

**“ȘTEFAN CEL MARE” ACADEMY OF THE MINISTRY  
OF INTERNAL AFFAIRS OF THE REPUBLIC OF MOLDOVA  
DOCTORAL SCHOOL “CRIMINAL SCIENCES AND PUBLIC LAW”**

**Manuscript  
CZU: 343.343.5(043.2)=111**

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**CRIMINAL LIABILITY FOR DESERTION**

**SUMMARY OF THE DOCTORAL THESIS IN LAW**

**Specialty: 554.01 - Criminal Law and Criminal Enforcement Law**

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**CHIȘINĂU, 2024**

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**The summary and the doctoral thesis can be consulted at:** The National Library of the Republic of Moldova, the general library „Tudor Roșca” within the „Ștefan cel Mare” Academy of the Ministry of Internal Affairs, on the web page of the National Agency for Quality Assurance in Education and Research (<https://anacec.md/>), and the web page of the Doctoral School „Criminal Sciences and Public Law” (<https://academy.police.md/>).

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## CONCEPTUAL LANDMARKS OF THE RESEARCH

**Relevance and Importance of the Addressed Issue:** State security has always been a priority for the benefit of citizens and an obligation that can be fulfilled with their support, expressed through the completion of military service. Whether imposed on active-duty soldiers or reservists, perpetual devotion, responsibility, and discipline are key indicators of a state's military defense capability. State structures must contribute to forming civic consciousness and maintaining high morale in society and the national army.

To ensure compliance with defense regulations, implementing a system of accountability for evading military obligations is crucial, with criminal liability being considered the most effective and vigorous approach. Military offenses are a special category of crimes with specific elements and characteristics that distinguish them from other offenses in the Criminal Code of the Republic of Moldova.

Among military offenses, desertion directly threatens state defense capacity, involving unauthorized abandonment of compulsory military service mandated by law, endangering the reaction capacity of military authorities. Consequently, the absence of military personnel reduces the ability to respond to any attack on the Republic of Moldova, jeopardizing territorial integrity and citizen security.

Current tensions further necessitate vigilance and consolidated efforts from those responsible for national security. As an independent country for over 30 years, Moldova continuously strives to strengthen its defense capacity, with the patriotic spirit of its citizens being crucial. Despite a developed legal framework for security, desertion cases persist, with an increase noted in recent years. In 2022, 14 soldiers were convicted for desertion, rising to 24 in 2023. This increase is linked to various causes, including a legislative framework less capable of ensuring the effectiveness of penalties.

Doctrinal frameworks on desertion are limited and superficial, with a notable absence of comprehensive doctoral studies on the legal regime of desertion incrimination. These factors have motivated the research, maintaining the relevance of desertion as a subject requiring ongoing systemic and adaptive approaches amid current regional challenges and hybrid warfare.

**Description of the Research Field and Identification of the Research Problem:** The incrimination of desertion is vaguely reflected in national doctrine, with only a few superficial articles addressing the offense's composition. Given Moldova's geopolitical context, a broader approach to desertion is imperative. This research aims to identify the legal and social nature of desertion and propose solutions to improve the legal framework for desertion incrimination. Notable contributors to this topic include Ulianovschi X., Brînză S., Stati V., Borodac Al., Macari I., Mariș Al., Cojocaru R., Slisarenco I., Dolea I., and foreign authors such as Cojocaru D., Roman D., Dobrinoiu V., Popescu C., Loghin

О., Тоадег Т., С.В. Михеенко С.В., Бушуев Г.И., Осипов А.А., Папог А.И., Акопов А.А., Harutyunyan G., Brunelli M, Landi G V., Veutro V., Stellacci P., Verri P., Pietrzak R., Jarosz D., and Warburg J.

Thus, addressing the subject of desertion is important and timely, both from individual considerations and from social and military needs, as desertion can represent a serious threat to national security. Moreover, criminal liability for desertion is an essential instrument for maintaining discipline within the armed forces and preventing the consequences of illegally leaving military service, which can contribute to increasing defense capabilities and the degree of intervention in critical situations intended to destabilize the situation in the country. The necessity of the present study is also determined by the fact that in modern defense conditions, the organization of stability is indispensable, a necessary attribute for maintaining stability and ensuring democracy, and the fundamental rights and freedoms of individuals.

The purpose and objectives of this paper are to elucidate the causes of inefficiency of the norm in Article 371 of the Penal Code with a view to reformulating its content and adapting it to the current requirements in ensuring the country's defense capacity. To achieve the predetermined purpose, the following research objectives have been outlined:

- Analysis of the doctrinal framework, at both national and international levels, that scientifically addresses the criminal incrimination of desertion;
- Examination of the content and essence of the penal legislation of other states that regulate the legal-criminal regime of the offense of desertion;
- Scientific substantiation of the characteristic features of the offense of desertion through the analysis of the elements of the crime's composition;
- Scientific argumentation for the idea of distinct qualification of the act of desertion during peacetime and during states of emergency, siege, and war;
- Highlighting the main issues of qualification and application of the law for holding individuals criminally liable for the offense of desertion;
- Analysis of judicial practice in the adjudication of desertion cases and the application of the penal punishment system for this offense;
- Examination of the essence of aggravating circumstances under which the offense of desertion;
- Formulating some recommendations under the title of *ferenda* law regarding the improvement of the criminal regulatory framework.

### **Methodology of Scientific Research.**

In conducting this scientific study, we employed the most efficient and universally recognized research methods, which include:

- The Analytical Method: This involves a multidimensional analysis of the phenomenon of desertion, the doctrinal situation regarding its scientific ap-

proach, as well as the existing incriminatory framework.

- The Historical Method: This method is widely used in conducting a retrospective study on the origin and evolution of regulations concerning the incrimination of desertion.

- The Systemic Method: This method applies to the normative framework with a penal character correlated with the essence of military statutes that establish the order of fulfilling military service within the Armed Forces.

- The Comparative Method: This method is primarily used for the comparative study of the national incriminatory framework with the international framework concerning acts that qualify as desertion. It is also used in the comparative study of desertion with other military offenses.

- The Empirical Method: This method is applied in the process of examining judicial practice in the application of criminal liability for the crime of desertion.

**The novelty and scientific originality** lie in the first edition of a national scientific study in the format of a doctoral thesis, which fully addresses the issue of criminal liability for the offense of desertion. Additionally, the elements of novelty can be identified in the following results obtained:

- The unification of the meaning of certain concepts previously defined differently in the content of various normative acts that regulate the fulfillment of military citizen obligations;

- The addition of new circumstances to the list of aggravating factors under which the offense of desertion can be committed, specific to the criminal law of the Republic of Moldova;

- The formulation of a new hypothesis in which the offense of desertion can be committed, where desertion is only qualified as such if the soldier is absent for a certain period from military service during peacetime, while the act of desertion during wartime is incriminated separately;

- The revision of military regulations to align them with current standards for fulfilling military service, both on term and contract basis.

### **Theoretical Significance of the Work**

The research presents theoretical importance by providing substantial material to the science of criminal law, particularly in the area concerning the criminalization of desertion. This contribution aims to align the concept of military offenses with international doctrine standards.

### **Practical Value of the Work**

The practical value of the study emerges from its potential impact on the application of Article 371 of the Penal Code, as well as the training of individuals who enforce or currently apply the penal norm that criminalizes desertion. Additionally, the practical value will be evident through the development of a

Guide, based on this research, to direct the actions of criminal investigation authorities in qualifying acts of desertion.

### **Main Scientific Results Submitted for Defense**

The principal scientific results presented for defense include: Clarifying the legal nature of desertion by considering the intention and duration of the military personnel's evasion from military service, eliminating interpretative controversies regarding the location of desertion, classifying special categories of subjects of the desertion offense based on specific criteria of affiliation and status.

### **Implementation of Scientific Results**

The results obtained from this research can be adopted for improving the training of teaching staff in criminal law courses, particularly in the special part, and can also be used in the development of various scientific works. Some of the arguments presented in this work will serve as inspiration for legislators in the process of modernizing penal legislation, especially concerning the regulation of responsibility for desertion.

