

SECURITY AND FINANCIAL ASPECTS OF THE DOCTRINAL AND LEGAL CHARACTERISTICS TYPES OF ADMINISTRATIVE LIABILITY OF THE SERVICEMEN OF THE ARMED FORCES OF UKRAINE

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Abstract. The article's primary focus is on the doctrinal and legal characteristics of the types of administrative responsibility of servicemen of the Armed Forces of Ukraine, with a particular emphasis on the security and financial aspects. The authors noted that the large-scale aggression of the Russian Federation against Ukraine and the necessity of ensuring the combat readiness and effectiveness of the Defence Forces in general, and the Armed Forces of Ukraine in particular, in protecting Ukraine's sovereignty and territorial integrity, are key factors in highlighting the need to strengthen military discipline. Additionally, they emphasised the importance of establishing an effective mechanism to maintain the proper moral and psychological state of the Armed Forces of Ukraine, especially under special conditions, such as martial law. In addressing these challenges, the institution of administrative responsibility for military personnel plays a significant role. *Methodology.* The research methodology is determined by the defined goal and set tasks and includes various methods of scientific knowledge, approaches, and actions aimed at obtaining new scientific results of determining the administrative responsibility of servicemen of the Armed Forces of Ukraine. During the research, a range of methods were employed, including general and specific methods of scientific knowledge, the method of systematic analysis, the dialectical method, formal-logical methods, structural-functional and comparative-legal methods, as well as several empirical methods. These methods were used to determine the doctrinal and legal principles of administrative responsibility of military servicemen and to identify directions for their improvement, as well as their impact on security and economic phenomena in the state. *Conclusion.* It has been established that careless destruction or damage to weapons, ammunition, means of transport, military and special equipment or other military property significantly harms the security and financial interests of the state. It is proposed to refer to the material burdens applied to servicemen of the Armed Forces of Ukraine for committing administrative offences with a pronounced negative economic impact. The following types of administrative responsibility of servicemen are characterised: general administrative responsibility, special administrative responsibility and mixed (administrative and disciplinary) responsibility of servicemen.

Keywords: servicemen of the Armed Forces of Ukraine, administrative responsibility of servicemen, types of administrative responsibility of servicemen, disciplinary responsibility of servicemen, material damage, financial interests of state, military administrative offense, administrative sanctions.

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1. Introduction

The Constitution of Ukraine, in Art. 17 stipulates that "the defense of Ukraine, the protection of its sovereignty, territorial integrity and inviolability are entrusted to the Armed Forces of Ukraine"

(The Constitution of Ukraine, 1996). The Law of Ukraine "On Armed Forces of Ukraine" specifies the aforementioned constitutional provision by stipulating that "...the Armed Forces of Ukraine ensure the deterrence of armed aggression against Ukraine and

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repulse it, the protection of the airspace of the state and the underwater space within the territorial sea of Ukraine..." (The Law of Ukraine "On Armed Forces of Ukraine", 1991).

In the context of the large-scale aggression of the Russian Federation against Ukraine, the aforementioned legislative provisions assume a particular significance and acquire a special content. This necessitates a rethinking and reformatting of a whole set of issues to ensure the combat capability of the Defence Forces as a whole and the Armed Forces of Ukraine in terms of actualising military sphere issues. This necessitates the establishment of an effective state-legal mechanism to ensure the defence capability of the Armed Forces in the context of conducting hostilities and defending Ukraine. This mechanism must encompass the formation of military personnel potential, the maintenance of military discipline and the performance of military duty, the completion of military service, and the legal status of military personnel in exceptional conditions.

It is evident that the resistance demonstrated by Ukraine in the face of aggression has not only exemplified the profound heroism and courage of the Ukrainian populace and its military, but has also exposed instances of misconduct by military personnel. This behaviour has the potential to not only adversely impact but is already having a detrimental effect on the state of military discipline, the morale and psychological well-being of the armed forces, and the defence capabilities of Ukraine. It is imperative to acknowledge that administrative transgressions perpetrated by military personnel have the potential to inflict material destruction. Given the gravity of the transgression, this destruction will invariably entail both cumulative security implications and fiscal consequences. The provision of financial assistance for armaments that may be destroyed due to incompetence poses a dual threat: a threat to the security of the state and a threat to its financial weakness.

The 2016 Internal Report on Anti-Corruption Measures in Europe noted the following. It states that "an effective fight against corruption is an important basis for a realistic prospect of EU membership for a sovereign and integral Ukraine". Concurrently, the commission of administrative corruption offences by military personnel in contemporary conditions also impacts the economic and security interests of the state.

It is imperative to ascertain the current state of legal regulation pertaining to the administrative responsibility of servicemen, particularly in the context of Ukraine's integration into the European Union and NATO. This determination is of equal importance to the necessity of enhancing domestic legislation to align with international standards. Simultaneously, there is a necessity to rethink conceptual approaches to the legal regulation of relations between servicemen

and the state, military discipline, and the legal responsibility of servicemen. The objective is to eliminate outdated post-Soviet approaches to solving these issues, particularly the exclusively repressive and punitive nature of the legal responsibility of servicemen. Furthermore, there is a requirement to develop updated conceptual approaches to the formation of a modern concept of disciplinary and administrative responsibility of military personnel, taking into account NATO standards.

Turning to scientific works on the researched issue (as a relevant theoretical and methodological basis), it is shown that several issues of administrative and disciplinary responsibility of military personnel were and are the subject of scientific research by such scientists as O. Polyakova (2014) and V. Vernyhora (2018), Kanduev (2020); K. Kovalenko (2017), V. Kononets (2020), V. Stolbovy (2018), M. Turkot (2017) and others. However, it is crucial to acknowledge that a multitude of theoretical and methodological challenges persist, along with issues of normative and legal regulation, which remain unresolved. Consequently, this state of affairs influences judicial decisions when adjudicating pertinent cases, yet fails to ensure uniformity of approaches.

