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USSR Report

MILITARY AFFAIRS

MILITARY CRIMINAL LAW FOR COMMANDERS

Ed. by

A. G. Gornyy

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Moscow KOMANDIRU -- O VOYENNOM-UGOLOVNOM ZAKONODATEL'STVE in Russian 1983 (signed to press 10 Aug 82) pp 1-176

[Book "Military Criminal Law for Commanders," under the general editorship of Col-Gen Just A. G. Gornyy, "Voyenizdat," 35,000 copies, 176 pages]

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[Text] Annotation

This work was prepared by a collective of authors consisting of Col-Gen Just A. G. Gornyy (Introduction); doctor of juridical sciences, professor, and honored jurist of the RSFSR Col Just Kh. M. Akhmetshin (Chapters I and IV); candidate of juridical sciences, docent Col Just F. S. Brazhnik (Chapters V, VI, and VII); doctor of juridical sciences, docent Col Just V. V. Luneyev (Chapter XI); candidate of juridical sciences, honored jurist of the RSFSR Col Just I. P. Rashkovets (Chapters VIII and IX); candidate of juridical sciences, docent Col Just A. A. Ter-Akopov (Chapter III jointly with V. V. Shuplenkov and Chapter X); and candidate of juridical sciences, docent Col Just V. V. Shuplenkov (Chapters II, XII, and, with A. A. Ter-Akopov, III).

The editorial board consisted of Kh. M. Akhmetshin, V. V. Luneyev, and I. P. Rashkovets.

This book sets forth the fundamental principles of the criminal responsibility of military servicemen for the commission of military crimes under existing military criminal law. The concept of military crime is explained, the types of punishment applied to servicemen are presented, and a legal description of specific types of military crimes is given. The book examines the main areas of work to prevent military crimes.

The book is intended for commanders, political workers, and cadets and students at non-legal military schools.

Introduction

The USSR Armed Forces, indoctrinated by the Communist Party in a spirit of absolute dedication to the Homeland and the cause of communism, are vigilantly guarding the peaceful constructive labor of the Soviet people. Permeated with lofty ideals they perform their constitutional duty to reliably defend the

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socialist Fatherland and be in constant combat readiness which guarantees the immediate repulse of any aggressor.

Under contemporary conditions where the army and navy are equipped with collective types of weapons and combat equipment and sophisticated combat complexes which can only be kept in constant combat readiness by the skillful and coordinated actions of many people, it becomes exceptionally important for each fighting man to be highly organized, self-controlled, and irreproachable in performance. Even isolated cases of carelessness and lack of discipline may have grave consequences. That is why V. I. Lenin's teaching that "We must have military discipline and military vigilance raised to the highest level"[1] and his demand that "all laws concerning the Red Army and all orders be followed out of conscience, not out of fear, and discipline be maintained in the army by every means"[2] sound so timely today.

The everyday life and activities of the Soviet Armed Forces as an organic part of socialist society are constructed on the basis of the Leninist principles of socialist legality. The USSR Constitution, the USSR Law on Universal Military Obligation, the military regulations, and other enforceable enactments of military law regulate the procedures for performance of military service and the rights, duties, and mutual relations of military servicemen precisely. Rigorous observance and percise execution of the requirements of the USSR Constitution, the laws, and the military regulations by all servicemen are an essential condition for maintaining the constant combat readiness of units and ships. Military legal order creates a solid legal basis for mutual relations among fighting men, permitting them to carry out their missions of defending the socialist Fatherland successfully in any situation, under the most difficult conditions.

In the Soviet Armed Forces since their origin military discipline has been based on each serviceman's being highly conscious of his patriotic and international duty and being dedicated to the ideas of the Communist Party and the ideals of the Great October Socialist Revolution. Our army is properly called a school of political and moral indoctrination for young people, for toughening them ideologically and physically, and for teaching them a high level of organization and discipline. Soviet fighting men typically have a profound understanding of their personal responsibility for defense of the Homeland, an activist posture in life, and a feeling of genuine military comradeship, and carry out the requirements of the laws, military oath, regulations, and orders of commanders conscientously. The high political-moral state of personnel, their political consciousness, and discipline have a positive effect on the fighting effectiveness of the Armed Forces and on maintaining them in constant combat readiness.

Commanders, political organs, and party and Komsomol organizations carry on planned, purposeful work to prevent legal offenses in the army and navy. This

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1 V. I. Lenin, "Poln. sobr. soch." [Complete Works], Vol 39, p 55.

2 Ibid., p 152.

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work is done on the basis of Leninist principles embodied in resolutions of congresses of the Communist Party and decrees of the CPSU Central Committee and Soviet Government. This struggle is made highly effective under army and navy conditions, as follows from the 2 August 1979 decree of the CPSU Central Committee entitled "Improving Work to Protect Legal Order and Intensify the Struggle Against Legal Offenses," by the unity of action of commanders, political organs, party and Komsomol organizations, and the organs of military justice; a comprehensive approach to indoctrination of personnel; and, correct use of means of state and social influence. Primary attention here is devoted to eliminating the causes and conditions that foster the commission of legal offenses and to instilling servicemen with high ideological-political and moral qualities and socialist legal consciousness. The decisive factors in successful performance of these missions are purposeful organizational and ideological-political work by commanders and political workers; their high demands and intolerance of shortcomings; and their personal example in observance of Soviet laws, the military oath, the military regulations, and legal and moral-ethical norms of behavior.

Soviet criminal law, including the Law on Criminal Responsibility for Military Crimes, is an important tool in the struggle against legal offenses in army and navy forces. Skillful use of the law in the struggle against crimes and other violations of established procedures for performance of military service is one of the essential conditions for maintaining solid military discipline and regulation order in the Armed Forces.

Correct application of the laws for the above-stated purposes presupposes that officer personnel have certain legal knowledge. This knowledge is especially important for commanders of military units and large units and the chiefs of military institutions, to whom the law gives the powers of preliminary investigation. It is these officials above all who are expected to organize and conduct work to prevent legal offenses and, when necessary, to organize investigation of them and decide whether to turn over their findings concerning guilty persons to organs of the military procurator's office. To perform these functions commanders and chiefs must have a solid knowledge of the general requirements of the Soviet State's legal policy, the norms of existing law on the criminal responsibility of military servicemen, and the purposes and fundamental principles of assigning and serving sentences.

All other commanders and chiefs who, under Article 49 of the Internal Service Regulations of the USSR Armed Forces, are expected to engage in legal indoctrination of subordinates on a daily basis must also have a good knowledge of the law on the responsibility of military servicemen for legal offenses. And because they rely in their indoctrination work on party and Komsomol organizations, taking advantage of their influence on all personnel, party and Komsomol activists must also have a certain amount of such knowledge. Military lawyers and legal activists give commanders, political workers, and the heads of army and navy social organizations a great deal of help both in improving their own legal sophistication and in organizing legal indoctrination work with the men.

As we know, military servicemen and reservists called up to active duty enjoy all the rights and bear all the responsibilities of citizens of the USSR

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envisioned in the USSR Constitution. Their rights and duties, which follow from the conditions of military service, are established by the USSR Law on Universal Military Obligation and the military regulations. According to Article 83 of this Law, military servicemen and reservists on active duty bear criminal responsibility in conformity with existing law for crimes that they commit.

Military criminal law, which is the set of all criminal law norms that apply only to military servicemen, is a particular part of Soviet criminal law. Military criminal law has the immediate mission of protecting the fighting effectiveness and combat readiness of the Soviet Armed Forces, military service relations, proper performance of military service, and military discipline against criminal infringement. Military criminal law comprises the Law on Criminal Responsibility for Military Crimes and the norms of the Fundamentals of Criminal Law of the USSR and Union Republics concerning criminal punishment applied only to military servicemen. The need for special military criminal law results from the unique characteristics of the Armed Forces as a military organization whose activity demands unconditional observance of the principles of one-man command ["yedinonachaliye"], absolute obedience to commanders and chiefs, detailed regulation of all service, and strict military discipline.

The Law on Criminal Responsibility for Military Crimes defines which violations of discipline and military order are criminal and what punishments should be applied to the guilty persons. In this way it preserves the system of military and service relations established by laws and military regulations, promotes indoctrination of personnel in a spirit of rigorous observance of military discipline, and deters unstable people from disallowed actions and behavior. Thus, the Law on Criminal Responsibility for Military Crimes has important indoctrination and preventive significance, on the one hand, and on the other hand it enables one-man commanders and the organs of military justice to an energetic struggle against military crimes strictly within the framework of socialist legality.

Military criminal law begins from the concepts of crime, guilt, the purposes and missions of punishment, and so on which are defined in the Fundamentals of Criminal Law of the USSR and Union Republics. Soviet criminal law does not contemplate a special system of military punishments. Military servicemen guilty of committing crimes generally receive the same kind of punishments as do civilians. The procedures for assigning and carrying out punishments are determined by the uniform norms of criminal, criminal procedural, and corrective labor law. The general principles concerning criminal conviction, prescription [limitation of actions] on initiation of a criminal case, prescription on execution of a guilty verdict, cancellation and clearing of a criminal record, and so on also apply to military servicemen who have committed military crimes.

At the same time the Law on Criminal Responsibility for Military Crimes has certain specific features. Above all it clearly defines the object of criminal infringement: military service relations, the key components of established procedures for performance of military service. Only those crimes against the established procedures for performance of military service which are committed

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by military servicemen or reservists when serving on active training duty and persons equivalent to them who are directly indicated in the Law[3] are recognized as military crimes. All other persons are subject to responsibility under the articles of the Law only in cases where they are accomplices in a military crime.

A significant characteristic of the Law on Criminal Responsibility for Military Crimes is also that a number of its articles envision disciplinary responsibility on the condition that the crimes indicated in them were committed with mitigating circumstances. This refers to certain violations of internal order in the military unit which, although formally they do fit the elements of some particular article of the Law, still by their nature do not present a significant danger to military legal order and the maintenance of military discipline. Persons guilty of such legal offenses can be rehabilitated by means of penalties imposed under the rules of the Disciplinary Code of the USSR Armed Forces.

Of course this humane rule has nothing in common with universal forgiveness and indulgence of legal offenders. "Any law," the Accountability Report of the CPSU Central Committee to the 26th Party Congress stated, "is alive only when it is carried out, carried out by all people in all places."[4] The Central Committee of the CPSU demands that each crime be properly investigated and that the guilty persons receive their just punishment. In our country where the laws express the will of the people and are aimed exclusively at protecting their interests, any concealment of crimes is intolerable. But it is especially intolerable in the Armed Forces, because failure to punish legal offenders nurtures crime and leads to the breakdown of military discipline and the lowering of combat readiness.

The Accountability Report of the CPSU Central Committee to the 26th Party Congress observes that persons employed by the organs on whom the investigation of crimes and punishment of guilty persons depends must have a combination of professional knowledge, civic courage, incorruptibility, and fairness. This party demand applies fully to the commanders and chiefs who are given the rights of preliminary investigative organs in the Armed Forces and to other officers who may be assigned to conduct preliminary or administrative investigations.

Beginning from this and endeavoring to help certain categories of servicemen improve their legal knowledge, the authors of the present book set forth the basic principles of Soviet military criminal law in lay form. The book examines the general concepts of military crime, the range of persons to whom military criminal law applies, the criteria for distinguishing a military crime from a disciplinary offense, and other questions which commanders and chiefs

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[3] Here and in the subsequent text references to the "Law" will mean the Law on Criminal Responsibility for Military Crimes.

[4] "Materialy XXVI s "yezda KPSS" [Materials of the 26th CPSU Congress], Moscow, 1981, p 64.

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may encounter when evaluating the nature of legal offenses. The book is also intended for a broad range of officers and warrant officers and for legal activists engaged in legal indoctrination of personnel.

The collective of authors express in advance their gratitude to those readers who will consider it possible to express their comments and wishes concerning the content of this book.

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CHAPTER 1. THE CONCEPT OF THE MILITARY CRIME

1. Definition of the Concept of the Military Crime

A crime is an act which presents danger to socialist society and the rights and interests of the citizens and therefore is prohibited by the criminal law. Article 7 of the 1958 Fundamentals of Criminal Law of the USSR and the Union Republics gives the following definition of the concept of a crime: "A crime is recognized to be a socially dangerous act (action or inaction) contemplated by the criminal law that infringes on the social order of the USSR, its political and economic systems, socialist property, the individual personality, and the political, labor, property, and other rights and liberties of citizens as well as any other socially dangerous act envisioned by the criminal law that infringes on socialist legal order."

The main element of a crime is its social danger, that is, its ability to cause significant damage to the interests of socialist society. Of the different types of incorrect behavior Soviet criminal law singles out and declares to be criminal and criminally punishable only those which present a serious danger to socialist legal order. Because under conditions of socialism the interests of society and the interests of the individual do not contradict one another, any criminal act is considered socially dangerous regardless of whether it infringes on general state interests or on the legally protected interests of individual citizens.

The second element of a crime is that it is against the law: only that socially dangerous act which is directly contemplated in the criminal law is recognized as criminal. And the third element of a crime is the culpability (guilty mind) of the person in commission of the socially dangerous, illegal act. Only an action or inaction which a person does with a guilty mind, under the control of consciousness and will, is recognized as a crime. No act, no matter what dangerous consequences it may have, can be considered a crime if it was committed without a guilty mind.

The concept of the military crime is defined in Article 1 of the Law on Criminal Responsibility for Military Crimes which was adopted by the USSR Supreme Soviet on 25 December 1958.[5] The article states: "Military crimes are recognized to

[5] See VEDOMOSTI VERKHOVNOGO SOVETA SSSR, 1959, No 1, Article 10.

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be crimes against established procedures for performance of military service envisioned by the present Law and committed by military servicemen and reservists during active duty training."

The Law on Criminal Responsibility for Military Crimes is a constituent part of unitary Soviet criminal law. It is full reproduced in the criminal codes of the Union Republics and is applied in practice in the form of the corresponding articles of these codes. Specifically, military crimes form the 12th chapter of the Special Part of the RSFSR Criminal Code (Articles 237-269).

The definition of a military crime begins from the general concept of a crime as a socially dangerous, illegal, and culpable action or inaction. At the same time it points out the special features of a military crime that distinguish it from other, general crimes.

The social danger of military crimes lies in the fact that they flagrantly violate military legal order, that is, the social relations regulated by military law, cause harm to this legal order, and weaken the military discipline and combat readiness of the troops.

The special characteristics of a military crime are: (1) the act is directed against established procedures for performing military service and against military legal order, and (2) the legal offense is committed by a serviceman or a reservist during active duty training, in other words by a special subject.

Any military crime is characterized by both of these elements together. For example, socially dangerous acts by military servicemen that do not infringe on the established procedures for performing military service (for example, stealing the personal property of citizens, infringement on the life and health of an individual, and so on) are not military crimes. As general crimes they are subject to determination according to the appropriate articles of the criminal codes of the Union republics. At the same time, work crimes committed by civilian workers and employees of the Soviet Army are not military crimes because these crimes are committed by persons who are not in the military service.

In addition to the above one must keep in mind that there are also crimes which, although they violate procedures for performance of military service and are committed by military servicemen, still are not envisioned as military crimes by military criminal law (for example, a serviceman's stealing military gear issued to him for service use, or careless destruction of or damage to military gear). Responsibility for these actions also follows under the articles of the criminal codes of the Union republics which envision the corresponding general crimes.

The procedures for performance of military service (military legal order) against which the military crime infringes are the totality of military service relationships that arise in the process of troop life and combat activity and are fixed in Soviet laws, the military oath, the military

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regulations, statutes on service by different categories of servicemen, and other enactments of military legislation. These procedures must be followed by all servicemen; rigorous and exact compliance with them is the essence of military discipline and an essential condition for insuring the constant combat readiness of the USSR Armed Forces, which guarantees the immediate repulse of any aggressor.

The established procedures for performance of military service are a constituent part of socialist legal order. At the same time, military legal order reflects the specific principles of military organization: military service as the constitutional duty of Soviet citizens; one-man command; absolute obedience by subordinates to superiors, and strict military discipline. It is characterized by comprehensive, detailed regulation of social relations in the army and navy and precise delineation of the rights and obligations of the subjects of these relations.

Each military crime infringes directly not against the full totality of military relations protected by military criminal law, but against specific relations that constitute a definite part (aspect) of the rules for performance of military service. The components of military legal order are as follows: procedures for mutual service relations of commanders, (chiefs) and subordinates, superiors and inferiors in military rank, and servicemen who are not in relationships of subordination and seniority; procedures for going through military service; rules established by corresponding normative documents for using military gear and military equipment; procedures for performing combat duty, guard duty, and other special services, and so on.

In conformity with this the military crimes envisioned in the Law form the following system:

-- crimes against the rules of subordination and observation of military honor -- disobedience, failure to carry out an order, resistance to a superior or forcing him to violate service obligations, threatening a superior, violent actions in relation to a superior, and criminal insult of one serviceman by another (Articles 2-8 of the Law, Articles 238-244 of the RSFSR Criminal Code);[2]

-- avoiding military service -- being absent without leave, leaving the unit or place of service without authorization, desertion, leaving the unit without authorization in a combat situation, and avoiding military service by self-mutilation or other means (Articles 9-13 of the Law, Articles 245-249 of the RSFSR Criminal Code);

-- crimes against procedures for preservation of military property and use of military equipment -- illegally disposing

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[2] Here and in the later text we refer also to the corresponding articles of the criminal codes of the other Union republics.

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of or losing military property, deliberately destroying or damaging military property, violating the rules of driving or using motor vehicles, violating the rules of flight or preparation for flight, and violation of the rules of ship navigation (Articles 14-18 of the Law, Articles 250-254 of the RSFSR Criminal Code);

-- crimes against procedures for performance of special work -- violation of regulation rules for guard and convoy service and garrison patrol, violation of the rules for performance of border service, violation of the rules of performance of combat duty, and violation of regulation rules for internal service (Articles 19-22 of the Law, Articles 255-258 of the RSFSR Criminal Code);

-- divulging military secrets (Article 23 of the Law, Article 259 of the RSFSR Criminal Code);

-- military official crimes (Article 24 of the Law, Article 260 of the RSFSR Criminal Code);

-- military crimes committed in a region of military operations (Articles 25-33 of the Law, Articles 261-269 of the RSFSR Criminal Code).

2. The Subject of Military Crime

As noted above, only military servicemen and reservists during active training duty can be the subject of military crime, the persons who commit it.

The term "military servicemen" in the Law means people on active military duty in the Soviet Army, Navy, and border and internal troops. In addition to soldiers, seamen, sergeants, petty officers, warrant officers, and officer personnel this term also includes students and cadets at military schools.

The term "reservists" mean people enlisted in the reserve of the USSR Armed Forces. The USSR Law on Universal Military Obligation establishes that periodically during their time in the reserve reservists are called up for training duty. Socially dangerous acts by reservists against established procedures for performance of military service are recognized as military crimes only when committed during these training tours.

According to Part 2 of Article 1 of the Law on Criminal Responsibility for Military Crimes, soldiers, seamen, sergeants, petty officers, and officer personnel of state security organs and also persons who are specially indicated in the law of the USSR are responsible for crimes against the procedures established for them to perform their service, as are military servicemen of the Armed Forces, under the corresponding articles of the Law.

Among the persons specially indicated are military construction workers, who by their legal status are equivalent to regular-term military servicemen.

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In addition, according to Article 82 of the 1949 Geneva Convention on Treatment of War Prisoners,[3] prisoners of war who are obliged to obey the laws and the regulations and orders operative in the armed forces of the country that is holding them captive can be responsible under certain articles of the Law.

The initial and final moments of active duty military status between which a person may be found guilty of committing a military crime are determined by the corresponding points on going through military service. The beginning of regular-term active military duty is considered to be the time when the draftee in fact presents himself at the military commissariat to be sent to the military unit. The final moment of this service is when the serviceman receives in his hands the documents from the military unit on his discharge into the reserve. Cadets and students of military schools who are civilians and have reached 17 years of age and reservists are on active military duty from the day they enroll in the military school. The fact of taking the military oath is not significant for recognizing a person to be a subject of military crime. However, the fact that it has not been taken at the time that the military crime is committed may be viewed as a circumstance that mitigates responsibility.

The beginning of the term of service for officers and warrant officers is determined in two ways: (a) by the date that the order granting the appropriate military rank was signed for personnel on active duty; and (b) by the date prescribed by the military commissariat for departure to the place of service for reservists enlisted in active military duty. The end of active duty status for these categories of servicemen is considered to be the day on which they are removed from the personnel roster by an order for the unit. The beginning and final moments of active military duty for extended-term servicemen are determined in a similar way.

The initial and final moments of service for reservists called to training duty are the first day that the reservist is actually present at the training site and the last day of the training assembly.

Crimes committed by a person before the beginning of active military duty (or training duty) or after it is over cannot be recognized as military crimes. Responsibility for evasion of a regular call to active military duty and evasion of training or examination assemblies by reservists comes under general criminal laws. It is envisioned by Article 80 and 198[1] of the RSFSR Criminal Code and corresponding articles of the criminal codes of the other Union republics. People who have been discharged from the Armed Forces can be held criminally accountable for military crimes only if the crimes were committed while they were in the service.

Some military crimes can be committed not by all servicemen, but only by persons who have certain characteristics. For example, military official crime (Article 24 of the Law, Article 260 of the RSFSR Criminal Code) can

[3] See "Zhenevskiye konventsii o zashchite zhertv voyny" [Geneva Conventions on Protection of War Victims], Moscow, 1954.

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only be committed by chiefs or other official personnel; failure to carry out the order of a superior (Articles 2 and 3 of the Law, Articles 238 and 239 of the RSFSR Criminal Code) can only be committed by subordinates, while the crimes envisioned by Article 19 of the Law or Article 255 of the RSFSR Criminal Code (violation of the regulation rules for guard, convoy, and patrol duty) can only be committed by persons who are members of the guard, convoy, or patrol detail.

As a general rule persons who have been incorrectly drafted for military service as well as those who are unsuitable for military service because of health at the moment of the commission of the legal offense can be held accountable for the commission of military crimes. According to the USSR Law on Universal Military Obligation (Articles 27 and 29) the suitability of a person for active military duty is determined by the rayon (or city) draft commission; it is the same commission that decides the question of calling him up. Although a person has been incorrectly called up for military service, he carries the rights and duties established for military servicemen. Until the decision of the draft commission is properly canceled. these rights and duties have mandatory force and may not be violated; those who violate them are subject to responsibility.

Military crime as a socially dangerous and criminally punishable act is expressed in violation of the established military legal order by a serviceman and causing harm to the Armed Forces. Therefore, even though a person may have been incorrectly called up for military service he is an actual participant in military-service relations and if he commits a military offense he is subject to responsibility. At the same time, the question of the responsibility of persons who are unsuitable for military service when they commit military crimes is decided for due regard for the fact that because of their health or for other reasons these people are subject to release from the duties of military service. Mental anomalies and other unhealthy conditions (for example, feeble-mindedness, psychopathy, uncontrollable sleepiness, and the like) or physical handicaps, as well as being under draft age may, when they are the reason for unsuitability for military service, be very important in deciding the question of responsibility for the act committed, and also for individualizing this responsibility. Needless to say, the importance of the circumstances will depend above all on the nature and danger of the act committed.

A person's unsuitability for military service may be grounds for recognizing a legal offense committed to be non-criminal because of mitigating circumstances, and thus involving application of the rules of the Disciplinary Code of the USSR Armed Forces. With respect to such military crimes as leaving the unit or place of service without authorization, violation of the regulation rules for guard, internal, and other special duties, and the like it may be recognized as grounds for releasing the guilty person from criminal responsiblity and punishment because the social danger of the act or of the peson who committed it is removed. This possibility is envisioned in Article 43 of the Foundations of Criminal Law (Article 50 of RSRSR Criminal Code).

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But by itself the unsuitability of a person for military service is not always a circumstance that mitigates responsibility. For example, unsuitability for military service because of flat-footedness does not affect the nature and degree of responsibility of a military serviceman guilty of committing acts of violence in relation to a superior (Article 6 of the Law, Article 242 of the RSFSR Criminal Code) or misuse of military gear (Article 14 of the Law, Article 250 of the RSFSR Criminal Code).

At the same time, cases are possible where the act committed is a direct result of the illness or physical handicaps of the subject who is recognized as unsuitable for military service on this basis (for example, failure to carry out an order to cross an obstacle zone because of illness in the legs, sleeping on sentry duty by a person suffering from uncontrollable sleepiness). In such cases the act is considered to be committed without guilt; it cannot be recognized as criminal and therefore does not entail responsibility.

3. Complicity in Military Crimes

A military crime can be committed by one person or in complicity, that is, with deliberate, joint participation by two or more persons. A crime committed in complicity is usually one of greater social danger. For example, the Law views group commission of insubordination, resistance to a superior, or forcing the superior to violate the duties of military service to be an aggrivating circumstance that entails greater responsibility for the guilty person (Point "b" of Article 2 and 4 of the Law, Articles 238 and 240 of the RSFSR Criminal Code). In a crime committed and involving complicity a distinction is made among the principals (co-principals), organizers, abettors, and accessories. A person who has actually committed a crime is considered a principal. The organizer organizes commission of the crime or directs its commission. The abettor is a person who has incited another person to commit a crime. The accessory is a person who has helped in the commission of a crime with advice, instructions, providing means, or removing obstacles as well as a person who promised in advance to conceal the criminal, implements and means of committing the crime, traces of the crime, or objects obtained by criminal means (Article 17 of the RSFSR Criminal Code). All co-participants are subject to responsibility. The degree and nature of each co-participant's participation in commission of the crime is considered by the court in sentencing.

Military servicemen and reservists called up for assemblies may be the principals (co-principals) of a military crime as well as organizers, abettors, and accessories. Civilians cannot be the principal of a military crime, but they can be abettors, accessories, or organizers (for example, accessories in evasion of military service by self-mutilation or forging documents, abettors to misuse of military property, and the like.)

Persons who are not military servicemen cannot be co-principals in a military crime either. For example, if a civilian and a military serviceman together violently resist a patrol detail when the detail detains the serviceman for violation of public order, the serviceman is recognized as a principal in a military crime (Article 4 of the Law, Article 240 of the RSFSR Criminal Code), while the civilian is an accessory. In this situation resistance to the patrol detail will not be considered a group crime.

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Cases are possible where a military serviceman does not participate directly in the commission of actions that make up a military crime, but incites civilians to do this. Nonetheless, the serviceman in such cases is recognized as the principal in the crime and the civilians are accessories (so-called perpetration of the act through another). For example, if a serviceman, from a desire to get back at a commander for his high service demands, incited his civilian friends to commit violence against the commander, he would be subject to responsibility(under Article 6 of the Law, Article 242 of the RSFSR Criminal Code) as a principal in the crime, while the civilians who committed the violence would be accessories.

Cases where the superior takes part in commission of the crime together with subordinates are more dangerous to military legal order. This circumstance is considered by the court in sentencing. In those cases where the commanding officer (superior), when committing a military official crime, incites his subordinates to take part in this crime, he is recognized as the principal in the crime and the subordinates are accessories.

4. The Military Crime and the Disciplinary Offense

Any infringements on the established procedures for performance of military service are violations of military law. By the nature and degree of social danger some of them are crimes, while others are disciplinary offenses. The military crime has greater social danger than the disciplinary offense.

Only a person guilty of committing a crime is subject to criminal responsibility. The set of acts recognized as crimes is rigorously defined by criminal law. Therefore, the legal foundation for delineating the military crime from disciplinary offenses is chiefly the norms of the Law on Criminal Responsibility for Military Crimes; guided by these norms, all violations of military law can be divided into two groups:

1. Violations of the established procedures for performance of military service which do not contain the elements of a crime, are not envisioned in military criminal law, and therefore can only be recognized as disciplinary offenses (for example, violation of the uniform and rules of military courtesy, first-time absence without leave for less than 24 hours, and so on);

2. Violations that are included by the law as military crimes (Articles 2-33 of the Law, Articles 238-269 of the RSFSR Criminal Code).

It should be kept in mind, however, that violations classified in the second group are not in all cases recognized as military crimes that entail criminal responsibility. As noted above, the most important element of a crime is its social danger. The Fundamentals of Criminal Law in Part 2 Article 7 (Part 2 Article 7 of the RSFSR Criminal Code) state: "Although it formally contains the elements of some act envisioned by the criminal law, an action or inaction which because of its insignificance does not represent a social danger is not a crime."

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In conformity with this, such violations of the law as misuse or loss of small articles of clothing or gear, short (up to 1-2 hours) repeated absence without leave, and the like are not military crimes. Because of their insignificance they are recognized as disciplinary offenses.

Point "b" in Articles 3, 5, 7, 8, 14, 19, 20, 21, 22, 24, and 32, Point "g" of Article 9, and Point "d" of Article 23 of Law, which state that the corresponding violations which are recognized as military crimes under certain conditions entail application of the rules of the Disciplinary Code of the USSR Armed Forces if they are committed in mitigating circumstances are important for delineating military crimes from disciplinary offenses. In other words, if they fit the indicated norms of the Law these violations are not by their nature crimes, but rather disciplinary offenses and as a result persons guilty of committing them cannot be subjected to criminal punishment.

Mitigating circumstances in which a violation of military law ceases to be criminal and becomes a disciplinary offense can relate to the character of the violation, the conditions and situation of commission of the violation, actions to eliminate its harmful consequences, character of the offender, his behavior in the service both before and after commission of the violation, and so on. Among such circumstances are, for example, a short period of time in the military service as a result of which the guilty person does not adequately know the requirements of military order, irreproachable service before commission of the violation, sincere repentance and diligence in the service after commission of the violation, and so on.

The norms of the Law concerning application of the Disciplinary Code rules offer the possibility of differentiated decisions on the question of the criminality of violations of military law that do not present great social danger based on their actual social danger in particular conditions of time, place, and circumstances and with due regard for the character of the offender. The right to decide this question belongs to commanding officers (chiefs) who are responsible for turning findings over to military investigative organs. These person are the commanding officers of military units and large units and chiefs of institutions, in other words commanding officers and chiefs who are given the rights of preliminary investigative agencies in the USSR Armed Forces, as well as to higher-ranking commanders and chiefs.

In the cases indicated above the decision of the commanding officer to subject an offender to disciplinary, not criminal responsibility has legal force and can be canceldd or modified only by the commanding officer himself or by a higher-ranking officer. If such a decision is made in violation of the law, that is where there are not mitigating circumstances necessary to recognize the violation as non-criminal, the decision is canceled by the appropriate commanding officer or chief at the request of the military procurator.

The commanding officer's decision to bring a serviceman to disciplinary responsibility for the violation committed because of mitigating circumstances does not lose force if this serviceman commits a new violation for which he is held criminally responsibility. According to existing law the violation which was classed as a disciplinary offense cannot be recognized

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as a crime that entails criminal punishment. However it may influence the type and degree of punishment for the crime committed after being held to disciplinary responsibility.

The fact that a commanding officer or chief turns over his findings on a violation to military investigative organs does not by itself predetermine the question of holding the guilty person criminally responsible. Guided by the law and basing themselves on the actual circumstances of the case, the military justice organs make an independent legal evaluation of the act committed and on this basis decide the questions of classifying this act and bringing the guilty person to criminal or disciplinary responsibility. Having established that the violation was committed in mitigating circumstances and therefore is a disciplinary offense, the military investigative organs stop the criminal case because the elements of a crime are not present. A similar decision is made by the court when such a case has reached the court. In these cases the appropriate commanding officer or chief decides the question of applying measures of disciplinary responsibility to the offender.

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CHAPTER 2. PENALTIES APPLIED TO MILITARY SERVICEMEN

1. The Objectives of Criminal Punishment

Criminal punishment is one of the means used in the fight against crime. It is a special form of state coercion which is only applied to persons guilty of committing a crime, and is only done by the court. "No one can be recognized as guilty of committing a crime or subjected to criminal punishment except by a verdict of the court and in accordance with the law," states Article 160 of the USSR Constitution.

Criminal punishment can be applied by the court only where it has been proven with certainty that the particular person committed a specific crime that is directly envisioned in the criminal law. Criminal punishment is given on behalf of the state. The USSR Supreme Court and all military tribunals deliver verdicts in the name of the Union of Soviet Socialist Republics, while the courts of the Union republics (rayon, city, oblast, kray, and republic courts) speak in the name of the Union republic. A convicted person can be released from serving criminal punishment only by the presidium of the USSR Supreme Soviet or Union republic in the form of amnesty or pardon , and also by the court in cases established by law.

After it goes into legal force the verdict of the court delivered in the name of the state becomes mandatory for all state organs and organizations, officials, and citizens and must be carried out everywhere in the country. For example, if by sentence of a military tribunal a military serviceman is deprived of the right to drive means of transportation or to occupy positions involving material responsibility, then during the period of time indicated in the sentence of the court no enterprise, organization, or military unit can give him work involving the particular type of activity.

Punishment as a measure of coercion inevitably involves causing certain deprivations to the convicted person and limiting him in certain rights or benefits. The nature and scope of these deprivations depends on the particular type and extent of punishment, which is given with due regard for the gravity of the crime committed and the degree of social danger of the convicted person. In this sense punishment is retribution for the crime committed.

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But causing the convicted person to suffer is not a goal-in-itself. V. I. Lenin defined the role of the Soviet court as follows: "Deterrence + indoctrination."[1] The punitive effect in combination with mandatory indoctrination of the convicted person during the process of serving the punishment is essential to achieve such humane goals as correction and reindoctrination of convicted persons in a spirit of a conscientious attitude toward labor, precise execution of the laws, and respect for the rules of socialist communal living and to prevent the commission of new crimes both by convicted persons and by others. However, it is impossible not to consider that the process of reindoctrination often demands considerable time and in reality is still not always successful. Therefore, the goal of preventing new crimes by the convicted person is also accomplished by isolating him from that environment and situation in which he could commit crime again. The threat of a more severe punishment for another crime also plays a certain part in achieving this goal.

Punishment also plays its social role in the fight against crime by affecting the consciousness of other members of society, convincing them of the immutability of the established order and creating confidence that it will be reliably protected.

In our society an absolute majority of citizens observe the laws and rules of socialist communal living voluntarily, because of their political consciousness and moral convictions. But there are also those who do not violate them only because punishment is given for this. The criminal law, declaring certain acts which harm society to be criminal and establishing punishments for them, helps keep these citizens from illegal actions and encourages them to behave correctly.

Before committing a crime a person thinks to some degree about its possible consequences, weighs various circumstances and, becoming aware of the inevitability of future criminal responsibility, is restrained from crime. But the threat of the punishment contained in the law would not by itself be an effective means of restraining people from committing crimes if punishment were not in reality applied to persons who have committed crimes. V. I. Lenin wrote as follows: "The preventive significance of punishment is not at all a result of its severity, but rather its inevitability."[2]

Thus, in the last analysis the social purpose of punishment as the final stage of criminal responsibility is to prevent crime and protect socialist society against socially dangerous infringements. Alongside increasingly broad use of measures of persuasion and social influence on offenders punishment remains at present an essential means in the fight against crime.

2. Penalties Applied to Military Servicemen

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[1] V. I. Lenin, "Poln. sobr. soch." [Complete Works], Vol 36, p 547.

[2] Ibid., Vol 4, p 412

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Punishment must be legal and just. The objectives of punishment can only be achieved when it is applied with due regard for the gravity of the crime committed, the character of the guilty person, and circumstances of the case that mitigate or aggravate responsibility. Therefore, Soviet criminal law envisions three groups of punishment: primary, supplementary, and punishments employed both as primary and as a supplementary.

