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## **MILITARY LAW IN THE LEGAL SYSTEM OF UKRAINE: CONCEPTUAL DIMENSIONS**

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**Abstract.** The article defines the theoretical, methodological and practical principles of military law as a separate branch of law and clarifies its place and role in the legal system of Ukraine. It was determined that military law is a system of universally binding norms, formally defined rules of conduct in the military-public sphere, which are established, protected and provided by the state and regulate social relations related to the activities of the military organization of society and are aimed at ensuring the protection of the state, sovereignty, territorial integrity. The main features of military law are normativity, formal certainty, obligation, regularity, proceduralism, connection with the state, systematicity. In general, the structure of military law indicates its systemic unity, as a result of which the ontological features of this complex field of law are manifested, insisting on the fact of its existence and doctrinal certainty. Structural elements of military law have their own regulatory component. Provisions of one or more laws, normative acts, including military orders, international agreements, separate court decisions, which introduced law enforcement norms into the practice of legal regulation; norms of customary law fill the institutional formations of military law with content.

It has been proven that military law is a system of universally binding norms, formally defined rules of conduct in the military-public sphere, which are established, protected and provided by the state and regulate social relations related to the activities of the military organization of society and are aimed at ensuring the protection of the state, sovereignty, territorial integrity. The main features of military law are normativity, formal certainty, obligation, regularity, proceduralism, connection with the state, systematicity. Therefore, the formation and development of the concept of military law of Ukraine shows that military law is objectified in legal reality and requires an epistemological study of its essence, social functions, prospects, implementation of scientific forecasting, ensuring regulatory influence on important processes that take place in the military-public sphere in the conditions of Russia's military aggression, which poses a direct threat to national security. Military law is an integral complex formation of the integral system of Ukrainian law, therefore, scientific research in this area should be continued in this direction.

**Keywords:** national law; modern Ukrainian law; legal norms; branch of law; legal system; military law; military; military formations; constitutional rights; rights of military personnel.

**Formulation of the problem.** Globalization processes not only transform social and political life, but also dictate the need for a systematic and operational update of the regulatory and legal framework. This tendency is especially visible in the post-Soviet countries, which chose the democratic path of development and declared their aspirations for European integration. The emergence of new opportunities and spheres of social activity, the expansion of the rights of both individuals and legal entities, a significant scientific and technical process, the growing role of information and computer technologies, digitalization, as well as the strengthening of various threats (nuclear, chemical, bacteriological, man-made, military etc.) leads to a significant expansion of legal norms regulating all these relations. With this in mind, the processes of formation of new branches of national law are being forced and intensified.

The problem and existing military risks and challenges to the national security of Ukraine, which are characterized by the dynamism of the military and political situation and the long-term nature of military threats, are updated. Russian aggression has a complex nature, combining military (armed) actions with information warfare, carrying out attacks on critical infrastructure objects, interfering in cyberspace, and opposing Ukraine's entry into existing and prospective world security systems. Therefore, there is no doubt about the need to consider military law as a complex field of law.

**Analysis of the study of the problem.** The problem of the legal system is actively developed in the Ukrainian scientific and legal discourse and is the subject of research by such scientists as O. Bandurka, V. Golovchenko, M. Kozubra, A. Kolodiy, N. Krestovska, O. Murashin, Yu. Oborotov, N. Onishchenko, O. Petryshyn, V. Pohorilko, S. Pogrebnyak, I. Pogribnyi, P. Rabinovich, O. Skakun, O. Tikhomirov, Yu. Shemshuchenko and others

