

Davydiuk Iryna,
student of the 4th year of the Institute № 1
of the National Academy of Internal Affairs,
specialty «Law»

Language Adviser:
Skrynyk Myroslava,
Senior Instructor of the Legal Linguistics
Department
of the National Academy of Internal Affairs

PECULIARITIES OF THE APPLICATION OF PUNISHMENTS IN CONDITIONS OF MARTIAL LAW

In most countries of the world, military criminal law is an independent branch of legislation. Exceptions are the CIS and Baltic states, the republics that were part of the former Yugoslavia, as well as Bulgaria, Hungary, the People's Republic of China, Vietnam, Mongolia, Poland, Romania, the Czech Republic, and Sweden. In these countries, norms on military crimes are included in the texts of criminal codes in the form of separate sections, paragraphs or chapters. In the criminal codes of the CIS countries, this section is usually called "Crimes against military service". In Ukraine, this is the section of the XIX Criminal Code entitled "Crimes against the established order of military service (military crimes)" [1].

In most states, where the norms of military criminal law are included directly in the national criminal codes by the legislators, the legal concept of a war crime or a crime against military service is formulated (Ukraine, Belarus, Kazakhstan, Azerbaijan, etc.). Only a person who has committed a criminal act (defined as a crime in the state's criminal law) can be held criminally liable. She must clearly and unambiguously know about such liability. And if a person has already committed a crime, then he/she should be held liable following the law.

These concepts have no fundamental differences from the definition of a war crime enshrined in Art. 401 of the Criminal Code of Ukraine). Thus, according to the Criminal Code of Ukraine, crimes against the procedure established by law for carrying out or completing military service, committed by military personnel, as well as conscripts during their training (or inspection) or special meetings (Article 401 of the Criminal Code of Ukraine) are recognized as military crimes.

The Supreme Court of Ukraine drew the attention of Ukrainian citizens to the peculiarities of liability for criminal offenses in the sphere of safeguarding the fundamental principles of national security, ensuring the protection of life, health, rights, and freedoms of individuals in conditions of martial law. Paragraph 11 of Part 1 of Article 67 of the Criminal Code of

Ukraine stipulates that committing a crime using the conditions of martial law as a circumstance aggravating the punishment. This means that the guilty party, with the aim of facilitating the commission of a criminal offense, utilizes the most unfavorable time for society, severe circumstances, and conditions in which society finds itself, indicating an increased degree of social danger of crimes committed in conditions of martial law.

Therefore, the punishment for individuals found guilty of committing criminal offenses during a period of martial law will be imposed taking into account this aggravating circumstance, meaning that the type and size of the imposed punishment will be close to the maximum limit prescribed by the Criminal Code of Ukraine.

In the countries of the Anglo-American (USA, Great Britain, Ireland, Canada, Australia, New Zealand, etc.) and Romano-Germanic (Germany, France, Italy, Spain, Holland, Austria, Switzerland, etc.) legal families, as already mentioned above, issues related to war crimes are not regulated by criminal codes (some of them do not have a criminal code as such). In these countries, military criminal law has become a separate branch of law. At the same time, the legislation of this group of countries does not have a single approach to defining the term "military crimes" [2].

Thus, combating offenses committed by servicemen in the US Armed Forces is ensured by a very complex set of norms of military legislation. However, one of the main legal sources governing issues of criminal and disciplinary liability of American servicemen is the Uniform Code of Military Justice of 1951 (hereinafter - the Uniform Code of Military Justice). It consists of 140 articles, 58 of which are devoted to the definition of punishable acts and penalties imposed on military personnel, which emphasizes the priority nature of punitive measures to maintain strong military discipline. The ECHR does not contain the concept of a war crime, but in Art. 77 establishes the concept of a subject of a war crime: firstly, such a subject includes a person who committed a crime defined in Chapter X of this Code, or a person who facilitates, incites, advises, gives a command, ensures its commission; secondly - the person who contributes to the performance of the act, if it is mainly performed by him [3].

In Art. 414 of the Criminal Code of Ukraine establishes criminal liability for crimes related to violations of the rules of handling weapons, as well as substances and objects that pose an increased danger to the environment. Criminal responsibility for such violations arises only if, by such actions, the serviceman either caused bodily harm to the victim(s), or created a danger to the environment, or caused the death of the victim(s), or caused other serious consequences. Other serious consequences should include large material damage (if it exceeds the tax-free minimum income of citizens by 250 or more times). In addition, severe consequences include disabling of military equipment important for combat capability, disruption

of combat mission performance, contamination of bodies of water, land, air, etc. with harmful substances.

In the USA, the norms related to military criminal law are concentrated in Chapter X of the ECHR and establish, in particular, responsibility for various state, military and general criminal crimes. The articles of the ECJU are not systematized, they are located without any internal regularity. Compositions of crimes that are similar in content are often located in different places of the specified Code. There is no article in the ECJ of the USA that would establish criminal liability for violating the rules of handling weapons or other dangerous objects and substances [4]. However, the liability of a serviceman for causing death through negligence (§ 919, Article 119), for intentional homicide (§ 918, Article 118), for causing mutilation to the victim (§ 924, Article 124), for loss, damage, destruction of military property is established separately. USA (§ 908 art. 108) That is, as you can see, in the ECHR it does not matter what caused the death or bodily harm to the victim: whether it was due to a violation of the rules for handling weapons or other dangerous substances, or for any other reason [5].

In general, it can be stated that in modern conditions, the norms of national and foreign military criminal law remain an important legal means of protecting military service relations from criminal encroachments and protecting the interests of the state in the military sphere. It attracted the attention of legislators of various states, as evidenced by its dynamic development.

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