PECULIARITIES OF DETENTION IN A DISCIPLINARY BATTALION

The article examines the punishments in the sanction of the provision providing liability for unauthorised leaving of a military unit or place of service: detention in a disciplinary battalion, a fine, service restriction, and imprisonment. The author distinguishes the categories of persons to whom the punishment in the form of detention in a disciplinary battalion of servicemen may be applied. The author analyses the changes in the peculiarities of the detention application in a disciplinary battalion of servicemen: the circle of persons to whom this type of punishment may be applied has been expanded by including servicemen called up for military service from among reservists during a particular period.

Keywords: criminal liability; punishment; detention in a disciplinary battalion; servicemen; unauthorised leaving of a military unit or place of service.

Statement of the problem. According to the Constitution of Ukraine, the defence of the Motherland, independence and territorial integrity of Ukraine is a constitutional duty of every citizen of Ukraine. The defence of the Fatherland can be carried out, in particular, by performing military service, which is a special kind of public service related to the defence of Ukraine, the defence of its independence and territorial integrity. In connection with Russia's unprovoked aggressive war against Ukraine, the number of the Armed Forces of Ukraine (hereinafter referred to as the AFU), which are an integral part of our society, has increased significantly. At the same time, the number of offences committed by military personnel is growing, which requires close attention to the relevant corpus delicti and the penalties that may be imposed for their commission.

Recent research and publications analysis. The issues of qualification of military criminal offences and punishment for their commission have been studied by such scholars as V. A. Bugayev, S. I. Dyachuk, M. I. Karpenko, I. B. Medytskyi, M. I. Melnyk, V. O. Navrotskyi, N. A. Orlovskaya, Y. A. Ponomarenko, O. M. Samavskyi, M. M. Senko, O. V. Sokorynskyi, M. S. Turkot, M. I. Khavroniuk, S. O. Kharytonov and others.

The article aims to study the issue of establishing specific features and improving punishment in the form of detention for military personnel in a disciplinary battalion.

Summary of the primary material. Based on the current version of Article 407 of the Criminal Code of Ukraine (from now on - CC), which provides for liability for unauthorised leaving of a military unit or place of service, the author has determined that its criminal sanctions provide for the following types and amounts of punishment:

1) detention in a disciplinary battalion for up to two years or imprisonment for up to three years (Article 407(1) of the CC);

2) a fine of one thousand to four thousand tax-free minimum incomes, or official restriction for up to two years, or imprisonment for up to three years (part 2 of Article 407 of the Criminal Code);

3) imprisonment for a term of two to five years (Article 407(3) of the Criminal Code);

4) imprisonment for a term of three to seven years (Article 407(4) of the Criminal Code);

5) imprisonment for a term of five to ten years (Article 407(5) of the Criminal Code) [1].

Thus, the criminal law sanctions of the article above...
cover four types of punishment:

- detention in a disciplinary battalion for up to two years;
- a fine of one thousand to four thousand tax-free minimum income;
- service restriction for a period of up to two years;
- imprisonment for a term of up to three years (Article 407(1-2) of the Criminal Code), two to five years (Article 407(3) of the Criminal Code); three to seven years (Article 407(4) of the Criminal Code); five to ten years (Article 407(5) of the Criminal Code) [1].

As stated in Art. 62 of the CC, punishment in the form of detention in a disciplinary battalion is imposed on servicemen in regular service, servicemen performing military service under a contract, officers performing regular military service, officers performing military service by conscription, servicemen called up for military service during mobilisation for a particular period, servicemen called up for military service from among the reservists during a special period (except for women servicemen), for a term of six months to two years in cases provided for in the CC, and if the court, taking into account the circumstances of the case and the personality of the convicted person, considers it possible to replace imprisonment for a term not exceeding two years with detention in a disciplinary battalion for the same term. Detention in a military disciplinary battalion instead of imprisonment cannot be applied to persons who have previously served a sentence of imprisonment [1].

The provision of Art. 62 of the CCU, which defines the peculiarities of detention in a disciplinary battalion of servicemen, has been amended several times to expand the range of subjects to whom this type of punishment can be applied. According to 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 05.02.2015 No. 158-VIII. The subjects in respect of whom the analysed type of punishment may be imposed include servicemen who are performing military service under a contract, officers who are performing military service in the cadre, officers who are performing military service by conscription, servicemen called up for military service during mobilisation, for a particular period (except for female servicemen) [2]. According to the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Improving Certain Issues of Military Duty and Military Records" of 30.03.2021 No. 1357-IX, the circle of persons to whom detention in a disciplinary battalion of servicemen may be applied has been expanded by including servicemen called up for military service from among reservists for a special period [3].

