

Criminal Liability for Desertion under the Legislation of the Republic of Moldova

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Abstract

National security is a crucial component of the state of the Republic of Moldova. Therefore, an important condition for ensuring it is the exact compliance by the military with the military laws and regulations to successfully carry out the tasks established by the Armed Forces of the Republic of Moldova and ensure state security. Violation by military personnel of legislative requirements and military statutes carries with it either disciplinary responsibility or, in the most serious cases, criminal liability. In this context, the criminal legislation of the Republic of Moldova provides for "Military Offenses" in Chapter XVIII. Desertion represents a component of the acts that fall under the category of military offences, which is criminalized in Art 371 of the Criminal Code of the Republic of Moldova. The unjustified absence of a soldier from their unit constitutes a clear insubordination primarily against the law and military regulations. Dodging military service represents a violation of duty towards the country, a provision confirmed by the supreme law of the Republic of Moldova, which states that defending the country is a sacred duty of every citizen.

Keywords: desertion, defence of the homeland, military unit, national security, military discipline, military regulations

Introduction

At present, the security of the Republic of Moldova must be a crucial task for the Armed Forces of the Republic of Moldova, following military discipline and military regulations of the unit. The probability of the emergence of a potential risk to national security is not excluded, therefore, the National Army must be in constant preparedness to avoid this risk. The devoted fulfilment by the military of the tasks set within the military unit constitutes a guarantee of the security and military stability of the state. The defence of the country represents one of the fundamental social values protected by Criminal legislation – an essential condition for the primordial components of a state: independence, unity, integrity, and sovereignty. The potential for defending the homeland is closely related to the presence of the National Army within the state, the discipline, and the military order that must persist. Another important set-up that the military system must undergo is the fulfilment of fundamental duties by every citizen regarding the defence of the state, especially by the soldiers who perform military service in the Armed Forces. Military discipline involves complete subordination to military regulations and legislation; it is based on maintaining in the consciousness of every military person the requirement of performing military duties and the obligation for continuous improvement of their military preparation, thereby enhancing the potential and combat resilience of the Armed Forces. In this context, through the offence of desertion, military discipline and order that must not, under any circumstances, affect the

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state's defence capability are jeopardized. The generic object of the offence of desertion consists of social relations related to the country's defence capability and the established order of fulfilling mandatory military service.

Legal content

Desertion is a military offence stipulated by the Art. 371 of the Criminal Code of the Republic of Moldova, incurring a typical composition and two aggravating forms. "Desertion is the abandonment of the military unit, training centre, or place of service with the purpose of evading military service, concentration, or mobilization, as well as non-appearance for the same reason at service or concentration or mobilization in cases of leave from the military unit or training centre, distribution, transfer, return from a mission, from leave, or a curative institution, committed by a military person or reservist." [2].

The concept of "military" comes from the Latin word "militaris." The legal definition of the word "military" was mentioned in Art. 2 of Law No. 968 of March 17, 1992, concerning the military obligation and military service of the citizens of the Republic of Moldova (repealed by Law No. 1245 of July 18, 2002, regarding the preparation of citizens for the defence of the Homeland). It stipulated that citizens who perform military service are referred to as "Militari" (Military personnel). A similar notion of military personnel is provided by Art. 7 of Law No. 1245 of July 18, 2002, concerning the preparation of citizens for the defence of the Homeland. Expanding on the term "military," this law specifies that military service is a special type of state service, involving citizens fulfilling the constitutional duty to defend the state within the ranks of the Armed Forces, based on military obligation or voluntary engagement through a contract. It includes the military service of soldiers, sergeants, officers, and students from military educational institutions.

The destruction of statehood usually begins with the breakdown of the armed forces. Therefore, military order and discipline should be viewed not only as factors ensuring defence against external enemies but also as indicators of the internal stability of the state. Military criminality is the product of negative social conditions. These conditions contribute to the demoralization of the youth, the injection of criminal experience into the military environment, and the refusal to fulfil military service [3, p.7].

Avoiding military service and unauthorized departure from a military unit is not only evidence of negligence towards the law and military regulations but also constitutes a destructive source for the Armed Forces. Taking this aspect into account, the criminal law of the Republic of Moldova has emphasized the importance of criminalizing the offence of desertion in the legislation.

The special legal object of the offence of desertion is constituted by social relations regarding military order and discipline, whose existence and normal functioning are conditioned by the continuous presence of the military personnel in the unit, formation, or service to which they belong [4, p.1300].

Some authors support the idea that the offence of desertion falls into the category of military offences conditioned by the evasion from the performance of military service obligations, while other authors think that it belongs to the group of offences against military discipline and order.

In another line of thought, the special legal object of desertion is constituted by social relations regarding the order of performing military service, which bind military personnel to carry out military service within a certain period, established by law, and to always be

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prepared to defend the state, fulfilling their constitutional and military duty to defend the Homeland [5, p. 751].

Considering the specificity of the offence of desertion, it does not have a victim or material object in its composition. From a moral standpoint, this offence harms the state and compromises, to some extent, national security, infringing on the right of citizens to coexist in a peaceful and sovereign country. In other words, indirectly, the state can be seen as a potential victim through the commission of the offence of desertion, but this idea is not acceptable simply because the state does not meet the criteria as the passive subject of the offence.

