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Genesis of criminal legislation of Ukraine on liability for open theft of property (robbery)

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■ **Abstract.** The main features of the modern concept of "robbery" as an open theft of someone else's property were first defined in Soviet legislation in the Criminal Code of the Ukrainian SSR of 1922 (until January 30, 1937 – Ukrainian Socialist Soviet Republic). There were periods when the concept of "robbery" dissolved into such crimes as theft and robbery (decrees of the Presidium of the Supreme Soviet of the USSR of June 4, 1947 "On criminal liability for theft of state and public property", "On strengthening the protection of personal property of citizens"). Therewith, the legislator, guided by the objective necessity of punishment humanisation in the post-Soviet countries, reduces the sanction for this type of crime and emphasises those persons who committed it for the first time without aggravating circumstances, for them to get on the path of correction and not to commit a relapse. However, the practice has demonstrated that robbery has always been considered one of the most serious crimes, as defined by the current legislation of Ukraine. The urgent problem requires a solution at the scientific level in particular. Considering the above, the purpose of the research is to provide a historical explanation of the doctrinal provisions of the crime of robbery in different state periods, starting from the legislative sources of the Criminal Code of the Ukrainian Socialist Soviet Republic of 1922 to the present day; to formulate the quantitative and qualitative features of the concept of "robbery" and its legal construction at different periods. The methodological foundation of scientific research is the modern postulates of the theory of cognition [1]. A complex of interrelated general scientific and historical-legal methods was used, namely: chronological – to update the historical conditions that contributed to the development of criminal legislation in general and a specific crime (robbery); comparative legal analysis - comparative approach to Soviet and modern legislation establishing liability for robbery; psychological and legal modelling – to develop proposals for improving Art. 186 of the Criminal Code of Ukraine and to develop a methodology for investigating robbery; structural and functional - psychological and legal assessment of the object and objective side of the robbery, and analysis of the psychological characteristics of the subject and subjective side of the robbery. The scientific originality of the research is that the research for the first time argues in detail the prerequisites for the origin and historical conditions for the development of such

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a socially dangerous crime as robbery, and traces the path of its development, starting with the inclusion in other types of crimes and the legislative development of each legal structure of robbery into a single entity, which provided grounds to separate robbery and structure it into independent research. Thus, in the course of this research initial conclusion about the high level of improvement of the national legislation on criminal liability for theft of property, in particular by open means, was confirmed. Thus, the experience gained can be successfully used in the process of improving national criminal legislation

■ **Keywords**: robbery; abduction; theft; other people's property; misappropriation; violence; repeat offender; embezzlement; state property; public property; possession; personal property of citizens

■ Introduction

Protection and security of property is a priority task of the rule of law. According to Article 41 of the Constitution of Ukraine, no one can be unlawfully deprived of property rights. Practical implementation of this prescription is impossible without efficient counteraction to any criminal encroachments on property, in particular robberies, which are one of the most dangerous groups of criminal acts in Ukraine. The implementation of such counteraction requires appropriate scientific and theoretical substantiation [2].

Currently, robbery is one of the most serious crimes against property. It poses a particular danger to society, as it encroaches on social relations in the field of property, and in the field of protection of human life or health. Therewith, the increased public danger and resonance of this crime arises from an open, illegal and violent attack on a person to possess their property [3].

Historical analysis of robbery, experience, analysis of the legal sources of this research and its changes, on which Article 186 of the Criminal Code of Ukraine [3] is based, will contribute to the understanding and improvement of criminal legislation.

Robbery is a socially dangerous crime, thus the law provides severe punishment for its commission. The social danger of robbery, and theft, is that by committing it, the guilty person deprives the owner of the opportunity to own, use and dispose of their property [4]. However, unlike theft, a specific feature of this kidnapping is its open nature – it is committed in advance obviously, and visible to others. The open method of stealing property significantly increases the public danger of theft (compared to theft), as the perpetrator does not hide his intention to illegally take possession of someone else's property against the will of the owner or the person in whose jurisdiction or under whose protection the property is, and ignores the opinion of witnesses. The openness of the kidnapping testifies to the exceptional audacity of the robber, who neglects the danger of being exposed (as deliberately takes the risk of being detained at the scene of the crime) and publicly ignores the legal and social prohibitions of the ordinary life of the state [3].

