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FEATURES OF THE OBJECTIVE SIDE OF VOLUNTARY LEAVING A MILITARY UNIT OR PLACE OF CORPS

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Abstract. The article analyzes the objective side of the criminal offense provided for in Art. 407 of the Criminal Code of Ukraine "Unwillingly leaving a military unit or place of corps".

The signs characterizing two forms of action are identified: voluntary leaving a military unit or place of corps; failure to appear on time without valid reasons for duty. It is substantiated that voluntary leaving a military unit or place of corps or failure to report to duty on time, committed under martial law or in a combat situation, cannot be considered forms of the objective side of this criminal offense. The expediency of considering "martial law" and "combat situation" as circumstances aggravating responsibility is argued.

As a conclusion, the signs of the objective side of the criminal offense provided for in Art. 407 of the Criminal Code: an act that is expressed in two forms; the way, place and time of its commission.

Key words: method, place, time of committing criminal offenses, criminal offenses against the established order of military corps, voluntary abandonment of a military unit or place of corps; failure to appear on time without valid reasons for duty, serviceman.

Introduction. The procedure for passing is established by the legislation of Ukraine military service is a guarantee of ensuring the legal regime in the military formations that were formed in accordance with the laws of Ukraine and that a legally established legal category that regulates passing military service Voluntary abandonment of a military unit or place of service violates the established order of military service, for which criminal liability is established in accordance with the provisions of Art. 407 of the Criminal Code of Ukraine (hereinafter referred to as the Criminal Code).

Problematic questions of the essence of the objective side of the arbitrary leaving a military unit or place of service in the theory of criminal law decided ambiguously. Therefore, it is necessary to find out and study the signs in detail of the objective side of the criminal offense provided for in Art. 407 of the Criminal Code "Arbitrarily leaving a military unit or place of service." The specified thesis is the purpose of this scientific article.

Problematic issues of criminal responsibility for committing offenses against the established order of military service were studied by such scientists as V.P. Bodayevskiy, V. A. Bugaev, S. I. Dyachuk, M. I. Karpenko, T. Yu. Kasko, M.O. Kolodyazhny, M. I. Melnyk, V. O. Navrotskyi, Yu. I. Rusnak, M.M. Senko, M.S. Turkot, M. I. Khavronyuk, S. O. Kharitonov and others.

Presenting main material. The objective side of the criminal offense provided for in Art. 407 of the Criminal Code, described in the Criminal Code as follows: "voluntarily leaving a military unit or place of service, as well as failure to appear on time without valid reasons for service" (Kryminalnyi kodeks Ukrainy vid 04/05/2001 r.). As we can see, the objective side of the analyzed criminal offense contains features that characterize two forms of doing:

- 1) voluntary abandonment of a military unit or place of service;
- 2) failure to appear on time without important reason for duty.

M. I. Melnyk believes that the objective side of the criminal offense provided in Art. 407 of the Criminal Code, has a more complex structure possible forms of its manifestation:

1) voluntarily leaving a military unit or place of service military serviceman with a term of service lasting more than three days, but no more than a month (Part 1 of Article 407);

2) non-appearance of serviceman on time without important reasons for service in case of dismissal from the unit, appointment or transfer, absence from a business trip, vacation or from a medical institution lasting more than three days, but not more than a month (Part 1 of Article 407);

3) voluntarily leaving a military unit or place of service a military serviceman (except for conscript service) for a duration of: a) more than ten days, but no more than a month; b) although less than ten days, but more than three days, committed repeatedly during the year (Part 2 of Article 407);

4) non-appearance of a serviceman (except conscript servicemen services) on time for duty without valid reasons for a duration of: a) more than ten days, but not more than a month; b) although less than ten days, but more than three days, committed repeatedly during the year (Part 2 of Article 407);

5) voluntary abandonment of a military unit or place of service by anyone military serviceman for more than one month (Part 3 of Article 407);

6) failure to show up on time for duty without important reason of any kind military serviceman for more than one month (Part 3 of Article 407) (Naukovo-praktychnyi komentar Kryminalnoho kodeksu Ukrainy, 2010: 1124).

