

REASONS FOR COMPULSORY MILITARY SERVICE EVASION

The article examines current situation, problems and reasons for compulsory military service evasion.

Key words: *military service, military conscription evasion, compulsory military service.*

У статті досліджуються сучасний стан, проблеми призову на строкову військово-ву службу, причини ухилення від призову на строкову військово службу.

Ключові слова: *військова служба, причини ухилення від призову на строкову військово службу.*

В статье исследуются проблемы призыва на срочную военную службу, причины уклонения от призыва на срочную военную службу.

Ключевые слова: *военная служба, отклонение от призыва, срочная служба, причины уклонения от призыва на срочную военную службу.*

Research State. According to Ukrainian Constitution, protection of the sovereignty and territorial integrity of Ukraine, ensuring its economic and information security are the most important functions of the state, as well as of all Ukrainian people. [1, p. 17]. The question of reasons and terms of compulsory military service evasion were not a subject to complex scientific research previously. Problems of legal definition and practical implementation of these kind precautions were examined by these domestic and foreign scientists: O.M. Dzhudzha, V.M. Kudryavtseva, M.I. Bazhanova, O.M. Bandurka, V.V. Golina, L.M. Davidenko, A.F. Zelinskiy, O.G. Kalman, M.I. Melnyk, O.G. Kolba.

In modern Ukrainian science, some issues of this type were subject of dissertational researches by O.G. Kolba and Y.B. Puzyrevskogo. However, their studies cover only certain judgment aspects and in terms of criminal law mostly.

The purpose of this article is to identify the causes of compulsory military service evasion based on the state of analysis and military crimes trends. It is necessary to examine the system of effective prevention measures and identify ways of their improvement.

Summary of the basic material. According to article 65 of the Constitution of Ukraine, the defense of the Motherland, the independence and territorial integrity of Ukraine is the duty, not the right of the citizens of Ukraine. Citizens serve military service according to the current legislation. In this regard, in case of refusal to perform this duty by citizens any negative consequences could come, according to current administrative and criminal legislation. State of war crimes continues to be challenging up to date. Unlawful acts in military units and formations of the Ukrainian Armed Forces affect adversely the authority of the army and in society. One of the acute problems, which Ukrainian Armed Forces encounter with, became the increase of military service evasions by draftees, soldiers and contract based military personnel. Especially should be emphasized that being deserting, soldiers commit a number of general criminal offences (robberies, rapes, pillages, often cause road accidents due to a state of alcoholic intoxication and other). All this of course significantly affects the prestige and the credibility of the troops in the country. Criminological characteristics of the reasons and conditions for evading of military service is largely determined by the common to the whole country socio-economic (unemployment, inflation, rich and poor stratification, the expansion of commercial structures), socio-political, legal, managerial, ideological and other issues. Current political and economic situation have caused a number of negative phenomena, affecting safety and health of the population. It is primarily an economic crisis in the country. A significant reduction of economy level leads to a decrease in standards of living of the population, the growth of unemployment causing the degradation of people, drastically falling living standards, low fertility and growth of number of individuals not busy with a useful work. This in its turn influences psychological characteristics: on

the one hand, the attempts to achieve material prosperity at any cost, decrease of education prestige and cultural level in general and on the other hand, uncertainty in tomorrow, fails, drawing into various religious cults trying to escape from real life with its difficulties. All these indicators stimulate and deepen the stressful situation in society, causing negative impact on the crime level and law enforcement in general as well. Among the macro level factors “background” phenomena, economic, social, socio-psychological, organizational, managerial, political, cultural, educational, etc. can be mentioned. Along with the negative material support, political differences rapidly reduce the prestige of the military service, the army authority level and respect for defender of the Motherland. Abovementioned affects moral and psychological climate in the Armed Forces, relation to the law, morals, the rights of others, and therefore, the crime situation. All of the above combines with the crisis in the Armed Forces related to their reforming (we are talking about transition to contract based military service). This question has a bright political coloring, but for maximum impartiality and political neutrality, the authors of the textbook stick to giving the facts without their political evaluation.