### **Approval of Results**

A significant portion of the work's content has been discussed in scientific meetings attended by theorists, educators, practitioners (judges, prosecutors, criminal investigation officers, lawyers), and scholars from all fields of law. The research findings have been published in several accredited scientific journals, both nationally and internationally.

### **Publications on the Thesis Topic**

Seven scientific articles on the thesis topic have been published in accredited specialized scientific journals, both nationally and internationally.

### **Keywords**

Military offenses, national security, defense system, military service, military discipline, justice, military personnel, deserter, criminal liability, criminal punishment.

## THE CONTENT OF THE THESIS

**The introduction** of the thesis presents the main points that argue the necessity and importance of the work in the following sections: the current relevance and importance of the addressed issue, the aim and objectives of the thesis, the research hypothesis, the scientific research methodology, scientific novelty, the solved scientific problem, the theoretical importance and practical value of the work, and the summary of the thesis sections.

**Chapter I** of the work, titled „**Doctrinal Approaches Regarding the Criminalization of Desertion,**” contains an analysis of both national and international doctrines that address the issue of criminalizing the offense of desertion, as well as the international normative framework that regulates the criminal aspect of liability for desertion.

In the reference section, we identify the authors who have distinguished themselves with their written works on the topic of desertion, providing in-depth analyses, debates, opinions, and some conclusions on the concept of criminalizing the act of desertion as approached by each individual author.

For example, by examining with great interest the national doctrinal framework regarding the criminalization of the act of desertion, we focus on the works of the renowned Professor **Ulianovschi X.**, who has consistently dealt with the legal-criminal analysis of the offense of desertion in his written works on military offenses. The first issue observed by the author regarding the qualification of the act of desertion concerns the duration of the military personnel's absence from the unit or other locations where they perform military activities. Here, the author raises the question of whether „the cases when a military person is absent without permission from the military unit for an hour, two hours, a day or two, a week, or more do not constitute evasion from military service.” He argues in response that „in each specific case, the military person understands that they are evading military service, neglecting their obligations related to military service, violating military discipline and regulations for a shorter or longer period, and either desires or allows this to happen.”

Professor **Borodac AL.**, among his valuable works in the field of criminal law, dedicates a distinct analysis to the crime of desertion. By carefully examining his opinions on the purpose of the crime in question, we find that the author does not link the existence of the crime of desertion to the period of absence from fulfilling military service obligations. Specifically, the author mentions that „the purpose of evading military service can be either a temporary absence from military service for a certain period of time or a permanent absence, but this is not relevant to the qualification of the crime. These modes of desertion can influence the determination of the perpetrator's punishment. The duration of the unjustified absence of a soldier from military service or from the military unit is not important.”



As we can see, there are still contradictions in criminal doctrine regarding the period of a soldier's absence from the military unit as a necessary condition to be met for the qualification of the crime of desertion. Some authors believe that to consider the existence of the danger of the act, a certain period of time must elapse, a matter that is also reflected in Romanian criminal legislation. Other authors argue that the period of the soldier's absence from the place of military service is not relevant for the qualification.

The issue of the legal-criminal classification of the crime of desertion has also concerned authors **Brînză S.** and **Stati V.**, who dedicated a scientific article exclusively to the examination of the offense provided for in Article 371 of the Criminal Code. In their work, we find valuable opinions regarding the current situation in the application of criminal legislation to individuals who evade fulfilling their military obligations by leaving the military unit or failing to report for duty or mobilization. The authors make an important observation for criminal doctrine, asserting that „failure to report for duty or for concentration or mobilization – in cases of leave from the military unit or training center, re-assignment, transfer, return from mission, leave, or from a medical institution – implies the unauthorized omission by the perpetrator to return, under the circumstances mentioned, to duty or for concentration or mobilization.”

The crime of desertion is further analyzed by the same authors in some didactic works. In one of these, our attention is drawn to the idea they express regarding the essence and danger that justify the criminalization of desertion, a context revolving around the idea of military discipline. As they state, „military discipline requires every servicemember to be constantly present at the unit or service to be able to perform the tasks arising from the training program exactly, and the absence of servicemembers from the unit is an evident sign of indiscipline, a flagrant violation of military duty. Such an act is likely to disrupt the activity of the unit or service, an activity that must be carried out perfectly.”

„Relevant studies on military offenses, including those criminalizing desertion, are also found among the concerns of the domestic author **Slisarenco I.** In his view, ‚military offenses are understood as offenses considered continuous, without breaks in their commission.’ In our opinion, this is a quite relevant observation, especially since it helps us precisely define the circle of subjects of such offenses, which, in principle, is much larger than initially thought. However, more involvement would have been required in describing the status of predisposed subjects capable of committing desertion offenses. The conditions we live in, along with the flexibility of military legislation, demand more specificity regarding the circle of subjects who could commit the offense of desertion.

Examining Romanian criminal doctrine in the hope of identifying valuable ideas to inspire the process of developing a consistent legal framework for

criminalizing desertion, we focus on the work authored by **Jurca I.**, in which he argues that ,the special legal object of desertion consists of social relations regarding the order of military service, obliging soldiers to perform military service within a certain period established by law, always ready to defend the country, fulfill their constitutional and military duty to defend the Homeland.’

Many important works are identified in the Romanian specialized literature under the editorship of **Cojocaru D.** In one of them, the author argues that ,when a soldier is arrested during the period in which he still had the possibility to return voluntarily to the unit before the expiration of the term, he will no longer be criminally liable for desertion, as he is under the authority that ordered the arrest. Therefore, the offense of desertion entails an absence from the unit or service extended beyond the term established by law, and only if the soldier acted freely, having the option to return to the unit or remain in a deserter status.’

Around the term associated with the qualification of desertion, with various debates, comes the distinguished Romanian penal scholar **Dobrinioiu V.** He supports the idea that ,we are dealing with the offense only when the three-day term (respectively 24 hours in wartime) has expired, the unjustified absence from the unit or service lasting until his return voluntarily or until his apprehension by the authorized authorities. However, the illicit (criminal) activity ceases, respectively ends, upon reaching the legal age limit until which the subject of the offense can „Having the quality of a conscripted military member” comes the work of **C. Popescu**, contributing to the development of Romanian criminal doctrine through a piece that explores the subjective element of the investigated offense. Specifically, the author argues that „the offense of desertion is committed with direct or indirect intent.” Clearly, the author also acknowledges situations where the military member intentionally deserts to achieve criminal goals, namely to harm the military interests of the state, but often this type of intention continues through its embodiment in another offense, that of treason. In fact, this occurs less frequently in cases of desertion. Typically, the offense of desertion is committed with indirect intent, as the military member does not desire the consequences of desertion but is aware of them, accepts them, and intentionally leaves the military unit.

Glancing over specialized Russian literature, we are drawn to the doctoral thesis of author **Mikheenko C.V.** on the topic: „Criminal Liability for Unauthorized Abandonment of a Military Unit or Place of Service.” In its contents, we identify significant interpretations of the essence of criminal liability for the act of leaving a military unit, with detailed descriptions of the particularities of this offense, the social danger posed by its commission, the quality of the subjects of the desertion offense, the intentional element that drives them to com-

mit the act, as well as the categories of sanctions to be applied..

The Russian author **Bushuyev G.I.**, through his works, provides us with interesting insights into the circumstances that lead to the commission of desertion crimes. One of these, quite relevant, concerns the approach to situations where, prior to desertion, the military personnel were illegally brought into the military unit. Specifically, he mentions that „the issue of responsibility for unauthorized abandonment of military personnel illegally called up for military service or service contrary to legal requirements cannot be resolved solely on the basis that the person should not have been required to perform military service, but rather that in order to do so, it is necessary to take into account the specific reasons that hindered service in the Armed Forces.”

The same idea is also expressed by the author **Osipov A.A.**, who notes that „a citizen who is illegally assigned military service responsibilities as a result of his illegal recruitment does not commit an offense against military service rules. The presence of this citizen in military service itself is illegal, which is why it should not be protected by criminal law measures, but rather by others according to the law.” Clearly, the illegal induction into the armed forces is not a subject for criminal law discussion, but should be addressed through other forms of legal responsibility, while criminal law focuses solely on sanctioning the act of desertion, regardless of how the military status was obtained.

