

## REASSESSING THE CONCEPT AND CLASSIFICATION OF WAR CRIMES IN MODERN LAW UNDERSTANDING

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## ABSTRACT

War is inevitable, and its consequences devastating with lots of casualties and damages experienced. The purpose of the article is to study the concept and classification of war crimes. It has been emphasized that it is impossible to organize timely detection, effective pre-trial investigation and fair trial of war crimes cases without understanding the essence of the indicated illegal actions and the specifics of the mechanism of their commission. Analysis of the provisions of international legal acts, regulatory legal acts of Ukraine and foreign countries has been carried out. Those regulations define the concept of “war crimes”, their features and system. It has been found that there is no actual definition of war crimes in international criminal law, similar to the criminal law of Ukraine. It has been offered to understand war crimes as criminal offenses that encroach on the established procedure for performing active duty and are committed by members of the armed forces, conscripts and career reservists during

reserve training, as well as their accomplices and other persons specified by law. It has been established that the criminalistics classification of war crimes allows us to form the appropriate forensic methods, to choose the right direction, means, tactics and investigation plan. The authors have accomplished criminalistics classification of war crimes according to a mixed criterion, which is stipulated by such criminal and forensic significant features of the indicated criminal offenses, as the characteristics of the offender's personality, direction, situation and methods of commission.

**Keywords:** war crimes; military crimes; criminal offenses; criminal and legal features; criminalistics classification; performance of active duty.

## **REAVALIANDO O CONCEITO E CLASSIFICAÇÃO DE CRIMES DE GUERRA NO ENTENDIMENTO DA LEI MODERNA**

### **RESUMO**

A guerra é inevitável e suas consequências devastadoras com muitas baixas e danos sofridos. O objetivo do artigo é estudar o conceito e a classificação dos crimes de guerra. Enfatizou-se que é impossível organizar a detecção oportuna, investigação pré-julgamento eficaz e julgamento justo de casos de crimes de guerra sem compreender a essência das ações ilegais indicadas e as especificidades do mecanismo de sua comissão. Foi realizada uma análise das disposições de atos jurídicos internacionais, atos jurídicos regulamentares da Ucrânia e de países estrangeiros. Esses regulamentos definem o conceito de “crimes de guerra”, suas características e sistema. Verificou-se que não existe uma definição real de crimes de guerra no direito penal internacional, semelhante ao direito penal da Ucrânia. Ofereceu-se entender os crimes de guerra como delitos que infringem o procedimento estabelecido para o exercício da ativa e são cometidos por membros das forças armadas, recrutas e reservistas de carreira durante o treinamento da reserva, bem como seus cúmplices e outras pessoas especificadas em lei. Ficou estabelecido que a classificação criminalística dos crimes de guerra nos permite formar os métodos forenses adequados, escolher a direção, os meios, as táticas e o plano de investigação corretos. Os autores realizaram a classificação criminalística dos crimes de guerra segundo um critério misto, que é estipulado por características penais e forenses significativas das infrações penais indicadas, como as características da personalidade do infrator, direção, situação e métodos de cometimento.

**Palavras-chave:** crimes de guerra; crimes militares; infrações penais; características penais e jurídicas; classificação criminalística; desempenho da ativa.

## **1 INTRODUCTION**

Transitional justice is beginning to opportunities and spaces for consensus in which conflicts have historically broken the peace, breach of the human rights of victims of war to be dealt; and they have distanced themselves from the ideal of justice, reparation and truth. It is therefore, we have created conducive legal mechanisms to punish crimes unpunished and

achieve effective reconciliation, investigate the events, the participants, the actions or omissions made, to exalt human dignity and identify individual responsibilities and collective (Ventura, 2016). Ukraine's national security policy is aimed at protecting the fundamental values defined by the Constitution and laws of Ukraine – independence, territorial integrity and sovereignty, dignity, democracy, human rights and freedoms, rule of law, welfare, peace and security. At the same time, the current threat to Ukraine's national security is Russia's aggressive actions aimed at seizing territory, depleting the Ukrainian economy and undermining socio-political stability, which have led to intensified migration processes due to hostilities, operation of illegal armed groups and crime rate growth, as well as manifestations of separatism and terrorism (on the decision of the National Security and Defense Council of Ukraine, 2020 *apud* BILOUS, 2018, p. 40-41). The growth of criminal offenses' rate against the established system of performing active duty (military criminal offenses) negatively affects the situation and level of national security under such conditions.

