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CRIMINAL LAW CHARACTERISTICS OF DRAFT EVASION DURING MOBILIZATION: A GENERAL THEORETICAL OVERVIEW

Abstract. Purpose. The purpose of this article is to provide a comprehensive theoretical and legal analysis of the criminal law characteristics of evasion of conscription during mobilization, to identify problematic aspects of the legal classification of this crime, and to formulate proposals for improving the criminal legislation in this area. **Results.** The article presents a detailed analysis of the criminal law elements of draft evasion during mobilization. It examines the constituent elements of the offence provided for in Article 336 of the Criminal Code of Ukraine, with regard to the specific nature of the mobilization period. Both the objective and subjective elements of this criminal offense are explored, with an emphasis on current judicial practice and recent legislative changes introduced under martial law. The article identifies problematic issues in qualifying acts of draft evasion during mobilization, particularly in distinguishing this offense from other related crimes. It proposes ways to enhance the effectiveness of criminal law measures against such offenses and improve law enforcement practices. An analysis of international experience in criminalizing draft evasion reveals a variety of legal approaches to addressing this issue. In most European countries, criminal liability is imposed for evasion of military service; however, the sanctions are generally less severe than those applied in Ukraine. **Conclusions.** The study concludes that international experience in criminalizing draft evasion can serve as a useful reference point for improving Ukrainian legislation in this area. Nevertheless, the adoption of foreign legal practices must be carried out with due consideration of the specificities of Ukraine's legal system, national traditions, and current threats to national security. In the context of martial law, it is especially important to maintain a balance between the state's interest in protecting national security and defense capabilities on the one hand, and the protection of citizens' rights and freedoms on the other. This balance must be ensured both at the legislative level and in law enforcement practice. Consequently, improving the criminal law response to evasion of conscription during mobilization remains a crucial task that will contribute to strengthening national security and defense capability, as well as fulfilling the constitutional duty of citizens to defend the Homeland.

Key words: criminal law, draft evasion, mobilization, military service, criminal liability, elements of a crime, martial law, crime qualification, national security.

1. Introduction

Ensuring the defense capability of the state under modern challenges represents one of the key priorities of Ukraine's public policy. This issue has gained particular urgency following the onset of the full-scale military aggression against Ukraine, which led to the declaration of general mobilization and the introduction of martial law throughout the territory of the state. Pursuant to the Presidential Decree "On the Introduction of Martial Law in Ukraine" dated February 24, 2022, a special legal regime was established, involving restrictions on constitutional rights and freedoms, including the imposition

of a military duty on certain categories of individuals.

Under these conditions, the issue of holding individuals criminally liable for evasion of conscription during mobilization has become of particular importance. The effectiveness of manning the Armed Forces of Ukraine and other military formations is directly linked to the defense capacity of the state and the protection of its territorial integrity. Criminal liability for draft evasion during mobilization is established in Article 336 of the Criminal Code of Ukraine (hereinafter – the CC of Ukraine), which provides for imprisonment for a term of five to ten years.

The legal analysis of the nature and specific characteristics of criminal law provisions on draft evasion during mobilization is of both theoretical and practical significance, since the proper legal qualification of such conduct directly affects the effectiveness of criminal justice mechanisms. Despite the relevance of the issue, the academic literature lacks comprehensive studies specifically addressing the criminal law aspects of evasion of military service during mobilization, which necessitates a thorough analysis of the subject.

The objective of this article is to conduct a comprehensive theoretical and legal study of the criminal law characteristics of evasion of conscription during mobilization, to identify challenges in the qualification of this offense, and to develop proposals for improving the relevant criminal law framework.

2. The Theoretical and Legal Foundations of Liability for Evasion of Conscription During Mobilization

Liability for evasion of conscription for military service during mobilization is established under Article 336 of the Criminal Code of Ukraine. According to this provision, evasion of conscription during mobilization is punishable by imprisonment for a term of five to ten years. It is worth noting that, following the outbreak of the full-scale invasion, the sanction under this article was significantly increased—from the previous penalty of two to five years of imprisonment to the current term. This amendment was introduced by the Law of Ukraine "On Amendments to the Criminal Code of Ukraine Regarding the Strengthening of Liability for Certain Military Offenses" dated 15 March 2022.

