

Legal and Administrative Strategies for Addressing Military Administrative Offences within the Personnel of the State Border Guard Service of Ukraine*

Yaroslav Kushnir¹

National Academy of the State Border Guard Service of Ukraine
named after Bohdan Khmelnytskyi, Ukraine



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Abstract

This study examines the role of the State Border Guard Service of Ukraine in preventing administrative military violations during the ongoing state of martial law. The research emphasizes the growing importance of optimizing the efficiency and functionality of border control agencies amid heightened security challenges. Using a qualitative research method with a juridical-normative and comparative approach, the study explores legal frameworks, institutional practices, and foreign experiences to identify best practices for Ukraine. Using a literature review, legal documents, government decrees, and international conventions on border protection are systematically reviewed to determine the legal basis and administrative procedures governing preventive measures. Meanwhile, the comparative qualitative analysis involves examining case studies from other countries that have implemented effective systems for preventing administrative offenses in border services. In addition, qualitative interviews with border officials, legal experts, and defense policymakers were conducted to gain practical insights into the challenges faced in enforcing administrative discipline under martial law. The findings reveal that while Ukraine has a solid legal foundation for border protection, gaps remain in coordination, documentation, and personnel training. Drawing on both domestic and international perspectives, the study identifies adaptable mechanisms to enhance the efficiency of combating administrative and military offenses. Ultimately, this research offers policy recommendations to improve preventive measures, strengthen legal accountability, and ensure that Ukraine's border security system remains resilient, transparent, and compliant with international norms during periods of military emergency.

Keywords: Military Administrative Offences; Administrative and Legal Prevention; Determinants of Illegal Activity; State Border Guard Service of Ukraine

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¹ **Yaroslav Kushnir.** Doctor of Philosophy in Law, Associate Professor, Senior Lecturer at the Department of Administrative Activities, Faculty of Law Enforcement Activities, National Academy of the State Border Guard Service of Ukraine named after Bohdan Khmelnytskyi, Khmelnytskyi, Ukraine; ORCID: <https://orcid.org/0000-0002-8519-5331> Email: yarukfurrier@ukr.net

**Corresponding author: yarukfurrier@ukr.net

A. INTRODUCTION

By its powers and legislation, the State Border Service of Ukraine (SBSU) plays a significant role in protecting the state border. Every state is responsible for ensuring the safety of citizens and public order. The SBSU plays an important role in the national security system. It is tasked with ensuring the inviolability of the state border and protecting Ukraine's sovereign rights in its adjacent zone and exclusive (maritime) economic zone. ([Bratko & Mysyk, 2021](#)) In addition, in wartime, the SBSU must have a permanent combat component that can counteract both traditional and hybrid warfare. Hybrid warfare is characterised by a combination of all known traditional forms and methods of using forces (military formations) and forms and methods of using partisan, sabotage, reconnaissance groups, and terrorist organisations.

During a particular time of martial rule, the Armed Forces of Ukraine are responsible for defending the national boundary in line with Ukraine's National Security Strategy and Military Doctrine. Therefore, some contradictions arise between the tasks of the State Border Service of Ukraine and the use of forces and means in a unique period. Accordingly, the administrative and legal prevention of military administrative offenses among the personnel of the State Border Service of Ukraine becomes critical. Possible military administrative offenses among the State Border Guard Service personnel include, in particular, the ones presented in Table 1.

Table 1. Examples of possible military administrative offenses among the personnel of the State Border Guard Service

Offence	Description
Abuse of Authority	Under military rules, a superior officer who exceeds the power he exercises by his commission, abuses such authority, or unlawfully assumes authority not bestowed by such commission is penalised, even if his behaviour does not constitute an offence.
Threats or Violence against an Inferior	Whoever threatens a person under his commands or of inferior rank, attacks him, uses cruelty or violence against him, or treats him in a demeaning manner.
Breaches of Military Duty	Offences that undermine good order and discipline.

