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Special Dossier October 2025
Ukraine Military and Wartime Law

Edited by Ganna Sobko

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Challenges in classifying violent military offenses

by Ganna Sobko[1], Victoria Shchyrska[2], Kateryna T. Izotenko[3], Andrii Svintsytskyi[4], Yuriy Ponomarenko[5]

Abstract, The article is devoted to the military doctrine of Ukraine, the main task of which is to ensure military security in the Armed Forces and other military organizations by performing special (security) services, namely: combat duty, combat service, border service, punitive service, watch service, public order and public security, internal service, and patrolling in the garrison. The article examines four corpus delicti of criminal offenses, which include: violation of the rules of combat duty (Article 420 of the Criminal Code of Ukraine); violation of the rules of border service (Article 419 of the Criminal Code of Ukraine); violation of the statutory rules of guard service or patrolling (Article 418 of the Criminal Code of Ukraine); violation of the statutory rules of internal service (Article 421 of the Criminal Code of Ukraine). This paper compares the military's awareness of responsibility for violating an order with the expediency of taking into account the legal experience of international criminal tribunals. It also expresses the issue of dualistic legislative regulation of the duty of a serviceman to execute an order received in his address. Furthermore, it analyses the possibilities of resolving the conflict in terms of absolute necessity. Subsequent to this, the authors analyze in detail the corpus delicti of criminal offenses and their legislative constructions, as well as their important features in qualifying a criminal act.

Keywords: military statutory order of service, military duty, military order, criminal offenses.

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1. Introduction

Ukraine's military doctrine states that ensuring military security is the most important activity of the state. The main tasks of ensuring military security are to prevent, localize and neutralize military threats to Ukraine. These tasks are solved mainly through the organization of special (security) services in the Armed Forces and other military organizations. These services include: combat duty, combat service, border service, punitive service, watch service, public order and public security, internal service, and garrison patrol (Navrotskyi, 1997).

These types of special military service have a number of common characteristics. Firstly, they are usually related to the performance of combat missions (active duty) and involve the use of physical force, weapons, special means and military equipment, if necessary. Secondly, special services are organized in such a way that they are carried out periodically, within a certain period of time, by changing (duty) units or individual outfits of servicemen, which are separated from military units, subunits. Thirdly, servicemen are in a special legal position during their service - they are out of subordination to their superiors and become subordinate to the officials of the respective outfit, acquire additional rights and obligations related to the nature of the respective service (Judiciary of Ukraine, 2024).

The procedure for performing special services is a component of the procedure for military service (military law and order), and is strictly regulated by military regulations, guidelines, instructions and other normative legal acts. Violations of this procedure pose a serious public danger and can lead to grave consequences. They create conditions for violating the inviolability of the land border, air and sea space, causing damage to the enemy, stealing military property, etc. The most dangerous violations of the order of special services are recognized as crimes.

Crimes against the order of special services include: violation of the rules of combat duty (Article 420 of the Criminal Code of Ukraine); violation of the rules of border service (Article 419 of the Criminal Code of Ukraine); violation of the statutory rules of guard service or patrolling (Article 418 of the Criminal Code of Ukraine); violation of the statutory rules of internal service (Article 421 of the Criminal Code of Ukraine).

The elements of criminal offenses against the order of special services have

a pronounced special character. These are the offenses that are traditionally considered in criminal law theory as offenses with a special subject of a criminal offense. However, the essence of criminal offenses with a special subject is such that they have not only the subject, but also other elements (object, objective and subjective sides) of a special nature.

The main feature of these special elements of criminal offenses, which, in fact, makes the elements special, is the special nature of the relations that act as the main direct object of criminal offenses in Articles 418, 419, 420 of the Criminal Code. These relationships develop and are preserved in relation to the necessity of carrying out certain socially required tasks inside the state's military structure in order to guarantee the state's military security through internal service and guard duty. Special relations are a certain order of behavior and activities regulated by special legal norms that ensure the performance of the relevant functions.

The peculiarity of the analyzed criminal offenses is the presence in their corpus delicti of both "special" objects and "general" objects that act as additional objects. The difficulty in establishing them in these norms is that the relevant social values (life, health, freedom, etc.) are not directly indicated in them. Additional objects in criminal offenses against the procedure for performing special types of military service, which indicate the possibility of violent nature of some of these offenses, are mainly revealed in a detailed analysis of the procedure for performing a particular special service.

The relevant regulations contain rules aimed at ensuring the physical and mental safety of a person. In other words, these criminal offenses against military service, as well as all violent criminal offenses in general, are multi-objective, with physical and mental well-being of a person acting as an additional object. The purpose of this article is to analyze the legislative regulation and to identify gaps and the current state of non-performance or improper performance of duty by servicemen in the course of performing their duties.

