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TITLE

**PENAL AND PUNISHMENT POLICY FOR CRIMES
AGAINST THE ORDER OF MILITARY SERVICE
IN THE REPUBLIC OF ARMENIA**

STUDENT'S NAME

GEVORG GRIGORYAN

SUPERVISOR'S NAME

ARMAN ZRVANDYAN

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Introduction

For the state and society, military service is one of the guarantors of their security. The purpose of military service is to maintain the country's military security, protect state sovereignty, protect against acts of aggression, ensure internal order, which guarantees the proper level of national security of the state.

The practical implementation of these tasks is impossible in the absence of a clearly streamlined mechanism for the military to fulfill the duties assigned to them to protect the state, ensure its defense capability and security. The development of the mechanism for the performance by military personnel of their duties is inextricably linked, inter alia, with the effectiveness of the criminal law protection of this sphere of public relations. It is expressed in the establishment of norms on crimes against military service, the analysis of which requires consideration in interconnection, interdependence and interaction, in the context of the conditions and organization of military service or military service.

The study of the problem of committing crimes of this type involves the application of a systematic approach. In order to properly protect the relevant public relations, thanks to which it is possible to ensure a high level of state security, it is necessary that the Criminal Code of the Republic of Armenia (hereinafter - the Criminal Code)¹ enshrines the system of crimes against military service as an integrated entity containing the necessary interconnected elements of crimes. This system should be built taking into account the fact that military personnel are involved in armed conflicts, military operations, liquidation of consequences of natural disasters, including during the introduction of a state of emergency, in ensuring the regime of counter-terrorism operations and the destruction of illegal armed groups, perform tasks in military exercises and other combat missions. Under these conditions, violations of the established procedure for military service a priori have a high public danger.

¹ Criminal Code Of Republic of Armenia, available at <https://www.arlis.am/>, last visit may 2 2020

Crimes committed by military personnel constitute a separate type of crime, having an extremely negative impact on the state. It serves as one of the indicators by which society can assess the state of social security in the country. Therefore, special demands are made on military personnel in connection with their military service. They are performing their duty to protect their state and so have a special status by which they enjoy exclusive trust among citizens.

The penal and punishment policy of crimes against the order of military service is severe and unjustified. This, in turn, leads to many practical problems related to the application of the law. Practically it is not possible to apply the law as it is written in the case of such punishment policy. Severe and unjustified penal and punishment policy has another negative aspect. As a result the institution of the conditional non-application of the sentence² is used instead of the imposed punishment³. The latter has its negative impact on the idea of the inevitability of punishment in the Armed forces.

The purpose of the work is to use the systematic approach to find out the legal nature and content of the system of crimes against military service, establish its features, identify system properties and connections, subsystems and elements, as well as develop a theoretical model of the system of these crimes and suggest ways to improve criminal law in the field of research.

Dividing crimes against the order of military service into subsystems or groups, have more theoretical than practical importance. The division of crimes into groups will allow us to unite more similar crimes, by which it would be easier and more effective to develop penal and punishment policy for this field. Specifically, after the division by detecting practical or theoretical problems in the specific group, relevant changes will be done for the improvement of the punishment policy for that specific group. The purpose of all this is to have more effective way for detecting problems related to punishment and penal policy in specific groups.

To achieve above mentioned goal, the following tasks are set:

1. to develop the author's concept of a system of crimes against military service based on a systematic approach;
2. to exercise international best practice by making comparative legal analysis;

² The Criminal Code of The Republic of Armenia, Article 70.

³ A judge of Criminal Chamber of the Court of Appeal

3. to suggest directions for optimizing the norms of the system of crimes against military service.

The RA Criminal Code contains a section on war crimes (Section 12 chapter 32 “Crimes against the order of military service”, Articles 356-383 of the Criminal Code of the Republic of Armenia). Crimes against the order of military service are the crimes against the established procedure for military service or against military service, committed by military personnel who are doing military service on conscription or by contract in the Armed Forces, in other troops, military units of the Republic of Armenia, as well as citizens who are in reserve, during military training.

In 2013 changes and additions were made in 32nd chapter of 12th section of RA Criminal Code by the HO-34-N RA law. As a result of changes and additions the chapter “Crimes against the order of military service” has been supplemented with new offenses, a new sentence has been introduced, and the penalties for existing offenses have generally been tightened.

Imposing severe penalties play less preventing role, then effective and unavoidable (real) use of less severe punishments. For example the judicial statistics that since the changes and additions were made in Criminal Code of RA the number of criminal cases against the order of military service received in the courts has not reduced. Moreover, there were no significant changes in the numbers of each crime taken separately. In particular, before and after the changes and additions were made in the chapter “Crimes against the order of military service” the vast amount of crimes is crimes committed with violence. Therefore, the best possible outcome in a penal policy is the actual use of proportionate punishment.

Also, by increasing the upper limit of the punishment in the form of imprisonment, and unjustified and frequent use of a sentence of imprisonment do not promote the effectiveness of punitive policies. In most cases it leads courts to use the institution of the conditional non-application of the sentence.

Hence, for achieving the most important goals of justice, such as crime prevention, strengthening the rule of law in the army, raising legal awareness etc., and our state have to adopt more effective penal and punishment policy. An example of more effective penal and punishment policy can be detention and short-term detention in disciplinary battalion. Also, for officers can

be applied restriction in military service punishment, even with a large withholding from the salary, if necessary.

Different methodological approaches allowed the author to study the system of crimes against military service under domestic criminal law, conduct its comparative legal analysis, examine the issues of its regulation in modern Armenian criminal law, classify crimes against military service and establish its systemic significance for such a system crimes, determine the place of this system in the legislation, taking into account its relationship with other systems of crime of assumptions and suggest directions for optimizing the norms.

The fact that this field is quite extensive to study in the scope of this master's paper, therefore in this master's paper I am going to study and after suggest ways to improve criminal law specific branch of the mentioned field. Within this master's paper will be studied crimes against the subordination order and statutory relationships between military personnel⁴. More specifically, Articles 358, 358¹ and 359 of the Criminal Code will be studied within this master's paper.

The structure of the master's paper corresponds to the goals and objectives of the dissertation research. This master's paper shall consist of an introduction, four chapters, a conclusion, a bibliography and appendices. The Introduction will present background of the problem, statement of the problem, some brief answers, methodology and the justification and significance of this master's paper. Chapter 1 is designed to study the classification of crimes against military service and its significance. In chapter 2 a research will be done to determine the current practical issues in the field. Also, statistical research will be done in the field, by taking statistical data from courts. In chapter 3 international best practices will be studied and parallels will be drawn between The Criminal Code and the draft of the Criminal Code of the Republic of Armenia⁵. Finally, Chapter 4 will present directions for optimizing the norms taking into account the changes in the draft Criminal Code of the Republic of Armenia. The Conclusion

⁴ Akhmetshin Kh. Crimes against military service // The Russian justice. 1997. no. 5. Pp. 42-43.