In modern legal science, there is a positive trend towards scientific interest in new branches of law and the emergence of a whole range of well-founded investigations, the authors of which are R. Braslavskiy, L. Dobrobog, R. Dudnik, T. Mazur, T. Murakhovska, O. Simson, S. Skurihin, V. Khrypchenko, R. Shchupakivskiy and others. Military law as a separate field was practically not researched, obviously due to its excessive specificity, and was only represented by individual scientific developments of scientists P. Bogutsky, D. Zinchenko, S. Skurikhin, I. Shopin and others. Military legal problems were to some extent clarified in the writings of such authors as: V. Bugayov, V. Bondarev, S. Dychuk, N. Karpenko, M. Kravchuk, V. Nimchenko, V. Pashinskyi, V. Pylypchuk, M. Prokhorenko, N. Turkot, V. Shamraya. Available scientific research on the problems of military law is fragmentary and does not allow to fully ensure its proper scientific consolidation as a separate field of law.

**The purpose of the article** to determine the theoretical, methodological and practical principles of military law as a separate branch of law and to clarify its place and role in the legal system of Ukraine.

**Main material presentation.** The development of law is a long-term, multifaceted process that is determined by the peculiarities of civilizational development and mediated by many factors. The catalyst for the formation of the field of law can be social or political transformations and certain cataclysms [1, p. 6]. Factors influencing changes in the legal system are culture, customs of national legal regulation, as well as globalization processes. Therefore, the following main factors of the development of law are distinguished: anthropological, cultural, economic, political and legal [2, p. 286].

The emergence of new branches of law is caused primarily by the expansion of the range of objects of legal regulation, which arise as a result of the formation of new relations at a certain stage of social development and have social significance that requires proper legal regulation. It is the presence of public interest that determines the emergence of normative legal acts that will regulate such relations [3]. Therefore, the content of the analysis of the prerequisites for the formation of new branches of law should

be based on the understanding of this process as the result of the synthesis of general, immediate and basic prerequisites. Therefore, the new branch of law should represent a system that is in demand both in legal science and in practice.

The doctrinal consolidation of Ukraine's military law is determined by the national legal system, the foundations of constitutionalism, and the state's national security system. All these issues are especially relevant in view of Russia's military aggression, which poses a direct threat to national security, and the problem of reforming the Armed Forces of Ukraine in the context of an ongoing armed conflict.

The essential characteristics of military law can be seen primarily in the institutional complex of legal norms that regulate complex relations arising in the military sphere. Legal regulation of military and related activities is one of the main elements of the constitutive function of the state – protection of sovereignty, inviolability and territorial integrity. At the same time, legalization in the military sphere of public relations depends on the concept of national security, and therefore is a problem not only of the state in general, but also of every citizen in particular.

Understanding military law as a legal-doctrinal category is not devoid of complexity inherent in the process of learning about the legal system and its components. Defining military law as a component of the legal system, one should substantiate the very possibility of its inclusion in this system. The epistemology of military law, the scientific understanding of its place in the national legal system is based on the use of institutional and functional characteristics of Ukrainian law, which allows defining the legal regime as the forming basis of the entire legal system.

The specified approach to the formation of the system of Ukrainian law and its components allows to logically explain and substantiate the fact of the existence of complex industries as mandatory elements of the national legal system. The study of the legal regimes of the branches of public law and their impact on ensuring the regulation of military-social relations, as well as the institutionality and functional characteristics of the entire complex of military legal norms allow us to conclude that military law is a complex branch of the Ukrainian legal system.

The definition of military law, the disclosure of its essential features are accompanied by a study of the peculiarities of the composition of legal sources of this complex field of law, which form a certain normative system (ontological basis).

An axiomatic circumstance demonstrated in modern Ukrainian jurisprudence is the identification of the system of military legislation in the legal system of Ukraine and the scientific development of the main theoretical provisions in this regard. The legal regulation of military relations ensures a clear regulation of military activities, increases the general obligation of the established rules for the functioning of the Armed Forces, introduces a wider range of means of ensuring and implementing the standards of military life [5, p. 459].

It should be noted that the separation of military law as a complex field in the legal system of Ukraine is still debatable, but it is objectively necessary, because it is due to the presence of its own legal regime, which organically combines the specific subject, method and goal of legal regulation.