The primary punishments are loss of freedom, corrective labor without loss of freedom, social censure, and the special military punishment of assignment to a disciplinary batallion. Confiscation of property and deprivation of military and special ranks are employed in cases envisioned by the law only as supplementary to the primary punishment. Then, such forms of punishment as banishment to or from a certain place, fines, and deprivation of the right to occupy certain positions or engage in certain activities can be used as either primary (independently) or supplementary. For particular especially grave crimes execution by firing squad can be used as an exceptional measure of punishment.

The specific conditions of life and work in the Armed Forces lead to certain distinctive characteristics in the application of particular punishments to servicemen. For example, corrective labor is not used with them; instead they are kept in the guardroom for a period of up to two months. At the same time, as we see from the above, special punishments such as assignment to a disciplinary batallion and deprivation of military rank are envisioned for rehabilitation of servicemen.

The Law on Criminal Responsibility for Military Crimes envisions three types of punishment: loss of freedom, assignment to a disciplinary batallion, and execution.

Loss of freedom can be given for periods from three months and, under the general rule, up to 10 years. But for especially grave crimes, for crimes that have especially grave consequences, and also for especially dangerous recidivists in cases directly envisioned by the law a punishment of up to 15 years loss of freedom may be given.

Depending on the gravity of the crime committed, prior convictions, and the term of punishment given by the court, convicted persons serve their sentences to loss of freedom in four types of corrective labor colonies (general, reinforced, strict, or special regime) or in jail. Persons sentenced to loss of freedom for a term of up to five years for negligent crimes serve their sentence in settlements where the regime is less strict. This system for serving terms of loss of freedom also applies to convicted military servicemen.

Criminal punishment is employed on a individual basis. For example, many articles of the Law envision loss of freedom as a measure of punishment. But this does not mean that it will necessarily be applied in fact in all cases when loss of freedom as punishment is envisioned for a particular crime. For able-bodied adults sentenced for the first time to a term of up to three years for an intentional crime or up to five years for a crime

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committed out of negligence this punishment can be given on a conditional (probationary) basis, but the convicted person must go to work at places assigned by MVD agencies. When making such a decision the court considers the degree of gravity of the crime committed, the character of the guilty person, and also the possibility of his rehabilitation in freedom, but under supervised conditions. If the probationer avoids work or regularly and maliciously violates labor discipline, public order, or the rules of living established for him, he is sent to places of incarceration (loss of freedom) to actually serve the given sentence.

This form of conditional sentencing to loss of freedom can be applied to military servicemen who are officers, warrant officers, and on extended duty. In such a case the convicted person is subject to discharge from active military duty and when the sentence goes into legal effect is sent to work at enterprises or construction projects of the national economy. Conditional sentencing to loss of freedom with mandatory labor is not used for regular-term servicemen.

Assignment to a disciplinary batallion is employed for periods of from three months to two years to regular-term servicemen and military construction workers. It is given in cases directly envisioned by the Law on Criminal Responsibility for Military Crimes (for absence without leave, misuse or loss of military gear, and violation of regulation rules for patrol in the garrison) and also for commission of other military and general crimes when the court, considering the circumstances of the case and the character of the convicted person, deems it wise to assign the convicted person to a disciplinary batallion for a period of up to two years instead of loss of freedom.

An important feature of this punishment is that convicted persons serving in disciplinary batallions continue to be military servicemen and perform duties in the military service. The purposes of the disciplinary batallion are to rehabilitate and reindoctrinate convicts in a spirit of a conscientious attitude toward labor and service, precise execution of the laws, the military oath, the military regulations, and orders of superiors, and observation of the rules of socialist communal living and to prevent the commission of new crimes by them. Thus, the rehabilitation influence on convicts under conditions of the disciplinary batallion includes military indoctrination. Combat and political training conducted with the convicts and various forms of indoctrination work have this goal.

The disciplinary batallion (or detached disciplinary company) is a military unit whose organizational structure, staff, and size are determined by the USSR Ministry of Defense. Direct management of these units is assigned to the troop commanders of the military districts in which they are located. The rights and duties of servicemen serving sentences in disciplinary units, the internal schedule, and norms for insuring pay and allowances are basically determined by general military regulations. It follows from this that internal order in them is by nature military legal order. At the same time, assignment to a disciplinary batallion, like any other punishment, has punitive elements which in this case find expression in the strictness of the regime and restrictions on some rights of the convicts.

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After the military tribunal delivers its verdict and before it goes into force, convicted persons who are be sent to a disciplinary batallion are kept in the guardhouse. When notice is received that the verdict has taken legal force, within three days the unit commander sends the convict under escort to the place for serving the sentence. The assignment of military construction workers and servicemen from other military districts who have committed crimes to a disciplinary batallion is done by order of the chief of the garrison at the place of the conviction. The convict's documents and personal effects are sent to the disciplinary batallion with the chief of the convoy.

Convicts who by their exemplary behavior and conscientious attitude toward labor and study have demonstrated their rehabilitation can be paroled (conditional early release) from serving further time if they have already served at least half of the term of punishment given by the court. If a convict becomes ill and because of his health is recognized as unsuitable for military service he is released from the disciplinary batallion ahead of time and discharged from the Armed Forces. In this case the part of the sentence that was not served can be replaced with another, lesser punishment. Person who have served their full punishment in a disciplinary batallion or have been released early are not considered to have criminal records.

The time that convicts spend in a disciplinary batallion does not count in the term of active military duty. It can be considered on an exceptional basis only by the commander of the branch of the Armed Forces or the commander of troops of the district or fleet. Such a decision is made with respect to servicemen who have mastered a military specialization, know the requirements of the military regulations well and carry them out precisely, and after release from the disciplinary batallion perform their service irreproachably. The petition for this is initiated by the commander of the unit where the released convict serves, after three months following his arrival in the unit. When a convict is released after his peers have been discharged into the reserve this petition can be initiated by the commander of the disciplinary batallion one or two months before completion of the term of punishment.

Execution by firing squad is permitted as an exceptional measure for especially grave crimes in cases directly envisioned in USSR law (for example, for treason against the Homeland, espionage, a terrorist act, gangsterism ["banditizm"], and premeditated murder with aggravating circumstances. The possibility of execution is also contemplated for grave military crimes committed during wartime or in a combat situation. In peacetime execution can only be employed as a punishment for resistance to a superior or forcing the superior to violate service obligations associated with the premeditated murder of a superior or another person performing duties in the military service. Persons who at the moment of commission of the crime have not reached the age of 18 and women who at the moment of commission of the crime or delivery or execution of the verdict are pregnant cannot be sentenced to execution.

Deprivation of military rank is employed by the court as a supplementary measure of punishment to a serviceman (or a reservist) when sentencing for a serious crime. This form of punishment can be employed by the verdict of the court to persons who have the ranks of junior or senior officer, warrant officer,

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or sergeant (petty officer). A copy of the verdict by which the convicted person is deprived of his military rank is sent to the appropriate military administrative organs: for officers to the USSR Ministry of Defense for declaration by an order of the minister, and for warrant officers and sergeants (petty officers), to the appropriate commander who awarded the particular rank (or to the military commissariat if this person is in the reserve).

Deprivation of military rank involves not only a moral impact. It also entails certain other consequences. A person who has been deprived of his military rank cannot later (after serving the primary punishment) occupy positions corresponding to this rank. Thus, where a convicted person is deprived of his officer's rank, he cannot later be used as an officer either in peacetime or wartime (if he has not been restored to his military rank after cancellation or clearing of the criminal record, which possibility is envisioned in the law). Another consequence when an officer is deprived of his military rank is loss of the right to a pension, and to medical treatment at medical institutions of the Ministry of Defense, as well as other privileges. All these things must be taken into account when discussing the question of the wisdom of employing this form of punishment. A convicted person is deprived of military rank only if he is unsuitable for later use in the Armed Forces in conformity with the rank he held, based on his moral-political and work qualities.

For commission of a serious crime a convicted person can also be deprived of government awards (orders and medals). The decision on this question is made by the Presidium of the USSR Supreme Soviet on request of the court.

3. What Guides the Court in Determining Punishment

The punishment is not always identical for identical crimes committed by different people. One of the most important principles that guides the Soviet legal system is the principle of rigorous individualization of punishment. The criminal law contains clear statements of those criteria which should guide the court in selecting the particular measure of punishment for the particular crime. Article 37 of the RSFSR Criminal Code states that the punishment should be set within the limits indicated in the article that envisions responsibility for the crime committed with due regard for the nature and degree of social danger of the act, the character of the guilty party, and circumstances of the case that mitigate and aggravate responsibility.

The legislative norms, setting the limits of responsibility for particular crimes, as a rule give minimum and maximum terms of the particular punishment; sometimes these limits are very broad. For example, in the case of violation of the rules for driving or operating military vehicles resulting in an accident with personal injury or other grave consequences, the Law on Criminal Responsibility for Military Crimes establishes punishment in the form of loss of freedom for a term between 2 and 10 years.

This is done so that when assigning punishment in specific cases the court will be able to consider all the individual characteristics of the crime and the character of the guilty party. In one case the violation of the rules may be associated with flagrant disregard of safety precautions by the guilty

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party, driving a vehicle while intoxicated, but in another case this can be the result of the driver's inexperience; in one case the result may be causing death to several citizens or preventing fulfillment of the combat assignment, while in another it may be a repairable breakdown of the vehicle. In each of these cases the punishment given by the court will depend on the nature of the violation committed, the gravity of the consequences that occurred, and other specific circumstances.

In addition to the harm caused by the crime the character of the guilt (was the crime committed intentionally or out of negligence), the motives that led the person to the crime, and -- if the crime was committed by a group of persons -- the role of each participant of the group in the crime must be considered. Consideration is also given to the sociopolitical and personal qualities of the guilty person, his attitude toward his social duty, the laws, and the collective, his family status, and his physical and mental health.

When assigning punishment to a military serviceman for commission of a military crime information that describes him as a military man is given great importance. For example, a positive reference in the military service, the receipt of government awards and insignia for military valor, a large number of commendations, and lengthy service without criticism before the commission of the crime are considered with respect to mitigation of the punishment, as are such factors as inadequate assimilation of military requirements because of being new in the service, a sincere desire to undo the guilt by conscientious service, and unsuitability for military service. In a number of cases the last circumstance (unsuitability) is recognized by military tribunals as exceptional, which gives them the right to assign a more lenient punishment than envisioned by the law. On the other hand, information established in the cause that characterizes the guilty person negatively is also subject to consideration: unconscientious performance of military duty, systematic, flagrant violations of discipline, abuse of alcohol, and the like. This practice in setting punishment promotes achievement of its indoctrinational and preventive goals.

The law mentions certain circumstances related to the crime committed and the character of the guilty party as circumstances that mitigate, or on the other hand aggravate, responsibility. Among the mitigating circumstances, for example, are: action by the guilty person to prevent harmful consequences of the crime committed or voluntary reimbursement for damage caused; commission of the crime in a state of powerful emotional agitation ["heat of passion"] caused by the improper actions of the victim; commission of the crime because of grave personal or family circumstances, and also under the influence of a threat or compulsion, or defending against a socially danger infringement but exceeding the limits of essential defense, and so on. Among the aggravating circumstances the law mentions the repetition of the crime; commission of the crime by an organized group, or with special cruelty or tormenting of the victim, or taking advantage of the condition of social disaster or a generally dangerous method; commission of the crime out of selfish or other base motives; commission of the crime in a state of intoxication, and certain others.

In isolated cases where there are exceptional circumstances the law gives the court the right to set a punishment that is more lenient than envisioned for

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the particular crime. And if the court when setting punishment in the form of loss of freedom or corrective labor considers the circumstances of the case and the character of the guilty party and comes to the conviction that it will not be wise for the convicted person to actually serve time, it may decree that punishment not be employed against the guilty person on a conditional basis. This decision of the court is called conditional conviction (probation). It is applicable to all categories of military servicemen in connection with the commission of both general criminal and military crimes. When a suspended sentence is given to a guilty person, the probationary period lasts from one to five years. If during the probationary period established by the court the probationer does not commit another intentional crime, the sentence will not be carried out. If this condition is violated the guilty person sentenced to loss of freedom for a new crime will also serve the punishment given earlier on a conditional basis.

Social organizations or collectives of working people can petition the court for a guilty person to receive probation. With respect to a military serviceman this petition can be submitted to the military tribunal by the collective of the military subunit or unit, if it is supported by the unit commander. When the court finds it possible to grant the petition, it turns the probationer over the the corresponding collective for reindoctrination and rehabilitation. The court can also use probation on its own initiative. In this case the military collective or, for example, the Komsomol organization of the unit (with their permission), is assigned the duty of supervising the probationer and doing indoctrination work with him. Probation is not ordinarily used with people who have committed serious crimes, who regularly or maliciously violate discipline, and who were turned over to a collective for help at an earlier time.

A special form of release from criminal punishment is the reprieve (postponement of execution of a verdict) given to a military serviceman or reservist during wartime. The essential point here is that during wartime execution of the verdict of loss of freedom can be postponed for a serviceman (and also for a reservist subject to the draft or mobilization) until the end of military operations, and the convicted person can be sent to military units of the active army. If the convicted person shows himself to be a steadfast defender of the Homeland in battle, the court may, on petition of the military command, release him from the punishment entirely or substitute a new, more lenient punishment.

During the time of the Great Patriotic War the reprieve for servicemen was used widely by military tribunals and proved to be an effective means of fighting crime in the army and navy. Most of the military servicemen who were convicted and given reprieves proved to be steadfast fighting men in battle, demonstrated courage and heroism, and even before the end of military operations had not only freed themselves from the punishment but in many cases also earned government awards.

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CHAPTER 3. CRIMES AGAINST THE PROCEDURES OF SUBORDINATION AND MILITARY COURTESY

1. Criminal Law Protection of One-Man Command and Military Courtesy

The most important principle of construction of the Soviet Armed Forces is the principle of one-man command ["yedinonachaliye"]. Only one-man command makes it possible to insure the unity of action of many people that is essential in military affairs, flexibility and operating efficiency of control, and achievement of maximum results with minimum expenditure of effort and minimum human and materiel losses. The experience of the Civil and Great Patriotic Wars demonstrated convincingly that only full and unconditional following of this principle in the army and the navy makes it possible to achieve victory over the enemy.

Under contemporary conditions the role and significance of one-man command have increased immeasurably as a result of the fundamental changes in military affairs and growing complexity of the missions performed by armed forces. Therefore, Soviet laws, the military oath, and the regulations of the USSR Armed Forces obligate each military serviceman to carry out the orders and other instructions of superiors strictly and precisely and to obey them unconditionally. Failure of a serviceman to fulfill these requirements, and even more an attempt to obstruct the service activity of commanders (chiefs) or modify it contrary to the interests of the service are the most dangerous infringements on the foundations of control in the Armed Forces because they can lead to disorganization of the particular military formation and its inability to carry out its combat mission.

Soviet laws give commanders and chiefs broad authority and protect their service activity and their personal inviolability and dignity against any infringements whatsoever. Failure to obey a superior, resistance to his service activity, or violence in relation to a superior in connection with his service activity are recognized as grave military crimes.

At the same time Soviet laws and military regulations guard the honor and dignity of each military serviceman regardless of his position in the service. They obligate both subordinates and inferiors in rank, on the one hand, and superiors or seniors in rank on the other to respect one another and be solicitous of the honor and dignity of every military serviceman. This helps insure healthy mutual relations among fighting men, precludes the possibility of conflicts arising, and ultimately helps maintain high morale among personnel and solidarity in the military collective.

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Observance of the established forms of interaction between superiors and subordinates and of the rules of military courtesy follows from the constitutional principle of the equality of Soviet citizens and underlines the unity of goals and missions of all categories of servicemen in the Soviet Armed Forces and their combat comradeship. Violation of the rules of military courtesy and offending the honor and dignity of military servicemen have a negative effect on the mood of personnel, their observance of subordination procedures, and ultimately on the combat readiness and fighting effectiveness of the particular military formation. Therefore, infringements on the honor and dignity of a serviceman performing his service duty are viewed as military crimes by the Law.

Thus, crimes against the procedures of military subordination and the rules for observance of military honor are similiar to one another in their socially dangerous orientation and thus constitute a single group of crimes against the system of subordination and observance of military courtesy. This group includes: insubordination, failure to carry out an order, resistance to a superior or forcing him to violate service duties, threatening a superior, violent actions in relation to a superior, criminal insult of a superior by a subordinate and of a subordinate by a superior, and criminal insult by violent action of one serviceman against another when there are no relations of subordination or seniority between them.

2. Insubordination and Failure to Carry out an Order

One of the most dangerous crimes that infringes on the system of military subordination in the Armed Forces is insubordination, which Article 2 of the Law (Article 238 of the RSFSR Criminal Code) defines as open refusal to carry out the order of a superior, or any other intentional failure to carry out an order. By "order" the Law means any official command by a superior directed to subordinates with a demand to carry out (or refrain from carrying out) some specific action in the service. The particular type of order ("prikaz," "prikazaniye," "komanda," "predpisaniye," and the like) does not matter, nor does the fact that the order was written or spoken, given to one serviceman or to a group, or that it was given directly to the subordinate by the commander, through other servicemen, or using communications equipment.

A distinction must be made, however, between these commands and documents that formalize orders, which contain general rules of activity for servicemen in a particular area of the service and are long-standing and directed to an indeterminate number of servicemen (instructions, manuals, rules, and the like). Failure carry out such written orders is not considered to be insubordination, but in appropriate cases it may constitute another military crime. For example, if a sentry leaves his post without authorization this is a violation of the regulation rules of guard service, but if the sentry does not carry out the demand of the chief of the guard directed to him to go to this post it is insubordination.

The most flagrant form of insubordination is open refusal to carry out an order when a subordinate categorically announces that he will not carry out the demanded action and in fact does not. The refusal may also be expressed

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by silence when the subordinate by some particular actions, gestures, or facial expression demonstrates his intention not to carry out the order.

If a military serviceman who has received an order to carry out some particular action expresses displeasure that the commander directed it precisely to him and not to some other serviceman or if he discusses the order and tries to get out of performing it under some pretext, but when the order is confirmed does carry it out, this type of resistance is not insubordination; it may, however, be recognized as a disciplinary offense.

Any other deliberate failure to carry out an order is distinguished from open refusal by the fact that the subordinate outwardly accepts the order for execution, but then consciously fails to carry it out. Another form of behavior that is evaluated as insubordination is where a subordinate, pitting his will against the will of the commander, proceeds as he himself believes necessary, not in conformity with the order (modifies a strictly defined route of travel, time calculation, or calculation of forces and means to perform an assignment, or in some other way deviates from the order).

Although the law does not stipulate it specially, in practice certain insignificant cases of failure by a serviceman to carry out the commander's order may also be evaluated as disciplinary offenses. Under peacetime conditions it is often adequate to apply measures of disciplinary responsibility for failure to carry out certain orders relating to questions of proper uniform, the rules of saluting, the schedule of the day, cleaning up rooms, and the like.

It was noted above that the state protects only those orders of a commander which are given on a service basis and in the interests of the service. If an order is given on non-service matters or conflicts with service interests, or if a subordinate is ordered to perform actions that contradict the norms of law and morality, such an order does not have legal force and is not protected by the law. "A demand to carry out orders which are not really related to the service," M. V. Frunze said, "impels the subordinate to violate discipline and in this way demoralizes both him and his unit. We have waged and will continue to wage a ruthless campaign against such phenomena."[1]

This does not mean, however, that a commander can give a subordinate an order only during work time and only with respect to performance of professional duties. For example, a commander's demand that a subordinate who is in town on leave stop his violation of public order is precisely a service order and failure to follow it entails criminal responsibility.

Under peacetime conditions insubordination committed by one serviceman and not leading to grave consequences is punished by loss of freedom for a period of from one to five years. If the appointed punishment for this crime does not exceed two years, military tribunals can substitute assignment to a

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[1] M. V. Frunze, "Izbrannyye proizvedeniya" [Selected Works], Moscow, 1965, p. 263.

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disciplinary batallion for the same term, which makes it possible to rehabilitate the convicted man while continuing military service.

Insubordination committed by a group of military servicemen or leading to grave consequences presents increased social danger. In these cases the punishment for it is envisioned as loss of freedom for a term of 3-10 years. The crime is considered to have been committed by a group of persons when two or more military servicemen act jointly and each of them is aware that not only he himself, but also others are not carrying out the order. It is not important here whether the participants in the group agreed in advance on the joint insubordination or whether the behavior was agreed upon after receiving the command. Grave consequences may be disruption of the combat readiness of the subunit or unit, failure to fulfill the combat mission, the disabling of combat equipment, death or injury to people, and causing serious property damage to the state or citizens.

Insubordination becomes most dangerous in wartime or in a combat situation. Therefore, a sentence of execution or loss of freedom for a term of 5-10 years can be employed for commission of the crime during wartime or in a combat situation.

In view of the fact that any failure to perform a service order represents a certain danger to the Armed Forces, Article 3 of the Law (Article 239 of the RSFSR Criminal Code) establishes that failure to carry out an order out of carelessness is punishable. This crime can be expressed in the failure of a subordinate to perform a certain action which he has been ordered to perform, performing it in an imprecise, untimely, and incomplete manner, performing it in violation of a prohibition. The negligent guilt in this crime, distinguished from intentional guilt, is expressed in the fact that the subordinate shows inattention and forgetfulness and choses an incorrect method of carrying out the order where there is a realistic possibility of acting correctly.

Examples of failure to carry out an order because of carelessness might be a courier who delivers a report to the addressee late because the courier deviated from the assigned route to take care of personal matters, figuring to make up the lost time by catching a ride which in fact proved impossible. The act of a serviceman who, after receiving the commander's order, forgets to carry it out is classified in the same way.

Under peacetime conditions careless failure to carry out an order is punished by loss of freedom for a term of from three months to three years, and with mitigating circumstances entails use of the rules of the Disciplinary Code of the USSR Armed Forces. In wartime or in a combat situation the punishment may be in the range 3-10 years loss of freedom.

3. Resistance to a Person Performing Duties in Military Service or Forcing him to Violate These Duties

Cases of openly influencing the service activity of military servicemen with the purpose of stopping it or modifying it against the interests of the service are especially intolerable in the Armed Forces. Therefore, Article 4 of

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the Law (Article 240 of the RSFSR Criminal Code) establishes responsibility for resistance to a commander and to any other person performing duties assigned to him by the military service, or forcing him to violate these duties. Although these actions are joined together in a single article of the Law, each of them -- resistance and coercion -- is an independent crime.

Actions aimed at hindering a commander or other servicemen, not giving them the possibility of performing a specific service duty are recognized as resistance. Resistance usually begins when coercive measures are applied to a military serviceman who has committed some violation. Resistance can be offered, however, not only by the person against whom such measures are being taken, but also another person acting in the interests of the first. For example, if a military serviceman who is being detained by a patrol detail for violation of public order pushes away the guards and breaks free of them in order to escape detention, he is offering resistance to persons performing their military duties. Another serviceman who, wishing to help his friend escape from the guards, holds them or hits them is committing the same crime.

In practically all cases of resistance to a commander the guilty person is at the same time insubordinate toward him. But this does not mean that his actions constitute two crimes. Resistance by its essence is a more offensive, vigorous form of insubordination, and therefore everything done by the guilty person in such cases is classified under Article 4 of the Law.

Coercion of a commander or other person performing the duties assigned to him in the military service involves action against these people aimed at forcing them to proceed contrary to the interests of the service and violate the duties assigned to them. In this case the guilty person may be able to get the coerced person to commit certain illegal actions or actions which, although they are permissible, contradict the interests of the service in the particular case.

Unlike resistance where the guilty person by his own efforts hinders the commander or other servicemen from performing his service duty, coercion presupposes influence on the consciousness and will of these persons so that they themselves proceed contrary to the interests of the service. In addition, while resistance is not necessarily associated with force used against the victim, coercion always presupposes physical or mental force against the commander or other serviceman who is performing the duties assigned to him. Physical force here finds expression in the direct use of force against the victim (causing bodily injury, assault, tying up, and so on). Mental force means the threat of physical reprisal, destruction of property, and other similar actions in order to frighten the victim and force him to obey.

Every case of coercion is characterized by the fact that a specific demand is made of the victim to do something or refuse to do a certain action. For example, if a military serviceman is able to get a short leave by threatening the commander with beating if he refuses, his behavior is coercion of the commander using mental force.

Any military serviceman can be responsible for resistance or coercion, including servicemen who are not subordinate to the victim. It is not mandatory

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that the guilty person achieve his goal for the resistance or coercion to be recognized as a completed crime. The attempt to influence the service activity of these people is by itself the crime. And it should be emphasized here that the commander who does not take decisive steps to re-establish order and discipline bears responsibility for this under Article 7 of the Disciplinary Code.

Commission of the crimes envisioned by Article 4 of the Law under peacetime conditions is punishable by loss of freedom for a term of 1-5 years. But if these crimes are committed by a group of persons, using a weapon, or if they have grave consequences the punishment is set in the range 3-10 years loss of freedom.

To recognize resistance or coercion as committed by a group it must be established that the guilty persons consciously united their efforts to achieve a single result and supported one another. Let us imagine that Sergeant K., subunit orderly, sets off to report to the unit duty officer on a violation of internal order by Privates D. and F., who came back from leave drunk. Having agreed to prevent this, D. and F. do not allow the sergeant to leave the barracks; D. blocks the door with his body and F. pushes K. back into the room. Group resistance is taking place here.

The phrase "use of a weapon" means actual use of it to harm the health of a military serviceman whose service activity they want to influence, as well as threatening him (aiming a gun, brandishing a knife, and so on). Weapons here may be not only factory-produced firearms or cold weapons, but also home-made ones (filed-down guns, Finnish knives, and other objects) whose only or main purpose is to harm living things.

Grave consequences in the crime under consideration can in principle be the same as with insubordination. In addition these consequences can be expressed in infliction of serious bodily injury on the victim during resistance or coercion or causing him to die on the condition that the guilty person did not allow its onset. It is not precluded that causing less dangerous bodily injury to several victims at one time may also be recognized as a grave consequence.

If resistance or coercion committed by a group of persons, or using weapons, or having grave consequences was associated with the premeditated murder of the commander or other persons performing duties in the military service, or if it took place during wartime or in a combat situation it is recognized as a specially dangerous military crime. Execution or loss of freedom for a term of 5-15 years can be applied for such a crime.

It should be noted that resistance or coercion associated with premeditated murder is the only military crime for which execution can be used not only in wartime but also in peacetime. And causing the death of the commander or other servicemen is a constitu nt part of the crime under consideration and is not classified as an independent crime because the norm that envisions responsibility for resistance and coercion with such consequences is aimed at protecting not only personal safety but also the service activity of military servicemen.

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4. Threatening the Commander and Using Force Against Him

When it clothes commanders and other chiefs with essential service powers, including the right to give orders and commands to subordinates and seek to have them carried out unconditionally going so far as using coercive measures against violators of discipline, the Soviet State guards their person and service authority against all infringements of any sort. The commander, who is directing subordinate servicemen in the name of the state, must always be confident that his activities and he himself are under the protection of the law, that he has no reason to fear the possible discontent of an indifferent subordinate. Therefore, the Law on Criminal Responsibility for Military Crimes contains two articles that establish the responsibility of a subordinate for mental or physical force in relation to a superior in connection with his service activity.

Article 5 of the Law (Article 241 of the RSFSR Criminal Code) defines threatening murder, causing bodily injury, or an assault against a superior in connection with his performance of duties in the military service as a military crime. Threatening to commit any of these actions is an attempt by the subordinate to frighten the superior, to deter him so that the superior, afraid of reprisal, will modify the character of his service activity in the interests of the person making the threat (lower standards, not punish for legal offenses, give favors, and so on). The threat may be expressed directly to the superior in words or it may be transmitted to him through third persons; it may be presented in written form, or by means of threatening images or gestures. In those cases where a threat is not expressed directly to the superior, but is transmitted through third persons, it is necessary to establish that it was in fact intended for transmission to the superior and was taken to him.

The law restricts the content of the threat as a military crime to only the use of physical force in relation to the superior himself. A threat to use force against the relatives of the superior, to destroy his property, or to spread undesirable information, as well as indefinite threat such as for "You'll remember me," "We'll meet again," or "You'll be sorry for this" does not contain the elements of the crime.

A threat presents a social danger and is recognized as a crime only if it is in fact feasible and capable of exerting an influence on the superior, although it is not at all mandatory that the superior in fact be frightened or begin acting as the threatener wishes. But if the threat contains a promise of reprisal on the occurence of some improbable conditions or in a way that is quite unrealistic, the act is not recognized as a crime because such a threat can hardly influence the person to whom it is addressed.

The realism and practical feasibility of a threat does not at all mean that the guilty person in fact intended to carry it out. On the contrary, in actual life the guilty person most often does not plan to carry out the actions which he has threatened. He is only pursuing a goal by frightening to get certain advantages for himself from the superior. But in those cases where the threatener later carries out real actions aimed at putting the threat into effect, they may constitute another crime, for example preparation

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for murder, attempted murder, violent actions in relation to a superior, and so on.

The motive for threatening reprisal against a superior may be the subordinate's discontent with certain correct actions by the superior in the service or his general high standards and zealous work. But if the threat is a response to illegal, non-regulation actions by the superior, there is generally not responsibility for it.

It may also happen that a military serviceman, in a response of emotional hurt to what he considers injustice or lack of objectivity shown toward him, makes a statement of threatening content, but not pursuing the goal of frightening the superior and influencing his service activity. In such case the guilty person can be punished by the appropriate commander on a disciplinary basis without reference to the criminal law.

Under Paragraph "a" of Article 5 of the Law threatening a superior under peacetime conditions is punishable by loss of freedom for a term of from three months to three years. Point "b" of this article gives the commander the right in cases where the crime is committed under circumstances that mitigate the responsibility of the guilty person, to employ disciplinary measures with him. But under conditions of wartime or a combat situation the punishment for a threat increases and may be in the range of 3-10 years loss of freedom.

Other dangerous military crimes which infringe on the person of military commanders are violent actions in relation to a superior expressed as inflicting bodily injury or committing an assault in connection with his performance of duties in the military service (Article 6 of the Law, Article 242 of the RDFSR Criminal Code).

When committing this crime the guilty person is trying the get the commander to lower his service standards or to get revenge for a reprimand given to him earlier or some other service action. In this case the infringement on military service relations is accomplished by means of violating the personal inviolability of the superior and affecting his health and dignity.

It is not mandatory that, at the moment when the subordinate tries to commit violence against a superior, the latter be performing some duty in the service. The infringement may also take place in a non-service situation, away from the military unit. What is important is that the subordinate in this is guided not by personal relations with the superior (for example, a quarrel over a girl), but manifests a negative attitude toward the past, present, or future service activity of the superior. At the same time, an assault out of revenge motives for past service activity, committed against a former superior who is not such at the present moment does not contain the elements of this crime (it is classified as a general crime).

It follows from Article 6 of the law that causing the superior bodily injury or committing an assault against him are recognized as violent actions in relation to a superior.

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The phrase "bodily injury" refers to causing harm to health, expressed in a disturbance of the antomical integrity or physiological functions of the tissues or organs under the influence of factors in the external environment. Bodily injury may vary greatly in nature, from a scratch or bruise to loss of sight, hearing, an arm, or a leg by the victim, and so on. The criminal law distinguishes three degrees of gravity of injury: serious, moderate ["meneye tyazhkoye"], and minor ["legkoye"]. Minor injuries are, in turn, subdivided into: (a) injuries that cause a short impairment of health; (b) injuries that cause an insignificant, stable loss of work capabilities; (c) injuries that do not cause a brief impairment of health or insignificant, stable loss of work capabilities. A legal medicine examination is conducted to determine the degree of seriousness of bodily injury. Neither the preliminary investigation organ, nor the court investigator, nor the court has the right to decide these matters independently.

The term "assault" means multiple (more than one) blows associated with causing physical pain to the victim but not resulting in any visible impairments of the integrity of the tissues of the organism or the normal activity of its organs. If as a result of the blows the victim has abrasions, bruises, and the like, these consequences are considered minor bodily injury. A single blow that leaves no traces can be grounds for classifying the violence as criminal insult. This does not apply to cases where the guilty person, intending to commit acts of violence against the superior, was not able to carry through his criminal intention for reasons that did not depend on him. In such situations there is responsibility for an attempted crime.

Premeditated murder of a superior in connection with his performance of service duties is not considered a military crime by military criminal law. Responsibility for this act follows under the general norms of criminal law as murder in connection with the victim's performance of his service or social duty (Article 102, Point "v" of the RSFSR Criminal Code).

Violent actions against a superior together with insubordination, resistance, and coercion of the superior are classified in the category of serious crimes. This crime is punished by loss of freedom for term of 2-10 years. In wartime or in a combat situation, if the crime had grave consequences, the guilty person may be sentenced to execution or loss of freedom for a term of 5-15 years.

5. Criminal Insult of One Military Serviceman by Another

The general principles of Soviet law concerning protection of the honor and dignity of citizens apply fully to personnel of the Armed Forces. The USSR Constitution fixes the guarantees that insure the inviolability of the individual and his honor and dignity. The requirements of the Soviet military regulations that obligate military servicemen to observe courtesy and show self-control in relations among themselves and also in relation to the civilian population conform fully to the constitutional principles (Articles 39 and 43 of the Internal Service Regulations of the USSR Armed Forces).

One of the ways of protecting the personal dignity of citizens, military servicemen included, is establishing criminal responsibility for criminal

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insult. Intentional debasement in an unseemly form of the honor and dignity of any citizen whatsoever gives grounds to bring the guilty person to responsibility under Article 131 of the RSFSR Criminal Code. It is a mandatory condition for initiation of a criminal case under this article that there be a statement from the victim with a demand that the guilty person be brought to criminal responsibility.[2]

Under the conditions of military service criminal insult of one serviceman by another takes on a special coloring. Debasement of the personal dignity of a military man in unseemly form is by no means personal in nature, no matter what the motives for it may be. The military collective is based on mutual support, mutual help, and military comradeship. Each member of the collective must see a reliable support and a ready helper in each of his comrades. Any kind of hostility, hurt feelings, or lack of respect in relations among servicemen weakens the unity of the military subunit, thus lowering its fighting effectiveness and combat readiness. That is why under conditions of the military service this crime presents a significant social danger.

Considering the heightened significance of a healthy moral climate in relations among military servicemen, the Internal Service Regulations obligate all military servicemen to cherish military comradeship, the honor and combat glory of the Armed Forces and their own units, and the honor of their military rank (Articles 2 and 3). To cherish the honor of one's military rank means not only to refrain personally and restrain comrades from undignified behavior, but also not to allow insults addressed to oneself and to one's fellow servicemen.

Tolerance of flagrant forms of non-regulation attitudes towards oneself and comrades in service is sometimes based on a feeling of false humility. Of course, humility is a worthy adornment to a person, but not in this case. One's attitude toward such actions is by no means a personal matter, because they debase not only the individual personality, but also the military honor and dignity of a Soviet serviceman and undermine military comradeship.

Vigorous counteraction to insults promotes a normalization of mutual relations in the collective, increases its solidarity, and helps prevent crime. Needless to say, the response must not go beyond legal bounds. As the Regulations require, the military serviceman must show self-control, using legal means to defend military honor, and apply the force of comradely, Komsomol, and party influence.

Under certain circumstances criminal insult of one serviceman by another goes beyond crimes against the individual and causes harm to some particular sphere of the military service. When either the guilty person or the victim is

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[2] Cases of crimes envisioned by Article 131 (criminal insult), Article 130 (defamation), Article 112 (minor bodily injury), and Article 117, Part 1 (rape without aggravating circumstances) of the RSFSR Criminal Code and the corresponding articles of the criminal codes of the other Union republics are among the cases that are brought only upon the complaint of the victim.