In recent years, the criminal law characteristics of robbery have been explored by such scientists as: V.K. Veselskyi, V.I. Galagan, O.I. Motliakh, L.D. Udalova, V.G. Khakhanovskyi, P.V. Tsymbal, S.S. Cherniavskyi, Y.M. Chornous, V.Y. Shepitko and many other scientists. However, currently, there is no significant law-making path of development of liability for the open theft of other people's property, which dates back to 1922. The initial conclusion regarding the high level of improvement of national legislation on criminal liability for theft of property, in particular by open means, was confirmed in the course of this research.

The purpose of the research is to analyse the historical foundations related to the construction of criminal and legal provisions relating to the open theft of someone else's property in such legislative sources of the last century as the Criminal Code of the Ukrainian SSR of 1922, the Criminal Code of the Ukrainian SSR of 1927 and the Criminal Code of the Ukrainian SSR of 1960, and in the current Criminal Code of Ukraine, with due regard for recent regulatory changes and a detailed analysis of the provisions of the above sources for their systematisation.

The scientific originality of the results obtained is that for the first time the prerequisites for the origin and historical conditions for the development of such a socially dangerous crime as robbery are argued in detail, and the path of its development is traced, starting from its inclusion in other types of crimes to the legislative development of each legal structure of robbery into a single entity, which provided grounds to separate robbery and structure it into independent research.

■ Outline of the Main Material

According to the results of the analysis of the current national criminal legislation, the articles of the Criminal Code of Ukraine (hereinafter - the CC of Ukraine), which establish liability for theft of property, can be attributed to those that fully correspond to the requirements of law enforcement activities regarding the validity of differentiation of liability for committing specific criminal offences. As a result of the laborious and consistent work performed by the legislator to improve them, the analysed articles of the CC of Ukraine are now a subsystem that can provide an appropriate response to specific facts of theft

of other people's property, which is quite convincingly proved by the example of Art. 186 of the CC of Ukraine, which provides for liability for open theft of other people's property (robbery) [5].

It should be noted that in the domestic legislation the criminal law grounds for liability for the open theft of other people's property were enshrined in the resolution of the All-Ukrainian Central Executive Committee (hereinafter – the ARCEC) enacted on September 15, 1922, of 23 August 1922 to the Criminal Code of the Ukrainian Socialist Soviet Republic (hereinafter – the CC of the Ukrainian SSR of 1922). Considering the usual for the present time structuring of the articles of the CC of Ukraine (to ensure differentiation of liability, considering the severity of the committed criminal offence and the identity of the perpetrator), including those establishing liability for theft of another's property, it was somewhat unusual in the Criminal Code of the Ukrainian SSR of 1922 to establish separate (separate articles) grounds for liability for simple robbery (Article 182) and its commission under qualifying circumstances (Article 183).

Simple theft, according to Art. 182, was "the open theft of another's a property in the presence of a person who owns, uses or has custody of it, but without violence to the person" [6]. Thus, the above definition did not specify either the owner of the property (it could be both an individual and a legal entity, but the such property should not belong to the perpetrator) or the degree of violence (it should not be used at all). According to Art. 183, the following were qualified: a) robbery combined with violence that is not dangerous to the life and health of the victim; b) the same actions committed by a repeat offender or a group of persons (gang) [6]. It should be noted at once that based on the analysis of only the above information it is quite difficult to assess the state of criminal and legal counteraction to robberies of other people's property by the CC of the Ukrainian SSR of 1922. Therewith, the regulatory gaps observed in the structure and dispositions of Articles 182 and 183 are quite fully and manifested when comparing them with similar indicators of Article 180, which provided for liability for the secret theft of another's property, i.e. theft.