Senko M.M. to the forms of the objective side includes the arbitrary leaving a military unit or place of service or failing to appear on time at service committed under martial law or in a combat situation (Senko, 2005: 70). We consider this position incorrect, since the specified circumstances are such that burden the responsibility. Therefore, it is correct to note that qualified and especially qualified features of this criminal offense is the duration of voluntary abandonment of a military unit or place of duty or untimely reporting to duty without valid reasons – over one month (Part 3 of Article 407 of the Criminal Code), committing acts in the conditions of a special period (Part 4 Art. 407 of the Criminal Code), under martial law or in a combat situation (part 5 of Article 407 of the Criminal Code).

Thus, the objective side of the criminal offense, provided for in Art. 407 of the Criminal Code, consists in the abandonment by the subject of the criminal offense without the permission of the head of the location of the military unit or place of service, as well as failure to appear on time without valid reasons for service at in case of dismissal from the military unit, assignment or transfer, non-appearance from a business trip, vacation or from a medical institution. Such arbitrary evasions from military service are recognized as criminally punishable if they continued more than three days, but not more than a month (Part 1 of Article 407 of the Criminal Code), more than ten days, but not more than a month, or even less than ten days, but more than three days, committed repeatedly during the year (Part 2 of Article 407 of the Criminal Code); more than one month (Part 3 of Article 407 of the Criminal Code), committed in the conditions of a special period (Part 4 of Article 407 of the Criminal Code), committed in the conditions martial law or in a combat situation (Part 5 of Article 407 of the Criminal Code).

Peculiar nature of violations of the order of military service consists in the unity of action and inaction: one is accompanied by another, according to each action is followed by inaction and conversely. Violation of special rules behavior is characterized by a person's non-fulfillment of the requirements that are presented to him. At the same time, the external manifestation of behavior is a person's attitude towards regulations, and not to material objects (Kharytonov, 2018: 110).

According to Senko M. M., the act provided for in Art. 407 of the Criminal Code, may be committed in two ways: by action - voluntary abandonment of a military unit or place of service or through inaction - failure to appear on time for duty without valid reasons (Senko, 2005: 70). Kharitonov S.O. believes that the order of military service is violated by inappropriate behavior of a serviceman and indicates that voluntary abandonment of a military unit or place of service is committed only by active behavior (Kharytonov, 2018: 112).

Leaving a military unit or place of service is arbitrary in case it is committed illegally and without the permission of a direct or the immediate superior of the culprit. The term "arbitrary" means arbitrariness, which contradicts the statutory requirements regarding the possibility of staying outside the place of duty only with appropriate permission. The presence of this sign means that the person is aware of the violation of the established order and the fact of illegality stay outside the borders of the military unit or place of service and wishes to do so (Senko, 2005: 71). Abandonment of a part or place of service committed is arbitrary without the permission of the chief (commander) (Naukovo-praktychnyi komentar Kryminalnoho kodeksu Ukrainy, 2010: 1124), leaving without the permission of the commander location of the military unit during the established duty hours daily schedule, or at other times when performing in the location of the part official task; the territory of the educational center, the camp at any time; any other place of service where the person must permanently or temporarily perform the duties assigned to her (Viiskovi zlochyny: komentar of legislation, 2003: 71-79). Illegally leaving a military unit or the place of service is recognized if it is committed contrary to the established rules of staying servicemen outside the military unit or location services (Senko, 2005: 70). In our opinion, "arbitrary" should be understood committing actions contrary to the requirements of regulatory and legal acts, without availability appropriate permission.

According to Art. 216 of the Charter of the Internal Service of the Armed Forces of Ukraine, conscript military servicemen in time off from classes and work time have the right to move freely on the territory of the military unit, and during liberation – and within the garrison (Zakon Ukrainy "Pro Statut vnutrishnoi sluzhby Zbroinykh Syl Ukrainy"). Military servicemen of the officer and sergeant ranks (senior) staff who are serving under the contract and who are leaving outside the garrison, the military commander is notified in writing parts Departure of conscript military servicemen abroad of the garrison (except for cases of departure on vacation or business trip) is prohibited (Karpenko, 2018: 245). Conscript military servicemen are released from the location of the military unit by the company commander in the specified time days and hours and in the order established by the commander of the military unit. A dismissed person is issued a notice of dismissal signed by the company commander and with an imprint of the seal of the military unit. It specifies the duration of the permit stay of a serviceman outside the military unit. A note about the exemption is valid only within the garrison in which the specific one is stationed military base. In addition to the company commander, they also have the right to give dismissal superior commanders and superiors are equal to him in terms of position (Karpenko, 2018: 245).

