POLSKA AKADEMIA NAUK • INSTYTUT NAUK PRAWNYCH

ZAKŁAD KRYMINOLOGII

ARCHIWUM KRYMINOLOGII

Archives of Criminology

PL ISSN 0066-6890

DOI 10.7420/AK2024.01

2024 • 46(2) • 5–27

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Military violent crime in the Ukrainian criminal law system: Analysis, gaps and prospects

Wojskowe przestępstwa z użyciem przemocy w systemie ukraińskiego prawa karnego. Analiza, luki i perspektywy

Abstract: There is a significant gap in the academic literature on military violent crime due to the fact that the delimitation and categorization of military violent crimes has not yet been carried out. The article focuses on the problem of military violent crime in Ukraine in the context of martial law and determines the differences in the classification and regulation of such crimes in accordance with domestic and international legislation. The aim of the article is to analyze the dynamics of military violent crime in Ukraine during martial law. Moreover, gaps in the classification of such crimes are identified, while their characteristics are compared in accordance with the Criminal Code of Ukraine and international criminal law. Apart from that, various types of violence in the military enshrined in the Criminal Code of Ukraine are investigated and court sentences on such cases are analyzed. The article covers the period from the beginning of Russia's military aggression in 2014 to the full-scale invasion in 2022, revealing trends and gaps in criminal legislation. Finally, suggestions to amend the legislation on military violent crime are presented in order to improve the legal situation in the country.

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Keywords: criminal offense, martial law, military personnel, violent offenses, criminal law

Abstrakt: W literaturze naukowej występuje znacząca luka dotycząca przestępstw wojskowych z użyciem przemocy. Powodem jest fakt, że delimitacja przestępstw wojskowych z użyciem przemocy i ich klasyfikacja do określonych kategorii nie zostały jeszcze przeprowadzone. Artykuł koncentruje się na problemie brutalnych przestępstw wojskowych w Ukrainie w kontekście stanu wojennego i określa różnice w klasyfikacji i regulacji takich przestępstw zgodnie z ustawodawstwem krajowym i międzynarodowym. Celem artykułu jest analiza dynamiki wojskowych przestępstw z użyciem przemocy w Ukrainie w okresie stanu wojennego. Ponadto przedstawia on zidentyfikowane luki odnośnie do klasyfikacji takich przestępstw, a także porównanie ich cech w kodeksie karnym Ukrainy i międzynarodowym prawie karnym. Poza tym artykuł przedstawia badanie różnych rodzajów przemocy w wojsku zapisanych w kodeksie karnym Ukrainy i analizę wyroków sądowych w takich sprawach. Artykuł obejmuje analizę tych zagadnień w okresie od początku agresji wojskowej Rosji w 2014 r. do pełnej inwazji w 2022 r. oraz ujawnia trendy i luki w ustawodawstwie karnym. Na koniec przedstawia sugestie dotyczące zmiany przepisów dotyczących przestępstw wojskowych z użyciem przemocy, ukierunkowane na poprawę sytuacji prawnej w kraju.

Słowa kluczowe: przestępstwo, stan wojenny, personel wojskowy, przestępstwa z użyciem przemocy, prawo karne

Introduction

Martial law is accompanied by various challenges for society, among which a special place is occupied by military violent crime. During the warfare, Ukraine has faced the problem of military violence, which has become an important issue for researchers and society.

One of the main problems of criminal legal classification is the fact that every day the servicemen of the Russian Federation commit more and more war crimes on the territory of Ukraine. Thus, military violent crimes are committed through new various means and for different purposes, which complicates their qualification. Despite there being a large number of scholarly works on this phenomenon, some of them are no longer relevant – given the conditions and methods of warfare – while others do not reveal all the nuances of such crimes (Kovalova, Korniienko, Postol 2019). In addition, the academic literature mainly refers to the legislation from the last century (Melnyk 2020).

Another reason why military violent criminal offenses are a rather urgent problem today is that scientific research is complicated by the intense hostilities that have been going on for almost two years. Despite the duration of martial law, there have not been significant changes in the legislation regarding military service during armed aggression. This complicates the practical implementation of law and order in the military sphere.

The issue of attributing restrictions on human freedom to physical violence is controversial. The concept of physical violence, from our point of view, should not include any restriction of freedom, only that which is associated with the direct impact on the victim's person. This opinion is shared by most criminologists (Korniienko et al. 2020).

Thus, in Article 404 of the Criminal Code of Ukraine (hereinafter "CCU"), the threat of violence is an alternative sign. The modern Ukrainian language defines a threat as intimidation or a promise to cause trouble. In other words, intimidation involves threatening, frightening, or endangering.

An analysis of the types of military violent crime, in particular, violations of the statutory rules of relations between military personnel, reveals a need to develop special rules for their qualification. Thus, it is important to consider the specifics of violence in these crimes and to develop clear criteria for determining military crimes. The problem of distinguishing military crimes from related criminal offenses is complex, since not every type of violence between military personnel can be recognized as a military crime. In order to solve this problem, it is essential to establish clear criteria and specific rules for qualification.

Thus, the research includes an analysis of the types of military violent criminal offenses. We hope to shed light on this problematic aspect of Ukrainian law and to develop strategies for reducing military violent criminal offenses and for ensuring law and order under martial law.

During the research, the following objectives were set:

a) analyze changes in the frequency and nature of military violent crimes under martial law in Ukraine
b) study the legislation and case law of Ukraine on military violent crime and identify gaps and propose measures to eliminate them and improve the legislative environment
c) suggest effective measures to prevent violent crime in the military, taking into account the identified causes and factors of their commission.

It is important to emphasize that the understanding and classification of military violent crime are key aspects of effectively responding to it and preventing future cases. Therefore, this research aims not only to analyze various types of crimes, but also to determine their roots and characteristics – which is an important step toward developing effective strategies to combat this phenomenon.