Since the legal regulation of both administrative and disciplinary responsibility of military personnel is rather vague and concretely undefined, to some extent, vague, this study draws attention to such issues as: 1) the theoretical, methodological and legal characteristics of the administrative responsibility of military personnel; 2) highlighting the peculiarities of the types of administrative responsibility of military personnel; 3) the impact of military misconduct on ensuring the economic and security interests of the state.

2. General Administrative Liability of Servicemen

Firstly, the characteristics of the administrative responsibility of military personnel presuppose an appeal to the doctrinal vision of this legal phenomenon. Given the extensive coverage of general issues of administrative responsibility in scientific publications, it appears essential to concentrate on the theoretical and methodological characteristics of the administrative responsibility of military personnel. In turn, it is important to note that the characteristics of administrative responsibility for military personnel should take into account scientific developments related to a broader range of issues in the military sphere. This includes research on military service by V. Aleksandrov (2007) and I. Korzh (2004); the legal status of military personnel by V. Pashinsky (2007), S. Ishchenko (2019), and V. Koval (2018); legal responsibility of military personnel by V. Zaluzhnyi

(2023), M. Ishchenko (2024), V. Kononets (2020), O. Polyakova (2014), O. Snigerev (2017), M. Turcot (2017), S. Tyurin (2002), and V. Shkarpytska (2018); as well as the maintenance of military discipline within military formations by O. Havryshchuk (2016), V. Vernyhora (2018), and others.

The above-mentioned and other issues of military service also determine the peculiarities of the administrative responsibility of military personnel, which from time to time have been the subject of scientific research by such domestic scientists as D. Kanduev (2020), A. Mota (2003), S. Shaparenko (2008), V. Babich (2014) and others. Concurrently, several issues of this nature remain at the centre of attention of the scientific community because of the global challenges that necessitate the rethinking of several scientific provisions of this legal institute, taking into account the realities of today.

O. Polyakova (2014) drew attention to the shortcomings of the legal regulation of bringing servicemen to administrative responsibility and investigated the issue of the ratio of disciplinary and administrative responsibility of servicemen. The role of management in matters of military personnel discipline has been a subject of study and improvement for a considerable period (Jefferies, 1977; Tuan-sheng, 1948).

The foundation of this study was the works pertaining to the functionality of military personnel and the significance of their adherence to legal stipulations, particularly with regard to the particularities of discipline compliance by military personnel in Hungary (Héregi, 2018), Poland (Szynowski, 2019), and Romania (Fusea, 2016).

Before moving on to the characteristics of the administrative responsibility of military personnel and its types, it should be noted that in some cases the doctrinal and legal characteristics of the same concept do not coincide in their essence and content, and sometimes contradict each other. A vivid example of such a contradiction (both in essence and in content) is the juxtaposition of the concepts of "administrative offence" and "administrative misdemeanour". Thus, at the doctrinal level, on the institution of administrative compliance, the concept of "administrative offence" is used as a factual basis, which is recognised by the vast majority of scientists. On the other hand, at the legislative level, i.e., in the Code of Ukraine on Administrative Offences (The Code of Ukraine on Administrative Offences, 1984) (hereinafter referred to as the Code of Administrative Offences), the term "administrative misdemeanour" is used, which is included in the title of the legislative act itself. A comparison of these concepts reveals their fundamental substantive distinction: an administrative offence constitutes any violation of the norms of administrative law, for

which administrative responsibility is not necessarily provided; and an "administrative misdemeanour" is a violation of the law, for which administrative responsibility is necessarily provided. The present study employs the concept of "administrative offence" as the foundational principle for examining administrative liability among military personnel. In the context of the aforementioned, it should be noted that despite certain contradictions, both doctrinal and legal characteristics are not only inseparable from each other, but also mutually conditioned and interconnected (even in the case of non-coincidence), and it is in this aspect that it is presented in this research.

The sole normative legal act pertaining to the administrative responsibility of military personnel is the Code of Administrative Offences, which defines not only the main triad of this responsibility (legal, factual and procedural grounds), but also its basic principles (principles, guarantees), types (general, special, mixed) and characteristics. In addressing the particulars of this form of responsibility, it is imperative to acknowledge the primary focus on the subject of administrative responsibility – that is, a serviceman. The question of delineating the legal nature of a military serviceman as an administrative offender has been the subject of attention from the scientific community, with this issue being partially investigated by a co-author (Bila-Tiunova Lyubov, 2024). Consequently, the provisions stated above were taken into account in this study.

The administrative responsibility of military personnel is, by its very nature, a multifaceted legal phenomenon, and the analysis of the relevant articles of the Code of Administrative Offences makes it possible to distinguish three types of such responsibility.

The employment of the adjective "general" in this particular instance serves to underscore the notion that the responsibility in question is encompassed within the ambit of the Code of Administrative Offences. This signifies that the responsibility in question is applicable to all subjects who have committed specific administrative offences, a category which includes military servicemen. The Code encompasses general principles, guarantees, factual grounds, the procedure for bringing to administrative responsibility, and the system of administrative fines (subject to certain restrictions).