There is a well-founded opinion that the military serviceman's leaving a part or place of service with the permission of the direct or immediate superior, even if he does not have the right to grant dismissal, although it is illegal, but it is not arbitrary and, accordingly, such actions do not contain signs of a criminal nature the offense provided for in Art. 407 of the Criminal Code (Senko, 2005: 701; Viiskovi zlochyny: comment on legislation, 2003: 71-79). Karpenko M. I. believes that in such a case, the responsibility rests with the superior who admitted violation of the dismissal procedure (Karpenko, 2018: 246).

A military unit or duty station as an immediate alternate location committing a criminal offense is any military units, subdivisions, teams, institutions, formations, where according to their officials duties or orders or instructions of the command, the subject must be on service There is an opinion that the location of the military unit should be considered the territory of a barracks, camp, marching or combat location units, where a person enrolled in military service is included in the unit's lists (Senko, 2005: 70); that this is the territory of a barracks or camp (camp), the military unit's mobile or combat location (Karpenko, 2018: 246); that a military unit is the territory of a military unit, the boundaries of which may or may not be marked by a fence, but are usually determined by the order of the unit commander with an illustration of them on a plan (diagram) (Naukovo-praktychnyi komentar

Kryminalnoho kodeksu Ukrainy, 2010: 1125). At the same time, it should be borne in mind that the boundaries of the territory the borders of the military unit and the military garrison do not coincide.

As stated in Art. 366 of the Charter of the Internal Service of the Armed Forces of Ukraine, the military unit and its units are located on the training ground in premises or tent camps. Boundaries of the training ground (camp), beyond which it is forbidden to leave the components, they are announced in the order by part (Zakon Ukrainy "Pro Statut vnutrishnoi sluzhby Zbroinykh Syl Ukrainy"). During stay of a serviceman on a business trip instead of him service will be considered the place indicated in the travel certificate. At non-appearance of a serviceman to a unit or place of service after termination the term of legal absence in places of preparation and direct execution crimes are those in which the serviceman was on legal grounds, i.e. medical institution, place of leave, dismissal, military the part from which the serviceman left (when transferring and returning from assignment).

During the serviceman's stay on a business trip the place of his service will be considered the place indicated in the certificate of assignment. In case of non-appearance of a serviceman to the unit or place of service after the expiration of the period of legal absence from places of training and of the direct commission of the crime are those in which the serviceman was on legal grounds, i.e. medical institution, place of vacation, dismissal, military unit from which a serviceman was discharged (at transfers and returns from business trips).

In case that the place of service does not coincide with the location of the military part, you should use the provisions of Part 4 of Art. 24 of the Law of Ukraine "About general military duty and military service": military personnel are considered to be performing military service duties: a) on the territory military unit or in another place of work (classes) during working hours (educational) time, including breaks established by the schedule (schedule classes); b) on the way to or from work, during business hours trips, return to the place of service; c) outside the military unit, if stay there corresponds to the duties of a military serviceman or was sent there by order of the relevant commander (chief); d) during performance of state duties, including in cases where these duties were not related to military service; e) during the performance of duty with saving human life, protection of state property, maintenance of military discipline and law enforcement (Zakon Ukrainy "Pro zahalnyi viiskovyi oboviazok i viiskovu sluzhbu").

Therefore, the place of service, except for a military unit, can be considered any another place where the serviceman is obliged for a certain time perform official duties or be at the command of the superior: place performance of official tasks or economic work outside the location part, conducting educational classes or mass cultural events, movement as part of a team – echelon, train, column (Karpenko, 2018: 247).

That is, it is the place where the person actually performs the duties of military service Senko M.M. clarifies that the place of service can be:

a) for servicemen who are on a business trip - a place the business trip specified in the business trip certificate;

b) for military personnel undergoing military service in civilian clothes institutions and establishments, – the location of these institutions or establishments;

c) for military personnel who are in a medical institution – location of the medical facility;

d) for servicemen who are outside the boundaries of part c in connection with the performance of special duties related to military service or execution of the order – the place of execution of these duties or the order;

e) for servicemen who are transported as part of a group (not part of military unit) – echelon, command, column (Senko, 2005: 72).

