



Characteristics of Punishment for Property Embezzlement and Appropriation by Military Personnel through Abuse of Office

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Article	Abstract
<p>Keywords: embezzlement; appropriation; military property; military personnel; corruption.</p> <p>Article History Received: Apr 20, 2023; Reviewed: Apr 25, 2023; Accepted: Jun 06, 2023; Published: Jun 12, 2023;</p>	<p><i>The article is focused on the analysis of legislative regulation of sentencing and exemption from punishment of persons who have committed criminal offenses connected with the appropriation and embezzlement of military property by military personnel through the abuse of official position. The variability of responsibility for the appropriation and embezzlement of military property was analyzed, beginning with the Criminal Code of 1960, the effective Criminal Code of 2001, and the draft new criminal legislation on this criminal offense. This study employed a comparative legal analysis of responsibility according to administrative and criminal legislation, defines the level of punishment for the committed offenses, and presents. The author's classification of disciplinary, administrative, and criminal responsibility. Criminal offenses related to corruption were also analyzed and the restrictions that cannot be applied to persons who have committed corruption offenses were investigated. This study also proposes a list of corrupt criminal offenses, explores possibilities for mitigating criminal liability for persons who have committed corruption criminal offenses that would not exceed the ban on mitigating criminal responsibility for corruption offenses, and considers the possibility of imposing additional types of punishment to persons who have committed criminal offenses in the area of the appropriation and embezzlement of military property. Statistical data on administrative and criminal proceedings on this issue were analyzed.</i></p>



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INTRODUCTION

Due to the military situation in Ukraine, there are increasing questions concerning the criminal prosecution of persons who commit the embezzlement of military property using their official position. A very large amount of military equipment was borrowed or received from other countries. Therefore, it is necessary to analyze what responsibility is envisaged by the Ukrainian legislation on the illegal acts with military property, in particular legislative gaps and inconsistencies. For this purpose, it is necessary to analyze the importance of assuring justice for the state over the committed offenses connected with the appropriation and embezzlement of military property with the use of service position, and the practice of the court concerning the type and size of punishment for the committed act. Each country can have its own laws and procedures to exempt military personnel from punishment. Ukraine's relations with member states of the Association of Southeast Asian Nations (hereinafter – ASEAN) are on the rise (Lavrentieva et al., 2020). Ukraine considers the ASEAN an important partner in the region and seeks to strengthen cooperation with these countries at various forums and within international organizations. In addition, Ukraine seeks to expand cooperation with the ASEAN in the areas of combating terrorism, ensuring cyber security, and maintaining peace and security, including participation in joint military exercises and peacekeeping operations (Levchenko et al., 2021). Consequently, the experience of the countries of Southeast Asia can be useful for improving the legal framework of Ukraine in the context of the specific features of punishment and sentencing for embezzlement and appropriation of military property by military personnel through abuse of office.

This article is aimed at conducting the comparative analysis of normative legal documents regulating responsibility for criminal offenses related to appropriation and embezzlement of military property by military personnel using their official position in the countries of Southeast Asia and Ukraine, as well as the analysis of statistical data on the application of exemption from punishment and sentencing for these acts in Ukraine.

The object of the article is the social relations that arise in the public sphere in connection with criminal offenses connected with the appropriation and embezzlement of military property by military officers using official positions, while the subject involves normative-legal documents regulating the responsibility for criminal offenses related to the appropriation and embezzlement of military property by military personnel using the official position and statistical data on the application of penalty and punishment for the indicated acts.

METHODS

To study this issue, we employed a range of methods. First, the theoretical method was used to determine the purpose and goals of punishment just when military criminal offenses are committed by military personnel. Secondly, the comparative-legal method was used to study penalties for criminal offenses committed by military personnel by comparing the Codes of 1960, 2001, and the draft new Criminal Code of Ukraine. Thirdly, the statistical method was used to calculate the number of persons who have committed criminal offenses and have been brought to criminal responsibility under Art. 401 of the Criminal Code of Ukraine (2001) and Art. 250 of the Criminal Code of Ukraine (1960). We will begin with the study of the judicial statistics of criminal prosecution for military criminal offenses and will proceed to the analysis of part 2 of the Art. 410 of the Criminal Code of Ukraine, concerning criminal prosecution of officials who use their service activity for appropriation and embezzlement of property.

RESULTS AND DISCUSSION

The analysis of legislative regulation of military offenses in the countries of Southeast Asia

Studying the experience of other countries can improve the system of discipline and establish effective mechanisms for controlling military personnel in the field of embezzlement and appropriation of military property. In many countries of Southeast Asia, there are laws and military rules governing the actions of military personnel and providing for punishment for embezzlement and appropriation of military property (Britchenko & Saienko, 2017).

Borrowing the experience of the countries of Southeast Asia in the criminal legal context, in the study of exemption from punishment and sentencing for embezzlement and appropriation of military property by military personnel through abuse of official position, is interesting for Ukraine for several reasons. First, Southeast Asia is the fastest-growing region in the world where four of the world's ten largest economies are located (Osiejewicz, 2020; Shambaugh, 2018; Zhang & Liu, 2019). Therefore, the study of the legislation and practice of these countries can provide Ukraine with useful information and examples on the regulation of military discipline, the establishment of procedures for the investigation and consideration of violations by military personnel, and the imposition of punishments. This can contribute to the improvement of Ukrainian legislation in this area and the introduction of effective mechanisms for controlling the behavior of military officials, which will positively affect the economy of the state.

Secondly, since the beginning of the 21st century, Ukraine has been actively developing its trade and economic ties with Asian countries. The main areas of cooperation are military-technical and the agricultural sectors. Despite the great distance from Ukraine, Indonesia, Singapore, Malaysia, and Thailand remain attractive and promising trade and economic partners for Ukraine (Osiejewicz, 2018).

The study of the experience of the partner countries of Southeast Asia can help Ukraine improve the procedures for investigating violations committed by military persons, particularly embezzlement and appropriation of military property. This may include improving methods of collecting evidence, conducting interrogations, and ensuring transparency and independence of the investigation. Familiarization with the practice of imposing penalties for such violations in Southeast Asia can provide Ukraine with an understanding of the diversity and effectiveness of various penalties, thereby contributing to the development of more effective sanctions against military personnel who commit embezzlement and appropriation of military property in the defense sector. All these improvements and adaptations will facilitate the perception of Ukrainian realities by the countries of Southeast Asia and will be useful in the context of expanding defense ties.

In different countries of Southeast Asia, various sanctions and types of punishments can be established for military personnel who abuse their official position to commit embezzlement and appropriation of military property. Exemption from punishment or imposition of punishment may depend on several factors, such as the degree of guilt of the accused, the seriousness of the crime, and the presence of previous violations. For such actions, military personnel may be subject to various types of penalties, including disciplinary sanctions, military disciplinary responsibility, or criminal liability (Honcharuk et al., 2021). Military courts, disciplinary commissions, or army commanders usually decide on the imposition of punishment (Effron & Wroblewski, 2022; Jöbstl, 2020; Schenck & Schlueter, 2020). They comply with military laws and regulations governing such cases.