In addition to the provisions of the CC and the Criminal Executive Code (from now on - CEC), the appointment and serving of detention in a disciplinary battalion for servicemen is regulated by two more legal acts that regulate the procedure for the execution of this type of punishment and interpret its content: Order of the Ministry of Defence of Ukraine No. 155 of 04.06.2021 "On Approval of the Procedure for Serving the Sentence of Detention in a Disciplinary Battalion" [4] and Resolution of the Plenum of the Supreme Court of Ukraine (from now on - SCU) No. 15 of 28.12.1996 "On the Practice of Imposing a Sentence of Detention in a Disciplinary Battalion on Servicemen" [5].

According to the provisions of the CCPU, punishment in the form of detention in a disciplinary battalion for servicemen is applied in cases of criminal offences or minor crimes when the court, taking into account the circumstances of the case and the personality of the convicted person, considers it possible to replace imprisonment for a term not exceeding two years with detention in a disciplinary battalion for the same period, i.e., convicts can be retained in military service and rehabilitated in a special military unit. This punishment can be applied to servicemen who have committed grave and especially grave crimes, provided that the court, taking into account the personality of the perpetrator and circumstances that mitigate the punishment and significantly reduce the severity of the offence, concludes that it is possible to impose it [5].

Detention in a disciplinary battalion of servicemen implies that persons serving it are forcibly isolated from society in the conditions of military service and forcibly sent to a special military unit - a disciplinary battalion or a disciplinary company. Serving a sentence of convicted servicemen in the form of detention in a disciplinary battalion involves the correction and re-education of convicts in the spirit of honest attitude to work and military service, strict observance of the Constitution, laws of Ukraine, the Military Oath and the statutes of the AFU and prevention of new offences [4].

An essential feature of this punishment is its combination with the performance of military service: while serving this type of punishment, the convicted person remains a military serviceman. This indicates that the correction and re-education of convicts as servicemen of the AFU is covered by the influence of the disciplinary battalion.
There is a well-grounded scientific position that staying in a disciplinary military unit is a more humane punishment than imprisonment, as convicts serve their sentences in a typical environment, are not influenced by experienced persons serving their sentences, and are subject to the validity and influence of the statutes of the Armed Forces of Ukraine, not the norms of the CEC [6, p. 326].

Detention in a disciplinary battalion of servicemen does not apply to persons who are declared unfit for military service for health reasons, as stated in paragraph 2 of the PPVSU: it is inadmissible to impose punishment in the form of detention in a disciplinary battalion on servicemen who are declared unfit for military service for health reasons [5]. This punishment should not be imposed on persons who have arbitrarily left a military unit or place of service during regular military service but were discharged at the time of the court hearing [7, p. 163]. Punishment in the form of detention in a disciplinary battalion does not apply to persons who have previously served a sentence in a penitentiary, who, along with the punishment for the crime, are subject to compulsory treatment for alcoholism or drug addiction [5].

As a general rule, the time spent serving the analysed type of punishment is not included in the period of military service. After serving it and being discharged from the disciplinary battalion, servicemen are sent to serve in the units where they served before the conviction.

In the cases provided for by law, those sentenced to detention in a disciplinary battalion may be subject to additional punishments, primarily deprivation of military rank. Moreover, this may be for a period exceeding the time of serving the main sentence. Convicted servicemen who have served their sentence in detention in a disciplinary battalion or have been released early from this type of punishment are recognised as having no criminal record [7, p. 164].

According to S. Kharitonov, the most difficult issue on which there are diametrically opposed positions is the expediency of keeping military personnel in a disciplinary battalion in Ukraine's penal system [8, p. 268].

Proponents of such punishment for servicemen as detention in a disciplinary battalion believe that any changes in the regulation of issues related to the institution of punishment should be scientifically substantiated using a sufficient empirical base [9, p. 449]. According to O. M. Sarnavskyi, the elimination of detention of servicemen in a disciplinary battalion from the penal system makes it impossible to apply an alternative milder punishment than imprisonment for a certain period. Such actions would contradict the course chosen by Ukraine for further humanisation of the penal system, one of the principles of which is the widespread use of non-custodial punishments [10, p. 461].