Zakamaldin R. V. Shortcomings of the military criminal law response to crime in the sphere of military service // Criminal realities, reaction to them and the law / edited by A. I. Dolgova. M., 2018. P. 72.

⁵ the draft of the Criminal Code of the Republic of Armenia, available at <https://www.e-draft.am/projects/2115/about>, last visit May 2 2020

will outline main findings of the research. And after the conclusion the list of used sources will be given.

Chapter 1: Classification of crimes against military service and its significance.

The identification in the system of crimes against military service not only crime groups, but specifically subsystems, has theoretical and practical significance. Firstly, the potential development lies in it itself. Focusing on the nature of each subsystem, it is possible to analyze for its integrity, completeness. Second, on the basis of such an analysis it will be possible to propose directions for the optimization of criminal legislation in the field under study by the improvement of subsystems and the entire system. This field of science is well studied by Russian scientists.

So, Kh. M. Akhmetshin suggests that the offenses set forth in Chapter 33 of the Criminal Code of the Russian Federation “Crimes against military service” can be divided into the following groups:

1. crimes against the order of subordination and statutory relationships between military personnel (Articles Art. 332–336 of the Criminal Code of the Russian Federation);
2. evasion of military service (Articles 337–339 of the Criminal Code of the Russian Federation);
3. crimes against the procedure for the provision of special services (Articles 340–344 of the Criminal Code of the Russian Federation);

4. crimes against the procedure for the use and saving of military equipment and other military property (Articles 345–348 of the Criminal Code of the Russian Federation);
5. crimes against the procedure for handling weapons and the exploitation of military equipment (Articles 349–352 of the Criminal Code of the Russian Federation)⁶

R.V. Zakomoldin also agrees with this classification.⁷

The classification is generally consistent with Russian criminal law and reflects all the elements of the system of crimes against military service. But after matching this classification to our legislation we will have the following result: in the first group Articles 356-360.2 of the Criminal Code of the Republic of Armenia will be included; the second group will include Articles 361-364.2 of the Criminal Code of the Republic of Armenia; in the third group Articles 365-368.1 of the Criminal Code of the Republic of Armenia will be included; in the fourth group Articles 369-372 of the Criminal Code of the Republic of Armenia will be included; and finally the fifth group will include Articles 373-377 of the Criminal Code of the Republic of Armenia.

After studying Criminal code of the Republic of Armenia it is obvious that such classification does not comply with our Criminal Code. The author came to this conclusion based on the fact that within this classification it is not clear in what we have to include Articles 378-383 of the Criminal Code of the Republic of Armenia. Therefore this classification must be developed for being implemented in our Criminal Code.

O. K. Zatelepin, N. A. Petukhov, A. A. Tolkachenko and others, as well as V. A. Markelov believe that crimes against military service must be divided into the following types;

1. crimes against the order of military statutory relations;
2. crimes against the order of military service;
3. crimes against the order of special (protective) types of military service;
4. crimes against the order of conservation of military property;
5. crimes against the order of exploitation of military equipment.⁸

⁶ Akhmetshin Kh. Crimes against military service // The Russian justice. 1997. no. 5. Pp. 42-43.

⁷ Zakamaldin R. V. Shortcomings of the military criminal law response to crime in the sphere of military service // Criminal realities, reaction to them and the law / edited by A. I. Dolgova. M., 2018. P. 72.

⁸ Zatelepin O. K., Kislitsyn M. K., Petukhov N. A. [et al.]. Military-criminal legislation of the Russian Federation. Special course: textbook. M., 2004. P. 68; Markelov V. A. Criminological characteristics of evasion from military service // Russian investigator. 2005. No. 6. P. 42.

When trying to implement this classification in our Criminal Code we face the same problem as in the first one. As an example can serve Article 373 of the Criminal, which logically belongs to the fifth group. But one should pay attention to the narrowness of the formulation of the fifth group of the types of crimes against military service identified by the indicated authors. In particular, the offense under Article 373 of the Criminal Code of the Republic of Armenia involves a violation of the rules for handling weapons and objects that pose an increased danger to others; therefore, attributing it to crimes against the operation of military equipment is incorrect or conditional.

Another point of view has S. M. Malkov. He identifies the following groups or types of crimes against military service:

1. common crimes against military service;
2. crimes against military service, associated with opposing the implementation of duties in the military service (crimes encroaching on the established rules of relations between military personnel);
3. crimes encroaching on special types of military service;
4. crimes encroaching on the safety rules for the use of military equipment:
 - crimes against military service, encroaching on relations in the sphere of exploitation of weapons, ammunition, explosives and other objects, representing an increased danger;
 - crimes against military service, encroaching on the rules of exploitation of special equipment;
 - crimes against military service, encroaching the order of saving military property.⁹

The author thinks that the most corresponding classification is given by S. M. Malkov, as it can be easily developed and implemented in our Criminal Code. However, it does not consistently define the object of encroachment in the separate types of crimes identified. In particular, it is not clear which social relations are being destabilized by common crimes against military service.

⁹ Malkov S. M. Crimes against military service: monograph. M., 2015. Pp. 23-24; Malkov S. M. the Content of the object of the crime against military service and its significance for the systematization of Chapter 33 of the Criminal code of the Russian Federation // Modern law. 2017. No. 8. P. 82.

Thus, in the science of criminal law, scientists propose various classifications of crimes against military service on such a basis as the object of these crimes. As a rule, all elements of the studied crime system are divided into five types or groups:

1. Firstly, crimes against the subordination and statutory relationships between military personnel or simply statutory relationships;
2. Secondly, crimes against the order for military service or evading military service or crimes against the organization of military service;
3. Thirdly, crimes against the procedure for performing special types of military service;
4. Fourthly, crimes encroaching on the use and saving of military property;
5. Fifthly, crimes against the procedure for handling weapons and exploitation military equipment or crimes against the procedure for exploitation military equipment.