An appeal to the legislative grounds of the general administrative responsibility of servicemen demonstrates that it arises on the basis of:

1) Article 15 (1) "Responsibility of servicemen and other persons subject to disciplinary statutes for committing administrative offences" of the Code of Administrative Offences, which provides for an exhaustive list of administrative offences for which servicemen are generally liable. The following constitute administrative offences: infringement of regulations

pertaining to road safety, sanitation, hunting, fishing and protection of fish stocks, customs regulations, commission of offences related to corruption, domestic violence, gender-based violence, failure to comply with an urgent restraining order or failure to report the place of temporary stay in the event of an urgent restraining order, breach of silence in public places, illegal use of state property, illegal storage of special technical means of secretly obtaining information, failure to take measures regarding a separate court order, evasion of the legal requirements of the prosecutor, violation of the legislation on state secrets, violation of the procedure for accounting, storage and use of documents and other material carriers of information containing official information. Simultaneously, it is imperative to acknowledge that the legislator, in formulating this particular legislative provision, permitted a transgression against the established legislative technique by enumerating administrative offences without explicit reference to the pertinent articles of the Code of Administrative Offences. This procedural lapse engenders certain challenges in the identification and execution of these offences.

2) Chapter 13-A "Administrative offences related to corruption" of the Code of Administrative Offences (the subject of these administrative legal measures may be a natural person authorised to perform state functions, including a military serviceman). It is important to note that, without providing a detailed description of the specific administrative responsibility for misdemeanours related to corruption, attention should be paid to the fact that administrative offences related to corruption, the subject of which is a military serviceman, are subject to special control. This is confirmed by the Instruction on providing reports and reports on events, criminal offences, military administrative offences and administrative offences related to corruption, violations of military discipline and their accounting in the Ministry of Defence of Ukraine, the Armed Forces of Ukraine and the State Special Service of Transport (*The Order of the Ministry of Defence of Ukraine "On Approval of the Instruction on Submission of Reports and Disclosures on Events, Criminal Offences, Military Administrative Offences and Administrative Offences Related to Corruption, Violation of Military Discipline and their Accounting in the Ministry of Defence of Ukraine, the Armed Forces of Ukraine and the State Special Transport Service"*, 2021). At the same time, it should be noted that, according to the above-mentioned instruction, only such administrative offences are subject to special control as: a) related to corruption; b) illegal drug trafficking; c) petty hooliganism; d) firing weapons in unspecified places; e) consumption of alcohol in public places; g) malicious disobedience; h) public calls to disobey the requirements of law enforcement bodies.

The commission of corruption offences by military personnel exerts further pressure on Ukraine's positioning as a democratic state and the possibility of continuing to provide it with adequate financial resources. Concurrently, this state of affairs has ramifications for the economic security of the state in its entirety. The importance of safety issues in supporting the stable development of states and societies cannot be overstated. It is noteworthy that the scientific community's interest in this issue has persisted over the centuries without diminution. The origins of the conceptualisation of security perception can be traced back to the works of ancient philosophers and thinkers, who conceptualised it as a state that determines the absence of environmental danger (Hnatenko, 2020).

It is important to note that the name "general administrative liability of servicemen" does not exclude the existence of specific features of such liability, which mainly relate, in particular, to the issue of bringing servicemen to such liability:

1) Liability for administrative offences under Article 15(1) of the Code of Administrative Offences and Chapter 15-A "Administrative offences related to corruption" is imposed exclusively under the Code of Administrative Offences. The provisions of the Disciplinary Statute of the Armed Forces of Ukraine (Disciplinary Statute of the Armed Forces of Ukraine, 1999) do not apply.

2) Sanctions that cannot be applied to military personnel (community service, correctional labour, administrative arrest).

3) Protocols on administrative offences:

Military officials [a) officials of the military inspection for road traffic safety within the Military Law and Order Service of the Armed Forces of Ukraine (Article 255(2)(11) of the Code of Administrative Offences) concerning misdemeanours committed by servicemen, conscripts, and reservists during assembly, specifically under Article 122(5), Article 122-2, Article 123(3), and Article 124. This also applies to all violations of traffic rules committed by individuals (except for military personnel, conscripts, and reservists during assembly) who operate vehicles belonging to the Armed Forces of Ukraine and other military formations; b) officials of the military administration bodies of the Military Law and Order Service of the Armed Forces of Ukraine (Article 255(1)(1) of the Code of Ukraine on Administrative Offences) regarding misdemeanours committed by servicemen, conscripts and reservists during training, as well as by employees of the Armed Forces of Ukraine during performance of official duties by them (Article 44, Article 123(2) and Article 123(3), Articles 172-10–172-20, 173, 174, 178, 182, 184-1, 185, 185-7)]. It is also important to note that commanders are not authorised to establish protocols for administrative offences.

Other officials, depending on the nature of the offence (Article 255(1) and (2) of the Code of Administrative Offences), i.e., officials of the authorities: a) National Police bodies, in relation to the commission of domestic violence under Article 173(2) of the Code of Administrative Offences; b) Security Service of Ukraine authorities, regarding violations of legislation on state secrets under Article 212(2) of the Code of Administrative Offences or the illegal storage of special technical means for covertly obtaining information under Article 195(5) of the Code of Administrative Offences; c) the secretary of the court session, for failing to take measures regarding a separate decision of the court under Article 185(2) of the Code of Administrative Offences, among others.

4) Cases of administrative offences are considered not only by the court, but also by other entities, depending on the nature of the offence, in particular:

The military traffic safety inspection of the Military Law and Order Service of the Armed Forces of Ukraine (Article 235-1 of the Code of Administrative Offences of Ukraine), which: a) examines cases of violations of traffic rules by drivers of military vehicles (military servicemen, conscripts and reservists during training) or by employees of the Armed Forces of Ukraine during their official duties; b) independently, in case of committing the offences provided for in Article 121(1), (4) and (5), Article 121-1, Article 122(1), (2), (3) and (4), Article 123(1), Articles 124-1–126, Article 132-1 of the Code of Administrative Offences, imposes administrative fines on the above-listed persons only in the form of a warning; or c) submits to the court reports on the commission of misdemeanours, for which an administrative penalty may be imposed in the form of deprivation of the right to drive a vehicle.