Scientist P. Bogutskii proposes to understand military law as a system of universally binding norms, formally defined rules of conduct in the military-public sphere, which are established, protected and provided by the state and regulate social relations related to the activities of the military organization of society and have the purpose ensuring the protection of the state, sovereignty, territorial integrity [6, p. 8].

The subject of legal regulation of military law is quite complex in view of the special characteristics of military relations that arise and exist within the functioning of the military organization of the state and are characterized primarily by the presence of the state interest in the implementation of one of the defining external functions of the state – ensuring the protection of sovereignty, territorial integrity and inviolability borders

Subjects of military relations are the Armed Forces of Ukraine, military administration bodies, military units, institutions, organizations, state enterprises of the Ministry of Defense of Ukraine, other military formations formed in accordance with current national legislation. At the same time, the entire complex of state institutions, united in a single system and involved in solving issues of defense and

military security, belong to the subjects of military relations. Also, the subjects of military relations are the category of citizens defined by legislation who are actively active in the military sphere and, thanks to this, have the special status of conscripts, military personnel, or persons undergoing military service in the reserve.

Social relations regulated by legal norms between the specified category of citizens with a special status and structural elements, formations of the military sphere, state bodies that are components of the military organization of society are defined as military-legal relations.

The subject of military law is heterogeneous in terms of its structure and the prerequisites for its emergence, since the military sphere of social life involves different levels of social communication – from resolving issues regarding the conscription of citizens to military service to regulating relations regarding the social protection of military personnel, fulfilling statutory requirements for ensuring internal order in military units and units, carrying out special types of military service, including combat duty, conducting combat operations, keeping and using weapons, ammunition, etc. The method of legal regulation of military law includes a system of ways and means of legal regulation of military and related civil relations, based on the administration of the behavior of the participants of such relations.

The method of legal regulation in the legal regime of military law has common features with the method of legal regulation of the branches of law that form the subsystem of public law. However, special subordination in the legal regulation of military relations, which is characteristic of the military sphere of public life, is distinctive. Dispositivity in military law is absent even when it comes to the realization of the social rights of military personnel, since even in these cases the imperativeness of prescriptions of military-public law norms dominates.

The purpose of military law is to provide means of legal regulation to achieve the military security of society and to resolve issues of social protection of military personnel. Military security should be considered the main feature of the purpose of military law, but the anthropology of military law, which comes from the principle of humanism of law, should not be overshadowed in solving complex tasks of military legal regulation [7, p. 184].

Sub-branches and institutes of military law combine legal norms, specifying the signs of uniformity and specifics of military-legal relations, the goals of legal regulation. Institutes of military law belong to the corresponding sub-branches of law and consist of sub-institutes – a narrower set of legal norms, which are grouped not only on the basis of general features of the subject and method of legal regulation, but also taking into account the purpose of their legal action. The primary element of military law is legal norms, which are concentrated in relevant legal sources and adopted or sanctioned by the state.

The law of military service, forming a sub-branch of military law, becomes a central link in the intra-branch system and regulates public relations at all stages of the performance of military duty, detailing its regulatory action in legal norms, their system groups, which are sub-institutes.

The development of military law, as a complex branch of the Ukrainian legal system, is carried out in the direction of intra-branch institutional separation of sub-branches, institutes; doctrinal development of military-legal matter; carrying out systematic scientific developments; creation of conditions for the formation of military law as a science. The doctrine of military law is therefore formed by combining theoretical studies of the normative basis of this complex field of law with the practical implementation of military legal norms, which conditions the formation of the science of military law and the educational discipline of military law [8, p. 16–19].

Scientists M. Kuznetsov, Yu. Mygachyov, S. Tikhomirov define military law as a complex branch of law, the norms of which regulate social relations in the field of construction, life and activity of the Armed Forces and in the field of military activity of the state.