2.Methodology

This study examines the subjective elements, specifically the internal attitudes of individuals involved in violent military offenses. The study's primary focus is on the indicators of violence that influence the form of guilt and the range of personnel who may commit these offenses, including guard chiefs, sentries,

scouts, assistant guard chiefs, technical operators, vehicle drivers, and checkpoint guards. Furthermore, the study examines the role of sentries and escorts within military brigades and their responsibilities in the protection of military facilities. Comparative statistical data reveal the prevalence of these offenses across different periods in Ukraine: peacetime prior to 2014, anti-terrorist and Joint Forces operations from 2015 to 2021, and the period following Russia's full-scale invasion from 2022 to 2023. The data demonstrate a correlation between an increase in such offenses and the military situation. Additionally, the research incorporates case examples to illustrate the judicial handling of these cases and suggests legislative amendments aimed at mitigating these criminal offenses among military personnel.

To accomplish this task, the following research methods were used:

- Formal-dogmatic - used in the analysis of Articles 418 of the Criminal Code, 419 of the Criminal Code, 420 of the Criminal Code and Article 421 of the Criminal Code of Ukraine to build the disposition of the article and identify the shortcomings in the legislative construction, on the basis of which proposals for improving the legislation were made;

- The method of hermeneutics was used to interpret and understand the content of the text of legislation;
- A quantitative analysis was conducted to examine criminal cases initiated under Articles 418, 419, 420, and 421 of the Criminal Code of Ukraine. This approach yielded data on the prevalence of these offenses throughout Ukraine, as well as insights into the profiles of the individuals involved. The analysis encompassed the review of sentences issued for these offenses as well as data from the Prosecutor General's Office regarding prosecutions under these articles. This quantitative assessment enabled a structured examination of patterns and trends related to these criminal offenses.
- The sociological method is utilized to examine social phenomena and processes that contribute to the non-performance or improper performance of military duties. This approach provides insights into the underlying social factors that influence these behaviors.
- The comparative legal method is employed extensively for the purpose of analyzing the composition of criminal offenses and identifying conflicts and gaps within military and criminal law. This method entails the comparison of per-

tinent legal frameworks across diverse branches of law, with a particular emphasis on delineating the responsibilities of parents and guardians - or those acting in a parental capacity - in the event of their absence or unavailability. This approach illuminates potential avenues for legislative adjustments that could enhance clarity and consistency in legal responsibilities.

3.Results

In order to gain a deeper understanding of these articles, the authors propose a new approach to the analysis of their statistical data, which is outlined in the following sections:

1. Before the beginning of Russia's military aggression against Ukraine in 2014;
2. During the ATO and JFO (Anti-Terrorist Operation and Joint Forces Operation), which lasted 8 years from 2015 to 2021;
3. The last indicators, which relate specifically to the time of Russia's full-scale invasion of Ukraine (martial law).

Statistics for 2014 are unavailable, preventing examination and comparison with this category (Judiciary of Ukraine, 2024). However, martial law and the percentage of criminal offenses committed is increasing.

Given the volume and complexity of the data provided, the court statistics for Articles 418, 419, and 426-1 for 2021 and 2022 are presented (Table 1.), (Judiciary of Ukraine, 2022).

Table 1. Summary of court statistics for Articles 418, 419, and 426-1 of the Criminal Code of Ukraine (2021–2022)

Cases	Descriptions of Violations					
	Guard Service (Art. 418)		Border Service (Art. 419)		Excess of Power by Military ()Art. 426-1)	
	2021	2022	2021	2022	2021	2022
Pending	1	1	1	3	47	41
New	0	0	0	2	13	13
Considered	1	2	0	3	15	3

Sentences passed	0	0	0	2	13	3
Guilty verdicts	0	0	4	0	6	0
Closed	0	0	0	0	1	1
Unresolved	2	3	3	3	35	39

Table 1. allows for clear visualization of data across the two years for each article, highlighting both the availability of statistics and providing easy comparability between years. A review of the data in the chart reveals that there are no recorded cases for Articles 420 and 421, indicating that there are no cases currently pending in court. In contrast, Articles 418 and 419 indicate a relatively low number of recorded offenses, which suggests a low incidence of violent criminal offenses. In peacetime, the number of criminal offenses was reported to be zero. However, the statistics for Article 426-1 of the Criminal Code are noteworthy in that they reflect an increasing trend in military service-related criminal offenses since the onset of the ATO and the JFO. A comparison of the indicators from the period of martial law with those from earlier measured times reveals an upward trend in offenses. In contrast, the rates observed during the ATO and JFO periods demonstrate minimal variation.

This pattern is consistent across all analyzed indicators, with the exception of the number of verdicts issued, which decreased by half during martial law. This decline may be attributed to the fact that many offenders are currently engaged in combat or because of the increasing caseload in the courts. However, these factors do not impact the challenges related to the accurate qualification of these offenses, which will be examined next. This trend underscores the relevance of the topic being studied.

3.1. Specificity and subjectivity of war crimes.

In the context of discussions pertaining to military accountability and the legal implications of orders issued within a military hierarchy, it is imperative to consider a range of perspectives drawn from international legal doctrine. It is worth noting the presence of a particularly rational viewpoint articulated in foreign legal scholarship. This perspective posits that conferring absolute rehabilitative status upon military orders would represent a significant misstep by legislators. Such

an approach would imply that the Supreme Commander-in-Chief, as the highest authority within the military hierarchy, would bear responsibility for all crimes committed under their command, thereby undermining the principle of individual accountability (Figure 1.), (Cassese et al., 2013). This notion gives rise to critical questions concerning the balance between obedience to orders and the legal and moral obligations of military personnel.