Bodies of the sanitary-epidemiological service (Article 236 of the Code of Administrative Offences of Ukraine), which: consider cases of administrative misdemeanours related to violations of sanitary norms, provided for in Article 41(5), Article 42, Article 44-3(2), Articles 78, 80–83, 90-1, 95, 167, 168-1, 170 (when they are violations of sanitary norms), Article 188-11 of the Code of Administrative Offences.

Fish protection bodies (Article 240 of the Code of Administrative Offences of Ukraine), which consider cases of administrative misdemeanours related to violations of the rules of fishing and protection of fish stocks, provided for in Article 50, Article 85(3), Articles 86-1, 91-2, 188-5 of the Code of Administrative Offences.

The central executive body that implements the policy in the field of hunting and gaming (Article 242 of the Code of Ukraine on Administrative Offences), which considers cases of administrative offences related to violation of the rules of hunting and gaming, is provided for in Article 50, Article 85(1),

Articles 91-2, 188-5 of the Code of Administrative Offences, other bodies.

It is evident that, within the broader context of the general administrative responsibility of military personnel, the most significant pressure on the security and economic interests of the state is exerted by the commission of corruption offences. These offences play a pivotal role in the ongoing provision of international financial assistance.

3. Special Administrative Liability of Servicemen

With regard to this type of administrative responsibility of military personnel, it should be noted that the very name "special" indicates that it is characterised by a number of specific features that make it possible to distinguish it as a separate type. At the same time, it is important to emphasise that these characteristics are crucial and constitute a specific system.

When determining the legal basis of special administrative responsibility of military personnel, it should be borne in mind that such responsibility was provided for in the Administrative Code of Ukraine only in 2015 by the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Strengthening the Responsibility of Servicemen, Granting Commanders Additional Rights and Imposing Duties in a Special Period" (*The Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Strengthening the Responsibility of Servicemen, Granting Commanders Additional Rights and Imposing Duties in a Special Period"*, 2015) (hereinafter referred to as the 2015 Law), which added Chapter 13-B of the Code of Administrative Offences "Military administrative offences" [namely: "Refusal to comply with the lawful requirements of the commander (chief)" Article 172-10; "Arbitrarily leaving a military unit or place of service" Article 172-11; "Reckless destruction or damage to military property" Article 172-12; "Abuse of power or official position by a military official" Article 172-13; "Exceeding authority or official authority by a military official" Article 172-14; "Negligent attitude to military service" Article 172-15; "Inactivity of the military authorities" Article 172-16; "Violation of the rules of wearing combat duty" Article 172-17; "Violation of the rules of carrying the border service" Article 172-18; "Violation of the rules for handling weapons, as well as substances and objects that pose an increased danger to the environment" Article 172-19; "Drinking alcoholic, low-alcohol beverages or using narcotic drugs, psychotropic substances or their analogues" Article 172-20]. The importance of the adoption of such legislation was determined by the necessity to ensure law and order and military

discipline in the Armed Forces of Ukraine in a time of crisis, particularly in view of the significant number of cases of gross violation of military discipline, in particular: the consumption of alcoholic beverages in the locations where coordination of combat units is conducted and in the areas of anti-terrorist operations by servicemen of the Armed Forces of Ukraine who have been called up during partial mobilisation; the arbitrary abandonment of military units or places of service; the disobedience or non-fulfilment of commanders' orders.

It is important to note that the adoption of the Law of 2015 in the part of Chapter 13-B "Military administrative offences" was characterised by ambiguous perception of such changes due to the fact that: a) it created the possibility of weakening the criminal liability of servicemen for violation of military discipline through the artificial introduction of administrative liability for acts recognised as war crimes; b) it may be impossible to bring to administrative responsibility for military administrative offences, as it is considered to be quite difficult to record the circumstances that would indicate the presence of signs of misconduct without conducting appropriate investigative actions due to the lack of an administrative investigation institution; c) there is competition with some articles of the Criminal Code of Ukraine (The Criminal Code of Ukraine, 2005) (hereinafter – the Criminal Code of Ukraine) (for example, Article 172¹⁰ of the Code of Administrative Offences competes with Article 402(1) of the Criminal Code of Ukraine, and part 2 of Article 172¹¹ of the Code of Administrative Offences competes with Article 407(1) of the Criminal Code of Ukraine), which can lead to criminal liability in some cases, and administrative liability in others, which will create difficulties in the application of the mentioned legal norms.

The negligent destruction or damage to weapons, ammunition, means of transportation, military and special equipment, or other military property is of significant concern, as it poses a threat to the security and financial interests of the state. It is recommended that material burdens applied to servicemen of the Armed Forces of Ukraine for committing administrative offences with a pronounced negative economic effect be referred to.

It appears that certain aspects of the aforementioned provisions merit not only attention but also further consideration in the refinement of current legislation, particularly with regard to the necessity for a clear and unambiguous distinction between the administrative and criminal liability of military personnel for military offences, with a view to strengthening military discipline and ensuring the clarity of court decisions when considering relevant cases.

It is imperative to emphasise that the 2015 Law served to supplement the Code of Administrative Offences, in addition to Chapter 13-B, and Article 32-1. This provides for the institution of a new administrative penalty, namely arrest with detention at the guardhouse. This penalty is intended to complement the system of administrative penalties and, concomitantly, represents one of the features of the special administrative responsibility of military personnel (a matter which is discussed below). With regard to the theoretical and conceptual characteristics of arrest with detention in the brig, it should be noted that since this issue was studied by the co-author in the monograph "Taxonomy of legal measures" (Bila-Tiunova Lyubov, 2024), the highlighted scientific provisions are quite acceptable for this study.