For example, Indonesian law provides for rules regarding military discipline and liability for embezzlement and appropriation of military property. In particular, the Code of Military Discipline and other relevant laws determine the types of violations, investigation procedures, and sentencing (Armed Forces of Indonesia, 2023). In the military system of Indonesia, the cases of the abuse of office, embezzlement, and appropriation of military property can be heard by military courts. Under Article 359 of Indonesia's Military Service Act, military personnel can be subject to disciplinary sanctions, military disciplinary action, or criminal liability depending on the severity of the violation (2023 Indonesia Military Strength, 2023). However, each case is examined on an individual basis, and the final decision depends on the available facts and evidence. Exemption from punishment and sentencing presuppose a previous investigation, during which all the circumstances of the case are clarified, evidence is collected and the guilt of the military official is determined. The investigation may be carried out by military investigative bodies or special commissions (Alon Margalit, 2018; Shilin, 2022).

Singapore's Military Forces and Military Regulations Act establishes standards of conduct, military discipline, and investigation procedures. In some serious cases, military personnel involved in the theft and distribution of military property can be tried in the military court of Singapore (Lee, 2011). The military court is the judicial body responsible for considering violations of military laws by military personnel

(Simmons, 2021). Singapore's military courts consider cases of the abuse of office, embezzlement, and appropriation of military property by military personnel. According to Article 40 of Singapore's Military Code, military personnel may be subject to military disciplinary liability, which may include punishments such as dismissal from service, reduction of rank, salary, or other restrictions (Singapore Government Agency, 2023).

In Malaysia, the legislative regulation of the imposition of punishment and exemption from punishment of military personnel who have committed criminal offenses related to the appropriation and embezzlement of military property through abuse of office is based on several legislative acts (Ministry of Defense of Malaysia, 2023). For example, the Armed Forces Act defines military jurisdiction and judicial procedures for military offenses, such as embezzlement and appropriation of military property. Moreover, the Military Discipline Code establishes the discipline norms for military personnel (Law of Malaysia No 77 "Armed forced act 1972," 2006). It contains provisions on the violation of discipline, such as embezzlement and appropriation of military property, and procedures for investigating and imposing punishments. The Armed Forces Offences Act defines criminal offenses related to military persons. It includes provisions on embezzlement and appropriation of military property and provides for appropriate penalties for delinquents (Law of Malaysia No 77 "Armed forced act 1972," 2006).

In Malaysia, the abuse of office, embezzlement, and appropriation of military property by military personnel may be heard by military courts or military disciplinary commissions. Military courts have the competence to consider cases of criminal offenses committed by military personnel. Depending on the seriousness of the crime, military personnel may be subject to disciplinary sanctions, in particular dismissal, demotion, fines, or other restrictions. Malaysian military authorities pay attention to the prevention of embezzlement and appropriation of military property. This includes preventive measures such as raising awareness of military personnel about the consequences of committing crimes and the importance of following rules and norms (Law of Malaysia No 77 "Armed forced act 1972," 2006).

In Thailand, violations of military laws and regulations can be considered by military courts. Military personnel may be subject to disciplinary sanctions, military disciplinary liability, or criminal liability depending on the severity of the violation (Joll, 2010). Thai military authorities are actively working to prevent embezzlement and appropriation of military property. This includes the implementation of systems of control, audit, and supervision, as well as training programs to raise the awareness of military personnel regarding rules and responsibilities (Armed Forces of Thailand, 2023).

Analysis of legislative regulation of military offenses in Ukraine

Depending on the degree of public danger, punishment can be different for military offenses, ranging from disciplinary offenses, then military administrative offenses, and the most dangerous are military criminal offenses (criminal offenses

against the established procedure of military service). The first two types relate to offenses, while the latter belongs to criminal responsibility.

The table compares administrative responsibility and criminal responsibility (Table 1). In the article's disposition, these socially dangerous acts almost do not have a difference in the interpretation, but the sanctions of the article are absolutely different in the degree of severity. Besides, administrative responsibility does not entail criminal liability, with all restrictions imposed as a result of criminal responsibility. So, if military officials, according to the note to Art. 172¹³ of the Code of Ukraine on Administrative Offences are persons who are "military chiefs, as well as other military officers, who hold permanent or temporary posts related to the performance of organizational, administrative and economic duties, or perform such duties on the special order of the authorized command", this offense is corruption. However, it provides for the penalty from seven to one hundred and forty-five non-tax minimum incomes of citizens or imprisonment for up to seven days, which in the transfer of money is a fine from 1190 UAH to 10500 UAH or arrest for seven days.

It is necessary to draw attention that now the penalty under Art. 130 of the Code of Ukraine on Administrative Offences "Management of vehicles or vessels by persons who are in a state of alcohol, drug or other intoxication or under the influence of medications, which reduce their attention and speed of reaction", is a heavy penalty in the amount of one thousand non-tax minimum incomes of citizens, which is 17000 UAH. Therefore, in the case of Article 172-13 "The abuse of military service or official position by a military official, namely: the unlawful use of vehicles, buildings or other military property by a military official, the use of a military official for the performance of tasks not related to military service, as well as other abuse of power or service, committed for mercenary purposes or in other personal interests or in the interests of third parties" will be punished by maximum 10500 UAH and minimum 1190 UAH. But if the person (any, not military) drives in a state of alcohol intoxication, the penalty will be 17000 UAH.

While the same acts as mentioned in Art. 172-13 will be qualified for part 2 of Art. 410 of the Criminal Code of Ukraine because it is committed with abuse of service and part 1 of art. 410 the Criminal Code of Ukraine does not provide that this act is committed by a person involving official authority, according to the sanction of the article it can be committed by any military person. Consequently, it turns out that the lawmaker was mistaken when Art. 410 of the Criminal Code of Ukraine is referred to as corruption. Only part 2 of the Art. 410 of the Criminal Code of Ukraine is a criminal offense. The amount of punishment ranges from 5 to 10 years, so there should be a clear division when imposing such different types of punishment. There should be a clear explanation from the Supreme Court on these issues.

