

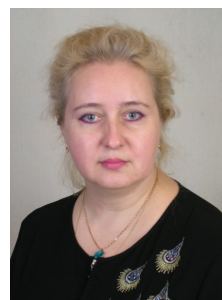
### Summary

In the article, universal social prevention is considered as a priority direction in the prevention of trafficking in human beings. It is emphasized that it is possible to minimize the problem of trafficking in human beings only due to the tangible improvement of the economic situation in the country, the creation of new workplaces and the provision of decent living and working conditions.

**Keywords:** *general social prevention of crime, trafficking in human beings.*



**Oleksandr Duylovskiy**  
*(Southern operative-territorial union  
of National Guard of Ukraine)*



**Svetlana Shalgunova**  
Ph.D, As. Prof.  
*(the Dnipropetrovsk State University  
of Internal Affairs)*



**Taisiya Shevchenko**  
lecturer  
*(the Dnipropetrovsk State University  
of Internal Affairs)*

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## CRIMINAL LEGAL ASPECTS OF ACTIVITY OF SERVICEMEN ARE ON IMPLEMENTATION OF ORDERS IN CRIMINAL LEGISLATION OF FOREIGN COUNTRIES

**Дуйловський О., Шалгунова С., Шевченко Т. КРИМІНАЛЬНО-ПРАВОВІ АСПЕКТИ ДІЯЛЬНОСТІ ВІЙСЬКОВОСЛУЖБОВЦЯ ПРИ НЕВИКОНАННЯ НАКАЗУ ЗА КРИМІНАЛЬНИМ ЗАКОНОДАВСТВОМ ЗАРУБІЖНИХ КРАЇН.** Автори розглядають питання правової регламентації виконання наказів та розпоряджень військовослужбовцями державних військових формувань (Збройних Сил України та інших, утворених відповідно до закону), під час військової служби. Також авторами проведено порівняльний аналіз кримінальної відповідальності за невиконання наказу вищестоящого військового начальника в кримінальному законодавстві України та інших країн. Для порівняння, автори взяли кримінальні кодекси як країн пострадянського простору, так і тих, що до нього не входили (Японія, Швеція, Китай, Болгарія). В статті наведено спільні риси та відмінності в розумінні такого військового злочину, як невиконання наказу, формулювання його основного складу злочину, кваліфікуючі ознаки. Також проаналізовано та здійснено порівняння видів кримінальних покарань, що мають бути застосовані за невиконання наказу різними категоріями військовослужбовців.

**Ключові слова:** *військова служба, порушення дисципліни, злочин, невиконання наказу, кримінальне покарання за невиконання наказу.*

**Formulation of the problem.** In the conditions of intensifying of criminogenic situation in a country the special disturbance causes the level of criminality in law enforcement authorities and state soldiery forming. Especially dangerous is a feaseance of offences and crimes by the workers of MIA and servicemen of the National guard of Ukraine. The degree of public

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unconcern of such displays is high enough, as unlawful actions from the side of such categories of persons cause harm to not only state law-enforcement interests, but also substantially reduce the level of trust of population to the system MIA and operating power on the whole. In addition, the common falling of level of morality and legal culture in the population of our country similarly is negatively reflected and in consciousness of young people that come on service to the organs of police and National guard of Ukraine.

**Connection of problem is with important scientific and practical tasks.** The select theme of research is executed within the limits of subjects of scientific researches of department of criminal right and criminology of the Dnepropetrovsk State University of Internal Affairs, and answers the subjects of researches of criminology in Ukraine, to priority directions of the scientific providing of activity of organs of internal affairs of Ukraine on a period 2015-2019 (an order of MIA of Ukraine is from 16.03.2015 № 275), Conceptions of development of science of criminology in Ukraine at the beginning XXI of article and recommendations of the Coordinating bureau from the problems of criminology of Academy of legal sciences of Ukraine.

**The purpose of this study** is to investigate the criminal law aspects of servicemen's activity in executing orders in the criminal legislation of Ukraine and foreign countries.