Failure to appear on time for duty without valid reasons as the second form objective side of the analyzed criminal offense consists in because the serviceman who left the location of the military unit on legal grounds, does not return to military service without valid reasons part or place of service

in the prescribed period (Karpenko, 2018: 247). That is, the serviceman is outside the military unit or places of service on legal grounds: on dismissal, business trip, vacation, medical institution and, having objective opportunities for this, without respectable ones reasons do not appear or appear late for duty (Senko, 2005: 73).

M.I. Melnyk notes that the non-appearance of a serviceman on time at service is his failure to report for duty within the term specified in the relevant documents (Naukovo-praktychnyi komentar Kryminalnoho kodeksu Ukrainy, 2010: 1125), because it is the duty of a serviceman upon discharge from the unit, appointments, transfers, returns from a business trip, from vacation or from medical institution is to return to service within the term specified in permission documents: release notes, prescriptions, certificates of business trip, leave card, medical institution documents.

Establishing the fact of non-appearance when a serviceman is summoned to criminal liability for failure to appear on time without valid reasons at the service is not enough. In such a situation, it is necessary to find out whether he had the opportunity guilty serviceman under specific circumstances of the case to appear at service. If, due to objective circumstances, he did not have such opportunity, in this case there is no volitional sign of the act, therefore it is criminal liability should be excluded due to lack of composition criminal offense (Senko, 2005: 74). At the same time, actual moment of appearance of the serviceman must be documented, and the time return of servicemen from discharge – to be noted in the record book dismissed Thus, a necessary condition of total responsibility for failure to show up on time without valid reasons for duty is a person's responsibility to report for duty, stipulated by the relevant regulatory acts, which may arise from the order or instruction of the superior.

Failure to report to duty on time is not a criminal offense in if it is caused by valid reasons. In Part 11 of Art. 15 of the Law Ukraine "On military duty and military service" states that valid reasons for non-arrival of conscripts to conscription stations on time, established by the territorial center of recruitment and social support, which are confirmed by relevant documents, are recognized:

a) an obstacle of a natural nature, an illness of a conscript or other circumstances which deprived him of the opportunity to personally arrive at the specified point and time;

b) the death of his close relative (parents, wife, child, siblings, sister, grandfather, grandmother) or a close relative of his wife (Zakon Ukrainy "Pro zahalnyi viiskovyi obov'язok i viiskovu sluzhbu").

It is obvious that this norm has an evaluative nature, because it contains a term "other circumstances that deprived him of the opportunity to personally arrive at the indicated point and term". Unforeseen traffic stop can be attributed to such circumstances, which led to the impossibility of arriving on time in another way, detention of a serviceman by the authorities, providing emergency care for sick parents, if it could not be obtained in another way (Viiskovi zlochyny: komentar zakonodavstva, 2003: 128; Kharytonov, 2018: 57).

Important reasons for the delay of servicemen on business trips may exceed the terms specified in the business trip certificate unforeseen obstacles in communication, fire or natural disaster that happened in the family of a serviceman, serious illness of his family members or persons, on whose upbringing he was. A serious reason for the delay in release the delay of the serviceman by the military commandant must be recognized, by other state authorities in connection with circumstances unrelated to illegal stay of a serviceman outside the location of the unit or places of service (Naukovo-praktychnyi komentar Kryminalnoho kodeksu Ukrainy, 2010: 1125).

Thus, a mandatory condition of criminal responsibility for Art. 407 of the Criminal Code, is absence without important reasons for duty on time. The important reasons are the objective factors that prevent it a serviceman to report to the unit on time (Senko, 2005: 76). List of possible cases of non-appearance of conscript servicemen on time without valid reasons for service, provided for in the disposition of Part 1 of Art. 407 of the Criminal Code (art in case of dismissal from a part, assignment or transfer, from a business trip, vacation, medical facility) is not exhaustive. There are cases

when the serviceman was outside the location of the unit in connection with by performing a certain task (at the same time, the messenger is sent to the place residence of the officer to inform him of the necessity of appearing in part) and does not appear on time without valid reasons for duty and evades from her for more than three days, but not more than a month. A serviceman for these actions should also be subject to liability under Part 1 of Art. 407 of the Criminal Code. However, such the case of not appearing on time without valid reasons for duty is not provided for and not directly specified in the law (Senko, 2005: 87).