Another author, **Rarog A.I.**, when analyzing the subjective aspect of desertion, argues that „legislatively, the objective side of the offense determines the list of significant legal objective signs of this component, but the objective side of offenses formulated differently in law is reflected differently in the consciousness of the perpetrator.”

In conclusion, it is evident that Russian doctrine pervades scientific works on the research topic of desertion, likely due to considerations related to the expansionist policies of the Russian Federation, stemming from competition in defense system development or the aspiration to ensure a higher level of national security. Moreover, this state has always been recognized for its military policy, emphasizing human factors, military training of the population, armament, surveillance, and constant vigilance.

Significant scientific research on the topic of desertion is also prominent in Ukrainian doctrine, especially since gaining independence. In particular, we wish to present the research of the **Navrotsky V.O.**, who dedicated his entire career to studying military crimes in the context of international criminal law, meticulously analyzed the history of military criminal legislation. He characterized the individual elements of military offenses, highlighted the differences between military crimes and general criminal and disciplinary infractions. According to him, the international study of desertion as a crime is crucial for shaping a state's

doctrine, especially as isolated regulation of certain crimes, particularly desertion, does not suffice despite the specific regulatory and military development nature of each state. Especially as most countries, particularly European ones, unite into blocs to harmonize their common defense systems, the regulation of desertion responsibility must also adhere to common rules and principles.

Valuable contributions to the development of Ukrainian criminal doctrine also come from authors **Stratonov V.M.** and **Streltsov E.L.**, who, in their monograph „Military Crimes: Legal and Criminological Characteristics,” investigated Ukraine’s military policy. They revealed issues in reforming military law enforcement, the creation of an effective system to combat military crimes, provided a criminological description, and described methods for preventing crimes committed among military personnel.

In our opinion, combining legal and criminological research on the criminal aspect of desertion is current and beneficial. Understanding the subjective perception of deserters greatly benefits from criminology. Scientifically grounding the norm that provides for criminal responsibility for desertion must necessarily consider the causes and conditions that lead to such criminal behavior, as well as the methods and types of penalties aimed at achieving the purpose of criminal responsibility.

The European legal theory on the criminalization of desertion is also analyzed in the same context, reflecting a wide spectrum of valuable opinions. According to the legal theory of the Italian author **Brunelli M.**, within the complex normative framework outlining absence from duty offenses, criminal offenses are distinguished based on whether the offense consists of failing to perform duty or arbitrarily interrupting it. In the former scenario, Article 151 of the Military Penal Code punishes soldiers who, when called to arms for military service, fail to report without valid reason within five days of the summons..

Thus, we observe that Italian criminal law condemns the act of desertion only in cases where there is failure to report for military duty within a certain time frame. In fact, such a regulatory style is also found in the legislation of many European states, as well as some from the former socialist bloc, an idea we also consider examining in our planned scientific study.

Significant contributions to the development of the Italian legal framework are attributed to authors such as **Landi G.**, **Veutro V.**, **Stellacci P.**, and **Verri P.** In one of their collaborative works, they argue that „the so-called improper desertion has drawn particular interest due to the identification of the concept of just cause, which has been interpreted differently. In this sense, they further assert that there must be a transient and abrupt impediment, which can be physical or moral, without extending to the extremes of force majeure or necessity, but merely requiring the judge’s assessment that conduct was condi-

tioned such that the absence lacked the attributed value.”

Important information regarding the offense of desertion is also identified in Polish doctrine. In this regard, in a work by **Pietrzak R.**, a distinction is made between desertion and arbitrary withdrawal. The author notes that „the distinctive feature of desertion is the intention to permanently abstain from military service, whereas in arbitrary withdrawal, the soldier intends to return to duty. The distinction between these two acts was made at the beginning of the twentieth century and is applicable today in the military criminal law of many countries.”

Analyzing the doctrinal approach to the scientific study of desertion in this section helps us understand the following:

1. The vast majority of countries around the world, from all continents, consider desertion a crime that undermines the military defense capability of the country. It is classified as a serious offense, which necessitates regulation in criminal legislation.

2. In the case of the Republic of Moldova, desertion is criminalized under Article 371 of the Penal Code, being considered a serious offense classified within the category of military crimes.

3. The national doctrine has a narrow spectrum of scientific analysis regarding the crime of desertion, identifying only a few scientific articles written exclusively on the topic of desertion. Moreover, the issue of desertion is superficially described in the content of many academic works.

4. The most consistent level of scientific research on the crime of desertion is identified in the Russian specialist literature, as well as in the doctrines of post-Soviet countries, where military discipline, defense capability enhancement, and the level of development of the defense system are subjects of great interest, even considered priorities over other social values.

5. In the European doctrinal space, there is a developed approach to desertion, demonstrated by the impressive series of scientific works written on this subject. However, there are also states that do not pay much attention to this phenomenon, considering the duty to defend the homeland as a contractual obligation, a duty of service that is sanctioned by the unilateral termination of service relationships.

**Chapter 2, titled „Retrospective of Regulatory Frameworks and Elements of Comparative Criminal Law Regarding the Offense of Desertion,”** directly addresses the historical evolution of regulations concerning the criminalization of desertion in the territory of present-day Moldova. It focuses particularly on the regulations in Bessarabia under various governance regimes, with a significant emphasis on the impact of the Russian regime.

As observed, during the years 1917-1918, a pivotal period for the Moldovan state, the offense of desertion gained pronounced contours largely in-

fluenced by nationalist and anti-Bolshevik sentiments, and by the unity of Bessarabian soldiers supporting the political events of that time. Evidence of these observations includes mentions by authors who underline that „one of the fundamental indicators of desertion, considered a characteristic that exacerbates the spirit of desertion among soldiers, is group influence. This phenomenon occurs not just at the initiative of a single person but within a group sharing the same goals, values, and interests. Moreover, there was strict control over soldiers, where the provisions of the Internal Regulation for Army units were strictly mandatory to be respected, and desertion actions violated numerous rules as well as criminal law.”

Another cause that led soldiers to commit the crime of desertion during that period was the force with which Moldovan troops were mobilized to fight against their own people. „These brave soldiers came from all parts of the country: from Orhei, Lăpușna, Soroca, endowed with the characteristics of their native places, they did not allow anyone to humiliate them, having the sacred duty to liberate their compatriots and all Christians from pagan slavery.”

According to some sources, „the Bessarabians were mobilized into the Russian army, forced to fight. The entire territory of Bessarabia was used to replenish and complete the units that had suffered major losses with soldiers and ammunition.”

In addition to the described causes of desertion, there was also a lack of food provisions to sustain the physical capacity of soldiers to fight. As stated in specialized literature, „inevitably, many soldiers deserted from the army. The units stationed in Bessarabia were not provided with sufficient food for all soldiers. The leadership of the Odessa District failed to supply the units with ammunition, and non-commissioned officers, along with soldiers, stole food from army warehouses to sell it.”

For a comprehensive understanding of the construction of the criminal norm that incriminates the act of desertion, it was considered necessary to consult the penal legislation of other states in the same field, in the hope of finding inspiration and the most optimal regulatory formula sure, taking into account the specifics of our state’s legislation, as well as the defense policy promoted over time. Considering the common aspirations of our state with those promoted by the neighboring state at the European level, the traditions that have united these two peoples for centuries, the common border, and similar geopolitical situations, we will proceed to compare the style of criminal regulations regarding the offense of desertion.

According to the Romanian Penal Code, the act of evading the duty to defend the homeland is criminalized under two distinct normative modalities. Specifically, under Article 409 of the Romanian Penal Code, liability is provided

for unjustified absence, stating that „the unjustified absence of any military personnel from their unit or duty, exceeding 4 hours but not more than 24 hours, during wartime, under siege or emergency, is punishable by imprisonment from one to 3 years or a fine.” Additionally, under the following norm (Article 410), liability for desertion is outlined:

1. Unjustified absence from unit or duty exceeding 3 days by any military personnel is punishable by imprisonment from one to 5 years or a fine.

2. Unjustified absence of any military personnel from their unit or duty exceeding 24 hours during wartime, under siege or emergency, is punishable by imprisonment from 3 to 10 years or a fine.

