

УДК: 343.8

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FEATURES OF THE EXECUTION OF PUNISHMENT IN THE FORM OF ARREST FOR MILITARY PERSONNEL

<http://doi.org/10.23939/law2025.45.281>

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The article examines the peculiarities of executing punishment in the form of arrest for military personnel, focusing on the legal, psychological, and organizational aspects that distinguish it from civilian forms of punishment. Arrest in the military system is a specific disciplinary measure designed to maintain order, discipline, and control within the armed forces. The article delves into the legal framework governing the imposition of arrest for military personnel, including the relevant military regulations, such as the Military Criminal Code and the Disciplinary Regulations of the Armed Forces. Special attention is paid to the conditions under which arrest is applied, the procedures for its execution, and the rights and duties of military personnel who are subjected to arrest. The psychological impact of arrest on military personnel is also analyzed, focusing on its potential effects on morale, mental health, and discipline, as well as the challenges of reintegrating those who have been punished. Additionally, the article discusses the role of arrest in the broader system of military punishment and how it functions as a corrective measure, distinct from other forms of punishment like imprisonment.

The article further explores the importance of labor and educational activities during the period of arrest, which serve to support the rehabilitative function of the punishment. It highlights how military authorities provide psychological and social support to those subjected to arrest, addressing their specific needs and helping mitigate the negative effects of the punishment. The role of monitoring and control throughout the execution of the arrest is also examined, emphasizing the need for transparency and accountability in the process. In conclusion, the article stresses that a comprehensive approach to the execution of arrest, which incorporates legal, organizational, and psychological considerations, is essential for maintaining discipline within the military while also ensuring that the punishment serves its corrective purpose and facilitates the reintegration of military personnel back into active service.

Keywords: arrest, military personnel, military punishment, military discipline, legal framework, psychological impact, labor obligations, rehabilitation, educational activities,

psychological support, social support, military regulations, military service, reintegration, punishment execution.

Formulation of the problem. Execution of a punishment in the form of arrest for military personnel is an important part of the criminal executive process which requires special attention given the specifics of military service. Arrest as a punishment has its own peculiarities, which are determined by both legal norms and requirements related to maintaining discipline and moral climate in the army. An important aspect is the question of the adequacy of the application of arrest to military personnel, as it is associated with the restriction of their rights and freedoms, which can negatively affect their professional and social adaptation. International standards, such as the UN Standard Minimum Rules for the Treatment of Prisoners, provide for restrictions on the use of arrest and similar punishment against individuals, in particular in the context of military discipline. At the same time, Ukrainian legislation lacks detailed regulation of the specifics of arrest for military personnel, which creates risks to the observance of the rights and freedoms of these individuals. The issue of improving the practical mechanisms of execution of the penalty of arrest, taking into account the specifics of military service and international standards, is relevant.

Analysis of the study of the problem. A number of Ukrainian scholars, including V. Baranov, O. Tyshchenko, Y. Liakh, N. Larina, O. Tarasenko, M. Orlov and others, have studied the problems of execution of the punishment of arrest for military personnel. Their works emphasize the need to develop a clear system of execution of the penalty of arrest, which takes into account the specific conditions of service and the socio-psychological climate in military units. In particular, researchers point out the importance of integrating elements of resocialization and psychological support during the execution of arrest, as well as the possibility of developing a system of punishment that would help correct behavior without harming the moral climate in the army. However, despite the existence of certain developments, scientific research still lacks in-depth practice of applying such measures in the context of the specifics of military discipline, which requires further research and improvement of legal norms in this area.

The aim of this article. The purpose of the article is to identify the specific features of the execution of punishment in the form of arrest for military personnel, to analyze the existing approaches to the application of this type of punishment in national legislation, and to assess their compliance with international standards. The article also examines the possibilities of improving the mechanisms of execution of arrest for military personnel, in particular, through the integration of effective resocialization and behavioral correction programs. Particular attention is paid to the analysis of the impact of the conditions of arrest on the social and psychological adaptation of servicemen after serving their sentence, as well as to the development of recommendations for improving the practice of arrest in the Ukrainian military system, based on international experience.