Offence	Description
Incomplete or Inaccurate Official Statements	<p>(1) Whoever is required by his commission or military obligations to prepare an official return or statement or to complete a service form</p> <p>(a) wilfully alters or conceals the facts or the truth, or purposely leaves blank any information or figure that his signature is supposed to certify, or</p> <p>(b) refuses, or fails by wilful negligence, to draw up or submit a minute, report, or statement he is expected to provide, is punished by simple imprisonment.</p> <p>(2) Any member of the armed services who makes a false statement or withholds the truth from the appropriate authorities to obtain or prolong leave suffers the same punishment.</p>
Malversation and Receipt of Ill-Gotten Gains	<p>(1) Whoever is tasked with the monitoring, acquisition, handling, or distribution of food, money, material, or any other property:</p> <p>(a) they are used illegally or undervalued in any way.; or</p> <p>(b) obtains or seeks any benefit or has an improper interest in procuring, selling, or distributing any food, supplies, equipment, goods, or other commodities delivered to a garrison, camp, canteen, barracks, or other military establishment.</p>

Source: Departments of the Army (2013)

Meanwhile, as Ukrainian researchers Baranov and Rybachenko (2022) rightly point out, the world experience of state-building and historical and scientific analysis of the development processes of any legal system shows that the methodology of theoretical understanding and practical solution to problems of strengthening law and order was and remains the idea of preventing offences, and not increasing punishment for their commission.

At the same time, the prevention of administrative offences ensures the implementation of a preventive function; that is, its actions are aimed at neutralising social processes and phenomena that stimulate the emergence of an asocial environment and the formation of objective and subjective prerequisites for limiting the scale of delinquency in public life. As a method, it includes measures of targeted information, persuasion, and propaganda of relevant social

values, and instilling psychological non-acceptance of the facts of offences in general and administrative ones in particular ([Podoliaka & Domin, 2020](#)).

In times of war, the prevention of offenses among the personnel of the armed forces units becomes of particular importance, as it is a factor in maintaining the country's high combat readiness. In this context, the Border Guard Service needs to be given maximum attention. Meanwhile, in 2024, 18 Ukrainian SBGS personnel have been imprisoned for breaking anti-corruption regulations since the beginning of the year. In particular, for abuse of office and support of unlawful border operations, including 9 people involved in cross-state human trafficking. There is one officer jailed for corruption and 17 non-commissioned officers and privates ([Cenzor.Net, 2024](#)). Eleven border guards were convicted guilty of corruption charges. The courts levied more than UAH 760,000 in penalties and sentenced two troops to jail for two years and five years (with a three-year probationary term), respectively ([Cenzor.Net, 2024](#)). Such statistics identify a range of significant problems existing in Ukrainian SBGS and require close attention to offences committed by personnel.

B. METHODS

The dialectical method of cognition served as the study's methodological foundation, and the authors employed various scientific methods, including formal-logical (methods of induction and deduction, analysis and synthesis), system-structural, formal-legal, historical-legal, and comparative-legal approaches. The study's theoretical basis is constituted of the works of scientists devoted, in particular, to the problems of legislative technique, differentiation of responsibility for military administrative offences (infractions) in criminal law, and issues of criminal liability for military offences.

C. RESULT AND DISCUSSION

Preventive measures applied by officials of the State Border Service units should be understood as activities aimed at the absolute prevention of administrative and criminal offenses. During the direct implementation of operational and service activities, the heads of the State Border Service units ensure the timely and effective implementation of the following measures by their subordinates ([McLaughlin, 2016](#)):

- 1) Organisational support for the detection and cessation of administrative offences;

- 2) Informing, by the established procedure, the relevant territorial bodies (subdivisions) of the central executive bodies or law enforcement agencies about administrative offenses detected at the State Border Service of Ukraine;
- 3) Monitoring and bringing into compliance with the current legislation the regime rules at checkpoints (control points) through the State Border Service of Ukraine or controlled entry-exit points, technological schemes for the passage of persons, vehicles and cargo, as well as other administrative acts in the field of introducing additional temporary restrictions on entry and work in the border zone or controlled border area;
- 4) Filling departmental information and analytical databases with information on detected administrative offences and on the persons who committed them;
- 5) Conducting a systematic analysis and generalisation of the accumulated information in order to identify the most characteristic reasons and conditions for committing offences at the border control posts and on the contact line;
- 6) Increasing the level of professional training of personnel of subordinate units in implementing offence prevention measures;
- 7) Monitoring the airspace of the border in order to promptly respond to cases of committing illegal actions;
- 8) Organising and conducting "Border" events by the Procedure for conducting events to supervise and control the implementation of legislation in the migration sector;
- 9) Annual implementation of a set of organisational and practical measures, "Prevention" ([Ministry of Internal Affairs of Ukraine, 2013](#)).