As observed, the Romanian legislator has chosen to differentiate between unjustified absences from the unit based on the degree of harm caused by the act, considering that a military personnel’s absence for a period of 4 to 24 hours during wartime, under siege or emergency, does not constitute desertion. Although we agree that the duration of absence directly affects the degree of harm caused by the act, we still consider that during wartime, state of emergency, or siege, the duration of absence is irrelevant, as the mere act of leaving the military unit poses a danger by removing oneself from the authority responsible for intervening at any moment, clearly with the soldiers who should normally be under their command at all times, a different situation in times of peace. Also, we do not understand why the Romanian legislator does not classify leaving the unit during wartime as desertion, but includes absence during peacetime for more than 3 days under this category of offense (Article 410, paragraph 1 of the Penal Code).

The broad spectrum of information analyzed in this section of the work allows us to make the following observations:

1. The history of criminal regulations regarding desertion is relatively short for the Republic of Moldova, as various states’ penal codes have been applied within its territory. Therefore, we cannot claim that our state has a criminal legislation in this matter based on traditions and legislative experience from the past.

2. The criminal legislation of European states, and not only, has a valuable legal basis that has formed the current norms criminalizing desertion, refined over time and adapted to the demands and policies of defense system development.

3. Analyzing the content of foreign criminal legislation, we identify a more lenient attitude of the legislator towards qualifying leaving the military unit as desertion. Generally, the penal law of most states distinguishes between leaving the military unit or non-appearance and desertion, which essentially involves absence from military service for a certain period (2 days or more in the case of Romanian legislation).

4. The penal policy of some European states (Austria, the Netherlands) is built on a different vision when addressing the issue of desertion, with the pen-

alty limited to severing ties with the authorities ensuring military order, without qualifying the act as desertion.

5. Regarding the place of committing the offense of desertion, issues of qualification and application of criminal law intensify when considering dual citizenship or when the military resides on the left bank of the Dniester. In addition, there is confusion generated by the current text of Article 371 of the Penal Code, as it lists a series of locations from which the military can be absent, leaving those applying the law in a dilemma when the military leaves a location not specified in the discussed norm.

**Chapter 3**, titled „**Legal and Criminal Analysis of the Offense of Desertion**,” addresses the components of the offense of desertion, starting with elucidating the essence of the act of desertion, followed by a discussion on the specifics of the objective and subjective aspects, as well as the characteristics of the subjects committing desertion.

With these aspects clarified, in relation to the specific nature of the offense of desertion, we state that its **general legal object** consists of all social relations related to the country’s defense capability and the established order for fulfilling military service, mandatory military training, and mobilizations in times of need. Consequently, by committing the offense of desertion, national security is jeopardized, and consequently, the safety of individuals and societal order is undermined.

**The group (generic) object** of the offense of desertion constitutes the category of common social relations protected by Chapter XVII of the Penal Code (Offenses against public authorities and state security). Indeed, it is true that desertion directly undermines defense capability and therefore national security, a mission entrusted to public authorities responsible for organizing the national defense system.

In domestic legal doctrine, we also identify opinions suggesting that desertion is part of the group of military offenses related to evasion from fulfilling military duties, and according to another viewpoint, desertion falls under „offenses against military order and discipline.”

**The special legal object** of the offense of desertion consists of social relations concerning military order and discipline, the existence and normal conduct of which are conditioned by the continuous presence of the military personnel in their unit, formation, or assigned service.

From another perspective, the special legal object of desertion includes social relations regarding the order of military service, which obligates soldiers to perform military service within a specified period established by law, to always be prepared to defend the country, and to fulfill their constitutional and military duty to defend the Fatherland.



To clearly describe the objective aspect, in terms of investigation, the following order of presentation is customary: 1) the **action** or **inaction** committed at a specific **time, place, circumstances, by certain methods or with certain means**; 2) the harmful **consequences** or the real danger of their occurrence; 3) **the causal relationship** between action and consequence.

This order will also be used by us in explaining the legal-criminal essence of the objective aspect characterizing the offense of desertion.

**Action.** The objective aspect of the offense of desertion, according to the provisions of Article 371 of the Penal Code of the Republic of Moldova, consists of prejudicial actions, expressed either by leaving the military unit, training center, or place of service, or by absence from duty, concentration, or mobilization in cases where absence is not permitted, such as during leaves from the military unit, training center, deployment, transfer, return from mission, leave, or medical institution.

Thus, desertion can be committed through two normative modalities, namely by the action of leaving or by inaction, or rather, by abstaining from fulfilling military service and all military-related civic duties, which can also be achieved through evasion actions (hiding, falsification of identity, etc.).

Absence from the unit can occur either by leaving or departing from the unit or service by any military personnel without proper justification, i.e., without permission from the commander or other authorized personnel granting leave to the military, or by failing to report to the unit or service while on leave, detachment, delegation, leave, etc., or when appointed or transferred to another unit or service.

Therefore, an essential characteristic of the objective aspect of the offense in question is the unauthorized nature of leaving a military unit or place of service. It should be noted that the illegal nature of departure should not be confused with the unauthorized nature, because if a superior authorizes the departure of a military personnel from the unit without proper authority, in this case, the departure from the military unit's location, although illegal, cannot be considered unauthorized, as the military leaves the location of a military unit or place of service not without permission, but with permission. Responsibility for violating the established procedure for dismissing military personnel should be borne in such cases by superiors who allowed the illegal departure from the unit.

As mentioned at the outset, the action of committing the offense must be analyzed in terms of elements such as **time, place, circumstances, methods, or means**, which will guide us in further study.

**Time of committing the desertion offense.** In analyzing this element, we will consider three aspects: the period of the soldier's absence; the duration of military service; and the time of day when the offense is committed, as follows:

Period of soldier's absence. The criminal law of the Republic of Moldova does not tie the offense of desertion to a specific period of absence by the soldier, although in the legislation of most European countries and those in Central Asia, desertion is considered a crime only when the soldier has unjustifiably been absent from military duties for a certain period of time (3 days in peacetime, 24 hours in wartime - in Romania; 2 days in the Russian Federation).

Indeed, we agree with such an approach because a very short absence of the soldier, especially in peacetime, may have insignificant consequences compared to situations where the absence is prolonged, thereby demonstrating an intention to evade permanently. Clearly, the detrimental impact of leaving the military unit during a state of emergency, siege, or war differs. The offense is considered from the moment when the military authority is no longer able to manage the situation through subordinate force.

In this context, we find it appropriate to reconsider legislative tactics in cases of desertion by considering absences longer than 72 hours from military service in peacetime and classifying absence during a state of emergency, siege, or war as an aggravating circumstance, punishable by up to 3 years' imprisonment. Accordingly, absences from military service for less than 72 hours in peacetime should be classified as a misdemeanor punishable by fine or unpaid labor, or considered desertion under mitigating circumstances.

Therefore, these specified absence periods should not apply when a soldier deserts the military unit or fails to report during wartime or combat. This act poses a greater danger in these circumstances and should consequently be subject to harsher penalties according to established norms.

Under Romanian doctrine, for example, the constituent elements of this offense are fulfilled once the 3-day period (or 24 hours in wartime) has elapsed, and the unjustified absence from the unit or service continues until voluntary return or apprehension by authorities. Furthermore, criminal activity ceases upon reaching the legal age limit beyond which the perpetrator can no longer be considered a military conscript.

According to the same author, the apprehension of the perpetrator by authorities constitutes the moment when the offense is exhausted, thus ending the state of desertion, regardless of when the military apprehended is returned by authorities to their unit.

Similarly, the voluntary presentation of the perpetrator before representatives of authority should also be considered. At this moment, the state of desertion ceases, regardless of when the military is actually returned to the unit.

The offense of desertion involves absence from the unit or service that extends beyond the period established by law, and only if the soldier acted with free will and had the option to either return to the unit or remain in desertion.

For example, if a conscript is arrested at a time when they could have voluntarily returned to the unit before the expiration of the term, they will not be liable for the offense of desertion, as they were under the jurisdiction of the arresting authorities.

In some situations, the offense of desertion may coincide with other offenses. For instance, if a conscript leaves the unit without approval while on guard or on duty, they will be liable for both desertion and breach of duty (Article 333 of the Romanian Penal Code).