Terms of voluntary leaving a military unit or place of service are of great importance for criminal liability under Art. 407 of the Criminal Code. So, the following terms are specified in the norm: a) for conscript servicemen service – more than three days, but not more than a month (Part 1 of Article 407 of the Criminal Code), b) for military serviceman (except for conscript service) - more than ten days, but not more than month, or even less than ten days, but more than three days, committed repeatedly within a year (Part 2 of Article 407 of the Criminal Code), c) for more than one month (Part 3 of Article 407 of the Criminal Code).

In the context of Art. 407 of the Criminal Code, the term "month" means a calendar month (from 1 January to February 1, February 15 to March 15, etc., regardless of the number days in one or another month) (Naukovo-praktychnyi komentar Kryminalnoho kodeksu Ukrainy, 2010: 1125). The term "no more than a month" means actual duration of voluntary absence from the moment of leaving the part or expiration of the established period of attendance at the part or at the place of service, which or is equal to the calendar month, or does not exceed it (for example, from January 10 until January 29, from February 1 to March 1, from March 5 to April 5) (Viiskovi zlochyny: commentary on legislation, 2003: 71-79). In other words: between the initial and final moments of voluntary leaving a part or place of service or failure to show up for duty on time must pass one calendar month regardless of the number of days in it. The term "more than a month" covers any what is the excess of the monthly term (one month and 5 hours, one month and 20 days) (Viiskovi zlochyny: komentar zakonodastva, 2003: 71-79). Duration specified in the disposition of Art. 407 of the Criminal Code is an important constituent feature analyzed criminal offense.

Without intention to be absent for more than one month, even twice voluntary abandonment of a military unit or failure to appear on time without valid reasons for service lasting 28–29 days each time to qualify, depending on the type of subject, under Part 1 or Part 2 of Art. 407 of the Criminal Code (Naukovo- praktychnyi komentar Kryminalnoho kodeksu Ukrainy, 2010: 1125).

If the military serviceman was in voluntary service for the first time absent for 10 days, and the second for 23 days, not intending to evade in both cases from service for a period of more than one month, his actions should be qualified under Part 1 Art. 407, although the total duration in this case exceeds the monthly period. But in the event that there are two or more facts of voluntary abandonment service duration of one of them is less than one month, and the second one is more than one month, it is worth talking about the real set of criminal offenses and actions to qualify according to part 1, part 2 of Art. 407 of the Criminal Code or according to Part 1, Part 3 of Art. 407 of the Criminal Code (Naukovo- praktychnyi komentar Kryminalnoho kodeksu Ukrainy, 2010: 1125; Viisks zlochyny: comment on legislation, 2003: 71-79).

Temporary appearance in the location of a military unit of a serviceman, who evades the duty of military service, unwillingly to start performing these duties does not interrupt the duration of the arbitrary leaving the military unit. In the event of the appearance of a serviceman who was voluntarily absent for more than three days, in a military unit or place of service, but in the absence of a report to the relevant commander (chief) about his return and subsequent non-fulfillment of duties from military service, term arbitrary absence is not interrupted (Karpenko, 2018: 247).

The time during which the serviceman was kept at the guardhouse in connection with his detention, or was under inpatient treatment at connection with the disease, while not hiding his belonging

to the military service, until the time of his voluntary absence from a military unit or location service is not counted (Naukovo-praktychnyi komentar Kryminalnoho kodeksu Ukrainy, 2010: 1125).

The term of service of a serviceman, even if outside the military part, but in the field of activity of the competent bodies that have the authority regarding the resolution of the issue of the further passing of the data service military serviceman or regarding giving his actions a legal assessment (the person is detained or arrested in a disciplinary or administrative order, to her a preventive measure was applied in connection with being brought to criminal proceedings liability for another criminal offense, executes a lawful order or order of a state authority) is subject to exclusion from the term illegal stay outside the military unit from the moment when the serviceman declared to the specified authorities about his evasion of military services (Naukovo-praktychnyi komentar Kryminalnoho kodeksu Ukrainy, 2010: 1125). That is, the actual period of stay of the serviceman outside the borders military unit or place of service is counted towards the term of voluntary leaving a military unit or place of service by a serviceman term service, as well as his failure to appear on time without valid reasons at service in accordance with Art. 407 of the Criminal Code only on the condition that there is such a stay illegal, arbitrary and unauthorized.