1. Methodological framework

The study of military violent criminal offenses and their dynamics under martial law in Ukraine requires an integrated approach and the use of various methods. The study draws on a wide range of methodological approaches, including legal analysis, sociological analysis, open-source analysis, and expert opinions. Thus, analysis is the leading research method. Using this method, an overview of the legislation of Ukraine and international regulations of military violent crime, martial law, and the legal status of military personnel was created. Moreover, the analysis method allowed the study of official reports, statistics of law enforcement agencies, and other public resources in order to assess the number and types of

military violent crimes that were committed during martial law. It was used to analyze the CCU regarding the classification of military violent crimes. Additionally, using this method, a literature review was performed to consider the legal interpretation of the terms "coercion" and "violence." The literature review on military violent crimes, martial law, and international humanitarian law made it possible to analyze previous studies in this area and to identify gaps in knowledge regarding violent military crime.

The formal dogmatic method was used in the analysis of Arts. 404–406 CCU in order to analyze the content of the article and identify shortcomings in the legislative structure. On the basis of this analysis, proposals were developed to improve the legislation. The method of hermeneutics was used to interpret the content of the legislation. Using the legal method, the qualification of violent actions was carried out and, as a result, a number of special rules on military violent criminal offenses were allocated. In addition, court sentences related to violence within military service were analyzed.

The statistical method was used to process and analyze the data. Using this method, trends were determined, correlations were identified, and differences were established. The statistical method was used to study criminal cases initiated under Arts. 404–406 CCU, which made it possible to obtain data on the spread of these criminal offenses in Ukraine and on those who committed these criminal offenses. In addition, this method helped in the processing of data according to the results obtained. With the help of the statistical method, the verdicts imposed under Arts. 404–406 CCU were examined and data from the General Prosecutor's Office on the prosecution of persons who committed criminal offenses under these articles were analyzed. Furthermore, the sociological method was used in the study of social phenomena and processes that lead military personnel to not perform or improperly perform their duties. The comparative legal method was used to analyze the composition of criminal offenses, collisions, and gaps in legislation on military offenses.

At the final stage, using the method of synthesis and generalization, the study results were interpreted; this in turn made it possible to draw conclusions about the trends of military violent crime and its causes and consequences, as well as to offer recommendations for preventing and combating such crimes.

2. Academic views on the legal interpretation of "coercion" and "violence"

Various scholars have studied the problems of military violent crimes, including Viktor Bodayevskyi (2010), Mykola Panov (2010), and Mykola Khavronyuk (2003). Mykola Karpenko (2019) and Dmytro Kupar (2017) have made a significant contribution to the theoretical and practical aspects of military crimes. It should be

emphasized that the positions of legal scholars differ regarding the classification of certain articles of the CCU as violent crime.

First of all, it is essential to differentiate the terms "coercion" and "violence." In criminal law, different authors attribute different meanings to these concepts. There is no consensus in the literature regarding the criteria for distinguishing between the coercion of a commander and violent actions against a commander. Thus, some authors believe that any coercion is characterized by the imposition of a specific requirement on the victim to commit any actions contrary to the interests of the military service (Babanly 2010). At the same time, it does not matter for the qualification of a criminal offense whether the offender demanded from the commander a certain line of conduct that contradicts the interests of the military service.

Some believe that threat is coercion (Omelchuk et al. 2022). Others believe that threat is intimidation, saying that "mental violence should be understood as an unlawful influence directed at the psyche of another person in order to suppress his/her resistance and subordinate him/her to the will of the offender by intimidation using physical force" (Melnyk et al. 2022). Other researchers regard threat as the arousal of anxiety in a person. In addition, threat is perceived as a mental impact (Semenets-Orlova et al. 2022).

Other authors believe that under Art. 405 CCU "Threats or violence against a commander" and not Art. 404 CCU "Resistance to a commander or coercion of a commander into breaching official duties," cases of violence against a commander are subject to qualification not in connection with their specific actions during military service, but on the basis of general demands (for example, the violent actions of soldiers toward sergeants for not creating easier conditions of service for them than their colleagues who are called up for military service later). Thus, Viacheslav Navrotsky (1997) believes that Art. 404 CCU involves forcing the commander to commit a certain action in the service and to change the nature of their official activity (Article 405 CCU) (Shkuta 2020). The author also believes that the goal of forcing the commander to violate their military service duties is inherent in the subjective side of coercion and violent actions against a commander.

Violence is generally understood as an external (on the part of other persons), socially dangerous, unlawful, and intentional physical or mental influence on another person contrary to their will, which harms them or creates such a danger (Utkina 2020). This calls into question the content of violence in Part 1 of Art. 404 CCU "Resistance to a commander or coercion of a commander into breaching official duties."

Most scholars believe that if the legislature uses the term "violence," it should concern only physical violence. Thus, according to Oleh Gurtovenko (2008), the term "violence" means only physical violence. If responsibility for the threat of violence is assumed, this is specifically stipulated in criminal law. Meanwhile, such a legislative technique does not formally meet the requirements of terminological accuracy. Therefore, as a broader term, violence should be replaced by the term "physical violence." According to Art. 404 CCU, then, violence should include

blows that cause physical pain, beatings, torture, or other violent acts associated with causing physical pain or restricting freedom. The consequence of violence is physical pain or mild harm to health, taking into account the qualifying violent signs, according to Part 1 of Art. 404 CCU.

Despite different approaches to solving these issues, almost all authors who deal with the problems of qualifying complex violent criminal offenses consider a comparison of sanctions for a crime against the person to be the most effective criterion (Golovin et al. 2022). This criterion can undoubtedly be considered universal. On the one hand, the public danger inherent in crime and the degree of importance of a particular object of criminal legal protection are formally reflected in the sanction. On the other hand, this method of qualifying complex violent crime relies on the most formalized concepts.