Table 1. Comparison of administrative and criminal liability

The Code of Ukraine on Administrative Offenses (Art. 1 – 212 ²⁴)	Criminal Code of Ukraine
<p style="text-align: center;">Article 172-13.</p> <p>Abuse of power or official position by a military official</p>	<p style="text-align: center;">Article 410</p> <p>Theft, appropriation, extortion of arms, ammunition, explosives or other military substances, means of transportation, military and special equipment or other military property, as well as appropriation of them by means of fraud or abuse of official position</p>
<p>The unlawful use by a military official of vehicles, buildings, or other military property, the use of military personnel to perform tasks not related to the military service, as well as other abuse of power or position, committed for the benefit or in other personal interests or in the interests of third parties, impose a fine of between seven and one hundred forty-five non-taxable minimum of citizens' income or imprisonment for up to seven days.</p> <p>The actions provided for in part 1 of this article, committed under special circumstances, entail a fine of one hundred and forty-five to two hundred and eighty-five untaxed minimum incomes or an arrest of seven to ten days in the guardhouse.</p> <p>Note: Military officials are understood as military chiefs, as well as other military personnel, who hold permanent or temporary positions related to the performance of organizational, administrative, or economic duties, or perform such duties on the special order of the authorized command.</p>	<p>1. Theft, appropriation, extortion of arms, ammunition, explosives or other military substances, means of transportation, military and special equipment, or other military property or possession of them using fraud are punishable by imprisonment for a period of three to eight years.</p> <p>2. The same actions committed by a military official with abuse of office, either repeatedly or by a group of persons, or those that have caused significant harm, are punishable by imprisonment for a term of five to ten years.</p> <p>3. The actions envisaged in parts 1 or 2 of this article, if they are performed in a special period, except for martial law, are punishable by imprisonment for a period of five to twelve years.</p> <p>4. The actions provided for in parts 1 or 2 of this article, if they are committed during martial law or in combat, burglary in order to possess weapons, ammunition, explosives or other military substances, means of transportation, military and special equipment, and extortion of these items, combined with violence that harms life and health of the victim, are punished with imprisonment for a term of ten to fifteen years.</p>

The classification of criminal offenses related to military responsibility occurs as follows:

1. Those that are not provided for by criminal nor administrative responsibility are subject to disciplinary responsibility;
2. Those that have the sign of a minor crime under part 2 of Art. 11 of the CC of Ukraine, namely: they do not constitute a public danger and could not cause significant harm, they are subject to administrative responsibility by formal logic;
3. Those that directly fall under the signs of Art. 410 of the Criminal Code of Ukraine and consequently to entail criminal responsibility.

However, the signs that divide these acts are not specified in any law except Art. 45 of the Disciplinary Statute states that "such an act is punished by disciplinary responsibility if this act is specified in the Code of Criminal proceedings or the

Criminal Code" (On the Disciplinary Regulations of the Armed Forces of Ukraine, 2022). It is the definition of the degree of public danger of action that determines what future responsibility will be. However, all these features are purely subjective and not specifically defined in any law. As a result, this is the main reason for the mistakes made in the qualification of the acts, and accordingly in the definition of the type and the amount of punishment for them.

Starting with general questions, we recall that the main purpose of punishment for any criminal offense is not only to punish but also to correct the sentenced person in accordance with part 1 of Art. 50 CC of Ukraine. This definition appeared for the first time in the CC of Ukraine 2001, whereas the Criminal Code of 1960 did not mention the purpose of punishment in Art. 22 the Criminal Code of Ukraine of 1960, which in our opinion is not positive, especially for future lawyers in the study of legislation (Fesenko, E. F. & Fesenko, 2001). Therefore, every future law specialist should even realize that the main purpose of punishment is to correct the sentenced person by means of punishment or release from punishment (Achmad, 2017; Notoprojo et al., 2022; Saputra, 2020) (in connection with the increase of the institute of probation it became more possible).

It is necessary to emphasize that the new draft Criminal Code contains a completely different approach to the concept of punishment and types of punishment, where the judge and his/her subjective attitude at the appointment of punishment are more advantageous. There are also positive and negative attitudes toward this type of punishment, but this project is more relevant to the Anglo-Saxon system of law, where the degree of severity of the act is determined not by the type of punishment. Thus, if a certain type of punishment is provided for in the article, then it is no longer an offense, but a crime. In this case, the term is determined by the level of danger of the act. Then the judge, even if he/she does not agree with the degree of danger of the act, must still appoint punishment within the limits of the article's sanction.

For example, we see what is happening now in section IV "Criminal offenses against sexual freedom and immunity", where "rape" can be punished less severely than "sexual violence", where sexual violence, unlike in the Istanbul Convention, is understood to be narrower in meaning as "violence without bodily penetration", namely: touching, demonstration of a naked body, etc., and also qualified signs such as family relations, namely when the rape of a woman is punished more strictly than the unknown person of the female article. In our opinion, this is a violation of the basic principles of punishment, and thus of the stated goal. Therefore, the new project contains a completely new approach to the purpose of punishment, recognizing it as the safety of society from criminal offenses and other illegal actions envisaged by this Code, which is contained in Art. 3.1.1. "The concept and purpose of the criminal-legal means" of the new project are to determine that prevention has become the main purpose of punishment in contrast to the effective Code of 2001 (Criminal Code of Ukraine (project), 2022).

It is necessary to define what belongs to prevention: general and special. General refers to all persons who are under the law of Ukraine on criminal responsibility, while

special prevention refers to persons who have already been brought to criminal responsibility and do not reoffend. So, the vector of punishment has changed. In addition, there is a division between the types of criminal-legal means (Article 3.1.2) and the penalties (Art. 3.2.1.). Criminal legal means include 1) punishment; 2) probation; 3) security means; 4) restitution; 5) compensation; 6) confiscation of property; 7) removal of things; 8) conviction; 9) criminal and legal means against a legal entity, while penalties for crimes and offenses include: 1) penalty; 2) imprisonment for a certain period; 3) long-term imprisonment (if committed) and 1) monetary penalty; 2) imprisonment; 3) unpaid work; 4) arrest (in case of misconduct).

However, the main thing is that the degree of severity of the crime is determined by the stages: 1) first-degree provides for a fine in the amount of 100 to 500 payment units or imprisonment for a term of three months to two years; 2) a second-degree crime provides a fine in the amount of 500 to 1000 payment units or imprisonment for a term of two to three years; 3) a third-degree crime provides a fine in the amount of 1000 to 2000 payment units or imprisonment for a term of three to four years; 4) a fourth-degree crime – imprisonment for a term of four to six years; 5) a fifth-degree crime – imprisonment for a term of six to eight years; 6) a sixth-degree crime – imprisonment for a term of eight to ten years; 7) a seventh-degree crime – imprisonment for a term from ten to thirteen years; 8) an eighth-degree crime – imprisonment for a term from thirteen to sixteen years; 9) a ninth-degree crime – imprisonment for a term from sixteen to twenty years or a long term imprisonment. And for ninth-degree crimes, including genocide, aggression, crime against humanity, or war crime (sections 11.1–11.4 of this Code), are subject to imprisonment for a term of 16 to 30 years or long-term imprisonment (Criminal Code of Ukraine (project), 2022).

Thus, along with the constant humanization of the punishment that has taken place in the last 22 years, the new project has significantly changed the attitude to war crimes, having changed the amount of punishment and defined them from sixteen to thirty years or long-term imprisonment as well as ninth-degree crimes. Nevertheless, the draft Code again uses different terms without giving an answer to why different terminology is used. It is known that the term war crimes is used for crimes against the peace and security of mankind and those that have been ratified by international conventions (Gaggioli, 2018; Heller, 2019), while military crimes is a fixed term that comes from previous codes and determines exactly those criminal offenses that occur during military service.