The criminalization of draft evasion during mobilization is driven by the imperative to safeguard national security and ensure the state's defense capability. The duty of citizens to defend the Homeland is enshrined in Article 65 of the Constitution of Ukraine, which states that the protection of the Homeland, its independence, and territorial integrity is the constitutional duty of Ukrainian citizens. Further implementation of this constitutional norm is ensured through the provisions of the Law of Ukraine "On Military Duty and Military Service" and the Law of Ukraine "On Mobilization Preparation and Mobilization," which establish the legal mechanisms for fulfilling this duty, including participation in military service during mobilization (Volotivskyi, 2019).

The legal basis for the conscription of citizens into military service during mobilization is the Law of Ukraine "On Mobilization Preparation and Mobilization." According to this Law, mobilization is defined as a set of measures

aimed at the planned transition of the national economy, the activities of public authorities, other state bodies, local self-government bodies, enterprises, institutions, and organizations to function under conditions of a special period, and the transition of the Armed Forces of Ukraine, other military formations, and the Civil Protection Operational Rescue Service to wartime organization and staffing structures.

Legal relations related to the fulfillment of military duty and the performance of military service are also governed by the Law of Ukraine "On Military Duty and Military Service." This law specifies that the fulfillment of military duty in the reserve includes conscription into military service during mobilization. Thus, in the event of a declared mobilization, citizens in the reserve are subject to mandatory conscription into military service.

3. Objective Elements of the Offense of Draft Evasion During Mobilization

The objective elements of the offense comprise the object and the objective side of the crime. The generic object of the offense of evasion of conscription during mobilization is the system of social relations in the sphere of ensuring the defense capability of Ukraine, its independence, and territorial integrity. The immediate object is the legally established procedure for the manning of the Armed Forces of Ukraine and other military formations under mobilization conditions (Iermolaieva-Zadorozhnia, 2017).

The objective side of this offense consists in the act of evading conscription during mobilization. Evasion may be manifested through active conduct (such as forging documents, feigning illness, changing one's place of residence without notifying the military commissariat, etc.) or through inaction (e.g., failing to report to the territorial recruitment and social support center upon summons).

It is important to note that in order to qualify an act as a criminal offense under Article 336 of the Criminal Code of Ukraine, it must be established that the individual was duly notified of the conscription and had a real opportunity to report to the territorial recruitment and social support center but deliberately failed to do so. Conversely, if the individual did not receive the summons or was unable to appear at the recruitment center for valid reasons (such as illness, natural disaster, etc.), the elements of the offense under Article 336 of the Criminal Code of Ukraine are not present.

The crime is considered completed upon the failure to report to the recruitment center after being summoned, or upon the commission of other acts aimed at evading conscription dur-

ing mobilization. Thus, the offense is formal in nature, meaning that its completion does not require the occurrence of socially harmful consequences.

4. Subjective Elements of the Offense of Draft Evasion During Mobilization

The subjective elements of the offense consist of the subject and the subjective side. The subject of the crime under Article 336 of the Criminal Code of Ukraine is a special subject—an individual who is subject to conscription for military service during mobilization. According to the Law of Ukraine "On Military Duty and Military Service," those subject to conscription during mobilization are individuals who are in the military reserve, i.e., conscripts (Official website "Judiciary", 2024).

Conscripts are individuals in the reserve who may be called up to staff the Armed Forces of Ukraine and other military formations during a special period, as well as to carry out defense-related tasks. This category includes individuals who acquired a military occupational specialty during their military service or military education, and those who are medically and age-wise fit for military service.

It is worth noting that under the Law of Ukraine "On Mobilization Preparation and Mobilization," certain categories of citizens are exempt from conscription during mobilization. These include, among others, individuals deemed unfit for military service due to health reasons, Members of Parliament of Ukraine, judges, prosecutors, persons with three or more children under the age of 18 in their care, and some other categories. Such individuals cannot be subjects of the crime defined in Article 336 of the Criminal Code of Ukraine.