It can be claimed that the general rule for qualifying violent crimes according to this criterion is that an accumulation of crimes occurs if the sanction of the criminal law norm establishing criminal responsibility for these crimes exceeds the sanction for multiple crimes established by the legislature (Smokov et al. 2022). In other words, an additional act included in a violent crime should be qualified in conjunction with it if the sanction for committing the additional act as an independent crime is higher than the sanction for the multiple crime.

Ganna Sobko (2020) notes that in some cases military crimes are committed under circumstances that warrant a more severe punishment in general criminal law. Art. 121 CCU defines grave bodily harm under aggravating circumstances (parts 1 and 2 of Art. 121 CCU) and establishes a punishment that significantly exceeds the sanction of Art. 404 CCU for violent acts against a commander. "In such cases, we have to deviate from the rules of competition of general and special norms, applying the general norm (part 1 or 2 of Art. 121 CCU). However, this would involve ignoring the danger of the military crime committed. Therefore, the crime must be qualified by the accumulation of crimes with the corresponding military and general punishment that entail a more severe punishment" (Sobko 2020).

3. Case law in relation to military violent criminal offenses: Analysis and qualification rules

Assessing whether an action is violent usually depends on the nature of the action itself. Firstly, one can hardly agree that in the military context, coercion is a sign of violent actions against a commander. However, the objective side of Art. 405 CCU is formulated in such a way that there is no place for coercion (as an independent sign). Part 1 of Art. 405 CCU refers exclusively to beating or another type of physical violence. One cannot agree with those authors who hide coercion in a subjective sign, i.e. a motive, "in connection with the performance of the commander's military service duties."

It should be mentioned that the motive of a criminal offense is "determined by social and psychological factors, objectified in the action of the subject and the motive that he/she realizes through the commission of a crime." Meanwhile, coercion is an independent act that characterizes the objective side of a crime and consists in making demands of the victim. In our opinion, there are not sufficient grounds for considering coercion a sign of the objective side of violent actions against a commander.

Secondly, the essence of Art. 405 CCU "Threats or violence against a commander" is a general norm in relation to Art. 406 CCU "Violation of the statutory rules of relations between military personnel in the absence of relations of subordination." It provides for liability for violent acts against a commander in general terms. Art. 404 CCU "Resistance to a commander or coercion of a commander into breaching official duties" provides for specific cases of violence (resistance and coercion). In case of a conflict between norms, there is a general rule (part 3 of Art. 40 CCU "Mental coercion") that qualifies the resistance (coercion) according to a special norm of Art. 404 CCU.

Thirdly, before qualifying a criminal offense under Art. 405 CCU, it is necessary to check whether it involves resistance or coercion. The interpretation of the term "coercion" as a requirement that a commander violates "specific duties" or "a certain duty" or "commits a certain specific action" does not follow the law. Art. 404 CCU does not provide requirements that may lead to a violation of these norms. Therefore, in our opinion, coercion shall be understood as any threat of violating the military service duties by the commander.

This allows us to formulate the following private qualification rule: in order to qualify a crime under Art. 404 CCU as coercion of a commander or other person performing military service duties, it is necessary to establish that the offender demanded that these persons violate the military service duties using violence or the threat of violence. In this qualification, the degree of the requirements is not important.

3.1. Qualification of violent actions within the scope of military violent offenses

The judicial authorities do not always take into account the whole set of circumstances, which can lead to errors in the qualification of violent actions. For example, on May 22, 2019, the Railway District Court of Lviv heard the case of a private who was accused of putting forward an unlawful requirement to remove garbage from the barracks to a sergeant, who was his commander. For refusing to do so, the accused kicked the victim in the left side, causing mild harm. The court convicted the private for violent acts against his commander on the basis of Part 1 of Art. 405 CCU (Register of court cases 2019).

Meanwhile, such a qualification cannot be considered correct. In this case, a pecific requirement related to violence was made in relation to the commander in order force him to perform certain actions. This requirement, taking into

account the official positions of the defendant and the victim, targeted the order of subordination, clearly contrary to the interests of the service, and the violence used by the offender was aimed at achieving this goal. Therefore, the offense committed by the private was intended to force the commander to violate his military service duties and required qualification under Part 1 of Art. 405 CCU "Threats or violence against a commander."

An important feature of intentional guilt in Art. 405 CCU is the fact that the offender must always act with direct intent to violate the relationship of subordination. In fact, this means that the subject of these crimes must be aware that they are committing violent acts against a commander. In the absence of such awareness, qualification under Art. 405 CCU is impossible.

An interesting example of resolving this problem is a criminal case of March 4, 2020 of Poltava District Court in the Poltava Region. In order to humiliate the honor and dignity of a colleague, the accused demanded that a junior sergeant bring sugar for tea, and for refusing to fulfill this unlawful requirement he beat the victim, inflicting multiple punches on his face and torso. These actions of the accused were qualified under Art. 405 CCU by bodies of preliminary investigation.

At the hearing, it was found that the accused and the victim had served in the same military unit for less than a week. He was not directly subordinate to the junior sergeant; he did not perform any tasks in the service with him and they practically did not communicate at all. As a result, he did not know about the victim's military rank of Junior Sergeant; at the time of the conflict, he did not see any insignia sewn on his uniform. Taking into account the above data, the court concluded that the accused had no intention of violating the relations of subordination and therefore re-qualified the offense under Part 1 Article 406 CCU (Register of court cases 2020).