However, if we consider the new project in detail, it has big gaps and inconsistencies, which, in our opinion, will still be worked out. For example, almost all military crimes belong to crimes of the 3rd degree, which are subject to three to four years' imprisonment, while in the current version of the Criminal Code of Ukraine (part 2 of Art. 410), this is a serious crime which is punished by the imprisonment of 5 to 8 years. Thus, the punishment systems vary in the current Criminal Code. Unlike in the 1960 Code, there is no death penalty as a form of punishment that has been replaced by a long-term deprivation of liberty or a maximum-term penalty in the form

of 15 years of imprisonment. Yet, the main thing was the introduction of new types of punishment, which did not exist before and are applied to military officers, such as arrest, and restrictions on military officers holding in a disciplinary battalion. Therefore, the rights of military officers in this regard have been considerably expanded.

The study is based on the current legislation, so all the examples and proposals mentioned will refer to the current legislation. Art. 410 of the Criminal Code of Ukraine is the only one in section XIX of the Criminal Code "Criminal offenses against the established procedure of carrying out military service (military criminal offenses)" that refers to corruption in accordance with the notes to Art. 45 of the Criminal Code of Ukraine (Criminal Code of Ukraine, 2001). All the crimes that are in the notes to Art. 45 of the Criminal Code of Ukraine are not subject to such privileges, which exist in the Criminal Code and still have the name of encouraging the norms, namely, exemption from criminal responsibility (Art. 45-49 of the Criminal Code of Ukraine), exemption from punishment with probation (Art. 75 Criminal Code of Ukraine), the appointment of a softer penalty than is provided by Art. 69 of the Criminal Code of Ukraine, which is applied to other categories of persons and in the case of several mitigating circumstances; the court may prescribe a milder punishment that is not contained in the sanction of the article.

According to the note of Art. 45 of the Criminal Code of Ukraine, Art. 410 of the Criminal Code of Ukraine refers to corruption criminal offenses. However, unlike in administrative legislation in the notes to Art. 172¹³, military officials are military chiefs, as well as other military officers, who hold permanent or temporary positions related to the performance of organizational, administrative, or economic duties or perform such duties under special instructions of the authorized command. Therefore, according to this definition, it becomes clear that art. 172¹³ Code of Ukraine on Administrative Offences is corruption. Yet, in criminal legislation part 1 of Art. 410 of the Criminal Code of Ukraine, it is not defined, meaning that it may be done by any person. Therefore, we propose to make changes to the notes of Art. 45 of the Criminal Code of Ukraine, which will include only part 2 and part 3 of the Art. 410 of the Criminal Code of Ukraine as corruption (Code of Ukraine on Administrative Offenses, 2022).

The only option to mitigate the punishment of a military officer who has committed a criminal offense under Art. 410., including theft, appropriation, extortion of weapons, ammunition, explosives, or other military substances, means of transportation, military and special equipment, or other military property, as well as possession of them by the way of fraud or abuse of official position is by referring to Art. 69¹. The mitigating circumstances are defined in para. 1 (surrender, sincere or active assistance in the investigation of criminal offenses;) and para. 2 (voluntary compensation of the damage caused or the removal of the damage caused) of part 1 of Art. 66 of this Code. If aggravating circumstances are absent and in case of a voluntary plea of guilty by the accused, the term or amount of the penalty may not exceed two-thirds of the maximum term or the size of the most severe penalty

provided for by the relevant sanction of the article (On Amendments to the Code of Ukraine on Administrative Offenses..., 2021). If such an example will take place in our article, we can say that at the maximum, which exists in Art. 410 of 8 years, the person can be punished for a maximum of 5 years and 4 months.

Article 49 of the Criminal Code of Ukraine provides for exemption from punishment due to the expiry of limitation periods. This kind of exemption may be applied to a person if from the date of the criminal offense until the date of the legal force of the criminal sentence has passed a certain term (in our case it is 10 years), namely when committing the criminal offense under part 1-2 of Art. 410 of the Criminal Code of Ukraine. However, for the application of Art. 49 of the Criminal Code of Ukraine to persons who have committed criminal offenses under parts 1-2 of Art. 410 of the Criminal Code of Ukraine, as for other criminal offenses, it must also be guaranteed that the given person will not avoid the pre-trial investigation and the court, according to part 2 of Art. 49 the CC of Ukraine. If he/she refuses to be released from criminal responsibility, the responsibility begins from the age of 15.

In addition to the above-mentioned punishment of a military officer who has committed a corruption criminal offense according to Art. 410 of the Criminal Code of Ukraine, additional punishment may be imposed, which is not provided in any article. However, considering the action, in case of a serious criminal offense, the court may apply Art. 54 of the Criminal Code of Ukraine "Deprivation of special rank, title, and qualification class", such as military rank. However, according to judicial practice, in addition to the signs mentioned in the law, additional signs are necessary, namely: the use of a military rank by a military official in criminal offense, the use of a military rank for obtaining unlawful benefits or privileges for himself or other persons, the presence of disciplinary charges, etc. Meanwhile, the court has the right to remove any rank of both sergeants and officers, which are appropriated by the bodies of military administration, excepting the highest officers, which are awarded by the President of Ukraine. This is referred to as the principle of equality. However, there is an exception, in which the court cannot deprive persons of a scientific rank (associate professor, professor) or a state award (order, medal) but can send a letter to the competent authority for further resolution of this question concerning deprivation of this rank, etc.

The last type of additional punishment, which can be assigned for Art. 410 of the Criminal Code of Ukraine is part 2 of the Art. 54 of the Criminal Code of Ukraine, in which "deprivation of the right to hold certain posts or engage in certain activities as an additional penalty may be imposed in cases it is not provided for in the sanction of an article (sanction of a part of an article) of a Special Part of this Code, provided that, taking into account the nature of a criminal offense, the court considers it impossible to preserve the right to hold certain positions or to engage in certain activities, either by the person convicted or other circumstances of the case" (Criminal Code of Ukraine, 2001). It is necessary to emphasize that it can be appointed only as an additional punishment because the basic one must be provided in the sanction of the article. As an additional punishment, it is prescribed for a term of 1 to 3 years. In

cases where the assignment to the main punishment relates to isolation from society, it is extended for the entire term of the main punishment and for the term for which it is intended as an additional one.

We move from theoretical issues to the analysis of statistical data on the imposition of punishment for military offenses related to the appropriation and embezzlement of military property by military personnel using the service position and their separation from related criminal offenses (Figure 1).

Starting from the administrative attraction data on the Art. 172¹³, 22 persons were sentenced for abuse of power or position during military service in 2018, 28 persons in 2019, 16 persons in 2020, and 19 persons in 2021, while the penalty was imposed on 13 persons (59%), 17 persons (60.7%) in 2019, 7 persons (43.75%) in 2020, 9 persons (47.3%) in 2021. In 2018, 2 people (15.38%) were released from administrative responsibility due to a low danger of the offense, 3 persons (17.6%) were released in 2019, 1 person (12.28%) in 2020, 2 people (22.22%) in 2021. There were 2 cases (15.38%) closed due to the absence of the event and composition of the administrative offense in 2018, 5 cases (29.4%) in 2019, 4 cases (57.14%) in 2020, 4 cases (44.44%) in 2021. There were 5 cases (55.55%) closed due to the end of the period of administrative responsibility in 2018, 3 cases (17.6%) in 2019, 3 cases (42.85%, 28%) in 2020, 2 cases (33.33%) in 2021.

