



## CRIMINAL AND LEGAL CHARACTERISTICS OF WAR CRIMES UNDER INTERNATIONAL AND UKRAINIAN LEGISLATION: ANALYSIS, PROBLEMS AND PROSPECTS FOR DEVELOPMENT

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### ABSTRACT

This research article provides a detailed analysis of the criminal law characteristics of war crimes in the context of international humanitarian law and Ukrainian legislation, with particular attention to the aspects related to the Russian armed aggression against Ukraine. The article begins with a historical overview of the development of international law governing the conduct of hostilities and their criminalisation at the national level, with a focus on the changes made to Ukrainian legislation in response to military aggression. The authors examine in detail the categories of war crimes defined in the statutes of international tribunals as well as in Ukrainian legislation, analyzing them through the prism of specific events that occurred during the war with the Russian Federation. By exploring these categories, the article highlights the alignment and discrepancies between international legal standards and Ukrainian national laws, providing a comprehensive understanding of the legal framework addressing war crimes in both contexts. Moreover, the article contains a section on international legal cooperation in the prosecution of war criminals, with a special focus on the mechanisms of interaction between Ukraine and international judicial institutions. This section explores the collaborative efforts and legal instruments that facilitate the prosecution of war criminals, emphasizing the importance of international support and cooperation in achieving justice. The conclusions of the article emphasize the need for further development of Ukrainian legislation in the context of criminalisation of war crimes and its adaptation to international standards. The authors underscore the critical role of enhancing national laws to better align with international



humanitarian principles and to effectively address the complexities of modern warfare. Additionally, the article highlights the importance of international legal support for Ukraine in the fight against impunity for war crimes, advocating for continued and strengthened global cooperation to ensure accountability and justice.

**Keywords:**

War crimes; International law; Criminal Code of Ukraine; Corpus delicti; Violation of the laws and customs of war; Criminal liability; Criminal proceedings; Suspect; Accused; Defence counsel; Victim



# CARACTERÍSTICAS PENAIS E JURÍDICAS DOS CRIMES DE GUERRA NA LEGISLAÇÃO INTERNACIONAL E UCRANIANA: ANÁLISE, PROBLEMAS E PERSPECTIVAS DE DESENVOLVIMENTO

## RESUMO

Este artigo de pesquisa fornece uma análise detalhada das características do direito penal dos crimes de guerra no contexto do direito humanitário internacional e da legislação ucraniana, com atenção especial aos aspectos relacionados à agressão armada russa contra a Ucrânia. O artigo começa com uma visão geral histórica do desenvolvimento do direito internacional que rege a condução das hostilidades e sua criminalização em nível nacional, com foco nas mudanças feitas na legislação ucraniana em resposta à agressão militar. Os autores examinam detalhadamente as categorias de crimes de guerra definidas nos estatutos dos tribunais internacionais, bem como na legislação ucraniana, analisando-as pelo prisma de eventos específicos ocorridos durante a guerra com a Federação Russa. Ao explorar essas categorias, o artigo destaca o alinhamento e as discrepâncias entre os padrões legais internacionais e as leis nacionais ucranianas, fornecendo uma compreensão abrangente da estrutura legal que trata dos crimes de guerra em ambos os contextos. Além disso, o artigo contém uma seção sobre cooperação jurídica internacional no julgamento de criminosos de guerra, com foco especial nos mecanismos de interação entre a Ucrânia e as instituições judiciais internacionais. Essa seção explora os esforços colaborativos e os instrumentos legais que facilitam o julgamento de criminosos de guerra, enfatizando a importância do apoio e da cooperação internacional para a realização da justiça. As conclusões do artigo enfatizam a necessidade de maior desenvolvimento da legislação ucraniana no contexto da criminalização de crimes de guerra e sua adaptação aos padrões internacionais. Os autores destacam o papel fundamental de aprimorar as leis nacionais para que elas se alinhem melhor aos princípios humanitários internacionais e abordem com eficácia as complexidades da guerra moderna. Além disso, o artigo destaca a importância do apoio jurídico internacional à Ucrânia na luta contra a impunidade dos crimes de guerra, defendendo uma cooperação global contínua e reforçada para garantir a responsabilidade e a justiça.