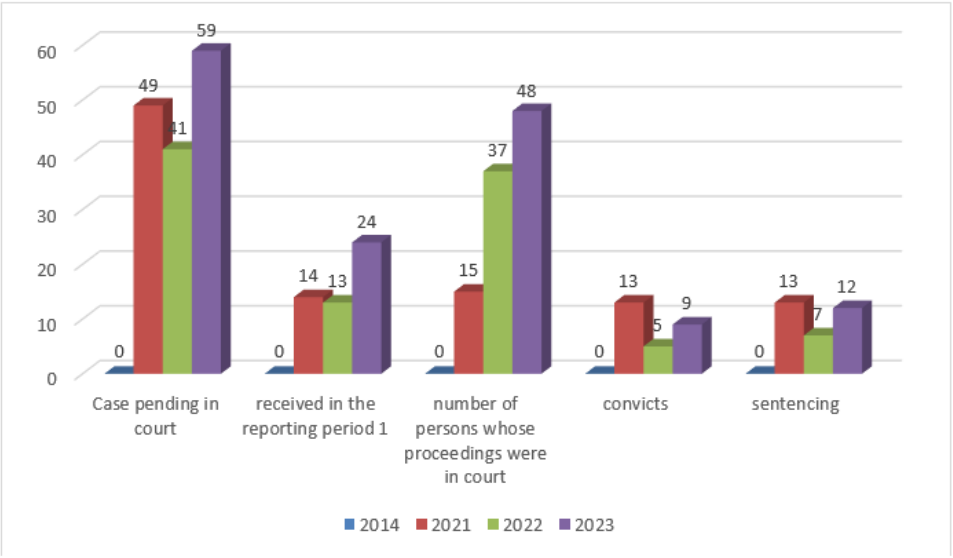

Figure 1. Dynamics of committing military service criminal offenses

Based on Figure 1., it is important to notice that the case count includes separate incidents or offenses related to the same individual or group. Given the fact that in Ukraine it is hardly appropriate to talk about the existence of an established law enforcement practice on the issue under consideration and the uncertainty regarding the subjective component, in the context of the serviceman's awareness of the illegality of the order addressed to him, it is advisable to take into account the legal experience of international criminal tribunals. The most problematic issue in practice is whether the perpetrator was aware of this circumstance, which is of key importance (Sobko et al., 2023a; Hutnyk, 2016).

The procedure for military service can be categorized as either general or special. According to the Judiciary of Ukraine (2023), the general procedure, which encompasses general military relations, is applicable to all servicemen. In contrast, the special procedure involves specific military relations that are established

in particular areas of military service activity and pertain to the fulfillment of certain tasks. This special procedure is not applicable to all servicemen but rather to specific categories of personnel. It is crucial to differentiate between the general and special procedures for military service when establishing the framework for criminal offenses against military service. Some criminal offenses contravene the general procedure, while others contravene the special procedure. The former include, in particular, criminal offenses against the order of subordination and military statutory relations (Articles 404 - 406 of the Criminal Code of Ukraine), (Verkhovna Rada of Ukraine, 1992).

In order to provide a clear definition of the a priori criminality of acts committed by a serviceman while following an order, it is necessary to define these acts in the following way:

- killing captured members of opposition armed forces and/or civilians in the occupied territory;
- torture of captured members of armed groups and/or civilians (the entire range of accompanying circumstances is taken into account, the context of inflicting pain, the tools used, the physical condition of the victim, etc.);
- ill-treatment of prisoners of war by members of armed groups and/or members of the civilian population (meaning the provision of insufficient food, inadequate medical care and conditions for meeting basic human physiological needs);
- intentionally causing serious bodily injury or harm to health;
- taking hostages from among members of armed groups and/or representatives of the civilian population;
- sexual acts of a violent nature;
- the use of “indiscriminate” weapons, military equipment and other means in an armed conflict to harm the enemy, if the use of such means may result in “unnecessary” suffering or damage;
- intentional attacks on civilians (the prohibition of these actions is interpreted as an indisputable absolute, the diminution of which cannot be explained by any military needs);
- attacking or shelling unprotected settlements that are not military targets (Panov, 2006)

According to these decisions, it is about the occurrence of such harmful consequences that cause a strong destructive effect on the human body, its appearance or emotional background. In this case, the said harm must prevent a person from normal, full-fledged life activities for a long time. In general, the consequences of such crimes include damage to both the main and additional objects of the crime. For example, the grave consequences of violating the rules of public order and public security service may simultaneously include harm to the victim's health, disorganization of this service, and failure to perform a combat mission. A special act in Articles 418, 419. 420, 421 of the Criminal Code of Ukraine is an act related to the violation of duties stipulated by the relations on performing special types of military service (which form a special object of a criminal offense). The special consequences of these criminal offenses are the damage caused to the values protected by the criminal law in the form of violation of special relations (the procedure for performing special types of military service) that ensure the safety of these values (Karpenko, 2019)

The particular and subjective aspects of special offenses pertain to the infringements of the regulations that govern the performance of specific types of military service. Signs of the subjective element - guilt, motive, purpose, emotions - reflect the subject's mental attitude to the act and its consequences. The form of the subjective element is the same for all criminal offenses - these are mental processes; however, the content of the subjective element of each criminal offense is specific, its features reflect the specifics of the object, act, consequences and other circumstances.