First, the very definition of theft was performed at the highest level – "the secret theft of property in the possession, use or custody of another person or institution" [6]. Thus, the legal foundations for separate liability for theft of property belonging to a natural or legal person were laid, which is embodied in the structure of the analysed research. According to paragraph "a" of Article 180, liability was provided for theft from a private person without using any technical means (simple theft) [6], while simple theft from state and public warehouses and institutions was subject to qualification under paragraph "d" of Article 180 [6]. Accordingly, the theft of private property committed by using tools or instruments, other technical devices or techniques, or committed by a person who was engaged in theft as a profession, or when the stolen property was known to be a necessary means of subsistence for the victim, etc. (clause "b"), or theft of horses or cattle from the agricultural population (clause "c") was considered qualified [6].

A simple theft from state or public institutions and warehouses, or wagons, steamships, barges and other vessels, and was committed by a person who had access to such places by their official position, was subject to qualification under paragraph "e" of Article 180, while the same theft committed by a person entrusted with the management or protection of such storages was qualified under paragraph "e" of the same article. Therewith, liability was envisaged for qualified theft (but without distinguishing its specific features), committed from state institutions, warehouses and other storages (paragraph "g" of Article 180), theft from state warehouses, wagons, ships and other storages, committed systematically or by responsible officials, or in particularly large amounts of stolen goods (paragraph "h" of Article 180) [6]. However, with a more perfect differentiation of liability for theft of property, there were no significant differences in the sanctions of the analysed articles and their parts. Simple theft of property from a private person (Article 180(a)) was punishable by forced labour for up to six months or imprisonment for six months, while simple theft from state or public warehouses and institutions (Article 180(d)) and simple robbery (Article 182) were punishable by the same penalties of forced labour or imprisonment for up to one year. The difference in sanctions for qualified theft and robbery was not very significant. For example, if for the theft of horses or cattle from the working agricultural population (paragraph "c" of Article 180) the punishment was defined in the form of imprisonment for a term of not less than two years, then for the qualified theft committed from state institutions, warehouses and other storage facilities (paragraph "g" of Article 180), the punishment was established in the form of imprisonment for at least two years in strict isolation, and for robbery combined with violence that is not dangerous to the life and health of the victim (Part 1 of Art. 183) – imprisonment for up to three years.

The establishment of the Union of Soviet Socialist Republics in December 1922, the adoption of the fundamental principles of the criminal legislation of the USSR and the Union republics in 1924, the onset of other transformations in the life of the country, which in a particular way limited the powers of the Union republics in the field of criminal law regulation

of social relations, necessitated the development and adoption of a new Criminal Code of the Ukrainian SSR.

According to the Resolution of the Central Executive Committee of June 8, 1927, the Criminal Code of the Ukrainian SSR as amended in 1927 was enacted on July 1, 1927 [7]. Criminal law provisions that established liability both for property crimes and for acts of theft of other people's property changed, in particular additions, and the inclusion of new corpus delicti [7]. Notably, there are differences in the content and significance for law enforcement activities of the amendments made to the articles of the CC of the Ukrainian SSR, which provide for liability for theft of property. If the liability for the secret theft of another's property (theft) was differentiated by eight paragraphs of Article 180 of the CC of the Ukrainian SSR of 1922, then according to the new CC of the Ukrainian SSR, liability for acts committed in this way was provided for by three separate articles (Articles 170-172). Article 170, which contained six parts, defined the legal grounds for liability for simple, qualified and specially qualified thefts of private property, state and public property. The smaller number of parts (in two parts) in the structure of Art. 170 of the CC of the Ukrainian SSR in the wording of 1927 was explained primarily by the separation into an independent Art. 171 of the legal grounds for liability for theft of horses, oxen or other cattle (according to part. 1 of this article, those guilty of theft of cattle owned by the state, a public organisation or non-agricultural workers were liable, according to part 2 – those guilty of theft of cattle from the agricultural worker, according to part 3 - those guilty of committing repeatedly or in collusion with other persons the crimes provided for in parts 1, 2 of this article) [7].