**Palavras-chave:** Crimes de guerra; Direito internacional; Código penal da Ucrânia; Corpus delicti; Violação das leis e costumes de guerra; Responsabilidade penal; Processo penal; Suspeito; Acusado; Advogado de defesa; Vítima

## 1 INTRODUCTION

In today's world, where the principles of the rule of law and respect for fundamental human rights and freedoms are becoming increasingly important, the issue of war crimes is of particular importance. War crimes, which are gross violations of international humanitarian law and the laws of war, remain one of the most painful problems for the international community. The relevance of this problem has especially increased in connection with Russia's armed aggression against Ukraine, which has caused large-scale international reactions and condemnation.

The purpose of this article is to provide a comprehensive analysis of the criminal law characteristics of war crimes, in particular in the context of the conflict in Ukraine, and



to determine their place in the system of international and national law. The authors aim to identify and analyse in detail the main problems and challenges arising in the course of qualification and investigation of such crimes, and to highlight the current state of Ukrainian legislation in this area.

The article pays special attention to the analysis of international regulations and their implementation in the national legislation of Ukraine, as well as to the study of judicial practice and methods of war crimes investigation. This allows not only to assess the effectiveness of existing mechanisms for responding to war crimes, but also to determine the prospects for the development of legal regulation in this area.

In the context of the ever-changing geopolitical situation and new security challenges, the article emphasises the need for further development of international humanitarian law and adaptation of national legislation to international standards. This approach is key to effectively combating impunity for war crimes and ensuring justice for the victims of these crimes.

The review of the literature on the criminal law characteristics of war crimes highlights the contribution of Ukrainian and European scholars to the development of this issue. Given the wide range of research, the following is an overview of the key works that have made a significant contribution to the research on the issues addressed in this paper.

In Ukraine, the issue of liability for war crimes has been studied by V. A. Bazov, M. V. Buromenskyi, N. V. Dremina, S. O. Zagorodniuk, I.O. Zaretska, A.V. Kartavtsev, M.I. Kozyubra, I.O. Kolotukha, V.O. Mironova, V.O. Navrotskyi, O.R. Naden, V.P. Pylypenko, V.M. Khavroniuk.

V. Petrenko in his monograph "War Crimes in International Law: Problems of Theory and Practice" (Kyiv, 2020) analyses in detail the concept of war crimes from the point of view of international humanitarian law, in particular in the context of the conflict in eastern Ukraine. The author examines the classification of war crimes and mechanisms for their prosecution at the national and international levels.

In his article "International Legal Aspects of War Crimes" (Journal of Ukrainian Law, No. 4, 2021), Kozyubra M. I. focuses on the international legal norms governing liability for war crimes, and analyses current challenges and problems of their application.

Buromenskyi M.V. - in his works focuses on aspects of international legal liability for war crimes, in particular in the context of armed conflicts on the territory of Ukraine. His works, such as "Liability for War Crimes in International Law" (Yurydychnyi Zhurnal, 2019), offer an in-depth analysis of the regulatory framework and its application in

practice.

Zaretska I.O. - focuses on the study of mechanisms of international cooperation in the prosecution of war crimes. In her work "International Cooperation in the Prosecution of War Crimes" (Scientific Notes, 2021), she examines the practical aspects of the implementation of international treaties and agreements in this area.

Kravchenko V.A. - researches the issue of qualification of actions as war crimes in Ukrainian legislation, focusing on the problems and prospects for their solution. His article "Problems of Qualification of War Crimes in the Legislation of Ukraine" (Law of Ukraine, No. 3, 2022) makes an important contribution to understanding the legislative challenges and ways to overcome them.

As for the European scholars who have studied the issue of war crimes, the following researchers and their works can be distinguished:

Stadler A. and Fritz N. co-authored the article "The Effectiveness of the International Criminal Court in the Prosecution of War Crimes" (European Journal of International Law, 2022), which examines the role and impact of the International Criminal Court on the prosecution of war crimes. The authors assess the practical aspects of the Court's work, its successes and challenges.

K. Greenwood in his monograph Principles of International Humanitarian Law (Cambridge University Press, 2019) analyses the basic principles and norms of international humanitarian law, including the topic of war crimes. The scholar draws attention to international legal mechanisms for the protection of civilians during armed conflicts.