Thus, some scientists identify special military violent crimes that entail or may cause harm to the health and physical integrity of both other military personnel and civilians. In particular, O. K. and M. M. Steepin Lavrikov write that these crimes can be divided into following groups:

1. acts where the sign of violence is mandatory (Articles 333–336, 343 of the Criminal Code of the Russian Federation, accordingly Articles 357-360, 368.1 of the Criminal Code of the Republic of Armenia);
2. acts where the sign of violence is optional (Articles 342 of the Criminal Code of the Russian Federation, accordingly Article 367 of the Criminal Code of the Republic of Armenia).¹⁰

Indeed, in explanatory dictionaries violence is defined as the use of physical force or forcible influence on someone or something¹¹. It involves dangerous illegal influence on the body of another person (external body coverings or internal organs), committed against his will¹². Violence can also be mental, which is a threat of physical violence, destruction or damage to

¹⁰ Zatepin O.K., Lavrikov M. M. the Concept of military violent crimes and some questions about their qualification // Military criminal law: Tab in the journal "Law in the Armed Forces". 2002. № 11-12; 2003. № 1-2; 2003. № 3-4. Available at URL: <http://voenprav.ru/tree-37.htm>, last visit April 12 2020

¹¹ Ushakov D. N. Explanatory dictionary of the Russian language, available at <https://ushakovdictionary.ru/word.php?wordid=33665>, alst visit April 25 2020; Ozhegov S. I., Shvedova N. Yu. Explanatory dictionary of the Russian language available at <http://ozhegov.info/slovar/>, last visit April 26 2020; New explanatory and word-forming dictionary of the Russian language / edited by T. F. Efremova, available at <https://efremova.slovaronline.com/>, last visit April 28 2020

¹² Gauchman L. D. Violence as a means of committing a crime. Moscow, 1974. P. 3.

property, dissemination of shameful information, etc.¹³ Although in the literature there is an opinion that an insult is a form of violence¹⁴, but, as A.V. Brilliantov rightly notes, from the point of view of criminal law, violence is only physical, and mental is defined by indicating the threat of the first or other “ways of influencing the will of a person to compel him to the necessary behavior for the guilty”¹⁵.

In my opinion it is important to identify military violent crimes as a special type of all crimes against military service. At the same time, by understanding violence not only as a physical, but also as a mental impact. In military violent crimes all types of illegal acts can be included that entail or may cause harm to the health and physical integrity of individuals, as well as actually aimed at forcing the victim to a certain behavior.

Based on the study, I think that Article 360 (insulting a serviceman) of Criminal Code of RA cannot be involved in the first group, since it does not involve forcing any behavior. Also Articles 360.1 and 360.2 of Criminal Code of RA (Bringing a serviceman to commit suicide imprudently and bringing a serviceman to commit suicide with indirect intent) must be involved in the first group, as in this crimes the sign of violence is mandatory and a serviceman is forced to commit suicide imprudently or with indirect intent.

The draft of the Criminal Code¹⁶ /hereinafter; the Draft/ compared to the current legal regulations has many differences, both systemic and contextual. Contextual differences will be analyzed in Chapter 3. Criminal Code of RA in force as for today comprises of one Section including one chapter. The Draft manifests a new approach in that regard: it is comprised of 1 section including 5 chapters¹⁷:

1. Crimes against military subordination and servicemen's code of conduct;
2. Crimes against the order of military service;

¹³ Burkina O. A. Concept and types of violence in crimes against property in the theory of criminal law of Russia // Gaps in Russian legislation. 2014. no. 1. Pp. 123-124; Veklenko V. V., Barkhatova E. N. Mental violence as a means of committing crimes: problems of qualification // Modern law. 2013. No. 7. P. 134-137.

¹⁴ Stepashin V. M. On the issue of criminal liability for insult and libel // Bulletin of Omsk University. Series "Law". 2012. no. 2. P. 195; Malkov S. M. Crimes against military service: monograph. P. 104.

¹⁵ Brilliantov A. Violence and the threat of violence in the Commission of rape // Criminal law. 2014. no. 5. Pp. 36-37.

¹⁶ can be found at: <https://www.e-draft.am/projects/496/about>

¹⁷ The draft of Criminal Code of RA, Section 15 chapters 46-50.

3. Crimes against the use, storage, exploitation or exploitation of weapons, military equipment, military equipment, military property, objects or materials that pose the greatest danger to the environment;

4. Crimes against the order of use, storage, exploitation or treatment of weapons, ammunition, military equipment, military property, objects or materials that pose the greatest danger to the environment;

5. Crimes against the order of special services and the performance of military service in special circumstances;

6. Crimes committed by military officials.

The author thinks that the draftsmen's proposed classification of crimes against military service in the draft conveys the essence and illustrates the features of each crime against military service, reflects the whole spectrum of social relations protected by the norms of Ch. 32 of the Criminal Code.

In my opinion, based on the presented in the science of criminal law classification of crimes against military service and from the analysis of these classifications it is possible to conclude that crimes against military service must be divided into the following groups:

1. Crimes against military subordination and servicemen's code of conduct;

2. Crimes committed with violence

3. Crimes against the order of military service;

4. Crimes against the use, storage, exploitation or exploitation of weapons, military equipment, military equipment, military property, objects or materials that pose the greatest danger to the environment;

5. Crimes against the order of use, storage, exploitation or treatment of weapons, ammunition, military equipment, military property, objects or materials that pose the greatest danger to the environment;

6. Crimes against the order of special services and the performance of military service in special circumstances;

7. Crimes committed by military officials.

Chapter 2: Practical issues in the field of crimes against the order of military service: practical issues in crimes against the order of subordination and statutory relationships between military personnel.

This chapter is designed to study practical issues in the scope of this research by interviewing judges from Courts of Appeal. In Armenian Government structure judicial power is the branch of the government that applies the legal norms.

The role of the courts in the law enforcement is significant. In modern economic, political, socio-cultural, and other transformations in Armenia, the formation of civil society in it and the rule of law the role of the court including judicial enforcement is increasing. In judicial

enforcement the entire legal system is presented in a concentrated form. Judicial enforcement is kind of living right and as Cicerone rightly mentioned “that if the law is silent judge, then the court is the law in action”.

By cooperating with judges form of Criminal Chamber of the Court of Appeal in this chapter problematic issues will be raised which are the result of the gaps in existing legal norms: specifically in Articles 358, 358.1 and 359 of the Criminal Code of RA.

A judge from Criminal Chamber of the Court of Appeal mentioned: “In most cases of crimes against the order of military service judges are tend to use the institution of the conditional non-application of the sentence. Sentences are unjustified and severe and therefore are less effective”¹⁸.