In the context of the above, one of the important tasks of the state is both to ensure the security of the state through timely and high-quality normative and legal regulation of this sphere of public life, in particular to properly organize the performance of active duty and to prevent any violations of the established procedure of performing active duty, as well as their detection and investigation in case of commission of relevant criminal offenses. At the same time, the effectiveness of the pre-trial investigation of war crimes directly depends on the compliance with the proper legal procedure established by the criminal procedural legislation and the use of all possibilities of forensic support of such activities. Thus, it is necessary to actively use modern achievements in science and technology, in particular criminalistics along with clear and strict compliance with the requirements of the law in the activities of detecting and investigating illegal acts in the field of performing active duty. Criminalistics is rightly considered a science that performs a security function within criminal proceedings, because it really “ensures” practical activities by providing arsenal of tools, techniques, methods of pre-trial investigation to investigators, operative officers, prosecutors and other participants in criminal proceedings; thus, filling the procedural form defined by criminal procedural law with effective and efficient content (SHAPOVAL, 2015, p. 194-195). However, proper forensic support for the investigation of criminal offenses against the established procedure of performing active duty is impossible without a clear understanding of the concept and classification of war crimes.

Scientific novelty of the research consists in the fact that taking into account the criminal and legal features of criminal offenses against the established procedure of performing active

duty, the authors have defined the concept of war crimes; have carried out the classification of war crimes according to such criteria as the offender's personality, direction, situation, methods of commission.

## 2 LITERATURE REVIEW

The issues about the concept, nature, system of war crimes and sentencing of the members of the armed forces, as well as their relationship with war crimes have been repeatedly studied in the works of both domestic and foreign scholars. In particular:

- V. Davydenko (2015) formed forensic characteristics, recommendations on the organization of the investigation of certain types of war crimes, taking into account the situational approach and tactics of investigative (search) actions while investigating the indicated illegal actions;
- Ya. S. Kulkina (2016) presented comparative characteristics of war crimes in Ukraine and foreign countries (on the example of the Art. 414 of the Criminal Code of Ukraine);
- theoretical and applied aspects of war crimes were covered by M. I. Karpenko, V. K. Matviychuk (2019), T. B. Nikolaienko (2019), S. O. Karytonov (2019);
- the specifics of criminal procedural activity within criminal proceedings on certain war crimes were determined by M. Z. Lutsiv (2020);
- criminological analysis of certain war crimes was carried out by Ye. M. Pashchenko (2021);
- the issues of the relationship between war and military crimes within international and national law was studied by T.S. Sadova (2021).

Certain aspects of the definition of war and military crimes, the identification of their features and the elucidation of the mechanism of their commission are also of great interest among foreign scholars. For example, the study "Magnetic Resonance Spectroscopy of Studying Social Misconduct, Psychopathy and Violent Crimes among Army Conscripts" is of particular interest. The emphasis of this study is the fact that comprehensive research of the offender's personality performing compulsory military service and committing criminal offenses of a violent nature is possible not only with the help of criminological and

psychological analysis of personality, but also neurovisualization. The specified methods allow conducting a comprehensive study of the offender from members of the armed forces for anomalies associated with antisocial personality disorder (APD), high rates of psychopathy and violent behavior, as well as to determine their impact on the formation of intent to commit violent war crimes (BASOGLU *et al.*, 2008).

In addition, it is worth noting the following scientific developments of foreign scholars in the researched field, namely:

- W. Fenrick (2015) considers war crimes along with genocide, crimes against humanity and aggression, as major international crimes;
- Chehtman (2018) analyzes the revisionist theory of just war and the concept of war crimes;
- W. Cheah (2018). draws attention to the need for a clearer and more comprehensive approach to malicious desertion within international humanitarian law, in particular the need to take into account the realities of malicious desertion, its various variants and the difficulty of distinguishing between prisoners of war and military absentees;
- Raising the issue of war crimes charges in the UK A., Williams (2020) in order to ensure a fairer investigation process, offers to admit three main tenets: norms regulating individual and systemic conduct in a military conflict are relatively indisputable; the state has a duty for the investigation, which is not disputable, in case of suspicion of a violation; any investigation must take into account the context, where it is conducted;
- E. Aaronson and G. Shaffer (2021) based on the theory of transnational public order and recursive law, study the issue of criminalization and note that transnational criminalization processes have fully embraced the legal definition of war crimes;
- W. Pons, J. Lord and M. Stein (2021) analyzing disability, human rights violations and crimes against man, highlight the specifics of both committing war crimes against people with disabilities and bringing people with disabilities to criminal liability for committing war crime;
- D. Marchesi (2021) on the example of the trial of Al Hassan initiated by the International Criminal Court, made an attempt in the scientific article to identify problems related to the material elements of war crimes associated to the denial of judicial guarantees; to warn about hidden dangers under the interpretation of the

specified crimes; to provoke discussion of issues about war crimes related to the denial of judicial guarantees;