The changes made to the criminal law provisions providing for liability for open theft of another's property (robbery) were as follows 1) the previously mentioned Articles 182, and 183 of the Criminal Code of the Ukrainian SSR of 1922 were merged into one Article 173, which had three parts and, accordingly, differentiated liability for simple (Part 1), qualified (Part 2) and especially qualified (Part 3) elements of open theft of another's property; 2) the legislator refused to include in the dispositions of Part 1, 2 of Art. 173 indications that the violence used in the process of robbery should not have been dangerous to the life and health of the victim, limiting itself to mentioning only that a simple robbery (part 1) was performed without violence, and according to part 2, the relevant unlawful acts combined with violence were subject to qualification (the lack of reference to the nature of violence during the robbery was explained by the definition of robbery (part 1 of Art. 174) as open to obtain another person's property, an attack of an individual, combined with violence threatening death or injury, or with the threat of committing such violence); 3) some editorial changes were made to the list of special qualifying features of robbery: committing a crime by special subjects (“repeat offenders”) was replaced by committing it repeatedly; moreover, such a special qualifying feature of robbery as its commission by a group of persons was preserved, but without calling it a “gang”; 4) the punishment for the analysed acts was given a definite unification and consistency, i.e. signs of consistency (in all cases, punishment was provided only in the form of imprisonment with its terms increasing as the degree of public danger and gravity of the committed act increased, namely: a) simple robbery was punishable by imprisonment for up to one year; b) qualified robbery – imprisonment for up to three years; c) acts qualified under part 3 of Art. 73 of the Criminal Code – imprisonment for up to five years [7].Translated with DeepL

It is essential to determine the role and significance in the development of national legislation on criminal liability for theft of other people's property, including by robbery, of the decrees of the Presidium of the Supreme Soviet of the USSR of June 4, 1947 “On strengthening the protection of personal property of citizens” (hereinafter – the first decree of June 4, 1947) [8] and “On criminal liability for theft of state and public property” (hereinafter – the second decree of June 4, 1947) [8]. Considering the purpose of the Decrees adopted by the Presidium of the Supreme Soviet of the USSR noted that the first of them was reflected in its title, and the purpose of the second Decree, as stated in the introductory part, along with the establishment of the unity of legislation on criminal liability for theft of state and public property equally emphasised on strengthening the fight against these crimes.

Thus, the legal principles of separate, depending on the form of ownership, the onset of liability for the secret theft of other people's property, established in the Criminal Code of the Ukrainian SSR in 1922, which were developed in the Criminal Code of the Ukrainian SSR in the wording of 1927, in these decrees received final legislative consolidation in relation both to theft and other ways of obtaining other people's property.

However, in the absence of significant comments on the general form of presentation of the listed legislative innovations, their presentation and content were not devoid of shortcomings [2]. First, considering the fact that the purpose of the first Decree of June 4, 1947, was to strengthen the protection of personal property of citizens, the methods of illegal appropriation of such property officially included only theft and robbery, although it was about responsibility for the open theft of private property, in particular with using violence that is not dangerous

to the life and health of the victim and without using such violence. Such legislative regulation was accomplished since open theft as a way of unlawful possession of personal property of citizens was classified as a type of theft (in Part 1 of Article 1 of the legislative act the crime was defined as theft, that is, secret or open (therefore, without using violence) theft of personal property of citizens) [9]. Recognising such a definition of the method of theft of personal property as sufficient, in Part 2 of this article the legislator identified the signs of the qualified composition of such a crime, defining it as a theft committed by a thieves' gang or repeatedly, i. e. again with a limited list of qualifying features [10]. These shortcomings were mainly compensated by measures to respond to the facts of committing such thefts: under Part 1 of the Article, the punishment was imprisonment in a labour camp for a term of five to six years, and under Part 2 of the Article – for a term of six to ten years [8].

Therewith, an attack with the purpose of possession of another person's property, combined with violence or threat of such violence, which was not dangerous to the life and health of the victim, was considered robbery, which was punishable under Part 1 of Article 2 of the Decree (punishment – imprisonment in a labour camp for a term of 10 to 15 years with confiscation of property). According to Part 2 of Art. 2 of the Decree, robbery, combined with violence dangerous to the life and health of the victim, or with the threat of death or grievous bodily harm, committed by a gang or repeatedly (punishment - imprisonment in a correctional labour camp for a term of 15 to 20 years with confiscation of property) was subject to qualification [8].