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performing some duty in the military service at the moment of commission of the crime, this is such a circumstance. Insulting actions committed by a person who is performing service duties are always a flagrant violation of these duties and distract the guilty person from performance of his service functions. To an equal degree a person who insults a military serviceman during the latter's performance of service duties (for example, a company orderly, the driver of a military vehicle, an operator, and so on), by the same token obstructs the performance of the duties and distracts the person from them, which may lead to dangerous consequences. This happened, for example, with driver Private M. Before leaving on a trip he became greatly upset at the rude treatment he received from the squad leader, and as a result he became distracted from driving the vehicle and had an accident. Thus, the presence of this circumstance, that is that the guilty person or the victim at the moment of the crime was performing military duties, gives grounds to consider criminal insult as a crime not against the individual, but against the procedure for performance of military service. Unlike criminal insult envisioned in Article 131 of the RSFSR Criminal Code, persons guilty of criminal insult of one military serviceman by another during performance of military duty by either of them are brought to criminal responsibility on the initiative of the preliminary investigation organ or the military procurator's office regardless of whether there is a complaint by the victim. This also underlines the greater social danger of such a crime.

The Law has two separate articles that regulate criminal responsibility for this crime.

Article 7 of the Law (Article 243 of the RSFSR Criminal Code) stipulates:

(a) criminal insult in words or non-violent actions by a subordinate against a superior or a junior against a senior, as well as by a superior against a subordinate or a senior against a junior when either one of them is performing military duties is punished by loss of freedom for a term of 3-6 months;

(b) the same acts with mitigating circumstances entail application of the rules of the Disciplinary Code of the USSR Armed Forces;

(c) criminal insult by violent action committed under the conditions indicated in paragraph "a" is punished by loss of freedom for a period of from six months to five years.

Article 8 of the Law (Article 244 of the RSFSR Criminal Code) indicates:

(a) criminal insult with violent action by one military serviceman against another, if they are not in a relationship of subordination or senority and if at least one of them was performing military duties, is

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punishable by loss of freedom for a term of from three months to one year;

(b) the same act with mitigating circumstance entails application of the rules of Disciplinary Code.

These norms of the Law differ primarily by the relationships between the guilty persons and the victims. Article 8 speaks of criminal insult of one military serviceman by another when the guilty person and the victim are not subordinate to one another by position or rank, while Article 7 envisions responsibility for criminal insult of one military serviceman by another if they are in relations of subordination. The norm given in it emphasizes the fact that the regulation requirements on military courtesy are the same for all categories of servicemen. Debasing the honor and dignity of a subordinate by a superior undermines one-man command just as much as criminal insult of a superior by a subordinate. It is no accident that Article 48 of the Internal Service Regulations obliges the commander to "combine high standards and principles and intolerance of shortcomings with trust and respect for the men and constant concern for them, do not permit rude treatment or debase their personal dignity."

The other difference between Articles 7 and 8 is in the conditions of responsibility. Under Article 8 responsibility arises only if the insult was committed by violent action. Unlike this Article 7 envisions responsibility for criminal insult both by violent action and by non-violent action or words. These conditions of responsibility point to the greater degree of social danger in actions committed by a serviceman who is in relations of subordination with the victim. This danger is also reflected in the stricter sanctions of Article 7 compared to Article 8 of the Law.

What is the difference between criminal insult in words and criminal insult by non-violent action? Criminal insult is an intentional debasement of the honor and dignity of an individual expressed in unseemly form, that is, not appropriate to generally excepted norms of ethics and morality. Criminal insult in words involves various oral or written expressions of insulting nature (epithets, comparisons, nicknames, and the like) which may be stated out loud, given to the victim personally, or passed to him through a third person. In the last case it is absolutely necessary to establish that the military serviceman who used the insulting expression in relation to another serviceman who was not present intended that this statement would be taken to the victim. When he did not have this objective responsibility is precluded.

Criminal insult by non-violent actions involves various insulting gestures or grabbing the victim by the clothing or certain parts of the body if these actions do not cause pain. Physical action against the victim which causes pain -- pushing, hitting, assaulting, and causing minor bodily injury with or without impairment of the health -- is classified as criminal insult by violent action.

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In the process of criminal insult the victim may suffer moderate or serious bodily injury. In such cases the actions of the guilty party must be classified not only under Article 7 or 8 of the Law, but also according to the appropriate article of the criminal code which envisions responsibility for moderate bodily injury or serious bodily injury.

Criminal insult is an intentional crime. This means that the guilty person is aware that his actions are directed to debasing the honor and dignity of a particular military serviceman who is performing service duties. The lack of such awareness precludes responsibility for the military crime. There may be various motives for committing criminal insult; they do not affect the classification of the crime unless they indicate a more serious crime.

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CHAPTER 4. EVASION OF MILITARY SERVICE

1. Forms of Evasion of Military Service and Their Social Danger

A citizen who has been drafted into the ranks of the USSR Armed Forces is obligated to serve in the military for a set period of time in that military unit to which he is sent by the appropriate command, not to leave the unit area or place of service without the authorization of the commander, and to be ready at any moment to perform his military duty. The various forms of evasion of military service present significant social danger because they weaken the fighting effectiveness of units and subunits and the discipline and organization of personnel; make the work of commanders (chiefs) to train and indoctrinate subordinates and maintain firm regulation order more difficult; and, negatively influence certain unstable, undisciplined servicemen.

The danger of such violations has increased particularly under contemporary conditions where, in connection with the growing complexity of military affairs, speed, precision, and promptness in performance of combat missions even by small military collectives and individual servicemen is becoming more and more important. Furthermore, evasions of military service often create the ground from which other military or general crimes (larceny, hooliganism, violation of the regulation rules of guard service, and so on) grow or are associated with them. That is why a decisive struggle against these violations, including the use of criminal punishment, is one of the essential conditions for insuring the high fighting effectiveness and constant combat readiness of troops and naval forces.

The Law on Criminal Responsibility for Military Crimes envisions responsibility for the following types of evasion of military service: absence without leave (Article 9); abandonment of the unit or place of service without leave (Article 10); desertion (Article 11); abandonment of the unit without leave in a combat situation (Article 12); evasion of military service by self-mutilation or other means (Article 13).

2. Absence Without Leave

Criminal responsibility for absence without leave is established for regular-term military servicemen (Article 9 of the Law, Article 245 of the RSFSR Criminal Code). Absence without leave means abandoning the unit or place of service for not more than three days without authorization.

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Of course, regular-term servicemen are housed in barracks that are located in the area of their military unit, and they are permitted to go outside this area only in connection with performance of the duties of military service or with special authorization to do so. Absence without leave means abandoning the area of the military unit, which refers to the area of its barracks, camp, or field disposition within boundaries established by order of the command.

It cannot be called absence without leave when a serviceman goes out of his barracks without leave, but remains within the unit area. The Internal Service Regulations (Article 140) establish that when it is necessary to go out within the boundaries of the unit (or subunit) area, the soldier (or seaman) must ask the permission of his squad leader to do so, and report his return after coming back. Failure to carry out this requirement is considered a diciplinary offense. However, when subunits are located in distinct, separate areas leaving the area occupied by the subunit without authorization may be classified as absence without leave even where the serviceman goes to another subunit of the same unit.

The crime envisioned by Article 9 of the Law can also be committed by abandoning the place of service without leave. As a rule, the place of service of a serviceman is his military unit, where he is enrolled for his service, and so usually the concepts of "military unit" and "place of service" coincide. But in some cases the place of service may be different from the location of the military unit. For example, when a serviceman is on a work trip his place of service will be the place indicated in the trip order; when traveling as a member of a team it will be the convoy, train, and so on; and during performance of assignments or administrative jobs away from the military unit it will be the place of performance of these assignments or jobs.

An essential feature of the crime under consideration is that the abandonment of the military unit or place of service must be without leave, that is the serviceman has left the unit area or place of service without the authorization of the commander (chief). According to Article 204 of the Internal Service Regulations, regular-term servicemen are released from the unit area by the company commander. Therefore, lower-ranking commanders do not have this right. In practice, however, there are cases where a serviceman leaves the unit area with the authorization of his direct or immediate superior, who does not have the right to release him (for example, with the authorization of the deputy platoon leader, company first sergeant, and so on). Needless to say, in such cases the serviceman's departure from the unit area is improper. However, his actions cannot be recognized as absence without leave because he did not abandon the unit area or place of service without leave, but rather with authorization. Responsibility for violating the established procedures for release is borne by the corresponding commanders.

Alongside absence without leave Article 9 of the Law establishes the responsibility of regular-term servicemen for failure to appear for work on time without acceptable reasons when they have been released from the unit, when assigned or transferred, and when returning from a work trip, leave, or a medical institution. Therefore, with respect to punishability failure to

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appear for work on time without acceptable reasons is equivalent to absence without leave (abandoning the unit without leave). Failure to appear for work on time means that, after leaving the military unit or place of service with legal grounds, the serviceman fails to appear for work on time and stays away from the unit or place of service longer than the established time.

The lack of acceptable reasons is an essential condition for responsibility in the case of failure to appear for work on time. The law does not define what reasons are acceptable. The answer to this question depends on the specific circumstances of the case. Among the acceptable reasons should be the following: illness of the serviceman or his close relatives (for example, aged parents or children); a natural disaster (fire, flood); a transportation stoppage; an emergency situation (for example, being late returning in connection with giving urgent aid to a victim of a highway accident or saving a drowning child); detention by organs of authority; and other circumstances that deprive the serviceman of the ability to appear in the unit on time. In certain cases other circumstances such as, for example, a critical need to help aged parents with their material and domestic arrangements, may be recognized as acceptable reasons.

The question of recognizing reasons for failure to appear for work on time as acceptable or unacceptable is decided by the commander (chief) who is responsible according to law for turning the materials on the offense committed over to the military procurator. For cases which are submitted for examination by the organs of military justice, this question is decided by the military court investigator, the military procurator, or the court. Recognition of the reasons for failure to appear for work on time as acceptable precludes responsibility of the serviceman for failure to appear for work on time.

Criminal responsibility under Article 9 of the Law ensues for absence without leave or failure to appear for work on time that lasts more than one day, but not more than three days; it also ensues when the time is less than 24 hours, but the offense has been committed more than once in the space of three months. Absence without leave lasting less than 24 hours committed for the first time or more than three months after commission of the previous absence without leave is a disciplinary offense.

Absence without leave is recognized as a crime based on the element of repetition if the second absence was committed within three months after the first. It is not important here whether the first absence without leave was discovered promptly or whether the guilty person was given disciplinary punishment for it. The law recognizes repeated absence without leave as a criminally punishable act based on the fact of its commission. But absence without leave cannot be recognized as repeated if the disciplinary punishment imposed for earlier absences has been canceled. Two or more absences without leave committed within the space of 24 hours do not constitute a crime either.

The beginning of the period of absence without leave is the moment that the serviceman leaves the unit area or place of work, and the end is the time when the serviceman appears in the unit area or at the place of work or the time that he is detained away from the unit area or place of work, if the guilty

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person in this case did not intend to evade military service in general or for a period of longer than three days. The guilty person may be detained either by servicemen (patrols, a detail sent out from the military unit) or by organs of authority (for example, detention of the serviceman by a militia employee in connection with a violation of public order).

With respect to failure to appear for work on time without acceptable reasons the beginning of the crime should be considered the moment when the serviceman is supposed to appear in the unit or at the place of service according to the appropriate document (trip order, leave papers, a pass, and so on). The final moment of the crime in a case of failure to appear for work on time is determined in the same way as for absence without leave (the time of appearance in the military unit or detention away from the unit). Unlike absence without leave, which is always an intentional crime, failure to appear for work on time without acceptable reasons may be committed either intentionally or out of carelessness.

Regular-term enlisted and NCO personnel and military construction workers equivalent to them can be brought to responsibility for commission of this crime. The action of Article 9 of the Law also applies to cadets at military schools, schools for warrant officers, and other military educational institutions if they were not on regular-term active duty before enrollment for study.

Under Point "a" of Article 9 of the Law, absence from the unit or the place of service without leave and failure to appear for work on time without acceptable reasons are punished by assignment to a disciplinary batallion for periods of between three months and two years. Point "g" establishes that the acts envisioned by Point "a," where there are mitigating circumstances, entail application of the rules of the Disciplinary code. The question of the existence of mitigating circumstances is decided by the command or military justice organs based on the specific circumstances of the case.

Absence without leave (failure to appear for work on time) committed in wartime (Point "b" of Article 9) leads to loss of freedom for a period of 2-10 years.

Under Point "v" of Article 9 of the Law, absence without leave and failure to appear for work on time without acceptable reasons committed by servicemen who are serving sentences in a disciplinary batallion are punished by loss of freedom for a period of 1-3 years.

3. Abandonment of the Unit Without Leave

Abandonment of the unit without leave is a more dangerous form of evasion of military service. Like absence without leave this crime involves evading performance of the duties of military service by abandoning the unit or place of work; but it is characterized by a longer period of time. Moreover, unlike absence without leave, criminal responsibility for abandonment applies to officers, warrant officers and extended-service servicemen in addition to

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regular-term servicemen. The conditions under which officers, warrant officers and extended-term servicemen are responsible differ from the conditions established with respect to regular-term servicemen, and are defined separately in Article 10 of the Law (Article 246 of the RSFSR Criminal Code).

Abandonment of the unit or place of service without leave by a regular-term military serviceman is covered by Points "a" and "b" of Article 10 of the Law. The essential element of the completed crime envisioned by these points is that the guilty person be away from the unit area or place of service for more than three days. A case of absence from the unit without leave where the serviceman intended to evade performance of the duties of military service for a period of more than three days but for reasons not depending on him was detained before this period passed constitutes an attempt to commit this crime.

The law does not give a maximum length for abandonment of the unit without leave, but by its nature it is a temporary evasion of military service without the objective of completely evading it. The military serviceman, committing this crime, intends to be away from the unit or place of service temporarily for a certain time (more than three days), and after this to return to the unit and continue his service. The periods of absence may differ, but it is the intention of the subject to evade performance of the duties of military service temporarily, for a certain time, that distinguishes this crime from desertion.

The conditions of responsibility for failure to appear in the unit or at the place of service on time without acceptable reasons for a period of more than three days upon release from the unit, during assignment or transfer, or when returning from a work trip, leave, or a medical institution are the same as for abandonment of the unit without leave.

Abandonment of the unit or place of service without leave by a regular-term serviceman, and also his failure to appear for work on time without acceptable reasons when released from the unit, during assignment or transfer, or when returning from a work trip, leave, or a medical institution with a duration of more than three days entails loss of freedom for a period of 1-5 years. The same action committed in wartime is punished by loss of freedom for a period of 5-10 years.

Abandonment of the unit without leave by an officer, warrant officer, or extended-serviceman is covered by points "v" and "g" of Article 10 of the Law. It was noted above that when a regular-term serviceman leaves the area of the military unit without the authorization of the commander this is an abandonment of the unit without leave and it is recognized as a criminally punishable act or a disciplinary offense depending on the length of time. Officers and warrant officers must be in the area of the military unit or at the place of work during working hours. At the same time they can leave the unit area without special authorization on service business. These servicemen generally live in apartments away from the military unit and use their off-duty time at their own discretion. Warrant officers and extended-service sergeants and petty officers who are housed in barracks can also be away from the unit area during off-duty time.

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Accordingly, the Law applied to officers, warrant officer, and extended-servicemen does not define the phrase "without leave" to mean any departure from the unit area or institution without special authorization, but only leaving it with the intention to evade performance of the duties of military service for a certain period of time. In certain cases, however, mandatory confinement to the barracks may be established for these categories of servicemen by the appropriate senior officer. In these cases leaving the unit area or place of service without special authorization for this is considered to be abandoning the unit without leave.

Failure to appear for work on time by these servicemen can be failure to arrive in the unit without acceptable reasons during assignment or transfer or when returning from a work trip, leave, or a medical institution. Cases where an officer, warranty officer, or extended-service serviceman who lives away from the unit area fails to appear for service without acceptable reasons and thereby evades the performance of service duties should also be considered as failure to appear for work on time.

For absence from the unit or place of service without leave and for failure to appear in the unit or at the place of work without acceptable reasons lasting more than 10 days in peacetime and more than 24 hours in wartime, officers, warrant officer, and extended-service servicemen are punished by loss of freedom for periods of,respectively, 1-5 years and 5-10 years.

Article 10 of the Law also applies on general principles to reservists who have been called up for training assemblies.

4. Desertion

Desertion is evasion by a military serviceman of performance of his constitutional duty to defend the socialist Fatherland in the ranks of the Armed Forces and is therefore one of the most serious and dangerous military crimes.

Article 11 of the Law (Article 247 of the RSFSR Criminal Code) defines desertion as abandonment of the military unit or place of service with the objective of completely evading military service or as failure to appear in the unit or at the place of service during assignment or transfer and upon return from a work trip, leave, or a medical institution with the same objective. The length of the serviceman's illegal absence from the unit or place of service is not important for the completed crime. When the objective of evading military service is proven the absence from the unit should be recognized as desertion regardless of how much time the serviceman was away from the unit or place of service. In particular cases a person who has decided to desert may be detained within a few hours after leaving the unit and, if the above-indicated objective is established, will be subject to responsibility under this article of the Law.

In practice it may happen that a serviceman will leave the unit with the objective of evading military service, but after a certain time for one reason or another will himself return to the unit or turn himself in to the organs of military administration (the rayon military commissariat or the

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military provost). Such cases do not free the guilty person from responsibility, but they may be seen as circumstances that mitigate responsibility.

Desertion is an intentional crime. A serviceman who is committing desertion is pursuing the objective of completely evading performance of military service. The judgment that a person intended to evade military service can also be made in cases where a military serviceman leaves the unit or place of service without a clearly defined objective of completely evading military service, but does evade it for a long time and does not intend to return to the unit. The objective of evading military service may manifest itself in the serviceman not only before leaving the unit or place of service; it may also occur in the process of committing the crimes of absence without leave or abandonment of the unit without leave.

A distinction should be made between the objective of evading military service and the motives for desertion. The motives which guide the guilty person in committing this crime can vary: a desire to avoid the difficulties of military service, fear of responsibility for an offense or crime committed, fear of death during wartime, and so on. They are important for determining the degree of social danger of the crime and the criminal and for selecting a measure of punishment appropriate to this danger.

Desertion committed by a regular-term serviceman is punishable in peacetime by loss of freedom for a period of 3-7 years (Point "a" of Article 11 of the Law), while in wartime it is punishable by execution or loss of freedom for a period of 5-10 years (Point "b"). Officers, warrant officers, and extended-service servicemen who are guilty of desertion in peacetime are subject to a punishment of loss of freedom for a period of 5-7 years (Point "v" of Article 11 of the Law), while in wartime the punishment can be execution or loss of freedom for a period of 7-10 years (Point "g").

Desertion, absence without leave, and abandonment of the unit which are committed while a serviceman is performing the special duties of military service, for example, while on combat watch, guard duty, as a member of a detail guarding the USSR State Border, and the like, constitute concurrent crimes and are classified as evasion of military service and as violation of the rules for performance of the corresponding special duties (Articles 19, 20, 21, and 22 of the Law, Article 255, 256, 257, and 258 of the RSFSR Criminal Code).

5. Abandonment of the Unit or Place of Service Without Leave in a Combat Situation

Article 12 of the Law (Article 248 of the RSFSR Criminal Code) envisions criminal responsibility of military servicemen for abandonment of the unit or place of service in a combat situation.

In a combat situation it becomes especially important that all servicemen perform the duties assigned to them irreproachably; to a large extent this will determine whether the subunit or unit carries out its assigned combat

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mission. Under contemporary conditions where the army and navy have adopted combat equipment that is operated, for the most part, by the collective efforts of fighting men, evasion of performance of the duties by even one person may have very grave consequences. Therefore, abandonment of the unit or place of service by a serviceman in a combat situation and a desire to avoid performance of the duties of military service at the most difficult and important moment of the activity of the military collective represents increased social danger and necessitates the use of strict measures of punishment for persons guilty of committing this crime.

It is an essential element of the crime envisioned by Article 12 of the Law that the military unit be in a combat situation. A military unit can be in a combat situation not only in wartime, but also in peacetime if it is carrying on combat operations (for example, repulsing the intrusion of an armed band into USSR territory). Therefore, this Article of the Law may be applied in wartime or in peacetime.

The length of the unauthorized absence from the unit is not important for the crime envisioned by Article 12 of the Law. Abandonment without leave of the unit or place of service, when committed in a combat situation, is a completed crime regardless of its length, as the statute states directly. It is punished by execution or loss of freedom for a period of 3-10 years.

6. Evasion of Military Service by Self-Mutilation or Other Means

Article 13 of the Law (Article 249 of the RSFSR Criminal Code) envisions responsibility for a serviceman's evasion of performance of the duties of military service by causing himself some injury (self-mutilation) or simulation of an illness, forging documents, other deception, and also for refusal to perform the duties of military service.

The main difference between the first four types of evasion of military service and the elements of the crimes considered in preceeding sections of this chapter is that a serviceman who has committed them is freed from performance of duties in the military service on an apparently legal basis, with the authorization of the appropriate official. In reality, however, the grounds are fictitious, created either artificially or by means of deception.

Another difference between the forms of evasion of military service considered in this section, also including refusal to perform the duties of military service, is that evasion of military service classified under Article 13 of the Law is not always associated with abandonment of the military unit. Whereas the crimes envisioned in Articles 9-12 of the Law involve temporary or permanent absence of the guilty person from the military unit or place of service, this article covers both cases of temporary or permanent evasion involving abandonment of the military unit (for example, illegal discharge into the reserve or receiving a short leave) and cases of evasion from the performance of all or at least some duties of the military service but not involving abandonment of the military unit (for example, evasion of participation in marches and exercises, performance of combat duty or guard service, and so on).

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Intentional injury of various organs or tissues of the body, causing a certain illness, and also intentional exacerbation or intensification of an existing illness is recognized as self-mutilation. It may be done by causing harm to the health using a firearm, cold weapon, or cutting and piercing instruments, by using means of transportation, taking medicines or toxic substances internally, injecting them into the skin, and so on. In cases of self-mutilation there must be a legal medical examination to determine the nature of the injury and there must be a finding of the military medical commission concerning suitability for military service.

The crime under consideration here is not completed by the fact that a serviceman has caused himself some injury alone; it also involves evasion of performance of the duties of military service in this way. Evasion here means actual non-performance of particular military duties by the serviceman. The result of self-mutilation may be permanent or temporary evasion of all or some duties of the military service (for example, release from training periods and marches, placement in a medical institution, and so on). The crime is considered completed from the time when the serviceman has caused himself a certain injury and for this reason has in fact stopped performing duties in the service. It is not important here whether the guilty person's release from the particular military duties has been officially recognized by an appropriate order.

In those cases where the damage to health did not occur but the reason was circumstances not depending on the guilty person, for example where he used ineffective means, or when the harm to health by its nature does not provide grounds for release from the performance of particular duties of the military service, the actions of the guilty person can be recognized as an attempt to commit the crime envisioned by Article 13 of the Law.

Self-mutilation can be committed by the person who is evading military service himself, or at his request, by other persons, either military or non-military. In all of these cases the principal of the crime is the person who is injured and evades military service. The other persons who deliberately harmed the health of the guilty person are subjected to responsibility as accessories in evasion of military service by self-mutilation (Articles 17 and 249 of the RSFSR Criminal Code). And deliberately causing serious bodily injury to a serviceman, even at his request, is further classified as a crime against the health of a individual (Article 108 of the RSFSR Criminal Code).

Evasion of performance of the duties of military service by simulating a disease is similar to evasion by self-mutilation. Both of these forms of evasion presuppose that the person is released from the performance of particular duties of the military service because of his health. But in the case of self-mutilation there is actual harm to the health, while with simulation of a disease the offender in reality does not have the problems to which he refers in trying to get released from the duties of military service.

Simulation of a disease may take the form of pretended illness, false depiction of physical handicaps (lameness, deafness, and the like), or exaggerating

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the symptoms of an actual illness (aggravation). And both physical (somatic) and mental illnesses may be simulated. In cases of simulation of illness a legal-medical or legal-psychiatric examination must be assigned to establish the fact of simulation of the disease, and sometimes also to determine the person's suitability for military service.

Evasion of performance of the duties of military service by forging documents involves the case where a serviceman submits a forged document to the appropriate commander (chief) and on this basis receives a permanent or temporary release from all or some service duties. The military crime is not the actual forging of the document, but use of a forged document to obtain a release from military service. The crime may be committed, for example, by submitting a fictitious telegram announcing the death or serious illness of close relatives in order to receive a short leave, by a regular-term serviceman's submission of some particular forged document that gives him the right to early discharge from the army, and so on. The crime is considered complete from the moment that the release from particular military duties on the basis of the forged document is received.

Preparation of a fictitious document as well as making changes in an authentic document which distort its content are considered forgery. Forgery of a document may be committed by the serviceman himself who is released from the duties of military service on this basis, or by other persons. It is also recognized as evasion of military service when a person is released from service duties by submitting an authentic document which belongs to another person. A person who has forged a document at the request of a serviceman or deliberately gave him a forged document for release from military service is an accessory to the crime.

In addition to self-mutilation, simulation of disease, and forgery of documents, Article 13 of the Law envisions "other deception" as a method of evading military service. Other deception here means knowingly presenting to the commander (chief) false information about facts, events, or circumstances which caused the serviceman to be released from particular duties of the service. For example, presenting the commander with false information about oneself or close relatives should be considered other deception if the serviceman in this way gets a permanent or temporary release from the duties of military service.

Refusal to perform the duties of military service consists of an open statement by the serviceman that he does not want to serve in the Armed Forces or the particular military unit or that he does not want to perform particular duties of the military service accompanied by actual non-performance of these duties. Individual cases of systematic abandonment of the place of service by an officer or warrant officer or failure to appear for service done with the intention of evading service in the USSR Armed Forces can also be recognized as refusal to perform the duties of military service.

Article 13 of the Law also covers refusal to perform the duties of military service because of religious convictions. Long ago, in the 1918 decree of the Soviet Government on the separation of church and state and school and church, it was stated that no one can evade the performance of his civic duties by

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reference to religious beliefs. This principle continues to operate today. Article 52 of the USSR Constitution, which guarantees citizens freedom of operation of religious groups, does not release religious believers from the performance of duties imposed on them by Soviet laws. The equality of Soviet citizens regardless of their attitude toward religion, which is guaranteed by the USSR Constitution, presupposes at the same time that believers and non-believers will perform their civic duties, including the honorable duty of serving in the ranks of the USSR Armed Forces, identically. It is not accidental that activity conducted under the guise of performance of religious rituals and involving encouragement of citizens to refuse to take part in public activities or perform civic duties entails criminal responsibility for the organizers, leaders, and active participants in such activity (Article 227 of the RSFSR Criminal Code).

An open statement by a serviceman that he refuses to serve in the Armed Forces or to perform particular military duties out of religious conviction and accompanied by actual non-performance of them is recognized as a military crime. In practice there may be certain cases where a serviceman (or military construction worker) conscientiously performs the service duties assigned to him but, out of religious conviction, refuses to take the military oath. Without actual non-performance of particular duties of the military service, such a refusal is not a crime.

Evasion of military service by all of the methods envisioned by Article 13 of the Law can only be done intentionally. Furthermore, it is an essential element of the crime that there be a special objective of evading the performance of some or all duties of the military service (for example, a desire to be discharged early, to receive a short leave illegally, to avoid participation in exercises, and in wartime to avoid participation in combat operations). Cases of careless infliction of bodily injury on oneself which lead to release from military service and cases of intentionally causing harm, simulating disease, forging documents, and the like do not constitute this crime if they are committed for other reasons, not with the objective of evading military service. At the same time, some of these actions may be classified under other articles of the criminal law or recognized as disciplinary offenses.

Moreover, this crime is not involved where there is deception in cases when it is used by the offender for the purpose of committing other types of evasion of military service (for example, forging a pass and giving it to the duty officer at the control and check point in order to leave the area of the military unit and go AWOL). Because the deception in such cases is not aimed at getting a release from the duties of military service, it does not fit the elements of Article 13. But there can be cases of concurrence (overlapping) of the crimes envisioned in Article 13 and Article 9-11 of the Law. For example, if a serviceman uses forged documents to receive a short leave and go to his parents' home and then, when the leave time is up, does not appear in the unit again and does not have acceptable reasons for this, his actions can be classified as criminal under Article 13 and also, depending on the specific circumstances of the case, under Article 9, 10, or 11 of the Law. In this case Article 13 covers only the evasion of military service

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during the period of the leave, while the failure to appear for work on time without acceptable reasons constitutes another, independent crime.

Evasion of military service envisioned in Article 13 of the Law in peactime entails loss of freedom for a period of 3-7 years. The crime, committed in wartime or in a combat situation, is punished by execution or loss of freedom for a period of 5-10 years.

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CHAPTER 5. RESPONSIBILITY FOR OFFENSES AGAINST THE RULES FOR USE OF MILITARY PROPERTY

1. The Social Danger of Offenses Against Military Property

The protection of socialist property is a sacred duty of every Soviet citizen. Article 61 of the National Constitution states: "A citizen of the USSR is obligated to perserve and strengthen socialist property. It is the duty of a citizen of the USSR to fight against misappropriation and squandering of state and public property and to take a conservative attitude toward public wealth."

This constitutional obligation is especially important for military servicemen. The Soviet State supplies the Armed Forces with everything necessary to defend the socialist achievements and peaceful labor of our people. Reliable protection and correct use of this military equipment received from the state is an essential condition to keep it in constant combat readiness. This demand also applies to other military property which is of considerable value and plays an important part in supporting the high fighting effectiveness of our troops and fleets. Therefore, the military oath and military regulations obligate each military serviceman to perserve the weapons and combat and other equipment entrusted to him and to perserve military and public property.

Criminal offenses against military property and procedures for using it represent a serious danger to the Armed Forces. They directly threaten the combat readiness and fighting effectiveness of the troops, may lead to failure to perform specific combat missions, and also cause material loss to the state.

Loss to the Armed Forces may be the result either of misappropriation of military property or of destruction of or damage to this property as the result of failure to follow procedures for perserving and using it. Military servicemen are criminally responsible for misappropriation of military property under the general principle of the articles of the general criminal code concerning crimes against socialist property (Article 89-93[2] and 96 of the RSFSR Criminal Code and the corresponding articles of the criminal codes of the other Union republics).

Military criminal law envisions criminal responsibility for intentional destruction of and damage to military property, and illegally disposing of or losing it as a result of violating the rules for its use and preservation.

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These rules are set forth in the general military regulations, manuals and instructions, handbooks, and statutes. Violation of them creates a danger of harming combat readiness, may lead to material loss and failure to perform a combat assignment, and in many cases makes it impossible for the serviceman to perform his assigned duties (illegal disposal of footwear during the cold season, losing a weapon or means of transport). For these reasons the most dangerous violations of the rules for preservation and use of military property are recognized as criminal. In this case the term "military property " means all material-technical means appropriated by the state to support the life and activity of the troops: weapons, ammunition, combat equipment, means of transport, technical equipment, and means of material support for all types of provisions that are at the disposal of the military command.

Existing law envisions responsibility for the following types of crimes against procedures for the use of military property and its preservation: illegally disposing of clothing and gear and losing or harming these objects by violation of the rules for their perservation (Point "a" of Article 14 of the Law, Point "a" of Article 250 of the RSFSR Criminal Code); losing or damaging the weapon, ammunition, means of transport, technical gear, or other military property entrusted to the serviceman for service use as a result of violating the rules for their preservation (Point "g" of Article 14 of the Law, Point "g" of Article 250 of the RSFSR Criminal Code); deliberately destroying or damaging military property (Article 15 of the Law, Article 251 of the RSFSR Criminal Code).

2. Illegal Disposal

Illegal disposal is found when a regular-term serviceman sells, pawns, or puts in the use of other people the items of clothing or other gear issued to him for personal use (Point "a" of Article 14 of the Law).

Objects of clothing or other gear issued for personal use are considered to have been disposed of illegally if they have been sold, given to someone, pledged to secure a debt, or turned over for use to another person. The social danger of this act is not just in causing material loss to the state to the extent of the item illegally disposed of. Furthermore, causing such loss is not always an essential element of the crime. For example, when an item that has been pledged is returned to the owner the Armed Forces do not suffer a material loss from this violation of the law. The social danger of the crime under consideration lies chiefly in the fact that by disposing of military property the serviceman deprives himself of the possibility of performing his service duties normally (he cannot go on detail without his greatcoat, go to a training period, or perform other duties) and thus he offends against established procedures for performance of service.

Items classified as clothing or gear and issued to a regular-term serviceman for personal use are not the only subjects of illegally disposing. We have in mind here both the clothing and gear assigned to a serviceman for the entire period that they are used and inventory items (shortcoats, wool vests, padded jackets and trousers, felt boots, insulated rubber boots, wool gauntlets, post clothing, and the like) issued to the serviceman for personal use during performance of specific assignments or jobs.

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Illegally disposing of property can be committed only with the specific intent, where the guilty person, aware of the social danger of his action and anticipating harmful consequences, acts with the objective of disposing of the above-mentioned property.

If a serviceman sells, pledges, or loans property issued for personal use not to him, but to other servicemen, his criminal responsibility is not for illegally disposing of it but for misappropriation of state property.

In addition to regular-term military servicemen, cadets at military educational institutions, military construction workers in the first year of service,[1] and reservists during attendance at training assemblies are criminally responsible for illegally disposing of military property.

The punishment for this crime is assignment to a disciplinary batallion for a period of between three months and one year. If the crime is committed with mitigating circumstances, according to Point "b" of Article 14 of the Law such an act is subject to punishment under the rules of the Disciplinary Code of the USSR Armed Forces. Illegally disposing of items of little value such as foot wrappings does not constitute a crime. Because of the insignificance of the act it is recognized as a disciplinary offense.

Illegally disposing of military property in wartime or in a combat situation is punished in conformity with Point "v" of Article 14 of the Law by loss of freedom for a period of 1-5 years.

3. Loss of and Damage to Military Property

Loss of and damage to military property as a result of violating rules for its preservation can have the same results as illegally disposing of it. Therefore, the law recognizes such actions as criminal. Loss of or damage to military property is a negligent crime because the person who violates the rules for its preservation is not pursuing the purpose of transferring the property or making it unuseable and does not anticipate these consequences. The person who commits this crime either carelessly figures that in the given circumstances he will be able to avoid harmful consequences or because of his irresponsibility does not anticipate the possibility of them at all, although he could and should have foreseen them.

The term "loss" means departure of the property from the possession of the military serviceman to whom it was entrusted, against his will (he forgot an item on the train, dropped it over the side of the ship, lost it, left it unprotected and it was stolen and so on). By "damage" here the law means causing an article to become partially or completely unsuitable for its designated use as the result of violation of rules for perservation of it by the military serviceman to whom it was entrusted for use in the service (for example, an optical instrument that is disabled because moisture gets inside it).

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[1] Beginning with the second year of service clothing and gear issued to military construction workers are paid for and thus become their property.

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A military serviceman can be brought to criminal responsibility for these crimes only if there is a causal connection between the fact of the loss of or damage to military property and the violation of the rules for its preservation. If in the example we took above the water had gotten into the optical instrument while it was still in storage at the warehouse, then the person who wound up with this malfunctioning instrument would not be subject to criminal responsibility, even though he violated the rules for storage of optical instruments, because the harmful effect was not caused by this violation.

The question of responsibility for loss and damage to military property is decided depending on the nature of the property for which conservation procedures were violated. For loss of or damage to military clothing and gear issued to regular-term servicemen for personal use, and also for illegally disposing of these items, responsibility comes under Points "a", "b", and "v" of Article 14 of the Law (and the same points of Article 250 of the RSFSR Criminal Code). Extended-service servicemen, warrant officers, and officers are not criminally responsible for the loss of or damage to such military property issued to them for personal use.