In my opinion one of the gaps in the Criminal Code of RA is that in the Part 2 of article 358 (using violence against the commander in connection with the performance of his duties) does not provide detention as a type of punishment, but at the same time, it is noteworthy that part 2 of article 358.1 (using violence against the subordinate in connection with the performance his duties) provides detention as a type of punishment. A judge of Criminal Chamber of the Court of Appeal agrees with me stating that: “In fact, in both cases, we are dealing with a crime committed by using violence, which is manifests in first Article against the commander and in the second one against a subordinate. Consequently, the absence of detention as a punishment in part 2 of article 358 of the criminal code of RA does not allow to fully actualize the individualization of punishment, particularly in cases where violence is less dangerous action (for example, cases when the crime is committed in form of a slap in the face). As for such crimes detention in a disciplinary battalion or the imprisonment is clearly severe, so often, instead the imposed punishment the institution of the conditional non-application of the sentence is used, which, in turn, in many cases affects negatively the idea of the inevitability of punishment in the Armed forces.”¹⁹ Moreover, the institute of detention in a disciplinary battalion does not exist anymore. So, in this case we have regulation in the norms that cannot be realized.

¹⁸ A judge of Criminal Chamber of the Court of Appeal

¹⁹ A judge of Criminal Chamber of the Court of Appeal

In my opinion another gap which leads to practical issues is that in Part 1 of Article 359 detention is not provided as a type of punishment, which was provided before the changes were done in Criminal Code in 2013. At the same time, it is noteworthy that in part 1 of article 358 of the RA Criminal code, which by its nature is a more dangerous crime, since it is committed against the commander, detention as a punishment is provided. “This change was done for increasing the discipline in our army. But as the punishments are severe, in such cases also, the courts intend to use the institution of the conditional non-application of the sentence. In this case the absence of detention as a type of punishment affects negatively the idea of the inevitability of punishment in the Armed forces.”²⁰

Another practical issue which leads to using the institution of the conditional non-application of the sentence and so affects negatively the idea of the inevitability of punishment in the Armed forces is “the absence of restrictions in military service as a punishment in Part 1 Article 359 of Criminal Code”²¹. The author agrees to this point of view, as in second part of the same article mentioned punishment is provided, in the case that the crime described in the second part is the most dangerous type of the crime described in the first part.

Before the amendments to the criminal code in 2013, causing minor harm was not a qualitative feature of military crimes committed with violence, and causing minor harm after the changes in 2013 in Articles 358, 358.1, 359 of the Criminal Code of the Republic of Armenia became a qualitative feature. At the same time, it is noteworthy that for causing minor or medium harm, the same penalties were imposed (see Parts 3 of Articles 358 and 358.1 of the Criminal Code), in which the punishment only provides for imprisonment for a period of 4-8 years. “In such circumstances, new sanctions usually do not correspond to the public danger of the acts, as a result, in the vast majority of cases, the imposed punishment is not applied conditionally, this, in turn, also affects negatively the idea of the inevitability of punishment in the Armed forces. In addition, a sentence of 4 to 8 years ' imprisonment excludes the opportunity to use the sentence of detention in a disciplinary battalion, by the application of article 58 of the

²⁰ A judge of Criminal Chamber of the Court of Appeal

²¹ A judge of Criminal Chamber of the Court of Appeal

criminal code, instead of imprisonment, as detention in a disciplinary battalion can be applied only in cases of imprisonment for a term not exceeding 3 years of imprisonment.”²²

Indeed, detention in a disciplinary battalion in the case of crimes against military service is more effective form of punishment compared to imprisonment, as it is assigned exclusively to military personnel, in which conditions the latter are excluded from communicating with persons who have chosen a criminal path. In addition, in the case of detention in a disciplinary battalion, the mechanisms for early release of a convicted person are easier, which also can contribute to more effective punitive policy while serving a sentence in a disciplinary battalion.

As an example of severe and unjustified punishment is described in sanctions of Parts 3 of Articles 358 and 358.1 of Criminal Code, the penalty is only 4-8 years of imprisonment. In my opinion there are many cases that can prove that such penalty is unjustified. For example causing minor damage to a serviceman with one slap or blow, or one hit an object, or striking one time by two people, or striking two persons for one time, etc. “Research on judicial practice shows that actions qualified by this article are often less dangerous, as a condition imprisonment for a term of four to eight years does not correspond to the public danger of these acts. In such a legislative regulation, as a rule (more than 70% of the cases), the appointed punishment conditionally is not applied, which not only affects negatively the idea of the inevitability of punishment, but it serves as a ground for cancellation of the conditional non-use of punishment in terms of even less dangerous acts during the period of probation, for the imposition of a new sentence and thereby use long-term penalties of deprivation of liberty in the military (for a period of 5-6 years)

²³”²⁴

Another practical issue was mentioned by a judge of Criminal Chamber of the Court of Appeal: “Article 358 of the RA Criminal code does not make any distinction between the use of violence against an officer and the use of violence against sergeants.”²⁵

The author agrees to this point of view as crimes against officers and sergeants differ significantly by their social danger in the Republic of Armenia, since very often the officers and sergeants are not treated by soldiers in the same way or equally. The psychological perception of

²² A judge of Criminal Chamber of the Court of Appeal

²³ Part 7 of Article 70 of Criminal Code of the Republic of Armenia

²⁴ A judge of Criminal Chamber of the Court of Appeal

²⁵ A judge of Criminal Chamber of the Court of Appeal

a person in relation to their behavior differs depending on the person against whom the crime is committed; therefore, it is necessary to make a similar distinction in the disposition of the article under discussion.

The same problem exists in the case of article 358.1 of the RA Criminal code. The Article code does not make any distinction between using violence by officers and using violence by sergeants. The reason is the same: soldiers don not treat officers and sergeant in the same way or equally and the social danger is higher when the violence is used by the officers.

As in cases discussed above, sanctions provided in Article 359 of Criminal Code are severe and unjustified too. Specifically, Part 3 of Article 359 establishes responsibility for committing acts provided for in part one or two of the same article, which negligently caused serious consequences. As a judge rightly mentioned “the sanction of the article imposes punishment in the form of imprisonment for the term from four up to eight years, when in the cases of absence of relations of subordination causing serious damage to health, qualified in accordance with part 1 or 2 of article 359 of the RA Criminal code and part 1 of article 112 of the RA Criminal code, impose a milder punishment.”²⁶

The results of the practical issues of mentioned articles are more visible and objective in the conditions of statistical data analysis. For this purpose statistics will be presented and examined for proving the current issues²⁷.

Based on the on the facts given in the website of Judicial Power of the Republic of Armenia, in 2015 all courts of general jurisdiction of the Republic of Armenia received 519 cases against the order of military service, from which 87 cases were crimes which were committed by violent acts against the commander or the threat of committing them (Article 358), and 145 cases were crimes which were committed by violent acts against a subordinate or the threat to commit them (Article 358.1).