- C. Simmons (2021) by determining the scope of military jurisdiction for violations of international humanitarian law, emphasizes the difficulty of internationalizing the discussion of military jurisdiction due to differences in national legal traditions.

Undoubtedly, the scientific achievements of these scholars have significantly enriched the understanding of war crimes, which in turn should reduce the scope of difficulties faced by law enforcement and judicial agencies while detecting, investigating and resolving cases of these criminal offenses. However, it should be noted that many issues still remain unresolved or controversial, which undoubtedly have a negative impact both on the development of relevant scientific concepts and law enforcement practice while investigating and prosecuting war crimes.

### **3 PURPOSE AND OBJECTIVES OF THE RESEARCH**

The purpose of this article is in understanding the view and position occupied by the state of Ukraine in accomplishing classification of war crimes. According to the set purpose *the objectives* of the research are: to study scientific approaches to interpret the concept and to distinguish the features of war crimes: to present authors' understanding of the concept of war crimes: to provide the classification of war crimes in accordance with criminal and criminalistics criteria. Really it will a refined propensity in ensuring that the state of Ukraine should classified crimes as it will enable them guarantee its fight and combatting. The notion of classifying crimes is a laudable initiative by the State of Ukraine, but of what use will this classification be of help when concrete measures are not taken in ensuing its recognition.

### **4 METHODOLOGY**

Methods of the research chosen by the authors are related to the set purpose and objectives, in particular they have used both generally philosophical and special methods of scientific cognition.

The dialectical method of cognition allowed us to illustrate the formation of the concept of war crimes and to form a definition of the indicated criminal offenses. The methods of logic assisted to analyze the provisions of regulatory legal acts and scientific approaches to interpret

the concept of war and military crimes, the characteristics of their features, to determine the role and criteria of criminalistics classification of war crimes. The system and structural method was used while distinguishing criminal and legal features of war and military crimes; implementing criminalistics classification of war crimes according to a mixed criterion, which is stipulated by criminal and legal, forensically significant features of the indicated criminal offenses. The comparative and legal method allowed us to compare the norms of international criminal law, criminal law of Ukraine and foreign countries in terms of defining the concept and system of war crimes.

## 5 RESULTS AND DISCUSSION

The problem of effective provision of the protection of the person's rights has always existed, and even despite the ratification by Ukraine of a number of international documents that guarantee every person fundamental rights and freedoms. Under these conditions, the key issue should be the development and introduction of an effective legal mechanism for protecting the rights of the aggrieved person in criminal proceedings on the one hand and their updating on the other. This will be evidence that the state as a whole and its law enforcement bodies are ready to fulfill their international obligations (ABLAMSKYI; HLOBENKO; CHYCHA; MARTOVYTSKA; BURLAKA, 2020).

The system of war crimes (as well as any other crimes) is important both theoretical and practical: first, it provides an opportunity to identify the most significant features inherent in war crimes; and second, due to these signs, the latter differ from each other; thirdly, the system of such crimes permits the separation of war crimes from non-military (ordinary or special-criminal), which is a prerequisite for their proper qualification, which, in turn, embodies the principle of the lawfulness of criminal law. The value of systematizing war crimes lies in their most important and stable functional relationships with various branches of law and allows for legal identification with sectoral legal systems, for example, with administrative and military law, through such logical terms as concepts, judgments and inferences (KHARYTONOV, 2018).

Given that war crimes can only be committed in the course of or in connection with an armed conflict, it would be logical to clarify its nature. Undoubtedly, armed conflict in all its manifestations is a deformation of social relations, accompanied by sharp contradictions, widespread use of weapons, the declining value of human life, rising levels of violence and other crime, which is the root cause of war crimes (TATARYN; KOMISSARCHUK;

DMYTRYK; MAISTRENKO; RYMARCHUK, 2021, p. 78). The investigation of criminal offenses always begins with a preliminary criminal and legal qualification of an illegal action. Accordingly, it is necessary to clearly distinguish between *corpus delicti* of criminal offenses and the qualifying features of socially dangerous actions. War crimes are no exception in this respect. That is the reason that a large number of research works is focused on elucidating the specifics for determining *corpus delicti* of military criminal offenses, their criminal and legal qualification, prosecution for their commission and sentencing.