The content of the subjective side in the special corpus delicti of criminal offenses in Articles 418-421 of the Criminal Code is determined by the special object, special nature of the action and consequences. The perpetrator mentally reflects these special circumstances and therefore his/her guilt (in some cases, motive and purpose) are also special. In the literature, the subjective side of these criminal offenses is disclosed in different ways. In particular, some authors point out that the very violation of the rules in Part 1 of Art. 418, Part 1 of Art. 419, Part 1 of Art. 420 and Part 1 of Art. 421 of the Criminal Code of Ukraine is intentional, and the attitude to the consequences is characterized by negligence.

Other authors believe that some criminal offenses are committed intentionally, others - recklessly, but the attitude to the consequences of the committed viola-

tions may be reckless or indirect intent. Pursuant to Article 24(2) of the Criminal Code, if the legislator does not specify the form of guilt in the articles, then the crime can be committed both intentionally and negligently. With this in mind, in the articles of Section 19 of the Criminal Code of Ukraine, where the form of guilt is not specified, and the terminology used allows for both intent and negligence, both forms of guilt are possible.

Otherwise, if there are any doubts about the essence of the order given and its legality, they should be interpreted in favor of the subordinate, which naturally follows from the general responsibility of the superior for this, as well as from the fact that the subordinate does not have all the information necessary to decide on the legality of the order. At the legislative level, there is no possibility of preliminary collection and analysis of such data, and the serviceman must immediately and unconditionally execute the order addressed to him (Sobko et al., 2023b). Thus, a dualistic situation arises: on the one hand, the obligation of a serviceman to execute an order received in his address is absolute, at the same time, a serviceman, being, first of all, a citizen of the state, must strictly comply with the provisions of criminal law, refraining from taking a criminal path, both by order and in its absence (Chervyakova, 2019; Shkuta, 2020).

In the absence of any alternative models of behavior, except for the execution of an illegal order, the actions of a serviceman should be such that the harm that occurred was less significant when compared to that which would have been caused by his other behavior. The rationality of this proposal is questionable. Such a dilemma should not exist at all, and a subordinate should not, under any circumstances, follow an illegal order. Any authority is based on its legal basis and legal limits of operation. If an authorized entity exceeds the limits of its competence and gives a clearly illegal order, the subordinate is not obliged to follow it. If he does otherwise, the mechanism of legal liability comes into play (Korystin, 2022).

In violations of the rules of guard duty and internal service, damage to the physical and mental well-being of a person is always caused, i.e., these additional objects are optional. For example, most violations of the rules of service (sleeping during military service, leaving a sentry's post, stealing protected military property, etc.) are not related to violent acts. Hence, violations of the rules of service are fully treated as violent offenses, unlike criminal offenses against the

order of statutory relations between servicemen, in which violence is the main, essential feature (Morozyuk & Sobko, 2022).

The distinctive characteristics of the procedures for performing specific types of military service have a profound impact on the actions of personnel within these formations. In special units, violations are primarily the result of breaches of established relationships and duties. Therefore, the acts perpetrated in these contexts tend to exhibit similarities, frequently manifesting as violations of specific responsibilities and conduct rules. For example, criminal offenses delineated in Articles 418, 419, and 420 of the Criminal Code - including sleeping while on duty, leaving one's post, and using violence - are illustrative of a failure to adhere to the protocols of a particular service (Dmytrenko, 2020).

In the corpus delicti of criminal offenses against the procedure for performing special types of military service, the subject is usually named. For example, in Article 418 of the Criminal Code, the subject of a criminal offense is a person who is a member of a guard (watch), such servicemen include: the chief of the guard, sentries, scouts, assistant chief of the guard (if any), assistant chief of the guard for technical means or change of operators (if necessary), vehicle driver, and checkpoint guards. The guard at the brig also includes sentries and escorts. For the direct protection and defense of facilities, the following sentries are posted as part of the guard.

In criminal offenses against the procedure for performing special types of military service, violence is the result of a violation of the established rules for performing a particular special service and is manifested, as a rule, in the unlawful use of physical force, weapons, special means (equipment). The use of violence in these crimes has features characteristic of other criminal offenses against military service, as well as some general criminal violent crimes. In this regard, in theory and in practice, questions often arise as to the distinction between these acts. A study of court practice in this category of cases shows that the issues of distinguishing criminal offenses against the procedure for performing special types of military service committed with the use of violence from violations of the statutory rules of relations between military personnel in the absence of subordination and abuse of authority, as well as from certain violent crimes against the person are very relevant.