The fine was imposed for 13 people (100%) in 2018, 16 persons (94.11%) in 2019, 7 persons (100%) in 2020, and 9 people (100%) in 2021. Almost all persons were punished by the penalty in the form of a fine, there was only 1 (5.88%) case in 2019 with arrest and detention in the guardhouse.

The amount of the fine in 2018 was 2367 UAH, which is 139 non-tax minimum income of citizens, while the amount paid on average was only 850 UAH, which is 50 non-tax minimum income of citizens; in 2019, it was 2491 UAH, which is 146 non-tax minimum incomes of citizens, while 1232.5 UAH were paid; in 2020, it was 2477 UAH, which is 145.7 non-tax minimum incomes of citizens, while 1772 UAH were paid; in 2021 it was 2673 UAH, which is 157 non-tax minimum incomes of citizens, while 1200 were paid.

Based on the indicators, the total amount of the fine for the abuse of power or position by military personnel is 2500 UAH, which during these years is equal to 100 dollars, while 50-70% of the punishment was paid.

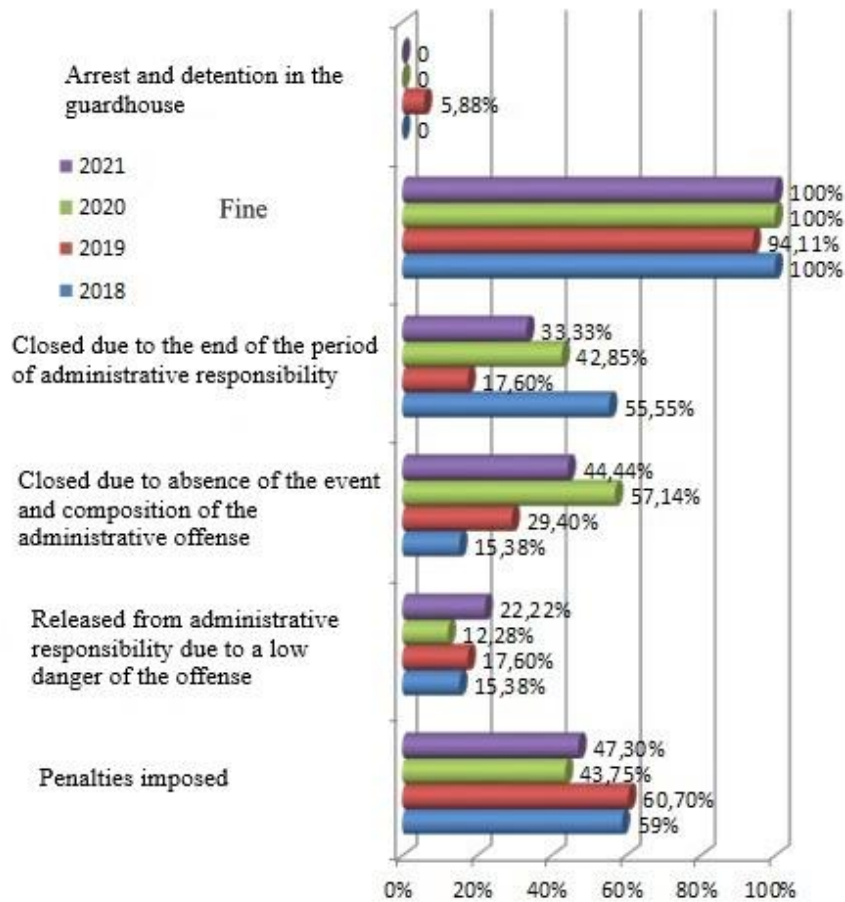


Figure 1. Analysis of statistical data on the imposition of punishment for military crimes related to the appropriation and embezzlement of military property by military personnel using their official position and their distinction from related criminal offenses

According to the statistics, which we analyzed, it turns out that every year there is an increase in the act under Art. 410 CC of Ukraine. Thus, in 2018 of all military criminal offenses committed, 1.87% referred to Art. 410 the Criminal Code of Ukraine was under consideration in the court, of which 1.15% was considered, with 1.12% receiving a penalty. In 2019, 1.17% was considered under Art. 410 CC of Ukraine out of all military crimes, 0.8% of other military crimes were considered, and 1.18% received a verdict. In 2020, 1.77% was considered according to Art. 410 CC of Ukraine, 0.67% was considered, and 0.77% received a verdict. In 2021, 2.13% was considered, 0.99% was finished, and 1.07% received a verdict.

According to these statistics, it can be observed that the number of cases in court concerning the appropriation and embezzlement of property is very insignificant even compared with the total number of all criminal offenses against the established order of military service.

According to the quantitative indicators (Figure 2) on cases considered and brought to justice, on average, about 100 cases are considered per year to bring persons to criminal responsibility under the art. 410 CC of Ukraine. As far as the number of persons is concerned, they are slightly higher than about 115 persons per year because sometimes this crime is jointly committed with other persons. However, it was 25 guilty verdicts per year, 4 cases were returned and 1-2 cases were closed on average. A more detailed analysis by years is as follows: number of cases on the review 2018 – 97 cases, 2019 – 94 cases, 2020 – 102 cases, 2021 – 97 cases; the number of persons brought to criminal responsibility in 2018 is 116 persons, 2019 – 111 people, 2020 – 125 people, 2021 – 116 people; sentences issued: 2018 – 38 cases, 2019 – 25, 2020 – 19, 2021 – 38; guilty verdicts: 2018 – 31 cases, 2019 – 22, 2020 – 14, 2021 – 31; non-guilty verdicts: 2018 – 5 cases, 2019 – 3, 2020 – 3, 2021 – 5; remanded to the prosecutor: 2018 – 4 cases, 2019 – 1, 2020 – 1, 2021 – 1; closed: 2018 – 1 case, 2019 – 1, 2020 – 1, 2021 – 4.