All servicemen, including officers, warrant officers, and extended-service servicemen are responsible for loss of and damage to the weapons, ammunition, means of transport, technical gear, and other military property entrusted to them for service use, caused by violation of the rules for their preservation. According to Point "g" of Article 14 of the Law, guilty persons are subject to punishment in the form of loss of freedom for a term of 1-3 years. But if this crime was committed in wartime or in a combat situation, the punishment is loss of freedom for a period of 2-7 years (Point "d" of Article 14 of the Law).

Loss of and damage to weapons, ammunition, and means of transport as a result of violation of the rules for their preservation represent greater social danger, cause greater damage to the interests of combat readiness, and create more obstacles to performance of duties by military servicemen; therefore, the law attaches greater importance to the fight against violations of the rules for use of weapons and combat equipment, as well as other military property.

4. Intentional Destruction of and Damage to Military Property

As already stated, compliance with procedures for preservation and use of military property is especially important for the Armed Forces. A serviceman's violation of these procedures by deliberately destroying or damaging weapons, ammunition, military equipment, or other military property represents great social danger. Unless there are the elements of an especially dangerous state crime this act constitutes the crime envisioned by Article 15 of the Law (Article 251 of the RSFSR Criminal Code).

This article envisions responsibility for deliberately destroying or damaging any military property regardless of whether it is designated for waging combat operations (artillery weapons, tanks, infantry combat vehicles, armored

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personnel carriers, granade launchers, gas masks, and various types of radios) or to meet the personal needs of the troops (food products, clothing, housing support objects, and the like). The only difference between military property and non-military property is its legal ownership. All physical assets on the balance of the USSR Armed Forces are military property.

The term "destruction" of military property means causing it to become completely unsuitable for its designated use, when it is impossible practically or unwise economically to restore the damaged property because expenditures for its repair approach the cost of a new article or exceed it. The way the property is destroyed does not matter for acknowledgement of the completed crime. It may take the form of physical destruction or destroying the property by an explosion, forging, pressing, burning, or by chemical means, as well as throwing into a river, the ocean, and so on.

Cases where military property is left unwatched which leads to its loss and concealing property which temporarily deprives the military unit of the possibility of using it are not covered by the concept of "destroying military property." So if a soldier, to get revenge on a fellow serviceman, threw his automatic weapon off a ship, this is intentional destruction of the weapons. If he hid the automatic weapon on the ship for the same purpose and it was later found, his action does not constitute intentional destruction of the weapon.

The term "damage" to military property means making it partially unsuitable so that it is hard to use the particular property for its designated purpose without first restoring (repairing) it. For example, if a serviceman, acting from antisocial motives, throws foreign objects into the rotating mechanism of an operating machine which causes the machine to break down and requires repair, his actions are intentional damage to property.

Intentional destruction of or damage to military property is recognized as a crime if it causes significant material loss to the military unit and to the state. This element is the basis for distinquishing the crime and the offense. Destruction of or damage to military property worth an insignificant amount does not constitute a crime and is subject to disciplinary punishment. For example, destroying gun accessories service caps, and the like which do not cost more than a few rubles is a disciplinary offense.

But the cost is not the only thing considered in deciding whether destruction of some particular military property is a crime or a disciplinary offense. It necessary to consider also the significance of this property for insuring troop combat readiness and the circumstances in which the particular violation was committed (for example, during everyday training periods or performance of a combat mission). Therefore, the law does not set a minimum amount of loss which gives the right to classify destruction of or damage to military property as a crime.

Destruction of or damage to military property is always an intentional crime. It is characterized by the fact that the person who committed it is aware of the social danger of his action or inaction, anticipates harmful consequences

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(destruction of or damage to the property), and desires or consciously permits them to come. Intentional destruction of or damage to military property differs from sabotage and wrecking, which are especially dangerous state crimes, in that the guilty person is not pursuing the objective of undermining or weakening the Soviet public, state order, foreign security, or the military might of the USSR. But if the guilty person when destroying or damaging military property is pursuing anti-Soviet objectives, his actions contain the elements of an especially dangerous state crime.

Under Point "a" of Article 15 of the Law, intentional destruction of or damage to military property is punished by loss of freedom for a period of 1-5 years. The same action which has serious consequences is punished by a loss of freedom for a period of 3-10 years (Point "b" of Article 15 of the Law).

Serious consequences are a large material loss caused by the intentional destruction of or damage to military property and harmful consequences to combat readiness and fighting effectiveness (disrupting performance of an assignment, the death of people, and causing bodily injury) if they are causally connected to the intentional destruction of or damage to the property. Human death and serious injury are classified as serious consequences only if they were caused by negligence, that is where the offender did not anticipate such consequence because of a foolish expectation that they would be avoided or because he did not foresee the possibility of them occurring even though he could and should have foreseen them. But if in the process of intentional destruction of or damage to military property human death or injury is caused intentionally, the action constitutes two crimes, against military property and against the individual.

Intentional destruction of or damage to military property that has serious consequences, if it is committed in wartime or in a combat situation, is punished by loss of freedom for a term of 5-10 years or by execution (Point "V" of Article 15 of the Law).

Intentional destruction of or damage to military property that has serious consequences, whether it is committed in peacetime or wartime, represents such a great social danger that the law classifies it with the serious crimes (Article 7^1 of the Fundamentals Criminal Law of the USSR and the Union Republics, Article 7^1 of the RSFSR Criminal Code).

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CHAPTER 6. CRIMINAL VIOLATIONS OF THE RULES FOR DRIVING AND OPERATING MILITARY EQUIPMENT

1. The Concept and Social Danger of Violating the Rules for Driving and Operating Military Equipment

The swift development of science and technology has made it possible to supply the USSR Armed Forces with the most modern tanks, airplanes, naval vessels, infantry combat vehicles, self-propelled guns, armered personnel carriers, and other machines which carry their own weapons and special installations and service means for transporting personnel and cargo. Correct use of this military equipment is an essential condition for maintaining the combat readiness of the troops and fleets.

The procedures for use of combat, special, and transport vehicles, airplanes, and ships is a significant element of military legal order and is regulated by special normative documents -- the military regulations, manuals, rules and instructions on operation of the corresponding types of machinery, and also highway traffic rules. Offenses against these procedures by violation of the rules for driving and operating vehicles, ship navigation, and preparation for flights and flying aircraft represents a serious social danger because it can lead to accidents, disasters, breakdown of machines, human injury and death, and significant material loss.

But this is not the only way that this offense is dangerous. The danger manifests itself even more in the threat that combat assignments will not be performed and the fighting effectiveness of the subunit or unit will be lessened because of losses of equipment, personnel, weapons, ammunition, fuel, food, and other materiel because of disasters, accidents, and breakdowns. Finally, this danger also involves the fact that violation of the rules for driving and operating military equipment often leads to harm to the national economy and the civilian population.

All this illustrates that indoctrinating servicemen with a high sense of responsibility for correct organization of technical work, insuring the safety of flights, cruises, and the travel and operation of military equipment, preventing accidents, disasters, and breakdowns, and not permitting harm to the state and to individual citizens is a task of paramount importance. This kind of indoctrination is inconceivable without a determined fight against unconscientious and careless attitudes toward observance of the established

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legal order. This is accomplished both by persuasion and moral influence, on the one hand, and by applying administrative, disciplinary, and -- in the special cases envisioned by the law -- criminal responsibility to persons who violate the rules of ship navigation, flying, and driving and operating military vehicles.

The military criminal law considers violation of the rules of driving and operating combat, special, and transport vehicles (Article 16 of the Law, Article 252 of the RSFSR Criminal Code), violation of the rules for flights and preparation for them (Article 17 of the Law, Article 253 of the RSFSR Criminal Code), and violation of the rules of ship navigation (Article 18 of the Law, Article 254 of the RSFSR Criminal Code) to be military crimes in those cases when these violations have harmful consequences.

All these crimes are by their nature negligent crimes. The negligence manifests itself in the fact that the offender, consciously digressing from the requirements of the corresponding rules, foolishly hopes that harmful consequences will not occur or that he can prevent them (put on the brakes in time, go around the obstacle, stop the vehicle, and so on). The negligence may also be a result of inattention, where a person who committed a violation was not aware that he was violating the established rules, although he could and should have been aware of this. Thus, negligent guilt is the result of a foolish evaluation of a situation, an irresponsible attitude toward the performance of one's duties, and failure to understand the essential requirements of the corresponding rules.

Experience with hearing such cases indicates that if they had been properly attentive and observant and had a high sense of responsibility for insuring traffic safety, in every particular case the guilty persons could usually have made a correct decision and not allowed the harmful consequences to occur. This circumstance emphasizes once again the need for purposeful training and indoctrination of military servicemen who are involved with driving military equipment; giving them solid professional skills and a thorough understanding of the full importance of rigorous observance of the rules for driving and operating this equipment; and instilling them with a sense of responsibility for insuring safe use of the equipment.

If a person intentionally causes harm by violating the rules of driving and operating equipment, he commits a different crime. For example, if a serviceman intentionally drives his vehicle against a power transmission tower in order to wreck the vehicle and thus avoid going to an exercise, he commits intentional damage to military property (Article 15 of the Law) and preparation to evade performance of the duties of military service (Article 13 of the Law).

2. Violation of the Rules for Driving and Operating Vehicles

Land vehicles constitute a considerable part of the equipment of the USSR Armed Forces: tanks, infantry combat vehicles, armored personnel carriers, self-propelled guns, automobiles and other moving equipment mounted on automobile or caterpillar frames, motorcycles, and rail transport operating on

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sidings (diesel engines, electric engines, line inspection trolleys, and the like). The procedures for driving and operating them are defined by the Highway Traffic Rules, which are in effect throughout the USSR,[1] the Manual on Motor Vehicle Service of the USSR Armed Forces, the military regulations, and other enforceable enactments that establish procedures for driving and operating particular types of vehicle (tanks, self-propelled guns, and the like).

Observance of the rules for driving and operating vehicles is the service duty of a military serviceman and an important part of military discipline; therefore every violation of these rules is considered a disciplinary offense, and in the cases envisioned by Article 16 of the Law they are recognized as military crimes. According to this article there is criminal responsibility for violation of the rules of driving and operating combat, special or transport vehicles which leads to accidents involving human injuries or other serious consequences. The punishment for this crime is loss of freedom for a period of 2-10 years.

The concept of "combat,special, and transport vehicles" covers all self-propelled vehicles that the USSR Armed Forces have, including rail vehicles when they move on sidings.

The term "rules of driving" means the requirements established by the military regulations, manuals, and Highway Traffic Rules which are mandatory for persons behind the wheel (control levers) of a vehicle and whose observation is expected to insure safe vehicle traffic. This violation may find expression in exceeding the traffic speed, traveling against a red light (prohibiting signal), incorrect passing, at intersections, when braking, and so on.

Any military serviceman (officer, warrant officer, extended-service serviceman, or regular-term serviceman), a military construction worker, or a reservists during training assemblies, who has violated these rules, may be held responsible for the violation of driving rules regardless of whether he has the right to drive a vehicle.

The concept "operation of vehicles" is defined in military law as the use of vehicles and their technical servicing in the process of use. Procedures for using and technical servicing of vehicles are defined by the Highway Traffic Rules, the military regulations, and manuals and handbooks for operation of the corresponding model of vehicle. But Article 16 of the Law establishes responsibility for violation of the rules of operating a vehicle only with respect to those rules that are expected to insure traffic safety.

Such violations include the following:

(a) knowingly putting a technically malfunctioning vehicle on the road;

(b) permission by a commander or vehicle officer to allow persons who are known not to be trained for driving the particular vehicle or who are incapable of insuring traffic

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[1] In those cases where military vehicles are being driven in the territory of countries friendly to us, Soviet military servicemen are obligated to obey the rules that are in effect in those countries.

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safety because of their condition (intoxication, fatigue, illness, and the like) to drive;

(c) giving a driver orders that plainly contradict operating rules. These orders may concern driving the vehicle (selecting traveling speed, making a maneuver, and the like) and operations (loading people into a vehicle not equipped to haul people, loading out-sized freight, violating the rules for towing, and so on);

(d) violation by a driver of the rules that are expected to insure the traffic safety of other vehicles (leaving a vehicle without putting the handbrake on; leaving a vehicle on the road without its stop signals on during the hours of darkness; allowing persons who are not sober or for other reasons are incapable of insuring traffice safety to drive, and so on).

Unlike the situation with violations of driving rules, not any serviceman can be responsible for violation of operating rules; only persons whose duties include insuring traffic safety can be responsible for this violation. Among these people are the commanders of the corresponding subunits, including the squad leader, the head of the technical control point and other personnel of the technical service, drivers, and in certain cases the vehicle officer.

As noted above, a violation of the rules for driving and operating vehicles is recognized as a crime only when it leads to an accident involving bodily injury or other serious consequences.

The phrase "accident involving bodily injury" means causing one or several people death or serious, moderate, or mild bodily injury. If the only bodily injury was to the person who violated the traffic rules, he is not subject to criminal responsibility because the Law looks only to the life and health of surrounding people as consequences of the violation.

The phrase "other serious consequences" means causing significant material loss to the state or to citizens (damage to the vehicle, destruction of the freight, weapons, combat equipment, and the like). Computation of the material loss is done at retail prices, and where there are none it is done on the basis of the findings of examination by commodity experts. In practice the minimum amount of loss that gives the right to recognize consequences as serious is 450-500 rubles. In borderline cases when deciding the question of whether the loss caused can be recognized as a serious consequence, consideration is given not only to the amount of loss but also to its effect on the combat readiness of the vehicle and the subunit to which the vehicle belongs.

A mandatory condition for bringing a person to criminal responsibility for violation of the rules of driving and operating vehicles is establishing a causal relationship between the violation and the consequences that follow. In certain cases this is a very complex question to decide. Let us give an example.

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The vehicle officer ordered that the vehicle be loaded with objects which are permitted to be shipped only when properly secured. But despite the driver's warning, he did not take steps to secure the load. The vehicle turned over en route, and as a result serious consequences occurred. If it is established in this case that in addition to the vehicle officer's violation of operating rules the driver permitted a violation of driving rules and that the violation of each was causally related to the consequences, then both men can be brought to responsibility. But it may happen that the conseqences were entirely the result of the violation permitted by one of the men, and then the violation committed by the other is not causally related to the consequences. In this case only one of the offenders is subject to criminal responsibility.

Violation of the rules for driving vehicles can be committed simultantiously with other crimes related to the operation of military equipment. In this case the guilty person is subject to responsibility for each of the crimes. For example, if a serviceman has taken a vehicle away from from the unit area without leave and then has a highway accident which causes serious bodily injury as a result of his violation of driving rules, he is subject to responsibility under Article 212[1] for taking a motor vehicle without leave and under Article 252 of the RSFSR Criminal Code.

If the serviceman who violated the rules hit a victim and left him in a helpless condition, then he is also responsible for the two crimes envisioned in Article 252 and Article 127, part 2 of the RSFSR Criminal Code. But if it turns out that the victim whom the driver left in a helpless condition got in the way of the vehicle as a result of his own negligence and not through the fault of the driver, the driver would only be responsible under Article 127, part 2 of the RSFSR Criminal Code.

Military servicemen are criminally responsible for driving combat, special, and transport vehicles in an intoxicated state on the same principles as other citizens under Article 211[1] of the RSFSR Criminal Code and the corresponding articles of the criminal codes of the other Union republics. Military servicemen who have committed highway crimes in their personal vehicles and in vehicles that do not belong to the military department are responsible for the commission of general crimes (Article 211 of the RSFSR Criminal Code and corresponsing articles of the criminal codes of the other Union republics).

Military servicemen may be subject to disciplinary responsibility or administrative measures, except for fines, corrective labor, and administrative arrest, for violations of the rules of driving and operating vehicles that do not cause accidents with bodily injury or other serious consequences.[2] These measures can also be applied to servicemen who have violated the rules for driving personal and other non-military vehicles.

The interests of perventing accidents, disasters, and breakdowns of military vehicles demand that there be a careful review and proper response to every

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[2] See Article 9 of the Fundamentals of the Law on Administrative Offenses of the USSR and Union Republics.

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case of violation of the rules of driving and operating motor vehicles. In essential cases, therefore, it is wise to submit petitions to the State Motor Vehicle Inspectorate that servicemen who have violated the rules for driving a vehicle be deprived of the right to drive motor vehicles.

3. Violation of the Rules for Flights and Preparation for Them

Successful performance of the mission assigned to military aviation demands a high level of skill by military pilots, careful preparation for each flight, and rigorous and precise observance of the rules of flight which are regulated by numerous national and military legal acts. A solid knowledge and absolute observance of these rules is the service duty of the officials and flight-technical personnel of aviation units and subunits. Violations of the rules of flights and preparation for them may lead to flight incidents, material loss, and a lowering of combat readiness, and therefore they present considerable danger to military legal order.

Responsibility for violation of the rules of flights and preparation for them leading to a disaster or other serious consequences is established in Article 17 of the Law (Article 253 of the RSFSR Criminal Code). This crime is punished by a loss of freedom for a period of 3-10 years.

The term "violation of the rules of flights and preparation for them" means committing actions that are prohibited by these rules or failure to carry out their orders (authorizing flights in a meteorological situation that does not permit flights; flying under conditions of serious icing; authorization for flight without a preflight medical examination; concealment of ill health by a crew member before a flight; loss of orientation in flight by a navigator and failure to take steps to determine the correct position, and so on).

The term "disaster" means a flight incident involving destruction or damage to the aircraft and leading to the death of a crew member or passengers on board, and also to the death of one of these persons if death occurs during the period of investigation of the flight incident.

The phrase "other serious consequences" includes accidents with persons who are not crew members and passengers, causing injury to crew members or passengers; an accident, which is a flight incident without human death, that causes complete destruction of the aircraft or sufficient destruction that its repair is not economicly adviseable; causing a large loss from a breakdown of the airplane, destroying other state or public property, and damaging airfield structures, buildings, industrial facilities, warehouses, and property belonging to citizens.

The consequences may be imputed to the guilt of the violator of the rules of flights and preparation for them only if the consequences are causally related to the violation of the rules. In addition, because Article 17 of the Law protects flights safety, the occurrence of such consequences does not constitute the crime envisioned by this article when, although they were caused by the violation of the rules of preparation for flights, they did not harm flight safety. For example, if an injury to one of the airfield employees

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occurred before the flight as the result of violations of the rules for preparation for flight, this would not constitute the crime envisioned by this article.

Only persons who are members of a flight crew and flight control officials can be responsibile for violation of the rules of flights. Persons who perform duties in preparing the aircraft for flight are subject to responsibility for violation of the rules of preparation for flight: flight and technical personnel of the crew, engineering-technical personnel and their superiors -- the flight control officer and officials of the support service.

4. Violation of the Rules of Ship Navigation

One of the important factors in insuring the high combat readiness of the personnel and equipment of the USSR Navy is skillful ship navigation under any conditions -- at night, in poor visibility and poor weather, during long crossings, during the performance of complex maneuvers, and so on. Navigation skill is based on unconditional observance of the rules of ship traffic and finds expression, among others, in the ability to prevent the danger of a collision and damage to or loss of the ship.

The rules for operation of warships, auxiliary vessels, floating equipment in base, support ships, and small craft are regulated by the Shipboard regulations of the USSR Navy, the Rules for Prevention of Ship Collisions at Sea, and other documents. This system also applies to hydroplanes which are maneuvering on the water. Rigorous and precise observance of the rules of ship navigation is expected to insure not only safe sailing but also keeping navy personnel and equipment in constant combat readiness and fulfilling combat missions.

The rules of ship navigation are a constituent part of military legal order. Violation of these rules threatens serious consequences and presents great social danger. For example, a vessel sailing at full speed during thick fog despite the requirements of Article 16 of the Rules for the Prevention of Ship Collisions at Sea can lead to serious damage and even the loss of ships. Violations of the requirements of Article 147 of the Shipboard Regulations of the USSR Navy involving failure to take steps to measure depth and, where necessary, reduce speed and cut the engines may cause a ship to run aground, suffer serious damage, and so on. It is entirely understandable that a ship which has lost its power and received damage cannot properly perform its assigned mission; therefore, the above-described actions by persons whose duties include operating ships are recognized as criminal.

Responsibility for violation of the rules of ship navigation leading to the loss of or serious damage to a ship, human victims, or other serious consequences is established by Article 18 of the Law (Article 254 of the RSFSR Criminal Code), which envisions a penalty in the form of loss of freedom for a period of 3-10 years.

The term "violation of the rules of ship navigation" means failure to observe an requirement of the rules for operation of ships by the commander, navigation officer, executive officer, ship captain, watch officer, or any other

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military serviceman who is controlling a warship, other vessel, small craft, or hydroplane on the water.

The concept "loss of the ship" means complete loss of the ship as the result of a collision, explosion, sinking, and the like which is a result of violation of the rules of ship navigation. The term "serious damage" means damage caused to a ship which requires significant expenditures for repair. If repair is technically impossible or economically unwise the ship is considered lost.

The term "human victims" means the loss of at least one person caused by violation of the rules of ship navigation. The term "other serious consequences" means causing injury to crew members, personnel of another ship, passengers, or citizens on a dock and destruction of or damage to cargo and other material assets on a significant scale.

An essential condition of responsibility for violation of the rules of ship navigation is a causal connection between the violation of the rules and ship navigation and the result that occurs. If the result was caused by an action or inaction which is not a violation of the rules of ship navigation, responsibility should follow under other articles of the Law. For example, if the loss of a ship resulted from poor preparation of the ship before going to sea, then the persons guilty of this are subject to responsibility under Article 24 of the Law, a negligent attitude toward service.

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CHAPTER 7. VIOLATION OF THE RULES FOR PERFORMANCE OF GUARD, INTERNAL, AND OTHER FORMS OF SERVICE.

1. Types of Violations of the Rules for Performance of Special Services and Their Social Danger

The special services organized in the army and navy have an important part in performing the missions given to the USSR Armed Forces. Among these special services are combat duty, border service, guard service, watch service, patrol service, and internal service.

The procedures for performance of special services and the duties of personnel enlisted to perform them are defined by the military regulations, statutes, instructions, and orders of the appropriate commanders (chiefs). They are an important constituent part of military legal order. Rigorous and precise observance by every serviceman of his duties during performance of combat duty, border service, guard service, and work on the internal detail is an essential condition for successful performance of the missions facing the corresponding special services.

A violation of the procedures for performance of special services presents a serious social danger. It is a result of the fact that such violations either create the possibility of harmful consequences (intrusion into USSR airspace, crossing the state border of our Homeland with hostile intentions, causing substantial material loss to the state, human death, disablement of military equipment, and so on) or in fact lead to their occurrence. Therefore, the most dangerous violations of the rules for performance of special services are recognized as crimes. Those violations which do not create a real threat of dangerous consequences or cause only insignificant harm and are committed under mitigating circumstances are classified as disciplinary offenses under Points "b" of Articles 19-21 of the Law (Articles 255-258 of the RSFSR Criminal Code) and entail use of the rules of the Disciplinary Code of the USSR Armed Forces. In this case the mitigating circumstances may relate not only to the violation of the rules itself, but also to the situation in which it was committed and to the character of the offender.

Guided by the principles set forth in the Law and in Article 45 of the Disciplinary Code, the commander must decide in every particular case whether the violation committed by his subordinate is a crime or a disciplinary offense. Needless to say, the commander has the right to limit himself to

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disciplinary punishment only in those cases where the violation of the rules for performance of special services does not carry that degree of social danger which is characteristic of a crime.

The Law on Criminal Responsibility for Military Crimes envisions the following types of crimes against procedures for performance of special services:

-- violations of the regulation rules of guard (watch), patrol, and convoy service (Article 19 of the Law, Article 255 of the RSFSR Criminal Code);

-- violation of the rules for performance of border service (Article 20 of the Law, Article 256 of the RSFSR Criminal Code);

-- violation of the rules for performance of combat duty (Article 21 of the Law, Article 257 of the RSFSR Criminal Code);

-- violation of regulation rules of internal service (Article 22 of the Law, Article 258 of the RSFSR Criminal Code).

A knowledge of these legal norms and a correct understanding of their social purpose help a commander focus his attention on preventing actions by personnel subordinate to him which are recognized as criminal and, if they are committed, taking the measures envisioned by the law to bring the guilty persons to appropriate responsibility.

2. Violation of the Regulation Rules of Guard (Watch) Service

As Article 2 of the Regulations on Garrison and Guard Service of the USSR Armed Forces indicates, guard service is instituted for reliable protection and defense of the combat colors; storehouses containing weapons, combat and other equipment, ammunition, explosives, and other property; and other military and state facilities, and also to guard arrestees and convicts being held at guardhouses and disciplinary batallions.

In addition, navy ships organize watch service under the rules of the USSR Navy Shipboard Regulations. In its importance and significance watch service is equivalent to guard service. Watch service is carried out by special duty assignment and has the objective of protecting combat equipment and the ship itself and insuring its constant combat readiness.

Violations of regulation rules for the performance of guard and watch service which create a threat of dangerous consequences are recognized as criminal and classified under Article 19 of the Law (Article 255 of the RSFSR Criminal Code). Point "a" of this Article stipulates that a violation of the regulation rules of guard (watch) service and of orders and instructions published to elaborate these rules, committed on guard duty and at posts to protect storehouses containing ammunition, weapons, combat equipment, or other

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important facilities, is punished by loss of freedom for a period of between six months and three years, and in wartime or in a combat situation the punishment in conformity with Point "g" is 2-7 years.

Violations of the rules of guard service may find expression in committing actions prohibited by the Regulations on Garrison and Guard Service and orders issued to elaborate them, or failure by members of the guard to take the actions envisioned by these documents. An example of such a violation is when a sentry permits an outsider to get through to the object being defended, because Article 172 of the Regulations orders the sentry not to permit outsiders to come any closer to the post than a distance given in the table of posts.

If members of the guard commit other crimes in addition to violation of the rules of guard service, the guilty persons are subject to responsibility not only under Article 19 of the Law, but also under the articles that envision responsibility for other military or general crimes. For example, leaving a post without permission, if it involves abandoning the unit area or place of service, is not only a violation of the rules of guard service but may also constitute another military crime -- absence without leave, abandonment of the unit, or desertion. In this case the guilty person will be responsible for two crimes at once: for violation of the regulation rules of guard service under Article 19 of the Law, and for a second crime under Article 9, 10, or 11, as appropriate.

Only violations which are committed while on guard can be classified under Article 19 of the Law. A person who is appointed to the guard is recognized as on guard from the moment that the command is given during mounting of the guard to greet the officer in charge of the guard (unit duty officer) and until the chief of the old guard gives the order to move to the unit (subunit) area. For socially dangerous acts committed during preparation of the guard and travel to the mounting of the guard as well as travel from the guard quarters after replacement, guilty persons can be brought to responsibility only under other articles of the criminal code, if the act committed constitutes a crime envisioned by them. In addition to members of the guard, the officer in charge of the guard and his assistant, as well as the unit duty officer and his assistant for internal guards, can be called to responsibility if their violations infringe on procedures for performance of guard service.

To a certain degree the principles given above also apply to violations of the rules for performance of watch service established by the Shipboard Regulations.

Point "d" of the Article of the Law under consideration establishes responsibility for violations of the regulation rules of ship (watch) service that lead to harmful consequences of the type which the particular guard (watch) was established to prevent. As we can see from the very words of the article, the Law has in mind only those harmful consequences which it was the direct duty of the guard to prevent (for example, theft of military property from an object guarded by a sentry because the sentry left his post

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without authorization). The punishment for this crime is loss of freedom for a period of 1-10 years. In wartime and in a combat situation when the social danger of violations of the rules of guard (watch) service is much greater, the punishment is more severe -- loss of freedom for a period of 3-10 years or execution.

3. Violation of the Regulation Rules of Patrol and Convoy Service

The purpose of patrol duty carried out under the rules envisioned by Chapter 3 of the Regulations on Garrison and Guard Service is to insure order and high military discipline among servicemen on the streets, in public places, at railroad stations, terminals, ports, airports, and also in populated points adjacent to garrisons. Patrols are formed by order of the chief of the garrison from members of military units, military schools, and institutions of the garrison.[1]

Convoy service is performed by internal troops on the basis of special documents and takes the form of convoying arrested persons being kept under guard at institutions of the Ministry of Internal Affairs and protecting the living areas of corrective labor institutions and production sites.

Violations of the rules for patrol and convoy service present a serious social danger because these violations may result in conditions that promote affenses against public order, the escape of prisoners being kept under guard, and the creation of disorder in places of incarceration (loss of freedom). This made it necessary for Points "v" and "d" of Article 19 of the Law (Article 255 of the RSFSR Criminal Code) to establish criminal responsibility for violation of the regulation rules of patrol and convoy service which have harmful consequences and for whose prevention the particular convoy or patrol was appointed. If the violation did not lead to the harmful consequences for whose prevention the convoy or patrol was appointed, the action constitutes a disciplinary offense.

The harmful consequences of violation of the rules of performance of patrol or convoy service may vary greatly. Where the violation of the rules of patrol service takes the form of deviating from the route without authorization or inaction or passivity by the patrol, there may be such consequences as hooliganism by military servicemen, infliction of bodily injury, evasion of detention by servicemen, resistance to superiors who are stopping the disorder, beating up militia employees, and so on. Violation of the rules of convoy service may result in the escape of a prisoner who was under guard, the creation of disorder by prisoners at the work site or in the living zone, the commission of a crime by prisoners, and so on.

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[1] Protection of radar and other special subunits in isolated locations using the patrol method is not classified as patrol service. This is a special type of guard service with all the legal consequences that follow from this (see Chapter 12 of the Regulations on Garrison and Guard Service).

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The consequence that results may be imputed to the guilt of the person who violated the rules of patrol or convoy service only if the violator was obligated not to permit this consequence to occur. For example, in certain cases the head of a patrol is obligated to check the documents of servicemen and, where necessary, to detain them and deliver them to the directorate of the garrison military provost. If he did not do this with a criminal who was being searched for and as a result the latter was able to hide and commit a series of crimes, this would be a consequence which the patrol was obligated to prevent.

The consequence must be causally related to the violation of the rules that was committed, that is, it must be a necessary condition without which it would not have occurred (in our example, if the head of the patrol had not violated the rules of patrol service the criminal would have been detained and the harmful consequences would not have occurred). Moreover, the violator must have the possibility of preventing the harmful consequences (for example, if the head of the patrol did not help militia workers stop disorderly conduct by civilians on the street because at this time he was forced to stop violations being committed by military servicemen, the consequences of this disorderly conduct cannot be imputed to his guilt).

Violation of the regulation rules of patrol service envisioned in Point "v" of Article 19 of the Law is punished by loss of freedom for a period of 1-5 years or assignment to a disciplinary batallion for a period of between three months and two years; in wartime and in a combat situation the corresponding punishment under point "g" is loss of freedom for a period of 2-7 years.

The punishment established for violation of the regulation rules of convoy service under Point "d" of the same article is loss of freedom for a period of 1-10 years. In wartime or in a combat situation this crime is punished under Point "ye" by loss of freedom for a period of 3-10 years or by execution. If the violation of the rules of patrol or convoy service is accompanied by commission of other crimes (taking money and other valuables from persons detained in an intoxicated condition; causing bodily injury either intentionally or by carelessness, and so on), the guilty persons are subject to responsibility not only under Article 19 of the Law but also under the Article that envisions responsibility for these crimes (robbery, bodily injury, and the like).

Sentries and members of convoys and patrols during performance of their duties must show great vigilance and unflinching determination and initiative and strive to perform their assigned missions in the most complex cases, in exceptional cases, even with the use of weapons. The grounds and procedures for use of weapons against violators of the law are set forth in Article 81 of the Regulations on Garrison and Guard Service. If the conditions for use of a weapon are fully observed, the infliction of injury or even death on a violator of the law by a sentry or a member of a patrol or convoy is not a crime. What occurs in these cases is legal use of a weapon in the process of performing the duties of military service.

In practice, however, although it is extremely rare, there are still cases of illegal use of weapons. Because observance of the rules for use of weapons by

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sentries and members of patrols and convoys is a constituent part of their special duties, illegal use of weapons should be classified as a violation of the rules for performance of guard (watch), convoy, or patrol service leading to harmful consequences for whose prevention the patrol or convoy was appointed. In this case the consequences of incorrect use of the weapons (wounding, killing) are fully covered by Article 19 of the Law only in the case if they were caused by carelessness, or if intentional, were a result of an incorrect understanding of the interests of the service and an incorrect evaluation of the situation and the person's own actions. But if the bodily injury or death was caused for the purpose of reprisal or revenge or followed an action which in the guilty person's own opinion was not necessary in performance of his special service duty, the act constitutes a concurrence of crimes: violation of the corresponding rules and an intentional crime against the individual taking the form of homicide or bodily injury.

4. Violation of Rules of Border Service

Reliable protection of the USSR State Border, carried on by border troops of the USSR State Committee for Security (KGB), is an important guarantee of the territorial integrity of our Homeland. According to the Statute on Protection of the State Border of the Union of Soviet Socialist Republics, this includes repelling armed intrusion into Soviet territory by military groups and bands and protection of the border population and socialist and personal property against criminal infringement; prevention of crossings (by foot, vehicle, or in the air) of the state border at unauthorized points or by illegal means; detaining violators of the state border; clearing persons crossing the state border at established points; preventing, jointly with customs organs, the movement across the border of objects, materials, currency, and currency assets whose import and export is prohibited; supervising, together with militia organs, observance of border conditions, and other missions. Performance of service by a border detail is performance of a combat mission and is carried out on the basis of special instructions and orders issued by the chairman of the USSR State Committee for Security.

The social danger of violations of the rules for performance of border service by a member of a border detail results from the importance of the missions performed by the border service. The most dangerous of these violations create the possibility of penetration of our territory by spies and saboteurs, illegal crossing of the USSR State Border, illegal movement of contraband goods and subversive literature across the border, and other serious consequences. Therefore, Article 20 of the Law (Article 256 of the RSFSR Criminal Code) recognizes such violations of the rules of service as crimes. Other violations which do not present increased social danger are considered by current law to be disciplinary offenses. Among them are violations of the rules for performance of border service committed in mitigating circumstances, which is pointed out in Point "b" of the same article.

The law formulates the concept of the crime under consideration as violation of the rules for performance of border service by a person who is a member of a detail guarding the USSR State Border. It follows from this definition that any action or inaction that conflicts with the statute on protection of the

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State Border, instructions to the border detail, and other documents which define procedures for the performance of border service is recognized as a violation. For example, stopping the work of a border detail without authorization, sleeping during performance of duty, being distracted from protection of the state border by outside activities (reading literature, conversations, and the like), allowing citizens or contraband to cross the state border, failure to use the weapon to repel attacks by bandits against USSR territory, unfounded use of the weapon and the like are violations of the rules for performance of border service.

Violation of the rules of border service is punished by loss of freedom for a period of 1-3 years (Point "a" of Article 20). But if this act had serious consequences, the guilty persons are subject to loss of freedom for a period of 3-10 years (Point "v").

The term "serious consequences" means actual harm to the state security of the USSR (a spy or saboteur crossing the USSR state border; allowing contraband goods across the border and then they spread around the country; failure to stop attacks by bandits, and the like). A consequence is not recognized as serious if it does not harm the security of the state border.

Causing harm to other objects which are protected by the criminal law as the result of a violation of the rules of border service constitutes a concurrence of crimes. For example, if a border guard by careless handling of his weapon during performance of border service commits a negligent homicide, the act is classified under Point "a" of Article 20 of the Law as a violation which did not have serious consequences for protection of the border, and under Article 106 of the RSFSR Criminal Code as a negligent homicide. Violation of the rules for performance of border service may also be associated with the commission of other military or general crimes (abandonment of the unit without leave, highway-transport crimes, and the like). In all of these cases they are classified as concurrent crimes.