The doctrinal characterisation of the specific administrative liability of military personnel appears to be founded upon an initial attempt to clarify the essence and attributes of the conceptualisation of "military administration misdemeanour" (in its legislative manifestation as a military administrative offence). This necessity is also caused by the fact that the official introduction of such a concept into the regulatory circulation constitutes, to some extent, a violation of the legislative tradition established in the Code of Administrative Offences regarding the definition of types of administrative offences. Thus, the types of administrative offences are defined in both the Code of Ukraine on Administrative Offences and the Criminal Code of Ukraine depending on the object of the offence, i.e., a certain set of social relations that are unlawfully encroached upon. In this case, the legislator uses the "administrative offences" wording:

1) "In the field/on the ground" (labour protection and public health; nature protection, use of natural resources, protection of cultural heritage; road and communications, etc.);

2) "encroachment on" (property; industry, construction; public order and public safety; established governance, etc.);

3) "related to" corruption.

It appears that the utilisation of the concept of "military administrative offences" does not align with the prevailing format for differentiating between types of administrative offences. This is due to the fact that the adjective "military" is the determining factor in this concept, and not a set of social relations in the form of a sphere, industry (e.g., the military sphere), or other object such as "the established order of passing military service and performing military duty". In order to comprehend the legislator's logic with regard to the introduction of the concept of "military administrative offences", it is necessary to make

changes to the Code of Administrative Offences and to provide for "environmental offences", "land offences", "corruption offences", "security offences", etc. However, this approach would be in direct contravention of the principle of uniformity of approach to determining the criteria for grouping administrative offences depending on the object of the offence. It seems that the definition of this type of administrative offence is more accurate and aligns with the requirements of legal drafting. A more appropriate term would be "administrative offences that encroach upon the established order of military service and military duty" or "administrative offences in the military sphere".

The question regarding the very characteristics of the concept of "military administrative offence" is a logical one. It is imperative to acknowledge that the notion of a "military administrative offense" has been delineated for the first time at the regulatory level as an illegal, culpable (intentional or careless) action or inaction on the part of a military serviceman, for which administrative responsibility is provided, as defined by Chapter 13-B of the Code of Administrative Offences (*The Order of the Ministry of Defence of Ukraine "On Approval of the Instruction on Submission of Reports and Disclosures on Events, Criminal Offences, Military Administrative Offences and Administrative Offences Related to Corruption, Violation of Military Discipline and their Accounting in the Ministry of Defence of Ukraine, the Armed Forces of Ukraine and the State Special Transport Service", 2018: paragraph 2 part 2 of year 1*). Simultaneously, it is imperative to acknowledge that the aforementioned delineation of the concept of "military administrative offense" is stipulated in a subordinate regulatory legal act. However, in accordance with the legislative tradition and the principles of legal technique, such a definition ought to be incorporated into the Note, which is to be appended to Article 172-10 of the Code of Administrative Offences. The definition itself appears to be sufficiently specific, clear and unambiguous.

As noted above, specialised administrative responsibility of servicemen is characterised by a number of features that constitute the relevant system and distinguish this type of administrative responsibility of servicemen in particular:

1) Liability for administrative offences under Art. 172-10-172-20 of the Code of Administrative Offences is incurred exclusively under the Criminal Procedure Code (the provisions of the Disciplinary Statute of the Armed Forces of Ukraine do not apply).

2) Sanction of Articles 172-10–172-20 of the Code of Criminal Procedure provides for only two types of punishment: a fine (Bila-Tiunova Lyubov, 2024) and arrest with detention at the guardhouse (Bila-Tiunova Lyubov, 2024).

3) Protocols on administrative offences are drawn up only by: a) commanders (chiefs) of military units

(institutions, establishments) (Article 255(1)(14) of the Code of Administrative Offences); b) commanders of units authorised to do so by commanders (chiefs) of military units (institutions, establishments) (Article 255(1)(14) of the Code of Ukraine on Administrative Offences); c) management bodies of the Military Law Enforcement Service in the Armed Forces of Ukraine (Article 255(1)(1) of the Code of Ukraine on Administrative Offences); d) the prosecutor (Article 255(1)(11) of the Code of Ukraine on Administrative Offences).

4) The protocol for the establishment of military administrative offences and the subsequent filing of cases is delineated in the Instructions for the establishment of protocols and filing materials on military administrative offences (*The Order of the Ministry of Defence of Ukraine "On Approval of the Instruction on Drawing up Protocols and Processing Materials on Military Administrative Offences", 2021*). In this regard, it is imperative to address the following salient points:

a) The subjects of the protocol are as follows:

The commanders (chiefs) of military units or their authorised unit commanders in case of direct detection of the fact that a subordinate serviceman has committed a military administrative offence or receipt of information about the commission of such an offence from other persons;

an authorised official of the military management body of the Military Law and Order Service, the DSST management body in the event that he/she directly discovers the fact that a serviceman has committed a military administrative offense or receives information about the commission of such an offense from other persons.

b) Time limit for drawing up a protocol (an authorised official draws up a protocol no later than 24 hours after the discovery of the serviceman who committed the military administrative offence).

5) Consideration of the case (carried out only by the district local court) (Article 221 of the Code of Ukraine on Administrative Offences).

6) Shortened case consideration period (1 day) (Article 277(2) of the Code of Ukraine on Administrative Offences).