However, we cannot agree with this decision. The offender's mistaking the official position of the victim is evidence of an actual error in relation to the object of the criminal offense. Therefore, in this case, the actions of the accused should be qualified according to the rule of actual error as an attempt to violate the statutory rules of relations between military personnel in the absence of relations of subordination under Part 3 of Art. 15 and Part 1 of Art. 406 CCU "Violation of the statutory rules of relations between military personnel in the absence of relations of subordination."

It should be noted that this kind of decision is an exception to the general rules for qualifying crimes of this category. They can only be recognized as correct if circumstances are established that undoubtedly indicate that the perpetrator did not know they were using violence against a commander, as was done by the court in this case. The corresponding private qualification rule shall be as follows: the qualification of violent acts against a commander is possible under Art. 405 CCU only if circumstances are established that undoubtedly indicate that the perpetrator knew about the status of the commander.

The question of qualifying the actions of a subordinate arose in a case of February 23, 2021 of Kostiantynivskyi City District Court in Donetsk Region, who when insulting a commander in connection with his military service duties or during

their execution, used violence on him. Thus, in the criminal case law it was established that in response to a legitimate remark of the warrant officer, who was responsible for a fleet of vehicles, a junior sergeant obscenely to the victim and struck him in the face, then beat him with many blows and kicks to the head and body. These actions were qualified under Part 2 of Art. 405 and Part 2 of Art. 406 CCU (Register of court cases 2021a).

This qualification cannot be accepted as correct. In this case, the insult became part of a more serious criminal offense. Thus, it does not involve violent actions against a commander and does not require additional qualifications. If the stage (intermediate stage) of committing a severe criminal offense was a less serious crime, the crime committed is covered by the norm indicating a severe criminal offense.

In this connection, the private rule of qualification shall be as follows: if a subordinate in the process of insulting a commander during the performance or in connection with the performance of military service duties uses violence or threatens to do so, the committed offense becomes a more serious crime provided for in Art. 405 CCU "Threats or violence against a commander."

3.2. Humiliation of honor and dignity of one serviceman by another while on duty

In accordance with Art. 406 CCU "Violation of the statutory rules of relations between military personnel in the absence of relations of subordination," humiliation of the honor and dignity of military personnel is one means of violating the statutory rules of relations between military personnel when there is no subordination between them. At the same time, Part 2 of Art. 406 CCU establishes the responsibility for one serviceman's mockery of another during the performance or in connection with the performance of military service duties. In this regard, the question arises as to the delimitation of crimes under Arts. 405 and 406 CCU, which is of particular importance under martial law.

The mockery provided for by Art. 406 CCU "Violation of the statutory rules of relations between military personnel in the absence of relations of subordination" is manifested in the negative attitude of the offender toward the victim or the humiliation of their honor and human dignity, but not connected with presenting certain requirements of them, coercing them to violate the duties of military service, or desiring to obtain for themselves a privilege in the military unit.

In violation of the statutory rules of relations between military personnel when there is no subordination, humiliation of honor and dignity of victims occurs – along with other forms of illegal actions – in order to ensure such an environment in the military unit where individual military personnel fulfill the debts of recruits toward the so-called "grandfathers" (soldiers who have served for a long time in the army), such as doing them personal favors or creating for them easier conditions of service. To achieve these goals, "grandfathers" apply various forms of bullying and mockery, violence, or sexual perversion to younger soldiers.

Such actions are a manifestation of hazing in certain military units and should be qualified under Art. 406 CCU "Violation of the statutory rules of relations between military personnel in the absence of relations of subordination." This approach also corresponds to the general rules for the qualification of complex crimes: if a particular crime acts as a way of committing another one, which is always a heavier criminal offense, then there is no accumulation of offenses and the crime is qualified as a single criminal offense.

Thus, the difference lies in the intent of the guilty party. In mocking, the desire to humiliate the honor and dignity of the victim is the ultimate goal of illegal actions. At the same time, such actions are not related to making certain requirements to the victim, coercing them to violate the duties of military service, etc. A misunderstanding of this difference led to the court's erroneous decision in the following case. Being dissatisfied with the refusal of a soldier on duty to serve at the unit's checkpoint, a private struck him in the face with the edge of his palm, which did not cause damage to the victim's health. Taking into account the level of violence used, the offense was qualified by the court under Part 1 of Art. 406 CCU (Register of court cases 2022a).

However, we cannot agree with this legal assessment. Although the actions of the private were accompanied by humiliation of the honor and dignity of the victim, they were caused not by the intention to mock a colleague, but by dissatisfaction with his official activity and the desire to achieve proper fulfillment of duties at the checkpoint. Therefore, the offense was subject to qualification under Part 1 of Art. 405 CCU, as the preliminary investigation bodies qualified it. As for the humiliation of honor and dignity of the victim, it was part of the objective side of the violation of the statutory rules of relations that do not require additional qualifications under Part 1 of Art. 406 CCU.

A special qualification rule should be formulated as follows: if humiliation of the honor and dignity by one serviceman toward another during the performance or in connection with the performance of duties of military service is a way of violating the statutory rules of relations between servicemen between whom there is no subordination – i.e. related to making certain requirements, coercing them to violate the duties of military service, or the desire to obtain a privileged position in the military unit, etc. – the action shall be qualified under Art. 405 CCU.

3.3. Issues of delimitating violations of the statutory rules of relations between military personnel

The issue of delimiting the violation of the statutory rules of relations between military personnel when there is no subordination between them from crimes against the individual remains relevant due to the fact that not every act of violence of one soldier toward another constitutes a military crime. During military service, military personnel enter into military service relations regulated and protected by military legislation. In the process of mutual communication, on

the basis of the exercise of property, marital, familial, and other personal rights and freedoms, purely personal relations may arise between them. In specific cases, they may be accompanied by a socially dangerous violation of the general civil rights and freedoms of the military personnel participating in them, including with the use of violence.