The duration of military service is considered the interval from the issuance of the enlistment order into the armed forces, with the soldier's name entered on the nominal list, until the expiration of a calendar year, specifically on the date of removal from the unit's roster. The expiration of this term without removal from the roster does not indicate the end of the military service period.

The time of day when the offense is committed does not affect the classification of the desertion offense, as the danger remains the same whether the soldier deserts during the day or night. They must remain available to the public authority responsible for national security, both day and night, ready to execute orders even during alarms, exercises, training, or simulations of crisis situations.

**Place of committing the desertion offense.** We discussed details about the place of committing the desertion offense in the previous section of this work, but here we intend to address the assessment problem of the location where the act of desertion or failure to appear occurred by the soldier.

In this context, we recall that the harmful act under analysis recognizes the following two normative alternatives:

1. The action of deserting from the military unit, training center, or place of service.

2. The inaction of not reporting for duty or for concentration or mobilization in cases of leave from the military unit or training center, assignment, transfer, return from mission, leave, or curative institution. Desertion from the military unit, training center, or place of service implies the unauthorized leaving or abandonment of these locations. Similarly, failure to report for duty or for concentration or mobilization in the cases of leave from the military unit or training center, assignment, transfer, return from mission, leave, or curative institution implies an unauthorized mission of the perpetrator to return under the circumstances indicated, to duty or to concentration or mobilization.

**The harmful consequences** are nothing but the negative effects of the deed that categorize it as a crime, which requires us to analyze them in the presence of the crime of desertion.

Thus, criminal doctrine recognizes two categories of harmful consequences:

1. Result-consequences, which produce harmful changes in the object of the crime protected by criminal law;

2. Consequential-consequences, which do not produce changes in the object of the crime but produce changes in the objective reality related to the object of the crime, changes that equate to the real danger of producing harmful modifications in the object of the crime.

In describing the quality of the subject of the crime of desertion, we will start by showing that the subject of the crime in question can only be a responsible natural person who has reached the age of 18. At the same time, we must specify that the crime of desertion cannot be attributed to a legal person. However, as argued in Romanian literature specializing in this field, due to its nature, the crime of desertion can only be committed by a qualified active subject, which is incompatible with the commission as an author by a legal person. In the context of respecting the personal nature of criminal responsibility, in some works, the compatibility with the criminal responsibility of a legal person is questioned, mentioning that the condemnation pronounced against the group as a whole has the effect of attracting blame and the damaging consequences of an unjustified criminal conviction on the legal person and innocent members, so it is appreciated that the criminal action can only be directed against the presumed authors and accomplices of the crime and only those whose guilt led to the commission of the crime can be declared responsible and condemned.

In the following, we will make our own classification of the subjects of the crime of desertion based on several criteria. Thus, the subjects of the crime of desertion can be classified according to the following criteria:

a. **Based on age**, only individuals who have reached the age of 18 are military personnel.

b. **Based on gender**, only men can have military status, but also women with special training who satisfy military service by contract.

c. **Based on the place of military service**, students of military educational institutions are considered to be in military service.

d. **Based on obligation**, there are conscript soldiers and contract soldiers.

e. **Based on the period of military service**, we distinguish between full-term conscript soldiers and soldiers with reduced terms.

f. **Based on military status**, we distinguish between active-duty soldiers and reservists.

Considering that the very text of Article 371 of the Penal Code requires, for the qualification of the soldier's act as desertion, the purpose of evading military service, special attention must be paid to analyzing the subjective side of the crime. It is known that the subjective side expresses the intentional, volitional element that characterizes the consciousness of the offender and his psycholog-

ical attitude towards the antisocial act committed.

In this sense, as stated in specialized literature, the content of guilt is traditionally clarified by analyzing its intellectual and volitional characteristics, which are characterized by the awareness of the person regarding the socially dangerous nature of their own behavior and the prediction of its socially dangerous consequences.

According to some opinions identified in Russian doctrine, although „the subjective side reflects the mental, immaterial activity of the guilty person, it is always established as a real fact, since it is the mental activity of a person in a criminal and illegal act that is objectified in his deed”.

In the same vein, with which we agree, the author N.M. Yarmysh explains the idea that „regarding the impossibility of studying the actions or inactions of a person isolated from their internal, subjective factors, since the very concept of ‚action’ means a certain behavior of a person determined by his consciousness and will”.

Regarding the essence of the subjective side of the crime of desertion, the Russian author V.D. Menshagin expressed the opinion that unauthorized abandonment of a unit can be committed with direct and indirect intent. At the same time, he formulated the content of indirect intent as follows: „the guilty party, without immediately wanting to leave their military unit, being outside of it, nevertheless consciously admits the possibility of leaving it”.

In the same context, the author further considers that two points should be included:

- a) the attitude of the subject of the crime towards the nature of the action;
- b) the attitude of the subject of the crime towards the consequences of their actions, understood as the fact of partial absence itself.

Thus, the subjective side represents one of the basic elements of the crime’s composition. In this way, the constitutive signs of the subjective side are mandatory for holding the perpetrator criminally responsible, establishing the degree of social danger of the offender, the act, and the legal qualification of the crime committed.

The subjective aspect constitutes the distinguishing element between certain military offenses within their classification and individualizes criminal responsibility and punishment.

The subjective aspect of desertion includes not only the intention to commit an offense but also several other factors indicating its presence.

**The motive and purpose** of the desertion offense are two significant signs in establishing the circumstances and factors that conditioned the perpetrator to commit the act, significantly aiding in the individualization and determination of criminal responsibility and punishment.

Purpose is a mandatory sign of the subjective aspect and, respectively, of the existence of the criminal component, especially desertion, where the criminal statute explicitly mentions leaving the military unit to evade military service.

The compartment of analyzing aggravating circumstances of the desertion offense necessitates stating that, similar to many offenses, desertion can occur under aggravating circumstances, which requires detailed examination, particularly given certain inequalities and lack of regulation apparent at first glance, but not before indicating which circumstances are considered aggravating by the criminal legislation of the Republic of Moldova.

Upon noting these circumstances, the legislator resorts to establishing, through the provision at paragraph (2) of Article 371, aggravating circumstances under which desertion is committed, namely desertion committed:

- a) with a weapon;
- b) by two or more persons.

Another category of circumstances of a more aggravated nature is provided for in paragraph 3 of the same provision, as follows:

Actions specified in paragraph (1) or (2), committed:

- a) during wartime;
- b) under combat conditions.

Therefore, in the following text, we will proceed to the detailed characterization of each of the aforementioned aggravating circumstances, in the following sequence:

**Desertion committed with a weapon.** The Moldovan legislator, for certain reasons, has considered the act of abandoning a military unit with the issued weapon as an aggravating circumstance of desertion. This consists of the fact that the military personnel unlawfully leave the military unit or the place of military service with the weapon issued to them for fulfilling their duty obligations, without this constituting the crime of theft of a firearm, for example. In cases where the military personnel, during the desertion process, use the weapon to facilitate desertion (such as threatening or using the weapon against individuals attempting to detain them), their actions are required to be classified as concurrent offenses: Article 371 paragraph (2) letter a) of the Criminal Code, and as applicable, Article 365 paragraph (2) letter b) or Article 369 paragraph (3) letter b) of the Criminal Code, etc.

**Desertion committed by two or more persons.** Committing the offense by two or more persons is considered when two or more individuals who are military personnel or reservists, with a single intention, through coordinated actions, leave the military unit.

Although it is stated in specialized literature that for the existence of an aggravating circumstance in military offenses, namely the offense committed by

two or more persons, a prior explicit understanding between participants is not necessary, we believe that the understanding among military personnel for the purpose of desertion is crucial. Therefore, even though desertion committed by two or more military personnel poses a greater threat to state security, if their actions are not coordinated, each individual should not have their sentence affected, as long as there was no prior understanding among them.

As a result of the study conducted in Section Three of the work, we can conclude the following:

1. In the specialized literature, there is a unanimous view regarding the legal essence of the objective signs of the offense of desertion, with the same issue being noted in the doctrine of other states that provide for criminal liability for such a category of act.

2. The objective signs of the offense of desertion have a vague description in Moldovan doctrine, lacking a specific concept for desertion, and the notion of „military unit” is defined differently in various laws.