A review of conceptual approaches to the study of military law suggests that military law is a rather complex, but integral system of interrelated norms. The focus of this system are legal norms regulating relations in the field of military security of the state and legal norms exerting a regulatory influence on the mechanism and procedure of military service. The purpose of military law is to determine the means (modes) of achieving the military security of the state (society) as a mandatory, integral and constitutive

component of national security, subject to the observance of the rights of military personnel and other citizens who are subjects of military relations. The lack of systematicity in this area would give a defective character to all actions aimed at ensuring national security and constitutional rights of citizens in the military sphere.

Military law as a complex branch of law is distinguished in the Ukrainian legal system on the basis of its own legal regime, which organically combines the subject, method and purpose of legal regulation. The complexity of military law is determined, first of all, by the multifaceted social relations of a public nature that arise in the military sphere and as a result of the actions of complex legal mechanisms in achieving the goal of legal regulation – ensuring the protection of the state and its sovereignty.

It should be noted that military law is significantly influenced by the public spheres of national law, including constitutional, administrative, financial, criminal and other spheres. At the same time, the separation in the legal system of institutional complexes of legal norms that regulate public relations of the military service, or relations in the field of using weapons and military equipment during combat exercises; the rules of the guard service, or the combat service of the internal troops of the Ministry of Internal Affairs of Ukraine; of the rules of combat rotation proves its separateness, independence. Therefore, all the specified theoretical and practical difficulties are solved by doctrinal recognition of the complex field of military law with its own legal regime, subject, method and purpose of legal regulation.

The formation of the concept of military law shows that military law is objectified in legal reality and requires a doctrinal perception of its essence, social functions, determination of social perspectives, forecasts in ensuring regulatory action on a complex management system of important processes that take place in the military sphere of public life [8, p. 32–33].

The array of legal sources of military law is made up of quite specific acts of local regulatory nature – military orders, instructions, rules, etc. The systematization of legal sources of military law is considered not only as an activity to organize the normative basis of this complex field of law, but also as an epistemological process. The systematization of legal sources of military law is carried out according to the rules of incorporation and in all cases – comprehensively, which is due to the effect of the branch legal regime [6, p. 18].

In general, the structure of military law indicates its systemic unity, as a result of which the ontological features of this complex field of law are manifested, insisting on the fact of its existence and doctrinal certainty. Structural elements of military law have their own regulatory component. Provisions of one or more laws, normative acts, including military orders, international agreements, separate court decisions, which introduced law enforcement norms into the practice of legal regulation; norms of customary law fill the institutional formations of military law with content.

The normative basis of the components of military law is also characterized, among other features, by complexity. For example, the Laws of Ukraine “On the Basics of National Security of Ukraine”, “On the Defense of Ukraine”, “On the Armed Forces of Ukraine” form a normative component of the sub-branch of military law – the law of military security.

Sub-branches and institutes of military law form norms that have signs of the general goal of legal regulation of social relations that are close in nature. In some cases, such institutes belong exclusively to the military sphere and cannot contain the norms of any other branches of law (law of military service). In other cases, institutions of military law regulate social relations that are related to relations between the state and citizens in the military sphere, but do not directly belong to it (separate institutions of military-economic, military-administrative, and military-social law).

Essential features of the legal regime of military law allow us to distinguish the general legal regime of this complex field of law and a special legal regime. The general or sectoral legal regime forms all sectoral features of military law and ensures the separation of this complex field of law in the legal system of Ukraine. The special legal regime has the characteristics of a branch and, at the same time, due to the definition of the specifics of the subject and purpose of legal regulation, it forms systemic groups within the field of military law. Institutions, sub-institutes, and sub-branches of military law are undoubtedly such systemic groups of legal norms. Thus, the system-forming significance of the legal regime lies in the formation of a system of military law – sufficiently complex and at the same time functionally oriented to

achieve the goal of legal regulation defined in the military sphere of public relations regarding the provision of military security, the implementation of social protection of military personnel. The legal regime of military law, as in other branches of the Ukrainian legal system, depends significantly on objective factors, which are social relations (in this case – military-public relations) and follows them in the direction of ensuring the goal of legal regulation. The practice of establishing law in the military sphere of public relations confirms the active use of the concept of legal regime. Yes, rules were adopted and are in force, which are based on the peculiarities of the legal regime of military property in the Armed Forces of Ukraine, or which establish special rules of behavior in conditions of war and emergency [7, p. 185].