In 2016 the reports show that all courts of general jurisdiction of RA received 328 cases against the order of military service, from which 74 cases were crimes which were committed by violent acts against the commander or the threat of committing them (Article 358), and 53 cases

²⁶ A judge of Criminal Chamber of the Court of Appeal

²⁷ Available at court.am/hy/statistic

were crimes which were committed by violent acts against a subordinate or the threat to commit them (Article 358.1).

Based on the published information in 2017 RA general jurisdiction courts received 447 cases against the order of military service, from which 49 cases were crimes which were committed by violent acts against the commander or the threat of committing them (Article 358), and 138 cases were crimes which were committed by violent acts against a subordinate or the threat to commit them (Article 358.1) and 119 cases were crimes which were committed by violating the statutory rules of relations between military personnel in the absence of a relationship of subordination between them (Article 359).

Based on the reports on criminal cases in the courts of general jurisdiction of RA in 2018 general jurisdiction courts received 426 cases against the order of military service, from which 40 cases were crimes which were committed by violent acts against the commander or the threat of committing them (Article 358), and 114 cases were crimes which were committed by violent acts against a subordinate or the threat to commit them (Article 358.1) and 128 cases were crimes which were committed by violating the statutory rules of relations between military personnel in the absence of a relationship of subordination between them (Article 359).

And in 2019 general jurisdiction courts received 328 cases against the order of military service, from which 46 cases were crimes which were committed by violent acts against the commander or the threat of committing them (Article 358), and 81 cases were crimes which were committed by violent acts against a subordinate or the threat to commit them (Article 358.1) and 78 cases were crimes which were committed by violating the statutory rules of relations between military personnel in the absence of a relationship of subordination between them (Article 359).

After analyzing given facts author thinks that even at first sight there is a decreasing tendency in the number of committed crimes against military service it is steel big amount for our country. Besides based on the publicly known information the number of soldiers in the army of our country is decreasing too. So it is impossible to state clearly that the number of committed crimes has decreasing tendency in the context of ratio of number of soldiers and the number of committed crimes during a year compared to statistics of other year.

Another conclusion can be made after comparing the number of committed crimes and the number of crimes under Articles 358, 358.1 and 359. In 2015 44 percentage of the crimes were crimes under mentioned articles, in 2016 38 percentage, in 2017 68 percentage, in 2018 66 percentage and in 2019 62 percentage. After analyzing these facts I can state that the vast amount of crimes against military service are crimes committed with violence despite the fact that in 2015 less crimes under mentioned articles were committed but, steel, a big part if compared to other crimes.

To conclude, the author thinks that there are many significant gaps in the mentioned articles. By observing practical issues raised by judges and analyzed statistical data in one complete context I can state that changes which were done in Criminal Code of RA in 2013 are not effective, the logical outcome of this study is that severe punishments lead to many practical problems, specifically the application of the institution of the conditional non-application of the sentence instead of the imposed punishment, which, in turn, in many cases affects negatively the idea of the inevitability of punishment in the Armed forces. Consequently severe punishments are less effective and unjustified.

Chapter 3 International best practice. Today's regulations in the Criminal code and the draft of the Criminal Code of the Republic of Armenia.

It is well-established that scientific comparison method is one of the best methods of study and research. In order to reveal the main gaps and problems in the subject of our paper it is essential to understand how draftsmen of other states regulates certain aspects of the crimes against military service, what are the main similarities and what are the main prospects of developments thereof. The said will provide us with a better picture of the main paths to develop the current legislation of RA in the light of international practice. Moreover, as V. V. Sivov correctly noted about the necessity of study of foreign criminal legislation, it makes possible to “differently assess the various problems existing in domestic legislation”²⁸ and thereby see the flaws in the Criminal Code of the Republic of Armenia. It leads us to the imperative requirement to avoid blind copying of foreign experience, but instead to analyze and adapt the ones convenient to our legal culture and legislation.

It is reasonable to study the system of crimes against military service in foreign legislature within the framework of legal systems similar to ours. However, we stick to the position, that besides the said, it is strictly needed to review the best practice of Anglo-American system in this regard as well.

In countries of the Romano-German legal system we would like to pay attention to some members' legislation of the Commonwealth of Independent States (CIS), since they have common legal roots with the Republic of Armenia, a joint past in the Soviet Union. Criminal liability for crimes against military service in the CIS countries, as in Armenia, is provided by criminal codes. Within this master's paper certain provisions of Criminal Codes of Russia, Belarus, Moldova, Kazakhstan will be studied²⁹. Moreover, also German and English law will be

²⁸ Sivov V. V. Special types of criminal punishments applied to military personnel: criminal-legal and criminal-Executive aspects. Omsk, 2012. P. 53.

²⁹ Criminal Codes of Russia, Belorussia, Moldavia, Kazakhstan, available at <http://continent-online.com/>

a subject of comparison. The draft of the Criminal Code³⁰ of the Republic of Armenia will be compared to the Criminal Code in force at the moment as well.

Hence, in order to compare the articles 358, 358.1 and 359 with similar provisions of other states criminal norms and with the Draft, one should firstly understand the meaning of the said articles, i. e. reveal the main elements thereof.

Article 358 states “1. Beating the head (commander) or using other kind of violence against him or threatening to use it against the head (commander) or his relative, in the military unit or other place of military service, if it is not related to the performance of military service duties:

shall be punished by restriction in military service for a maximum of two years, or by detention for a maximum of three months, or by detention in a disciplinary battalion for a maximum of two years, or by imprisonment for a maximum of three years.

2. The beating of the head (commander) in connection with the performance of military service duties by the latter or the use of other violence against him or the threat to use it against the head (commander) or his relative.

shall be punished by restriction in military service for a maximum of three years, or by keeping in a disciplinary battalion for a maximum of three years, or by imprisonment for a maximum of five years.

3. The actions envisaged in parts 1 or 2 of this Article, committed:

1) by a group of persons;

2) by using weapon or other object used as a weapon;

3) causing not grave or medium-gravity damage to health, shall be punished by imprisonment for a term of four to eight years.

4. Actions envisaged in parts 1 or 2 or 3 of this Article which negligently caused serious damage to health or other serious consequences, shall be punished by imprisonment for a term of six to twelve years.

³⁰ can be found at: <https://www.e-draft.am/projects/496/about>

5. Actions envisaged in parts 1 or 2 or 3 or 4 of this Article committed in conditions of martial law, in war conditions or during military actions, **shall be punished with imprisonment for the term of 7 to 13 years.**”

Article 358.1 states. “1. Beating the subordinate or using other kind of violence against him or threatening to use it against the head subordinate or his relative, in the military unit or other place of military service, if it is not related to the performance of military service duties:

shall be punished by restriction in military service for a period of one to two years, or by detention for a maximum of three months, or by detention in a disciplinary battalion for a maximum of two years, or by imprisonment for a maximum of four years.