3. Regarding the place of commission of the offense, as well as certain time-related issues, both the text of Article 371 of the Criminal Code and the doctrine report certain ambiguities, which seriously impede law enforcement authorities in qualifying the offense.

4. Unlike the legislation of other states, the Republic of Moldova is among the few states that attribute the status of subject of the offense of desertion to reservists as well, explicitly in the text of the criminal norm that incriminates this act (Article 371 of the Criminal Code).

5. Although the legislation of many states does not provide aggravating circumstances for desertion, our legislation includes a list of such circumstances. However, it is not complete and balanced based on the degree of harmfulness of each circumstance.

**Chapter 4, titled „Delimitative Aspects and Characterization of the Sanctioning Regime of the Desertion Crime,”** contains important information about the manifestation of desertion compared to other crimes within the military category.

Therefore, for the correct delimitation of desertion from other military offenses, we have taken into account all the particularities of the signs characterizing similar offenses in the group that undermine the proper functioning of the state defense system, but not before providing some general clarifications regarding the specific nature of the desertion offense.

Thus, desertion is not the only offense in the military category that undermines the established relationships in ensuring state security through the defense system; it involves a series of related acts that also undermine the efficient functioning capacity of the public authorities responsible for the defense

of the country. These include: evasion from military service (Art. 372 Criminal Code); violation of rules regarding military alarm (combat alert) service of military troops (Art. 375 Criminal Code); violation of statutory rules regarding internal service (Art. 376 Criminal Code); willful departure from the battlefield or refusal to act with arms (Art. 386 Criminal Code).

**Differentiating desertion from the offense specified in Art. 372 Criminal Code RM**, which manifests through evasion by the soldier, the person undergoing mandatory military training, or the reservist from fulfilling military service obligations, mandatory military training, or concentrations by self-mutilation, simulation of illness, falsification of documents, or other deceit.

Therefore, starting from identifying elements of similarity, we find that these two compared offenses resemble each other in that the subjective aspect of evasion from military service through any method is characterized by direct intent and purpose (a mandatory sign of this offense component) of temporary or permanent evasion from military service.

Regarding similarity by subject, we can say that in both cases, the subject of the offense is specific and can be any military personnel or reservist.

This offense can be committed to evade military service in general, to evade temporary military service, and sometimes to evade specific obligations related to military service (for example, simulating illness to evade participation in maneuvers, field instructions, and installation, related to this, in the medical point or military hospital). Consequently, unlike desertion, the offense of evading military service, provided for in Art. 372 Criminal Code, is not always linked to the perpetrator being outside the military unit's deployment.

**Violation of rules regarding military alarm (combat alert) service of military troops** is an offense within the category of military offenses committed by violating rules regarding alarm (combat alert) service for timely discovery and repulsion of a surprise attack on the Republic of Moldova or for the defense and security assurance of the state, if it has caused or could cause damage to the interests of state security.

Therefore, the offense specified in Art. 375 Criminal Code undermines the defense capability of the state through actions that violate the intervention order in discovering or repelling an attack on the state. Unlike desertion, this action is committed only through action, without the soldier's abstention. Another difference lies in the intention's character, where desertion involves only direct intent, whereas in the circumstances of committing the offense under Art. 375 Criminal Code, recklessness can also be identified. Additionally, in the latter offense, the existence of damage or the risk of generating certain damages to state security interests must be established. Otherwise, both offenses have specific aggravating circumstances, with those provided in paragraph (3) being



identical. According to the norm (Art. 375 paragraph (3) of the Criminal Code), actions under paragraph (1) or (2), committed: a) during wartime; b) under combat conditions, are punishable by imprisonment from 7 to 12 years.

In general terms, the analyzed offense, although it does not imply evasion from fulfilling military service, presents an increased danger through the performance of military duties, albeit inadequate, insufficient, or through the improper use of entrusted technical means.

The offense provided for in Art. 376 Criminal Code (**Violation of statutory rules regarding internal service**) is also part of the category of offenses committed by violating certain rules for performing military service.

**Willful departure from the battlefield or refusal to act with arms** is another component of the offense, provided for in Art. 386 Penal Code, which closely relates to the offense of desertion, both being united by the danger they pose to the defense capability of the Republic of Moldova.

Thus, according to the stated norm, willful departure from the battlefield during combat or refusal to act with arms during combat is punishable by imprisonment from 10 to 15 years.

Therefore, as observed, like desertion, the offense provided for in Art. 386 Criminal Code undermines the state's defense capability once the soldier or reservist leaves the battlefield. Similarly to desertion, willful departure from the battlefield or refusal to act with arms has two normative modalities: leaving the battlefield and refusing to act with arms.

As a distinguishing feature between these two offenses, we have the fact that desertion refers to leaving the military unit or other locations where the soldier fulfills military service, while leaving the battlefield targets a specific location. Moreover, desertion can occur in peacetime, whereas the offense under Art. 386 Criminal Code only occurs during wartime.

Considering that the danger posed by leaving the battlefield is greater than that of desertion during peacetime, and the punishment is harsher for the former offense, namely deprivation of liberty for a term of 10 to 15 years.

Additionally, desertion can be committed in the presence of certain aggravating circumstances, whereas the offense provided for in Art. 386 Criminal Code does not have such circumstances.

### **Betrayal of the Homeland (Article 337 of the Criminal Code)**

Because by committing the offense of desertion, the military betrays the interests of the Republic of Moldova in enhancing its defense capability, thereby creating advantages in favor of the enemy, we observe a similarity between desertion and betrayal of the homeland, which necessitates an analysis of both offenses to identify points of intersection as well as differences between the two.

According to Article 337(1) of the Criminal Code of Moldova, betrayal

of the homeland is intentionally committed by a citizen of the Republic of Moldova to the detriment of sovereignty, territorial integrity, or state security and defense capability of the Republic of Moldova, through siding with the enemy, espionage, disclosing state secrets to a foreign state or organization, or their representatives, as well as providing assistance to a foreign state in hostile activities against the Republic of Moldova.

Before proceeding to identify the differences between the offense of desertion and that of betrayal of the homeland, we wish to highlight some similarities between them.

Therefore, both offenses are committed with direct intent, and both jeopardize state security and defense capability of the Republic of Moldova. Additionally, these offenses can be committed by military personnel, primarily during wartime.

Regarding the criminal penalty for desertion, we consider that the sanction for this offense, as outlined by the legislator in Article 371 of the Criminal Code, contradicts the principles of humanism and individualization of criminal punishment, and thus should be modified for the following reasons: by stipulating in Article 371(1) a prison sentence of up to 5 years, the legislator does not allow the courts to individualize the punishment, taking into account the provisions of Articles 75-77 of the Criminal Code. Therefore, whether desertion lasts for 1-2 days or 1-2 months or more, the legislator provides the same punishment of up to 5 years in prison.

Furthermore, in the case of desertion, the courts cannot apply the provisions of Chapter VI of the General Part of the Criminal Code regarding „Exemption from criminal liability,” since Articles 54-55, 57-59 of the Criminal Code provide for the possibility of exemption from criminal liability only in cases of minor or less serious offenses, whereas desertion, as provided for in Article 371(1) of the Criminal Code, is considered a serious offense.

Additionally, we consider that in cases where desertion lasts only for a few hours, although formally these acts constitute desertion offenses, they should not be considered crimes according to Article 14(2) of the Criminal Code, because they lack significance and do not present the harmful degree of the offense.

Similarly, for desertion from military units or from military service locations, disciplinary or administrative sanctions can be applied, which would fully correspond to the objectives of disciplinary sanctions and would decriminalize minor breaches of military discipline. Therefore, it would be appropriate for desertion to constitute a crime only in cases where the unjustified absence lasts more than 72 hours.

The subject matter examined in the final chapter of this work inspires us to draw the following conclusions:

1. Although in the category of military offenses there are many offenses similar in many respects to the offense of desertion, in national doctrine we identify only distinguishing aspects between desertion and evasion of military service satisfaction.

2. Foreign specialist literature contains a wide range of interpretations of the offense of desertion in comparison with other offenses and misdemeanors that affect the proper assurance of military security of the state.

3. The penalties provided for aggravating circumstances under Article 371 of the Criminal Code are not balanced in terms of quantum and the idea of achieving the purpose of criminal punishment.