Meanwhile, when the border guard service personnel themselves commit military offenses, the effectiveness of the above functions may significantly decrease. Therefore, the administrative responsibility of military officials, by its legal essence, is a necessary legal means of reliable protection of military law and order from offences. It is a sure guarantee of the strength and inviolability of military law and order. Also, it ensures the proper state of combat readiness and combat capability of military units. However, it should be noted that military personnel's legal status significantly differs from a citizen's general legal status. In practice, this is determined by the possibility and, in most cases, the inevitable obligation of the legal transformation of their general responsibility into specific, special responsibility.

Historically, this regulatory regulation was inherited from the times of the existence of Soviet administrative and military legislation. This legal situation was explained by the fact that in the interests of the country's defence capability, the jurisdiction of civilian authorities to maintain law and order in the military sphere should be narrowed, extending to military personnel only for individual administrative offenses.

Currently, in the conditions of permanent conduct of an anti-terrorist operation, a joint forces operation, and full-scale military operations on the territory of Ukraine, the relevance of issues related to holding military personnel accountable is difficult to overestimate.

According to the military legal definition, administrative responsibility is a type of legal obligation imposed on a service member for an offence that is unrelated to the execution of official responsibilities and is not criminally punished. It also applies to people required to serve in the military while undergoing training. Administrative sanctions are applied by approved state administration organisations (internal affairs agencies, state inspectorates, and individuals authorised by state legislation). ([Koropatnyk et al., 2023](#))

All administrative offences for which servicemen are held administratively liable can be conditionally divided into several groups: first group: offences provided for in Art. 15 of the Code of Administrative Offenses; second group: military administrative offences provided for in Ch. 13-B of the Code of Administrative Offenses; The third group: committing corruption-related offences. At the same time, offences belonging to the third group, unfortunately, have become quite widespread and are resonant compared to the other two groups of military administrative offences.

In the context of our research, it is helpful to examine the conceptual frameworks Western researchers use to address police corruption ([Suber, 2023](#)). Scholars have created a variety of conceptual frameworks ([Punch, 2000](#); [Newburn, 1999](#); [Van de Bunt, 2004](#)) to investigate the origins and manifestations of police corruption. Traditionally, police corruption was divided into two categories: individual corruption, sometimes known as the 'rotten apple theory' or 'flawed officer perspective', and institutional corruption. For a long time, the conventional perspective in the United States was to see police corruption as an individual issue. After investigating rampant corruption in the NYPD in 1971, this strategy shifted after the Knapp Commission concluded that the 'rotten apple theory' acted as a 'scapegoat' for top officers to divert attention away from fundamental issues in their organisations.

Some scholars suggest that unique elements of the law enforcement profession make it particularly susceptible to corruption. Refuting the 'rotten apples' hypothesis, which holds that police corruption is unintentional, Newburn examines some of the most prevalent beliefs about the nature and environment of police work, revealing the 'constant elements' that allow officers to follow their agenda. At the same time, elements not inherent in the profession and fluctuate with time, place, and culture, known as 'variable factors', are as important to the possibilities and pressures that lead to police corruption ([Newburn, 1999, p. 14](#)). Newburn's 'constant elements' in police corruption, based primarily on the UK experience, are as follows:

- The requirement for discretion in police roles fosters corruption;
- Low public visibility: The majority of the public does not routinely observe or monitor police officers' daily actions;
- Peer group secrecy: 'police culture' is distinguished by a high level of internal unity and confidentiality;
- Managerial secrecy: police managers have often worked their way up from 'the beat' and share similar ideals with those they oversee;
- Status issues: police personnel are occasionally alleged to be underpaid relative to their capabilities;
- Touch with criminals: Police personnel unavoidably encounter a wide array of people who want to corrupt them.

As can be seen, all these peculiarities are inherent also in border guard service. The corrupt practices within border guards fall mainly into three categories: 1) involvement in organised criminal activities, 2) petty corruption, and 3) administrative/bureaucratic corruption.