François Delmas-Saint Hilaire is known for his research in the field of international humanitarian law, in particular, for his work "War Crimes and International Responsibility" (Les crimes de guerre et la responsabilité internationale, 2018), where he analyses the mechanisms of international responsibility for war crimes.

Hildegard Schneider is a professor specialising in international justice and international humanitarian law. Her research International Criminal Justice in Action: Prosecution of War Crimes (2019) covers the practical aspects of international criminal justice.

Andreas Zimmermann - his War Crimes in International Law (2020) provides a detailed analysis of the legal aspects of war crimes, including definitions, qualifications and legal consequences.

Elizabeth Wilmschurst - her study The Classification and Prosecution of War Crimes (2017) focuses on the classification of war crimes and mechanisms for their prosecution



under international law, with a particular emphasis on the role of international tribunals.

Marco Sassòli is an authority in the field of international humanitarian law, whose work *The Use of Force in International Humanitarian Law: War Crimes* (2018) examines the legal framework for the use of force during armed conflicts and crimes related to its misuse.

Paolo Benvenuti - in his work *The Principles of Accountability for War Crimes in International Law* (2021), he examines the issue of accountability for war crimes, analysing both historical and modern approaches.

These scholars and their work have played a significant role in shaping the current understanding of war crimes and international criminal justice, offering in-depth analysis of institutional mechanisms, legal norms and practices. Their research contributes significantly to the development of scholarship on war crimes, providing a comprehensive view of this complex and multifaceted issue. Their work helps to deepen understanding of both the theoretical and practical aspects of the prosecution and qualification of war crimes in international and national contexts.

The above works of Ukrainian and European scholars undoubtedly make a significant contribution to the development of theoretical and practical aspects of war crimes research. However, it is important to understand that the field of international and criminal law on war crimes is constantly evolving, especially in response to new challenges and crimes arising from modern armed conflicts.

Many of these works were written prior to the most recent armed conflicts or in the early stages of such conflicts. Consequently, they could not fully analyse the current problems and challenges faced by the international community today.

Although many studies cover a wide range of topics, they may not take into account the specifics of particular armed conflicts, in particular the Russian armed aggression against Ukraine, and its impact on the development of international and national war crimes legislation.

Legislative and regulatory frameworks, as well as judicial practice in the field of war crimes, are undergoing rapid changes, especially in response to new challenges of armed conflicts. Existing works may not take into account the latest changes and innovations.

The article is aimed at scholars, human rights defenders, lawyers, representatives of governmental and international organisations.

## 2 METHODS





The methodology for the scientific article "Comprehensive Criminal Law Characteristics of War Crimes under International and National Legislation: Analysis, Issues and Prospects for Development" was developed with due regard for the unique aspects of the study that contribute to a deep analysis and understanding of the topic.

Systematic approach. This is the first systematic study that covers the criminal law characteristics of war crimes with simultaneous analysis of international and national legislation. The study aims to identify and analyse the key aspects that affect the effectiveness of prosecution and qualification of war crimes.

Documentary analysis: The study and analysis of international conventions, legislative acts of Ukraine and other countries, and court decisions of international and national courts.

Thus, the research methodology is designed to provide an in-depth analysis and objective assessment of the current state of the criminal law characteristics of war crimes, which will make a significant contribution to the consideration of these problematic issues.

### 3 RESULTS AND DISCUSSIONS

The term "war crimes" has deep historical roots and plays a key role in international humanitarian law, which aims to regulate the conduct of armed conflicts and protect persons who are not involved in them or have already ceased to participate. Let us consider a historical overview of the emergence and development of the term "war crimes", its use in legal acts and the differences between "war crimes" and "war crime" under Ukrainian law.

The history of the term "war crimes" dates back to antiquity, when certain rules of warfare and treatment of prisoners of war already existed. However, a systematic formulation of the rules that defined prohibited actions during the war began to take shape only in the XIX century with the development of international (international humanitarian) law.

"The international treaties that are classified as sources of international criminal law do not contain a conceptual definition of the concept of 'war crimes'. However, attention should be paid to the following circumstance: in the legal documents of modern international law, war crimes are sometimes defined as a result of violation of the



fundamental principles and norms of international law applicable in armed conflict", - notes A.O. Dragonenko ( Dragonenko A., 2022).