4. The quantum of penalties provided for the act of desertion committed under the conditions of Article 371(3) of the Criminal Code, although well correlated with penalties provided for other offenses, is not sufficient to achieve the purpose of punishment, requiring other forms of punishment besides imprisonment.

## GENERAL CONCLUSIONS AND RECOMMENDATIONS

Complex study on the specificity of the offense of desertion among military crimes, alongside the meticulous findings presented in each chapter, allows us to draw the following general conclusions:

1. According to the criminal policy of the Republic of Moldova, desertion represents a serious breach of military obligations, posing an increased threat to national security. This warrants severe sanctions, with significant consequences for deserting soldiers, as well as for those in reserve who evade their civic duty to defend the homeland. Moreover, desertion can occur under aggravating circumstances, leading to harsher penalties under criminal law. However, the law also provides exemptions for soldiers who leave their military unit under difficult circumstances.

2. The national doctrinal framework concerning the investigation of signs of desertion is underdeveloped, with a narrow spectrum of scientific analysis on this specific offense. In contrast, European scientific literature, as well as that of many other countries including post-Soviet states, demonstrates a more advanced approach to desertion, evidenced by a substantial body of scholarly works on the subject.

3. A retrospective study of regulations regarding the criminalization of desertion indicates that our state lacks a criminal legislation in this area based on historical traditions and legislative experience. This is due to the relatively short history of criminal regulations concerning desertion in the Republic of Moldova, influenced by various governing regimes that imposed their own criminal policies on regulating desertion.

4. Determining the place where the offense of desertion occurs becomes complicated, as Article 371 of the Penal Code attempts to enumerate specific locations from which a soldier deserts during military service.

5. Despite specialized literature unanimously sharing a legal perspective on the objective and subjective elements of the offense of desertion, these are vaguely described in Moldovan doctrine, lacking a specific definition of desertion itself, while the concept of „military unit” varies across different laws. Additionally, the list of special subjects capable of committing desertion is incomplete, and the seriousness of the offense is considered uniform, disregarding distinctions between commanding officers and ordinary soldiers.

6. Military offenses encompass a multitude of similar offenses sharing numerous signs with desertion, yet they significantly differ in terms of their objective elements. However, national doctrine restricts itself to analyzing the distinctive aspects between desertion and evasion from military service.

7. The penalties stipulated for aggravating circumstances of desertion lack balance between their magnitude and the intended punitive goals, with some

being too lenient and others excessive when considering the severity and execution of penalties for desertion.

The highlighted conclusions from the doctoral study provide grounds to suggest a reassessment of the concept underlying the formulation of Article 371 of the Penal Code to the legislator, based on the following recommendations:

1. Unifying the definition of „military unit” in the texts of Law No. 162/2005 and Law No. 345/2003, which regulate military service and military training orders. Thus, proposing to define a military unit as follows: **the area where military structures are stationed, equipped with their own management and logistical bodies capable of carrying out combat missions and conducting all military training activities.**

2. Reassessing desertion penalties based on circumstances, giving attention to aggravating circumstances and the status of deserting subjects; also considering mitigating factors and personal motives.

3. Revising Article 370 of the Penal Code **by increasing the severity of the penalty and establishing a penalty in the form of unpaid work for the benefit of society.**

4. Reformulating the text of Article 371 of the Penal Code, dividing it into two norms: Article 371 (Desertion) and Article 3711 (Desertion during wartime or under combat conditions), with the following wording:

#### **Article 371. Desertion**

(1) Abandonment or unjustified absence for more than 72 hours from the military unit or place of service by any military personnel shall be punished with a fine ranging from 650 to 950 conventional units or with unpaid community service ranging from 60 to 120 hours.

(2) The same action committed:

- a) by a military member belonging to a lower or higher command corps;
- b) by two or more persons;
- c) during a state of emergency or siege;
- d) while carrying a military weapon,

shall be punished with a fine ranging from 950 to 1350 conventional units or with unpaid community service ranging from 120 to 240 hours or imprisonment for up to 3 years.

(3) A military member who deserts for the first time under the conditions of paragraph (1) shall be exempt from criminal liability if the desertion occurred due to severe circumstances.

#### **Article 3711. Desertion during wartime or combat conditions.**

(1) Abandonment or unjustified absence from the military unit or place

of service by any military personnel during wartime, official missions, or combat conditions shall be punished with unpaid community service ranging from 120 to 240 hours or imprisonment for up to 3 years.

(2) Actions described in paragraph (1) committed:

a) while carrying a military weapon;

b) by a military member belonging to a lower or higher command corps, shall be punished with imprisonment from 3 to 7 years.

**Suggestions regarding potential research directions associated with the topic addressed:**

- Comparative study of criminal legislation that criminalizes desertion.
- Characteristics of objective signs of the desertion offense.
- Juridical-penal analysis of aggravating circumstances of desertion.
- Adaptation of desertion punishment systems to international legal requirements.

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**Articles in national and international scientific journals (13):**

1. **GORDILĂ, D.** Some peculiarities of aggravating circumstances provided for in Article 371 para. (2), (3) of the Penal Code of the Republic of Moldova. In: *Universul Juridic* (Monthly Review of Doctrine and Jurisprudence), Bucharest, no. 2/2024. ISSN 2393-3445. Available at: <https://www.universuljuridic.ro/unele-particularitati-ale-circumstantelor-agravante-prevazute-la-art-371-alin-2-3-codul-penal-al-republicii-moldova> (databases: HeinOnline and EBSCO).

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## ADNOTARE

**Gordilă Dianu. Răspunderea penală pentru dezertare. Teză de doctor în drept.**

**Chișinău, 2024**

**Structura tezei:** Introducere, patru capitole, Concluzii generale și recomandări, Bibliografie din 201 titluri, 140 de pagini text de bază. Rezultatele obținute sunt publicate în 13 lucrări științifice.

**Cuvinte-cheie:** infracțiuni militare, siguranță națională, sistem de apărare, serviciu militar, disciplină militară, justiție, militar, dezertor, răspundere penală, pedeapsă penală.

**Scopul lucrării.** Scopul central al lucrării de doctorat constă în elucidarea cauzei de ineficiență a normei de la art. 371 a Codului penal, în vederea reformulării conținutului acesteia și adaptării la exigențele actuale în materia asigurării capacității de apărare a țării.

**Obiectivele cercetării.** Întru atingerea scopului prestabil, au fost tratate următoarele obiective ale cercetării: analiza cadrului doctrinar, la nivel național și internațional, ce abordează științific problematica incriminării penale a faptei de dezertare; examinarea conținutului și a esenței legislației penale a altor state ce reglementează regimul juridico-penal al infracțiunii de dezertare; identificarea cauzelor și a condițiilor ce determină săvârșirea infracțiunii de dezertare, precum și dificultățile de prevenire, calificare și tragere la răspundere penală; evaluarea politicilor ce stau la baza formulării cadrului normativ în materia incriminării infracțiunii de dezertare; identificarea și fundamentarea științifică a trăsăturilor caracteristice infracțiunii de dezertare prin prisma analizei elementelor componente de infracțiune; evidențierea principalelor probleme de calificare și aplicare a legii în vederea tragerii la răspundere penală pentru infracțiunea de dezertare; analiza practicii judiciare în materia judecării cauzelor de dezertare.

**Noutatea și originalitatea științifică** constau în studiul științific de primă ediție, la nivel național, în formatul unei lucrări de doctorat ce abordează pe deplin problematica tragerii la răspundere penală pentru infracțiunea de dezertare. De asemenea, elementele de noutate se identifică și în următoarele rezultate obținute: unificare a sensului unor noțiuni definite până acum diferit în conținutul diverselor acte normative ce reglementează modul de îndeplinire a obligațiilor cetățenești cu caracter militar; completarea listei circumstanțelor agravante, în care poate fi săvârșită infracțiunea de dezertare, cu circumstanțe noi pentru dreptul penal al RM; formularea unei noi ipoteze în care ar putea fi săvârșită infracțiunea de dezertare, fiind calificată drept dezertare doar absența pentru o anumită perioadă de la îndeplinirea serviciului militar.