2. The beating of the subordinate in connection with the performance of military service duties by the latter or the use of other violence against him or the threat to use it against the subordinate or his relative.

shall be punished by restriction in military service for a period of one to three years, or by detention for a maximum of one to three months, or by keeping in a disciplinary battalion for a maximum of three years, or by imprisonment for a maximum of five years.

3. The actions envisaged in parts 1 or 2 of this Article, committed:

1) a group of persons;

2) by two or more persons

3) by using weapon or other object used as a weapon;

4) causing not grave or medium-gravity damage to health, shall be punished by imprisonment for a term of four to eight years.

4. Actions envisaged in parts 1 or 2 or 3 of this Article which negligently caused serious damage to health or other serious consequences, shall be punished by imprisonment for a term of seven to twelve years.

5. Actions envisaged in parts 1 or 2 or 3 or 4 of this Article committed in conditions of martial law, in war conditions or during military actions, **shall be punished with imprisonment for the term of eight to thirteen years.**”

The crime prescribed by this article had been criminalized in 2013³¹. Before that the Criminal Code of RA was not familiar with such a crime, although in practice many activities took place that could have been qualified as a crime in the meaning of today existing Criminal Code.

As Articles 358 and 358.1 are very much alike we find it reasonable to discuss them jointly.

What clearly stands out, the objective side of the crimes comprises of certain actions; beating the commander/subordinate, using violence other than beating, threatening to the commander/ subordinate or his relative.

Under the “beating” one should understand “hitting for more than one time, rapidly”, which implies physical pain. Application of only one hit does not fall under the discussed articles.

“Other violence” should be understood as tying the commander/ subordinate, twisting the arms with the aim inflicting physical pain on him or restricting his freedom. This said, both “beating” and “other violence” present with simultaneous availability of two basic conditions: the victim was not bodily harmed and physical pain or restriction of freedom has occurred.³²

On the subjective side, the use of violence against the commander/ subordinate is committed with direct intention. The motive for committing a crime in connection with the performance of military service duties is revenge, dissatisfaction with actions of commander. It is crucial to distinguish between use of violence against commander and forcing him not to perform or improper performance of duties of military service (arts. 357 and 358).

The subjects of the discussed articles (including Art. 359, that will be discussed in details below) are special: it can only be the commander/the commander or the serviceman. The primary object of the crimes is the relations between military personnel that have subordination among them. The crimes are directed against the order of military orders, statutory rules of military service. The secondary object is, inter alia, the health of the military serviceman.

³¹ RA Law of April 30, 2013 “On Amendments and Addenda to the Criminal Code of the Republic of Armenia”

³² **A. S. MNATSAKIAN**; Violent Actions or the Threat of Their Using Against the Superior, Violent Actions or the Threat of Their Using Against Subordinates (Under the Criminal Code of the Republic of Armenia)

Before the amendments and additions to the Criminal Code of RA in 2013 the article 358 did not include a description of subjective sight to the aggravating parts of the Article. In addition, several disproportionate acts were included in one part, and at the same time provided the same punishment: for causing serious harm or medium-gravity harm, even in case of causing death. For all the said consequences caused by the subject of crime the penalty was the imprisonment for a term of three up to twelve years.

This, of course, violates principle of individualization of responsibility, according to which the punishment and other measures of criminal law applied to the person who committed the crime must be fair, that is, correspond to the gravity of the crime, the circumstances of its commission. This problem was not resolved by the amendments of April 30, 2013.

When comparing the penalties provided by the Criminal Code with the draft, certain notes can be made. First, of all it should be mentioned, that the amendment provides a hybrid of both penalization and de-penalization, as in certain aspect the penalties became severe, in some aspects, in contrary, it did not.

Namely, the phenomenon of the “detention” has been eliminated in the Draft in a whole, and in the Articles 473, 474 specifically, which corresponds to articles the 358 and 358.1 of the Criminal Code respectively. Instead, it was replaced by a phenomenon of “short-term imprisonment”. The phenomenon of “disciplinary battalion” does no longer exist in the Draft as well.

Thus, the disposition of part 1 of 473 Article in the draft manifests no changes in comparison to the Criminal Code. However the sanction comprises only of three alternatives of punishment. It is reasoned by the above-mentioned elimination. One may also notice a de-penalization of punishment as the three month period of detention has been replaced by a two-month-period of short-term imprisonment. As we can see, de-penalization is being shown only in terms of time period. The idea of short-term imprisonment is the same as the detention in today’s Criminal Code. The draftsmen of RA simply replaced the mentioned penalty means by each other. However, in nature the two of them are simply similar.

When comparing the 2nd parts of the Art. 473 in the Draft and 358 of the Criminal Code, we notice the same; de-penalization, as Art. 358 did not consider detention as an alternative

punishment, but 2nd part of 473 of the Draft prescribes the short-term imprisonment for 2 month as a punishment.

While talking about the third part, it must be pointed that “causing severe damage to health” is no longer an independent 4th part of the Article in the Draft, but instead it is relocated to the 3rd part. It brings us to another de-penalization. Art. 358, part 4 stipulates an imprisonment for a term of six to twelve years for the said. However, Article 473 stipulates an imprisonment for a term of five to ten years for, *inter alia*, “causing severe damage to health” as a liability and punishment. The said is true, but only in relation of “causing severe damage to health”. If we turn to the other aggravating circumstances pointed in 3rd part of Art. 473, we can see a penalization of punishment as it stipulates, as already mentioned, from 5 to 10 years of imprisonment for such circumstances as action “*by a group of people*”, instead of the time period for 4 to 8 years (Art. 358). And here we notice the hybrid of both penalization and de-penalization.

Punishment for the crime committed in conditions of martial law, in war conditions or during military actions is also de-penalized.

Parts 1, 2 and 4 of Art. 474 of the Draft manifest a de-penalization as well. However the 3-rd part, again, comprises of both penalization and de-penalization. The explanation is the same as for Art. 473.