7) Collection, summarisation, analysis and accounting of information on military administrative offences is carried out in accordance with the requirements of the Instruction on Submission of Reports and Disclosures on Events, Criminal Offences, Military Administrative Offences and Administrative Offences Related to Corruption, Violation of Military Discipline and their Accounting in the Ministry of Defence of Ukraine, the Armed Forces of Ukraine and the State Special Transport Service (*The Order of the Ministry of Defence of Ukraine "On Approval of the Instruction on Submission of Reports and Disclosures*

on Events, Criminal Offences, Military Administrative Offences and Administrative Offences Related to Corruption, Violation of Military Discipline and their Accounting in the Ministry of Defence of Ukraine, the Armed Forces of Ukraine and the State Special Transport Service", 2018).

4. Mixed (Administrative and Disciplinary) Responsibility of Military Servicemen

Before proceeding to the description of this type of administrative responsibility of servicemen, attention should be paid to the name of this type of responsibility ("mixed liability of servicemen"), which in the scientific literature is sometimes called "administrative and disciplinary responsibility of servicemen". In this regard, the following should be noted: 1) the term "administrative and disciplinary responsibility of military personnel" may be interpreted according to the following classification: administrative responsibility of military personnel, administrative and disciplinary responsibility of military personnel, and disciplinary responsibility of military personnel. 2) the name "mixed responsibility of servicemen" can be used when referring to the types of administrative or disciplinary responsibility of servicemen: general, special, mixed. In this case, the unity of the types of responsibility is preserved and it seems that this approach is quite correct, which will be used in this study.

The peculiarity of this type of liability is that it is regulated by two legislative acts, each defining different types of legal liability. The Code of Ukraine on Administrative Offences establishes administrative liability, which may be general or special. The Disciplinary Statute of the Armed Forces of Ukraine regulates disciplinary liability. Both the Code of Ukraine on Administrative Offences and the Disciplinary Statute of the Armed Forces of Ukraine together establish administrative and disciplinary liability, which is considered mixed.

The essence of this type of responsibility of servicemen is that

1) The Code of Ukraine on Administrative Offences defines: a) the factual grounds for such liability, i.e., the corpus delicti of administrative offences; b) general provisions on the procedure for processing materials on an administrative offence;

2) The Disciplinary Statute of the Armed Forces of Ukraine defines: a) sanctions applied for committing an administrative offence; b) the procedure for bringing to disciplinary responsibility.

The peculiarities that characterise this type of responsibility of servicemen include the following:

1) Applies only to servicemen in regular service who: a) violate traffic rules; b) drive vehicles of the Armed Forces of Ukraine or other military formations

established in accordance with the laws of Ukraine. In these cases, the bodies (officials) authorised to impose administrative penalties do not apply sanctions themselves, but only pass the materials on the offence to military commanders (Article 15(3) of the Code of Administrative Offences).

2) Cases of administrative offences are considered not only by the court, but also by other entities depending on the nature of the offence, in particular by the Military Road Safety Inspectorate of the Military Law Enforcement Service in the Armed Forces (Article 235-1 of the Code of Administrative Offences), which:

a) Considers cases of violations of traffic rules committed by: drivers of military vehicles (military personnel, persons liable for military service and reservists during training); employees of the Armed Forces of Ukraine in the performance of their duties.

b) In case of committing offences provided for in Article 121(1)(4) and (5), Art. 121-1, Article 122(1), (2), (3) and (4), Article 123(1), Articles 124-1–126, Article 132-1 of the Criminal Procedure Code. Independently imposes an administrative penalty in the form of a warning on guilty persons; does not have the right to independently impose other sanctions, transfers material to commanders (chiefs) to resolve the issue of bringing the guilty to justice in accordance with the Disciplinary Statute of the Armed Forces of Ukraine in case of application of other sanctions than a warning; submits to the court reports on the commission of violations for which an administrative penalty in the form of deprivation of the right to drive a vehicle may be imposed.

c) In the case of committing offences provided for in Articles 80, 126, 128, 128-1, Article 129(1) and (2), Article 140 of the Code of Criminal Procedure. Hands over the material to the commanders (chiefs) to solve the problem of disciplinary measures; does not have the right to take any other measures, to impose any sanctions himself, submits to the court reports on the commission of offences for which an administrative sanction may be imposed in the form of deprivation of the right to drive a vehicle.

3) Peculiarities of accounting and monitoring of administrative offences provided for in Articles 44, 173, 174, 178, 185 and 185-7 of the Code of Criminal Procedure. In particular, the accounting of disciplinary sanctions imposed on servicemen of the Armed Forces of Ukraine who have committed administrative offences under the above articles is entrusted to the security and patrol units of the territorial and zonal administration of the Military Law Enforcement Service (*The Order of the Ministry of Defence of Ukraine "On Approval of the Instruction on Submission of Reports and Disclosures on Events, Criminal Offences, Military Administrative Offences and Administrative Offences*

Related to Corruption, Violation of Military Discipline and their Accounting in the Ministry of Defence of Ukraine, the Armed Forces of Ukraine and the State Special Transport Service", 2018: paragraph 4, paragraph 3, III).

It has been demonstrated that the separation of administrative and disciplinary responsibility for military servicemen gives rise to a number of problems. These problems are related to the need for a clear legislative definition of both the actual existence of this type of responsibility and the need for a clear distinction between administrative and disciplinary responsibility as independent types of responsibility (legal regulation, grounds, actual composition, procedure, etc.). This is necessary to ensure unequivocal prosecution and prevent their illegal interchange. This issue is of particular importance, firstly because the current state of the legal definition of the administrative and disciplinary responsibility of military personnel (in terms of their comparison) is characterised by vagueness, imprecision, and blurred provisions, which in the end do not provide the possibility of their unambiguous demarcation (which is discussed in the next paragraph).

5. Conclusions

The analysis of the peculiarities of the administrative responsibility of military personnel has made it possible to identify three types of such responsibility, with an emphasis on their possible impact on the economic security of the state: 1) general administrative; 2) special administrative; and 3) mixed (administrative and disciplinary).