As the court found, a private approached a table at which another soldier was having dinner and mockingly put a plate with leftover food in front of him. Consequently, the private demanded an explanation from the soldier in a secluded place, but he refused to talk and spoke with obscene language. In order to avenge this behavior, the private punched the soldier and fractured his jaw, due to which the victim was hospitalized for 27 days. The bodily injury was classified as severe (Register of court cases 2023a).

In its definition, the court pointed out that when deciding on the legal qualification of the offense, the courts examining this case did not take into account the fact that the physical violence of one soldier against another could be recognized as a military crime falling under the signs of Art. 406 CCU, encroaching on the established order of military service. It is applied in connection with the victim's performance of military service duties, or when the use of violence, although not directly related to the performance of military service duties, was associated with an obvious violation of the order of military relations and expressed a clear disrespect for the military unit.

In this case, the private inflicted bodily harm on the soldier out of revenge for the personal offense previously inflicted upon the victim, that is, by a motive unrelated to military service. These actions, which were a response to the inappropriate behavior of the victim, were committed on the basis of purely personal relations and did not affect the established order of official relations in the military unit. During the crime, neither the private nor the soldier was performing military service duties. Accordingly, there are no grounds for qualifying these actions under Art. 406 CCU, which establishes the responsibility of violating the statutory rules of relations between military personnel when there is no subordination between them. Instead, the criminal acts committed by the private were intentionally inflicting lesser bodily harm and did not contain signs of encroachment on the established order of military service. They were not military, but ordinary crimes against the person.

Thus, according to Art. 406 CCU, first of all, violent actions are subject to qualification when they are committed in connection with the victim's fulfillment of military service duties, for example, dissatisfaction with their conscientious attitude to service. Secondly, the basis for qualifying these actions under Art. 406 CCU is if they are committed not only in connection with the duties of military service, but in connection with other motives, if at the same time at least one of the military personnel (victim or perpetrator) was performing duties of military service. Thirdly, the crime, which is qualified under Art. 406 CCU, is committed not in connection with and not during the performance of military service duties, but is accompanied by a manifestation of obvious disrespect for the military unit,

a gross violation of order within the unit, normal rest, or leisure of personnel, or the desire of an individual to assert their superiority over recruits.

An example of the correct approach in resolving this issue is a criminal case against a junior sergeant who was accused of having punched another junior sergeant in the face in the barracks, causing a fracture to his lower jaw, that is, moderate damage to his health. His actions were qualified under Part 2 of Art. 405 CCU. At the hearing, the garrison military court found that the accused had used violence on the basis of personal relationships not related to military service, in particular, in connection with the suspicion that the victim had stolen his belongings.

At the same time, neither the defendant nor the victim was performing any specific duties of military service (general or special), despite the conflict between them occurring during the service hours established by the daily routine, but in a secluded place and without violating the order within the unit. Since the above-mentioned circumstances indicated an absence of signs of a criminal offense against military service in the actions of the junior sergeant, the court, taking into account the damage caused to the victim, reasonably requalified the offense to Part 1 of Art. 122 CCU "Intentional bodily injuries of moderate severity" (Melnyk 2020).

In this regard, it is possible to propose the following qualification rule: the violence of one soldier against another can be recognized as a military crime (Art. 406 CCU) only if it serves as a means of violating the established procedure for military service and can be applied in the following cases:

a) in connection with the victim' performance of military service duties
b) during the performance of at least one of these duties
c) when the use of violence, although not directly related to the performance of military service duties, was associated with an obvious violation of the order of military relations for the offender and expressed a clear disrespect for the military unit.

3.4. Violent acts committed against a chief during the performance of military service duties

A necessary sign of the objective side of a criminal offense provided for in Art. 404 CCU is the commission of violent acts against a commander during their performance of military service duties. According to the requirements of paragraph 1 of Art. 7 to the Law of Ukraine "On Military Law Enforcement Service in the Armed Forces of Ukraine," during the performance of their tasks, servicemen of the law enforcement service are given the right to demand from the servicemen of the Armed Forces of Ukraine – and other military formations formed in accordance with the laws of Ukraine, who are liable for military service, and from other persons in military uniform, dismissed from military service to the reserve forces, or retired with the right to wear it – observance of public order and rules for wearing military uniforms and suppression of offenses and actions that impede the implementation of the tasks and functions of the military law enforcement

service, and in case of failure to comply with these requirements, the right to apply coercive measures provided for by Arts. 9–11 of this Law (Bondarenko 2020).

The duties of military service is understood to include the performance of official duties established by military regulations, combat duty, and other special services and the execution of an order or task given or assigned by a commander (chief), etc. In this case, the chief is considered to have begun to perform their duties at any time, under any circumstances that require calling for the subordinate's obedience. Violent acts against the commander in these situations are subject to qualification under Art. 404 CCU.

On February 18, 2020, Dzerzhinsky District Court of Kharkiv considered a case regarding a warrant officer who had left the territory of the military unit at about 9 p.m. on August 24, 2017. He then began to demand from the soldier at the checkpoint of this military unit to permit him to return to the territory of the military unit. At the same time, the warrant officer was approached by a garrison patrol consisting of the patrol chief, who was in the rank of the senior soldier, and patrol soldiers. The chief of the patrol introduced himself, presented the warrant officer a certificate of the chief of the patrol and put forward a legal requirement for him to present documents certifying his identity, since there were all grounds for considering him a serviceman of the Armed Forces of Ukraine. In addition, the warrant officer was in a public place with obvious signs of alcohol intoxication. The fact that the warrant officer was in a state of alcohol intoxication is confirmed by Conclusion No. 168 of August 25, 2017 issued by the military unit; the examination was conducted at 00:15 a.m. on August 25, 2017. However, the warrant officer refused to comply with the legal requirements of the patrol and began to behave inappropriately by threatening the personnel of the patrol, and then intended to leave the scene of his violation of military discipline, that is, from the checkpoint of the military unit.