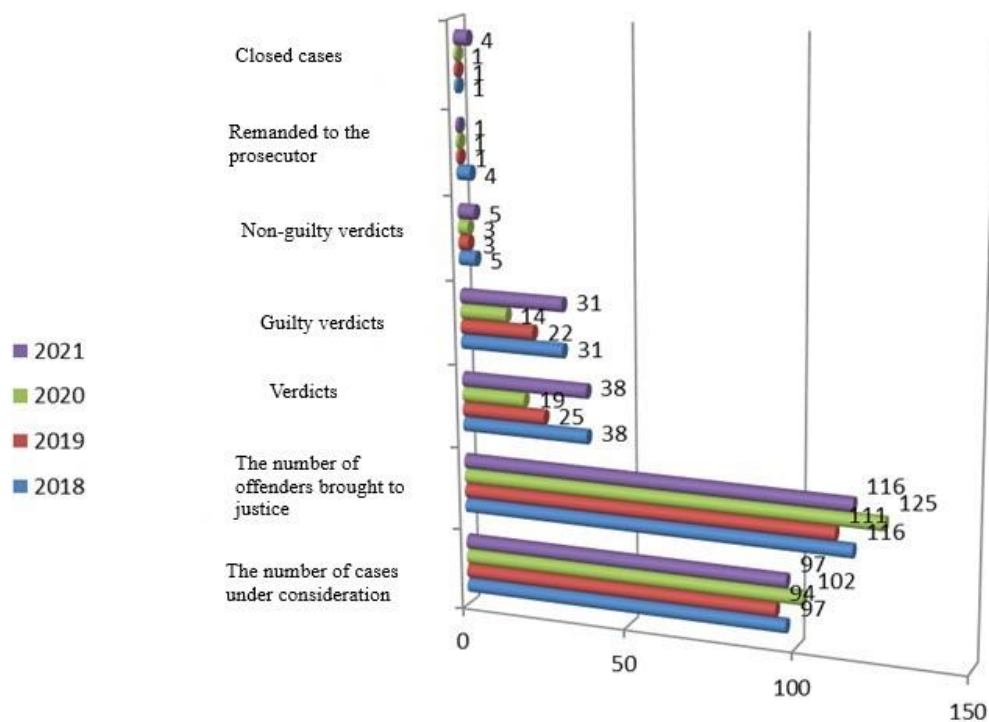


Figure 2. Quantitative indicators of cases

We will analyze the convicted in detail regarding the differences in different parts of the Art. 410 CC of Ukraine. Table 2 considers the number of cases that have gained legal force in the reporting period. The diagram shows that most cases in which the sentences were passed are in part 3. 410 CC of Ukraine "Actions provided for by the first or second parts of this article if they are taken in the conditions of a special period, except for the martial law". On average, during 4 years 18 cases per year received

verdicts under part 3 Art. 410 CC of Ukraine, while 1 case per year – under part 1 and part 2 of this article.

However, it is important to study the types of punishment that were intended for the act of Art. 410 the Criminal Code of Ukraine and analyze how changes in the corruption legislation have affected the appointment and release from punishment. Thus, in 2018 according to the data of the website, Judiciary Ukraine, 24 persons were found guilty (Figure 3), while the court had 25 cases under consideration, but 1 case was closed due to the death of the person, while 3 persons were punished in the form of imprisonment from 3 to 5 years under part 3 of Art. 410 the Criminal Code of Ukraine. Accordingly, this indicator made up 12.5% of other types of punishment provided for by Art. 410 CC of Ukraine, such as detention in a disciplinary battalion appointed to 1 person (4.17%), the service restrictions for military servants are assigned to 3 persons (12.5%), the fine is at the same level as the service restrictions for military servants and is 12.5% (Judiciary Ukraine, 2021).

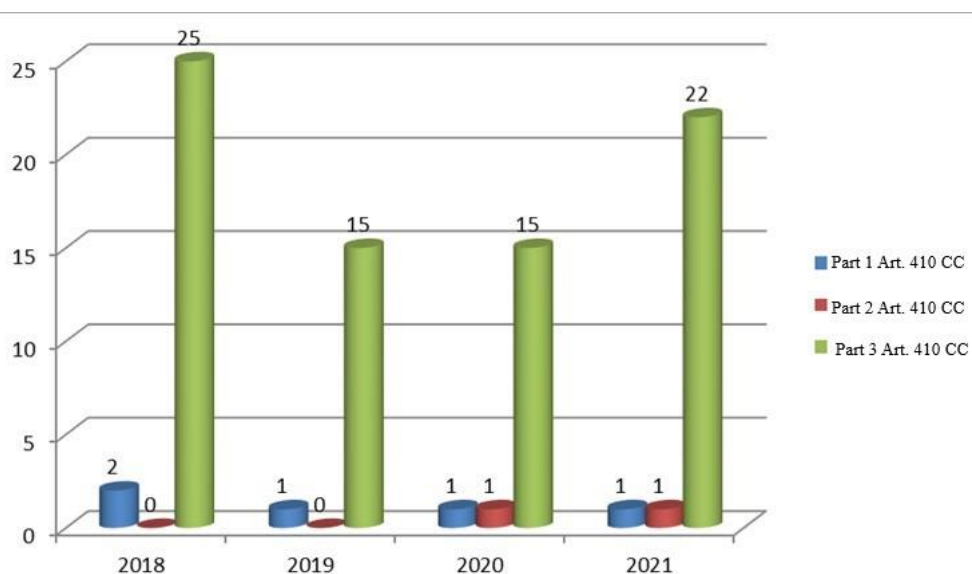


Figure 3. Types of punishment imposed on crimes under Art. 410 of the Criminal Code of Ukraine (2018-2021)

The most surprising statistic is that in 2015 the Law of Ukraine 336-VIII of 21.04.2015 "On amendments to certain Legislative acts of Ukraine concerning Support of activities of the National Anti-Corruption Bureau of Ukraine and the National Agency on Preventing Corruption" was amended and supplemented; 1) A note to Article 45 was put in the following wording: "Note. The corruption crimes provided for in Articles 191, 262, 308, and 312 are considered criminal offenses under this Code, according to Articles 313, 320, 357, 410, in the event of the abuse of office, as well as crimes under the Articles 210, 354, 364, 364-1, 365-2, 368-369-2 of this Code" (On Amendments to Certain Legislative..., 2015). At the same time, the disposition of the

Art. 75 the Criminal Code of Ukraine states that the conditions of exemption from responsibility do not apply to corruption criminal offenses. Since the adoption of the Law of Ukraine No. 1698-VII of 14.10.2014 (Law of Ukraine No. 47., 2014), this condition in the Criminal Law has been in force for 8 years. Accordingly, in 2018, the court had no right to release the persons concerned from criminal liability with probation, but in the following years, the release was carried out with probation for persons who committed criminal offenses under the art. 410 CC of Ukraine, which according to the law, is recognized as corruption. Therefore, in 2018, 14 persons were released with probation, which amounted to 58.3% of all convicted persons this year. All these data were analyzed for part 3 Art. 410 CC of Ukraine while in part 1 Art. 410 the CC of Ukraine in 2018, two cases were under consideration, one of which was closed, and the other person was released from punishment with probation under Art. 75 CC of Ukraine respectively.

In 2019, statistical data on the sentenced to Art. 410 CC of Ukraine were the following: 16 cases were under consideration, of which only 1 case was under part 1 of Art. 410 the CC of Ukraine and this one person was found guilty and released from punishment with probation. All other cases were considered under part 3 of Art. 410 CC of Ukraine, 14 persons were found guilty, and another person was declared insane with compulsory medical measures being applied. In 2019, only 1 person was punished in the form of imprisonment for a term of 3 to 5 years under part 3 Art. 410 Criminal Code of Ukraine (6.66%), all other 15 persons were released from criminal responsibility, which amounted to 94.33% of all convicted in 2019.