A unique study produced in the EU in 2012 presents scholarly and policy viewpoints and extensive empirical data on corruption in border guard organisations throughout the European Union. It also analyses and evaluates anti-corruption policies in border guard services among EU Member States, as well as the techniques and tools utilised in border guard corruption investigations. ([Center for the Study of Democracy, 2012](#))

The only factual basis for bringing military personnel to administrative responsibility is their commission of an administrative offence. Therefore, in order to strengthen the responsibility of military personnel for violating military discipline, to ensure law and order and military discipline in the Armed Forces

of Ukraine, the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Strengthening the Responsibility of Military Personnel, Granting Commanders Additional Rights and Assigning Duties in a Special Period" dated 05.02.2015 No. 158-VIII was adopted. Thus, administrative responsibility for committing military administrative offenses was introduced in the Code of Administrative Offenses. Procedural issues regarding the procedural registration of committing military administrative offenses were also regulated. Thus, commanders (chiefs) of military units were granted the right to draw up administrative protocols. Military personnel are liable for committing military administrative offences as provided for in Chapter 13-B of the Code of Administrative Offenses, provided that these offences do not entail criminal liability. ([Vitvitsky et al., 2024](#))

It is worth noting that, under the current legislation's changes, military personnel who commit military administrative violations may face sanctions such as arrest and confinement in a guardhouse. According to Article 32-1 of the Code of Administrative Offenses, arrest with custody in a guardhouse is established and used only in extraordinary instances for specific types of military administrative offences for up to 10 days. This punishment is carried out at the guardhouses of the Law Enforcement Service in unique premises equipped by the management bodies of the Law Enforcement Service to execute punishment for military personnel sentenced to arrest. Violation of the rules for carrying out border service by a person who is part of the state border guarding unit of Ukraine entails the imposition of a fine of one hundred to one thousand non-taxable minimum incomes of citizens or arrest with detention in a guardhouse for a period of up to ten days. The actions provided for in Part One of this Article, committed during a unique period, shall entail a fine of one to two thousand tax-free minimum incomes of citizens or arrest with detention in custody for a period of ten to fifteen days. ([Koropatnyk et al., 2023](#))

With all the problems with the application of responsibility for administrative and military offences, the real way to develop the field of law enforcement is to continue working on bringing military legislation into line with European and NATO standards. First, this will provide the opportunity to systematise the responsibility of military personnel according to clearly defined criteria. In addition, the introduction of electronic document management in Ukraine delegates the urgent need to create a Unified Register of Military Offenses, which would contain data on all offences committed by military personnel during their military service and by conscripts (reservists) during their training. The military prosecutor's office can ensure the maintenance of such a register.

Burlaka (2019) rightly emphasises the need to distinguish between a criminally punishable act and an administrative offence during border service by military personnel of the State Border Service of Ukraine. However, from an objective perspective, both a crime and an administrative offence violate specific requirements of the established procedure for performing border guard service, which active actions and inaction can commit.

Article 172 of the Code of Administrative Offenses is a blanket norm, that is, a norm that only names or describes an offence and, for a full definition of its features, refers to other regulatory legal acts, which fills the norm of Article 172 of the Code of Administrative Offenses with more specific content to establish those features that are important for the correct legal qualification of the specified act. From the objective side, a violation of service by a person who is part of the state border guarding unit occurs if this person has violated, by action or inaction, specific regulatory provisions or prohibitions enshrined in laws or other subordinate regulatory legal acts: orders (orders) that regulate the activities of the state border guarding unit. Today, in wartime conditions, the range of possible administrative offences among the personnel of the State Border Guard Service of Ukraine has expanded accordingly, which requires not only a flexible approach but also modernisation (improvement) of the prevention of such offences.

Furthermore, as Petkov et al. (2023) correctly point out, it is critical to highlight flaws such as the “mixing” of violations of military discipline committed by servicemen with illegal (corrupt) actions of officials or abuse of power (Article 172-13 of the Ukrainian Administrative Offences Code). As a result, these offences are fundamentally distinct in form and purpose and, therefore, must be treated separately. A violation of discipline by a service member should result in punishment, which is fair. However, discipline is frequently disregarded due to emotional causes, such as the dread of death. In contrast, corruption is an intentional act undertaken to benefit oneself.