**Analysis of scientific researches and publications in that the decision of this problem is founded an author leans on that.** Study of circumstances that assisted the feaseance of violations of discipline and legality in the state soldiery forming and in law enforcement authorities attracted attention scientists in different times of development of the Ukrainian state system. M. Tahantsev, M. Gernet, C. Ordynskiy, I. Tarasov, E. Tarnovskiy, Г. Feldstein, I. Foyntskiy, M. Chubinskiy called to the problems of decision of different forms and types of criminal behaviour. Works of the marked authors became precursors and soil of realization of modern criminal law and criminology researches of soldiery crimes.

Among modern authors it is possible to name M. Khavronuk, M. Melnik, however, works of the marked authors were sent to research of criminogenic situation in the Armed Forces of Ukraine. As for a situation in internal troops, and from 2014 - to the National Guard of Ukraine, - then paid attention this question it was not.

**Exposition of basic material of research is with the complete ground of the got scientific results.** Character and terms of passing of military service, and also them specific features, limit circle of communication of servicemen, specific official and professional tasks that depend upon servicemen, clear establishment in the penal law of specific situation and time of committing crime of this group and others like that, all of it stipulated a forming necessity for the home criminal legislation of separate division of Special part of criminal code (CC) of Ukraine on questions their criminal responsibility. The same approach is kept in most foreign countries. Special criminal law norms that determine the circle of criminal acts of servicemen and specific order of bringing in of them to criminal responsibility, vitally necessary taking into account a specific services and executable duties by persons that pass military service after an appeal or by contract. Such approach can be explained by that the group of soldiery crimes appeared in penal laws so a long ago, as well as most in general lines criminal syllables of crimes. Regardless of place of location of soldiery crimes (in a separate division or head of Special part of criminal code, independent legislative act), is the group of independent criminal acts that have a separate family object. There is the order of execution and passing of military service set by a legislation such. Only for all soldiery crimes (crimes against the set order of military service) after the criminal codes of foreign edges an unifying moment are presence in each of codes of the soldiery crimes, distinguished within the limits of separate division or head, and such crime, as non-fulfillment of order of military commander or chief. Thus categories of servicemen, that can accomplish this crime and be confessed by his subject, can be different: mobilized for implementation of the special tasks (as, for example, in Ukraine, for participating in an anti-terror operation in the Donetsk and Luhansk areas), serve (both ordinary and officers) a serviceman of urgent service (both ordinary and officers), serviceman of contract. The only look of legislators of different countries to this act is constrained, in our view, with one of basic and main principles of organization of military service and military business on the whole, - by principle of undivided authority. This principle envisages the absolute submission of all categories of servicemen the soldiery commanders and chiefs regardless of their level (both direct and higher).

For the military legislation of Ukraine 1991 to traditional was and remains on it time approach of location of criminal law norms that envisage responsibility for crimes in the field

of military service, within the limits of separate head or division of Special part of criminal code. He was saved on this time. Founding of such approach were Bases of criminal legislation of the USSR and Statute about soldiery crimes [1]. Position about soldiery crimes after 1917 was the first legislative act of the allied value, in that the general grounds of criminal responsibility of servicemen and liable for military service persons were determined for soldiery crimes. Certainly, that including of all positions of this legal act to the criminal codes of Ukraine, that operated in the period of 1923-1991, as well as other allied republics of the former USSR, was obligatory. By this Statute criminal responsibility was envisaged both for non-fulfillment of order and for resistance to implementation of order (articles 3, 2). In 1927 new Statute was accepted about soldiery crimes (what operated 1959 to, id est, to new reform of criminal legislation), that it was related to reformation of military criminal legislation [2]. Each time the norms of military criminal law changed at reformation of military legislation. Unlike position of 1924, in position of 1927 the circle of soldiery crimes was extended, the new types of soldiery crimes are entered, but such crime, as non-fulfillment of order was stored. The new stage of reformation of military legislation, that was marked passing an act "About criminal responsibility for soldiery crimes" passed in 1958 [3] (what operated 1991 to) and fastened basic principles of criminal legislation in relation to soldiery crimes. This law contained the concept of disobedience, as a constituent of military crime of "non-fulfillment of order". Yes, in particular, it is marked in a article to 2 p. of "a" law, that an open refuse confesses disobedience to execute the order of chief, the same as other intentional non-fulfillment of order of chief [4, a. 22]. The table of contents of non-fulfillment of order, as publicly dangerous act, included for itself one of next actions or inactivity: 1) non-fulfillment by a serviceman of actions that is contained in the order of military commander or chief; 2) feasancess of actions, that is straight forbidden by an order; 3) implementations of order improper character (failure to observe of the terms of his implementation marked in an order : time, place, pattern of behavior, volume of actions and others like that). The aggravating circumstances of disobedience were name the following: feasance of disobedience by the group of persons, heavy consequences, war-time or battle situation (a article is 2 paragraphs of "b", "c") [4, a. 22-28]. In a article 3 the examined law there was the second concept of disobedience, but without the signs indicated in the point of "a" article 2 [4, a. 28]. Differentiation of disobedience and non-fulfillment of order took place only on the signs of subjective side, namely - after a form and type of guilt. If disobedience could be perfect only intentionally, then non-fulfillment of order - only from a carelessness. At the feasance of non-fulfillment of order under extenuating circumstances - a law allowed to apply the norms of disciplinary character (in obedience to positions of the Disciplinary charter of the Armed Forces of the USSR, article of 3 p. of "b") to the serviceman, and for aggravating (war-time or battle situation) - only criminal (a article 1 p. of "B").