The key moment in the crystallisation of the concept of war crimes was the Hague Conventions of 1899 and 1907, which established the rules of armed conflict and the protection of civilians and prisoners of war.

After the Second World War, war crimes were clearly defined and criminalised at the Nuremberg and Tokyo Military Tribunals, where Nazi and Japanese war criminals were tried.

In 1949, the four Geneva Conventions were adopted, which regulate in detail the protection of war victims, including the wounded, sick, prisoners of war and civilians. These conventions, together with their Additional Protocols (1977, 2005), are the basis of the modern understanding of war crimes.

War crimes are defined in a number of international legal acts, including the Geneva Conventions and their Additional Protocols, as well as the Rome Statute of the International Criminal Court (1998), which classifies war crimes as one of the types of international crimes.

Article 8 of the Rome Statute of the International Criminal Court provides a list of war crimes. As for the national criminal legislation, we are talking about violations of Article 438 of the Criminal Code of Ukraine (hereinafter - the CC of Ukraine) "Violation of the Laws and Customs of War", which states: "Ill-treatment of prisoners of war or civilians, expulsion of civilians for forced labour, looting of national property in the occupied territory, use of means of warfare prohibited by international law, other violations of the laws and customs of war provided for by international treaties ratified by the Verkhovna Rada of Ukraine, as well as giving an order to commit such acts".

Ukrainian legislation distinguishes between the terms "war crimes" and "war crime". War crimes in Ukraine are regulated on the basis of international conventions and the Rome Statute, to which Ukraine is a party. These crimes cover a wide range of violations of international humanitarian law, including the intentional killing of civilians, torture, the use of prohibited weapons and other serious violations (Yagunov D., Kuryliuk Y., Chernousov A., Haverkamp, R., 2023).

A "war crime", in turn, is more commonly used in the national context to refer to crimes committed by members of the armed forces against the rules of military service or the military laws of a state. This may include desertion, disobedience to orders, treason and other crimes defined by military law.





In particular, in the Criminal Code of Ukraine, war crimes can be considered in the context of "Crimes against peace, human security and international law and order" (Title II of the CCU). The articles of this section contain provisions that may be qualified as war crimes, such as violation of the laws and customs of war (Article 438 of the CCU), planning, preparation or initiation and conduct of aggressive war (Article 437 of the CCU), propaganda of war (Article 436 of the CCU) and others.

A war crime in a national context can be defined through the articles dealing with offences against military service. For example, the articles located in Chapter XIV "Crimes against Military Service". These articles include, but are not limited to, defamation of a serviceman (Article 406), unauthorised leaving of a unit or place of service (Article 407), desertion (Article 408) and other acts that violate military discipline and legislation.

The main difference between "war crimes" and "war crime" in the context of Ukrainian legislation is the scope of their application and legal consequences:

- War crimes focus on serious violations of international humanitarian law that are of global significance and can be prosecuted by international tribunals. They are directed against persons, property and the integrity of states in the context of international or internal armed conflicts;
- a war crime refers to violations committed by military personnel and qualified as crimes against military service in accordance with the military legislation of Ukraine. These violations relate mainly to military discipline, order and other aspects of military life.

Thus, the main difference lies in the scale and context of the violations: "war crimes" are of an international nature and are directed against internationally recognised rules of warfare, while "war crime" refers to violations of internal military order.

The criminal law nature of war crimes is determined on the basis of international humanitarian law, which, in turn, is reflected in various international documents, such as the Geneva Conventions and their Additional Protocols, as well as the Rome Statute of the International Criminal Court. The following features must be taken into account when qualifying war crimes:

- The context of the armed conflict: War crimes can only be committed in the context of an international or internal armed conflict. Accordingly, it is important to establish the existence of an armed conflict at the time of the crime.
- Violation of international humanitarian law: A war crime is characterised by acts that constitute a gross violation of international humanitarian law as set out in

international conventions and customary law. This may include intentional attacks on civilians, the use of prohibited weapons, destruction of civilian objects without military necessity, torture and other crimes.

- Individual criminal liability: One of the key features of war crimes is the principle of individual criminal responsibility. This means that specific individuals can be held accountable for committing or ordering war crimes, regardless of their official status or rank.

- The presence of victims among protected categories of persons: War crimes often involve acts directed against persons protected under international humanitarian law, such as civilians, prisoners of war, wounded or sick soldiers.

