada.gov.ua/laws/show/v0010700-09#Text>.

Table 1, Continued

		Article 185	Article 189	Article 191	Article 432
The structure of the criminal offence	Subject	A legally capable individual who reached 14 years of age before the crime was committed	A legally capable individual who has reached the age of criminal responsibility (reduced age – 14 years).	A legally capable individual who has reached the age of criminal responsibility (general age – 16). Therewith, the subject of embezzlement can be both a private person and an official person, while the subject of appropriation of someone else's property by abuse of official position is only an official person	A legally capable individual who has reached the general age of criminal responsibility – 16 years; <i>optional feature</i> : special subject (official position – military serviceperson, listed in Article 401 of the CCU). A comparison of the signs of looting (Article 432 of the CCU) and "other violations" (Article 438 of the CCU) suggests that the legal content of the acts differs in that Article 438 of the CCU does not prescribe liability for violations of the laws and customs of armed conflicts of a non-international nature.
	Subjective side	The form of guilt is direct intent only; <i>optional feature</i> : lucrative motive and lucrative purpose (even though the legislators do not specify this in the disposition of the articles).	The form of guilt is direct intent; <i>optional feature</i> : lucrative motive and lucrative purpose.	The form of guilt is direct intent; <i>optional feature</i> : lucrative motive and lucrative purpose.	The form of guilt is direct intent (a person realizes that they are trespassing on someone else's property, secretly seizes property, foresees causing material damage in a certain amount and wants to cause such consequences and damage); <i>optional feature</i> : implies both a lucrative motive and its absence.

**Notes:** 1. Article 432 of the CCU does not specify the maximum size of the object, as, e.g., Item 4 of the Notes to Article 185 of the CCU (especially a large amount – of 600 or tax-free minimum incomes of citizens). Notably, the upper limit of the sanction in Article 432 of the CCU – 10 years of imprisonment, and in lucrative criminal offences against property – over 10 years. It is not possible to substantiate the totality of these criminal offences merely by the difference in sanctions – constructive differences in composition are needed. Such distinguishing features are the method of larceny, which in Article 432 of the CCU is not specified: secret theft of belongings during looting in particularly large quantities or by means of violence dangerous to life or health, during robbery (Article 187 of the CCU). Therefore, there are two options for qualification: exclusively per Article 432 of the CCU and for the totality of the crimes committed. Reasons: a different upper limit of sanctions, a particular method of committing larceny, which is not mentioned in Article 432 of the CCU, but is a sign of another, more grave criminal offence

**Source:** developed by the author of this study based on the provisions of the Criminal Code of Ukraine and scientific papers by A. Vozniuk (2016), V. Tatsii *et al.* (2013)

The debatable position is an optional feature of the subjective side of looting – the motive. A differentiated approach is proposed regarding the interpretation of the subjective side of looting, which must always have selfish motives (i.e., the purpose is to take possession of valuable things) and a direct intent (Siabrenko & Tatarinova, 2022), but Ya. Lyzohub (2022) believes that looting can be characterized not only by a lucrative motive. Such illegal acts may be connected, e.g., with the desire to replenish the collection of "trophies" obtained after defeating the enemy as evidence of victims killed by their own hands, or certain paraphernalia or objects of the victim (elements of their uniform, chevrons, badges, awards, etc.). Moreover, the purpose may lie in the desire to prove to oneself or third parties, e.g., one's physical presence on the battlefield, in replenishing the existing collection of the relevant type of objects, which eliminates the lucrative nature and the related intention of criminal actions.

Analysing theft in this context, it takes place in special conditions, i.e., on the battlefield. This refers to a certain spatial area wherein combat actions take place (it can be a wider area than the actual conduct of the battle) and in which, accordingly, a certain item is located. Thus, in case of theft of personal belongings of a pilot whose plane was shot down, the place of its crash will be considered a battlefield within the meaning of Article 432 of the CCU, even though no hostilities were conducted there.

Scientists V. Tatsii *et al.* (2013), citing the example of the theft of things from a medical train, draw attention to the fact that the theft of items outside the boundaries of the battlefield creates a component of a general criminal offence – theft, robbery, etc. Thus, the phrase "when killed or wounded" denotes a place, object, or space near which something is placed; the person near whom the object is located; or a subject that contains a certain component. The subject of looting is certain things,

i.e., objects of the material world, regarding which civil rights and obligations<sup>1</sup> may arise and which are related to the provision of the sphere of a person's personal life (legal features) at the time of the person's stay on the battlefield (factual feature).

Thus, according to Article 6 of the CCU, all individuals, regardless of citizenship, who have committed crimes on the territory of Ukraine, shall be subject to the responsibility prescribed by the current CCU (according to the principle of territoriality), since looting is considered a crime not only at the level of national legislation, but is also recognized by international law as a military crime of an international nature. In the case of committing actions defined by the content of the norm as looting, the civilian population, the Russian military, representatives of private military companies or illegal armed formations supported by them must bear responsibility under Article 438 of the CCU. After all, relying on Article 401 of the CCU, the specified individuals are not subjects of the crime prescribed by Article 432 of the CCU.