Only a person who is a member of a detail that is guarding the USSR State Border can be responsible under Article 20 of the Law. The initial moment of the detail is when the order of the chief of the post to guard the USSR State Border is received, and the final moment is when the senior man of the border detail reports fulfillment of the order to defend the USSR State Border after the tour of duty.

5. Violation of the Rules for Performance of Combat Duty

Combat duty to protect the inviolability of the land, sea, and air space of the USSR and prevent a surprise attack on our Homeland is performance of a combat mission of particular state importance. Because our probable enemies have weapons of great destructive force with practically unlimited operating radius, the rules for performance of combat duty demand exceptional precision in performance of their duties, vigilance and discipline, and a high level of skill from the personnel of duty shifts, combat teams, crews, posts, or other duty subunits. Violation of the rules for performance of combat duty under contemporary conditions may have very serious consequences and therefore presents particularly great social danger.

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Article 21 of the Law (Article 257 of the RSFSR Criminal Code), which establishes responsibility for violation of the rules of combat duty, does not contain a list of violations that are recognized as criminal. This means that any violation of the rules for performance of combat duty is recognized as criminal if it presents a danger to insuring the inviolability of the land, sea, or air space of the USSR or reduces the possibility that a sudden attack on the Soviet Union will be prevented. Such violations may take the form of leaving the area of the duty subunit without authorization, drinking alcohol during duty, switching off radar equipment without authorization, failure to report the appearance of a target on the screen promptly, stopping observation without authorization, failure to carry out commands concerning the operating regime of the equipment, and so on.

Only those servicemen who are members of the duty shift of a combat team or a crew, post, or other duty subunit are responsible for violations of the rules for performance of combat duty. These violations may be either intentional or negligent.

A violation of the rules for performance of combat duty committed by the above-mentioned persons and not leading to serious consequences is punished under Point "a" of the Article 21 of the Law by loss of freedom for a period of 1-5 years. Insignificant violations and violations committed in mitigating circumstances are recognized by the Law as disciplinary offenses (Point "b" of the same article).

In those cases where the violation of the rules for performance of combat duty manifests itself in action which also constitutes another crime, it is also classified under the article that envisions responsibility for this crime. For example, if a soldier abandons a duty subunit for a period of more than three days without authorization, his action can be classifed under Point "a" of Article 257 and Point "a" of article 246 of the RSFSR Criminal Code.

Point "v" of Article 21 of the Law envisions responsibility for violation of the rules for performance of combat duty which has serious consequences. This crime is punished by loss of freedom for a period of 3-10 years.

The term "serious consequences" means harm to the inviolability of the land, air and water space of the USSR. It may take the form of failure to stop an intrusion into the air, water, or land space of the USSR, disablement of equipment, the death of people, and so on. The harmful consequences may be imputed to the guilt of the person who committed the violation of the rules for performance of combat duty only if they are causally related to this violation and were within the conscious contemplation of the guilty person or should and could have been so.

The crimes envisioned by Points "a" and "v" of Article 21 of the Law committed during wartime or in a combat situation are punished according to Point "g" of this article by execution or loss of freedom for a period of 5-15 years.

6. Violation of Regulation Rules of Internal Service

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Correct organization of internal service in units, on ships, and in subunits, is an essential condition for maintaining regulation internal order among the troops and serves as an important means of indoctrinating servicemen in conscious awareness of their military duty, high performance standards, and discipline, and teaching them practical skills in performance of the duties of military service.

The maintenance of internal order is assigned to commanders(chiefs) and the daily detail. The duties of members of the daily detail (except the guard and watch) are defined by the Internal Service Regulations of the USSR Armed Forces and corresponding instructions developed on their basis. The duty detail for a ship is governed by the Naval Shipboard Regulations. Improper performance or failure to perform duties by members of the daily detail can lead to disruption of internal order in the unit, on the ship, or in the subunit, to the loss of gear, weapons, ammunition, and other valuables that are under their protection, to failure to fulfill other duties of the military service, to creation of conditions that promote violations of the law, and so on.

Thus, violations of the regulation rules of internal service present significant social danger. Therefore Article 22 of the Law (Article 258 of the RSFSR Criminal Code) establishes criminal responsibility for this act. According to Point "a" of this article, violation of the regulation rules of internal service by a person who is a member of the daily detail (except guard and watch) is punished by loss of freedom for a period of 3-6 months.

Only persons who are members of the daily detail appointed in conformity with the principles of Chapter 6 of the Internal Service Regulations of the USSR Armed Forces can be held responsible for commission of this crime. The beginning of the daily detail is defined as the moment during mounting of the detail that the command "Attention!" is given to greet the unit duty officer, and for persons who are not called to the mounting procedure it begins when the command is given to begin performance of duties on the detail (kitchen worker). The daily detail ends when the report is made to the appropriate superior turning over the duty.

Violation of the regulation rules of internal service may be recognized as criminal regardless of whether it is committed itentionally or by negligence. Such a violation may take the form, for example, of failure by the duty officer, orderly, check point guard, and other personnel to carry out the duties prescribed by the regulations (orderly who does not report an incident that has occurred in the subunit to the duty officer, or does not take steps to put out a fire and call the fire team; unit duty officer who violates procedures for issuing personal weapons to officers and warrant officers, and so on), violation of the prohibitions established by the regulations (a duty officer, orderly, or guard who leaves the place of performance of his duties without authorization; allowing outsiders to enter the unit or subunit; giving illegal authorization to take out weapons, gear, and the like), and careless performance of duties (an orderly who does not insure the protection of weapons and gear; orderlies and checkpoint guards who fall asleep, and the like).

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Depending on their nature and whether they were committed with mitigating circumstances, these violations may not present significant social danger and thus not constitute crimes. Persons guilty of committing them in such cases are subject to disciplinary responsibility. This principle is fixed in Point "b" of Article 22 of the Law.

But if this violation has harmful consequences whose prevention was the duty of the particular person, not only is the violation always recognized as criminal, but also under Point "v" of Article 22 of the Law it is punished more severely, by loss of freedom for a period of six months and two years, and for 1-5 years in wartime or in combat situations (Point "g" of this article).

The term "harmful consequences" in this article means causing significant harm which takes the form of loss of or damage to property, weapons, and ammunition that is being guarded; failure to stop disorder in the barracks; penetration of outsiders with criminal intentions into the unit or subunit area; removal of combat, special, or transport vehicles; propagation of infectious diseases; the poisoning of military servicemen, and so on. Harmful consequences may be imputed to guilt only in those cases where the guilty person was under a duty to prevent them and could have prevented them.

Violation of the regulation rules for performance of internal service can be accompanied by commission of other general or military crimes. For example, if an orderly who knows that his fellow serviceman is stealing company property authorizes him to take it out of the company quarters, he is subject to responsibility not only under Point "v" of this article, but also under Article 17 and 89, Part 1 of the RSFSR Criminal Code for aiding and abetting the misappropriation of state property.

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CHAPTER 8. THE LAW PROTECTING MILITARY SECRECY

1. The Social Danger of Divulging Military Secrets

Because of the particular nature of the duties they perform servicemen in the army and navy have access to broad information about the types of combat equipment and weapons at the disposal of units and other secret information. Keeping this information secret is an essential condition for successful performance of its assigned missions by the Armed Forces. Divulging such secrets may cause serious harm to the security interests of the Soviet State and the combat readiness of our troops and fleets. Therefore, such acts have a high degree of social danger and are strictly punished by the criminal law.

The law applies stricter penalties to military servicemen who divulge secrets than it does to other citizens. This is primarily because of the specific features of military service, which imposed duties on fighting men that are peculiar in nature and exceptionally important for the state. This demand is fixed in the military oath and military regulations as one of the most important duties of the Soviet fighting man. Throughout his service he receives explainations of the meaning of military secrecy and rules for preserving it and systematic work is done to instill a high level of vigilance and dedication to the Soviet Homeland.

Information containing military secrets may be divulged in the press, in public statements, in conversation with outsiders, and by giving such persons access to secret documents or defense facilities. One of the factors that leads to divulging secrets is that certain military servicemen take a flippant attitude toward observance of the rules of secrecy and sometime like to show off how much they know, without thinking about the possible consequences. Foreign intelligence agents look for such people, try to win them over, and gradually get from them the information that interests our potential enemy. Regular and purposeful work by commanders, political organs, and party and Komsomol organizations to indoctrinate personnel in a spirit of high vigilance, which includes explaining the special state danger of this act and the measures of responsibility envisioned by law for it is expected to prevent the possibility that servicemen will divulge information known to them from their service which contains military secrets.

2. The Concept of the State and Military Secret and Responsibility for Divulging such Secrets

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A state secret is information which is specially protected by the law whose divulging can objectively be used by the enemies of the USSR to the detriment of its security and defense capability. This includes economic, political, military, and other information which is extremely important for the defensive might of our state.

At the same time the state also protects other military information which, although it is not a state secret, is important for the interests of the Armed Forces. If forces hostile to our Homeland possess it they can cause certain harm to the army and navy and their normal activities in both peacetime and in a war situation.

Thus, the term "military secret" should be understood to mean all military information, both state secrets and other information, which is important to the Soviet Armed Forces and therefore must not be made public. The military information that is not to be divulged is determined by authorized military administrative organs. With time, of course, the body of such information may change and be supplemented. This is a result of the steady stream of new types of equipment and weapons related to the scientific-technical revolution and changes in tactics, operational art, and means and methods of waging warfare.

Article 23 of the Law (Article 259 of the RSFSR Criminal Code) envisions criminal responsibility for offenses against military secrecy. This act is differentiated as follows depending on the nature of the information divulged, the method of divulging it, and the consequences:

-- divulging military information that is a state secret when there are no elements of treason against the Homeland is punished by loss of freedom for a period of 2-5 years (Point "a" of this article);

-- for losing documents that contain military information that is a state secret or losing objects, information about which is a state secret, by the person to whom these documents or objects were entrusted if the loss was a result of violation of the regulation rules of handling these documents or objects, the punishment envisioned is loss of freedom for a period of 1-3 years (Point "b");

-- if the acts envisioned by Points "a" and "b" of Article 23 of the Law have serious consequences, they are punished by loss of freedom for a period of 5-10 years (Point "v");

-- for divulging military information that is not to be made public but is not a state secret, punishment is envisioned in the form of loss of freedom for a period of from three months to one year (Point "g"), but in mitigating circumstance this act entails application of the rules of Disciplinary Code of the USSR Armed Forces (Point "d").

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Any military serviceman who has committed this crime can be brought to responsibility for divulging state and military secrets regardless of his service position or military rank. It does not matter for the elements of the crime how the information containing a military secret became known to the guilty person, whether at work or through third persons.

3. The Meaning of the Phrase "Divulging Military Information That Is a State Secret"

Competent military administrative organs decide the question of the character of the divulging of information in each particular case. However, each serviceman must know an approximate list of military information that is state secrets and could be interesting to foreign intelligence. Among such information is, for example, the following:

-- mobilization plan and other documents and communications that contain information about the defense of the country, the fighting effectiveness of the Armed Forces and the branches and combat arms, military districts, fleets, armies, and flotillas;

-- information on the location and number of troops, and the quantity and quality of weapons and combat equipment;

-- plans for combat readiness, information on the combat and operational training of troops and the state of discipline among them;

-- information on the number of active reservists and the provision of troops from regular drafts;

-- summary information on the airfield system, its condition and capacity, and defense and other special constructions;

-- plans with descriptions, drawings, and photographs of naval bases and weapons and ammunition storehouses;

-- information on the situation with protection of the state borders, and so on.

To divulge military information that is a state secret means to make it public in some way or another, to make it the property of outsiders. It follows from this definition that for the serviceman's act to be recognized as criminal the secret information must not only be made public, but there must also be a real possibility that this information will be received by outsiders. In addition, the elements of this crime require that it be established that the act (or inaction) of the guilty person violates the procedures for keeping secrets established by law, that is that it is illegal.

The law envisions responsibility for the following forms of divulging state secrets: oral, written, and by showing or giving to outsiders documents, drawings, or objects.

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Among the most typical ways of divulging secrets orally are communicating military information that is a state secret in statements at a meeting, political demonstration, or public lecture and when talking on the public telephone. There are various reasons that these criminal actions are committed -- boasting with the object of showing how much a person knows, carelessness, indifference toward organizing the storage of secret documents, articles, instruments, and the like.

Examples of divulging secrets in writing may be publication of information containing a state secret in the newspaper, a brochure, a magazine, or other accessible publication and communicating the information to outsiders in notes and personal correspondence.

A state secret can also be divulged by showing outsiders plans, maps, photographs, models, and other objects that are state secrets or by giving them to an outsider, even for just temporary use (for example, as illustrative material for the preparation of a report, lecture, or article, even in a private printed edition).

There have also been cases of divulging information which was a state secret by the inaction of the guilty person. This is possible where a serviveman out of carelessness allows outsiders to familiarize themselves with documents or articles, for example, by leaving them on his desk without supervision.

It does not matter for the classification of this crime whether the military information that was a state secret became known to one or several people.

4. What the Term "Loss of Documents and Objects" Means

Losing document that contain military information that is a state secret or objects, information about which is a state secret, leads to the same harmful results as divulging this information. The difference is that when a document, instrument, or other object is lost it is no longer in the possession of the serviceman to whom it was entrusted at work. In this case it does not matter how the document or object was lost, whether it was taken by an outsider from an open safe left unsupervised, from the desk of a worker, or from a suitcase forgotten in a public place.

The determining element of the crime is that the responsible person has violated the established rules for handling secret documents (objects) when issuing them, receiving them, transporting them, storing them, or working with them. For example, an officer might fail to turn in documents containing a military secret to the office, take them home with him, and lose them en route. Or a student at a military academy might make notes on secret material on sheets of paper which are not properly recorded and then lose them.

As a rule, the elements of this crime envision a real possibility that the lost documents or objects will be used by outsiders. Under certain circumstances, however, even a temporary absence of the document (object) from rightful possession, which creates such a danger, will be classified under Point "b" of Article 23 of the Law as loss of documents containing military information that is a state secret or objects, information about which is a state secret.

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From the standpoint of the guilty person's subjective attitude toward his actions the loss takes the form of criminal carelessness or overconfidence Criminal carelessness occurs when the guilty person does not anticipate the possibility of losing the documents or object even though, in the circumstances of the case, he should and could have anticipated this. The actions of an office chief carelessly turning over a document containing information that is a state secret along with non-secret material to an unauthorized person fit this definition.

In the case of overconfidence the guilty person anticipates the possibility of losing the document as the result of the action he has taken which violates the established procedure for storing military secrets, but he foolishly expects to prevent this loss. For example, in violation of established rules a serviceman carries a file containing secret drawings when traveling by urban transportation without guard, hoping that nothing will happen, but en route the file is stolen from him.

Intentionally giving a document or object to an outsider will be classified under Point "a" of Article 23 of the Law as divulging military information that is a state secret, and where the elements and circumstances indicated in Article 1 of the Law on Criminal Responsibility for State Crimes (Article 64 of the RSFSR Criminal Code) are present, it is treason against the Homeland.[1]

In practice there might also be cases of unintentional destruction of secret documents, for example, while burning drafts, and so on. Such carelessness can be classified as a negligent attitude toward the service under Article 24 of the Law.

Cases where the lost document is found and it is established beyond doubt that its contents did not and could not have become known to outsiders do not constitute the elements of the crime under consideration.

Intentional destruction of documents or objects by a military serviceman who is legally in possession of them should be considered as abuse of service position (Article 24 of the Law) or intentional destruction of military property (Article 15 of the Law) as appropriate. Intentional destruction of documents containing state secrets to "get even" with a commander or fellow serviceman by a person who is not an official and does not take advantage of his service position should be classified under Article 195 of the RSFSR Criminal Code, which envisions responsibility for misappropriation, destruction, damaging, and concealment of documents.

The seriousness of the consequences, which is discussed in Point "v" of Article 23 of the Law, is determined by the court based on the actual circumstances. Examples of serious consequences are cases where the information divulged or the documents lost become the property of foreign agents and are used to the detriment of the interests of the Soviet Union and the other

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[1]According to this article, an act intentionally committed by a citizen of the USSR to the detriment of the state independence, territorial integrity, and military might of the USSR is treason against the Homeland.

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friendly socialist countries; when this leads to losing priority in a discovery or invention that is important for defense needs, and so on. In wartime cases of failure to perform the combat mission and losses of personnel and combat equipment that were not justified by the battle situation have been classifed by courts as serious consequences of divulging or losing secret material.

5. Being Held Responsible for Divulging Information That Is Not a State Secret

As already observed above, military servicemen may also be criminally responsible when they divulge military information which, although it is not a state secret, still by virtue of its content should not be made public. This might be information on the location of the unit or subunit and the missions they are performing, their supply of essential gear, available communication equipment, and the like. The scope of such information is determined by orders of competent military administrative organs. This information, based on its content, has a lower degree of secrecy then military information which contains a state secret.

With respect to methods of commission and the guilty person's subjective attitude toward the results, divulging military information does not differ from divulging a state secret. The crime under consideration consists in intentional or careless action or inaction that leads to a criminal result.

In case of intentional divulging of this information it is necessary to establish whether the guilty person's act contains the elements of treason against the Homeland in the form of espionage or giving out a military secret. These crimes are distinguished by clarifying the motives and objectives for divulging this information. Intentionally giving this information to a foreign state or its agents for use against the interests of the USSR and the friendly socialist states constitutes the crime that is classified as treason against the Homeland.

Secret information may be divulged in letters and telephone conversations, as a result of violation of discipline during radio communication, and in other ways. We must not forget that foreign intelligence agents are trying to set up radio intercept stations, equipment to listen in on conversations conducted over cable and overhead communication lines, and the like in order to receive necessary information. In addition, they gather intelligence information from public sources such as the press, radio and television broadcasts, documentary films, public lectures, and manuscripts designated for storage.

According to the general rule, losing secret documents or objects that contain military information that is not a state secret, but is also not subject to publication, does not entail criminal responsibility. In certain cases, however, when such documents or objects are lost because of the careless attitude of an official toward the service, if his actions were systematically committed or if they caused substantial harm, he may be responsible under Article 24 of the Law for an official crime. The question is decided in a similar fashion in the case of deliberate destruction of such documents by an official taking advantage of his service position.

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Whether the act under consideration can be considered to have been committed in mitigating circumstances (Point "d" of Article 23 of the Law) depends on conditions such as the importance of the information divulged, the character of the guilty person, and his attitude toward his actions.

The interests of strengthening the security of the Soviet State and the combat readiness of its Armed Forces demand that we firmly stop the various manifestations of carelessness and indifference and prevent cases of divulging state and military secrets. Therefore, it is an absolute law for every Soviet serviceman that he must follow unconditionally the demands of the military oath to be vigilant and the keep military and state secrets rigorously. Constantly raising vigilance is a command of the times and a mighty weapon in the struggle against the aggressive aspirations of international imperialism and its henchmen.

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CHAPTER 9. RESPONSIBILITY OF OFFICIALS FOR WORK CRIMES

1. General Description of Military Official Crimes and Their Social Danger

V. I. Lenin devoted a special place to military discipline and socialist legality in successfully building a new type of army and winning victory over the enemy. These ideas of Lenin have been further elaborated in the decisions of the Communist Party of the Soviet Union and applied specifically to the actual conditions of the Armed Forces in the orders and directives of the USSR Minister of Defense and the Chief of the Main Political Directorate of the Soviet Army and Navy.

Official personnel of the Soviet Armed Forces, to whom the state gives great rights and authority, have great responsibility for carrying out Lenin's teachings and the orders of the CPSU. Like any contemporary leader, the commander (chief) must combine in himself party loyalty with profound competence and discipline with initiative and a create approach to the work. In all their activity military officials must observe the USSR Constitution and other Soviet laws unconditionally.

As we know, the authority of commanders and chiefs is protected by the law and military regulations. This gives them important obligations to use the power and rights granted to them only in the interests of the military service, to strengthen the combat might of the Armed Forces. Use of the service position against the interests of the service, like the inaction of authority, causes serious harm to military legal order, as a result of which it presents considerable social danger.

The Soviet Armed Forces have experienced officer personnel, a large majority of whom direct the subunits, units, and ships entrusted to them skillfully, always remember their duty as commanders, and never for a minute lose their feeling of responsibility to the party and the people. The high performance level and discipline of the commander and chief is very important here. Emphasizing this, M. V. Frunze wrote as follows: "Any undisciplined action by a particular commander or political worker should meet the strictest rebuke and should in no case go unpunished. Only in this case is it possible to follow the policy of tightening up discipline from the top to the bottom."[1]

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1 M. V. Frunze, "Izbrannyye proizvedeniya" [Selected Works], Moscow, 1957, Vol. 2, p 298.

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The Communist Party demands of regular military personnel that the commander set a proper tone in the struggle for rigorous observance of Soviet laws and regulation order by his ideological conviction, state-minded approach to the work, and high demands of himself. This requirement is embodied in Article 48 of the Internal Service Regulations, which emphasizes that the commander (chief) "should set an example for his subordinates of rigorous observance of the USSR Constitution, Soviet laws, and the norms of communist morality and unconditional fulfillment of the requirements of the military oath, military regulations, and one's own service duties."

Of course, high legal sophistication, moral purity, and professional confidence in command, engineering, and political personnel are the operative factors that insure effective training and indoctrination of personnel and a rise in combat readiness of subunits, units, and ships. Nonetheless, in practice there are isolated cases of deviation from the requirements of the laws, regulations, and other military enactments. Each such digression to one degree or another is reflected in the successes of the particular subunit and military unit. And under conditions of the Armed Forces official crimes are absolutely intolerable -- abuse of authority or service position, inaction or exceeding authority, or a careless attitude toward performance of service duties. These acts are capable of causing substantial harm to the discipline and combat readiness of troops and naval forces and therefore are criminally punishable.

As a constituent part of the Soviet state apparatus, the apparatus of military administration is constructed on the basis of the same principles, including the principles of responsibility for offenses against the interests of the service. At the same time, the structure, forms, and methods of military leadership have distinctive features resulting from the strict centralization of administration, the nature of the missions being performed by Armed Forces, and the specific characteristics of service relations in military collectives. Therefore, in addition to the articles that establish responsibility for general official crimes,[2] our criminal law and Article 24 of the Law (Article 260 of the RSFSR Criminal Code) envision special responsibility for military official crimes, which means acts that significantly disrupt the functioning of the military administrative apparatus and cause harm to military legal order, if they are committed by a military official taking advantage of his service position.

Point "a" of this article indicates that abuse of authority or service position by a chief or official, inaction or exceeding authority, and also a careless attitude toward the service, if these actions are committed regularly or for mercenary or other personal interests, as well as if they have caused substantial harm, are punished by loss of freedom for a period of from six months to 10 years. The same actions with mitigating circumstances entail use of the Disciplinary Code of the USSR Armed Forces (Point "b"). But if

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[2] See Articles 170-175 of the RSFSR Criminal Code, which envision responsibility for abuse of authority or service position, exceeding authority or service powers, carelessness, bribe-taking, mediating bribe-taking, and official forgery.

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they are committed in wartime or in a combat situation, the guilty persons are punished by loss of freedom for a period of 3-10 years or by execution (Point "v").

2. The Concept of the "Military Official"

According to Article 24 of the Law, not all categories of military servicemen can be held responsible for military official crimes; only commanders and other officials can be responsible. Thus, determination of the range of people responsible for these crimes is based on the nature of the serviceman's authority and the functions he is performing. The concept of "commander" is given in Articles 10, 11, 12, and 14 of the Internal Service Regulations. The main distinguishing characteristic of the military commander is that he is given the right to give orders and commands to his subordinates. As we know, a serviceman may be a commander in relation to other servicemen either based on the position he holds or based on his military rank. From the legal standpoint both are military officials. In addition to commanders, other servicemen are also classified as officials based on their service position.

In defining a military official we should begin from the general concept of an official given in the criminal codes of the Union republics in application to general official crimes. The determining characteristic of an official according to the note to Article 170 of the RSFSR Criminal Code is the performance of organizational-leadership or administrative functions based on the position occupied (permanently or temporarily) or based on special authorization.

Organizational-leadership functions are nothing more than the duties involved with general organization of work in a particular sector, with management of people, selection and placement of personnel, hiring and firing, and so on. Included in this category of officials are, for example, the commanders of individual military subunits, units, and large units, the chiefs of institutions, headquarter, and directorates, their duputies and assistants, and other servivemen who are given certain authority and rights to give orders and commands to their subordinates and to monitor their performance.

Administrative functions presuppose direct management of state (including military) or public property and organizing record-keeping, storage, use, issuing, and expenditure of commodity-material assets and monetary resources. The officials who are given these duties, in addition to those listed above, are the chiefs of special services (finances, food, clothing, medicine, and the like), managers of materiel storehouses, bookkeepers, inspectors, and the chiefs of administrative departments and services.

The group of officials who may be held responsible under Article 24 of the Law includes not only servicemen who occupy regular positions in military administrative organs, but also persons who temporarily possess the rights of a commander while performing duty on the internal detail and during guard, border, and other special service. Thus, if a company duty officer, abusing his authority, assaults the orderly, he will be held responsible under Article 24 of the Law. But if the violations committed by such persons are related to

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special, not general duties, then their actions may constitute the elements of a crime committed against procedures for performance of the special service. For example, a chief of the guard who permits alcoholic beverages to be drunk at the posts, causing harmful consequences, will be held responsible not as an official under Article 24, but as a member of the daily detail under Article 19 of the Law (Article 255 of the RSFSR Criminal Code) -- for violation of the regulation rules of the guard service.

Servicemen who are temporarily performing the duties of commander (chief), for example, a private who is temporarily acting as squad leader, can also be officials within the meaning of Article 24 of the Law.

Military servicemen who are officials of public organizations operating in the Armed Forces are responsible for crimes committed in this sphere under the articles on general official crimes. For example, a warrant officer who is chairman of the mutual aid fund and has committed abuses related to performance of this duty will be responsible for the corresponding general official crime, not the military official crime.

3. Types of Military Official Crimes

As already noted, Article 24 of the Law envisions four types of military official crimes: abuse of authority or service position by a commander or official; inaction of authority; exceeding authority; and a careless attitude toward the service. In terms of their legal nature these crimes are of the same type because they all infringe on the normal activity of the military administrative apparatus, and commanders and other servicemen recognized as officials are the subjects of the crime. At the same time, they have a number of distinguishing features.

Abuse of authority or service position takes the form of a commander or other military official's intentionally using his service position to the detriment of service interests. It involves an action (or inaction) which consciously violates the service duties and rights established for these people by law or by special military legal enactment.

An example of a case which will be considered as official abuse by action is where a unit commander orders his subordinates to do work at an outside enterprise in order to receive resources which he has designated for construction of unplanned facilities or expenditures for other measures not envisioned by estimate. From the standpoint of the law no justification that such actions are "in the interests of the service" can be accepted. The commander (chief) has a right to give only legal orders and commands which can be carried out by permitted means. Any other command by an official which conflicts with the law and regulations is illegal and if the elements indicated in Article 24 of the Law are present entails criminal responsibility.

Unlike abuse of authority, exceeding authority manifests itself in the form of an action that goes beyond the authority given by law to the particular official. For example, use of a weapon against a subordinate by a commander without the conditions envisioned by Article 7 of the Disciplinary Code

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contains the elements of a crime in the form of exceeding authority. It will also be exceeding authority for a commander to undertake actions which by their nature only higher-ranking officials are authorized to take.

Inaction of authority manifests itself in failure by a military official to take steps which he was supposed to take by virtue of his service position in order to prevent harmful consequences. Violation of this duty, that is inaction of authority, can lead to serious consequences under certain conditions, for example, failure to take proper steps to prevent disorder and inaction in an emergency situation or a combat situation.

Regardless of the position he occupies, a commander or chief is obligated to use the authority given to him skillfully and resolutely within the limits of his competence and direct the efforts of subordinates to performance of their military duties. In case of insubordination or resistance of subordinates, for example, the regulations obligate the commander to take all necessary measures of coercion, to the point of arresting the guilty persons and bringing them to criminal responsibility, to restore order. In exceptional cases where delay is intolerable, when the actions of the disobeying person are plainly directed toward treason against the Homeland and preventing performance of the combat mission or create a real threat to the life of the commander or other persons, the regulations give the commander the right to use weapons. A commander who has not taken appropriate steps to restore order and discipline is responsible for this.

Failure to take actions which are not within the scope of his service duties cannot be imputed to the guilt of a commander.

The careless attitude toward the service as a official crime finds expression in a military official's improper performance of or failure to perform his service duties because of a careless or unconscientious attitude toward them. A typical feature of the careless attitude is inaction, failure of an official to take action which he could and should have taken by virtue of his service duties. For example, if during construction of a building a senior inspecting engineer of the billeting directorate, representing the purchaser, does not monitor the production processes of the construction site and as a result design specifications are violated and the building collapses, this is a case of official carelessness.

Improper performance of service duties consists of incomplete work which ultimately leads to criminal results. An example of this could be a storehouse chief who receives and issues food without checking the assortment and weight, as result of which a large shortage of these goods develops over time. An unconscientious or careless attitude toward the service may also be expressed in thoughtless, formalistic performance of service duty, excessive paperwork, and a cold, bureaucratic attitude toward people.

It should be kept in mind that criminal carelessness can be not only longstanding careless performance of official duties, but also one-time unconscientious performance if it causes substantial harm.

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Just one of the elements envisioned in Article 24 of the Law (systematic nature, mercenary interests or other personal interests, and causing substantial harm) is enough to recognize abuse of authority or service position, inaction of authority, or exceeding authority as an official crime. By contrast, carelessness can be recognized as criminal only when it is systematic or causes substantial harm.

The term "systematic character" means the illegal actions are repeated several times, which means at least three times.

"Mercenary motives" presuppose the extraction of an illegal property benefit. Unlike misappropriation by abuse of service position, which is envisioned in Article 92 of the RSFSR Criminal Code, a mercenary motive in official crimes involves temporarily borrowing property for personal use or the use of third persons, concealing shortages of material assets by taking advantage of one's service position, or illegally releasing oneself and other persons from payment of taxes and other forms of indebtedness to the state or to individual citizens. From experience we know of cases, for example, where an official intentionally issued documents to relatives or friends so they could receive property benefits to which they had no legal right. Mercenary abuse is also seen in the case where the chief of an institution bought scarce parts for his personal automobile in the warehouse subordinate to him and paid for them through the appropriate financial organ at state prices, not retail prices.

The phrase "other personal interests" covers a broad range of non-property motives of the official which conflict with service interests. The motives here may be highly diverse: careerism (for example, the desire to get an undeserved promotion or commendation) or envy and revenge, which leads to illegal infringement on the rights and interests of other citizens. The main distinguishing feature of these motives is satisfaction of personal interests rather than service interests.

Whether there is substantial harm in each particular case is determined by a competent organ during its analysis of the violation committed by the official. They consider not only the harm caused to the state and to public organizations, but also to the legally protected rights and interests of individual citizens. Substantial harm may mean disabling expensive equipment, stopping performance of the combat mission (for example, to intercept a violator of USSR airspace), or injury and death of people.

Criminal official carelessness will be found, for example, in the actions of an officer responsible for servicing combat equipment who did not insure that the work was done in strict conformity with established rules, if these actions led to an accident, the disablement of valuable equipment, or disruption of the normal activity of the subunit. The action of a senior physician in a department of a military hospital who did not monitor a nurse's work and as a result a medicine was mistakenly injected into the veins of the patient and caused his death or serious damage to his health will be classified the same way.

In terms of objective characteristics the careless attitude toward service is similar to inaction of authority: in both cases the duties necessitated by

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the service are not carried out. The difference is in the subjective attitude of the guilty person toward his behavior; inaction presupposes intent, while carelessness is done out of neglect.

Point "b" of Article 24 of the Law envisions certain mitigating circumstances, including: first-time commission of the official crime, commission of the crime out of mistakenly understood service interests, voluntary reimbursement of the loss caused, taking care of the damage done, sincere repentence, active help in uncovering the crime, and so on.

In the case where a military serviceman commits crimes of an official character that are not envisioned by Article 24 of the Law, responsibility for them comes under general criminal law, for example, under Articles 173, 174, 174^1 of the RSFSR Criminal Code for bribe-taking and Article 175 of the same criminal code for official forgery.

Commanders, political organs, and party and Komsomol organizations in close cooperation with state law enforcement organs are working constantly to prevent criminal offenses against the activity of the military administrative apparatus and other antisocial phenomena. A large majority of the officers of the Armed Forces and military official approach performance of their service duties with a sense of great responsibility and thorough knowledge of the assigned work. This is accomplished by constant ideological and political indoctrination work and by the means of legal propaganda. But in those cases where crime occurs nonetheless, the Leninist principle of inevitable punishment is put into effect unconditionally.

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CHAPTER 10. WARTIME CRIMES

1. The Concept and Types of Wartime Crimes

Soviet military criminal law envisions responsibility for a number of crimes which are characteristic only of wartime and a combat situation. Wartime crimes offend against the procedures established for military servicemen to wage combat operations. These crimes involve violation of the requirements of the USSR Constitution, the military regulations, and the military oath on defense of the Fatherland and present exceptional danger.

When joining the ranks of the USSR Armed Forces every fighting man swears to be conscientious, courageous, and disciplined and to defend the Homeland bravely, skillfully, and with dignity and honor, not sparing blood or life itself to achieve complete victory over our enemies. Unconditional observance of these requirements of the military oath, which follow from Article 62 of the USSR Constitution, and of numerous other points of Soviet law is an essential prerequisite for successful performance of combat missions. Various types of evasions of waging combat operations, even by individual servicemen, and cases where they show cowardice, weakness, and excessive self-concern weaken the fighting effectiveness of troops and fleets, have a demoralizing impact on personnel, and in this way help the enemy.

To prevent such phenomena the law envisions criminal responsibility for criminal violation of the requirements which are made of military servicemen in connection with waging combat operations. Strict punishment all the way to execution is established for most of the wartime crimes. At the same time the state clearly defines the list of such crimes and their elements.

Every military serviceman is obligated to know the norms of the Law which establish criminal responsibility for wartime crimes thoroughly. Study of these norms is a part of the combat training for troops and fleets, because they orient fighting men to correct, proper behavior in a combat situation and help them be more deeply aware of the responsibility which they have under conditions of waging military operations and of the social danger of criminal violations of the requirements of the military oath. An understanding by personnel of the great responsibility of the military serviceman in a combat situation helps strengthen military discipline in peacetime too.

The wartime crimes can be conditionally divided into three groups; crimes on the field of battle, crimes in captivity, and crimes against the laws and customs of war.

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2. Crimes on the Field of Battle

The most dangerous crime on the field of battle is turning over or leaving to the enemy the means of waging war, envisioned by Article 25 of the Law (Article 261 of the RSFSR Criminal Code). A commander who turns over to the enemy the military forces entrusted to him or without being forced by the combat situation leaves fortifications, combat equipment, and other means of waging war for the enemy, if these actions were not done for purposes of helping the enemy, is punished by loss of freedom for a period of 3-10 years or execution.

The essential point of this crime is that the commander either turns over the military forces subordinate to him to the enemy or stops military operations and withdraws from the positions occupied, leaving fortifications, combat equipment, and other combat means for the enemy. Only commanders and chiefs, that is servicemen who have personnel and combat and other military equipment under them, can be criminally responsible for surrendering or leaving to the enemy the means of waging war.