What is interesting to notice is the difference between penalties of Art. 358 – 358.1 and 473-474. Sanctions are higher for the crimes against Commander in both the Criminal code and the Draft. It is not clear why would the draftsmen put that differentiation, however it is a fact that subordinates are being punished more severe than the commanders. That kind of position is being shown also in the Draft. In this regard the position of the Federal Republic of Germany seems fair and just. The Criminal Code of Germany has one article which includes offences made by both commander and subordinates and, respectively, requires the same penalty. Thus, it states: “*Whosoever, by force or threat of force, offers resistance to or attacks a public official or soldier of the Armed Forces charged with the enforcement of laws, ordinances, judgments,*

*judicial decisions or orders acting in the execution of such official duty shall be liable to imprisonment not exceeding three years or a fine”.*³³

The same position was adopted by Moldova. Criminal Code of Moldova is using the term “serviceman” instead of “commander”, “chief” or “subordinate”. When comparing the penalty required by the Germany’s Criminal Code and/or Moldova’s with RA’s criminal code we can notice that the former ones seem more humanitarian as the maximum term of imprisonment in Germany and Moldova is five and twelve years respectively, when the Criminal Code of RA provides for maximum of thirteen years of imprisonment.

As already mentioned above, CIS countries have many similarities in legal systems, and now, turning to some CIS countries practice we are going to analyze some similarities and differences between Armenia’s and other CIS countries.

Thus, first of all it must be mentioned, that even though the crime against commander is a common one, however not all the countries have criminalized the crime against subordinates. For example, Criminal Code of Russia, Belarus, Kazakhstan have not. In this regard, we can say that Armenian government is one step ahead.

Article 441 named “Violence against the commander” of the Criminal code of Belarus provides ***restriction in military service, detention and imprisonment as alternative punishment means***. The maximum term of restriction in military service is 2 years, and the maximum term of imprisonment is twelve years.

Article 368. “Violence against the serviceman” of the Criminal Code of Moldova has only one mean of punishment which is imprisonment and the maximum term of it is twelve years.

Article 368. “Violence against the commander” of the Criminal Code of Kazakhstan uses ***restriction in military service, detention and imprisonment as well***. The maximum term is life imprisonment. It also provides for a death penalty which is under moratorium and cannot be used.

³³ Criminal Code of Germany, available at http://legislationline.org/download/id/6115/file/Germany_CC_am2013_en.pdf, last visit April 29 2020

Article 334 “Violence against the commander” of the Criminal Code of Russia provides for almost all the penalties as Armenia’s Criminal code does. The maximum term of imprisonment is 8 years.³⁴

Thus, as we can see the penalties differ from each other by both the provided alternatives, but also by the terms prescribed. However, only the Criminal Code of Germany provides, *inter alia*, for “fine” as a penalty. The position of Germany seems just and reasonable, firstly for having the crimes committed by commander and subordinate in one article and by that providing the same punishment measures, and secondly, by offering to judges an alternative between fine and imprisonment.

In legislation of England crimes against the order of military service can be found in a separate act called Armed Forces Act 2006. It includes, *inter alia*, two articles, called “**Misconduct towards a superior officer**” and “**Ill-treatment of subordinates**”. The former provides “A person guilty of an offence under this section is liable to any punishment [...] but any sentence of imprisonment imposed in respect of the offence must not exceed— (a)[...] ten years; (b)in any other case, two years.”

The latter provides “A person guilty of an offence under this section is liable to any punishment [...] but any sentence of imprisonment imposed in respect of the offence must not exceed two years.”³⁵

As we can see here, again a big different occurs between the offence against the commander and the subordinate. For crime against subordinate the sentence cannot exceed two years, while for the crime against the commander sentence cannot exceed ten years. It can be reasoned by the safety of the country and the huge role that commanders play in it. While, in Armenia they are almost similar.

Nowadays strengthening the rule of law and legality in the Armed forces is very important. The priority here is to strengthen combat readiness, unity of command, protection of the rights, honor and dignity of the personality of military serviceman, their life and health. Under these conditions, one of the urgent tasks of the state is to ensure the effective fight against

³⁴ Supra not 2

³⁵ Armed Forces Act 2006 of England available at <http://www.legislation.gov.uk/ukpga/2006/52/contents>, last visit April 29 2020

significantly increased crime against military statutory relationships and prevention its manifestations. Art. 359 of the Criminal Code is one of the needed tools in this regard.

Article 359. says as follows. “1. Breach of relations, prescribed by statutory rules, between servicemen not subordinated to each other, expressed in humiliation of the person’s honor and self-esteem, persecution or violence,

shall be punished by disciplinary battalion for the term of up to 2 years, or with imprisonment for the term of up to 2 years.

2. The same action

1) committed against two or more persons;

2) by a group of persons;

3) by using weapons or other items used for inflicting bodily injuries;

4) causing not grave or medium-gravity to health, ***shall be punished by restriction in military service for one to three years, or by detention in a disciplinary battalion for one to three years, or by imprisonment for one to five years***

3. Actions envisaged in parts 1 or 2 of this Article which caused grave consequences, ***shall be punished by imprisonment for 4-8 years.***

4. Actions envisaged in parts 1, 2 or 3 of this Article which were committed in conditions of martial law, in war conditions or during military actions,:

shall be punished by imprisonment for 5-10 years.

Under the “*Breach of relations, prescribed by statutory rules*” are understood different types of violence of one military serviceman over others, coercion of victims to commit acts degrading their personal dignity, to render personal services to old-timers, to fulfill for them certain duties of military service, to seek providing yourself with facilitated conditions of service, a privileged position in the team, as well as from other, including hooligan, motives. Violence may consist of beating, causing harm to health of various severity, other violent actions related to causing physical pain to the victim or restriction of his freedom. The concept of *violence* includes both physical and mental violence. Beating shall be understood as inflicting multiple (two or more) strokes associated with causing physical pain. Under “another violence”

should be understood different types of physical impact on the victim, which are not beatings and are not related to personal injury.

On the subjective side, the said crime should be committed with direct intention. The primary object of the crimes is the relations between military personnel that do not have subordination relations. The crimes are directed against the statutory rules of military service. The secondary object is, *inter alia*, the health, honor and dignity of servicemen of the military serviceman.

The Draft does not provide for many changes in the article. However it eliminated the phrase “*humiliation of the person’s honor and self-esteem*”, which in our opinion is not a correct consideration, but the paper is primarily discussing the penalty and punishment, thus we are not going to discuss it.

In terms of penalties the Draft has changed the 1st part. The changes on the means of punishment are common with the article 473 and 4474. The imprisonment term for the 1st part is up to 1 year. And the penalty for the 3rd part have become from 5 to 10 years instead of from 4 to 8 years³⁶.

Article 443 named of the Criminal code of Belarus provides ***for detention and imprisonment as alternative punishment means***. The maximum term of detention and imprisonment is twelve years.

Article 369. of the Criminal Code of Moldova provides ***for*** unpaid work in favor of society and imprisonment ***imprisonment as alternative punishment means***. The maximum term of imprisonment is eight years.