**Conclusions.** Thus, military law is a system of universally binding norms, formally defined rules of conduct in the military-public sphere, which are established, protected and provided by the state and regulate social relations related to the activities of the military organization of society and are aimed at ensuring the protection of the state, sovereignty, territorial integrity. The main features of military law are normativity, formal certainty, obligation, regularity, proceduralism, connection with the state, systematicity. Therefore, the formation and development of the concept of military law of Ukraine shows that military law is objectified in legal reality and requires an epistemological study of its essence, social functions, prospects, implementation of scientific forecasting, ensuring regulatory influence on important processes that take place in the military-public sphere in the conditions of Russia's military aggression, which poses a direct threat to national security. Military law is an integral complex formation of the integral system of Ukrainian law, therefore, scientific research in this area should be continued in this direction.

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## **ВІЙСЬКОВЕ ПРАВО В СИСТЕМІ ПРАВА УКРАЇНИ: КОНЦЕПТУАЛЬНІ ВИМІРИ**

**Анотація.** У статті визначено теоретико-методологічні та практичні засади військового права як окремої галузі права та з'ясовано його місце і роль у системі права України. Визначено, щоо військове право є системою загальнообов'язкових норм, формально визначених правил поведінки у військово-публічній сфері, які встановлюються, охороняються і забезпечуються державою та здійснюють регулювання суспільних відносин, пов'язаних із діяльністю військової організації суспільства та мають на меті забезпечення захисту держави, суверенітету, територіальної цілісності. Основними ознаками військового права є нормативність, формальна визначеність, обов'язковість, регулятивність, процедурність, зв'язок з державою, системність. Загалом структура військового права вказує на його системну єдність, внаслідок цього мають прояв онтологічні ознаки цієї комплексної галузі права, наполягаючи у факті свого існування та доктринальну визначеність. Структурні елементи військового права мають власну нормативну складову. Положення одного або декількох законів, нормативних актів, у тому числі військових наказів, міжнародних угод, окремих судових рішень, якими введено у практику правового регулювання правозастосовні норми; норми звичаєвого права наповнюють змістовно інституційні утворення військового права.

Доведено, що військове право є системою загальнообов'язкових норм, формально визначених правил поведінки у військово-публічній сфері, які встановлюються, охороняються і забезпечуються державою та здійснюють регулювання суспільних відносин, пов'язаних із діяльністю військової організації суспільства та мають на меті забезпечення захисту держави, суверенітету, територіальної цілісності. Основними ознаками військового права є нормативність, формальна визначеність, обов'язковість, регулятивність, процедурність, зв'язок з державою, системність. Отже, становлення і розвиток концепції військового права України свідчить про те, що військове право об'єктивується у правовій реальності і потребує епістемологічного опрацювання його сутності, соціальних функцій, перспектив, здійснення наукового прогнозування забезпечення регулятивного впливу на важливі процеси, які відбуваються у військово-публічній сфері в умовах військової агресії росії, що несе пряму загрозу національній безпеці. Військове право є невід'ємним складним утворенням цілісної системи українського права, тому наукові пошуки у цій сфері повинні бути продовжені саме у такому напрямі.

**Ключові слова:** національне право; сучасне українське право; норми права; галузь права; система права; військове право; військовослужбовці; військові формування; конституційні права; права військовослужбовців.