On the micro level factors in the field of small social groups are dominating. The features of these groups are: 1) homosexuality; 2) technicality because of the essence of the army system; 3) a variety of psychological formulations of different groups of people, bringing them their household, moral, religious, political and other traditions and preferences (although informal small social groups within formal also takes place). Committing some crimes often associated with the existence of unpunished cruelty, aggressiveness on the part of senior titles of persons, as well as maximizing the Declaration of conduct of military personnel. It is impossible to mention about the determinants of already named above hazing as a manifestation of negative interpersonal relationships. Here there are two basic approaches. The first is the “revenge” of the servicemen, who had experienced bullying. This is a manifestation of a stereotype: “It was done with me, so I shall do it with others”. The second approach is the old “negative army tradition”. Because, in the words of Voltaire, “people never feel pangs of conscience from acts that have become a tradition”.

At the microsocal level should be emphasized such important determinant like латентизація of committed illegal actions due to the closed system.

At the individual level there is relatively complex system of proximate causes and conditions, which are to a certain extent derived from negative factors on the general social level. Thus, the economic contradictions and underfunded armed forces leading to financial problems, sometimes becoming causes of committing war crimes with mercenary motives. In addition, the system crisis of the Ukrainian army, and the lack of a sense of patriotism in the country as a whole leads to the fact, that bravery will not perform functions of defenders of the fatherland. This creates a irresponsibility for own actions, the feeling of permissiveness, legal nihilism, nervousness; becomes the basis for committing war crimes, not only with mercenary and socially dangerous acts, adding to their objective side violent actions while committing them. Also very powerful determinants for committing military crimes are: 1) the accumulation of large number of young men in the closed barracks conditions; 2) changing military recruits (was described while covering the characteristics of military criminal person), who probably could have criminogenic inclinations or even criminogenic skills and experience; 3) the most common age of onset and the passage of the military service 18–25 years coincides with the most criminogenic period in the framework of the general criminal crime. It is time when there is a peak of physical activity, attempts to implement the ambitions etc (1).

The causes of this phenomenon we propose to consider in two dimensions. Outside, they are out of army life bounds, in society and, inland, hidden in the troops by themselves. While the reasons are in dialectical interconnection, interdependence and mutually determined.

External causes and conditions are common flaws and contradictions of socio-economic, ideological, cultural, political, national, psychological, organizational– administrative and medico-biological nature.

1. General shortcomings of the economic sphere of society.

Ministry of Defense of Ukraine, as well as all State structures is on the State budget, and he is now sufficiently miserable and servicemen are currently forced to some extent engage software themselves and members of their families. This leads to:

- reduce in the level of effectiveness of the passage and the duty of military service;
- fall of military discipline (most crimes occur in conditions of no control);
- increase in cases of injuries and deaths, and deaths of civilians on the part of military personnel;
- strengthening of the social stratification in troops and commissioned much of the dissatisfaction with the fact that they have to deal with not quite “own business”;
- the falling prestige of military service.

2. The ideological. No bragging, no rampant criticism does not go in favor of the military services. Investigated offences have the property of variability and flexibility. And the positive and negative towards the US crimes lead to:

- changes in forms of delinquency;
- increase latency crime soldiers;
- the extended play of these offences.

3. Cultural. The poverty of the cultural life of our society is well known. If central cities and regional centers can still offer its residents any cultural values, in areas where generally located on the border troops of the military personnel often just have nothing to do in your spare time from the service.

Meanwhile, as a rule, persons who are particularly cruel when committing a crime data, suffer a lag in their cultural and spiritual development.

4. Political. It should be emphasized that at present between the various political parties and movements was a real struggle for spheres of influence in the armed forces of Ukraine. This leads to:

- disorganization and disorientation;
- negative impact on the mentality of young people;
- the appearance of delinquency among military personnel at the political soil.

5. National. The sharp political and socio-economic conflicts have spawned the most complicated issues of national and territorial in nature, most of which can be solved in terms of ethnic hatred, bloody conflicts, mass riots, a wide variety of crimes in the absolute absence of necessary adequate anti criminogenic influences socio-legal character. It's all most adversely affects the military service, reinforcing mercenary and violent crimes and other negative manifestations in the midst of its defenders.

6. Social-household. As a result of significant social stratification of society in the troops called only young men who could not or did not have the opportunity to enter the institute or a college. This leads to reduced intellectual capacity personnel and transformation of Army to institute of social out-sidering.

7. Organizational-administrative. Because of the negative processes in society, young, energetic officers, who have the skills to work with "informal" youth associations are exempt; but coming to the service released from armed forces officers do not know the specifics of military service (frontier, aerial, land, etc.), the positive traditions of these forces.