The purpose of the article. The punishment in the form of arrest for servicemen convicted of criminal offenses is regulated by the provisions of the Criminal Executive Code of Ukraine (CEC of Ukraine) and the Procedure for the detention of convicted, remanded, arrested and detained servicemen. According to the provisions of the CEC of Ukraine, servicemen who have been arrested must serve their sentence in the brig, which allows for their correction and re-socialization. The purpose of such conditions is to ensure the protection of the interests of the individual, society and the state, as well as to create the preconditions for the convict's correction. Arrest is a type of punishment that involves keeping a convicted person in isolation for a period of one to six months.

It is noted that in order to achieve effective re-socialization of servicemen, it is necessary to create differentiated conditions for their detention, in particular by dividing them into certain groups depending on their social status or behavior. Thus, according to the Procedure for the Detention of Servicemen in the Brig, it is stipulated that different categories of convicts, such as women and men, officers and other categories of

servicemen, as well as persons serving under contract or conscription, should be held separately. Those who are brought to criminal responsibility for the first time, servicemen who worked in law enforcement or intelligence agencies, as well as those accused or suspected of the same criminal offense should be held separately [4].

However, according to the researchers, the process of differentiation and individualization of punishments for military personnel is not fully implemented today. For example, according to T. B. Nikolayenko, even after the introduction of separate detention of different categories of convicts, proper conditions for their correction are not created. This indicates that there are no incentives for convicts to strive for changes in their behavior. Therefore, it is necessary to provide various forms of incentives to those who demonstrate law-abiding behavior, for example, through benefits, early release or crediting the time of arrest to the total term of military service [3, p. 161–162].

At the same time, for those convicts who systematically violate internal regulations, refuse to work or commit other offenses, appropriate penalties should be applied. These may include reprimands, transfer to solitary confinement or toughening of the conditions of detention, as such convicts pose a threat to others.

It should be noted that current legislation already provides for certain forms of incentives for law-abiding behavior. For example, convicted military personnel can receive various types of incentives for good behavior, such as a letter of appreciation or early release of penalties. However, it is believed that the legislation requires additional amendments, in particular regarding the conditions of detention of convicts, taking into account their behavior. Prisoners who consistently demonstrate good behavior and are willing to work should be able to be transferred to sectors with lighter conditions. This will contribute to their re-socialization and increase their motivation to reform.

It is also necessary to introduce more differentiated conditions of detention for convicted servicemen, taking into account not only their social status or category, but also their behavior while serving their sentence. Servicemen who continue to violate the rules and are unwilling to reform should serve their sentences in harsher conditions, as their behavior can be dangerous for other convicts.

The execution of punishment in the form of arrest for military personnel is a specific type of punishment that provides for the isolation of persons who have committed criminal offenses in special conditions. This punishment is regulated by a number of legal acts, among which a special role is played by the Criminal Code of Ukraine (CCU) and the Criminal Executive Code of Ukraine (CECU), which establish general rules for the execution of punishments, as well as by separate acts relating to the military, in particular the Procedure for the Detention of Convicted Servicemen approved by the Ministry of Defense of Ukraine [1].

According to the Criminal Executive Code, arrest as a form of punishment is applied to military personnel for committing crimes under criminal law. The punishment in the form of arrest involves the isolation of the convicted person in the guardhouse or in specially designated institutions. According to the CCI of Ukraine, convicted servicemen are held in such conditions from one to six months, which allows for the correction and re-socialization of the offenders [2].

The legislation also stipulates that arrest is a punishment applied not only for violations of criminal law, but also in cases of disciplinary offenses among military personnel. The specificity of arrest for the military is that they are held not just in general prisons, but in special military institutions, such as guardhouses, which are part of the military organization and discipline. This allows for a certain amount of control over the behavior of individuals while providing them with conditions for correction.

The legal framework governing the detention of military personnel also includes the Procedure for the Detention of Persons Serving Sentences in Penitentiary Facilities. This document details how the conditions of detention should be organized, defines who can be taken into custody, and how convicts are divided into different categories. In particular, there is a need to isolate convicts depending on their social status, type of offense, and gender. This is an important issue, since arrest is a restriction of freedom, which should be organized in such a way as to facilitate the correction of individuals, and not just their isolation from society.