The Internal Service Regulations of the USSR Armed Forces (Articles 47, 65, 110, 123, 131, and 137) make commanders personally responsible for the combat and mobilization readiness of the unit, ship, and subunit entrusted to them and the condition and preservation of the weapons, combat and other equipment, ammunition, fuel, and other materiel at their disposal. According to the Regulations (Articles 66, 111, 124, 132, and 138) during performance of combat missions the commander is obligated to direct the unit, ship, or subunit skillfully, using the forces and means entrusted to him in the interests of accomplishing the assigned missions and in accordance with the combat situation.

The above-mentioned requirements apply to commanders and chiefs at all levels regardless of their rank and position, which may be permanent or temporary. A serviceman cannot justify his actions, for example, by saying that he is only a temporary acting chief, does not have adequate skills in waging combat operations, and so on.

The term "military forces" means personnel, both armed with means of waging combat operations and personnel who for some reason are without weapons. Under no circumstances and for no reason does the commander have the right to surrender the forces entrusted to him to the enemy. It does not matter whether there is or there is not a possibility of continuing combat operations; questions of the wisdom or humaneness of surrendering military forces who are unable to continue the battle are not taken into account. In all situations the commander must take steps to avoid the capture of personnel and to lead them out of encirclement.

The crime of surrendering subordinate military forces to the enemy is expressed by the commander's turning over the personnel subordinate to him to the enemy after preliminary negotiations about surrender, simply stopping armed resistance, or not taking steps to protect personnel against attack, as a result of which servicemen come under the enemy's power.

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The term "fortifications" means the segment of terrain occupied by the unit or subunit and equipped for defense and waging combat operations. Usually a system of engineering structures is built in such sectors, including pillboxes, earth-and-timber boxes, bunkers, trenches, block obstacles, underground structures, and the like. Fortifications are one of the most important means of waging warfare, so commanders and chiefs are obligated to use every existing opportunity to prevent their capture by the enemy. The only exception is situations where abandoning the fortifications is dictated by the combat situation. But even in this case the commander can only leave the occupied sector with an appropriate order from the higher-ranking officer. If the fortification is left to the enemy without these grounds, the commander's actions are a crime.

In exactly the same way it is considered criminal to leave weapons, ammunition, military equipment, means of transportation, and combat engineering equipment which can be used by the enemy. Forced withdrawls and temporary retreats are possible in a combat situation. When withdrawing their subunits following an order received, commanders and chiefs are obligated to take care to save the means of waging war and bring out military gear, everything that has material value. If there is no possibility of doing this, the means of waging military operations should be destroyed or damaged so that the enemy cannot use them.

Military chiefs who are providing medical, food, clothing, and cultural educational support for personnel during a period of military operations can be held responsibility only for surrendering military forces to the enemy, that is, if they turn the personnel subordinate to them over to the enemy. If they leave food, clothing, medical, and cultural education equipment for the enemy this does not constitute the crime classified as leaving the means of waging war. But depending on the circumstances, such actions by them may constitute another military crime, for example an official crime, inaction of authority or a careless attitude toward the service (Article 24 of the Law).

The crime under consideration here is usually committed out of cowardice, weakness, excessive self-concern, and the like. But if the guilty person when surrendering military forces to the enemy or leaving the means of waging war behind is pursuing the objective of helping the enemy and weakening the Soviet Armed Forces, his actions are treason against the Homeland and he can be held responsible for this state crime under Article 64 of the RSFSR Criminal Code.

Leaving a sinking warship is one of the crimes committed on the field of battle. It is true that this crime can be committed under peacetime conditions as well as in wartime, in a combat situation. Article 46 of the Law (Article 262 of the RSFSR Criminal Code) indicates that abandonment of a sinking warship by a commander who has not completely fulfilled his service duties, or by a member of the ship command without an appropriate order from the captain, is punished by loss of freedom for a period of 5-10 years (Point "a"), and in wartime or in a combat situation the punishment is execution or loss of freedom for a period of 10-15 years (Point "b").

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Soviet laws make a ship captain personally responsible for its combat and mobilization readiness. The commander must use all opportunities to insure preservation of the ship, crew, combat equipment, weapons, and other military gear and not permit them to be lost and destroyed unless it is a result of the combat situation.

In combat situations, and in certain cases under peacetime conditions as well, it is possible that a ship may receive damage that threatens to sink it. The law stipulates that a dangerous situation by itself does not relieve the ship captain of his responsibility for its fate. Under circumstances that threaten the loss of the ship, according to the requirements of the Shipboard Regulations of the USSR Navy, the commander must take all steps to save the ship, insure its survivability, and if this does not appear possible to save personnel, weapons, combat equipment, other valuable property, and essential papers. The first to abandon ship are passengers and sick persons, as well as all personnel who are not engaged in saving the ship and evacuation work; the navigation and watch logs, secret documents, maps, charts, and the like are taken out.

If the sinking warship is in a region of enemy operations, steps should be taken so that the ship is destroyed, sunk, and cannot be used by the enemy. All valuable military property which cannot be removed from the ship should be destroyed or made unuseable. Where there is not a threat that the ship will be captured by the enemy, and also under peacetime conditions, the captain if possible should run the ship aground or take steps that will make it easier later to raise the sunken ship.

The captain is the last to leave the ship. If the captain violates these requirements there may be serious consequences. The fate of a sinking warship and of its crew depend greatly on the discipline of the duty team. A navy man cannot stop performing his duties without authorization, and under no circumstances does he have the right to abandon a sinking ship without leave of the captain. If members of the duty team abandon the ship without leave the captain is deprived of the possibility of taking all prescribed actions to save the ship, insure its survivability, rescue personnel, and the like. Therefore the military criminal law establishes the same responsibility for the captain and for members of the ship duty team who abandon a sinking warship.

The damage caused to the ship may vary; in some cases the ship is immediately destroyed and sinks, while in others it stays afloat for an extended time. The question arises: is the question of the responsibility of the captain and members of the duty team decided in the same way in both situations?

Abandoning a sinking warship entails criminal responsibility only if the captain or members of the duty team had an opportunity to perform their prescribed actions. In a situation where the ship sinks and there is no opportunity to carry out the necessary evacuation work, abandonment of the ship without appropriate authorization is a forced action done in a situation of extreme necessity, and as a result criminal responsibility for it is precluded. But even under these conditions an effort should be made to abandon ship in an organized manner, showing performance standards and maintaining discipline to the end.

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Article 27 of the Law (Article 263 of the RSFSR Criminal Code) establishes responsibility for leaving the field of battle without authorization or refusing to fight with a weapon. This crime is punished by execution or loss of freedom for a term of 15 years.

The supreme form of defending the Fatherland is fighting with gun in hand on the field of battle. It is here that the missions of destroying the enemy are decided and the moral-political and fighting qualities of the men are tested. Evasions of combat operations -- leaving the field of battle without authorization, refusal to fight with a weapon, and surrendering out of cowardice and weakness -- undermine the fighting effectiveness of the subunit, threaten to prevent performance of the combat mission, disorganize personnel, and weaken their morale and fighting spirit. It is in view of the heightened danger of these actions that such strict penalties have been instituted for them. Any military serviceman regardless of rank or position can be brought to responsibility for leaving the field of battle without authorization or refusing to fight with a weapon.

The term "leaving the field of battle without authorization" means a serviceman abandons his place in battle, for example duing a battle he withdraws from the position occupied by his squad, team, platoon, or company, without the commander's authorization to do so. Leaving the field of battle is done for the purpose of evading participation in military operations, and if this objective is not established, simply leaving the assigned place by itself does not constitute the crime. For example, a serviceman abandoned the position he occupied without authorization and dashed to another sector in order to be closer to his friend. He did not stop combat operations and in fact did not leave the field of battle. His behavior can be evaluated, depending on circumstances, as a disciplinary offense.

Leaving the field of battle without authorization is criminal on the condition that it is done during a battle. If combat operations are not taking place withdrawal from the position occupied is not recognized as the crime envisioned by Article 27 of the Law. But it is possible that the withdrawal may be done in expectation of battle, when directly threatened with an enemy attack, or before the start of an attack by one's subunit. In these cases the guilty person is responsible in conformity with this article of the Law.

A case is possible where the serviceman leaves not only the field of battle without authorization, but also his military unit, traveling, for example, to rear units or home. Such actions are also evaluated as leaving the field of battle without authorization.

Refusal to fight with a weapon takes the form of ceasing to the use the weapon during battle. In this case the guilty person himself does not leave the field of battle. The refusal may be openly expressed, in words, and demonstrative, but it can also be in concealed form where the soldier in fact is not fighting but he does not openly announce that he does not want to fight.

In evaluating the behavior of a serviceman who actually stops fighting, it is necessary to identify the true reasons for the refusal. This crime is

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usually committed out of cowardice or weakness, and sometimes for religious reasons. Experience shows that young soldiers who have not been under fire can become depressed during battle and lose their ability to evaluate the situation soberly and control their own behavior. If a fighting man has stopped using his weapon, but at the same time is not trying to take shelter, does not explain his refusal with religious reasons or a desire not to fight, and it can be seen from his behavior that it is a result of fear and depression, the grounds for bringing him to responsibility under Article 27 are not present here.

Identifying the true motive for the refusal in each such case is also important because it may indicate another, more dangerous crime. This refers to a refusal which expresses a desire not to fight on the side of the Soviet Armed Forces and, even more, a refusal aimed at helping the enemy. In this case the refusal constitutes treason against the Homeland and is classified under the corresponding article of the criminal code. On the other hand, stopping combat operations may be caused by various objective factors that do not depend on the will of the serviceman, for example an injury, contusion, loss of the weapon, and so on. When such circumstances are established criminal responsibility for stopping military operations is precluded.

Article 28 of the Law (Article 264 of the RSFSR Criminal Code) establishes responsibility for voluntarily surrendering out of cowardice or weakness. This crime is punished by execution or loss of freedom for a term of 15 years.

Like leaving the field of battle without authorization and refusal to fight with a weapon, voluntarily surrendering is a form of evasion of combat operations by the serviceman for the purpose of saving his own life. It illustrates that the guilty person, guided by excessive self-concern and base interests, does not want to carry out his military duty in battle. The Soviet military regulations categorically prohibit servicemen from surrendering. "Nothing, not even the threat of death, should force a serviceman of the USSR Armed Forces to surrender," states Article 3 of the Internal Service Regulations of the USSR Armed Forces.

The term "surrender" means that a serviceman voluntarily crosses over and puts himself under the enemy's authority. The crime may take various forms, among them a serviceman who during battle raises his hands over his head or announces in words to the enemy that he wants to surrender, or who gives other signals that indicate this desire (for example he waves a white flag), leaves the location of his own troops and heads toward the enemy, or stays on the field of battle pretending to be wounded or killed.

By themselves actions aimed at surrender still do not constitute the completed crime because they may not end in surrender, for example because the enemy is driven back. The surrender is considered a completed crime from the moment that the guilty person is actually under enemy authority. If the serviceman did not in fact come under enemy authority although he deliberately attempted to surrender, he will brought to criminal responsibility for attempted voluntary surrender.

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The voluntary nature of the surrender is a mandatory condition of criminal responsibility under Article 28. The surrender is voluntary if the serviceman, after finding himself in captivity, has an opportunity to escape. If there is no such possibility the fact that a serviceman is captured is not grounds to bring him to criminal responsibility (for example, a serviceman may be in a helpless condition, wounded or stunned, unconscious, or for some other reason unable to resist the enemy). The fact that a serviceman did not have his weapon, ammunition, and the like is not an acceptable reason for being in captivity. The threat of death also cannot force a Soviet fighting man to surrender.

Voluntary surrender as a crime is done out of motives of cowardice and weakness. It is very important to establish these motives, because if it is found that the guilty person went over to the enemy for the purpose of fighting on his side or in some other way working counter to the Soviet State, the actions he committed should be evaluated as treason against the Homeland and classified under Article 64 of the RSFSR Criminal Code.

3. Crimes While in Captivity

The fact that a serviceman is in captivity does not free him of responsibility for his behavior. According to the principles of the 12 August 1949 Geneva Convention "On the Treatment of Prisoners of War,"[1] the prisoner remains a citizen of his country and a fighting man of his army and therefore he must observe all military obligations defined for him by the regulations and other laws. A serviceman who is in captivity must be loyal to the military oath and not commit actions which would harm the Soviet State or its Armed Forces and lower the honor and dignity of a Soviet fighting man. Furthermore, he is obligated to take all possible steps to free himself from captivity so that he can again join the ranks and continue the fight against the enemy.

The strength of prisoners of war lies in their solidarity, mutual support, and unity of action against the arbitrary actions of the POW camp administration. While in captivity the Soviet fighting man is obligated to give every possible support to the patriotic activity of other prisoners, including those from the armies of allied states, and when possible to look after the health, diet, and medical care of comrades in captivity.

Violation by a serviceman in captivity of the obligations imposed on him is in certain cases considered a crime by Soviet law. Article 29 of the Law (Article 265 of the RSFSR Criminal Code) states that voluntary participation by a serviceman in captivity in work that has military significance or other measures that he knows can harm the Soviet Union or states allied with it is punishable, where the elements of treason against the Homeland are not present, by loss of freedom for a period of 3-10 years (Point "a"); violence against fellow prisoners of war and cruel treatment of them by a serviceman who has senior status is punished by loss of freedom for a period of 3-10 years (Point "b"); actions by a serviceman in captivity which are aimed to harm other prisoners

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1 See "Zhenevskiye konventsii o zashchite zhertv voyny" [Geneva Conventions of Protection of Victims of War], Moscow, 1954, pp 69-128

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of war and are taken out of selfish motives or to win favor from the enemy are punished by loss of freedom for a period of 1-3 years (Point "v").

Thus, this article sets forth three forms of possible criminal activity by a prisoner of war, indicated respectively in Points "a", "b", and "v".

By taking part in work that has military significance or participating in other activities aimed at harming the Soviet Union or countries allied with it, a serviceman in captivity helps build up the miltary potential of the enemy. Military work is work related to strengthening the armed forces of the enemy. It includes participation in the production and delivery of combat vehicles, airplanes, ships, weapons, ammunition, and the like; work at industrial enterprises that produce strategic raw materials, metal, chemicals, radioactive substances, and the like. Furthermore, this refers not only to the immediate operations of producing products, but also to leadership activity. Military work may also involve scientific research (development of new types and systems of weapons, ammunition, and military-technical means, including defensive means).

The Geneva Convention prohibits a state holding prisoners of war from using them in work that has military significance. This gives the prisoners grounds to refuse such work and to actively resist arbitrary action by the administration. A prisoner of war can only be used in agricultural, material-domestic, and cultural work and in the service sphere. Moreover, work is not an obligation for captive officers, but rather a right; in other words, officers can in principle refuse any work.

It is a crime to participate not only in military work, but also in other measures that strengthen enemy forces or weaken the Sovit Union and states allied with it (for example, recruiting prisoners of war to participate in work with military significance, organizing provocation among prisoners and so on).

An important condition for criminal responsibility under Article 29 of the Law is that the serviceman be aware of the military character of the work being done or of the other activities. The law speaks of participation in such work which knowingly could cause harm. This means that the guilty person must be aware of the possibility of causing harm to the Soviet Union or a state allied with it by his participation in the work. If circumstances testify that he could not correctly evaluate the significance of the work being done, his actual participation in it does not entail criminal responsibility.

To classify actions as a crime under Article 29 of the Law it is also necessary to be certain that participation in the work or other measures under consideration does not have an anti-Soviet orientation. If the prisoner's activity pursued the special objective of weakening the Soviet State and its military might, the action should be considered as treason against the Homeland in the form of going over to the enemy side (Article 64 of the RSFSR Criminal Code). The motives for the crimes indicated in Article 29 of the Law are generally material-domestic and result from the guilty

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person's desire to make the situation easy, to get better food, and the like. Such types of crime as, for example, participation by a prisoner of war in intelligence or sabotage activity against the Soviet State or its allies points directly to treason against the Homeland.

Point "b" of Article 29 of the Law envisions the crime of violence against other prisoners of war or cruel treatment of them by a prisoner who is in a senior position.

Violence here means physical or mental influence on prisoners of war -- beating, torture, causing bodily injury, threatening to cause bodily injury or death, and so on. The commission of intentional homicide requires classification not only under Article 29 of the Law, but also under the article of the criminal code which envisions responsibility for homicide. Cruel treatment may manifest itself in committing actions that offend the honor and dignity of the individual and cause suffering and torment. This includes various types of limitations on freedom (for example tying them up), depriving them of sleep, rest, or food, forcing them to work past the point of exhaustion, mocking them, and similar actions.

It should be kept in mind that a senior man is responsible for these actions only if they were committed against a prisoner of war subordinate to him. Violent actions are a form of abuse of his service position by the senior man. In addition, these actions, committed in connection with performance of duties by the senior man, are evidence of his diligence and zeal in his work and his desire to win favor with the camp administration by causing harm to the prisoners.

If such actions are committed by a serviceman who holds the position of senior against prisoners who are not subordinate to him or against subordinate prisoners but not in connection with service duties (perhaps from personal motives, for example), the act should be classified depending on circumstances either under Point "v" of Article 29 of the Law or the article of the criminal code that envisions responsibility for the corresponding general crime.

The question may arise of how to evaluate the action of a senior man who has used violence or cruel treatment with a serviceman because that serviceman committed actions that harmed other prisoners (for example, pushed them around, took away their food, reported their patriotic activities to the administration, and so on). In these cases the senior man is not responsible because his actions were aimed at protecting the interests of the prisoners. On the other hand, if it is established that the senior man used violence or cruelty against a prisoner of war in connection with the latter's patriotic activity, his actions should be evaluated as treason against the Homeland.

Under certain circumstance actions committed by a serviceman in captivity to harm other prisoners constitute a crime (Point "v" of Article 29).

Any military serviceman, regardless of whether he is senior or not, should steadfastly endure the hardships of enemy captivity and not try to make his position easier by harming the interests of other prisoners. Such behavior

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promotes solidarity among the prisoners and helps them wage the struggle against their common enemy in an organized way. The commission of actions aimed at harming other prisoners may find expression in taking clothing, footware, and food from them, forcing them to do work assigned to the guilty person, reporting violations to the camp administration, and so on. If bodily harm is caused to the victim here or a homicide is committed, the act is also classified under the appropriate general articles of the criminal code.

Responsibility for the crime envisioned in Point "v" of Article 29 of the Law arises if the crime was committed from mercenary motives or to win favor from the enemy. This means that the guilty person was trying to get extra food, take other's things for himself, have other prisoners do his work, win favor with the camp administration, and so on. But if these actions are committed in connection with the patriotic activity of the prisoner-victim, they may indicate a more dangerous crime, treason against the Homeland.

4. Crimes Against the Laws and Customs of War

International law includes a number of norms that are expected to prevent a war of one state against another from becoming a war against the foundations of human existence and to prevent violation during military operations of those moral principles beyond which humanity ends. Foremost among them are the norms that determine the attitude of servicemen toward killed and wounded, the civilian population living in a region of military operations, prisoners of war, and medical units. They are presented in the corresponding Geneva Conventions and other international agreements signed by the Soviet Union and therefore are mandatory for our servicemen. Criminal responsibility is established for the most dangerous forms of violation of these norms.

Article 30 of the Law (Article 266 of the RSFSR Criminal Code) envisions responsibility for looting bodies. Stealing articles found on killed and wounded on the field of battle is punished by loss of freedom for a period of 3-10 years.

The term "looting bodies" means mercenary seizure of the personal articles of killed and wounded persons both during the battle and after, but on the field of battle. The articles may be taken secretly where the guilty person takes material valuables found on killed and wounded unnoticed by others. It may also be open, that is committed in sight of other people, including wounded men. Looting bodies is also done using force against wounded men.

The elements of this crime comprise stealing not any objects found on killed and wounded persons, but only personal effects. These are above all articles of clothing, toilet articles, watches, money, rings, and other valuables. Taking weapons, ammunition, documents of military significance, and other objects from killed and wounded in order to use them later to wage military operations is not looting bodies. Situations are possible where a serviceman may take articles of clothing (for example, boots, a coat, and the like) or food products from killed persons while in a state of extreme need, to preserve his own life or the lives of others. Under such circumstances there is no criminal responsibility.

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Looting bodies is a crime committed only on the field of battle. Stealing articles from killed and wounded who are away from the field of battle, for example, at a burial place, on a medical train, and so on, constitutes the corresponding general crime -- larceny, theft, or robbery. Responsibility for looting bodies arises regardless of which army the killed and wounded whose things are taken belong to, whether it be Soviet, allied, or enemy. In all cases responsibility follows on general principles.

According to the general rule military operations are operations aimed primarily at destroying the personnel of the enemy army and also the weapons, combat equipment, and other physical assets that make up the enemy's military potential. Without special need they should not infringe on the interests of the local population which finds itself in a region of military operations. The 12 August 1949 Geneva Convention entitled "Protection of the Civilian Population During War"[2] and the 9 December 1970 Resolution of U.N. General Assembly entitled "Basic Prindiples of Protecting the Civilian Population in a Period of Armed Conflicts"[3] prohibit any frightening, terror, plundering, and repression of civilians and their property on occupied territory. Destruction of real or personal property not called for by military necessity, forced moving, and other infringements on the inviolability of citizens are prohibited.

Soviet laws reinforce these international norms, establishing criminal responsibility for the most dangerous forms of infringement on the interests of the local population which finds itself in a region of military operations. Article 31 of the Law (Article 267 of the RSFSR Criminal Code) envisions responsibility for violence against the population in a region of military operations. Robbery, illegal destruction of property, violence, and also illegal taking of property under the pretext of military necessity committed in relation to the population of a region of military operations is punishable by loss of freedom for a period of 3-10 years or execution.

The danger of this crime consists chiefly in the fact that it causes material or physical harm to citizens who are located in the region of military operations. Because we are talking about such dangerous forms of offenses as robbery and violence, including those involving death, the Law establishes strict penalties, all the way to execution. In addition, committing these actions may cause the local population to develop a hostile attitude toward the military serviceman and an incorrect idea of the moral fiber of the Soviet fighting man.

This article covers all forms of violence against people regardless of whether they are associated with taking their property or not. The citizenship of the victims is not important either; responsibility follows regardless of whether the violence is committed against the Soviet population or citizens of allied or occupied country.

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[2] Ibid., pp 147-210.

[3] See I. N. Artsibasov, "Mezhdunarodnoye pravo (zakony i obychai voyny)" [International Law (The Laws and Customs of War)], Moscow, 1975, pp 230-232.

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It is an essential condition of responsibility for these actions that the use of force be illegal. Destroying or taking property or any violence committed without military necessity is recognized as illegal. If these actions are committed in the interests of insuring security (for example, taking weapons and other objects which are not allowed to circulate) or supporting military operations (for example, where building materials necessary to construct a crossing are taken, or vehicles or livestock to transport freight, and so on) these do not constitute the crime. The military necessity must be real; if it is established that there was not in fact a military necessity and the guilty person only used military necessity as an excuse, responsibility follows on general principles.

Combatants are obliged to give humane treatment to prisoners of war. The 1949 Geneva Convention on Treatment of Prisoners of War establishes procedures for treatment of prisoners of war which protect their life, health, honor, and dignity. Any illegal action or inaction by the power that holds them prisoner which leads to the death of a prisoner under its authority or seriously threatens the health of such a prisoner is considered a violation of the Convention (see Article 13 of Convention). Prisoners of war have the right to respect for their person and free maintenance and medical care.

Following this convention the Soviet State establishes criminal responsibility of military servicemen for mistreatement of prisoners of war. Article 32 of the Law (Article 268 of the RSFSR Criminal Code) states that mistreatment of prisoners of war which occurs more than once, is associated with special cruelty, or is directed against sick and wounded prisoners as well as negligent performance of duties with respect to sick and wounded prisoners by persons who are in charge of their medical treatment and care will be punished, where the elements of a more serious crime are not present, by loss of freedom for a term of 1-3 years (Point "a"); mistreatment of prisoners of war without these aggravating circumstances leads to application of the rules of Disciplinary Code of the USSR Armed Forces (Point "b").

The following persons, when they have come under the power of the Soviet State, are considered to be prisoners of war: members of the enemy's armed forces; home guards and members of voluntary detachments if they are headed by a person responsible for his subordinates, have a distinguishing symbol, observe the laws and customs of war, and bear weapons openly; and other categories of persons indicated in Article 4 of the above-mentioned convention.

The concept of "mistreatment" covers infliction of moderate and minor bodily injury and beatings, torture, deprivation of food and medical care, restricting established rights, and so on. Mistreatment is recognized as criminal where one of the following conditions is present: it has occurred more than once; it was done in especially cruel, punishing ways; it was directed against sick and wounded. Where none of these conditions is present the guilty person is brought to disciplinary responsibility. More dangerous actions such as homicide, serious bodily injury, rape, and the like require classification not only under Article 32 of the Law, but additionally under the corresponding general criminal articles of the criminal code.

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Mistreatment of prisoners of war which takes the form of negligent performance of duties toward sick and wounded prisoners by those military servicemen who by their branch of service activity are supposed to treat and care for them (doctors, nurses, medics, and the like) is singled out specially.

Illegally wearing the insignia of the Red Cross or Red Crescent and misusing them is also classified as a crime against the laws and customs of war. According to Article 33 of the Law (Article 269 of the RSFSR Criminal Code) a person who wears the insignia of the Red Cross or Red Crescent in a region of military operations and does not have the right to do so and persons who misuse the flag or insignia of the Red Cross and the Red Crescent or the symbols employed for medical evacuation vehicles during wartime are punished by loss of freedom for a period of from three months to one year.

The Convention "Improving the Lot of Sick and Wounded in Active Armies"[4] orders combatants to refrain from attacks on medical units (hospitals, tents, trains, airplanes, river and sea transports, motor vehicles, and carts) and the personnel of these units -- doctors, nurses, and medics. The distinguish medical units and medical personnel from combat subunits. Medical units are designated by the international symbols of the Red Cross and Red Crescent (a red cross or crescent against a white background, means of transportation painted white with a red cross on the flat surfaces). These symbols are depicted on flags, arm bands, means of transportation, and other objects related to the medical service.

[4] "Zhenevskiye konventsii o zashchite zhertv voyny," op. cit., pp 11-35.

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CHAPTER 11. PREVENTION OF MILTARY CRIMES

1. The Preventive Role of Military Criminal Law

The purpose of the legal description of the various ypes of military crimes presented in the preceeding chapters of the book was to orient commanders to intelligent application of military criminal law in fighting against legal offenses. No matter how real the consequences of a particular violation may be, no matter how the guilty person is characterized, and no matter what emotions he may arouse, the classification of the action and the decisions made in the case must be based on rigorous and precise observance of existing legal norms. The constitutional principle of observance of socialist legality in this matter has great indoctrination and preventive significance. Just as it is impossible to teach sophistication with lack of sophistication, so it is not possible to instill respect for the law by deviations from it, even if these deviations arise from good motives.

Let us suppose that a soldier who has a good record is more than three days late returning from a short leave, and gives as a reason the need to help his parents gather the harvest. It is a reason people can understand, but it is not an acceptable reason. The actions of the soldier constitute a crime, abandonment of the unit without leave. Considering the soldier's service and the circumstances of his late return, the commander does not initiate a criminal case, but limits himself to punishing the guilty man on a disciplinary basis.

From a narrow-minded point of view this decision may seem correct. But in reality it is counter to the law and socially harmful. By putting his own opinion above the law adopted by the USSR Supreme Soviet the commander here is giving his subordinates a lesson in lawlessness. Under such conditions how can we expect that similar late arrivals or other crimes will not be repeated later? Of course they will. Moreover, some servicemen who know that the commander has the right to use disciplinary punishment only for absence without leave committed under mitigating circumstance, but not for abandonment of the unit, may come the mistaken conclusion that the main thing is the commander, not the law. Long ago Field Marshall M. I. Kutuzov spoke out against this juxtaposition, believing it to be absolutely unacceptable for people to be controlled by commanders, not by the laws of the state.

The idea of the primacy of Soviet law in the activity of officials can be consistently followed in the decisions of our party. It is relevant here

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to recall the words of Comrade L. I. Brezhnev: "The law is alive and effective only when it is carried out. It is mandatory for all and must be observed by all without exception, regardless of status, position, and rank."[1] The general approach of our party to existing law is clearly expressed in the following proposition: "The further we develop Soviet law, the more necessary it is to see that it is strictly and unconditionally followed. Even in the old days people said -- there is no sense writing laws if they are not followed."[2] This important point was confirmed and developed further at the 26th CPSU Congress.[3]

The commander who has decided to deviate from the requirements of the law "for humane purposes," even without desiring it is destroying the solid foundation of socialist legality, the only basis on which successful control of subordinates is possible. And all the same, he has sufficient ways and means to use to decide any question in a completely humane manner on a legal foundation. But to do this, of course, he must have a thorough knowledge of Soviet law, at least of those branches of it with which he meets in his everyday activity.

One of those branches is the criminal law. A good knowledge of criminal law, above all military criminal law, helps commanders and chiefs carry out their activities to enforce the law in the fight against criminal manifestations in the behavior of individual servicemen on a correct and well-founded basis. Proper actions by the commander in relation to such people have a positive effect not only on the offenders, but also on their fellow-servicemen, exerting a general preventive influence.

The activity of a commander to enforce the law is significantly reflected in the legal indoctrination of the serviceman and the formation of their legal consciousness. In general it is difficult to neutralize the negative influence of the deviations from criminal law that are sometimes permitted by certain commanders. No lectures or discussion on legal topics can achieve this. Cases of discrepancy between what is said about criminal responsibility for military crimes in these lectures and discussions and how this responsibility is realized in fact are easily seen by the servicemen. A discrepancy between word and deed, no matter what form it may be expressed in, causes significant harm to moral indoctrination.

In addition to the activity of the command and military justice organs to apply the law, the effectiveness of the preventive action of the norms of military criminal law depends on a number of other factors. Paramount among them are: (1) the qualitative content of the norms themselves; (2) the degree to which they are assimulated by these servicemen; (3) the procedural rules

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1 L. I. Brezhnev, "Leninskim kursom: Rechi i stat'i" [By a Leninist Course: Speeches and Articles], Moscow, 1972, Vol 2, p 49.

2 Ibid, 1978, Vol 6, p 435.

3 See "Materialy XXVI s'yezda KPSS," p 64.

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for application of the Law on Criminal Responsibility for military crimes; (4) the organization of carrying out punishment for commission of military crimes in a disciplinary batallion.

The existing Law reflects the real needs of the Armed Forces for criminal law protection of various aspects of military order (subordination, performance of military service, operation of military equipment, and the like). Correct selection of the military legal relations that demand criminal law protection, realistic consideration of the capabilities of the Law to insure order and discipline among the troops, the correspondence of the requirements of this Law to the USSR Constitution and other legal documents, and understandable presentation of the specific articles of the Law promote a deeper understanding of the essential points of the norms contained in them by personnel and correct application of them by the command.

The degree to which servicemen have assimilated the existing norms of military criminal law is an important condition for the effectiveness of the Law's action. Legal indoctrination work is differentiated depending on the categories of servicemen (officers, warrant officers, sergeants, petty officers, privates and seamen) and their legal status (regular cadres, extended-servicemen, and regular-term servicemen) in order to help personnel better assimilate the prohibitions of the criminal law. All legal information work in the units and on ships should follow this differentiation.

For example, whereas rank-and-file servicemen need a knowledge of the requirements of the criminal law only to correctly orient their own behavior and for this it is sufficient to clarify the boundaries between the criminal and the non-criminal, for commanders this is not enough. They must know not only the lawful limits of their own activity, but also be able to explain the essential features of criminal law prohibition to their subordinates and apply the Law correctly to those who offend against military legal order.

The effectiveness of the criminal law is also determined greatly by the procedural rules of its application. There are no significant procedural differences between the general rules for investigation and hearing of criminal cases in our country and the rules for the Armed Forces. But there are certain special features in deciding the question of arresting military servicemen who have committed military crimes and bringing them to trial. Privates, sergeants, warrant officers, and officers can only be brought to criminal responsibility for military crimes (except for desertion) with the consent of the authorized senior officer: the consent of the unit commander for privates, the consent of the large unit commander for sergeants, and so on.

Continuation of the institution of consent in postwar times was a result of certain specific features of military crimes and the conditions in which they can be committed. And although in peacetime the lack of the commander's consent is not conclusive for legal organs because they have the right to appeal to the higher-ranking officer for this consent, nonetheless this institution can influence the effectiveness of military criminal law. Therefore its use by commanders must always be well-founded. Even isolated cases of unfounded release of guilty persons from criminal responsibility because the command

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did not consent to their being arrested and brought to trial can have a negative impact on strengthening socialist legality and instilling servicemen with confidence in the strength and immutability of the Law.

Finally, the carrying out of punishments for military crimes has a significant influence on the effectiveness of the Law. Persons who are convicted of military crimes are usually sent to a disciplinary batallion to serve their punishment. Extremely rigorous observance of regulation order in them and insuring that conditional and unconditional parole of convicts is well-founded enhance the preventive role of the Law. Failure by the command of disciplinary units to follow the normative prescriptions lowers its effectiveness.

Thus the preventive role of military criminal law depends on a number of interrelated factors which are included in the integrated system of the social mechanism by which the norms of criminal law operate. The most influential of these factors on the fight against violations is the activity of the command and military justice organs to apply the law.

The 26th CPSU Congress demanded that employees of the state organs who are called on to strengthen socialist legality and legal order see that "their work is maximally effective -- every crime is properly investigated and the guilty persons receive their deserved punishement."[4] This applies in full to the activity of commander and military justice workers to apply the law. Identification of all people who have committed military crimes, bringing them to criminal responsibility and applying correct measures of punishment to them are essential conditions for the effectiveness of the military criminal law.

When crimes go unpunished it is often because the servicemen have not been monitored and as a result the commission of a military crime (for example, absence without leave) may go unnoticed. But other equally important causes are the connivance and slackness of certain commanders who do not always take legal steps with offenders or who directly abuse their authority by concealing the offenses of their subordinates.

One of the reasons that crimes are allowed to go unpunished is the subjective approach of certain commanders to deciding the fate of a particular subordinate. There are still isolated cases where the decision to bring to criminal responsibility or not is based not on an objective evaluation of the act, but rather on the superior's feeling of like or dislike for the violator or other motives (for example, a desire to create the appearance of well-being in matters of discipline) that contradict the principles of socialist legality.

Instances of improper release from criminal responsibility give offenders confidence that their illegal actions in the future will also go unpunished, and as a result the criminal law loses its preventive role for them. "Not a single crime against discipline and the revolutionary fighting spirit," V. I. Lenin emphasized, "should remain unpunished."[5] Only on this condition can we

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[4] Ibid., p 65.

[5] "Leninskiy sbornik" [Lenin Anthology], 34, p 45.

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expect that the military criminal law will be highly effective in preventing military crime. This teaching of Lenin is a guideline for every commander who applies the law in connection with commission of particular military crimes by his subordinates.

2. The Main Ways to Eradicate Manifestations of Crime in Our Country

If it were possible to eliminate manifestations of crime by measures of criminal punishment alone, it is obvious that there would be no special problems with eradicating them. But as the 1979 decree of the CPSU Central Committee entitled "Improving Work to Protect Legal Order and Intensify the Fight Against Violators of the Law" emphasizes, there are special problems.[6] Criminal acts are declining only gradually, as their causes are eliminated in the process of the continuing development of our society, but criminal law measures do not eliminate the social causes of criminal behavior.

