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### QUALIFICATION OF EVASION FROM SERVING THE SENTENCE IN FORM OF SERVICE RESTRICTIONS FOR MILITARY PERSONNEL

The existence of a special criminal law for the responsibility of serving a sentence is not associated with deprivation of liberty, requires to think about the completeness of the contents of such criminal law prohibitions. Art. 389 Criminal Code of Ukraine establishes liability for the evasion from serving the sentence in the form: fine, disqualification to hold certain posts or engage in certain activities of public and correctional work.

The content of the existing forms of punishment, not associated with deprivation of liberty, indicates that legislator approached somewhat limited to installation in Art.389 of the Criminal Code of Ukraine about criminal liability for serving such forms of punishment. First of all we are talking about the penalty of

service restrictions for the military that in its content is similar to the penalty of correctional works. According to the Art. 58 Criminal Code of Ukraine, punishment in the form of official restrictions applied to convicted servicemen, except conscripts, for a term of six months to two years and consists in the deduction of funds in state income, with amount of salaries of the convicted in the amount established by a court verdict within ten to twenty percent. Almost similar to this have content the penalty of correctional works. According to Art. 57 Criminal Code of Ukraine, punishment like correctional labor imposed for a term of six months to two years on the workplace of the convicted and consists in the allocations of funds with the sum of income of the convicted in the amount established by a court verdict within ten to twenty percent.

In spite of this, the legislator has not set in Art. 389 of the Criminal Code of Ukraine, responsibility for evasion from serving the sentence in form of service restrictions for military personnel. However, this does not mean that there is a gap in legislation and complete lack of liability for such acts. The reason is also the meaning of the the penalty of official restrictions for military servants. So, as a rule, avoidance of service restrictions for military servants combined with the avoidance from execution of duties while passing military service, and therefore these acts, depending on the method and the subjective side evasion, qualify under Articles 402, 403, 407-409 of the Criminal Code of Ukraine.

Thus the proposal expressed by LV Chornozub, the establishment in ch. 2, Art. 389 Criminal Code of Ukraine, liability for evasion of the penalty of service restrictions for military serviceman it is reasonable and justifiable, but its necessity is associated only with a limited number of evasions. We are talking about cases where avoidance from serving of this punishment does not apply to avoidance of incurring general obligations or military service.

In this regard, avoidance of particular punishment, to some extent, can relate to avoidance from execution of duties of military service, that in turn can form one of the elements of crimes under Articles 402, 403, 407-409 of the Criminal Code of Ukraine. However, in our opinion, these elements of the crimes will not form

an adjacency with the the offense under Art. 389 Criminal Code of Ukraine, even with the establishing, Art. 389 Criminal Code of Ukraine, responsibility for avoidance from serving military servicemen service restrictions. It is substantiate first, by understanding the adjacency elements of crimes and secondly, the absence of mutually exclusive joint (adjacent) characteristics of these elements of crimes. That is a sign of avoidance of punishment not only for characteristics avoidance of military service. On the contrary, the passage or perform military service may be considered as a generic term covering execution of various military duties, including those arising with the punishment in the form of service restrictions for military personnel.

Under such circumstances, elements of the crimes under Articles 402, 403, 407-409 of the Criminal Code of Ukraine is not contiguous with the the offense under Art. 389 Criminal Code of Ukraine, even if this article will provide the evasion of serving punishment in the form of service restrictions for military personnel. However, regulations that allow for such elements of the crimes may form competition.

With ratio of military duties and on passing, perform military service and military responsibilities to the implementation of punishment in the form of military servicemen service restrictions, it follows that Article. 389 (if you install it liability for evasion of military servicemen service restrictions) and Articles 402, 403, 407-409 of the Criminal Code of Ukraine and form a competition. Thus Article 402, 403, 407-409 of the Criminal Code of Ukraine is one whole, as providing various types of avoidance of duties on a common passing or military service. While the art. 389 of the Criminal Code of Ukraine, which will envisage the responsibility for the evasion of military servicemen service restrictions is part of this, because these obligations apply only to a particular spectrum of responsibilities with the passing or military service.

Absence of Art. 389 Criminal Code of Ukraine guidance on the responsibility for the evasion of military servicemen service restrictions creates a legal gap, as avoidance of this punishment that does not combine with the evasion of general duets with passing or perform military service is not criminal offences, although, in

substance and degree of public danger such acts are most similar to avoidance from serving the punishment in the form of correctional works.

According to this, formulation of proposals to add to ch. 2, Art. 389 of the Criminal Code of Ukraine and Responsibility for avoidance from serving punishment in the form of military servicemen service restrictions are appropriate and justifiable. Thus, it is suggested, ch. 2, Art. 389 of the Criminal Code of Ukraine, after the words «correctional works», add the words «or official restrictions for military servants.» At the same time, the adoption of such changes will cause the competition of norms under Art. 389 (standard, which provides part) and the norms under Articles 402, 403, 407-409 of the Criminal Code of Ukraine (the rules provide the whole). In this connection, qualification of acts under consideration must be carried out according to the rules of qualification in the competition norms, providing part and the whole.

#### List of referenses

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