It should also be remembered that a crime can be qualified under Art. 405 CCU when a commander is not directly performing the duties of military service, but violence is used against them in connection with the performance of these duties. In such cases, using violence, the commander may be outside the military unit or place of service (rest, vacation, treatment, etc.). In some cases, violent acts against a commander can occur regarding the performance of military service duties, but on the grounds of personal hostile relations (for example, jealousy) and outside of a military setting. Such actions do not contain signs of crimes against military service and therefore are subject to qualification under the relevant articles of the CCU on crimes against the person (Sobko et al. 2023).

A special qualification rule can be formulated as follows: the violent actions of a subordinate against a commander cannot be qualified under Art. 404 CCU if the offender used violence against the commander during leisure time (rest, vacation, etc.) and for a motive not related to military service (personal hostile relations, jealousy, etc.). Such criminal acts shall be qualified as crimes against the person.

This allows us to formulate another special qualification rule: the violent actions of a subordinate against a commander can be qualified under Art. 404 CCU if the offender used violence against the commander in connection with their legitimate work in the service. If the violent acts became protection against unlawful violence by the commander, then the responsibility of the subordinate under this article is excluded. Such actions, depending on the specific circumstances, may be recognized as necessary or excessive defense, or as a crime against the person.

3.5. Infliction of grave bodily harm in crimes against the rules of statutory relations between military personnel

Let us consider in detail the possibility of implementing this rule on crimes against the order of statutory relations between military personnel. The average severity of harm to health in resistance, coercion, or violent acts against the commander and violation of the statutory rules of the relationship can be caused intentionally or through negligence. The intentional infliction of such damage in any case is covered by Part 2 of Art. 404, Part 2 of Art. 405, and Part 2 of Art. 406 CCU; an additional qualification under Article 122 CCU "Intentional bodily injuries of moderate severity" is not required. This qualification is due to the fact that the sanction for causing harm to health of moderate severity (Article 122 CCU) is less severe than for the corresponding components of military violent crimes.

This approach is observed in the case law. Thus, the military violent crime committed by the sergeant was correctly qualified by the court under Part 2 of Art. 406 CCU. The sergeant struck a soldier on the head with a stool several times for refusing to bring him a cigarette, causing him a moderate closed head injury (Register of court cases 2023a). Taking into account the absence of criminal liability for causing harm to health of moderate severity by negligence, it seems that if such an act was associated with resistance or coercion, then it should be qualified under Part 1 of Arts. 404–406 CCU on the basis of "use of violence."

The infliction of grave bodily harm by negligence or by intention, though in the absence of qualifying signs of Art. 121 CCU "Intentional grave bodily harm," should also be qualified under Part 2 of Art. 404 and Part 2 of Art. 405 CCU without additional qualification under Art. 121 CCU. This rule applies to damages caused in the process of non-statutory relations. Since Art. 405 CCU does not stand out as an independent qualifying sign of causing serious harm to health, this consequence should be regarded as serious and should be qualified in accordance with Part 3 of Art. 405 CCU. This qualification is due to the fact that sanctions in the relevant parts of Arts. 403, 405, and 406 CCU are stricter than the sanction in Part 1 of Art. 121 CCU.

An example of the correct qualification is the decision in the criminal case of May 7, 2021 of Beregovo District Court of the Transcarpathian region. Being dissatisfied with the service of a private (PERSON_1), another private (PERSON_2) struck him with a foot on the buttocks, causing the victim to fall and hit his head

on a wooden box. As a result of this blow, PERSON_1 received severe damage in the form of a closed blunt trauma to the cervical spine. Having correctly established that such a consequence was not foreseen in relation to the attack, although PERSON_2 should and could have foreseen it with the necessary attentiveness and foresight (a careless form of guilt), the military court reasonably qualified the crime under Part 3 of Art. 405 CCU (Register of court cases 2021b).

The most acute theoretical and practical issue is the qualification of military crimes under Arts. 404–406 CCU related to causing serious harm to the health of the victim under the circumstances specified in Parts 2 and 3 of Art. 121 CCU. Most judges adhere to this approach in the consideration of such cases. Thus, on February 12, 2022, Bila Tserkva City District Court of Kyiv Region considered the case of a private (PERSON_1), who tried to force a soldier of a later call (PERSON_2) to do push-ups from the floor in order to assert his superiority. When the latter refused, he struck him in the chest with a strong kick with a boot. By this action, PERSON_1 inflicted a closed chest injury on PERSON_2 that caused cardiac arrest and death. Taking into account the actual circumstances testifying to the intentional infliction of grave bodily harm to PERSON_2, which led to his death through negligence, the court reasonably recognized the crime as grave and qualified the actions of PERSON_1 under Part 3 of Art. 406 and Part 2 of Art. 121 CCU (Register of court cases 2022b).

However, such a solution to this problem cannot be considered indisputable. In the proposed approach, a double obligation is allowed since the accused would be brought to responsibility for causing grave bodily harm twice: first, under the relevant military articles, and second, under Art. 121 CCU. At the same time, in our opinion, it is rather difficult to give an unambiguous answer to this question due to the fact that the possibilities of general rules for qualifying crimes have been exhausted in solving the problem. Thus, the optimal solution to this issue is to establish a balance (compliance) between the sanctions of Arts. 404–406 CCU and Art. 121 CCU.