Defending Ukraine’s state border is an important aspect of maintaining national security. It comprises coordinated efforts of the state’s military formations, law enforcement agencies, and the organisation and process prescribed by law. This activity is carried out within the limits of the powers granted to them by implementing a variety of organisational and legal, political, diplomatic, military, intelligence, economic, environmental, border, immigration, counterintelligence, operational and investigative, environmental, sanitary and quarantine, technical, and other actions. The public danger of violations of the rules of border service by border guards is determined by the

importance of the tasks performed by the border guard service. The most dangerous of these violations create the possibility of penetration into the territory of our state of offenders, smuggled goods, currency values, illegal departure abroad or entry into Ukraine. Accordingly, the system for preventing military offenses by border guard personnel must be highly effective. In this vein, foreign experience can constitute a base for improvement.

Military discipline and applicable laws in military administrative crimes are not the only factors influencing the country's achievement. In the United States, conformity with military discipline is achieved by efficient solutions in the following areas ([Collins, 2019](#)):

- 1) Servicemen's training programmes. The United States Armed Forces has developed several training programmes to help service personnel comprehend the legal and ethical standards to which they must adhere.
- 2) Strong leadership. Leadership and responsibility are highly valued within the United States Armed Forces. This involves creating clear lines of authority and accountability, encouraging ethical conduct, and keeping commanders responsible.
- 3) Strict adherence to legal and ethical norms. The US military employs a strong legal system to uphold its standards. This approach assures that accused personnel have due process rights.
- 4) Policy and procedure updates occur regularly. The US Armed Forces constantly review its rules and processes to ensure that they are current and effective in preventing administrative offences.
- 5) Effective control and accountability measures. The United States Armed Forces employ various measures to maintain accountability and transparency, including internal audits, inspections, and investigations, as well as external monitoring and reporting by independent authorities.

In addition to examining the practice of preventing military administrative offenses in the United States, in the context of Ukraine's integration into the European Union (EU), it is vital to identify the key characteristics of combating the specified crimes in European countries:

- 1) Implementation of clear regulations and training: EU member states have procedures to address military administrative offences, such as the EU Code of Conduct in Military Operations. According to the European Union Agency for Fundamental Rights, training and education are critical to preventing wrongdoing among personnel.
- 2) Strengthening accountability measures: The EU has established systems to hold service members accountable for their activities. According to the

European Defence Agency's assessment, accountability systems are critical to ensuring service member's responsibilities.

- 3) Promoting an ethics and integrity culture: The EU emphasises instilling an ethical and integrity culture in service personnel. According to a paper from the EU Institute for Security Studies, a culture of integrity can help prevent crimes by laying a solid foundation for ethical behaviour.

Figure 1 below depicts the above elements. However, they should be viewed as a system, and the malfunction of one element will invariably have a negative impact on others. Thus, their development should be carried out not in sequence but simultaneously.

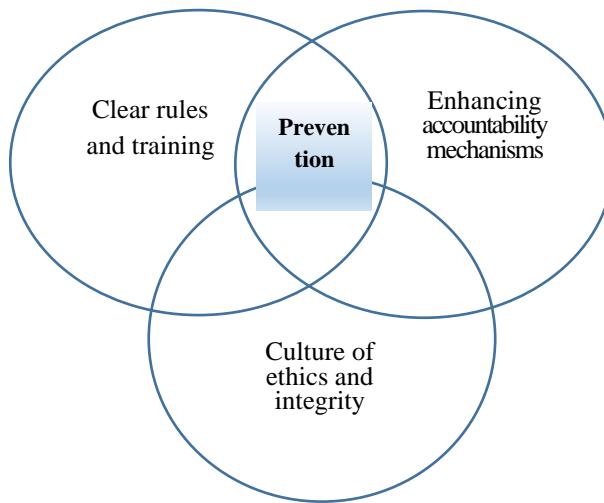


Figure 1. Conceptual model of administrative and legal prevention of military administrative offenses among the personnel of the State Border Guard Service

** Developed by the authors based on Collins (2019)*

The specified directions, provided they are adapted to Ukrainian realities, can contribute to improving ethics and counteracting violations among border servicemen.

D. CONCLUSIONS

The conducted research allowed for determining the core challenges in Ukraine's State Border Guard Service, functioning in the vein of military administrative offences. Analysis of the existing national legislative framework for classifying and punishing such offences and considering foreign experience allowed identify the conceptual vectors of enhancing the prevention of military administrative offences based on a three-component model. According to the Systems theory's general provisions, the model's systemic nature suggests the possibility of achieving a synergetic effect if all the components are correctly shaped and maintained.

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