Considering the implementation of martial law in Ukraine, the current legislation required some changes and amendments, and therefore the legislator amended the sanction of Article 432 of the CCU, increasing the punishment in the form of imprisonment for a term of 5 to 10 years<sup>2</sup>. While there is no punishment for looting in the Criminal Code of the Russian Federation, depending on the circumstances, it is treated as other crimes against property. In Australia, the maximum penalty for committing looting is 5 years of imprisonment<sup>3</sup>, while in the state of California, looting can be both a misdemeanor and a felony and is punishable by up to 3 years of imprisonment<sup>4</sup>.

### Special subject of looting

Researcher A.V. Gavrylenko (2022) states that problems of looting are common in that the subject of this criminal offence is special. Given that it is a war crime, it can be committed by individuals taking part in hostilities. In general, a special subject (per Article 401 of the CCU) is primarily as follows:

- servicepeople of the relevant military formations. Ukrainian legislation stipulates that a military formation is "a created set of military associations, large and small units, and their management bodies, which are staffed by military personnel and are intended for the defence

of Ukraine, the protection of its sovereignty, state independence and national interests, territorial integrity and inviolability in the event of armed aggression, armed conflict, or threat of attack by direct military (combat) actions"<sup>5</sup>. Therefore, if when defining the legal regime of a formation, its military nature is indicated, then it is military. For instance, when defining in Item 2 Part 1 of Article 1 of the Law of Ukraine "On the Fundamentals of National Resistance"<sup>6</sup> dated July 16, 2021, the concept of the voluntary formation of a territorial community is "a paramilitary unit formed on a voluntary basis from citizens of Ukraine living within the territory of the relevant territorial community, which is intended to take part in the preparation and implementation of tasks of territorial defence". However, when defining the territorial defence in Item 16 Part 1 of Article 1, its military nature is not mandatory;

- servicepeople in special services that are not military formations: servicepeople of the State Special Service of Transport, the State Service of Special Communication and Information Protection of Ukraine, the Security Service, the Foreign Intelligence Service, the State Border Service, the State Security Office, the National Guard;

- other individuals defined by law (i.e., subjects who are not military personnel, but are endowed with certain duties related to the performance of military service by the grounds defined by law). In other words, these are persons who, by the law, have a military duty associated with military service. Note that military duty and military service are associated with military servicepeople and people subject to conscription: military servicepeople are individuals undergoing military service, while people subject to conscription are those who are in the reserve for manning the Armed Forces of Ukraine and other military formations on a special period, as well as for the implementation of works to ensure the defence of the state<sup>7</sup>.

Ultimately, there are specific features of the qualification of crimes that have signs of looting, committed by employees of the National Police of Ukraine (such as the unit "United Assault Brigade of the National Police of Ukraine "Liut", which was created based on Resolution No. 30 on the formation as a legal entity of public law interregional territorial body of the National Police for the execution of the mandate of the President of

<sup>1</sup>Civil Code of Ukraine No. 435-IV. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/435-15#Text>.

<sup>2</sup>Law of Ukraine No. 2117-IX "On Amendments to the Criminal Code of Ukraine Regarding Increased Liability for Looting". (2022, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/2117-20#Text>.

<sup>3</sup>Order of General Prosecutor's Office of Ukraine No. 100 "On Registered Criminal Offenses and the Results of their Pre-Trial Investigation". (n.d.). Retrieved from <https://data.gov.ua/dataset/5e034040-3b4a-4c11-86f4-2cf346a95423>.

<sup>4</sup>Criminal Code of Ukraine No. 2341-III. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

<sup>5</sup>Law of Ukraine No. 1932-XII "On the Defense of Ukraine". (1991, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/1932-12#Text>.

<sup>6</sup>Law of Ukraine No. 1702-IX "On the Foundations of National Resistance". (2021, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/1702-20#Text>.

<sup>7</sup>Law of Ukraine No. 2232-XII "On Military Duty and Military Service". (1992, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/2232-12#Text>.

Ukraine, January 13, 2023 by the Cabinet of Ministers of Ukraine), which are directly involved in the performance of urgent tasks during military (combat) operations. The National Police of Ukraine (NPU) performs the same functions as military personnel (implementation of counter-sabotage measures, destruction of military equipment and enemy manpower, mortar calculations, conducting shock-assault and shock-search activities, conducting aerial reconnaissance and fire damage to the enemy on the territory of occupied settlements, etc.), but are not conscripted under Item 6 of Article 59 of the Law of Ukraine "On the National Police"<sup>1</sup>, which makes provision for the removal from military registration of conscripted police officers.

Furthermore, people subject to conscription may be assigned military duty and perform military service on the relevant grounds specified in the Law of Ukraine "On Military Duty and Military Service", namely: for the duration of assemblies (educational and special, i.e., undergo appropriate training). Therefore, they are subjects of looting only when these assemblies are held. That is, they can, due to certain reasons, be on the battlefield next to the killed and wounded.