It was determined that the "general administrative responsibility of military servicemen" is characterised by both common features with the administrative responsibility of other persons (which confirms the very term "general") and separate features. The separate features include administrative penalties that cannot be applied to military servicemen, such as public works, correctional works and administrative arrest. It is evident that, within the broader context of the general administrative responsibility of military personnel, the most significant pressure on the security and economic interests of the state is exerted by the commission of corruption offences. These offences play a pivotal role in the ongoing provision of international financial assistance.

It is important to acknowledge that the very designation "special administrative responsibility of military servicemen" signifies that this particular

administrative responsibility is distinguished by a distinct set of characteristics that enable its differentiation from other categories. It has been established that the concept of "military administrative misdemeanour" (in the legislative version – military administrative offense): 1) directly determines this type of administrative responsibility of military servicemen; 2) is, to a certain extent, a violation of the legislative tradition established in the Code of Administrative Offences regarding the definition of types of administrative misdemeanours, since in this case the adjective "military" is decisive, and not the object of illegal encroachment (such as: "in the field/on the ground"; "what encroachment on"; "related to"). It is hereby proposed that the title of Chapter 13-B be amended from "Military administrative misdemeanours" to "Administrative offences that encroach on the established order of military service and performance of military duty" or "Administrative offences in the military sphere". The negligent destruction or damage to weapons, ammunition, means of transportation, military and special equipment, or other military property is of significant concern, as it poses a threat to the security and financial interests of the state. It is recommended that material burdens applied to servicemen of the Armed Forces of Ukraine for committing administrative offences with a pronounced negative economic effect be referred to.

It has been established that, in contrast to the previous types of administrative liability of military personnel, which were associated only with administrative liability, "mixed liability of military personnel", which is referred to in the scientific literature as "administrative and disciplinary liability of military personnel", is a kind of legal combination of two types of legal liability (administrative and disciplinary). This is regulated by two legislative acts defining these types of liability: the Code of Administrative Offences – factual grounds (composition of administrative offences); the Disciplinary Statute of the Armed Forces of Ukraine – the procedure for bringing to disciplinary responsibility and disciplinary sanctions that may be imposed on the offender.

Attention is drawn to the fact that the mixed liability of military personnel raises several problems related to the need for a clear legal definition of both the actual existence of this type of liability and the need for a clear distinction between the administrative and disciplinary liability of military personnel as independent types of liability (legal regulation, grounds, factual composition, procedure, etc.).

References:

- The Constitution of Ukraine. The Law of Ukraine dated 28.06.1996 No. 254k/96-BP. Available at: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>
- The Law of Ukraine "On Armed Forces of Ukraine" of December 6, 1991. Available at: <https://zakon.rada.gov.ua/laws/show/1934-12#Text>
- Polyakova, O. S. (2014). Administrative responsibility of servicemen of the Armed Forces of Ukraine. *Scientific Bulletin of the International Humanitarian University*, Vol. 9-2. T. 1. P. 101–103.
- Vernyhora, V. (2018). Administrative and legal maintenance of official discipline and legality in the military formations of Ukraine during a special period: autoref. thesis ... candidate law of science Kyiv, 21 p.
- Report on Anti-Corruption Measures in Europe. 2016, Brussels. Available at: https://www.eesc.europa.eu/sites/default/files/resources/docs/reportcorruption_ukr.pdf
- Tkachenko, O. G., Oliynyk, V. S., & Klymenko, S. V. (2015). Administrative responsibility of military personnel for military offences. *Scientific Bulletin of Kherson State University. Series "Legal Sciences"*, Vol. 3(2), p. 164–167.
- Military administrative offences under the legislation of Ukraine. General concepts, administrative and legal characteristics, regulatory and legal support, features of law enforcement during martial law, current case law / comp.: Koropatnik I. M., Mykytyuk M. A., Pavlyuk O. O., Petkov S. V. Kyiv: VD "Professional", 2023. 516 p.
- Zaluzhnyi, V. F. (2023). Military disciplinary responsibility: general theoretical characteristics. *Legal Bulletin*, Vol. 29, p. 204–212.
- Zaluzhnyi, V. F. (2023). The concept of military disciplinary responsibility in the context of wartime challenges. *Juris Europensis Scientia*, Vol. 2, p. 85–91.
- Snigerev, O. P. (2017). Administrative and legal provision of disciplinary responsibility of employees and servicemen of the state border service of Ukraine. *Pravo.ua*, Vol. 2, p. 26–30.
- Kanduev, D. (2020). Historical aspects of demarcation of disciplinary and administrative responsibility of military personnel and the territory of modern Ukraine. *Legal Bulletin*, Vol. 4, p. 38–43.
- Kovalenko, K. V. (2017). Regarding the problem of distinguishing disciplinary responsibility from other types of legal responsibility. *Modern problems of legal, economic and social development of the state: theses of reports. VI International science and practice conf. (Kharkov, December 1, 2017)*. Kharkiv, p. 94–97.
- Kononets, V. P. (2020). Comparative legal characteristics of administrative and disciplinary responsibility of military personnel. *Legal Scientific Electronic Journal*, Vol. 3, p. 492–496.
- Stolbovy, V. M. (2018). Disciplinary and delict legal relations in the system of the Security Service of Ukraine. *Law and Society*. No. 9. Part 2. P. 170–174.
- Turkot, M. (2017). Separation of administrative and disciplinary responsibility of military personnel. *Bulletin of the National Prosecutor's Office of Ukraine*, Vol. 1(47), p. 40–47.
- Aleksandrov, V. M. (2010). Legal regulation of training of citizens for military service. *State construction and local self-government*, Vol. 19, p. 109–115.
- Aleksandrov, V. M. (2007). Powers of local self-government bodies regarding the preparation of citizens for military service in the Armed Forces of Ukraine. *Local self-government: modernity and prospects: scientific-practical materials. conf. (Kharkov, June 26, 2007)*. Kharkiv, p. 200–202.
- Korzh, I. F. (2004). Military service in Ukraine: entry, promotion, termination: autoref. ... candidate law of science Kyiv, 22 p.
- Pashinsky, V. Y. (2007). Constitutional and legal status of military personnel in Ukraine: thesis. ... candidate law of science Kyiv, 200 p.
- Ishchenko, S. O. (2019). Concepts and signs of the administrative and legal status of a serviceman of the Armed Forces of Ukraine. *Scientific Bulletin of the International Humanitarian University. Series "Jurisprudence"*, Vol. 37, p. 73–76.
- Koval, V. (2018). Legal guarantees as an independent element of the administrative and legal status of military personnel: theoretical and practical aspect. *Actual problems of jurisprudence*, Vol. 2 (14), p. 39–43.
- Ishchenko, M. V. Peculiarities of disciplinary and administrative responsibility of servicemen of the Armed Forces of Ukraine. Available at: https://www.lex-line.com.ua/?go=full_article&id=3324
- Tyurin, S. S. (2002). Disciplinary responsibility of servicemen of the Armed Forces of Ukraine: autoref. thesis ... candidate law of science Kharkiv, 19 p.
- Shkarpytska, K. V. (2018). Peculiarities of disciplinary responsibility of military personnel. *Actual problems of domestic jurisprudence*. Vol. 2. No. 6. P. 165–168.
- Havryshchuk, O. M. (2016). Concepts and types of ensuring military discipline in the Armed Forces of Ukraine. *Scientific bulletin of public and private law*, Vol. 1-1, p. 100–104.
- Kanduev, D. V. (2016). Administrative responsibility of servicemen of the Armed Forces of Ukraine in accordance with current legislation. *Law and Society*, Vol. 2(2), p. 109–116.
- Mota, A. F. (2003). Administrative responsibility of military personnel under the legislation of Ukraine: thesis. ... candidate law of science Kyiv, 205 p.