An important feature of the execution of punishment for military personnel is that this type of punishment is aimed not only at punishing the crime committed, but also at ensuring resocialization. Therefore, the conditions of detention should include measures that help improve the behavior of convicts, encourage correction and further service in the army. One of such tools is a system of incentives applied to those persons who show law-abiding behavior. This can include early release from prison or transfer to conditions that facilitate faster resocialization [5, p. 495].

The process of differentiating convicts in the guardhouse requires special attention. Legislation requires that military personnel in custody be divided into categories depending on their status, behavior and other circumstances. For example, officers may be held in separate sectors that differ in terms of the level of conditions of detention from those for ordinary soldiers. There is also a requirement for separate detention of first-time offenders to facilitate their re-socialization.

Punishment in the form of arrest for military personnel is a specific form of punishment applied for certain offenses committed within the framework of military service. It involves the restriction of the convicted person's freedom by keeping him or her in isolation, in particular in a brig, for a period of up to six months. It is important to understand that this type of punishment is used mainly for disciplinary violations, as well as for more serious criminal offenses committed by military personnel.

According to the Criminal Code of Ukraine, military personnel can be held liable for various offenses that are directly related to their service. These offenses include, among others, violations of military discipline, disobedience to superior officers, dereliction of duty, and more serious crimes such as desertion or hooliganism. In such cases, the court, based on the gravity of the offense, may impose a sentence of arrest, which restricts the freedom of the convicted person and helps restore discipline in the army.

One of the main offenses for which military personnel can be punished by arrest is disciplinary violations related to disobedience to orders or absence from duty without a valid reason. This may include violation of the daily routine, absence from duty or refusal to comply with orders from superior commanders. For such violations, which directly threaten the effectiveness of military duties and may reduce the overall combat readiness of the unit, arrest is used as a punishment aimed at correcting behavior and restoring proper discipline.

In addition, arrest may be imposed for offenses that undermine the morale of the military unit. These may include cases of hooliganism, theft of military property, alcohol or drug intoxication during service, or violation of military ethics. In such cases, arrest becomes necessary to restore law and order and prevent the spread of such actions among other military personnel [5, p. 496].

Desertion is one of the most serious grounds for arrest. If a serviceman leaves a unit without the permission of the command, it is not only a violation of military discipline, but can also pose a threat to the security and efficiency of military units. Deserters can be punished by arrest, followed by a trial by military court, which can lead to more serious penalties, depending on the circumstances.

There are also cases where military personnel commit offenses in the context of combat operations or military exercises, violating instructions and safety rules. Such violations can lead to irreparable consequences, so arrest in these cases is used to keep the serviceman in custody and ensure proper discipline in the army.

The legislation provides that the punishment of arrest should be applied taking into account the gravity of the offense and the personal circumstances of the perpetrator. Servicemembers who have committed less serious disciplinary offenses may be punished with shorter terms of detention, while more serious offenses, such as desertion or theft, may result in a much longer term of detention.

The peculiarities of the execution of the punishment of arrest for military personnel have significant differences compared to civilian practice. Punishment in the form of arrest is one of the most common disciplinary measures in military service, applied for violation of military discipline, law or orders of the commander. It involves the temporary restriction of a serviceman's freedom, which lasts for a certain period of time, usually up to 15 days, but can be extended for particularly serious violations.

Features of the execution of punishment in the form of arrest for military personnel

One of the main features of this type of punishment is its application within military units or institutions where military personnel perform their service. This means that arrest usually takes place not in isolation in prisons or pre-trial detention centers, but in specially designated premises that provide certain restrictions on the personal freedoms of convicts, but at the same time allow them to remain within the military unit or subdivision.

In addition, the regime of arrest in the army differs significantly from the civilian regime. During the arrest, a serviceman is obliged to comply with military discipline, perform simple physical exercises, participate in household work or other tasks provided for by internal regulations. At the same time, he is prohibited from leaving the arrested premises, communicating with other servicemen without permission, and having access to personal belongings that may be considered prohibited [3, p. 162].