3.2. Qualification of war crimes and violation of the rules of statutory relations between military personnel.

When qualifying military violent crimes, situations often arise when the offense has signs of violation of the rules of special types of military service (Articles 418-421 of the Criminal Code of Ukraine) and violation of the statutory rules of relations between military personnel in the absence of a relationship of subordination (Article 406 of the Criminal Code of Ukraine). For example, a company day officer uses violence against a serviceman who does not fulfill the requirements of the persons on duty (for example, to go for physical exercises, etc.). There are several ways to qualify such cases.

Violations of the rules of special types of military service may occur along with other criminal offenses. In a number of cases, the assessment of one criminal act containing signs of different crimes (ideal aggregate, i.e., part 2 of Article 33 of the Criminal Code of Ukraine) caused difficulties. The most difficult to qualify are acts that can be committed by both private and public officials who use their official powers, although the dispositions of the relevant articles of the CC do not mention this. The literature suggests that when such criminal offenses are committed by officials, the ideal combination of such offenses with the relevant criminal offenses against the interests of the service should be stated, provided that the offense, of course, has all the elements of the relevant official criminal offense, since the act harms two independent main objects.

As a general rule to be followed, the following should be borne in mind:

The commission of any unlawful act (embezzlement, violation of statutory rules of relations between servicemen, etc.) can simultaneously form the elements of a criminal offense of this category only if the perpetrator violated the rules of a special type of military service, the task of which was to prevent the harmful consequences. The ideal set of criminal offenses is evidenced by the encroachment on various direct objects and the infliction of real damage to each of them".

It is necessary to clearly establish a system (set) of rules for the performance of special types of military service. In this regard, these rules should have a special purpose, i.e., correspond to the goals set for a particular special service. As noted, the criminal law independence of blanket rules is achieved by including in them the entire scope of rules contained in a specific sectoral source, but only those that reflect the special purpose of the rule, which is determined in relation to

the object of protection. Violation of rules that have a special purpose, i.e., that do not ensure the fulfillment of the tasks of certain types of special services (units), should be qualified if there are appropriate grounds from other articles.

In this regard, it is important to clarify whether the general rules of relations between servicemen are included in the system of rules governing the procedure for performing special types of military service. An analysis of the relevant legal sources from this perspective shows that the general rules of relations between servicemen established by the Statute of the Internal Service of Ukraine are not included in the system of special rules for performing a particular special service. This means that special rules of service, for example, patrolling and internal service, guard service, do not regulate the procedure of relations between servicemen, which is referred to in Article 406 of the Criminal Code. Violation of the general order of relations between servicemen, which does not directly ensure the solution of the tasks of special types of military service, cannot be considered as a violation of the order of performance of a particular special service protected by Articles 418-421 of the Criminal Code.

The foregoing allows to state that in cases where a serviceman who is a member of a particular service commits a violation of the general rules of statutory relations between servicemen (in particular, uses violence), his actions, if there are appropriate grounds, should be qualified under Article 406 of the Criminal Code. This position is also shared by some judicial officers. In accordance with Article 406 of the Criminal Code of Ukraine, the defendant was found culpable of having thrown the individual to the floor while on a daily patrol in his company for presenting claims against him in the service in an unreasonable manner. As a result of hitting the floor, the individual sustained a closed head injury with a fracture of the bones of the vault and the base of the skull, which constituted serious bodily harm. In light of the fact that the defendant's actions fully encompassed the elements of the crime as defined in Part 3 of Article 406 of the Criminal Code, the court excluded Article 421 of the Criminal Code from the defendant's charges.

The proposal to qualify such situations as a set of crimes under Articles 418-421 and 406 of the Criminal Code does not seem to be quite successful for other reasons. In particular, its implementation leads to a de facto double treatment of the same circumstances. Thus, one of the grounds for qualifying the use of violence under Articles 418, 420 and 421 of the Criminal Code is the infliction

of certain physical consequences (physical pain, bodily harm, etc.). In fact, these same actions (use of violence) and consequences (physical harm) are also attributed to the said serviceman when assessing their behavior under Article 406 of the Criminal Code. This state of affairs clearly contradicts Part 3 of Article 2 of the Criminal Code (no one may be held criminally liable for the same act more than once).

The use of violence in some cases can be a type of violation of special rules of certain types of military service. These are situations where one of the tasks of a special service is to protect military personnel (guard (watch) service), ensure personal safety, protect human and civil rights and freedoms (combat duty), and ensure compliance with internal regulations (daily duty). Violation of such rules is usually expressed in the unjustified use of physical force or weapons, sometimes other special means. The physical consequences resulting from the use of violence are covered by the relevant articles of Section 19 of the Criminal Code of Ukraine, since the prevention of these consequences (along with others) is established by a particular special service.