The subjective side of draft evasion during mobilization is characterized by direct intent. This means that the individual is aware of the socially dangerous nature of their conduct (evasion of conscription) and deliberately chooses to engage in it. The motives and purposes of committing the offense (e.g., unwillingness to serve in the military, fear of danger, desire to maintain one's usual lifestyle, etc.) do not affect the legal qualification of the act, but may be taken into account by the court when determining the appropriate punishment (Official website "Judiciary", 2024).

5. Problematic Aspects of the Legal Qualification of Evasion of Conscription During Mobilization

The application of Article 336 of the Criminal Code of Ukraine has revealed a number of problematic aspects related to the legal qualification of this offense. One such issue is the distinction between evasion of conscription during mobilization and evasion of military reg-

istration. According to Article 210 of the Code of Ukraine on Administrative Offenses, evasion of military registration constitutes an administrative offense. However, if an individual is not registered for military service and, consequently, does not receive a draft notice, the question arises as to whether such conduct can be qualified as evasion of conscription during mobilization (Liudvik, 2015; Maistrenko, 2016; Pylypenko, 2018).

In the author's view, evasion of military registration with the intent to avoid conscription during mobilization should be qualified as an attempt to commit the offense provided for in Article 336 of the Criminal Code of Ukraine. In this case, the evasion of registration serves as a means of achieving the ultimate goal—evasion of conscription during mobilization. Conversely, if a person avoids military registration without the specific intent to evade conscription (for instance, due to ignorance of the law or negligence), such behavior should be regarded solely as an administrative offense.

Another problematic aspect concerns the legal qualification of actions committed by individuals who left Ukraine before the announcement of mobilization and did not return after it was declared. In such circumstances, the issue arises whether the failure to return to Ukraine constitutes evasion of conscription. In the author's opinion, if a person was aware of the announcement of mobilization and had the opportunity to return to Ukraine but deliberately failed to do so in order to avoid conscription, such actions should be qualified as evasion of conscription during mobilization. At the same time, if a person lacked a real opportunity to return to Ukraine (e.g., due to the absence of transportation, illness, or lack of financial means), the elements of the offense under Article 336 of the Criminal Code of Ukraine would be absent (Pysmenskyi, 2024).

The qualification of actions involving the use of forged documents or the offering of bribes to avoid conscription also presents legal challenges. In such cases, the issue arises as to whether these acts should be qualified cumulatively. In the author's view, if a person forges documents or offers a bribe with the aim of avoiding conscription during mobilization, such conduct should be qualified as a combination of offenses: evasion of conscription under Article 336 of the Criminal Code of Ukraine and either document forgery (Article 358) or offering an unlawful benefit to an official (Article 369).

6. Judicial Practice Concerning the Prosecution of Evasion of Conscription During Mobilization

Table 1

Main Methods of Evasion of Conscription During Mobilization and Their Legal Assessment

Method of Evasion	Objective Characteristics	Criminal Law Assessment	Challenges in Proving
Failure to report upon summons without valid reasons	The individual was duly served with a summons but failed to appear at the Territorial Recruitment and Social Support Center (TRSSC) within the designated timeframe	Qualified under Article 336 of the Criminal Code of Ukraine, provided that intent to evade is proven	Requires proof of receipt of the summons and the absence of valid reasons for nonappearance
Avoidance of receiving the summons	The individual deliberately avoids receiving the summons (e.g., refusing to open the door, ignoring electronic notification, etc.)	Qualified under Article 336 of the Criminal Code of Ukraine if intent to evade conscription is proven	Difficulties in proving deliberate evasion of receipt
Change of residence without notifying the TRSSC	The individual changes place of residence without deregistering from military records	Qualified under Article 336 of the Criminal Code of Ukraine if the purpose of changing residence was to evade conscription	Requires proof that the change of residence was aimed at avoiding conscription
Feigned illness	The individual deliberately simulates illness or worsens health condition intentionally	Qualified under Article 336 of the Criminal Code of Ukraine. May also be qualified under Article 358 (forgery) if false documents are used	Requires forensic medical examination; difficult to prove deliberate simulation
Forgery of documents to obtain deferral or exemption	Creation or submission of falsified documents regarding health status, family composition, etc.	Qualified cumulatively under Articles 336 and 358 of the Criminal Code of Ukraine	Requires document examination and proof of falsification
Crossing the border to avoid conscription	The individual leaves Ukraine with the intent to evade conscription	Qualified under Article 336 of the Criminal Code of Ukraine; if the border crossing was illegal, also under Article 332-2	Difficult to prove that the departure was motivated specifically by intent to evade conscription
Failure to return from abroad after mobilization is declared	The individual, while abroad, deliberately fails to return to Ukraine after the announcement of mobilization	May be qualified under Article 336 of the Criminal Code of Ukraine if intent to evade conscription is proven	Particularly difficult to prove intent and presence of legal obligation to return
Self-inflicted injury	The individual intentionally causes bodily harm to be deemed unfit for military service	Qualified cumulatively under Articles 336 and 409 of the Criminal Code of Ukraine	Requires forensic medical examination and proof of intentional nature of injuries