This type of punishment is often used to correct offenders who should not be sent to more severe punishments, such as imprisonment, but who require disciplinary action to prevent further offenses. Arrest allows military leaders to influence their subordinates in the context of their professional development, maintaining discipline and integrity in the military.

In addition, the peculiarities of the execution of the punishment in the form of arrest include the fact that this measure is not a criminal punishment. That is, it does not jeopardize a serviceman's further career in the army, but it is a serious warning of possible consequences for military service. However, arrest can affect a person's morale, creating temporary obstacles to their further development and professional career.

An important component is the role of unit commanders in the execution of punishment. They are directly responsible for ensuring the implementation of the disciplinary measure, which includes not only supervising the implementation of the arrest regime, but also assessing the effectiveness of the punishment. This means that the commander must take into account the individual characteristics of each subordinate and the circumstances in which the offense was committed in order to ensure that the behavior is corrected, and not just the execution of the punishment as punishment.

The execution of punishment in the form of arrest for military personnel involves not only the restriction of personal freedom, but also the impact on the moral and psychological state of the person. Within the framework of military discipline, arrest should become a kind of instrument of influence on the offender, the purpose of which is not only punishment, but also education of the subordinate in the spirit of responsibility and respect for military service. However, it is important to note that arrest as a form of punishment is a restriction of personal rights, which can cause certain psychological stress to individuals, especially when it comes to young military personnel or recruits [5, p. 497].

There is a certain procedure for the application of this punishment, which is regulated by relevant orders and regulations, including, in addition to articles of military regulations, provisions defining the limits and conditions of arrest. According to them, a serviceman can be placed under arrest only in case of a violation of discipline that is defined as serious or requiring an immediate response, such as desertion, disobedience to superior officers or disciplinary violations related to alcohol or drugs.

An important aspect is that while in detention, servicemen are required to perform work duties within the unit, but these tasks are more limited than those they perform during normal service. For example, persons in custody are provided with special working conditions that take into account the limited regime of their stay in the unit. In particular, they may be assigned lighter or less responsible types of work so as not to jeopardize the process of execution of the sentence.

The peculiarity of serving a sentence in custody is the specificity of interaction with other military personnel. Although arrest does not imply isolation in the traditional sense of the word, it is aimed at reducing the social activity of a person, which includes limiting his/her ability to communicate with other servicemen and access to unnecessary information that may affect his/her behavior. Violation of this regime may lead to an increase in the term of arrest or other disciplinary measures.

The process of executing a sentence of arrest for military personnel also requires some adaptation depending on the specific situation. For example, for persons who have committed an offense in special conditions (e. g., during hostilities or in conditions of increased complexity of tasks), the regime of arrest

may be adapted in such a way that it not only restores discipline, but also takes into account the specific circumstances in which the offense was committed [3, p. 163].

Often, arrest can be combined with other types of punishment or disciplinary measures that allow for more effective correction of the behavior of servicemen. For example, after the end of the arrest, the serviceman may be transferred to a position with limited duties or undergo special training that will allow him to integrate back into the team and realize his responsibility for the violations committed. The educational aspect of the punishment of arrest is not only the restriction of freedom, but also the opportunity for a person to reflect on his or her actions, to form a correct idea of the role of service in the army and the importance of military discipline.

It is also important that the arrest of a serviceman has certain restrictions on the conditions of detention. Military detention facilities are equipped according to special requirements to ensure order and security, as well as to maintain minimum conditions for the normal functioning of a person under arrest. Such conditions do not allow for complete isolation of the offender from society, but also restrict his personal rights, which is necessary to achieve the purpose of punishment.