Thus, the following special rules of qualification can be formulated:

a) violation of the general rules of statutory relations between servicemen in the course of performing special types of military service, which involves the use of violence, should be qualified, if there are appropriate grounds, only under Article 406 of the Criminal Code of Ukraine;

b) violation of special rules of military service intended for the protection of servicemen (guard (watch), ensuring compliance with internal regulations (daily duty), expressed in the unjustified use of physical force, weapons and other special means, should be qualified under Articles 418, 419 and 421 of the Criminal Code of Ukraine. In theory and in practice, the question of qualifying the unlawful use of weapons by a person who is a member of a guard is difficult to answer when such actions result in harm to the life and health of third parties. For example, a sentry, having detected an offender on the territory of the post, uses weapons against him in violation of the relevant provisions of the Statute of the Armed Forces of Ukraine (in particular, does not stop him with a shout “Stop, get back” or “Stop, go to the right (left)”, does not warn the offender with a shout “Stop, I will shoot” or does not make a warning shot upwards). As a result of such actions, the offender may suffer death or harm to

health of varying severity, including intentionally. In this regard, the question arises as to whether the offense committed by the guard should be qualified as a criminal offense under Article 418 of the Criminal Code and the relevant articles of Section II of the Criminal Code, or whether everything is covered only by the provisions of the chapter on crimes against life and health (Bogutsky, 2006).

In Article 418 of the Criminal Code, the main direct object of the criminal offense is the order of guard duty. This object is a certain system, the structure of which consists of persons who are members of the guard and objects for which or in connection with which this type of security service is established. Damage to this object of a criminal offense is manifested primarily in the damage to the objects protected by the guard. Accordingly, the grave consequences referred to in Art. 418 of the Criminal Code must necessarily be associated with "guarded objects", the security of which is the purpose of guard service. The Statute of the Garrison and Guard Services of the Armed Forces of Ukraine does not include such goods as the life and health of third parties (including offenders) as "objects protected by the guard".

This implies that harm to the life and health of an unauthorized person as a result of a violation of the procedure for the use of weapons is not covered by the concept of "grave consequences" in Article 418 of the Criminal Code and should be qualified as a relevant criminal offense against life and health (of a person). The exception will be cases when a sentry (outgoing) causes harm to the life and health of persons in the guardhouse or in a disciplinary military unit, since ensuring the safety of these persons is one of the purposes of organizing the guard service (as discussed in subsection 2.3.).

This is in accordance with the established position of court practice. The court found Sergeant guilty of the aforementioned offenses, in addition to other criminal acts, in violation of Article 418 of the Criminal Code of Ukraine. This resulted from the Sergeant's failure to adhere to the established rules and regulations governing the performance of guard duties, which ultimately led to significant and adverse consequences. As stated in the verdict, the accused was on guard duty in May 2007 as part of the garrison guard. During this period, he perpetrated multiple assaults against two other servicemen, including an attack on a sergeant. Subsequently, while under the influence of alcohol, the accused perpetrated the

fatal shooting of Private one of the servicemen with an assault rifle. The investigative authorities and the court, in addition to the aforementioned charges under the Criminal Code of Ukraine, classified the accused's illicit actions under Article 418 as a contravention of the statutory rules of guard service that resulted in severe consequences. In its cassation ruling, the panel underscored that the essential element of this criminal offense is not merely any violation of the statutory rules of guard service, which the accused indisputably committed, but specifically those violations that resulted in damage to the protected objects. The case did not establish that the accused's unlawful actions caused any damage to the protected objects of the guard, which included the accused himself.

In consideration of the aforementioned factors, the panel reached the conclusion that the elements of the criminal offense as defined in Article 418 were absent in the accused's actions. As a result, the verdict in this regard was annulled, and the criminal case was terminated (Supreme Court of Ukraine, 2023). A comparable resolution was reached in a separate case. The warrant officer, who was on duty as a park guard and was issued a pistol. After obtaining authorization from the commanding officer, the guard proceeded to his residence in the evening and made a stop at an officers' café along the route back, where he began to consume alcohol with his colleagues. Subsequently, in flagrant violation of public order, the guard initiated physical contact with citizens, grasping their clothing, and then discharged several rounds from the firearm at the floor. One of the bullets struck a bystander in the leg, causing a minor injury.

The pre-trial investigation authorities classified the actions of the guard under Part 3 of Article 296 and Article 421 of the Criminal Code of Ukraine as hooliganism and a violation of the statutory rules of internal service. In reaching the conclusion that the actions in question did not constitute a criminal offense under Article 421 of the Criminal Code, the court correctly stated that, according to the law, liability under this article is only applicable if there are consequences that the daily patrol on internal service is responsible for preventing. As there was no damage to the internal order in the park and no disruption to the duties of the relevant unit, there were no grounds for holding the guard additionally accountable under Article 421 of the Criminal Code of Ukraine (Kyiv District Administrative Court, 2020). In the general doctrine of official criminal offenses, it is generally recognized that, along with general criminal offenses in office in Chapter 17 of the Criminal Code of Ukraine, other chapters contain special corpus delicti. The

latter are committed by certain officials or in a certain area of activity specified in the law.