Thus, approach in forming of division of soldiery crimes and in operating CC of Ukraine, that it was accepted in 2001, stored the same, as well as in soviet time. In an operating criminal code in the division of XIX of Special part criminal responsibility is envisaged for crimes against the set order of military service (soldiery crimes).

Although, in General part of CC of Ukraine, as well as in the codes of other countries (criminal codes of Georgia, Belarus, Lithuanian and Latvian Republics) that entered in the complement of the USSR, such new type of circumstance that eliminates criminality of act is brought in, as implementation of order or order (a article 41 CC of Ukraine) [5]. Positions of home legislation fasten a right for a serviceman not to execute a criminal order or order that releases him both from disciplinary and from criminal responsibility obviously, regardless of time of feasance of such non-fulfillment of order.

It is necessary to mark that in the criminal codes of foreign countries of post-soviet space the same approaches were saved in forming of group of soldiery crimes, that and in soviet time. Yes, in the criminal codes of Azerbaijanian Republic (article 327) [6], Republics of Kazakhstan (article 366) [7], Republics of Tadjikistan (article 366) [8], Kyrgyzstan (article 354) [9], the same as in CC of Ukraine, the concept of military crime is certain in the separate articles, and in the code of Belarus in a note to the head 37 such concept is given [10]. In the criminal codes of Republic of Armenia, Republic of Moldova, Estonian Republic, Republic of Bulgaria a concept of military crime is not in corresponding divisions and heads. In the criminal codes of Chinese Republic of People's, Japan, Sweden the division of soldiery crimes is not distinguished in general, and only some of them are included to the heads of Special part. Yes, in CC of Peoples Republic of China it is a head 1 "Crimes against state security" and head 2

"Crimes against public safety".

About such military crime, as non-fulfillment of order the question is also not in all adopted penal laws. Yes, in the criminal codes of Kyrgyzstan in a article 39 [9] but Republics of Uzbekistan in a article 40 [14] by the concept of Kyrgyzstan implementation of order or order of chief, in thereby and military implementation of the duties envisaged by position and official duties is embraced, and in CC of Lithuanian Republic in a article 30 to him enters yet implementation of professional duties [15]. In addition, in CC of Kyrgyzstan in a article the 355 question is about non-fulfillment to the inferiors of order of the chief given in the set order, that caused substantial harm to interests of service [9]. In a article 328 CC of Azerbaijanian Republic the question is about obvious abandonment from implementation to the inferiors of order of the chief given in the order set by a law, and similarly intentional non-fulfillment of order in other form, that caused substantial harm to interests of military service [6]. Non-fulfillment to the inferiors confesses in CC of Republic of Armenia non-fulfillment of order [7]. In CC of Republic of Moldova the concept of non-fulfillment of order is indehiscent, but it is marked that it is intentional actions that pulled at after itself a damnification to official interests in considerable sizes (article 364) [17]. In CC of Republic of Tadjikistan non-fulfillment confesses non-fulfillment of order by the inferior of order of the chief given in the set order, that caused considerable harm to interests of service in default of signs of disobedience (open abandonment from implementation of order of chief, or other intentional non-fulfillment of order) (articles 368, 367) [18].