- Motive and intent: Some war crimes are characterised by a direct intention to commit the crime (*dolus directus*) or a conscious disregard for the consequences of the actions (*dolus eventualis*). Establishing intent is an important element in qualifying actions as a war crime.

- Connection with the armed conflict: Acts that qualify as war crimes must have a direct or indirect connection to the armed conflict, i.e. committed with the intent to influence the course or outcome of the armed conflict.

Taking these features into account is important for the correct qualification of actions as war crimes, which provides the basis for international and national legal responsibility and contributes to ensuring justice and the rule of law.

For a more detailed consideration of the issues raised, it is necessary to establish and define the range of social relations that constitute the generic object of war crimes, as well as the direct objects of each of the war crimes provided for in the Criminal Code of Ukraine (Kuryliuk Y., Khalimon S., Filippov S. et al., 2021).

The generic object of war crimes in the criminal law of Ukraine reflects a wide range of social relations that are protected from violations that occur in the context of armed conflict. War crimes under the Criminal Code of Ukraine (CCU) focus on the protection of civilians, prisoners of war, the wounded, and the sick, as well as the prohibition of the use of prohibited weapons and methods of warfare that cause excessive suffering or destruction.

Generic object of war crimes:

The generic object of war crimes encompasses public relations in the field of international security and international law. This includes:

- Protection of civilians and objects from acts of a military nature.
- Ensuring humane treatment of prisoners of war, the wounded and sick.



- Protection of cultural property and objects of importance to the civilian population.
- Preventing the use of prohibited methods and means of warfare.

Direct objects of war crimes under the CCU:

The CCU defines different types of war crimes, each of which has its own direct object of protection. Some of them include:

Violation of the laws and customs of war (Article 438 of the CCU): The immediate object is social relations related to the observance of the laws and customs of war, which includes the protection of civilians and prisoners of war, as well as the prohibition of the use of prohibited weapons.

Genocide (Article 442 of the CCU): The direct object is social relations ensuring the existence and protection of national, ethnic, racial or religious groups.

Environmental crime in the area of armed conflict (Article 441 of the CCU): The immediate object is public relations in the field of environmental protection, especially in the context of armed conflict.

These and other articles of the Criminal Code of Ukraine reflect the diversity of direct objects of war crimes, each of which focuses on the protection of specific social relations identified as important in the context of armed conflict. The protection of these relations is key to ensuring international security and humanitarian standards established by the international community.

Determining the generic object of war crimes is important, since war crimes consist not only of violations of prohibitions or restrictions on the use of certain means or methods of warfare during armed conflicts and attacks on persons under international protection, but also of other actions, such as looting. V. P. Bazov believes that the generic object of war crimes is a certain group of identical and homogeneous social relations protected by criminal law, which ensure peace and compliance with the generally recognised rules of warfare and other armed conflicts (Bazov V., 2009).

However, ensuring peace is the task of the procedure for the conduct of armed conflicts enshrined in international law. Therefore, taking into account the norms of international criminal law, the definition and classification of armed conflicts in international law, we believe that the generic object of all war crimes is a group of identical and homogeneous relations protected by criminal law arising from the procedure for the conduct of armed conflicts of international and non-international (internal) nature established by international law (Petrechenko S., Kuryliuk Y., Yuryk O., 2021).



As for the ill-treatment of prisoners of war (a crime under Article 434 of the CC of Ukraine), its direct object is the procedure for observing the customs and rules of war (Havronyuk M. I., Dyachuk S. I., Melnyk M. I., 2003) is the procedure established in the Armed Forces of Ukraine, in accordance with the norms of international humanitarian law, for the detention and treatment of prisoners of war, which ensures the protection of their life, health, dignity and personal rights, and the procedure that determines the fulfilment of the requirements of international conventions by military personnel. Its additional mandatory direct object is also called the life and health of a person (Karpenko M., 2013). In our opinion, the main direct object of this crime is the social relations arising from the procedure for the treatment of prisoners of war established by international and domestic law. At the same time, an additional mandatory direct object of this crime is the life, health and dignity of a person.