The literature suggests the following types of special official criminal offenses:

1) criminal offenses committed only by officials specially identified in the dispositions of articles (e.g., Article 206 of the Criminal Code of Ukraine, etc.)
2) criminal offenses committed with the "use of official position", as indicated in the dispositions (Article 151, Article 182 of the Criminal Code of Ukraine, etc.)
3) criminal offenses that name as perpetrator a specific entity whose rights and duties are of an official nature - a member of an election commission; a person who was responsible for compliance with safety and labor protection rules, etc. (Articles 158-3, 172, 137, 218, 219-1, etc.)
4) criminal offenses in which the subject is not named, but the nature of the action itself, which can only be committed by an official (Art. 168, Art. 372, Art. 371, etc.)
5) criminal offenses that can be committed by both officials using their official position and private individuals.

In all these cases, there are problems of competition of norms and qualification of service criminal offenses in the aggregate (ideal aggregate) with other criminal offenses.

The criminal law literature unanimously states that competition of norms occurs in cases where one criminal offense (as opposed to an aggregate) is committed, which falls under (contains features of) two or more norms, but only one of them is subject to application precisely because one criminal offense has been committed. At the same time, the question always arises as to which of these norms should be applied to qualify the offense. The rule developed by the general theory of law, namely - *lex speciali degorat legi generali* - a special law cancels the effect of a general law - was not enshrined in the Criminal Code of 2001, but the draft of the new law of Ukraine on criminal liability already provides for its legislative enshrinement.

Specialized literature distinguishes two types of special rules based on the object of criminal legal protection: a) special rules which have the same main object of protection as general rules (single-object rules); b) special rules whose

object of protection differs from the object of the relevant general rules (two-object rules). Of course, it would be quite reasonable to distinguish another type of special rules on this basis - special rules with a "mixed" (complex) object of criminal legal protection. Such rules should include Articles 418-421 of the Criminal Code. These articles protect the procedure for performing a particular type of special military service, which ensures the security of protected objects. An integral part of this procedure is the managerial activity of the relevant military officials who are part of a particular outfit. In these military criminal offenses, the interests of managerial activity cannot be considered as additional objects, since without management, military service in general, including its special varieties, is unthinkable. This aspect of the allocated type of special norms is not taken into account both in the works devoted to the problems of qualification of service criminal offenses and in judicial practice (Navrotskyi, 1997).

In cases where general and special norms are in competition, it is proposed that the following approach be taken: when the actions of an official exhibit characteristics of a general crime against the interests of the service and its special type, or when such a general criminal offense is clearly indicated by the meaning of the norm, the general norm should be applied. In such cases, the service in question, or its specific type, constitutes a special type of criminal offense that explicitly allows for its commission by an official in conjunction with other subjects. Alternatively, the possibility of such commission is clearly implied by the meaning of the norm itself (Us, 2018). In cases where the articles specifically provide for liability for crimes committed with the use of official position, it is proposed to qualify only under these articles without combining them with articles providing for liability for official crimes.

The special features of Articles 418-421 of the Criminal Code of Ukraine in comparison with the general norm (Article 364 of the Criminal Code) and the special norm (Article 426-1 of the Criminal Code) are, firstly, a special circle of military commanders (persons who are members of certain outfits), and secondly, a certain sphere of managerial activity - the performance of special types of military service. The specificity of these types of military service lies in the fact that military officers, while performing them, have a dual official status:

a) general - rights and obligations that they always have in connection with their official functions;

b) special - rights and obligations that they are endowed with only during the period of special service.

The issue of the correlation between general and special rules of military service and the relevant qualification rules was discussed above. It is clear that the proposed solutions are fully applicable to the cases under consideration: the abuse of general official powers by military commanders falls under Article 426-1 of the Criminal Code of Ukraine, and the abuse of special official powers - under Articles 418-421 of the Criminal Code of Ukraine. The above allows to formulate the following qualification rule.

Actions: if the actions of a military official resulted in a violation of the rules of special service related to the abuse of special official powers rather than general ones, the act should be qualified under the article providing for liability for violation of the procedure for performing this service. In judicial practice, difficulties arise in qualifying the unlawful use of weapons by a superior during the performance of special types of military service. The literature and court practice suggest that such actions should always be qualified as a military service criminal offense, i.e., under Article 426-1 of the Criminal Code of Ukraine.

The correct solution to this issue should be based on the following provisions: a) the use of weapons is a part of the power (organizational and administrative) functions of a military official; b) the grounds and procedure for the use of weapons in the conditions of military service are regulated by the general rules of the Disciplinary Statute of the Armed Forces of Ukraine. The above rules for qualifying the actions of military officials in the competition between general and special rules are fully applicable to this situation. Thus, if a military officer, while performing special types of military service, violates the general procedure for the use of weapons, his/her actions, if there are relevant signs, should be qualified under Art. 426-1 of the Criminal Code.