The criminal offense provided for in Art. 407 of the Criminal Code, is an act of formal composition: it is described in the CC in such a way that in the disposition Art. 407 of the Criminal Code does not specify socially dangerous consequences. So, for availability it is not necessary to establish the presence of elements of a criminal offense socially dangerous consequences and the causal connection between them and the act. The criminal offense provided for in Art. 407 of the Criminal Code, is finished from the moment voluntary abandonment of a military unit or place of service by a conscripted serviceman or from the moment of non-appearance of the person on time without valid reasons for service in case of dismissal from the unit, appointment or transfer, failure to appear from a business trip, vacation or from medical institution after the end of the minimum duration of action, specified in the CC.

Regarding the act provided for in Part 1 of Art. 407 of the Criminal Code, it should be noted that it exists expired from the moment of expiry of the established period of voluntary abandonment or non-appearance of a military serviceman in the absence of intent regarding evasion of service for a longer period (more than a month). Voluntary abandonment of a military unit or place of service ends in the specific moment when the serviceman arrived at the military unit or place of service was either detained or appeared before the appropriate body (Naukovo-praktychnyi komentar Kryminalnoho kodeksu Ukrainy, 2010: 1126).

Thus, in the case of committing an act provided for in Art. 407 of the Criminal Code, a certain criminally illegal state is created, which lasts for some time period of time. Therefore, it is important to establish the moment of the beginning and the end of the analyzed criminal offense. There is an opinion that these moments are determined differently for different categories of servicemen, who are the subjects of the act specified in Art. 407 of the Criminal Code: for military personnel the beginning of the term of service by voluntarily leaving the military unit or places of service should be considered the actual moment of their leaving, instead for military servicemen of other, except fixed-term, types of military service working time regulations are established, where the terms and the duration of their performance of the main activities arising from the duties military service Regulation of working hours when carrying special types services (combat duty, guard service) is determined by the military statutes, orders, instructions and other legal acts. Therefore, the initial moment of voluntary abandonment of a military unit or the places of service of these categories of servicemen are a matter of fact leaving a military unit or place of service during their performance official duties (Senko, 2005: 64-65).

The second form of the objective side of this criminal offense (failure to show up on time without valid reasons for duty) has a different point of the beginning: the end of the established duration of the legal stay outside service (Senko, 2005: 65).

The initial moment of voluntary abandonment of a military unit or the place of service is the day when the serviceman voluntarily left the location of the military unit or place of service, and the initial moment failure to show up for work on time - the next day after the expected day appearing in a military unit or place of service (Naukovo-praktychnyi komentar Kryminalnoho kodeksu Ukrainy, 2010: 1126). That is, the actual moment voluntary abandonment of a military unit or place of service should be considered the beginning of a criminal offense provided for in Art. 407 of the Criminal Code, and his end - the day of return to the unit or detention outside the unit. Failure to show up for duty is considered to be the end of the established term appearance, and finally – the time of return to the unit or detention of the person by the relevant authorities (Peletskyi, 2011: 250).

When setting the initial moment of non-appearance on time without important reasons for service may cause difficulties in cases of absence military serviceman's document with the specified date of arrival for service or this period was not determined by his verbal order. In such situations the initial moment of voluntary absence should be counted from the moment obtaining a real opportunity for military personnel to appear in military service part or to the place of service (Senko, 2005: 65). If in the leave ticket or in another document, which is the reason for the serviceman's absence within the limits of the part or place of service, only the date of return is indicated, then voluntary absence should be calculated from the next day, after the date specified in the document, since the return of a serviceman to duty at what time on the day specified in the leave ticket or other document, should be considered legitimate. If, in addition to the date, the hour is also indicated return to duty, then voluntary absence begins after discharge at the specified hour (Senko, 2005: 66).

In the case of a military serviceman forging a document that gives the right on leaving a military unit or place of service, his actions have to qualify under Art. 409 of the Criminal Code as evasion of military service forgery of documents.