The provision contained in Art. 3 of the Decree, which established liability for failure to report to the authorities about a reliably known prepared or committed robbery (punishment – imprisonment for a term of one to two years or exile for a term of four to five years), was subordinated to the strengthening of the protection of personal property of citizens [8].

Starting the investigation of the regulatory provisions enshrined in the second Decree, note their more extensive content, which is evidenced, first of all, by the consideration of all possible ways of stealing state and public property in the construction of criminal law provisions. Following the previously enshrined in the CC of the Ukrainian SSR in 1922, and then in the CC of the Ukrainian SSR in the wording of 1927, the legal foundations of criminal liability separately for theft of state and public property, the legislator defined the grounds for imposing liability for simple and qualified theft of state property in Articles 1, 2 of the Decree, respectively, and for simple and qualified theft of collective, cooperative or other public property – in Articles 3, 4 of the Decree [8]. As for the methods of illegal acquisition of the listed property, the simple corpus delicti of such crimes were defined as theft, misappropriation, embezzlement or other theft of state property (Article 1 of the Decree), theft, misappropriation, embezzlement or other theft of collective, cooperative or other public property (Article 3 of the Decree). Thus, the list of methods of illegal acquisition of property included both those known in practice at that time and those that could arise later. In Articles 2, and 4 of the Decree, which provides for liability for qualified corpus delicti of such crimes, the only qualified features were repeated commission of the relevant theft and its commission by an organised group (gang) or in large amounts. Notably, the theft of state property was punished more severely (such simple theft entailed imprisonment in a labour camp for a term of seven to ten years with or without confiscation of property, and qualified crime - imprisonment in a labour camp for a term of ten to twenty-five years with confiscation of property) than the theft of collective farm property, cooperative or other public property (for a simple crime, imprisonment in a labour camp for a term of only five to eight years with or without confiscation of property as possible, while for a qualified crime - imprisonment in a labour camp for a term of eight to twenty years with confiscation of property). In addition, criminal liability was envisaged for failure to report to the authorities about a reliably known prepared or otherwise committed (emphasized by the author, Volodymyr Zhenuntiy and Ruslana Zaporozhets) qualified fact of embezzlement of state and public property, which was punished more severely than provided for in Art.

3 of the first Decree – failure to report a reliably known prepared or committed fact of theft of personal property of citizens by robbery (punishable by imprisonment for a term of two to three years or exile for a term of five to seven years) [8].

The significance of the criminal provisions enshrined in parts 1-4 of the second Decree was that they provided the legal foundation for further symmetrical development in the national legislation of criminal liability for embezzlement of state or public property by robbery and open theft of personal property of citizens.

The changes that occurred after the end of the Great Patriotic War during the first 10-15 years in the Ukrainian SSR and throughout the country, namely, socioeconomic, political and other progressive transformations, determined and ensured by the end of the 50s of the 20th century the preparation of a new Criminal Code of the Ukrainian SSR, which was approved by the Law of the Ukrainian SSR of December 28, 1960, and enacted on April 1, 1961 (hereinafter – the CC of the Ukrainian SSR 1960) [7].

Considering the accumulated practice of systematisation of national criminal legislation, section two

of the Special Part "Crimes against socialist property" contained Article 82, which provided for liability for theft of state and public property [7], and section five (of the same Special Part) "Crimes against personal property of citizens" contained Article 141, according to which those guilty of open theft of personal property of citizens were liable [7].

The coincidences in the analysed articles concerned the following main provisions: a) the structure of the articles (contained three parts each); b) the very concept of the simple corpus delicti (parts one of the articles): open theft of the relevant property; c) the list of qualifying features: relevant acts associated with violence that is not dangerous to the life and health of the victim or with the threat of such violence, or committed by prior conspiracy by a group of persons or repeatedly; d) a specific qualifying feature – the commission of relevant actions by a particularly dangerous recidivist. The differences were as follows: a) under Part 3 of Art. 82, theft of state or public property by robbery committed on a large scale was to be qualified; b) under Part 2 of Art. 141, open theft of personal property of citizens, which caused significant damage to the victim, was qualified.