The issue of conceptual definition of war crimes has been relevant for many years for all countries of the world. Therefore, the specified issues have repeatedly been the subject matter of research by both domestic and foreign scholars. In this context, if we want more fully and comprehensively to cover the features of war crimes, which emphasize their difference from other criminal offenses and allow us to formulate their definition, it is necessary to analyze both the legal interpretation of this type of crime and scientific developments in this area.

It should be separately emphasized that the international interpretation of war crimes differs significantly from its interpretation in the criminal legislation of Ukraine. In particular, Part 2 of the Art. 8 of the Rome Statute of the International Criminal Court (1998) states that «For the purpose of this Statute, "war crimes" means:

- (a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention;
- (b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts;
- (c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause;
- (d) Paragraph 2 (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.
- (e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:
- (f) Paragraph 2 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.

Having analyzed the above provisions, we can note that international law understands war crimes as violations of the laws and customs applied during armed conflicts both of

international and non-international nature. To denote the indicated type of criminal offenses, the two terms “war crimes” and “military crimes” are used as synonymous. Moreover, the analysis of *corpus delicti* of criminal offenses recognized as war crimes demonstrates that they relate not so much to the violations of the procedure of performing active duty, but to the established rules of hostilities. This indicates that there is actually no definition of war crimes in international criminal law that is similar to domestic criminal law.

Similar conclusions can be reached as a result of the analysis of scientific positions of foreign scholars on determining the nature of war crimes. First of all, it should be noted that it is customary to distinguish a group of crimes called “international crimes” in the criminal law of many foreign countries, as well as in international criminal law. This group includes war crimes, genocide, crimes against humanity and aggression (FENRICK, 2015). At the same time, war crimes, according to the Office for the Prevention of Genocide and Responsibility for the Protection of the United Nations, are violations of international humanitarian law (treaty or common law), which entail individual criminal liability under international law. As a result, war crimes, unlike crimes of genocide and crimes against humanity, must always take place in the context of an armed conflict of international or non-international nature (WAR CRIMES, 2021).

This point of view is shared by L. Friedman (1999, p. 9-10), who, by studying the definition of war crimes and their use in international criminal tribunals, emphasizes that the definition of war crimes is limited by the requirement of “war” and a type of war. The scholar notes that war crimes are multifaceted category, which includes certain elements:

- 1) “crimes against peace”, which consist in the beginning of an aggressive war in violation of treaties;
- 2) “crimes against humanity”. But there is a qualifying phase in determining a crime against humanity – “before or during the war” – which implies that there must be a war or “armed conflict” somewhere before the concept of crimes against humanity can be applied;
- 3) “military crimes”, i.e., cruel treatment with prisoners, civilians, unnecessary destruction, everything requires war.

If we want to qualify illegal actions as war crimes, they must have certain characteristics. In particular, the indicated type of criminal offenses must contain two main elements (WAR CRIMES, 2021):

- 1) the contextual element: “the action took place in the context of international and non-international armed conflict and was related to such an armed conflict”;
- 2) mental element: intention and knowledge both about the individual act and the contextual element.

One of the distinguishing features of war crimes is the lack of clearly defined stages of their commission. Studying the actus reus of the crime of aggression, N. Hajdin, (2021, p. 496) finds out the difference between the crime of aggression and the other three main crimes (genocide, crimes against humanity and war crimes). This difference is that the latter do not contain clear stages preceding criminal activity in their definitions, but include only one stage – execution. In each case, the illegal action related to criminal aggression must include an element of collectivity that involves at least two stages, namely the planning and execution of the act. It is clear from the above that war crimes involve only the stage of execution.