The norms of the criminal law only influence the consciousness of a person to a certain degree, stimulating him to correct behavior or restraining him from behavior that is harmful to society by the threat of criminal punishment. The role and significance of these norms in eradicating crime must not be over-emphasized. Study shows that criminal punishment can limit the total number of anti-social manifestations to a certain possible level, but it cannot be considered the principal means of eliminating them. This is exactly why our country has never considered and does not consider criminal punishment to be the main way to elimiate antisocial acts. It has always been given a subsidiary role. The main thing in eradicating crime is to prevent it, to eliminate all the factors that give rise to it.[7]

An understanding of the essence of crime as a social phenomenon enabled V. I. Lenin to predict the historical pattern by which it would cease to exist. He wrote as follows: "We know that the fundamental social cause of the excesses that involve violation of the rules of communal living is explotation of the masses, their need and poverty. With the elimination of this principal cause the excesses will inevitably begin to 'die away.' We do not know how fast and in what progression, but know that they will die away."[8] Lenin's prediction is finding complete confirmation in the consistent decline in manifestations of crime both in the country as a whole and in its Armed Forces.

The manifestations of crime which still occur in our country, including those among military servicemen, are also social in their nature and causes. But while they remain social in essence, crimes in socialist society are alien to

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[6] PRAVDA 11 Sep 1979.

[7] See "Programma Kommunisticheskoy partii Sovetskogo Soyuza" [Program of the Communist Party of the Soviet Union], Moscow, 1976, p 106.

[8] Lenin, "Poln. sobr. soch," Vol 33, p 91.

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the fundamental principles of socialism. Manifestations of crime contradict the very essence of our system. Their existence is a result of still-surviving remnants of the former capitalist society. Long ago K. Marx wrote that communist society (having in mind its first phase) does not begin to develop on its own foundation, but rather arises out of capitalist society, and therefore "in all respects, economically, morally, and intellectually, it still preserves the birthmarks of the old society from whose bosom it emerged."[9]

The classics of Marxism-Leninism, speaking of the inevitable survivals in socialist society, had in mind the historical heritage in economic life and in the consciousness and behavior of people, a heritage that is quite broad in scope and negative from the standpoint of communism. The survivals of the past are usually considered to include the remnants of former socio-economic relations (socioeconomic and cultural-domestic differences between the city and the countryside, between mental and physical labor, among classes and social groups, and so on) and the traditions, customs, morals, ideas, views, notions, tastes, and norms and standards of behavior inherited from capitalism. These survivals are elimiated on a planned basis during our movement toward communism. Scientifically substantiated ways to continue eradicating them are worked out in the CPSU Program, the decisions of party congresses, and other party documents.

The reason that even in the contemporary phase our society is still not free of certain vestiges of the past cannot be reduced to nothing but the survival consciousness. The party teaches that if all negative phenomena are reduced to remnants of the past in people's consciousness, we will overlook shortcomings whose causes should be sought in present-day practice, in the mistakes of particular workers. Crime came to us from exploiter society not only as a survival in the consciousness and behavior of certain people, but also with a certain base of survival-type objective phenomena. Furthermore, antisocial offenses in our country find their roots in exploiter society not only through internal survival phenomena, but also through the unceasing attempts of the capitalist world to morally disarm Soviet people by various external influences.

The aggregate of social survival phenomena and the corrupting influences of capitalism create the objective prerequisites for illegal behavior. These prerequisites are realized in the actual conditions of the life and activity, everyday affairs and leisure of Soviet people and, as a rule, in those places where particular deviations from the principles of socialism, legal precepts, and the norms of morality are permitted.

The general causes of criminally punishable acts among military servicemen are not fundamentally different from the causes of crime in the country as a whole and comprise a set of survival-type social phenomena and processes. The fundamental difference is not in the essence of these causes, but in their unique reflection through the specific conditions of life and activity

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[9] K. Marx and F. Engels, "Soch." [Works], Vol 19, p 18.

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in the military. And this reflection occurs in different ways. For example, survival-type socioeconomic phenomena have more remote ties to manifestations of crime among military servicemen than among civilians because the material needs of regular-term servicemen are met by the state on an equal basis and within reasonable limits. However, an incorrect understanding by certain servicemen of certain discrepancies between the growing cultural-domestic and material wants of young people and the limitations of barracks life can be the precondition to the appearance of negative behavioral motives in them.

Ideological causes (shortcomings in the cultural development and consciousnees of certain citizens) also have their own specific features under conditions of the Armed Forces. The personnel of the army and navy are constantly being replaced and are always young in age. But a certain number of young people are characterized by political naivete, an inadequately responsible attitude toward labor and military service, weak moral convictions, and underdevelopment of socially useful needs and interests. The inadequate social maturity of certain military servicemen may provide fertile soil for the appearance of negative views and the traditions and customs of the past in them. In addition, group opinions, impressions, imitation, conformism, fashion, and other social psychological factors have a great influence on people's behavior at a young age.

Among the general causes of a purely military nature we may include certain shortcomings such as the inadequate example of some commanders in discipline and service, abnormal mutual relations of certain servicemen in the collective, relaxation of the fight against drinking, cases of inattention to the wants and needs of subordinates, failure to monitor, poor administration, failure to punish, connivance, distortion of disciplinary practice, violations of regulation requirements in organizing the work of the troops and the recreation and leisure time of servicemen, and others. The violations of the law that do occur generally feed on these deviations from regulation order, shortcomings, mistakes, and omissions.

According to the program principles of the party the primary ways to eradicate antisocial phenomena in our country and in its Armed Forces are determined from the social content of the causes and conditions that promote the commission of crimes. These ways are generally formulated in the CPSU Program, which links the elimination of crime with raising the material well-being, cultural level, and consciousness of the working people, that is, with eliminating negative socioeconomic, cultural, social psychological, and organizational phenomena.

3. The Direct Causes of Various Types of Military Crimes

In addition to the general causes which were discussed above, particular types of military crimes are caused by many direct and particular circumstances. The specific causes of particular types of military crimes are linked not only to external conditions, but also with the internal personality traits of the offenders. It is precisely the combination of negative personality traits of the subjects and criminogenic (promoting the commission of crimes) situations in which they may come out, that engenders the particular types of criminal offense against military legal order.

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Study of these immediate phenomena and processes helps correctly understand the motivation mechanism of the particular types of unlawful behavior and, on this basis, construct a system of effective measures for early prevention of criminal acts.

Intentional crimes against the rules of subordination and military honor (insubordination, resistance to a superior, violent actions in relation to a superior, threatening a superior, and criminal insult by a subordinate against a superior, a superior against a subordinate, or one serviceman against another) have always been linked with peculiarly military relations -- the mutual relation of superior and inferior and senior and junior and servicemen among themselves in the process of performing their duties in the military service. These circumstances have a definite impact on the motivation of these crimes.

Crimes against the rules of subordination and military honor are usually not committed to achieve any rational objective; rather they are a goal-in-itself for the offender, a manifestation of his desire to stand against the principle of one-man-command and the interests of the military service and other servicemen. The social orientation of the personality of offenders in this group is highly egotistical.

The level of education and sophistication among people who commit crimes against the rules of subordination and military honor is generally, according to average weighted indicators,lower than for servicemen who conscientiously perform their military duty. Many perpetrators of these offenses were raised without fathers or in other unfavorable family conditions. About half of the offenders had received negative references before being drafted into the military service. During the service most of them had committed disciplinary offenses such as abuse of alcohol, rude behavior and arguing with commanders, absence without leave, and others. These acts can be considered a kind of "precriminal behavior" by offenders in this group. These acts are especially consistently linked to offenses against the rules of subordination and use of alcohol.

The motives of these crimes are generally negative emotional reactions caused by a conflict situation in which the offender finds or puts himself. A feeling of dissatisfaction resulting from particular (proper, or sometimes improper) actions by the commander or other person performing duties in the military service has a significant party in the structure of these motives.

The offender's stable feelings of dissatisfaction form gradually, usually based on mutual relations with commanders. As already noted, deviations by commanders from the requirements of the law and regulations may engender negative attitudes and emotions in subordinates which, together with other circumstances, are capable of leading some of them to violate the rules of subordination. Crimes against the rules of subordination may also be motivated by a feeling of revenge and other violent-egotistical motives (a desire to show one's real nature, daring, superiority, and crude strength).

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The situations in which crimes of this group are committed usually involve everyday military life. Cases of committing these crimes on exercises or in combat situations are extremely rare. The conditions that foster violations of the rules of subordination are shortcomings in indoctrination work, failure to take an individual approach to subordinates, distortions of disciplinary practice, lack of tact, inattention to the needs of subordinates, failure to punish, connivance, violation of regulation rules for handling servicemen who are in an intoxicated state, and others.

Evasions of military service (abandonment of the unit without leave, absence without leave, desertion, and self-mutilation) differ by their causality. The temporary and less dangerous forms of evasion of military service, for the most party absence without leave, have certain causes which generally relate to a situation; the more dangerous forms of these crimes (desertion and self-mutilation) have differenct causes, mostly related to defects in formation of the offender's character even before being drafted for military service.

Dangerous forms of evasion may be committed at the very beginning of the service by servicemen who have a low level of education and sophistication, have been raised under unfavorable conditions, did not receive the essential moral and physical conditioning in surmounting hardships, and committed violations even before being drafted for military service. Absence without leave is most often committed by persons drafted for military service later than their peers, those inclined to use alcohol, and undisciplined persons.

Temporary evasions of military service are inspired mainly by everyday motives (a desire to meet with friends and acquaintances, to have a good time, to drink, party, and so on). Desertion and self-mutilation are motivated by a desire to avoid the hardships of military service, fear of responsibility for an act that has been committed, and other feelings. The common motives for this group of crimes are primitive-everyday and personal in content, which indicates that violators of the rules for performance of military service have not been taught to place the interests of the service above their own egotistical feelings.

The circumstances that promote commission of this group of crimes are short-comings in indoctrination work, shortcomings in organizing leisure time and recreation for regular-term servicemen, violation of regulation procedures for granting leaves and passes to the city, inadequate monitoring of regular-term servicemen who are away from their subunits (on leave, work trip, or in the hospital), cases of failure to punish for committing absence without leave that is not criminally punishable, inadequate work to combat drunkiness, and others.

Violations of the rules for performance of guard, internal, and other types of service usually are not a goal-in-themselves for the offender. The offenders, being on the detail, are usually pursuing egotistical, sometimes also selfish goals (meeting a girlfriend, drinking, sleeping, having a good time, commit-ting a theft, and so on) whose accomplishment involves violation of the rules for performance of the particular type of service. Personal interests, which they pit against the interests of the service, predominate in the orientation of these offenders.

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As noted above, the criminally punishable violations are leaving the post or duty station, sleeping on duty, being distracted from duty, use of alcohol during performance of duty, and others. The main direct causes of the crimes of this group are unfavorable conditions in the moral formation of the character of certain servicemen who were not instilled with a sense of responsibility and duty; the lack of discipline in the men performing the duties; and their inadequate physical and mental preparedness to perform the duty. Among the circumstances that foster commission of these crimes we may mention shortcomings in training and indoctrinating subordinate mistakes in the organization and performance of the particular type of service, and others.

Military official crimes can be committed by officers, warrant officers, sergeants, petty officers, and officials who are soldiers and seamen. The subjects of these crimes are united by a negative attitude toward the procedures established in the army and navy for performance of official duties -- carelessness, bureaucratism, inattention to the needs of subordinates, and selfish and other personal interests. A significant share of the military official crimes are committed because of an incorrect understanding of the interests of the service, inability to manage the assigned work properly, lack of diligence, loss of the sense of responsibility, and the drunkenness of certain officials.

The conditions that promote commission of these crimes are shortcomings in indoctrination work with officials; mistakes in selection and placement of personnel; inattention by senior officers to the needs of subordinate officials; inadequate knowledge of the fundamentals of pedagogy, psychology, criminology, and law on the part of certain officers and sergeants; failure to punish officials who have committed minor offenses; poor monitoring of the activity of officials, and others.

Violations of the rules for driving and operating combat, special, and transport vehicles have the largest share of the structure of crimes against procedures for the use of military equipment. The other crimes in this group are very rarely encountered.

The causes of violations of the rules for driving and operating combat,special, and transport vehicles are usually linked to incorrect actions by drivers, vehicle officers, pedestrians, and passengers, malfunctions of the vehicles, and difficult road conditions. These circumstances may be closely linked in specific crimes. In a large majority of cases, however, if a highway accident is classified as a crime the immediate cause is incorrect actions by a driver. The negligent character of these crimes determines specific features of their motivation. The subject in these cases is not trying to accomplish socially dangerous consequences. The motives that guide drivers when violating the rules of highway traffic are generally a desire to get there faster, carry out a maneuver, show off their skill, pass vehicles in front of them, and so on.

The commom violations are speeding, failure to observe rules for passing, exiting on the left side of the road, failure to observe the rules for passing through intersections, violation of the rules for carrying people, operating a technically malfunctioning vehicle, and others. The most

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frequent direct causes of violations of the rules for driving military vehicles are: neglect of the requirements of highway traffic and operations; the carelessness, flippancy, or reckless attitude of drivers; driving a vehicle while drunk; driving a vehicle known to be malfunctioning; incorrect assessment of the road situation; inadequate driver training; excessive driver fatigue; inadequate preparation of old vehicles; mistakes in organizing the technical monitoring service; poor legal and technical training of the persons responsibile for releasing and operating military vehicles.

Thus, military crimes, while caused by survivals of the past, have their immediate, specific causes in shortcomings in indoctrination of servicemen and organizing their life, activity, everyday affairs, and leisure time.

4. Main Directions of Preventive Work in Military Units

Based on the general causes of crime in our country, the main direction in eradication of antisocial manifestations should be recognized as consistently solving the major socioeconomic and ideological problems of the life of society in the process of building communism. The party teaches that solving problems in the fight against crime should rest on the solid foundation of socioeconomic policy. This foundation is the accomplishment of such major tasks of the socialist all-people's state as building the material-technical base of communism, refining socialist social relations and converting them to communist relations, indoctrinating the person of communist society, and raising the material and cultural standard of living of the working people. Consistently performing these tasks fundamentally eliminates or neutralizes those survival phenomena and processes to which the very existence of crime is linked. Moreover, socioeconomic transformations help to reduce criminal manifestations in our country and its Armed Forces through improvement in the material and cultural conditions of life, activity, service, and everyday affairs and leisure time of every Soviet citizen and every serviceman, as well as through raising the sophistication and consciousness of Soviet people.

The gradual improvement in all aspects of the life of the Soviet people is an objective, but not spontaneous process. Under conditions of the Armed Forces it is accomplished through the organizational and indoctrination activity of commanders and political workers. As a result of planned solutions to major socioeconomic and ideological problems in the life of society, new, objective possibilities are created in the Armed Forces for effectively preventing violations among servicemen by expanding and intensifying the areas of indoctrination and organizational preventive work.

The indoctrination areas include the entire arsenal of measures, means, and methods which have been worked out by the science and practice of indoctrinating people. Let us consider the ones which are most closely linked to preventing criminally punishable acts by military servicemen.

1. The moral-political characteristics of Soviet fighting men are formed by our entire way of life, above all by purposeful ideological indoctrination work, whose core is indoctrinating servicemen with a communist world view.

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Primitive-domestic and narrowly personal motives are the immediate cause of specific criminally punishable acts committed by certain servicemen. At the same time we know that no matter how strong and pressing such feelings may be for a particular person, they will not be carried out if they are against his convictions. And in the Armed Forces convictions take shape and become established under the influence of surrounding reality, all the life and activity of the military serviceman, and under the influence of commanders, political workers, and party and Komsomol organization as they train and indoctrinate personnel.

The spiritual world of a young draft-age man is already formed to some degree. And this influences his behavior while in the service. But a person's needs, interests, feelings, views, and convictions do not remain constant. They are especially dynamic in the 18-20 age bracket; new needs and interests appear, old ones die away, and with the accumulation of experience in life views and convictions are critically reviewed and values are re-evaluated.

When commanders and political workers instill a communist world view in their subordinates, develop socially useful needs in them, and broaden their knowledge and outlook they are changing the social orientation of the men being indoctrinated and supplanting from it the base (selfish, egotistical, and the like)motives which usually motivate illegal behavior. This way to prevent legal violations is the most promising because with this approach the problem of eradicating crime becomes part of the general problem of indoctrinating the new man. By shaping a communist world view in military servicemen is it possible to wage a more successful fight against drunkenness, the consumer attitude toward life, and other survival phenomena with which the bulk of violations of the law are connected.

2. Legal indoctrination work shaping the socialist legal consciousness of servicemen and instilling them with respect for Soviet laws and for the law is a constituent part of communist indoctrination. This work is done by the same forms and methods characteristic of political and military indoctrination.

At the present time explanation of the basic principles of the new Constitution (basic law) of the USSR, which is an important means of further development and deepening of socialist democracy and a powerful implement for building communism, including communist indoctrination, plays a special role in the legal indoctrination of military servicemen. Legal indoctrination of personnel aimed at preventing military crimes will only be effective when knowledge of the law and a positive attitude toward it become convictions, and correct behavior becomes a need of every serviceman. This is precisely the challenge that the party puts before us. And it cannot be accomplished by simply explaining the criminal laws. A comprehensive approach is needed here, as in all indoctrination. In particular, it is very important that all the life, everyday affairs, and activity of the men being indoctrinated correspond strictly to the requirements of Soviet laws and the regulations of the Armed Forces because fighting men draw their immediate ideas about the law and legality above all from the actual legal relations in which they are immediate participants.

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Regular information on the practical activity of military justice organs and the investigation and trial of criminal cases has a positive effect on shaping the legal consciousness of military servicemen. Information about the application of criminal laws to violators of the law gives morally unstable servicemen a conviction that criminal punishment for the commission of socially dangerous offenses is inevitable. This conviction is one of the effective factors that helps develop stable, lawful behavior.

Thus, when conducting legal indoctrination of servicemen commanders and political workers must strive to see that special indoctrination activities are reinforced every day by firm military legal order organized in strict conformity with the requirements of the laws and regulations.

3. The personal example of commanders and other superiors in observance of Soviet laws exerts a significant influence on preventing criminal manifestations among their subordinates. Officials of the army and navy who rigorously observe the norms of Soviet law by their example instill their subordinates with respect for the laws, thereby preventing antisocial behavior. It has long been known that the habits of correct behavior, the custom of following the norms of the law at all times in everything do not develop in a person only or even so much because of words and persuasion as under the influence of the example of those around him, above all the example of indoctrinators. "After all, the indoctrinator," M. I. Kalinin said, "influences the men being indoctrinated not only be giving them certain knowledge, but also by his own behavior, way of life, and attitude toward everyday phenomena."[10] Therefore, any action by a commander that reflects his attitude toward the law must be considered from the standpoint of the indoctrination impact which it has on subordinates. The party demands that leaders constantly think of the indoctrination consequences of the decisions they make.

An absolute majority of the commanders and political workers in the army and navy are models of strict observance of Soviet laws, which has a very favorable effect on the behavior of the serviceman subordinate to them. But individual cases of tactless, amoral, and sometimes even illegal behavior by commanders still occur. The need to strengthen discipline and prevent antisocial behavior by servicemen demands that we firmly eliminate such phenomena because when they become known to subordinates they may promote the commission of criminally punishable acts by the less stable privates and sergeants (petty officers).

In connection with a case of lack of discipline on the part of one of his leaders, V. I. Lenin wrote: "If we conscientiously teach discipline to the workers and peasants, we must start with out own selves."[11] This Leninist principle was enthusiastically supported by M. V. Frunze, who emphasized many

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10 "M. I. Kalinin o kommunisticheskom vospitanii i voinskom dolge. Sbornik rechaey, dokladov, statey" [M. I. Kalinin on Communist Indoctrination and Military Duty. Collection of Speeches, Reports, and Articles], Moscow 1967, p 415.

11 Lenin, op. cit., Vol 50, p 63.

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times that the "policy of tightening up discipline" must be carried out from the top to the bottom.[12] This principle has now been made part of the regulations and is upheld unconditionally by a large majority of commanders and chiefs.

4. The individual approach in legal indoctrination of servicemen and skillful use of knowledge from psychology, pedagogy, criminology, and other sciences in work with men being indoctrinated are effective measures for early prevention of criminally punishable offenses. Those indoctrinators who have up-to-date knowledge about the rules that govern the formation of mental processes, the characteristics of a person's reaction to various stimuli, and the causality of criminal behavior by servicemen in each particular situation have considerably more ability to anticipate the behavior of subordinates and prevent the emergence of negative feelings by a skillful pedagogical approach, directing the will of the indoctrinatee to performance of his service missions.

Purposeful individual indoctrination work requires that the immediate commanders and other person participating in the indoctrination process know how various methods of influence (persuasion, instruction, orders, and punishment) affect the particular person in particular situations and how these influences are received (with bias, critically, negatively, and so on). The ability to understand the subordinate in a specific life situation is the key to chosing the necessary indoctrination influences. But this means that the indoctrinator must not only have certain theoretical knowledge, but also constantly study his subordinates and be, as M. I. Kalinin put it figuratively, "up to date on all the affairs of Red Army men and able to promptly correct the thing that is bothering each of them."[13]

5. Prevention and eradication of crime in the units and subunits depends greatly on the degree of participation by the army and navy community in this work. As the CPSU Central Committee demands, party organizations, trade unions, and the Komsomol are obligated to do everything possible to insure rigorous observance of laws and to improve legal indoctrination of the working people. The CPSU Central Committee decree entitled "Improving Work to Protect Legal Order and Intensify the Fight Against Violations of the Law" poses for Komosomol committees the challenges of "Increasing the role of Komsomol organizations in the fight against violations of the law, analyzing the causes of antisocial manifestations among young people ... taking concrete measures to eliminate them, and insuring active participation by every Komsomol member in strengthening legal order."[14]

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[12] See M. V. Frunze, "Izbrannyye proizvedeniya" [Selected Works]. Moscow, 1977, p 234.

[13] "M. I. Kalinin...," op. cit., p 423.

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Military collectives usually are youthful. Therefore the Komsomol organizations in them have an especially large part to play in preventing violations of the law, especially among regular-term servicemen. After all, the life and activity of each fighting man takes place before the eyes of his fellow servicemen, a large majority of whom are Komsomol members.

Objectively speaking, the military collectives have been given great power which must be used skillfully by the command to prevent violations of the law. A healthy army or navy collective with its mature public opinion is in practice able to prevent, avert, or stop many criminal acts.

This does not, of course, exhaust the list of indoctrination measures. Preventive work is closely linked with the entire process of training and indoctrinating servicemen. For example, the formation of professional skills and good moral-fighting and psychological traits, moral indoctrination, physical toughening, and so on are important in preventing violations of the law.

In addition to the indoctrination measures enumerated above, organizational and administrative measures have a significant role in preventing criminal behavior by servicemen. Organizational and administrative measures have numerous aspects. Let us consider them briefly.

1. The most important of these measures is strict observance of regulation requirements in organing the life, everyday affairs, and activity of units and subunits and maintaining regulation military order. "Strict regulation order," USSR Minister of Defense Mar SU D. F. Ustinov points out, "means above all exemplary performance of combat duty and guard and internal service, precise organization of combat and political training, technically intelligent use of weapons, correct mutual relations among servicemen, exact performance of the schedule of the day and training plans and programs, concern about everyday matters, and intelligent organization of leisure time for personnel and mass sports work."[15] Only where these requirements are followed will each fighting man successfully develop the qualities of organization, discipline, and the habit of following the norms of Soviet law and the military regulations at all times in all things.

For example, let us take observation of the schedule of the day. In the definition of the famous pedagog A. S. Makarenko, the regimen ['rezhim"] is a system of means and methods which help indoctrinate. And indoctrination itself, as the outstanding physiologist I. P. Pavlov proved, is long series of conditioned reflexes. The statements of military pedagogs and psychologists point to the regimen as a system of exercises and drills during which positive habits and skills are developed and necessary dynamic stereotypes are established.

But the military regimen is not just a purposeful schedule of servicemen's life structured on correct pedagogical views. The schedule of the day of a

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15 D. F. Ustinov, "Izbrannyye rechi i stat'i" [Selected Speeches and Articles], Moscow, 1979, p 398.

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military subunit is structured on the requirements of the regulations and the orders of commanders, which for the serviceman have the force of law. Therefore, any unsubstantiated violation of the schedule gives personnel a reason to believe that fulfillment of the regulations and orders is not always mandatory. And this opinion can serve as the "theoretical basis" with which a violator of the law may justify his incorrect behavior.

M. V. Frunze pointed out, "the Red Army is an organism that lives and operates on the basis of firm legal principles established by the state."[16] Unswerving observance of these legal principles is an effective measure to prevent criminal behavior.

2. Strict monitoring of the activity of subordinates is an essential measure to prevent military crime. "The heart of all work and all policy lies in this, precisely and only in this -- check people and check actual performance of the work."[17] The connection between lack of monitoring and certain types of crime is undisputed and has long been established. Nonetheless, case of lack of monitoring which promote the commission of criminally punishable acts still occur.

The monitoring of subordinates cannot be organized independently, without precise organization of the work of the troops and conscientious performance of their official duties by each commander and member of the daily detail. Therefore, this measure is a constituent part of the overall increase in regulation requirements made of servicemen. Where regulation order is not on the proper level, it is very difficult to organize monitoring. In such a situation "secret monitoring," the sytem of "responsible duty officers," and other non-regulation forms of monitoring may arise. Such measures only generate mutual distrust among servicemen, diffused responsibility, and carelessness by members of the daily detail and therefore cannot be considered an effective way to prevent crime.

All the necessary forms of monitoring in the Armed Forces are envisioned in the regulations. Only strict and tireless regulation monitoring of the activity of military servicemen, carried out by officials of the units, institutions, provost offices, military commissariats and hospitals, the internal detail, and the guard service promote discipline among servicemen and prevent and stop many forms of incorrect behavior.

3. Consistently implementing the principle of the inevitability of punishment for commission of particular offenses is also an effective organizational-disciplinary measure to prevent criminal behavior by servicemen.

To carry out this measure there must be a constant fight against any distortions of disciplinary practice, especially lack of punishment. Lack of punishment ordinarily opens the way to more dangerous and criminally punishable offenses. Therefore Article 6 of the Disciplinary Code obligates the commander (chief) to respond to every misdeed by a subordinate.

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[16] Frunze, op. cit., pp 404-405.

[17] Lenin, op. cit., Vol 45, p 16.

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The Disciplinary Code clearly defines the duties of the commander when a subordinate commits an offense, and also the procedures for imposing punishment and carrying it out, the rules for keeping records of disciplinary punishments, and the like. Thus, like the previous measures this measure also follows from the requirements of the regulations of the Armed Forces.

Work to prevent crimes in the military goes beyond the indoctrination and organizational measures considered above. And the greatest success in this work is achieved by carrying out comprehensive measures, which is directly ordered by the CPSU Central Committee decree entitled "Improving Work to Protect Legal Order and Intensify the Fight Against Violations of the Law." They are necessitated by the fact that, as A. S. Makarenko emphasized, "Discipline is not created by individual 'disciplinary' measures, but rather by the entire syetem of indoctrination, the entire life situation, all influences."[18]

Comprehensive measures to prevent violations of the law include all the areas of preventive work carried on by the command, political organs, party and Komsomol organizations, and military justice organs on the basis of jointly developed plans. In this case explanatory measures must be coordinated in time and by object with measures aimed at strengthening regulation order in various spheres of the life and activity of personnel (the training process, the work of the troops, everyday affairs, leisure time, and so on). This method of carrying on preventive work is the most effective because it eliminates the immediate foundation of violations of the law.

Establishing proper procedures in those place where they are still violated is a large reserve for the development of our Soviet society. There is no question that this is also a large reserve in strengthening military discipline and raising the fighting effectiveness and combat readiness of military units, ships, and subunits.

5. Preventing Particular Types of Military Crime

Because, as discussed above, each type of military crime (violations of the rules of subordination and military honor, evasions of military service, violations of the rules of guard and internal service, military official crimes, criminally punishable acts involving operation of military equipment, and so on) have definite and typical features in their causes and the character of the offenders, it is useful to consider the content of preventive work for each type separately.

Indoctrination measures have an important place in preventing crime against the procedures of subordination and military honor. And they are directed above all at indoctrination of commanders and chiefs, in other words at indoctrination of the indoctrinators. High demands are made of commanders and chiefs under contemporary conditions. They must have such qualities as communist conviction, high discipline, strict demands of themselves, a strong will and organizational capabilities, a high level of professional training,

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[18] A. S. Makarenko, "Sobr. soch." [Collected Works], Moscow, 1957, Vol 4, pp. 362-363.

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general and professional sophistication, and the ability to train and indoctrinate subordinates. Realizing these requirements is very important for preventive work.

An order or command by a commander that meets these requirements will be correctly understood by subordinates in any situation. Such a commander is always able to prevent negative emotional reactions in subordinates which lead to the commission of the particular type of offense.

When indoctrinating subordinates in a spirit of absolute obedience to commanders and mutual respect for one another, experienced commanders and political workers devote considerable attention to instilling emotional sophistication, exposing the great harm of egotistical, violent, and aggressive behavior, and the ability to control one's own feelings in conflict situations. And in this case they give special care to organizing individual work with servicemen who have grown up in unfavorable families, who have criminal records, have abused alcohol, and show unbalanced, unrestrained, and aggressive personalities.

Organizational measures here involve constantly improving the selection and training of commanders and maintaining their authority among their subordinates by every means; determinedly combating cases of incorrect, amoral, or tactless behavior by individual commanders in relation to subordinates; prompt resolution of conflict situations and insuring regulation mutual relations among commanders and subordinates and among the servicemen themselves; and eliminating failure to punish servicemen who have committed offenses against the rules of subordination, abused alcohol, or committed other violations.

Measures that help prevent crimes against the rules of subordination and military honor committed under the influence of alcohol include: determined struggle against cases of use of alcohol; prompt isolation of servicemen who are drunk; improving the organization of patrols and the internal service at check points; and closing off all channels through which alcohol can reach regular-term servicemen.

All these measures are based on the requirements of the general military regulations, which should be observed unconditionally by every serviceman.

Indoctrination measures are also very important for preventing evasions of military service. We know that people who commit evasions of military service in general (desertion, self-mutilation, and refusal to perform the duties of military service) are characterized by a low level of sophistication and moral, legal, and political consciousness. Such servicemen especially need purposeful individual work, which would make the process of their adaptation to new, unusual, and therefore difficult for them conditions of military service easier, reveal to them correct ways to solve their personal problems, and show the social danger of criminal evasions of military service and the inevitability of criminal responsibility for committing them.

To prevent absences without leave and abandoning the unit without leave indoctrination work devotes a great deal of attention to disclosing the negative consequences of drunkeness, to questions of sexual indoctrination

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of regular-term servicemen, and to developing their self-control and ability to subordinate their personal needs to the interests of the military service.

Among the organizational measures to prevent evasions are the following: improving the selection of draftees at military commissariats ; promptly identifying illnesses in servicemen that prevent them serving their regular term; attention to the letters, complaints, and requests of servicemen and concern for their families. Establishing firm regulation procedures in the life and activity of regular-term servicemen, in the granting of leaves and passes to them, in mutual relations among fellow servicemen, and so on is an effective preventive measure. When commanders follow the requirements of military law strictly in the areas that touch the personal interests of the servicemen it makes the service clear and definite for their subordinates and instills an attitude of respect for military legal order in them.

Organizing precise regulation monitoring of the presence of servicemen at morning inspections and training periods, during personal time, and at evening inspections as well as monitoring their return from leave, work trips, and hospitals has a positive effect on the attitude of personnel toward performance of military service. Monitoring should be particularly rigorous for servicemen who are performing assignments away from the units and subunits. Solutions to these matters are closely tied to the organization of internal service in the subunits, technical and entry checkpoints, and patrol service away from the unit.

The prevention of criminal violations of the rules for performance of guard, internal, and other types of service begins by teaching the servicemen their special duties and training and drilling them. Thorough knowledge of their duties and an ability to work on combat equipment and handle weapons and other means of support for special duties guarantee their successful performance. Therefore personnel should have a perfect knowledge of the requirements of the regulations, manuals, instructions, and other documents that regulate procedures for performance of the special services. In addition, they should develop a conviction that it is necessary to observe regulation order strictly, be aware of the social danger of the slightest deviations from existing rules, and strive to perform their duties in the service conscientiously.

Organizing performance of the special services in absolutely strict conformity with existing norms is an effective measure to prevent criminal violations of the rules for performance of these duties. Any detail should be fully supplied with everything necessary to perform its mission: combat equipment, weapons, gear, means of transportation, clothing, and the like. Other important factors are appointing servicemen to the detail ahead of time, giving them time for preparation, study of these special duties, instruction, and rest; and selecting people with due regard for their personal characteristics, level of training, service experience, and the importance of fulfilling the missions.

One of the effective means of preventing violations of the rules of performance of these special services is well organized monitoring by the appropriate commanders, staffs, and duty officers to whom the detail is subordinate. The monitoring should follow the regulations, be systematic, and change in time and

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space, which makes it possible to maintain constant vigilance in members of the detail. Implementation of the principle of inevitability that persons who commit offenses in the detail will be held responsible deserves special attention.

As already noted, maintaining regulation order and discipline in the armies and fleets depends significantly on observance of the requirements of the laws and military regulations by officials. Therefore, preventing military official crime, especially among officials who are command personnel, has always been considered a paramount task in the Armed Forces. The principle of strengthening legal order from the top down has been followed since the first days of the existence of the Armed Forces. The need to observe this principle is substantiated in detail in a number of party documents, as well as in orders and directives of the USSR Minister of Defense and the chief of the Main Political Directorate of the Soviet Army and Navy. The Accountability Report of the CPSU Central Committee to the 24th Party Congress emphasizes: "Respect for law, for the law should be each person's personal conviction. This applies even more to the activity of officials. No attempts to deviate from the law or get around it can be tolerated, no matter what the motives for them may be."[19]

Measures to prevent military official crimes are specific measures aimed at eliminating their immediate causes and training and indoctrinating officials. They involve: (a) improving the selection of regular military officials during admission to schools and when appointting and transferring in the service; (b) insuring the necessary special training of officials to enable them to perform their duties knowledgeably. Commanders who are working with personnel especially need pedagogical and psychological knowledge, while employees in the administrative, financial, technical, and other services need specialized knowledge, and all officials must have a knowledge of the legal foundations of their activity and the norms of material, adiminstrative, and criminal responsibility which may ensue for failure to perform service duties; (v) improving work on legal indoctrination of officials, and the decisive factor in this indoctrination is rigorous observance of legality by higher-ranking commanders; (g) more precise and complete definition of the rights and duties of officials, above all where they are not regulated by general military regulations, manuals, and other legal documents; (d) creating for military officials all essential conditions that insure actual performance of their duties by them, and this especially concerns material-technical support for orders being given; (ye) organizing effective monitoring of the activity of officials by the higher-ranking command, staffs, and services of military units (good-quality systematic and surprise inspections, inventory taking, and auditing) -- which applies above all to monitoring the activity of materially responsible officials; (zh) steadily following in fact the principle of irreversibility of material, disciplinary, administrative, and criminal responsibility for crimes and other violations by military officials.

Measures to prevent criminal violations of the rules for driving and operating military vehicles relate to the three elements that interact in a criminal act

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19 "Materialy XXIV s"yezda KPSS" [Materials of the 24th CPSU Congress], Moscow 1971, p 81.

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involving operation of military equipment; the human being, the vehicle, and the road.

The first group of measures, related to indoctrination and training as drivers, vehicle commanders, officials responsible for the operation of military equipment, servicemen on internal duty at checkpoints and technical checkpoints, members of the crews of military vehicles, passengers, and pedestrians, is the most important. And primary attention here is devoted to selection, training, and indoctrination of drivers.

Raising the combat readiness of troops, the steady growth in the fleet of combat, special, and transport vehicles, and the increase in their speed and weight demand an improvement in the selection of military drivers based on social, social psychological, psychological, psychophysiological, and professional qualities and involving participation by the necessary specialists.