On June 13, 2023, Kropyvnytskyi Collegium of Judges of Kropyvnytskyi Court of Appeal issued a verdict regarding a soldier. He was found guilty and convicted for carrying bladed weapons without the permission provided by law and causing bodily harm to a commander in connection with military service duties with the use of weapons under martial law. The soldier was found guilty and sentenced under Part 4 of Art. 405 CCU to imprisonment for a term of five years and under Part 2 of Art. 263 CCU "Illegal handling of weapons, military supplies or explosives" to imprisonment for a term of one year. Based on Part 1 of Art. 70 CCU, by the accumulation of offenses and the more severe punishment absorbing the less severe one, the final punishment was determined to be imprisonment for a term of five years. On the basis of Art. 75 CCU, he was released on probation and a monitoring period of three years was established (Register of court cases 2023b).

The legislature, prescribing the responsibility for the commission of a criminal offense, must take into account the higher danger of these acts (basic and additional) in their unity. Moreover, the degree of public danger of a constituent criminal offense

is always higher than the additional act allocated from it. Otherwise, the purpose of constructing multiple crimes is lost, since the additional act acquires an equal social danger to the multiple crime, the responsibility for which takes into account this additional act (which cannot be considered correct). At the same time, before making appropriate changes to the Criminal Code of Ukraine, it is better to recognize the option of qualifying a crime committed in such cases by the accumulation of offenses. In this case, a legal fiction is created, i.e., the deviation from the general rule on conflicts between general and special norms and the qualification of such acts by the accumulation of offenses. Therefore, it should be remembered that the legal fiction in the qualification of crimes has ceased to be a new principle.

Summarizing the above, not all violence of one serviceman against another (whether chief or another person performing the assigned duties of military service with an equal, senior, or junior rank) should be considered a military crime. We would like to draw attention to the fact that under Art. 404 CCU only seven sentences were issued in 2019, two sentences in 2022, and three in 2023. Under Art. 405 CCU, 101 verdicts were rendered in 2019, four verdicts in 2020, eight in 2021, 45 in 2022, and 40 in 2023. Under Art. 406 CCU, since 2019 there have been only 95 sentences in total, out of which 14 sentences were issued in 2019, 15 sentences in 2020, 25 in 2021, 26 in 2022, and 10 during six months of 2023.

4. Statistics of criminal offenses in 2014, 2021, and 2022

Criminal offenses against statutory relations between military personnel (Arts. 404–406 CCU) "Resistance to a commander or coercion of a commander into breaching official duties" and "Violation of the statutory rules of relations between military personnel in the absence of relations of subordination," as noted above, share a number of common features that relate to violence. In this regard, it is necessary to consider the statistical data on these articles in the following order:

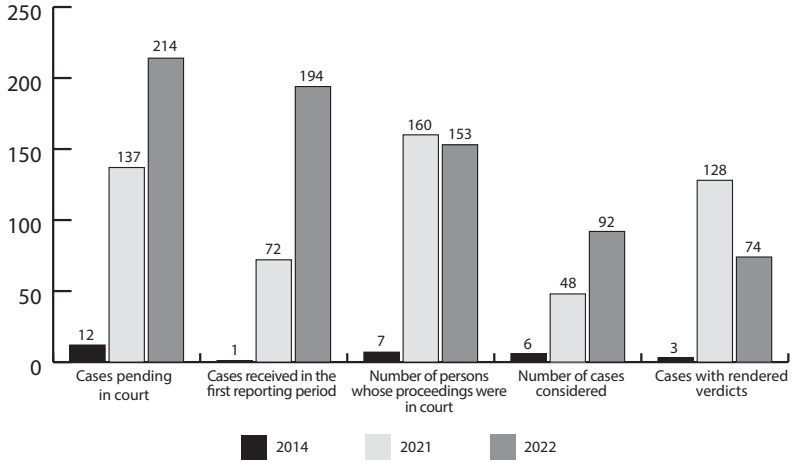
1. Before the beginning of Russia's military aggression against Ukraine, we analyze the data from 2014.
2. During the ATO and Joint Forces Operation (JFO), which lasted eight years from 2015 to 2021, we consider the data from 2021.
3. Recent indicators, taken into account in the analysis, correspond to the time of Russia's full-scale invasion of Ukraine (martial law).

Using this qualification, we trace the changes in violent criminal offenses in Ukraine. In 2014, statistical indicators are quite low throughout the section: only 12 criminal proceedings were before courts, one criminal case was received in the reporting period, seven individuals had proceedings in court, six cases were under consideration, three cases had verdicts rendered, no cases had reconciliation, no cases had a determination of guilt, no cases were returned by the prosecutor, and seven cases had closed proceedings in the case (Judiciary of Ukraine 2014).

In 2021, under Art. 404 CCU "Resistance to a commander or coercion of a commander into breaching official duties," there were seven criminal proceedings in court, three cases received during the reporting period, seven persons whose proceedings were in court, two proceedings that were considered, one case with a rendered verdict, no cases with reconciliation, no cases with a determination of guilt, no cases returned by the prosecutor, one case was closed, one case was sent to determine jurisdiction, nine pending proceedings, and six individuals whose proceedings were not considered. Under Art. 405 CCU "Threats or violence against a commander," there were 39 criminal proceedings in total: 13 cases were received in the reporting period, 40 had proceedings before courts, 13 cases were under consideration, 13 cases had verdicts, no cases had reconciliation, four cases had determination of guilt, no cases were returned by the prosecutor, no cases were closed, six cases were sent to determine jurisdiction, 46 proceedings were pending, and the proceedings of 26 individuals were not considered. Under Art. 406 CCU "Violation of the statutory rules of relations between military personnel in the absence of relations of subordination," there were 101 criminal proceeding in court: 56 cases were received in the reporting period, 43 individuals had proceedings in court, 34 cases were under consideration, 113 cases had verdicts rendered, 33 proceedings were under consideration, 24 cases had verdicts, no cases had reconciliation, eight cases had determination of guilt, two cases were returned by the prosecutor, four cases were closed, four cases were sent to determine jurisdiction, 58 proceedings were pending, and the proceedings of 67 individuals were not considered (Judiciary of Ukraine 2021).