In order to clarify the essence of the concept of “war crimes” in details and comprehensively, it is necessary to pay attention to the consolidation of the specified term in the criminal law of certain states. In particular, the term of “war crime” in the United States is a technical expression of a violation of the law of war by any military or civilian person or persons. Every violation of the law of war is a war crime (Field Manual; United States of America Practice Relating to Rule 156 Definition of War Crimes). War crimes are defined as acts that violate the law of armed conflicts, i.e., norms established by common and conventional international law regulating the conduct of war, and which are generally recognized as war crimes. Acts constituting war crimes may be committed by the armed forces of the belligerent party or by persons belonging to civilians. The list of acts that should be considered as military is given in the provisions of the Commander’s Handbook on the Law of Naval Operations of 1996 and are related to violations of the rules of conduct in international and non-international armed conflicts established by international treaties. With regard to crimes committed by the members of the armed forces, one of the main legal sources regulating the criminal and disciplinary liability of American servicemen is the Uniform Code of Military Justice of 1951 (KULKINA, 2016, p. 105), which is the legal framework that regulates all US military personnel. The UCMJ covers a variety of legal issues, starting from the detention and imprisonment of military personnel up to the rules related to Military Appellate Courts (the Uniform Code of Military Justice - UCMJ). However, the UCMJ does not provide an interpretation of the term of “war crimes”.

According to Ya. S. Kulkina (2016, p. 105), the issues related to war crimes are not regulated by criminal codes (some of them do not have the criminal code at all) in the countries of the Anglo-American (USA, Great Britain, Ireland, Canada, Australia, New Zealand, etc.) and Romano-Germanic (Germany, France, Italy, Spain, Holland, Austria, Switzerland, etc.) law systems. Military criminal law in these countries has become a separate branch of law. At the same time, the legislation of this group of countries does not have a single approach to the

definition of the term of “war crimes”. In particular, the only source of military criminal law in the United Kingdom is the 2006-Armed Forces Act, which has no definition of “war crime”; France, where the main source of military criminal law is the Code de Justice Militaire, adopted in 2006, also has no definition of “war crime”. Such a norm has been in force since 1957 only in Germany, where the Law on Liability for War Crimes (Wehrstrafgesetz), but the definition presented in this Law is very formal. According to § 2, an act provided by the Special Part of this Law is recognized as a war crime.

It is clear from the above that the issue of defining the concept of war crimes in criminal law is not settled in many countries of the Anglo-Saxon and continental legal systems; and war crimes in international criminal law are mainly limited to violations of rules and regulations during armed conflicts. The criminal and legal definition of “war crimes” is different in Ukraine, and acts that are called military (war or military crimes) in the international arena are related to military crimes. That is, the Criminal Code of Ukraine (hereinafter – the CC of Ukraine) provides criminal liability for committing two distinct groups of criminal offenses – war and military criminal offenses. Accordingly, the legislator distinguishes between war and military crimes.

The concept of war criminal offense is given in the Art. 401 of the CC of Ukraine, where war criminal offenses under Chapter XIX of the CC of Ukraine are criminal offenses against the statutory procedure of performing active duty, committed by the members of the armed forces, conscriptees and career reservists during reserve training. Part 2 of the specified Article lists the subjects of war criminal offenses, namely – servicemen of the Armed Forces of Ukraine, Security Service of Ukraine, State Border Guard Service of Ukraine, National Guard of Ukraine and other military formations formed in accordance with the laws of Ukraine, State Special Transport Service, The State Service for Special Communications and Information Protection of Ukraine, as well as other persons specified by law (CRIMINAL CODE OF UKRAINE, 2001). This indicates that the legislator enshrined main features in the definition of war criminal offenses – the object of war crimes (military service relations, namely the procedure of performing active duty) and an exhaustive list of subjects of committing this crime (SADOVA, 2021, p. 222).

Military crimes, as noted by T.S. Sadova (2021, p. 223-224), are serious large-scale violations of the laws and customs of war, provided by international law, are applied in terms of armed conflict and entail individual criminal liability under international criminal law. At the same time, the characteristics of the specified criminal offenses, which indicate their difference from war crimes, are the following: they occur within the state’s plan or policy and

this is their seriousness; are manifested in violation of the laws and customs of war, i.e. they encroach on the procedure established by international law for armed conflicts (both of international and non-international nature); they encroach on the interests of persons' security involved in armed conflict (both of international and non-international nature) protected by international law; they are possible only in the course or in connection with an armed conflict both of international and non-international nature; they violate the norms of international law; the subject can be both general inherent to all types of crimes against peace and security of mankind, and special – a combatant; the specific feature of the subjective aspect: along with the inherent to all crimes against peace and security of mankind features of intentional (regarding the action) and conscious (regarding the possibility of consequences of the action), it is necessary to state an additional analytical element concerning the perpetrator's perception of an armed conflict.