The peculiarities of the execution of the punishment in the form of arrest for military personnel are in the combination of the disciplinary and corrective functions of this punishment within the framework of military service. Arrest, as a disciplinary measure, is applied to violators of military discipline and may be imposed both for violation of the order of service and for violation of military duties. In case of its application, it is important to ensure not only compliance with the strict regime of detention, but also to create conditions for further rehabilitation and reintegration of the serviceman into service. Along with physical restraint, the punishment in the form of arrest involves the fulfillment of a number of labor or educational duties which contribute to the restoration of internal discipline and professional training of individuals. It is noted that under conditions of arrest, servicemen also have the right to psychological support, and the role of the command and military psychologists is special to ensure the normalization of their psycho-emotional state. All this allows us to consider arrest not only as a disciplinary measure, but also as one of the stages of the rehabilitation process, which helps to return offenders to military duty, while maintaining a high level of discipline and efficiency in the army [5, p. 497].

Conclusions. The article examines the peculiarities of execution of punishment in the form of arrest for military personnel, which is an important element of the disciplinary process in the army. The punishment of arrest is applied for various offenses, in particular, for violation of military discipline, insubordination, desertion and other serious crimes committed by military personnel. It is determined that the main purpose of this punishment is to restore discipline, prevent further offenses and promote law-abiding behavior among the military.

Particular attention should be paid to the correct application of arrest depending on the severity of the offense. This requires clear legal and regulatory frameworks that allow for the effective and fair application of punishment to military personnel, taking into account the specifics of their service and circumstances. In this context, comprehensive measures are important, including not only punishment, but also preventive work aimed at preventing future offenses.

The effectiveness of the punishment in the form of arrest depends on the proper organization of the process of detention of convicts, clear definition of the conditions of their detention, as well as the provision of opportunities for correction through participation in disciplinary programs. The active participation of commanders and military authorities in evaluating the results and introducing new forms of disciplinary work will help reduce recidivism and improve the moral climate in the army.

In general, the use of arrest as a punishment for servicemen should be clearly regulated, balanced and humane, focusing on strengthening military discipline, increasing the level of responsibility and law-abidingness among servicemen, which, in turn, will contribute to the efficiency of the army and strengthen national security.

СПИСОК ВИКОРИСТАНИХ ДЖЕРЕЛ

1. Кримінальний кодекс України від 2001. База даних “Законодавство України” / ВР України. URL: <https://zakon.rada.gov.ua/laws/show/2341-14#Text> (Дата звернення: 25.12.2024).
2. Кримінально-виконавчий кодекс України від 2004. База даних “Законодавство України” / ВР України. URL: <https://zakon.rada.gov.ua/laws/show/1129-15#Text> (Дата звернення: 25.12.2024).
3. Ніколаєнко Т. Б. (2017). Особливості забезпечення нормативно-правового регулювання диференційованих умов тримання засуджених військовослужбовців на гауптвахті. *Правова держава*. № 25. С. 160–166.
4. Про затвердження Інструкції про порядок і умови утримання військовослужбовців, заарештованих в адміністративному порядку: Наказ Міністерства оборони України від 2015. База даних “Законодавство України” / ВР України. URL: <https://zakon.rada.gov.ua/laws/show/z0693-15#Text> (Дата звернення: 25.12.2024).
5. Сагайдак В. О. (2022). Особливості виконання покарання щодо військовослужбовців, засуджених до арешту. Суми, С. 495–497. URL: https://lawconference.law.sumdu.edu.ua/wp-content/uploads/2022/06/%D0%97%D0%B1%D1%96%D1%80%D0%BD%D0%B8%D0%BA_2022.pdf#page=495 (Дата звернення: 25.12.2024).