In the process of analysing the structure of the crime regulated by Article 438 of the Criminal Code of Ukraine, a well-known scholar M. I. Khavroniuk points out that the key element that is directly violated in the actions is the procedure for conducting military operations established by international conventions and treaties. He also emphasises that, depending on the specific case of the crime, additional objects may be involved, such as human life and health, property. At the same time, there is a possibility that the life of an individual may be an additional optional object. Among the sources confirming this theory, it is worth mentioning the works of M. I. Khavroniuk and V. P. Bazov, who consider these aspects in detail (Melnyk M., Havronyuk M., 2004).

Other scholars, in particular S. Kharitonov and M. Panov, expand the understanding of the direct object of violation of the laws and customs of war, seeing it as peaceful relations between states and peoples, which also plays an important role in the international context (Bazhanov M. I., Baulin Yu. V., Borysov V. I. et al., 2003).

From our point of view, the fundamental direct object of the crime described in Article 438 of the CC of Ukraine is social relations based on the principles and norms of international law, which govern the process of armed conflicts of both international and internal nature. It is important to emphasise that we agree with the views of M. I. Khavroniuk and V. P. Bazov that, depending on the specifics of the socially dangerous act provided for in this Article, damage may be caused or conditions may be created for potential damage to other subjects (Bazov V., 2009).

Analysing the provisions of the articles of the Criminal Code of Ukraine on war crimes, we come to the conclusion that the criminal law identifies the following special subjects of this category of crimes.



1. Military personnel.
2. A serviceman who is responsible for the treatment and care of sick and wounded prisoners of war.
3. Servicemen who do not have the right to wear the symbols of the Red Cross, Red Crescent, Red Crystal in the area of military operations.
4. An official who has the right to give an order.

A serviceman is a special subject of the following war crimes: a) looting (Article 432 of the CC of Ukraine): b) violence against the population in the area of hostilities (Article 433 of the CC of Ukraine): c) a crime under Article 434 of the CC of Ukraine in the form of ill-treatment of prisoners of war, which took place repeatedly, or is associated with particular cruelty, or is directed against the sick and wounded.

According to part 9 of Article 1 of the Law of Ukraine "On Military Duty and Military Service", military personnel are persons who are performing military service. Foreigners and stateless persons who, in accordance with the law, perform military service in the Armed Forces of Ukraine, are also equated with the category of military personnel.

One of the key figures in the context of war crimes, according to Ukrainian criminal law, is an official who has the authority to give orders. This applies, in particular, to the crimes under part 1 of Article 438 of the Criminal Code of Ukraine, where the actions constituting the crime are related to giving orders. Thus, the subject of this crime is a person who has the legal right to give such orders, which may include both military and civilian employees, including the top leadership of the state.

The subjective aspect of war crimes has its own peculiarities, which stem from the fact that some war crimes are formal, others are ongoing, and some are considered complex. Legislation defines intent in relation to the material elements of crimes, providing for a subjective attitude to the act and its consequences. At the same time, there are different points of view on the possibility of indirect intent in crimes with formal elements. Some scholars admit the existence of indirect intent in such cases. However, the dominant view is that intent in the form of desire or conscious admission is possible only in relation to the consequences that are an element of the objective side of the crime (Yagunov D., Kuryliuk Y., Chernousov A., Haverkamp, R., 2023).

According to B.P. Bazov, any crime with a formal composition cannot be committed with indirect intent, since the attitude in the form of "did not want, but deliberately allowed" is possible only to the consequences (Bazov V., 2009). Also, according to V.O. Mironova, criminal arrogance associated with the foresight of socially dangerous



consequences cannot exist in crimes that do not include consequences as a feature of the objective side (Mironova V., 2008).

Thus, this discussion highlights the complexity of defining the subjective side of war crimes and the importance of further analysis and research in this area. It also points to the need for a clearer distinction between different forms of culpability in the context of criminal law to ensure fair and effective prosecution of war crimes. M.I. Khavroniuk emphasises that violations of the laws and customs of war accompanied by intentional homicide (under Article 438(2) of the Criminal Code of Ukraine) always require direct intent on the part of the perpetrator. However, there are difficulties in interpreting cases where the achievement of consequences in the form of death can be characterised by both direct and indirect intent. This is especially relevant in the context of complex crimes, where an act of violation of the laws and customs of war leads to intentional killing, not always directly committed by the persons who initiated the violation (Melnyk M., Havronyuk M., 2004). Thus, for example, the situation when a commander orders not to take prisoners, which leads to the intentional killing of non-resisting subordinates (as a case of direct intent), or the destruction of a building with the knowledge of the possible presence of civilians inside (as an example of indirect intent), demonstrate the complexity of determining intent in the context of war crimes.