Actions perfect from a carelessness or frivolousness (article 439) confess in CC of Republic of Belarus non-fulfillment of order, but separately distinguish the concept of disobedience (article 438) as open abandonment from implementation of order of chief or other intentional non-fulfillment of order (disobedience), after the exception of cases, when an inferior refused to execute a criminal order scienter [10]. Intentional non-fulfillment of official order of chief, perfect a person, that has for such misconduct a disciplinary penalty the term of action (article 247) did not run across on that, confesses in CC of Estonian Republic non-fulfillment of order [19].

In CC of Sweden criminal responsibility of serviceman is envisaged in case of refuse to come to heel or insubordination to the order given a higher chief, or if he detains implementation of such order (article 5) superfluously [13].

Thus, it is possible to mark that legislators of countries of post-soviet space, though went out from general for all norms, but after acquisition of independence actively began to work on creation of new penal laws. By the basic terms of bringing in of servicemen criminal responsibility, the following confess non-fulfillment of order : to execute a 1) refuse of serviceman order; 2) refuses touch the order given only by a higher military chief; 3) orders, what serviceman, refuse to execute, given in the set order; 4) orders given by a higher military chief do not contain the obvious signs of unlegality; 5) non-fulfillment of order can be intentional (codes of Azerbaijanian Republic, Republic of Kazakhstan, Republic of Armenia, Republic of Moldova, Estonian Republic) or careless or frivolous (codes of Belarus are Republics of Tadjikistan, Kyrgyzstan).

By the terms of release from criminal responsibility at presence of such circumstance that eliminates criminality of act, as implementation of order or order, foreign legislators name: a 1) order (order) is obligatory for implementation; 2) orders given by a person are in her capacity; 3) obligatory observance of form of knowing of order (codes of Republic of Беларусь, Republic of Kazakhstan, Republic of Tadjikistan); 4) orders are directed in relation to a that person that must execute (after an official submission) him; 5) legitimacy of implementation of order a that person that got him even at a damnification (codes of Kyrgyzstan, Republic of Uzbekistan); 6) realization of fact of uncriminality of order (absence of obvious criminality of order) (codes of Ukraine, Latvian Republic); 7) careless character of operating under implementation of order, that train damnification (and at presence of intentional, connected with implementation obviously of criminal order - criminal responsibility is not eliminated).

**Conclusions and prospects of further scientific researches.** Thus, such corpus delict, as non-fulfillment of order a serviceman, always needs the detailed research of his not only objective but also subjective signs, clear establishment of form and type of guilt, namely attitude of serviceman is toward non-fulfillment order got a from a higher military chief; what was realized by a serviceman at such refuse: or he realized the public unconcern of the inactivity or her consequences; pursued here some certain aim: to execute other order, or not to execute got, on what reasons and others like that. Such approach will allow to dissociate the legitimate

act of serviceman from violation of discipline, offence and crime, and to set the presence of such circumstance that eliminates criminality of act, as implementation of order or order (a article 41 CC of Ukraine) [5]. Such comparison of objective and subjective signs legitimate and criminal will allow to set that not only.

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### Summary

The authors consider the legal regulation of the execution of orders by servicemen of state military formations (The Armed Forces of Ukraine and others formed in accordance with the law) during military service. Also, the authors conducted a comparative analysis of criminal liability for failure to comply with the order of a superior military commander in the criminal law of Ukraine and other countries. For comparison, the authors took the criminal codex of both post-Soviet countries and those that were not included in it (Japan, Sweden, China, Bulgaria). The article presents the common features and differences in the understanding of such a war crime, such as non-compliance with the order, the formulation of its main component of the crime, qualifying attributes. Also analyzed and compared the types of criminal punishments that could be applied in case of non-compliance with the order by different categories of military personnel.

**Keywords:** *military service, violation of discipline, crime, non-execution of an order, criminal punishment for failure to execute the order.*