Desertion constitutes a formal offence. It is consummated from the moment the criminal activity ceases (for example, from the moment the perpetrator voluntarily reports) or due to events that prevent this activity (for example, the apprehension of the perpetrator). This is because the offence mentioned in Article 371 of the Criminal Code of the Republic of Moldova is characterized by continuous commission, for an indeterminate period, of the criminal activity.

At the time of the offence consummation, due to the apprehension of the perpetrator, the case is attributed as follows: P.I. was convicted under Ar. 371, para (1), of the Criminal Code of the Republic of Moldova. While serving in the military within the prescribed period, on June 22, 2008, P.I. was, as a duty officer, in the motor pool of the Engineer Battalion, stationed in the village of Negrești, Strășeni district. At around 7:00 PM, he left the military unit without authorization, heading towards the town of Ialoveni. Shortly afterwards, he went to the Russian Federation, where he worked as a construction worker until December 26, 2008. Upon returning home on January 1, 2009, P.I. was apprehended by the police [6].

The objective aspect of the offence stipulated by Art. 371 of the Criminal Code of the Republic of Moldova is characterized by the harmful act manifested in the action of leaving the military unit, training centre, or place of service, or in the inaction of not reporting for duty or concentration or mobilization in cases of leave from the military unit or training centre, distribution, transfer, return from a mission, from leave, or a curative institution.

Awareness of the offence represents an important element of volitional behaviour. The adoption and utilization of a decision by the subject are not possible without understanding the social significance of the actions committed and the harmful consequences that may occur at any moment. The principle of the importance of the deed for the individual serves as a determining criterion for selective activity. Any genuine volitional activity constitutes a selective act, involving conscious choice and decision-making [7, p. 123].

No person can be compelled to commit an offence, given the fact that they possess the capacity for selective behaviour, consciousness, and their own will. An individual can refrain from committing an unlawful act at any moment they choose.

From these considerations, volitional activity in legal literature is regarded as a directed, conscious influence of individuals on the surrounding world, as an active endeavour of a person to satisfy current needs, to achieve, and attain a specific goal [8, p. 69-71].

The analysed offence can be committed by a subject who holds the special status of conscripted military personnel, short-term military personnel, contracted military personnel, or a reservist called to training or mobilization, as well as mobilized individuals. In practice, a reservist is also considered a military person. Therefore, in the context of Art. 371 of the Criminal Code of the Republic of Moldova, it does not refer to just any reservist but to a person who performs military service as a concentrated or mobilized reservist.

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Under Art. 1, para. (3) of Law No. 345/2003 [9], national defence represents one of the fundamental functions of the state. According to Art. 3 of this law, the legal framework of national defence is maintained by the Constitution of the Republic of Moldova, the National Security Strategy, the National Defense Strategy, and the Military Strategy, the Military Doctrine of the Republic of Moldova, this law, other normative acts of the Republic of Moldova, as well as universally accepted norms of international law.

In its political-military course, the Republic of Moldova: does not endorse war (except in cases of self-defence) as a means of achieving political goals; promotes a pacifist foreign policy; guarantees its military security without jeopardizing the security of other countries and the overall security, etc.

Taking into account these requirements, the Republic of Moldova: respects the principles of the inviolability of state borders and the peaceful resolution of international disputes; does not consider any state as its enemy; does not assert territorial claims against other states and does not accept any territorial claims against itself, etc.

At the same time, the Republic of Moldova is obliged to take into account the potential sources of military danger to sovereignty, independence, and territorial integrity, including those related to unregulated relations between different states in the region [10, p. 1324].

Desertion constitutes a serious military offence punishable accordingly. Since the soldiers have taken the Oath of Allegiance to the Homeland, they assume the sacred duty to respect it and to be always on duty, especially and preferably when the independence and integrity of the Republic of Moldova are threatened. Thus, the soldier assumes certain risks and duties to demonstrate patriotism and devotion to the homeland. [12, p. 411].

Desertion represents a revolting action and then an offence. Through this offence, the soldier seriously violates the Regulations on Military Discipline, the sworn Oath, generating negative and irreversible consequences at certain moments [13, p.222].

Respecting internal order and discipline are necessary elements regarding the fulfilment of military service. Guaranteeing the respect of these components will reduce the determination of soldiers to desert, thereby encouraging the disciplined performance of military service to the commitments made to maintain peace and security throughout the territory of the Republic of Moldova.

Conclusions

The Constitution of the Republic of Moldova [11], states in Art. 56 that “Devotion to the country is sacred.” Paragraph 2 of the same article expands the content of the given duty, characterized by the fact that “Citizens entrusted with public functions, as well as the military, are responsible for faithfully fulfilling their obligations and, in cases provided by law, take the oath required by it.” In the continuation of the fulfilment of this duty, the Constitution stipulates that “Defending the Homeland is a sacred right and duty of every citizen.”

Fulfilling military duties with honour and good faith in the interest of the state is a necessary condition for ensuring national security. Defending the state is a paramount obligation imposed by the country's population and thus carries significant moral qualities: patriotism, devotion, and love for the country. From this perspective, national defence, in a legal sense, represents a right, and in connection with military service, an obligation.

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Desertion poses a major problem for any state, as committing this act can seriously impact the country's defence and security capabilities. Therefore, the state's criminal legislation needs to monitor and regulate the occurrence and progression of military desertion to adapt the framework of military offences to the current situation, thus preventing any temptation to commit such acts.

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