Part 6 of Article 1 of this Law enshrines the provision according to which foreigners and stateless persons cannot be conscripted. At the same time, the specified Law states that in cases prescribed by law, foreigners and stateless persons who are legally present on the territory of Ukraine may voluntarily (under contract) undergo military service in the Armed Forces of Ukraine. Furthermore, Part 9 of Article 1 of this Law notes as follows: foreigners and stateless persons who, according to the law, undergo military service in the Armed Forces of Ukraine (AFU) are equated to the category of military personnel.

Thus, military personnel can be foreigners and stateless persons, since their status is equated to military personnel when they undergo military service in the AFU, and therefore can be the subject of looting, prescribed by Article 432 of the CCU. For instance, this refers to the Sheikh Mansur Chechen Peacekeeping Battalion, the Georgian National Legion, and the Legion "Freedom of Russia".

## Conclusions

According to the results of this study, the definitions of looting in Ukraine and other foreign countries were given, and the main theoretical, legal, and practical aspects of this criminal offence were described and analysed.

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Looting has both common and distinctive features with criminal offences against property. However, they retain their separate criminal law meaning, which requires a careful approach to all factual data so that those who committed a criminal offence are held accountable to the extent of their guilt.

In general, analysing the structure of the composition of the criminal offence under Article 432 of the Criminal Code of Ukraine by comparing it with other crimes, it can be stated that looting differs from related criminal offences by the object, the objective part, and the subject. It was emphasized that the special subjects of looting are not any military servicepeople and individuals equal to them, as well as other individuals defined by law, but only those of them who are endowed with certain duties related to the performance of military service by the grounds specified in the law, and these duties are directly related to the presence of these individuals on the battlefield and next to the wounded and killed persons. For individuals specified in Part 2 of Article 410 of the Criminal Code of Ukraine, which commit looting – Article 432 of the Criminal Code of Ukraine, and for other individuals not named in Part 2 of Article 410 of the Criminal Code of Ukraine – Article 438 of the Criminal Code of Ukraine.

To overcome the identified issues of formulating a unified practice of interpretation and qualification of looting under the Criminal Code of Ukraine, it is necessary to increase public awareness and correct criminal assessment of this phenomenon, both in society and among lawyers.

The significance of the research results for modern law enforcement practice lies in the fact that the prospects for further research on the chosen topic are the development of innovative methods for the detection and investigation of looting based on the study of the profile of criminals, the psychology of behaviour and socio-economic conditions that contribute to this type of crime, as well as the analysis of the experience of countries with a prominent level of human rights protection and using these practices to improve the law and practice of criminal prosecutions regarding looting.

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None.

## Conflict of Interest

None.

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# Критерії відмежування мародерства від інших злочинів: порівняльний аналіз

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### Анотація

З початком російсько-української війни дедалі частіше злочини загальнокримінальної спрямованості підміняють ст. 432 Кримінального кодексу України, де склади злочинів зовсім різні. Метою дослідження є комплексний аналіз структури складу кримінального правопорушення – мародерства шляхом зіставлення його з іншими злочинами, а також формулювання єдиної практики розуміння та кваліфікації в аспекті предмета дослідження. Відповідно до мети використано комплекс наукових методів, зокрема загальнонаукові й спеціальні: метод статистичних досліджень – для аналізу та порівняння динаміки вчинення кримінальних правопорушень, пов'язаних з мародерством; діалектичний – у межах вивчення теорії та практики суперечностей, що пов'язані з неправильною кваліфікацією мародерства; порівняльно-правовий – у контексті аналізу позицій інших науковців стосовно розуміння сутності мародерства; формально-логічний – під час визначення правової категорії «мародерство». Встановлено, що необхідність правильного застосування вказаного положення обумовлена такими обставинами, як збільшення кількості випадків мародерства, що стають відомі з відкритих джерел інформації, які належним чином не реєструються та не розслідуються працівниками правоохоронних органів, що обумовлено відсутністю досвіду роботи з кримінальними правопорушеннями такої специфіки та складністю їх фіксації на окупованих територіях; потреба у відмежуванні злочину «мародерство» за українським законодавством від випадків обкрадання цивільного населення, їх житлових приміщень, транспортних засобів, магазинів та іншої інфраструктури з метою наживи й задоволення своїх потреб. Практична значущість полягає в тому, що основні твердження та висновки можуть бути використані в методичних рекомендаціях з розроблення алгоритму розслідування кримінальних правопорушень, пов'язаних з кримінально протиправними діями, передбаченими ст. 432 Кримінального кодексу України, а також є цінними для суб'єктів кримінальної юстиції у своїй діяльності задля усунення виявлених практикою непорозумінь і різночитання чинного законодавства; враховані під час удосконалення законодавства, спрямованого на превенцію та боротьбу з цим видом злочину, шляхом внесення змін

### Ключові слова:

воєнний стан; кваліфікація; поле бою; військовослужбовці; війна