An additional difficulty arises when considering crimes related to the use of weapons of mass destruction, if such use caused death or other grave consequences (according to Article 439(2) of the CC of Ukraine). As noted by M.I. Khavroniuk, in such cases, the perpetrator may either deliberately seek or allow the occurrence of grave consequences of his/her actions or be negligent. However, the problem with these crimes is the ambiguity of the construction of Article 439 of the CC of Ukraine, which does not take into account that the use of weapons of mass destruction by its nature carries a high risk of grave consequences, which requires the legislator to define more clearly the form of guilt and the foreseeable consequences.

Thus, the analysis points to the need for further research and clarification of the provisions of Ukrainian criminal law on war crimes and crimes involving the use of weapons of mass destruction in order to provide greater certainty in terms of guilt and intent. This, in turn, will contribute to more effective prosecution and prosecution of perpetrators of such crimes and strengthening of Ukraine's legal system in line with international standards.

The problem of criminal law offences in Ukraine is multifaceted and covers a wide range of issues that require attention from both the legislative and executive branches





of government, as well as society as a whole. Let us consider the key aspects and challenges faced by Ukraine in the field of criminal law.

Reforming criminal law. Ukraine continues the process of reforming its criminal legislation to ensure its compliance with international standards and the needs of modern society. However, this process is complex and time-consuming, facing challenges such as an imperfect regulatory framework, the need to improve pre-trial investigation procedures, and ensuring effective protection of individuals' rights and freedoms (Iasechko S., Zaitsev O., Kozhevnykova V., Melnyk K., Kulchii O., 2020).

Ensuring human rights: Challenges related to the protection of human rights and freedoms in criminal proceedings include the improper use of detention, issues of torture and ill-treatment, and the need to ensure the right to a fair trial. Improving procedural safeguards and raising the level of legal education of the population are critical to addressing these issues.

The Russian aggression against Ukraine has introduced additional challenges in the area of criminal law and order, including the prosecution of war crimes, crimes against national security and countering hybrid warfare.

One of the most important aspects highlighted in the article is the issue of integration of international humanitarian law into the national legislation of Ukraine. This process is key to ensuring effective prosecution and qualification of war crimes. At the same time, there are certain challenges, including the need to adapt the legislative framework to the rapidly changing conditions of modern armed conflicts and global trends. Further research could focus on analysing specific mechanisms and practices of integration, as well as studying international experience in this area.

Solving these and other problems requires a comprehensive approach, the use of international experience, strengthening the institutional capacity of law enforcement agencies, and the activation of civil society to ensure transparency and accountability in criminal justice.

#### 4 CONCLUSIONS

Concluding the analysis of the issue of criminal law crimes in Ukraine, especially in the context of the use of weapons of mass destruction, several key conclusions can be drawn that reflect the current state of this problem and outline ways to address it. The study highlights the key aspects that determine the criminal law nature of war crimes, including their classification, objects and subjects, as well as the specifics of their



qualification and prosecution.

War crimes cover a wide range of acts regulated by both international and national legal acts. Despite significant progress in the codification of international law, there are difficulties in their implementation at the national level in different jurisdictions.

The effective prosecution of war crimes requires national criminal justice systems not only to adapt international norms, but also to develop clear procedural mechanisms for the investigation, qualification and prosecution of perpetrators.

One of the key aspects is to ensure adequate protection of victims and witnesses of war crimes, which is critical for the collection of evidence and effective prosecution. Cooperation at the international level, including information exchange, extradition of perpetrators and assistance in investigations, is an integral part of the effective fight against war crimes.

The article emphasises the need for further development of international law and national legislation, as well as for raising awareness and training of law enforcement officers, judges and lawyers in this area.

The study emphasises the importance of a comprehensive approach to combating war crimes, including strengthening the legal framework, international cooperation, protection of victims' and witnesses' rights, and continuous improvement of criminal prosecution mechanisms. Highlighting these aspects will contribute to a better understanding of the challenges posed by war crimes and help develop effective strategies to address them at the national and international levels.

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