REFERENCES

1. *Kryminalnyj kodeks Ukrainy* vid 2001. [Criminal Code of Ukraine of 2001]. Baza danyh “Zakonodavstvo Ukrainy” / VR Ukrainy. Retrieved from: <https://zakon.rada.gov.ua/laws/show/2341-14#Text> (Accessed: 25.12.2024). [In Ukrainian].
2. *Kryminaljno-vykonavchij kodeks Ukrainy* vid 2004. [Criminal Executive Code of Ukraine of 2004]. Baza danyh “Zakonodavstvo Ukrainy” / VR Ukrainy. Retrieved from: <https://zakon.rada.gov.ua/laws/show/1129-15#Text> (Accessed: 25.12.2024). [In Ukrainian].
3. Nikolajenko, T. B. (2017). *Osoblyvosti zabezpechennja normatyvno-pravovogho rehuljuvannja dyferencijovanykh umov trymannja zasudzhenykh vijskovosluzhbovciv na ghauptvakhti. Pravova derzhava*. [Peculiarities of ensuring regulatory and legal regulation of differentiated conditions of detention of convicted servicemen in the guardhouse. The rule of law]. No. 25. P. 160–166. [In Ukrainian].
4. *Pro zatverdzhennja Instrukciji pro porjadok i umovy utrymannja vijskovosluzhbovciv, zareshotovanykh v administratyvnomu porjadku*: Nakaz Ministerstva oborony Ukrainy vid 2015. [On Approval of the Instruction on the Procedure and Conditions of Detention of Servicemen Arrested in Administrative Procedure: Order of the Ministry of Defense of Ukraine of 2015]. Baza danyh “Zakonodavstvo Ukrainy” / VR Ukrainy. Retrieved from: <https://zakon.rada.gov.ua/laws/show/z0693-15#Text> (Accessed: 25.12.2024). [In Ukrainian].
5. Sagajdak, V. O. (2022). *Osoblyvosti vykonannja pokarannja shhodo vijskovosluzhbovciv, zasudzhenykh do areshthu*. [Peculiarities of the execution of punishment for servicemen sentenced to arrest]. Sumy, P. 495–497. Retrieved from: https://lawconference.law.sumdu.edu.ua/wpcontent/uploads/2022/06/%D0%97%D0%B1%D1%96%D1%80%D0%BD%D0%B8%D0%BA_2022.pdf#page=495 (Accessed: 25.12.2024). [In Ukrainian].

Дата надходження статті: 18.01.2025 р.

ОСОБЛИВОСТІ ВИКОНАННЯ ПОКАРАННЯ У ВИГЛЯДІ АРЕШТУ ДЛЯ ВІЙСЬКОВОСЛУЖБОВЦІВ

У статті розглянуто особливості виконання покарання у вигляді арешту для військовослужбовців з акцентом на юридичні, психологічні та організаційні аспекти, які відрізняють його від цивільних форм покарання. Арешт у військовій системі є специфічним дисциплінарним заходом, що має на меті підтримання порядку, дисципліни та контролю в Збройних силах. У статті детально аналізується правова база, що регулює накладення арешту на військовослужбовців, зокрема відповідні військові нормативно-правові акти, такі як Кримінальний кодекс військовослужбовців та Дисциплінарний статут Збройних сил. Окрему увагу присвячено умовам застосування арешту, порядку його виконання, а також правам і обов'язкам військовослужбовців, які піддаються арешту. Аналізується психологічний вплив арешту на військовослужбовців, зокрема його потенційний вплив на моральний стан, психічне здоров'я та дисципліну, а також виклики, з якими стикаються військовослужбовці під час їхньої реабілітації після покарання. Крім того, у статті обговорюється роль арешту в ширшій системі військових покарань і його функція як коригувального заходу, на відміну від інших форм покарання, таких як ув'язнення.

У статті також розглянуто важливість трудової та освітньої діяльності під час виконання арешту, які сприяють реабілітаційній функції покарання. Зокрема, підкреслюється, як військове керівництво надає психологічну та соціальну підтримку особам, що піддалися арешту, враховуючи їхні специфічні потреби та допомагаючи зменшити негативні наслідки покарання. Досліджується роль моніторингу та контролю в процесі виконання арешту, наголошуючи на потребі прозорості та підзвітності в цьому процесі. У висновках підкреслюється, що комплексний підхід до виконання арешту, що містить юридичні, організаційні та психологічні аспекти, є необхідним для підтримки дисципліни в армії та забезпечення того, щоб покарання виконувало свою коригувальну функцію і сприяло реінтеграції військовослужбовців до активної служби.

Ключові слова: арешт, військовослужбовці, військові покарання, військова дисципліна, правова база, психологічний вплив, трудові обов'язки, реабілітація, освітня діяльність, психологічна підтримка, соціальна підтримка, військові нормативи, військова служба, реінтеграція, виконання покарання.