According to Senko M. M., the end of arbitrary abandonment of a military unit or place of service or failure to appear on time without permission reasons for service should be considered the time from which the serviceman stopped voluntary absence from military service. Termination of the arbitrary absence from service, in his opinion, is: a) the moment of return serviceman to the location of the military unit or to the place of service, b) the moment of voluntary appearance of the guilty person to the relevant authorities with a confession about voluntarily leaving a military unit or place of service or non-appearance on time without valid reasons for service, c) the moment of arresting the culprit by law enforcement agencies or representatives of the part or citizens of connection with his voluntary leaving of a military unit or place of service or failure to appear on time without valid reasons for duty, d) the moment of occurrence irresistible force that prevented the culprit from appearing in a part or place services, e) the moment of occurrence of other circumstances, as a result of which the sign disappears voluntary absence from a military unit or place of service (Senko, 2005: 66).

Conclusions. Therefore, the objective side of the criminal offense, provided for in Art. 407 of the Criminal Code, has the following characteristics:

1) action, which is expressed in two forms: action - voluntary abandonment military unit or place of service and inactivity – unreported on time without valid reasons for service;

2) method – arbitrariness of leaving a military unit or place of service, what is the commission of actions contrary to the requirements of normative legal acts, without availability of the appropriate permit;

3) place of commission – military unit or place of service, i.e. territory, where the serviceman is obliged to perform for a certain time official duties or to be on the orders of the superior;

4) the time of committing the criminal offense: a) more than three days, but no more than a month (Part 1 of Article 407 of the Criminal Code), b) more than ten days, but no more than a month (Part 2 of Article 407 of the Criminal Code), c) more than one month (Part 3 of Article 407 of the Criminal Code).

References:

1. Viiskovi zlochyny: komentar zakonodavstva (War crimes: commentary on legislation), 2003: 272. [in Ukrainian].
2. Zakon Ukrainy «Pro zahalnyi viiskovyi oboviazok i viiskovu sluzhbu» (Law of Ukraine «About general military duty and military service») № 2232-XII vid 25.03.1992 r. URL: <https://zakon.rada.gov.ua/laws/show/2232-12#Text> [in Ukrainian].
3. Zakon Ukrainy «Pro Statut vnutrishnoi sluzhby Zbroinykh Syl Ukrainy» vid 24.03.1999 r. (Law of Ukraine «On the Statute of the Internal Service of the Armed Forces of Ukraine») URL: <https://zakon.rada.gov.ua/laws/show/548-14#Text> [in Ukrainian].
4. Karpenko M. I. (2018) Zlochyny proty vstanovlenoho poriadku nesennia viiskovoï sluzhby (viiskovi zlochyny): teoretychni ta prykladni aspekty (Crimes against the established order of military service (military crimes): theoretical and applied aspects) : Monohpafiia, 420. [in Ukrainian].
5. Kryminalnyi kodeks Ukrainy vid 05.04.2001 r. (Criminal codex of Ukraine) URL: <https://zakon.rada.gov.ua/laws/show/2341-14#Text> [in Ukrainian].
6. Naukovo-praktychnyi komentar Kryminalnoho kodeksu Ukrainy (Scientific and practical commentary on the Criminal Code of Ukraine), 2010: 1288. [in Ukrainian].
7. Peletskyi V. O. (2011) Obstanovka vchynennia zlochynu yak element kryminalistychnoi kharakterystyky samovilnoho zalyshennia chastyny abo mistisia sluzhby (The circumstances of the commission of the crime as an element of the criminal characteristics of the arbitrary overstaying of a part or place of service). Problemy zakonnosti, 117, 249–256. [in Ukrainian].
8. Senko M. M. (2005) Kryminalna vidpovidalnist za samovilne zalyshennia viiskovoi chastyny abo mistisia sluzhby (Criminal liability for voluntarily leaving a military unit or place of service) : dys. ... kand. yuryd. nauk: 12.00.08, 217. [in Ukrainian].
9. Kharytonov S. O. (2018) Kryminalna vidpovidalnist za viiskovi zlochyny za kryminalnym pravom Ukrainy (Criminal liability for war crimes under the criminal law of Ukraine) : monohpafiia. 328. [in Ukrainian].