8. Socio-biological. Military enlistment offices send to military units large number of persons of various categories, and different sectors of the population, in particular:

- persons who previously had the drives to the police;
- persons affected by unfavorable heredity;

people taken from various preventive accounting (for example, persons who use drugs, etc.) It is sad to say but you must always remember that people with deviant (negative, diverging) behavior tending to violence and able to impose their will to physically or psychologically weak soldiers usually gain a false authority.

The second level of the reasons and conditions of delinquency and crimes that are carried out by the military servicemen are directly related to military and army specifics.

Specific conditions of life, relationships, senior and junior, superiors and subordinates, teams of military parts, small social groups have a significant impact on the formation of individual Member of the armed forces of Ukraine. Deviation from statutory requirements when organizing activities and life of the soldiers, the survivability of negative traditions, weak coping with alcoholism and drug addiction, formalism, bureaucracy of individual chiefs of a continuing wrong the formation of personality and fixing antisocial orientations in some soldiers.

Among the reasons discussed delinquencies believe it possible to highlight the following:

1. Organizational and managerial. Compliance with the Statute and the absence of offences in parts and units contribute to quality carrying out of service by officers, younger commanders and the organisation of everyday life of the young soldier. It is not a secret for anybody that not complying with statutes and the elementary norms of behavior, as well as support for many of the officers of the military offences-it is quite steady element of military reality. These reasons include deficiencies in the organization of the prevention of delinquency in the armed forces. The reason is the lack of well trained professionals who have knowledge in the field of Criminology, General and military psychology.

2. Economic. Border troops require a significant financial investment, improving the social side of life of military personnel of the armed forces of Ukraine.

3. Social. It is very difficult to get rid of recruits suffering the stigma of "social loser". It is important to seek to improve the conscript personnel.

4. Socio-psychological. Age differences are not such notable anywhere else as in the army. This is due to the fact that:

recruits are yesterday's schoolchildren cultivating age-related differences from the first class; most military service in a modern form strikes boys who do not yet have the psychological stability, strong psychotraumatic blow; age-related differences are manifested not only in the environment of privates, but also among the officers. Forced accession to homosexual social group has serious effect on the psychology of young soldiers.

5. National. The peculiarity of the reasons and conditions related to the differences in the field of ethnic relations in the military, until recently, was a bundle of servicemen on national, territorial signs education sustainable "affinity groups", "ethnic groups", who seek leadership through various forms of criminal influence. This was done by violent mix of ways of life, languages, cultures, habits, peculiarities of peoples. Considering offences in the sphere of interpersonal relations in the army, military psychologist's researches say that "community" did not substitute "hazing". Currently in the Armed Forces of Ukraine national problems went on the "background", but never ceased to be relevant, in the border troops. This is especially true of a number of districts, such as the Transcaucasian Special Border District, and a separate group of frontier troops in the Republic of Tajikistan.

As it is seen, the second level of the reasons and conditions include the reasons and conditions of investigated crimes of the first level, but in their specific breaking for the army. Features of the reasons and conditions of the second level of prisoners not in their content, how many so called breaking the general reasons due to the conditions of life and activity, as well as through the circumstances that contribute to the carrying out of crimes in different military organizations units.

It is characteristic that almost all of the offences are perpetrated by soldiers during the first half of the of service term. Statistics show that the servicemen that brought up without one or both parents, committing crimes four times more often than the soldiers, brought up in a family. About half of the offenders were negatively characterised prior to conscription. A large number of offences by soldiers are engaged in state of intoxication.

Examining causes of specific offences in divisions each commander can:

- compile and systematize their causes and conditions, and then go from the unit to the General (General theoretical and practical findings);
- identify weaknesses in prevention work of a particular military unit and eliminating them, enhance its capabilities;
- according to art. 21-1 CPC of Ukraine make proper and effective representation or a determination to eliminate the causes and conditions that contributed to commit a crime;
- expose all responsible, destroy the "circular recognizance" and restore social justice that will have widespread warning value.