However, less than three months after it entered into force, by the Decree of the Presidium of the Supreme Soviet of the Ukrainian SSR of 27 June 1961 "On Amendments and Additions to the Criminal and Criminal Procedure Codes of the Ukrainian SSR", the CC of the Ukrainian SSR of 1960 was supplemented with Art. 86-1, which established criminal liability for theft of state or public property committed on an especially large scale, regardless of the method of theft (Articles 81-84 and 86-1), thus, such acts committed by robbery were considered to be a crime under Art. 86-1 of the CC [7].

The following additions to the analysed article of the CC of the Ukrainian SSR of 1960 were made under the Decree of the Presidium of the Verkhovna Rada of the Ukrainian SSR "On Amendments and Additions to the Criminal Code of the Ukrainian SSR" of January 12, 1983: a) according to subparagraph "b" of paragraph 26 of the Decree, Article 82 of the CC of the Ukrainian SSR was supplemented after part 2 with a new part of the following content: "Robbery with breaking into premises or other storage shall be punishable by imprisonment for a term of four to ten years with or without confiscation of property", considering the above, Part 3 of the said Article became Part 4; b) according to subpar. "b" of paragraph 45 of the Decree, Art. 141 of the CC of the Ukrainian SSR was supplemented after Part 2 with a new part of the following content: "Robbery with breaking into a dwelling shall be punishable by imprisonment for a term of three to eight years with or without confiscation of property"", considering this addition, Part 3 of the said Article 141 was recognized as Part 4. The legislative additions made to Articles 82 and 141 of the Criminal Code of the Ukrainian SSR in 1960 once again confirmed the symmetry inherent in their structure and included in their legal provisions [11].

Conclusions

Considering the above, it should be concluded that, in general, the process of improving the criminal legal framework of liability for open theft of state or public property, and open theft of individual property of citizens, which lasted almost eighty years (since the adoption of the CC of the Ukrainian SSR in 1922 and until the end of the 90s of the 20th century and was marked by the preparation of the new Criminal Code of Ukraine, was quite successful.

The first evidence of such efficiency is the inclusion in Art. 186 of the CC of Ukraine of 2001, which provides for liability for the open theft of other people's property, previously enshrined in the fundamental during its development of Articles 82 and 141 of the Criminal Code of the USSR of 1960, the concept of theft of state or public property, and the open theft of personal property of citizens in an open way, the list of qualifying and, particularly, qualifying features of the analysed crime contained in these articles. Other amendments and additions made to Art. 186 at the stage of preparation of the CC of Ukraine in 2001 (for example, exclusion of such specific qualifying features as robbery committed by a particularly dangerous recidivist from the borrowed part 4 of Art. 82 and 141 of the CC of the USSR in 1960, and in addition to Art. 186 part 6, which provides for liability for a robbery committed on a particularly large scale or by an organised group, etc.) were conditioned upon objective reasons, but were not the result of subjective underestimation of the requirements of the practice of combating such thefts of other people's property.

No less convincing is the fact that despite the amendments and additions made to the CC of Ukraine in 2001, the dispositions of the criminal law provisions included in the analysed article remain unchanged since the adoption of the CC of Ukraine in 2001, which is generally specific for the articles included in Section VI "Criminal offences against property" of the Special Part of the CC, namely 185 (theft), 186 (robbery), 187 (robbery), 189 (extortion), 190 (fraud), 191 (misappropriation, embezzlement or possession of property by abuse of office), 192 (causing property damage by deception or breach of trust), as well as 193 (misappropriation by a person of found or other property that accidentally came into their possession). However, it should be clarified that by the Law of 15 April 2008 No. 270-VI "On Amendments to the Criminal Code and the Code of Criminal Procedure of Ukraine on the Humanization

of Criminal Liability", the sanctions of the first parts (providing for liability for simple elements of the respective thefts) of Articles 185 (theft), 186 (robbery), 192 (causing property damage by deceit or breach of trust) and 193 (misappropriation of found or accidentally acquired the property by a person) have been supplemented by such alternative humane punishments as community service and arrest (sanction of part 1 Article 190, i.e. in case of simple fraud, is supplemented with only one such type of punishment – community service). The original version of 2001 still contains articles that provide for liability for robbery (Art. 187), extortion (Art. 189) and misappropriation, embezzlement or possession of property by abuse of office (Art. 191) [12].