In 2020, according to the data of the website Judiciary Ukraine, 17 cases were considered by the court, one case under part 1 of the article. 410 CC in which the person was recognized guilty and released from punishment with probation, one case was considered under part 2 Art. 410 CC with the person being acquitted. Fifteen cases were considered under part 3 of Art. 410 Criminal Code of Ukraine and 15 persons were found guilty, four of which were to be punished in the form of imprisonment (25%), one person was to be punished in the form of imprisonment of 3 to 5 years (6.25%), and 3 persons were punished with imprisonment of 5 to 10 years (18.75%). However, the detention in a disciplinary battalion is appointed to 2 persons, which respectively amounted to 12.5%, the service restrictions for military servants are assigned to 1 person (6.25%), and the fine is also 6.25%. Fewer persons were released from punishment with probation than in the previous years, but still, there were 5 cases, accounting for 31.25%.

In 2021, the court had 23 cases, and no case was considered under part 1 of Art. 410 CC; one case was under part 2 Art. 410 CC of Ukraine because it was closed during the court hearing. However, 22 cases were considered under part 3 of the Art. 410 CC of Ukraine and 21 persons were found guilty, one case during the trial, and one case was closed due to the death of the person. One person was punished with imprisonment (4.76%) from 5 to 10 years and 1 person was punished with limitation of liberty (4.76%), 2 persons (9.52%) were appointed to a disciplinary battalion, 1 person (23.8) was punished by restrictions on military personnel, which referred to an

additional type of punishment. Under part 3 of the Art. 410, the deprivation of the military special rank and qualification class was imposed on 3 persons, which amounted to 14.3%, and the deprivation of the right to hold certain positions and to engage in certain activities was imposed on 1 person, which amounted to 4.76%. The problem is that the law-maker did not provide for additional punishment in the sanction of the article, and accordingly the court is not obliged to apply them. In this regard, it is necessary to change the sanctions providing for these types of punishment as obligatory. In this case, the court will be obliged to appoint them, and in case of not appointing in the motive part of the verdict, it is obliged to explain its decision. Fewer persons were released from punishment with probation than in the previous years, but still, there were 5 cases, accounting for 31.25% (Judicial Power of Ukraine, 2021).

As a result of the analyzed statistical data on the types of punishment, it is possible to conclude that military servants, unlike the general subject, will not receive a real punishment, which is more than 50% on average. In 2019, almost 95% were released from the punishment with probation. However, according to the Law of Ukraine on criminal liability, this is prohibited because Art. 410 of the Criminal Code of Ukraine is a corruption criminal offense and prohibits the exemption. This analysis is presented above in the analysis of theoretical material.

Detention in a disciplinary battalion is the next type of punishment, which is applied to military corrupt officials. However, under the Law of Ukraine on criminal responsibility, it can be applied only in case of punishment in the form of deprivation of liberty for up to 2 years and then transferred to the disciplinary battalion. Yet, the sanction of the article does not provide for the punishment of less than 3 years and only according to part 1 of the Art. 410. If the punishment is prescribed in the form of detention in a disciplinary battalion under part 2 and part 3 of Art. 410, the lowest term of punishment is 5 and 10 years, respectively. If the court imposes a punishment that is not provided in the sanction of the article, this is possible only when the Art. 69 is applied, namely the appointment of a softer punishment than provided for by law. There are no other ways for the corrupt officials in accordance with the norms of the Criminal Code of Ukraine. In the future, we will analyze cases and the number of applications of Art. 69 Criminal Code of Ukraine for the years indicated to the persons found guilty of committing a single corruption criminal offense.

The most surprising is the decision of the courts concerning the non-application of additional punishment such as deprivation of the right to hold certain posts or engage in certain activities and deprivation of a military rank, title, or qualification class if these are persons engaged in corrupt criminal offenses. However, it is wrong to accuse only the courts. First, the lawmaker did not foresee these types of punishment as mandatory in the sanction of the article, in connection with which it affects their appointment by the courts. If the lawmaker envisaged them in the sanction of the article as obligatory, the court would not be able to avoid them. There is a possibility, again, that is Art. 69 of the Criminal Code of Ukraine, in the application of which the court has the right not to appoint additional mandatory penalties when they are specifically designated in the sanction of the article. However, in this case, it is much

more difficult. Therefore, we believe that the sanction of the article should be changed and supplemented by additional penalties. Thus, out of 76 persons for 4 years from 2018 to 2022, who were recognized guilty, 5 were appointed to deprivation of a military special rank, title, and qualifying class, which accounted for 6.58%, while the deprivation of the right to hold certain posts or to engage in certain activities for 4 years was imposed only on 2 persons, which amounted to only 2.63% of the total number of persons sentenced in 2022 (Figure 4).

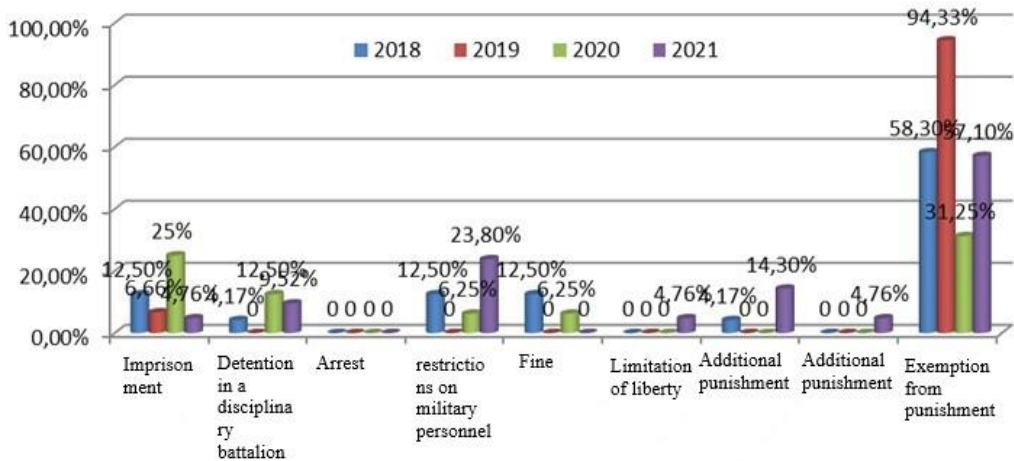


Figure 4. Total number of persons sentenced in 2022

We will analyze the data on persons who have been punished by the cumulation of offenses with the application of Article 69 of the Criminal Code of Ukraine "The appointment of a softer penalty than is provided by the law". Although it should be emphasized that since 2014 according to the Law of Ukraine No. 1698-VII of 14.10.2014, in which Section II of the final clauses in paragraph 2 of sub-paragraph B it is necessary to amend such legislative acts of Ukraine as part 1 of Art. 69. After the words "the decision", the words "except for cases of conviction for corruption crime" should be added (Law of Ukraine No. 1698-VII, 2014). Therefore, since 2014 courts have had no right to apply Art. 69 Criminal Code of Ukraine to corrupt criminal offenses, but the application is different in practice.