In 2022, under Art. 404 CCU, there were 12 criminal proceedings in court, nine cases were received in the reporting period, 16 persons had proceedings in court, three proceedings were considered, two cases had verdicts, no cases had reconciliation, no cases had determination of guilt, no cases were returned by the prosecutor, no cases were closed, one case was sent to determine jurisdiction, nine proceedings were pending, and the proceedings of 12 individuals were not considered. Under Art. 405 CCU, there were 102 proceedings in court, 90 cases were received in the reporting period, 101 individuals had proceedings in court, 56 cases were considered, 48 cases had rendered verdicts, no cases had reconciliation, no cases had determination of guilt, two cases were returned by the prosecutor, no cases were closed, six cases were sent to determine jurisdiction, 46 proceedings were pending, and the proceedings of 46 individuals were not considered. Under Art. 406 CCU, there were 90 criminal proceedings in court, 95 persons had proceedings in court, 46 cases were received in the reporting period, 33 proceedings were under consideration, 24 cases had verdicts, no cases had reconciliation, 38 cases had determination of guilt, no cases were returned by the prosecutor, no cases were closed, four cases were sent to determine jurisdiction, 57 proceedings were pending, and the proceedings of 62 persons were not considered (Judiciary of Ukraine 2022).

Figure 1. Statistics on the number of violent criminal offenses committed



Source: Own elaboration.

Analyzing Figure 1, it is necessary to consider indicators that an ever-increasing number of violent criminal offenses are being committed. During peacetime, the number of criminal offenses was even less than indicated in the table because the data are provided for all criminal offenses contained in Section 19 CCU. During the seven-year period of the ATO and JFO, the rates of these criminal offenses increased by 1140%. When comparing the data from the period of martial law, this indicator increased by 1780%. At the same time, when comparing the periods of the ATO and JFO, the number of violent criminal offenses increased by 158%. The same numbers remain true for all other indicators under analysis, except for the number of verdicts, which decreased twofold during martial law. This can be explained by the fact that the persons who commit these criminal offenses are at war or by the growing load of these criminal offenses in court. However, these determinants do not affect the problems of correct qualification. This trend definitely affects the relevance of the topic under study.

Problems arising during qualification are explained by this circumstance. In order to properly qualify criminal offenses, it is necessary to clearly determine the dividing lines between them. According to Oleh Shkuta (2020), "in fact, the entire qualification process involves the consistent separation of each sign of the committed act from the sign of other, related crimes. We can safely say that the delimitation of crimes is the reverse side of qualification." Therefore, it can be argued that careful consideration and proper qualification of violent crimes in the military are important steps in ensuring justice and law and order in the army and society.

5. Strategy for reducing military violent criminal offenses

Taking into account the above-described case law in relation to military violent criminal offenses, as well as statistical data, we consider it necessary to introduce a strategy for reducing military violent criminal offenses and ensuring law and order under martial law. This requires a comprehensive and systematic approach at the national level.

First of all, the Ukrainian legislation should be adapted to the specifics of military violent criminal offenses and should establish appropriate punishments. In this regard, we consider it expedient to create a system of accounting and reporting on cases of military violent criminal offenses, which would be accessible to the public and international observers. Apart from that, a special support and rehabilitation program should be established for victims of military violent criminal offenses, including psychological, medical, and social assistance.

Moreover, one of the priority areas of work is the formation of transparent and effective law enforcement agencies. The professional training and ethics of military and law enforcement services should be ensured, as should the creation of mechanisms for monitoring their activities.

The key to an effective strategy is launching an information campaign. Such campaigns on the prohibition and unacceptability of military crimes aimed at raising the awareness of citizens will facilitate the publicity of this problem.

This strategy should be based on real data and should take into account the specifics of the war in Ukraine, as well as cooperation with existing programs and initiatives. The consistency and focus on practical results to improve security, law and order, and human rights protection under martial law is fundamental in this context.

Conclusions

Based on the general methodology and the above trends, we can draw the following conclusions: During martial law, there is an increase in the number of military violent criminal offenses, which may be due to increased tension and hostilities. Ukraine has been under martial law for almost two years, but changes at the legislative level have not taken place regarding the procedure for military service during the armed aggression.

The specifics of displaying violence in provisions establishing responsibility for criminal offenses against the statutory rules of relations between military personnel require special rules for their qualification. Due to the fact that violence in these criminal offenses has a large number of similar signs, one of the topical issues is their delineation in the process of criminal legal assessment.

The problem of delimiting criminal offenses against the statutory rules of relations between military personnel from related general violent criminal offenses is due to the fact that not all violence of one serviceman against another (whether a chief or another person performing the assigned duties of military service of equal, senior, or junior rank) should be considered a military crime. Therefore, the exact establishment of the main objective of a criminal offense plays an important role. To determine the orientation of violent actions of military personnel on the order of statutory relations between military personnel and their qualification as military crimes, it is necessary to take into account a number of special (private) qualification rules.

To address the issue of qualifying criminal offenses against the statutory rules of relations between military personnel with the use of violence, in conjunction with violent general criminal offenses, the main thing is to establish the volume of "violent" consequences in signs of violence in the specific composition of a military criminal offense. A universal way to deal with this issue is to compare sanctions for the corresponding complex military violent crime and crimes against the person.

The study indicates the need to introduce effective measures to counter military violent criminal offenses by, among other things, improving human rights mechanisms, reforms of the security sector.

Declaration of Conflict Interests

The authors declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding

The authors received no specific funding for this work.

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