When teaching driving at schools and during the training and supplementary training of drivers in military units and subunits it is essential to strive to see that the future specialists have an absolutely complete knowledge of the layout of their vehicles, their technical and operating capabilities, and the rules of driving, servicing, and operating the vehicles, and that they receive the necessary practical skills in driving those vehicles in which they will work. To some degree driver inexperience can be compensated for by learning from experienced teachers.

In the indoctrination process special attention is devoted to shaping a sense of responsibility for traffic safety, preservation of the military equipment, and rigorous observance of driving and operating rules. Studies show that a young driver can compensate for a lack of driving skill and experience by special attentiveness, observation, and caution. For this reason the military driver training program includes the questions of the causality of the crimes under consideration and measures to prevent them. Another of the important areas in indoctrinating drivers is revealing the criminogenic role of the state of intoxication when driving a vehicle. The explanation of this matter should be accompanied by measures of disciplinary and administrative responsibility in relation to those people who drive while drunk.

The training and indoctrination of vehicle commanders and official responsible for the operation of transportation to prevent these crimes is constructed in two aspects. On the one hand, as the indoctrinators of military drivers these people must learn to carry on preventive work with the drivers. On the other hand, as possible subjects of violations of the rules for operation of military vehicles, they themselves should be trained in a spirit of rigorous observance of existing norms. Therefore, in addition to general command and special training they must also assimilate the corresponding legal and criminological knowledge.

Indoctrination work to prevent violations of the rules for operating military vehicles is also done with other servicemen who may be members of crews or passengers or pedestrians. If they do not observe the necessary precautions they sometimes become the victims of these crimes or are guilty of creating an emergency situation.

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The second group of measures involves technical refinement of the military vehicles, improving repair work, and improving monitoring of the release of vehicles from the motor pool and their work on the line. Maintaining military vehicles in good working condition, especially with respect to those systems which cause road incidents when they malfunction, is exceptionally important in preventing the crimes under consideration. The technical condition of vehicles, trip documents, and the drivers themselves (their physical condition, external appearance, and the like) are checked by officials and the daily detail at technical checkpoints. Higher standards imposed by these people make it possible to prevent malfunctioning vehicles from leaving the motor pool, to remove drivers who are drunk or overtired from behind the wheel in time, and to prevent vehicles without trip and other documents from leaving.

The third group of measures involves improving the condition of highways, field roads, road structures, traffic control equipment, and other road conditions which influence the traffic safety of military vehicles. These problems are generally handled by local governmental agencies, but participation by the military command as well is not precluded, especially at military posts, places where exercises are conducted, and other areas where military units and subunits are located.

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CHAPTER 12. THE RESPONSIBILITY OF MILITARY SERVICEMEN UNDER THE CRIMINAL LAW OF THE WARSAW PACT SOCIALIST COUNTRIES

1. Respect the Laws of the Union States

The Warsaw Pact Organization is a reliable defender of the peaceful labor of the fraternal peoples and the decisive factor in defending their socialist achievements and in the fight to strengthen peace and security in Europe. "The military-political defensive alliance of the countries of socialism," The Accountability Report of the CPSU Central Committee to the 26th Party Congress emphasizes, "faithfully serves peace. It has everything necessary to reliably defend the socialist achievements of the peoples. And we will do everything to keep it that way in the future!"[1]

The military-political cooperation of the members of the socialist community and their mutual aid in strengthening their security and defending the achievements of socialism take many different forms. Military cooperation plays an important role among them. It is based on mutual obligations, in case of an armed attack in Europe against one of the members of the Warsaw Pact, to immediately assist the state subjected to attack with all means, including the use of armed force. To prepare in advance for effective joint defense the allied countries established the Unified Command and singled out a certain group of their troops and fleets for the Unified Armed Forces.

Considering the characteristics of contemporary warfare and the possibility of a surprise attack by the imperialist states, certain contingents of Soviet troops were temporarily stationed in Poland, Hungary, East Germany and Chzechoslovakia on the basis of allied obligations. The Soviet Union has conclued treaties on the legal status of these troops with each of these countries and these treaties are in effect.

Such treaties were concluded with the Polish People's Republic on 17 December 1956, [2] with the Hungarian People's Republic on 27 May 1957, with the German

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[1] "Materialy XXVI s"yezda KPSS," op. cit. p 6.

[2] "Sbornik deystvuyushchikh dogovorov, soglasheniy i konventsiy zaklyuchennykh SSSR s inostrannymi gosudarstvami" [Collection of Operative Treaties, Agreements, and Conventions Concluded by the USSR with Foreign States], Vypusk XIX, Moscow, 1960, pp 101-106.

[3] Ibid., pp 79-85.

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Democratic Republic on 12 March, 1957,[4] and with the Czechoslovak Socialist Republic on 16 October 1968.[5]

These treaties are based on respect for the sovereignty of the states in whose territory the Soviet troops are stationed; they establish the principles of nonintervention by Soviet troops in the internal affairs of the host countries. "The temporary stationing of Soviet troops on the soil of the German Democratic Republic," Article 1 of the 12 March 1957 Agreement between the Governments of the USSR and the GDR indicates, for example, "does not violate its sovereignty; the Soviet troops do not intervene in the internal affairs of the German Democratic Republic and in the country's sociopolitical life."

According to the treaties persons belonging to the Soviet forces and members of their families are obligated to respect and observe the laws and legal order operative in the country where they are located. One of the expressions of the sovereignty of the states in which Soviet troops are temporarily stationed is that Soviet servicemen for violation of the laws operative there under the general rule are responsible under the corresponding law of the state in which they are located. For example, Point 1 of Article 9 of the Treaty between the Government of the USSR and Poland on the legal status of Soviet troops temporarily located in Poland says: "In cases of crimes and offenses committed by people belonging to the Soviet forces and members of their families in the Polish People's Republic, as a general rule Polish law is applied and the Polish courts, procurator's office, and other Polish organs authorized for investigation of crimes and offenses are used. Cases of crimes committed by Soviet servicemen are investigated by the military procurator's office and heard by military justice organs of the Polish People's Republic." The treaties with Hungary, East Germany, and Czechoslovakia contain similar points.

As an exception to the above-mentioned rules, in cases where crimes and offenses by persons who belong to Soviet forces are committed only against the Soviet Union or its citizens who are members of Soviet forces or are committed while in the performance of service duties, Soviet law is applied and Soviet legal organs are used (Point 2, Article 9 of the Treaty).

The treaties on the legal status of Soviet forces located in other socialist countries also decide the question of the responsibility of citizens of these states for crimes against Soviet forces and against the servicemen who make them up. Persons guilty of such crimes bear the same responsibility as they would for crimes against the armed forces of their own country.

Based on the principles of mutual aid, respect, and mutual trust the Soviet Union and the socialist countries where Soviet Forces are stationed included in the above-mentioned treaties points that obligate the legal organs of each country to render necessary mutual help in solving problems related to the investigation and solving of criminal cases. The principles and procedures

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[4] Ibid., pp 86-92.

[5] Ibid., Vypusk XXV, Moscow, 1972, pp 117-121.

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for providing this aid are defined in detail in special agreements among the interested countries.[6]

In addition, the legal agencies of each country have been given the right to request of one another that particular cases involving violations committed that refer to the jurisdiction of the other state be transferred or accepted for resolution according to their law. These requests are generally satisfied. For example, if a serviceman belonging to the Soviet forces commits a criminally punishable violation of the highway safety rules while driving his personal vehicle in Czechoslovakia, he is subject to responsibility under the law and before the organs of that country. But the Czechoslovak legal agencies can, at the request of the military procurator or military tribunal of Soviet forces, turn the guilty person and the file on the violation committed by him over the the Soviet side for the question of responsibility to be decided under USSR law. In such a case the Soviet legal organs inform the other party of the status of the case and send copies of verdicts and orders that complete the proceeding in the case. In those cases where a Soviet serviceman is brought to responsibility under the law of the host country for a crime that involves the interests of that country or its citizens, he has the same procedural rights and obligations as its citizens. The military justice organs of the corresponding country carry out the investigation and hearing of criminal cases in relation to Soviet servicemen.

It must also be observed that, on the basis of bilateral agreements for rendering legal assistance[7] and the convention concluded among the socialist countries,[8] a Soviet serviceman convicted by the legal organs of the host country to loss of freedom may be turned over to the Soviet State to serve his punishment. In such a case the assigned punishment is served on the same basis as exists in our country, but the time cannot be changed, even if a more or less severe punishment is envisioned under Soviet law for commission of such a crime than was ordered by the verdict in the country which turned over the convicted man. This does not apply, however, to the existing procedure for release from punishment and the possibility of amnesty or pardon. But a verdict can only be reviewed by a court of a state in which it was delivered.

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6 For example, see the "Agreement between the Government of the Union of Soviet Socialist Republics and the Government of the Hungarian People's Republic on Rendering Mutual Legal Assistance in Cases Related to the Temporary Presence of Soviet Forces in the Hungarian People's Republic," VEDOMOSTI VERKHOVNOGO SOVETA SSSR No 16, 1958, p 283.

7 See "Dogovory ob okazanii pravovoy pomoshchi po grazhdanskim, semeynym i ugolovnym delam, zaklyuchennyye SSSR i drugimi sotsialisticheskim stranami" [Treaties on Rendering Legal Assistance in Civil, Family, and Criminal Cases, Concluded by the USSR with other Socialist Countries], Moscow, 1973.

8 "Convention on Turning Over Persons Sentenced to Loss of Freedom to Serve their Punishment in the State of Which They are Citizens. Concluded among Bulgaria, Hungary, the GDR, Cuba, Mongolia, Poland, the USSR, and Czechoslovakia in May 1978 and Ratified by the USSR on 3 April 1979," VEDOMOSTI VERKHOVNOGO SOVETA SSSR No. 33, 1979, p 539.

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2. Short Survey of the Law of the Warsaw Pact Countries

A steady drop in crime and a decline in the social danger of the crimes still being committed are a general pattern of development in the socialist countries. As also true in the Soviet State, the foreign socialist countries devote their primary attention in the fight against crime to preventing crime, eliminating the causes of it, and indoctrinating citizens in a spirit of conscious fulfillment of their duty and the rules of socialist communal living and in a spirit of respect for the laws. At the same time, the laws themselves play an important role among the means of fighting crimes, as is also true in our country.

The criminal laws operative today in the Warsaw Pact countries are the criminal codes adopted by East Germany in 1968, Poland in 1969, Hungary in 1978, Czechoslovakia in 1971 (amended and supplemented in later years), Bulgaria in 1968, and Romania in 1973. The norms of the criminal laws of the fraternal countries which envision particular types of crimes and the penalties for them are very diverse. In the criminal codes of these countries responsibility for state and military crimes are defined in a way that is most similar to the Soviet criminal law.

The norms of the laws on criminal responsibility for state crimes are aimed at protecting the political and economic foundations of the countries of the socialist community and their external security against criminal infringement. All the socialist countries of Europe establish criminal responsibility for treason against the Homeland, sabotage, espionage, wrecking, acts of terrorism, and antistate propaganda and agitation. The most serious state crimes are punished by maximum terms of loss of freedom of 15 or 20 years, life imprisonment, or execution (in East Germany and Poland).

Unlike Soviet law in which crimes against peace and humanity are included among state or military crimes, the criminal codes of East Germany, Czechoslovakia, Hungary, Bulgaria, and Romania, single them out in separate chapters or sections. They envision criminal responsibility for such crimes as genocide, war propaganda, preparation for and carrying out acts of aggression, participation in oppression of peoples, recruiting for military service to the imperialists, and violations of the laws and customs of war.

The criminal law of the Warsaw Pact countries devotes a great deal of attention to protecting socialist property against criminal offenses.

The criminal codes of Czechoslovakia and Poland establish responsibility for misappropriation of socialist property regardless of how it is accomplished. For example, Article 199 Section 1 of the Polish Criminal Code states: "He who commits misappropriation of public property is subject to loss of freedom for a term of six months to five years." But if property of significant value (worth more than 100,000 zlatys) is stolen, in conformity with Article 201 of the Criminal Code the guilty person is subject to loss of freedom for a term of at least five and up to 25 years.

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The laws of Hungary, Bulgaria, and Romania subdivide responsibility for misappropriation of socialist property depending on whether it was committed by larceny (secretly), theft (openly), embezzelment, or fraud.

The East German criminal code in the chapter on crimes against socialist property determines different penalties for robbery and fraud, which means acquiring ownership of property by deception. The punishment for these crimes may be loss of freedom for a period of 2-10 years, and up to 15 years in the most serious cases. In addition, the crimes against individual freedom and dignity envision responsibility for such criminal offenses against property as robbery and extortion. Robbery means cases where the guilty person "takes things that are in socialist, personal, or private ownership, using violence against a person or by a threat accompanied by a present danger to life or health, or tries to keep things misappropriated by him in his possession by such means." Extortion is recognized as illegally forcing a person to turn over property to the guilty person or other persons by using violence or the threat of causing serious harm. The punishments for these crimes are set under the law as loss of freedom for a period of up to five years, and up to 10 years in serious cases. In addition to misappropriation of socialist property the law of the Warsaw Pact countries also punishes deliberate or negligent destruction of socialist property. For example, cutting trees in the forest is equivalent to larceny under Polish law.

The criminal law of the European socialist countries protects the personal property of citizens equally with socialist property, and in those countries which have a private capitalist sector in trade, agriculure, and small industry (East Germany and Poland) private property is also protected.

As in the Soviet State, the foreign members of the Warsaw Pact devote serious attention to the fight against crimes that cause harm to the economy and the socialist economic system. One of such crimes, for example, is speculation. "He who acquires or stores a significant quantity of objects of consumption or an object of greater value with the intention of selling them at a profit or exchanging them or receiving another advantage or who proves to be the middle-man in such activity," Section 117 of the Czechoslovak Criminal Code states, "is punished by loss of freedom for a period of from six months to three years." But if the speculation was committed by an organized group or the guilty person makes a significant profit, the penalty is set at 3-10 years loss of freedom.

The criminal law of all the European socialist countries gives comprehensive protection to the life, health, freedom, and dignity of the individual againt criminal infringement. Murder is strictly punished everywhere, up to the use of execution. The circumstances that aggravate responsibility for homicide are recognized to be a cruel method of committing it, taking the lives of two or more people, homicide in connection with the service or public activity of the victim, base motives, and the like. For example, under Section 112 of the GDR Criminal Code murder of a person is punished by a loss of freedom for a period of at least 10 years or life imprisonment. But if, for example, the homicide is committed by a method that is dangerous to others, treacherous, or especially cruel, the sentence can be execution.

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Negligent homicide is punished under Section 114 of the GDR Criminal Code by loss of freedom for a period of up to two years or a suspended sentence, and in serious cases (several victims killed or the negligent homicide occurred as a result of a flagrant violation of the rules for protecting human life and health, or if the guilty person committed an especially irresponsible violation of the duties that arise from the conditions of human communal living) the penalty is loss of freedom for to five years.

Responsibility for infliction of bodily injury, crimes against the freedom and dignity of the individual, and sexual crimes is regulated in detail in the criminal law of the Warsaw Pact countries.

Under the law of certain countries participation in a fight may also be grounds for bringing a person to criminal responsibility, even if no one was physically harmed. "He who intentionally puts the life or health of another person under threat by taking part in a fight," Section 225 of the Czechoslovakian Criminal Code states, "is punished by loss of freedom for a period of up to six months or by a corrective measure."

Rape and other sexual actions committed with the use of violence, or public, or associated with the corruption of minors are severely punished.

The criminal law systems of all the socialist members of the Warsaw Pact protect public order and public security against criminal infringement, but they use different forms. All the criminal codes contain norms that establish responsibility for hooligan-type actions. But the nature and descriptions of such actions are defined differently. According to Section 215 of the GDR Criminal Code hooliganism means participation in a group, "which, neglecting public order or the rules of socialist communal living, commits violent actions, threatens or rudely insults citizens, or maliciously damages property or structures." The punishment for this crime is envisioned as loss of freedom for period of up to five years or arrest. If participation in the group was secondary or the guilty person committed hooliganism on his own, he is punished by loss of freedom for a term of up to two years, arrest, or a fine. The Czechoslovak Criminal Code (Section 202) defines a similar crime, called disorderliness, as follows: "He who publicly or in a public place commits a flagrantly improper or disorderly act is punished by loss of freedom for a term of up to two years, a corrective measure, or a fine." The punishment may be increased to three years loss of freedom if the guilty person committed this crime as a member of an organized group.

Violation of the rules of traffic safety and operation of means of transportation (rail, air, motor vehicle, and urban electrical transport) constitutes a special group of crimes against public security. Those responsible for these crimes are not only employees of transportation, but also drivers of personal vehicles, passengers, pedestrians, and other persons not involved in transportation work.

Thus, under Article 145 of Polish Criminal Code a violation of the rules of traffic safety on land, waterways, or in the air which causes negligent bodily injury or impairment of the health of another person or serious loss of property

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entails the penalty of loss of freedom for a period of up the three years. If the consequence of the violation of the rules of traffic safety is death, serious bodily injury, or serious impairment of the health of another person the guilty person is subject to loss of freedom for a term from six months to eight years.

Under the GDR Criminal Code (Section 196) causing death or serious harm to a person's health and causing significant material loss as the result of a violation of safety rules for transportation is punished by loss of freedom for a term of up to two years or suspended sentence, and in the case of causing the death of several persons or an especially flagrant violation of precautionary rules the punishment can be up to five years loss of freedom.

As a rule the behavior of a participant in a tranportation incident who leaves a victim in life-threatening condition or does not help a victim is generally treated as an independent crime under the law of the countries of the Warsaw Pact. "The driver of a means of transportation," Section 208 of the Czechoslovak Criminal Code says, "who after an accident in transportation which occurred with his participation does not give the victim essential aid, although he can do this without danger to himself or others, is punished by loss of freedom for a term of up the three years, a corrective measure, or a ban on engaging in certain activity." This question is decided in roughly the same way in section 199 of the GDR Criminal Code.

Under all the criminal codes driving means of tranportation in an intoxicated condition is punished regardless of the consequences that ensue. This group of crimes also includes driving off means of transportation without the objective of stealing them and illegal use of the means of transportation of others.

A number of norms in the criminal law of the Warsaw Pact countries are directed to protecting the national dignity of peoples, the authority of the state order, representatives of its power, and state and public symbols. For example, it is recognized as a crime to defame the state or its representatives, to insult a nation, and to show disrespect for the state flag, seal, or other symbols of states and public organizations.

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APPENDIX. LAW ON CRIMINAL RESPONSIBILITY FOR MILITARY CRIMES

(Adopted by the USSR Supreme Soviet on 25 December 1958, VEDOMOSTI VERKHOVHOGO SOVETA SSSR No. 1, 1959, p 10)

Article 1. The Concept of the Military Crime

Crimes against the established procedures for performance of military service committed by military servicemen and by reservists during their attendance at training assemblies are recognized as military crimes by the present Law.

Soldiers, seamen, sergeants, petty officers, warrant officers, and officers of state security organs and also persons specially indicated in the law of the USSR bear responsibility under the appropriate articles of the present Law for crimes against the procedures established for them for performance of service.[1]

Complicity in military crimes by persons not mentioned in the present article entails responsibility under the corresponsing articles of the present Law.

Article 2. Insubordination

(a) Insubordination, that is open refusal to carry out the order of a superior, or other intentional failure to carry out an order -- is punished by loss of freedom for a period of 1-5 years.

(b) The same act committed by a group of persons or leading to serious consequences -- is punished by loss of freedom for a period of 3-10 years.

(v) Insubordination committed in wartime or in a combat situation -- is punished by execution or loss of freedom for a period of 5-10 years.

Article 3. Failure to Carry out an Order

(a) Failure to carry out the order of a superior committed without the elements indicated in Point "a" of Article 2 of the present Law -- is punished by loss of freedom for a period of from three months to three years.

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[1] The second part of Article 1 of the Law is given in the edition of the 26 November 1973 Ukase (VEDOMOSTI VERKHOVNOGO SOVETA SSSR No 48, 1973).

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(b) The same act with mitigating circumstances -- entails application of the rules of the Disciplinary Code of the USSR Armed Forces.

(v) The act envisioned by Point "a" of the present article, committed in wartime or in a combat situation -- is punished by loss of freedom for a period of 3-10 years.

Article 4. Resistance to a Superior or Forcing Him to Violate Service Duties

(a) Resistance to a superior or to another person performing the duties of military service assigned to him, or forcing him to violate these duties -- is punished by loss of freedom for a period of 1-5 years.

(b) The same acts committed by a group, using a weapon, or leading to serious consequences -- are punished by loss of freedom for a period of 3-10 years.

(v) The acts envisioned by Point "b" of the present article, if accompanied by murder of the superior or other person performing duties in the military service, or committed in wartime or a combat situation -- are punished by execution or loss of freedom for a period of 5-15 years.

Article 5. Threatening a Superior

(a) Threatening murder, bodily injury, or an assault against a superior in connection with his performance of his duties in the military service -- is punished by loss of freedom for a period of from three months to three years.

(b) The same action in mitigating circumstances -- entails application of the rules of the Disciplinary Code of the USSR Armed Forces.

(v) The act envisioned by Point "a" of the present article, committed in wartime or in a combat situation -- is punished by loss of freedom for a period of 3-10 years.

Article 6. Violent Actions Against a Superior

(a) Inflicting bodily injury or an assault on a superior in connection with his performance of his duties in the military service -- is punished by loss of freedom for a period of 2-10 years.

(b) The same actions committed in wartime or in a combat situation, if they lead to serious consequences -- are punished by execution or loss of freedom for a term of 5-15 years.

Article 7. Criminal Insult of a Superior by a Subordinate and of a Subordinate by a Superior

(a) Criminal insult using words or nonviolent action by a subordinate against a superior or by a junior against a senior, as well as by a superior against a subordinate or a senior against a junior where at least one of them

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is performing his duties in the military service -- is punished by loss of freedom for a period of 3-6 months.

(b) The same acts in mitigating circumstances -- entail application of the rules of Disciplinary Code of the USSR Armed Forces.

(v) Criminal insult by violent action committed under the conditions indicated in the Point "a" of the present article -- is punished by loss of freedom for a period of six months to five years.

Article 8. Criminal Insult Using Violent Action by One Serviceman Against Another If Relations of Subordination or Seniority Between Them Do Not Exist

(a) Criminal insult using violent action by one serviceman against another, if they are not in relations of subordination or seniority and at least one of them is performing his duties in the military service -- is punished by loss of freedom for a term of from three months to one year.

(b) The same act in mitigating circumstances -- entails application of the rules of Disciplinary Code of the USSR Armed Forces.

Article 9. Absence Without Leave

(a) Absence without leave from the unit or place of service by a regular-term military serviceman or failure to appear for service on time without acceptable reasons when released from the unit, during appointment or transfer, and when returning from a work trip, leave, or medical institution, lasting more than 24 hours but not more than three days or if less than 24 hours committed repeatedly during three months -- is punished by assignment to disciplinary batallion for a period of from three months to two years.

(b) The same acts committed in wartime -- are punished by loss of freedom for a period of 2-10 years.

(v) The acts envisioned by Point "a" of the present article committed by a military serviceman serving a sentence in a disciplinary batallion -- are punished by loss of freedom for a period of 1-3 years.

(g) The acts envisioned by Point "a" of the present article in mitigating circumstances -- entail application of the rules of the Disciplinary Code of the USSR Armed Forces.[2]

Article 10. Abandonment of the Unit or Place of Service Without Leave

(a) Abandonment of the unit or place of service without leave by a regular-term military serviceman, and failure to appear for service on time without

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[2] Point "g" was added to Article 9 of the Law by the 26 January 1965 Ukase (VEDOMOSTI VERKHOVHOGO SOVETA SSSR No. 5, 1965).

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acceptable reasons when released from the unit, during appointment or transfer, and when returning from a work trip, leave, or a medical institution, lasting more than three days -- is punished by loss of freedom for a term of 1-5 years.

(b) The same acts committed in wartime -- are punished by loss of freedom for a term of 5-10 years.

(v) Abandonment of the unit or place of service without leave by an officer, warrant officer, or extended-service serviceman, as well as his failure to appear for service on time without acceptable reasons, lasting more than 10 days -- is punished by loss of freedom for a term of 1-5 years.[3]

(g) The acts envisioned by Point "v" of the present article, committed in wartime, with unauthorized absence lasting more than 24 hours -- are punished by loss of freedom for a period of 5-10 years.

Article 11. Desertion

(a) Desertion, that is abandoning the military unit or place of service with the objective of evading military service, as well as failure to appear for service with the same objective during appointment or transfer and when returning from a work trip, leave, or a medical institution, committed by a regular-term military serviceman -- is punished by loss of freedom for a term of 3-7 years.

(b) The same acts committed in wartime -- are punished by execution or loss of freedom for a term of 5-15 years.

(v) Desertion committed by an officer, warrant officer, or extended-service serviceman -- is punished by loss of freedom for a term of 5-7 years.[3]

(g) The same act committed in wartime -- is punished by execution or loss of freedom for a term of 7-10 years.

Article 12. Abandonment of the Unit Without Leave in a Combat Situation

(a) Abandonment of the unit or place of service without leave in a combat situation, regardless of its length -- is punished by execution or loss of freedom for a term of 3-10 years.

Article 13. Evasion of Military Service by Self-Mutilation or Other Means

(a) Evasion of performance of the duties of military service by a serviceman by causing himself some harm (self-mutilation) or by simulating illness, forging documents and other deception, and also refusal to perform the duties of military service -- are punished by loss of freedom for a term of 3-7 years.

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[3] Points "v" of Articles 10 and 11 of the Law are given in the edition of the 26 November 1973 Ukase (VEDOMOSTI VERKHOVNOGO SOVETA SSSR No. 48, 1973).

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(b) The same acts committed in wartime or in a combat situation -- are punished by execution or loss of freedom for a period of 5-10 years.

Article 14. Illegally Disposing of or Losing Military Property

(a) The sale, pledge, or transfer to another for use by a regular-term serviceman of clothing and gear issued to him for personal use (illegally disposing) as well as the loss of destruction of these objects resulting from violation of the rules for preservation of them -- are punished by assignment to a disciplinary batallion for a term of three months to one year.

(b) The same acts in mitigating circumstances -- entail application of the rules of the Disciplinary Code of the USSR Armed Forces.

(v) The acts envisioned by Point "a" of the present article, committed in wartime or in a combat situation -- are punished by loss of freedom for a term of 1-5 years.

(g) Loss or destruction of weapons, ammunition, means of transportation, technical gear, or other military property entrusted for service use as a result of violation of the rules for perservation of it -- is punished by loss of freedom for a term of 1-3 years.

(d) The acts envisioned by Point "g" of the present article committed in wartime or in a combat situation -- are punished by loss of freedom for a term of 2-7 years.

Article 15. Intentional Destruction of or Damage to Military Property

(a) Intentional destruction of or damage to weapons, ammunition, means of transportation, military equipment, or other military property without the elements of an especially dangerous state crime -- is punished by loss of freedom for a term of 1-5 years.

(b) The same act, if it leads to serious consequences -- is punished by loss of freedom for a term of 3-10 years.

(v) The act envisioned by Point "b" of the present article committed in wartime or in a combat situation -- is punished by a loss of freedom for a term of 5-10 years or execution.

Article 16. Violation of the Rules for Driving or Operating Vehicles

Violation of the rules for driving or operating combat, special, or transport vehicles leading to accidents with people of other serious consequences -- is punished by loss of freedom for a term of 2-10 years.

Article 17. Violation of the Rules of Flights and Preparation for Them

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Violation of the rules of flights and preparation for them leading to a disaster or other serious consequences -- is punished by loss of freedom for a term of 3-10 years.

Article 18. Violation of the Rules of Ship Naviation

Violation of the rules of ship navigation leading to the loss of the ship or serious damage to it, human victims, or other serious consequences -- is punished by loss of freedom for a term of 3-10 years.

Article 19. Violation of the Regulation Rules of Guard Service

(a) Violation of the regulation rules for guard (watch) service and orders and instructions given to elaborate these rules, committed at guard posts or posts to protect warehouses containing ammunition, weapons, combat equipment, or other important objects -- is punished by loss of freedom for a term of from six months to three years.[4]

(b) The same act in mitigating circumstances -- entails application of the rules of the Disciplinary Code of the USSR Armed Forces.

(v) Violation of the regulation rules of sentry or patrol service which leads to harmful consequences which the sentry post or patrol was designated to prevent -- is punished by loss of freedom for a term of 1-5 years or assignment to a disciplinary batallion for a term of from three months to two years.

(g) Acts envisioned by Points "a" and "v" of the present article committed in wartime or in a combat situation -- are punished by loss of freedom for a term of 2-7 years.

(d) Violation of the regulation rules of guard (watch) or convoy service accompanied by harmful consequences to prevent which the particular guard or convoy was established -- is punished by loss of freedom for a term of 1-10 years.

(ye) An act envisioned by Point "d" of the present article committed in wartime or in a combat situation -- is punished by loss of freedom for a term of 3-10 years or execution.

Article 20. Violation of the Rules for Performance of Border Service

(a) Violation of the rules for performance of border service by a person who is a member of a detachment to guard the USSR State Border -- is punished by loss of freedom for a term of 1-3 years.

(b) The same act in mitigating circumstances -- entails application of the rules of the Disciplinary Code of the USSR Armed Forces.

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[4] Points "a," "v," and "g" of Article 19 of the Law are given in the edition of the 26 January 1965 Ukase (VEDOMOSTI VERKHOVNOGO SOVETA SSSR No. 5, 1965).

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(v) An act envisioned by Point "a" of the present article which has serious consequences -- is punished by loss of freedom for a term of 3-10 years.

Article 21. Violation of the Rules for Performance of Combat Duty

(a) Violation of the rules for performance of combat duty to defend the inviolability of the land, sea, or air space of the USSR or to prevent a surprise attack on the Soviet Union, committed by a person who is a member of a duty shift of a combat team, crew, post, or other duty subunit -- is punished by loss of freedom for a term of 1-5 years.

(b) The same acts in mitigating circumstances -- entail application of the rules of the Disciplinary Code of the USSR Armed Forces.

(v) An act envisioned by Point "a" of the present article which has serious consequences -- is punished by loss of freedom for a term of 3-10 years.

(g) Acts envisioned by Points "a" and "v" of the present article committed in wartime -- are punished by execution or loss of freedom for a term of 5-15 years.[5]

Article 22. Violation of the Regulation Rules for Internal Service

(a) Violation of the regulation rules of internal service by a person who is a member of the daily detail of a unit (except guard and watch) -- is punished by loss of freedom for a term of 3-6 months.

(b) The same action in mitigating circumstances -- entails application of the rules of the Disciplinary Code of the USSR Armed Forces.

(v) The act envisioned by Point "a" of the present article, if it has harmful consequences whose prevention was the duty of the particular individual -- is punished by loss of freedom for a term of six months to two years.

(g) An act envisioned by Point "v" of the present article committed in wartime or in a combat situation -- is punished by loss of freedom for a term of 1-5 years.

Article 23. Divulging Military Secrets or Losing Documents Containing Military Secrets

(a) Divulging military information that is a state secret, if the elements of treason against the Homeland are not present -- is punished by loss of freedom for a term of 2-5 years.

(b) Loss of documents containing military information that is a state secret or objects, information about which is a state secret, by a person to whom

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[5] Article 21 of the Law is given with consideration of the amendments made by the 26 January 1965 Ukase (VEDOMOSTI VERKHOVNOGO SOVETA SSSR No. 5, 1965).

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these documents or objects were entrusted, if the loss was the result of violation of the established rules for handling these documents or objects -- is punished by loss of freedom for a term of 1-3 years.

(v) The acts envisioned by Points "a" and "b" of the present article, if they have serious consequences -- are punished by loss of freedom for a term of 5-10 years.

(g) Divulging military information not subject to being made public, but not a state secret -- is punished by loss of freedom for a term of from three months to one year.

(d) The act envisioned in Point "g" of the present article in mitigating circumstances -- entails application of the rules of the Disciplinary Code of the USSR Armed Forces.

Article 24. Abuse of Authority, Exceeding Authority, and a Careless Attitude Toward the Service

(a) Abuse by a commander or official of his authority or service position, inaction or exceeding authority, and also a careless attitude toward the service, if these actions have been committed systematically or out of selfish motives or other personal interests, and also if they have caused substantial harm -- are punished by loss of freedom for a term of from six months to 10 years.

(b) The same acts in mitigating circumstances -- entail application of the rules of the Disciplinary Code of the USSR Armed Forces.

(v) The acts envisioned by Point "a" of the present article committed in wartime or in a combat situation -- are punished by loss of freedom for a term of 3-10 years or execution.

Article 25. Surrendering or Leaving to the Enemy Means of Waging War

Surrender to the enemy by a commander of the military forces entrusted to him, as well as leaving behind for the enemy fortifications, combat equipment, and other means of waging war when the combat situation does not require it, if these actions are not committed for purposes of helping the enemy -- are punished by loss of freedom for a term of 3-10 years or execution.

Article 26. Abandoning a Sinking Warship

(a) Abandonment of a sinking warship by a captain who has not completely fulfilled his service duties, as well as by a member of the ship crew without proper authorization to do so from the captain -- is punished by loss of freedom for a term of 5-10 years.

(b) The same act committed in wartime or in a combat situation -- is punished by execution or loss of freedom for a term of 10-15 years.

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Article 27. Leaving the Field of Battle Without Authorization or Refusal to Use the Weapon

Leaving the field of battle during battle without authorization or refusing to use the weapon during battle -- is punished by execution or loss of freedom for a period of 15 years.

Article 28. Voluntary Surrender

Voluntary surrender out of cowardice and weakness -- is punished by execution or loss of freedom for a term of 15 years.

Article 29. Criminal Actions by a Serviceman in Captivity

(a) Voluntary participation by a serviceman in captivity in work of military significance or other activities he knows can cause harm to the Soviet Union or countries allied with it, if the elements of treason against the Homeland are lacking -- is punished by loss of freedom for a term of 3-10 years.

(b) Violence against other prisoners of war or cruel treatment of them by a prisoner who holds senior status -- is punished by loss of freedom for a term of 3-10 years.

(v) Commission by a serviceman in captivity of action aimed at harming other prisoners of war for selfish reasons or to win favor with the enemy -- is punished by loss of freedom for a term of 1-3 years.

Article 30. Battlefield Looting

Stealing articles found on dead or wounded persons on the field of battle -- is punished by loss of freedom for a term of 3-10 years or execution.

Article 31. Violence Against the Population in a Region of Military Operations

Robbery, illegal destruction of property, violence, and illegal taking of property under the pretext of military necessity, committed in relation to the population in a region of military operations -- are punished by loss of freedom for a term of 3-10 years or execution.

Article 32. Mistreatment of Prisoners of War

(a) Mistreatment of prisoners of war that has occurred more than once, is associated with special cruelty, or is directed against sick and wounded, as well as careless performance of duties in relation to sick and wounded by persons who are assigned to treat and care for them, where the elements of a more serious crime are not present, are punished by loss of freedom for a term of 1-7 years.

(b) Mistreatment of prisoners of war without these aggravating circumstances -- entails application of the rules of the Disciplinary Code of the USSR Armed Forces.

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Article 33. Illegally Wearing the Insignia of the Red Cross and Red Crescent and Abuse of Them

Wearing the insignia of the Red Cross or Red Crescent in a region of military operations, done by persons who do not have the right to do so, as well as abuse of the flags or insignia of the Red Cross and Red Crescent or the colors designated for medical evacuation transport vehicles in wartime -- are punished by loss of freedom for a term of from three months to one year.

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