- Hnatenko, V. (2020). Economic Security in The State National Security System. *Krakowskie Studia Małopolskie*, nr 3 (27). Available at: <https://czasopisma.marszalek.com.pl/images/pliki/ksm/27/ksm2707.pdf>
- Shaparenko, S. O. (2008). Liability of servicemen and members of the ranks and senior ranks of the Ukrainian Armed Forces for committing administrative offences and the procedure for its implementation: dissertation. ... candidate law of science Kyiv, 232 p.
- Babich, V. L. (2014). Administrative responsibility for violation of the legislation of Ukraine on military duty and military service by conscripts and conscripts: thesis. ... candidate law of science Irpin, 215 p.
- Poliakova, O. (2014). Administrative responsibility of the armed forces of Ukraine. *Scientific herald of International Humanitarian University*, Vol. 9 (2), p. 33.
- Lt. Col. Erika Héregi (2018). Military administration tasks related to personnel augmentation in the past 20 years in line with the changes of legislation. *Applied Social Sciences*, Vol. 1, p. 223–235.
- Chris L. Jefferies (1977). Public Administration and the Military. *Public Administration Review*. Vol. 37, No. 4 (Jul. – Aug., 1977), p. 321–333.
- Ch'ien Tuan-sheng (1948) The Role of the Military in Chinese Government. *Pacific Affairs*. Vol. 21, No. 3 (Sep., 1948), p. 239–251.
- Ryszard Szynowski (2019). The notion of military administration. *ROCZNIK BEZPIECZEŃSTWA MORSKIEGO ROK XIII – 2019*. P. 13.
- Marian Paul FUSEA (2016). Public administration control over the military administration. *Social-Behavioural Sciences*, Vol. 2, p. 136–144.
- The Code of Ukraine on Administrative Offences of December 7, 1984. Available at: <https://zakon.rada.gov.ua/laws/show/80731-10#Text>
- Bila-Tiunova L. (2024). Administrative legal measures applied to servicemen of the Armed Forces of Ukraine for military administrative offences. Taxonomy of legal measures: monograph / edited by Prof. O. Kozachenko. Mykolaiv: Illion, 572 p.
- The Order of the Ministry of Defence of Ukraine "On Approval of the Instruction on Submission of Reports and Disclosures on Events, Criminal Offences, Military Administrative Offences and Administrative Offences Related to Corruption, Violation of Military Discipline and their Accounting in the Ministry of Defence of Ukraine, the Armed Forces of Ukraine and the State Special Transport Service" of November 29, 2018. Available at: <https://zakon.rada.gov.ua/laws/show/z1451-18#Text>
- The Law of Ukraine "On Disciplinary Statute of the Armed Forces of Ukraine" of March 24, 1999. Available at: <https://zakon.rada.gov.ua/laws/show/551-14#Text>
- The Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Strengthening the Responsibility of Servicemen, Granting Commanders Additional Rights and Imposing Duties in a Special Period" of February 5, 2015. Available at: <https://zakon.rada.gov.ua/laws/show/158-19#n15>
- The Criminal Code of Ukraine of April 5, 2005. Available at: <https://zakon.rada.gov.ua/laws/show/2341-14#Text>
- The Order of the Ministry of Defence of Ukraine "On Approval of the Instruction on Drawing up Protocols and Processing Materials on Military Administrative Offences" of 10/23/2021 No. 329. Available at: <https://zakon.rada.gov.ua/laws/show/z1622-21#Text>

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