Each unit commander should constantly study:

- general status and causes of crimes;
 - status and causes of certain types of offences;
 - status and causes of crimes among the various categories of personnel;
 - preventative work of higher commanders.
- It is impossible to give a specific system of measures aimed at the effective prevention of crimes and crimes committed by servicemen. This is substantiated by the constant changeability of form these offences. Their flexibility is determined by:
- features of the particular unit and a particular kind of troops;
 - level of latency for specified offences;
 - level of discipline;
 - predominance in the military unit or pledge of border service of anyone nationality in case of its opposing to militaries of another nationality;
 - performance of special bodies (operational employees, investigators, Prosecutor's Office, etc.);
 - attitude of noncommissioned and senior noncommissioned officers to the traditions of non-Statute relations;

– attitude to these crimes.

The latter can be expressed in:

- were the officers involved in similar criminal cases;
- did they involve old-timers into this;
- passive self-removal;
- what was the activity degree in the confrontation.

According to this forms of offences may be different: from crimes committed by officers to crimes aimed directly or indirectly against them.

Reviewed types of offenses allow filling their forms with real content. On this basis they can be divided into: offences that degenerated into criminal acts or those having nature of the disciplinary offence.

Reputable causes of citizen non-arrival to recruiting station in terms set by military enlistment office are:

- illness of the citizen;
- death or serious illness of a close relative;
- the obstacles of spontaneous nature.

Causes of non-arrival should be confirmed by relevant documents.

Compulsory commission are created to carry out military service conscription of citizens in areas (cities). They are imposed with: medical examination of conscripts; the decision to appeal to military and alternative service and assigning them for use on the service; respites or exemption from conscription for military service; the decision about the direction of conscripts who wished, in military schools for entrance examinations or to refuse them in this for health reasons, due to insufficient comprehensive level of training or moral qualities; the decision about the direction of the investigators on conscripts who avoid military service conscription.

The Commission's decision to postpone the military service call-up may be provided: for family reasons, for health reasons, to continue learning, in connection with parliamentary activities and in other cases according to the legislation.

Recruits and military personnel are responsible for violations of the "General military duty and military service" law. The term of compulsory military service for conscript, who avoids conscription and does not appear for receiving military notification for sending to military service to the recruitment office, is increased on the term of its evasion. Duration of absence in the military unit of military conscript, who spontaneously left the place of service or did not appear to the place of service within the time limit specified in his military service registration certificate in a timely manner without having a good reason for that, does not count to the term of service.

The following forms of contract military service are set: military service as soldiers and sailors, noncommissioned and senior noncommissioned officers; women's military service under the contract; warrant officers and sub-officers military service; military schools cadets and students of the military departments of the higher civilian educational institutions military service.

Conclusions.

All this proves that the question of conscription evasion is promising in terms of achieving goals, but to improve the process and perform the required further improvement of legal regulation is needed. Demographic situation in the country is characterized by a significant decrease in the number of young male conscripts so that the armed forces are not manned to the fullest. Military positions of young conscripts are not busy to 100%, and a load of persons undergoing military service increases, the public danger of unauthorized leaving of the military unit doubles. To reduce or even avoid such situations it is necessary to reform the system of recruiting, namely reduce the number of military service postponements.

References:

1. Конституція України: Прийнята на п'ятій сесії Верховної Ради України 28 червня 1996 р. Київ, 1996. 111 с.
2. Кримінальний кодекс України: Офіційний текст. Київ: Юрінком Інтер, 2001 р. 240 с.
3. Коржанський М.І. Науковий коментар Кримінального кодексу України. Київ: Атіка, Академія, Ельга-Н, 2001.
4. Кримінальне право України. Особлива частина / за ред. М.І. Бажанова, В.В. Сташиса, В.Я. Тація. Київ – Харків: Юрінком Інтер, 2003. 496 с.
5. Кримінальне право України. Особлива частина / за ред. М.І. Мельника, В.А. Клименка. Київ: Юридична думка, 2004. 656 с.
6. Кримінальне право України. Особлива частина / за редакцією М.І. Бажанова та ін. Харків: Юрінком Інтер – Право, 2001.
7. Науково-практичний коментар Кримінального кодексу України від 5 квітня 2001 року / за ред. М.І. Мельника, М.І. Хавронюка. Київ: Каннон, А.С.К., 2001.
8. Науково-практичний коментар до Кримінального кодексу України: у 2 ч. / під загальною редакцією М.О. Потебенька, В.Г. Гончаренка. Київ: Форум, 2004. Ч. 2. 984 с.