4.Discussion

Based on the above, the following special rule of qualification can be formulated: violation of the rules of special types of military service, which was expressed in the unlawful use of weapons by a military official, should be qualified as abuse of power (Article 426-1 of the Criminal Code of Ukraine) only if the use of weapons

was violated. In cases where special rules for the use of weapons while on duty are violated, the act should be qualified under Articles 418, 414 and 420 of the Criminal Code.

The use of violence in case of violation of the rules of special types of military service can cause various physical consequences: pain, damage to health, death, restriction of liberty. The problem of establishing the scope of physical consequences in the concept of "grave consequences" (Articles 418-421 of the Criminal Code) has already been considered in this paper.

Within the framework of this issue, it is advisable to dwell on the main conclusions made earlier:

1) in part 1 of Art. 418 of the Criminal Code of Ukraine, the damage to the objects protected by the guard, covering such grave consequences, should be limited to several persons
2) the scope of physical harm in Article 421 of the Criminal Code covers only intentional infliction of grave harm,

As it can be seen, the consequences of the use of violence in criminal offenses against the order of special types of military service are not always fully covered by the relevant corpus delicti. In the literature and court practice, it is proposed to qualify such cases under a set of criminal offenses. For example, the Review of Court Practice in Cases of Criminal Offenses Against Military Service and Some Official Criminal Offenses Committed by Military Personnel (2001) emphasizes that under certain conditions, criminal offenses under Articles 418, 419, 420 and 421 of the Criminal Code of Ukraine may also form criminal offenses against life and health. This method of qualifying complex violent criminal offenses is very common and is due to a number of circumstances.

Firstly, in articles that do not use the term "violence" and its derivatives ("violence dangerous to life and health", "violence not dangerous to life and health", etc.), but the crime itself allows for the use of violence as an alternative, the sanctions reflect the social danger of not all forms of violence, but only some of its varieties. In general, the discussion focuses on inflicting physical pain, light bodily injuries, and sometimes of moderate severity, restraint of liberty, for example, Articles 120, 180, 137, 164, 258 of the Criminal Code, etc. At the same time, the literature notes that in some of these cases, the scope of violence is limited to putting the victim in a helpless state, as well as a slight restriction of his or her

freedom (Articles 120 and 180 of the Criminal Code). Secondly, even in those cases where the corpus delicti of criminal offenses contain the element of "violence" (or its derivatives), the determination of the amount of physical harm is significantly influenced by the comparative severity of the sanction for a criminal offense committed with the use of physical violence and the sanctions in Articles 121, 122, 127, 146 of the Criminal Code, including for qualified corpus delicti of these criminal offenses.

Analysis from this perspective of the current legislation shows that in most cases the attribute of "violence" covers infliction of moderate bodily harm without additional qualification under Article 122 of the Criminal Code, in particular, Articles 262, 308, 314, 303, 364, etc. Infliction of grievous bodily harm in such criminal offenses, as a rule, requires additional qualification under Article 121 of the Criminal Code, especially if the offense has the qualifying circumstances provided for in this Article. Thirdly, the attribute of "violence" never covers the intentional infliction of death. Here, qualification under Article 115 of the Criminal Code of Ukraine is always mandatory. This traditional rule of qualification of complex violent criminal offenses is due to two circumstances: first, the exceptionally high public danger of murder compared to other criminal offenses, and second, the exceptionally severe punishment of the latter (long terms of imprisonment) is not found for other violent criminal offenses.

5. Conclusions

In consideration of the aforementioned points, the following qualification rules are proposed: In cases of medium gravity crime (Article 122 of the Criminal Code of Ukraine) and grievous bodily harm (Article 121 of the Criminal Code of Ukraine), the violation of the statutory rules of guard duty committed with the use of violence does not necessitate additional qualification. Similarly, in cases of causing moderate bodily harm (Article 122 of the Criminal Code of Ukraine) and serious harm to health (Article 121 of the Criminal Code of Ukraine), the violation of the rules of service for the protection of public order and ensuring public safety committed with the use of violence does not require additional qualification. A violation of the statutory rules of internal service and patrolling committed with the use of violence does not necessitate additional qualification in

cases of medium gravity crime (Article 122 of the Criminal Code of Ukraine) and grievous bodily harm (Article 121 of the Criminal Code of Ukraine). Conversely, the intentional infliction of death as a result of a violation of the rules of special types of military service requires additional qualification under Article 115 of the Criminal Code of Ukraine.

The use of violence by persons during the performance of special types of military service should be qualified under Articles 418, 419, 420 and 421 of the Criminal Code only when the general rules of relations between military personnel are violated, and not the special rules established in the norms regulating the procedure for performing a particular military service. The abuse of authority by military commanders who are members of the squads, which resulted in the use of violence, including weapons, is assessed as a criminal offense against the order of performing special types of military service only in case of violation of special duties provided for the organization of performing a particular special military service. Establishment of the scope of physical harm in criminal offenses against the order of performance of special types of military service, which does not require additional qualification in conjunction with criminal offenses against life and health, is largely due, among other circumstances, to the comparative severity of sanctions for military criminal offenses and relevant criminal offenses against life and health of Ukraine.

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