Thus, the conclusion about the high level of improvement of national legislation on criminal liability for theft of property, in particular, by open means, was confirmed in the course of the study [13]. The accumulated experience can be successfully used in the process of improving national criminal legislation.

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Генезис кримінального законодавства України щодо відповідальності за відкрите викрадення чужого майна (грабіж)

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■ **Анотація**. Основні ознаки сучасного поняття «грабіж» як відкритого викрадення чужого майна було вперше сформульовано ще в радянському законодавстві в Кримінальному кодексі УСРР 1922 року (до 30 січня 1937 року – Українська Соціалістична Радянська Республіка). Існували періоди, коли поняття «грабіж» взагалі розчинилося в таких злочинах, як крадіжка та розбій (укази Президії Верховної Ради СРСР від 4 червня 1947 року «Про кримінальну відповідальність за розкрадання державного і громадського майна», «Про посилення охорони особистої власності громадян»). Водночас законодавець, керуючись об'єктивною необхідністю гуманізації покарання в пострадянських країнах, зменшує санкцію за цей вид злочину й акцентує саме на тих особах, які вперше вчинили його без обтяжуючих обставин, аби вони стали на шлях виправлення та не вчиняли рецидив. Проте практика засвідчила, що грабіж завжди вважали одним із найтяжчих злочинів, як це й визначено в чинному законодавстві України. Нагальна проблема потребує розв'язання також і на науковому рівні. З огляду на вищезазначене, мета статті полягає в історичному роз'ясненні доктринальних норм складу злочину грабежу за різних державних періодів, починаючи від законодавчих джерел Кримінального кодексу Української Соціалістичної Радянської Республіки 1922 року до сьогодення; формулювання кількісних і якісних ознак поняття «грабіж» та його юридичної конструкції в різні проміжки часу. Методологічну основу наукового дослідження становлять сучасні постулати теорії пізнання [1]. Використано комплекс взаємопов'язаних загальнонаукових й історико-правових методів, а саме: хронологічний – задля поновлення історичних умов, які сприяли розвиткові кримінального законодавства загалом і конкретного складу злочину (грабіж); порівняльно-правовий аналіз – компаративістський підхід до радянського та сучасного законодавства, що встановлює відповідальність за грабіж; психолого-правове моделювання – щодо формулювання пропозицій з удосконалення ст. 186 КК України й опрацювання методики розслідування грабежів; структурно-функціональний – здійснення психолого-правової оцінки об'єкта й об'єктивної сторони грабежу, а також аналізу психологічних особливостей суб'єкта й суб'єктивної сторони грабежу. Наукова новизна полягає в тому, що в опрацьованій статті вперше детально аргументовано передумови походження та історичні умови розвитку такого суспільно небезпечного злочину, як грабіж, а також прослідковано шлях його розвитку, починаючи з входження до інших видів складів злочинів і до законодавчого формування кожної юридичної структури грабежу в єдине ціле, що дало підставу виокремити грабіж і структурувати його в самостійну статтю. Отже, наш первинний висновок щодо високого рівня вдосконалення національного законодавства про кримінальну відповідальність за викрадення чужого майна, зокрема відкритим способом, у процесі нашого дослідження підтвердився. Таким чином, накопичений досвід можна успішно використати в процесі вдосконалення національного кримінального законодавства

■ **Ключові слова**: грабіж; викрадення; крадіжка; чуже майно; привласнення; насильство; рецидивіст; розкрадання; державне майно; суспільне майно; заволодіння; особиста власність громадян