In addition, the Law of Ukraine No. 1576-IX of 29.06.2021 "On amendments to the Code of Ukraine on Administrative Offenses, the Criminal Code of Ukraine regarding the improvement of responsibility for declaring unreliable information and failure of the subject to declare the declaration of the person authorized to perform functions of the state or local self-government" introduced additional changes in part 1 of Art. 69 and part 1 of Art. 75, adding the words "criminal offense connected with corruption" after the words "for a corrupt criminal offense" (On Amendments to the Code of Ukraine on Administrative Offenses..., 2021). So now we will analyze how the judicial power fulfills the requirements of the law.

The diagram shows the following picture for cumulative crimes committed under the art. 410 the Criminal Code of Ukraine, in 2018, there were 41% (10 persons) convicted, which means that during the trial the court found that this military official, except for the appropriation and embezzlement of military property, committed some criminal offenses, which in our opinion indicates its antisocial character. In 2018, however, only 12.5% (3 persons) of the persons found guilty of criminal offenses of the stipulated article were appointed to five-years' imprisonment under Art. 410 CC of Ukraine. A person makes a corrupt criminal offense in combination with another criminal offense but does not receive a valid sentence. Yet, in the following years, the situation was even worse. In 2019 – there were 50% (7 persons), in 2020 – 50% (8 persons), and in 2021 – 33.3% (7 persons). At the same time, imprisonment was imposed on 6.66% (1 person) in 2019, 25% (4 persons) in 2020, and 4.76% (1 person) in 2021.

There are also cases of punishment under cumulative sentences, which means that the military officer who had already committed a crime or criminal offense but had been working at the place of service again, committed a corruption criminal offense before the end of the sentence or conviction. Accordingly, we can argue that for a previous crime, the punishment could be either a fine or restrictions on military personnel because otherwise, it is impossible at all. Thus, in 2018, 1 person (4.7%), 2019 – none (0), 2020 – 2 persons (12.5%), 2021 – 1 person (4.76%). The indicators are small, but they exist and are almost equal to the punishment in the form of imprisonment.

The application of Art. 69 of the Criminal Code of Ukraine "The appointment of a softer penalty than provided for by law is the indicator that has been banned from applying to persons who have committed corruption since 2014. However, the statistics show that it is still being applied, namely: 5 persons (20.8%) in 2018, 1 person (7.14%) in 2019, 5 persons (31.25%) in 2020, and 6 persons (28.57%) in 2021 (Figure 5).

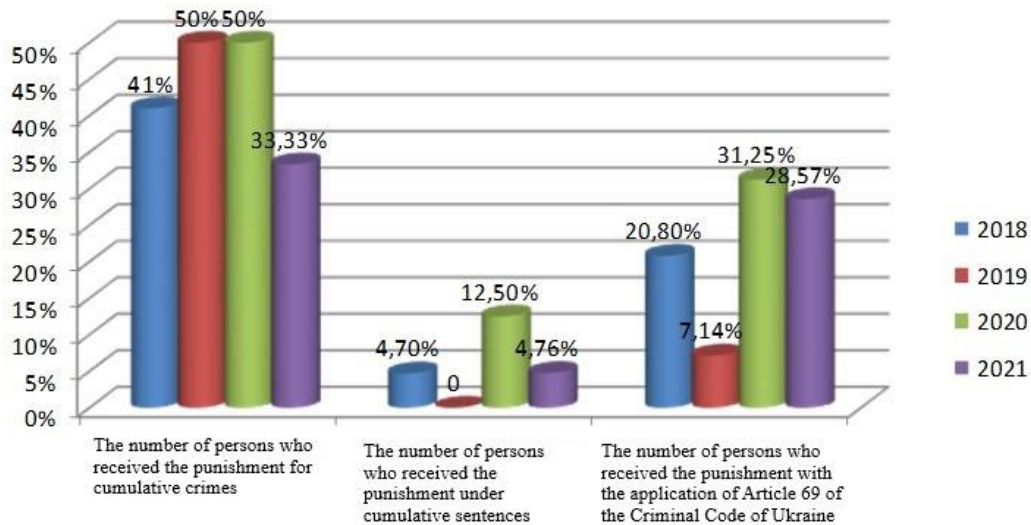


Figure 5. The number of persons who received the punishment

CONCLUSION

The countries of Southeast Asia have a successful experience in the fight against corruption, and embezzlement and taking possession of the property of military personnel through abuse of official position is one of the manifestations of corruption. Studying the specifics of the punishment for embezzlement and seizing the property of military personnel in the countries of Southeast Asia can provide Ukraine with useful conclusions and consider the best practices of these countries to improve its own punishment system. The analyzed experience of Singapore, Malaysia, Indonesia, and Thailand can serve as the basis for further expansion of international cooperation and exchange of experience between Ukraine and these countries in the field of combating corruption and effective punishment of war crimes.

The analyzed information regarding the legislation of Ukraine gives grounds with which conclusions on the imperfection of the legislation can be drawn. Depending on the degree of public danger, there is disciplinary, administrative, and criminal responsibility, but the lawmaker does not define differences in qualifications, and, therefore, there are difficulties in distinguishing between them when bringing offenders to justice. There is an inconsistency in the size and type of punishment, where the amount of punishment differs significantly between administrative and criminal responsibility. However, the lawmaker does not pay attention to signs of a criminal offense, which leads to the fact that the investigator can qualify the same act as a disciplinary case or administrative and even criminal offense, but the amount of punishment is significantly different. During the study of this issue, significant violations of the criminal legislation in force concerning the application of the norms of exemption from and reduction of responsibility for persons who have committed corruption offenses directly prohibited by the Law on counteraction of corruption were identified. Art. 75 and Art. 69 are prohibited by the current legislation; however,

they have been applied almost in 50% of cases under Art. 410 of the Criminal Code of Ukraine. The lawmaker does not provide for it.

As a result, the courts do not apply additional punishment to persons who have committed corruption criminal offenses related to the performance of official powers, such as deprivation of military special rank, title, and qualification class and deprivation of the right to hold certain positions and engage in certain activities. The amendments to the sanctions are proposed in part 2, part 3 and part 4 of Article 410 of the Criminal Code of Ukraine as follows: The same actions committed by a military official with abuse of office, or repeatedly or by a group of persons, or those that have caused significant harm are punished by imprisonment for a term of five to ten years with the deprivation of the right to hold certain positions or to engage in certain activities for a term of up to 3 years or without it; Actions provided for in parts 1 or 2 of this article, if they are committed during a special period, except for the martial law, are punished by imprisonment for a term of five to twelve years, with the deprivation of the right to hold certain positions or to engage in certain activities for a term of up to 3 years with the deprivation of a military rank; the actions provided for in parts 1 or 2 of this article, if they are committed during the martial law or in combat, burglary in order to possess weapons, ammunition, explosives or other military substances, means of transportation, military and special equipment, and extortion of these items, combined with violence, dangerous for life and health of the victim, are punished with imprisonment for a term of ten to fifteen years with the deprivation of the right to hold certain positions or to engage in certain activities for a term of up to 3 years with the deprivation of a military rank.

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