The researcher Y. Sokorynskyi, referring to the high degree of effectiveness of the analysed type of punishment due to the low level of recidivism of criminal offences, expressed the thesis about the need to preserve detention in a disciplinary battalion of servicemen in the system of punishment of the CC [11, p. 42; 12, p. 176]. According to the statistics of the Main Department of the Military Law Enforcement Service in the AFU, the vast majority of former convicts (about 90 %) who have served this type of punishment not only do not commit new criminal offences but also do not commit violations of military discipline in general [13, p. 64]. At the same time, we should not forget about the real possibility of serving a sentence in the form of detention in a disciplinary battalion, as well as the significance of the indicator of the absence of recidivism among servicemen who have served such a sentence for committing military criminal offences [8, p. 270].

Instead, V. M. Kuts draws attention to the fact that transforming military units into places of detention in a democratic state is unacceptable [14, p. 32]. I. B. Medynskyi notes the convincing arguments of scholars about the loss of the disciplinary battalion's potential to perform punitive, correctional and preventive functions [15, p. 684]. This idea is further developed by Y. Ponomarenko, who argues that the detention of servicemen in a disciplinary battalion is unconstitutional in general since, according to Part 1 of Article 17 of the Constitution of Ukraine, the task of the AFU is exclusively the defence of Ukraine, protection of its sovereignty, territorial integrity and inviolability, and not the execution of punishment [16, p. 312].

Agreeing with the above arguments, S. O. Kharytonov emphasises no grounds for detention in a disciplinary battalion of servicemen in an institution subordinate to the Ministry of Defence of Ukraine [8, p. 272].

Supporting the above argumentation, S.O. Kharytonov concluded that due to the absence of a real possibility of serving a sentence in the form of detention in a disciplinary battalion of servicemen, its exclusion from the penal system and replacement in the relevant articles of Chapter XIX of the Special Part of the Criminal Code "$\text{"Criminal offences against the established procedure for military service (military criminal offences)"}$ with alternative, milder punishments than imprisonment for a certain term, will not increase the criminal liability of a
serviceman, but, on the contrary, will be mitigated.

Offering an opposite way of solving the problem issue of serving a sentence in the form of detention in a disciplinary battalion of servicemen, S. Kharitonov proposes organisational and legal steps aimed at improving the process of serving this type of sentence, starting with changing the name of the disciplinary battalion to a disciplinary military unit, manning and expanding disciplinary military units; increasing the number of disciplinary battalions to enable them to serve in the military.

Given the country's special period since 2014 and its military period since 2022, organisational and legal changes aimed at improving the process of detention in a disciplinary battalion are particularly relevant today.

Thus, the debate on eliminating or retaining the punishment of detention in a disciplinary battalion is reduced to the following.

The arguments for retaining this type of punishment are as follows: a) the effectiveness of this type of punishment, b) a limited rate of recidivism, c) the humanity of staying in a disciplinary battalion compared to imprisonment, which is expressed in serving a sentence in a familiar environment, the absence of negative influence of experienced criminals, obedience to general military regulations, and not to the norms of the CCI [17, p. 53].

Among the arguments for excluding the detention of servicemen in a disciplinary battalion from the provisions of the CC are the following: a) the inadmissibility of turning military units into places of detention; b) the loss of the disciplinary battalion's potential to perform punitive, correctional and preventive functions; c) the unconstitutionality of detention in a disciplinary battalion of servicemen, since the execution of punishment is not within the tasks of the AFU; d) the lack of grounds for serving a sentence in an institution subordinate to the Ministry of Defence of Ukraine.

However, given the legislative prohibition of community service (Article 56 of the CC) and correctional labour (Article 57 of the CC), as well as restriction of liberty (Article 61 of the CC), the list of punishments that are milder than imprisonment includes a fine (Article 53 of the CC) and arrest (Article 60 of the CC), the maximum amount of which (6 months) is several times less than detention in a disciplinary battalion.

Conclusions and Prospects for Further Research.
Given the materials studied and the positive aspects analysed, it is worth supporting the scientifically sound position regarding the expediency of retaining the punishment in the form of detention in a disciplinary battalion for servicemen in the structure of the current CC provisions.

Promising areas of scientific research in the context of further improvement of both the punishment in the form of detention in a disciplinary battalion for unauthorised leaving of a military unit or place of service (Article 407 of the CC) and the said criminal law provision, in general, is further research to summarise the positive experience of foreign countries in terms of studying the specifics of criminal liability for military criminal offences and taking into account the reasonable positions of representatives of the investigative bodies of the State.

References


5. Postanova Plenumu Verhovnogo Sudu Ukrayini


7. Senko, M. M. (2005) "Кримінальна відповідальність за самовільне відحامання військової частини або місця служби [Criminal liability for voluntarily leaving a military unit or place of service]: дис. … канд. юрид. наук: 12.00.08. Львів, 217 с.