**Problema științifică importantă soluționată** este cea a clarificării naturii juridice a dezertării prin raportare la intenția și durata eschivării militarului de la satisfacerea serviciului militar; excluderea controverselor de interpretare a locului dezertării; clasificarea categoriilor de subiecți speciali ai infracțiunii de dezertare în funcție de anumite criterii de apartenență și statut.

**Semnificația teoretică.** Lucrarea prezintă importanță teoretică din perspectiva materialului impunător oferit doctrinei în procesul de înțelegere a esenței, cauzelor și condițiilor săvârșirii infracțiunii de dezertare.

**Valoarea aplicativă a lucrării** rezultă din eventualul impact al studiului științific asupra deciziilor de aplicare a normei de la art. 371 a Codului penal, precum și cel al instruirii subiecților care urmează sau aplică la moment norma penală ce incriminează fapta de dezertare. De asemenea, valoarea aplicativă a lucrării va putea fi sesizată în urma elaborării pe baza acesteia a unui Ghid ce va orienta acțiunile organului de urmărire penală la calificarea faptelor de dezertare.

**Implementarea rezultatelor științifice.** Rezultatele obținute în cercetarea de față pot fi preluate în vederea perfecționării cadrelor didactice titulare la cursul de drept penal, partea specială, precum pot fi utilizate și în cadrul elaborării diferitor lucrări științifice. Unele teze argumentate în conținutul lucrării vor constitui surse de inspirație pentru legiuitor în procesul modernizării legislației penale, în special, pe segmentul reglementării răspunderii pentru dezertare.

## ANNOTATION

### Gordilă Dianu. *Criminal Liability for the Offense of Desertion. Doctoral Thesis in Law. Chișinău, 2024.*

**Thesis structure:** Introduction, four chapters, General conclusions and recommendations, Bibliography with 201 titles, 140 pages of main text. The obtained results are published in 13 scientific works.

**Keywords:** military offenses, national security, defence system, military service, military discipline, devotion, justice, military, deserter, criminal responsibility, criminal punishment.

**The purpose of the work:** The central aim of the doctoral thesis is to elucidate the cause of the inefficiency of the provision at Article 371 of the Penal Code, with the objective of reformulating its content and adapting it to current requirements in the field of ensuring the defence capabilities of the country.

**Research objectives:** In order to achieve the predetermined purpose, the following research objectives were outlined: analysis of the doctrinal framework, both at the national and international levels, addressing the scientific issues related to the criminalization of the act of desertion; examination of the content and essence of the criminal legislation in other states regulating the legal and criminal aspects of the offense of desertion; identification of the causes and conditions leading to the commission of the desertion offense, as well as the difficulties in prevention, qualification, and prosecution; evaluation of the policies underlying the formulation of the normative framework concerning the criminalization of the offense of desertion; identification and scientific substantiation of the characteristic features of desertion offenses through the analysis of the elements constituting the offense;

**The novelty and scientific originality** consist in the first-of-its-kind scientific study at the national level, presented in the format of a doctoral thesis that fully addresses the issue of criminal liability for the offense of desertion. Furthermore, elements of novelty are identified in the following obtained results: unification of the meaning of certain concepts previously defined differently in the content of various normative acts regulating the fulfilment of military civic duties; supplementation of the list of aggravating circumstances in which the offense of desertion can be committed, with new circumstances for Moldovan Criminal Law;

**The important scientific issue** resolved is that of clarifying the legal nature of desertion by relating it to the intention and duration of the military personnel's evasion from fulfilling military service, excluding controversies of interpretation regarding the location of desertion, and classifying categories of special subjects of the offense of desertion based on certain criteria of affiliation and status.

**Theoretical significance.** The work holds theoretical significance from the perspective of the compelling material provided to the doctrine in the process of understanding the essence, causes, and conditions of committing the offense of desertion.

**The applicative value of the work** arises from the potential impact of the scientific study on decisions regarding the application of the provision at Article 371 of the Penal Code, as well as its influence on the training of individuals who are currently or will be applying the criminal norm that incriminates the act of desertion. Additionally, the applicative value of the work can be recognized through the development of a Guide based on it, which will guide the actions of the law enforcement body in qualifying desertion offenses.

**Implementation of scientific results.** The results obtained through this research can be adopted to enhance the skills of the academic staff responsible for the Criminal Law course, especially in the special part, and can be utilized in the development of various scientific works. Some well-argued theses presented in the content of the work will serve as sources of inspiration for the legislator in the process of modernizing criminal legislation, particularly in the segment concerning the regulation of liability for desertion.

## АННОТАЦИЯ

Гордилэ Диану. Уголовная ответственность за дезертирства. Докторская диссертация. Кишинев 2024

**Структура диссертации:** Введение, четыре главы, Общие выводы и рекомендации, Библиография из 201 названий, 140 страниц основного текста. Полученные результаты опубликованы в 13 научных работах.

**Ключевые слова:** военные преступления, национальная безопасность, система обороны, военная служба, воинская дисциплина, правосудие, военный, дезертир, уголовная ответственность, уголовное наказание.

**Цель работы.** Основная цель докторской диссертации состоит в выяснении причины неэффективности нормы из ст. 371 УК РФ с целью переформулировать ее содержание и адаптировать к современным требованиям в вопросах обеспечения обороноспособности страны.

**Научно-исследовательские цели.** Для достижения заданной цели были поставлены следующие задачи исследования: анализ доктринальной базы на национальном и международном уровне, научно подходящей к вопросу криминализации дезертирства; изучение содержания и сущности уголовного законодательства других государств, регулирующего уголовно-правовой режим преступления дезертирства; выявление причин и условий, которые приводят к совершению преступления дезертирства, а также трудностей предупреждения, квалификации и уголовного преследования; оценка политики, лежащей в основе разработки нормативной базы в области криминализации преступления дезертирства.

**Научная новизна и оригинальность** состоит в научном исследовании первого издания, на национальном уровне, в формате докторской диссертации, полностью освещающего вопрос уголовного преследования за преступление дезертирства. Также элементы новизны можно выделить в следующих полученных результатах: унификация значения некоторых понятий, определенных до сих пор по-разному в содержании различных нормативных актов, регулирующих порядок исполнения гражданских обязательств военного характера.

**Решаемая важная научная задача** - выяснение правовой природы дезертирства путем ссылки на намерение и продолжительность уклонения военнослужащего от военной службы, исключение разногласий относительно толкования места дезертирства, классификация категорий специальных субъектов. преступления дезертирства в соответствии с определенными критериями членства и статусом.

**Теоретическая значимость.** В работе представлена теоретическая значимость с точки зрения убедительного материала, предлагаемого доктриной в процессе понимания сущности, причин и условий совершения преступления дезертирства.

**Прикладная ценность работы** обусловлена возможным влиянием научного исследования на решения о применении правила из ст. 371 УК РФ, а также подготовки субъектов, соблюдающих или применяющих в настоящее время уголовную норму, криминализирующую дезертирство. Также будет отмечена прикладная ценность работы после разработки на ее основе Руководства, которое будет направлять действия органа уголовного преследования по квалификации деяний дезертирства.

**Внедрение научных результатов.** Результаты, полученные в результате настоящего исследования, могут быть взяты на вооружение в целях совершенствования преподавательского состава курса уголовного права, специальной части, так как они могут быть использованы при разработке различных научных работ. Некоторые положения, изложенные в содержании статьи, станут источниками вдохновения для законодателя в процессе модернизации уголовного законодательства, в частности, в части регулирования ответственности за дезертирство.



**GORDILĂ Dianu**

**CRIMINAL LIABILITY FOR DESERTION**

**Specialty: 554.01 - Criminal Law and Criminal Enforcement Law**

**Summary of the doctoral thesis in law**

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Approved for printing: 07.08.2024

Offset paper. Laser print.

Author's papers: 2.67 c.a.

Paper format 60x90/16

Draft 5 copies.

Order No. 327

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The printing executed at ***Editorial-Polygraphic Department***  
of the „Ștefan cel Mare” Academy of the MAI  
MD-2009, Chișinău, 21, Gh. Asachi Str.  
web: [www.academy.police.md](http://www.academy.police.md);  
e-mail: [academy@police.md](mailto:academy@police.md)