The statement made by Y. Dinstein (2016) in the context of the above, seems appropriate – “war crimes are acts that contradict to the Law on International Armed Conflict (LOIAC) and lead to criminal liability of persons who committed prohibited acts. It has been often argued in the past that “every violation of the law of war is a war crime”. But such allegations have never found support in the real practice of the state. As it has been already noted by H. Lauterpacht “the authors of textbooks and sometimes military manuals and official statements were wrong on the side of comprehensiveness”, “without trying to distinguish between violations of the rules of war and war crimes”. It is now clear that only some serious LOIAC violations are claimed as war crimes”.

War crimes and military crimes are actually distinct categories, although they may “partially intersect, since the object of military crimes involve violations of the laws or customs of war, and war crimes involve the procedure of performing active duty, which in turn may include the violation of laws and customs of war as a component” (SADOVA, 2021, p. 225). To ensure an effective pre-trial investigation of war crimes and to clarify all the circumstances to be proved, in addition to knowing the nature and characteristics of the specified category of criminal offenses, we need to know the specifics of the mechanism of their commission. This will assist to single out the main types of war crimes, which have natural features, taking into account of which contributes to the correct choice of the direction, means and methods of investigation. We talk about criminalistics classification of war crimes on the mixed criterion, which is stipulated by criminal and forensic significant features of the specified criminal offenses.

The United Nations offers to divide war crimes into (WAR CRIMES, 2021):

- (a) war crimes against persons in need of special protection;
- (b) war crimes against persons providing humanitarian aid and peacekeeping operations;
- (c) war crimes against property and other rights;
- (d) prohibited methods of war pursuance;
- (e) prohibited means of war pursuance.

And it cites as examples of prohibited actions: murder; injuries, ill-treatment and torture; hostage-taking; deliberate attacks on civilians; deliberate attacks on buildings dedicated to religion, education, art, science or charity, historical monuments or hospitals; looting; rape, sexual slavery, forced pregnancy or any other form of sexual abuse; conscription or enlistment of children under the age of 15 in the armed forces or groups or their use for active participation in hostilities.

In our opinion, the criminalistics classification of war crimes as one of the tools for forming the methodology of their investigation should be carried out according to such criteria as the offender's personality, direction, situation, methods of commission. In particular:

- 1) depending on the offender's traits, we distinguish war crimes committed by: servicemen of the Armed Forces of Ukraine; servicemen of the Security Service of Ukraine; servicemen of the State Border Guard Service of Ukraine; servicemen of the National Guard of Ukraine; servicemen of other military formations formed in accordance with the laws of Ukraine; servicemen of the State Special Transport Service; servicemen of the State Service for Special Communications and Information Protection of Ukraine; conscriptees during reserve training; career reservists during reserve training; accomplices of servicemen, conscriptees and career reservists; other persons defined by law;
- 2) according to the direction we distinguish violent war crimes; lucrative war crimes; war crimes related to damage and / or destruction or loss of property; crimes in the field of military service; crimes related to evasion of performing active duty; crimes related to violations of the rules of military service;
- 3) depending on the situation, we distinguish war crimes committed: in terms of the state of martial law; conditions of a special period, except the state of martial law; combat situation;
- 4) according to the method of commission there are war crimes committed by: non-compliance or violation of orders of the chief; harm to the life and health of a person;

plunder of military property; damage to military property; violation of the established rules for performing active duty; divulgence of defense information.

## 6 CONCLUSIONS

Thus, an effective pre-trial investigation of war crimes is impossible without understanding the nature, criminal and legal features of the specified criminal offenses, as well as the specifics of the mechanism of their commission.

War crimes should be understood as criminally punishable actions that encroach on the established procedure for performing active duty and are committed by the members of the armed forces, conscriptees and career reservists during reserve training, as well as their accomplices and other persons specified by law.

War crimes and military crimes are different, though interrelated categories. Certain war crimes may be committed under the state of martial law or combat situation, thereby combining the characteristics of military crimes.

The classification of war crimes allows the formation of appropriate forensic techniques, as well as to make the correct direction, means, tactics and investigation plan. It has been offered to classify war crimes according to a mixed criterion, which is determined by criminal and legal, forensic significant features of these criminal offenses, namely – the characteristics of the offender's personality, direction, situation and methods of commission.

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