Article 335 of the Criminal Code of Russia provides for ***detention in a disciplinary battalion an imprisonment***. The maximum term of imprisonment is 10 years.

The Armed Forces Act 2006 includes, an article, called “Using force against a sentry etc”, which states “A person subject to service law commits an offence if—

(a)he uses force against a member of any of Her Majesty's forces, or of any force co-operating with them, who is—

(i)on guard duty and posted or ordered to patrol;

³⁶ The other common changes have been discussed above.

(ii) on watch; or

(iii) under orders to regulate traffic by land, water or air; or

(b) by the threat of force he compels such a person to let him or any other person pass.

(2) A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.”³⁷

Thus, this article can become a subject of comparison, it regulates relations between servicemen.

Again, as we can see penalties differ from each other depending on every state and the most humanitarian position is shown in English law. Penalties provided by Armenia are more similar to the ones of Russia; the maximum term of imprisonment by both is 10 years.

Thus, we have seen that the penalties for the discussed 3 crimes vary from country to country. The punishment can have the form from a “fine” to a “death penalty”. It can be reasoned by the values of every country, by the role given to the military service as a whole, and to commanders/subordinates specifically. Based on the research done within this chapter, I think that the practice in England can be regarded as an international best practice as such.

Chapter 4: Ways of Optimization the Norms of Crimes against Military Service.

³⁷ Supra note 9

Improving the system of crimes against military service involves resolving problems such as building its theoretical model, constructing norms that enshrine this system in criminal law, finding and resolving shortcomings of specific provisions of the Criminal Code of the Republic of Armenia, bringing them in line with existing legal framework and to the established procedure for performing or military service, i.e. optimization of its norms, because the system under study, with its legal nature, is inseparably linked with the norms of the criminal law. It is important to follow the principles of criminalization and decriminalization of acts identified in legal science³⁸, as well as the rule of Article 18 of the Criminal Code of the Republic of Armenia, according to which a socially dangerous act that is not insignificant is recognized as a crime.

Directions for optimizing the norms will be presented also by taking into account the draft of the Criminal Code of the Republic of Armenia. My suggestions are based on the research done within this theses paper and also are done by taking into account that the major amount of the crimes against military service are committed by people who are between 18 and 22 years.

Another important fact is that in the draft in all discussed articles new form of punishment is provided in form of short-term imprisonment. Undoubtedly, this change will solve many practical issues. But at the same time in the draft the upper limits of the punishments in form of imprisonment are steel severe.

Summing up the research done within this paper, we propose to review the punitive policy of the state regarding the crimes against the order of military service, to make changes and additions to the RA Criminal Code, to rewrite Articles 358, 358.1 and 359 of the Criminal Code.

As the Articles 358, 358.1 and 359 of Criminal Code are similar crimes by their nature, as it was discussed in the first chapter, therefore they will be included in the same group. For this crimes one complete punishment policy must be developed separately from other groups of crimes against the order of military service.

We have already seen that the Draft is mostly going by the path of de-penalization of the crimes, however we would suggest including “fine” as an alternative measure of punishment for the discussed crimes, however I think that along with all the penalties provided in the draft

³⁸ Kleymentov M. P. Criminology : textbook. 2nd ed., M., 2012. Pp. 230-238

punishments such as detention in disciplinary battalions, fine, public works and public shaming must be included also. Besides, punishment in form of imprisonment should not exceed 2 years.

In my opinion the institute of detention in disciplinary battalions must be recovered. Also, I want to mention that this institute will work effectively only if qualified specialists will be involved in the program. The name of the punishment itself testifies that a person must serve his or her sentence under strictly disciplinary conditions which will affect to his or her psychology. This, in turn will lead to new assessment to committing crimes.

Punishment in form of fine can be effective only when it is applied to servicemen who are not compulsory military servicemen. As serving in the army is their duty and therefore they are not paid for military service. Also, fine can be applied only for minor crimes.

I my opinion public works and public shaming are more effective types of punishment than detention in disciplinary battalions. In this case the criminal is not punished physically, but is punished psychologically. The effectiveness of this punishments comes from our mentality. This punishment have some elements of humiliation, and people from our country definitely prefer physical punishment than being humiliated, therefore in my opinion the preventing role of such punishments is significant.

And finally, the reason that all punishments in the form of imprisonment should not exceed 2 years is based on the fact that the major part of people who commit crimes under discussed articles are from 18 to 22 years old. In my opinion in most cases at the moment when they commit crime they are not criminal by their nature. I believe that severe punishments make them criminals. In the Republic of Armenia prisons have criminogenic environment. The longer a person stays in such an environment the probability is high that he will become a criminal by his nature.

To conclude, it is obvious that changes must be done in studied articles. After such changes this field will be better regulated, which, in turn, will be the basis for the decline of the number of crimes against the order of military service committed with violence.

Conclusion

This master's paper has elaborated the current issues in Criminal Code of The republic of Armenia, specifically the problems in articles regulating crimes against military order. Different interpretation approaches and comparative analysis had been drawn in this study aiming to answer the question whether it is possible to improve the legislation in way that it will have no significant gap to fulfill.

For the aim of this a deep research was done within the first chapter for the first chapter illustration of the importance of the classification of crimes against the order of military service and the ways of its classification. It can be concluded that the approach of draftsmen of the draft is right. Also, in my opinion their classification is incomplete, as there are many grounds for the separation of the crimes against the order of military service committed with violence into separate group.

After classification a research is done for understanding the current practical issues in selected subsystem of crimes against military order. As was concluded in the second chapter there are many significant gaps in the Articles 358, 358.1 and 359. By observing practical issues raised by judges and after analyzing statistical data in one complete context it was possible to conclude that severe punishments lead to many practical problems, so they are less effective and unjustified and useless.

International best practice was examined for making possible to differently assess the various problems existing in domestic legislation. After conducting such study it was possible to conclude that the most humanitarian regulation exists in English law. Guided by that a suggestion was made in chapter 4.

Finally, the logical outcome of this master's paper is that changes must be done in studied articles for having more effective and justified legislation in this field. Although, I partially agree with the suggestions made in the draft related to penal policy, as de-penalization is being shown in terms of time period, but I think that in penal policy also must be included punishments such as detention in disciplinary battalions, fine, public works and public shaming. The reason that I

agree partially is that the punishment in form of imprisonment remains severe. Based on the research done within chapter 2, I can state that such regulation will lead to other practical issues in the future. Consequently, it must be changed too. After analyzing the information obtained within this master's paper it is possible to conclude that after implementing the recommendations there will be no significant gap to fulfill and the possibility is high that the court cases under discussed articles will be reduced.

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