An analysis of judicial practice in cases involving evasion of conscription during mobilization reveals key trends and problematic aspects in the application of Article 336 of the Criminal Code of Ukraine. Based on the generalization of court judgments rendered under Article 336, the following conclusions may be drawn.

First, courts pay particular attention to establishing whether the individual was duly notified of conscription. According to the case law of the Supreme Court, for conduct to be qualified under Article 336 of the Criminal Code of Ukraine, it must be proven that the individual was properly notified of the call-up and had a real opportunity to report to the territorial center of recruitment and social support. Noti-

fication is considered proper if the individual received the draft notice in person, confirmed by their signature, or if the notice was delivered via other communication channels provided by law (Turkot, 2015; Chornyi, 2015).

Second, courts recognize the existence of valid reasons for failure to appear in response to a draft notice as a circumstance that excludes criminal liability under Article 336. Such reasons may include illness, natural disasters, the death of a close relative, or other circumstances that make it impossible for the individual to report. The burden of proving the existence of valid reasons lies with the defendant.

Third, courts examine the subjective element of the offense, in particular the presence

Table 2

Comparative Analysis of Criminal Liability for Draft Evasion in European Countries

Country	Legislative Regulation	Sanctions for Draft Evasion	Qualification Features	Alternative (Non-Military) Service
Ukraine	Article 336 of the Criminal Code of Ukraine "Evasion of Conscription during Mobilization"	Imprisonment for a term of 5 to 10 years	Formal composition of the crime; direct intent required	Provided only for specific categories of citizens due to religious beliefs
Poland	Article 144 of the Criminal Code of Poland "Evasion of Military Service"	Fine, restriction of liberty, or imprisonment for up to 3 years	Intentional act; milder sanctions in peacetime	Available for persons with religious or other conscientious beliefs
Germany	§ 109 of the German Criminal Code "Evasion of Military Service"	Imprisonment for up to 5 years or a fine	Differentiated approach depending on the method of evasion	Well-developed system of alternative service
Lithuania	Article 314 of the Criminal Code of Lithuania "Evasion of Military Service"	Community service, fine, arrest, or imprisonment for up to 3 years	Increased liability during wartime	Available for persons with religious or other conscientious beliefs
Finland	Chapter 45 of the Criminal Code of Finland "Military Offences"	Fine or imprisonment for up to 1 year (in peacetime), up to 4 years (in wartime)	Clear differentiation based on the time criterion	Broad availability of alternative service
Sweden	The Total Defence Duty Act	Fine or imprisonment for up to 2 years (in peacetime), up to 4 years (in wartime)	Criminal liability reinstated in 2017 after a long suspension	Well-developed system of alternative service
Italy	Article 135 of the Military Criminal Code	Imprisonment from 6 months to 2 years (in peacetime), from 2 to 5 years (in wartime)	Differentiated approach based on time of commission	Right to alternative service is constitutionally guaranteed
Norway	§ 35 of the Military Criminal Code	Fine or imprisonment for up to 3 years	Additional sanctions include restriction of civil rights	Well-developed system of alternative civilian service

of intent to evade conscription. If the person was unaware of being subject to conscription or lacked intent to avoid it, the elements of the crime under Article 336 are not present. At the same time, ignorance of the law does not exempt one from criminal liability; therefore, a person who was aware of the announcement of mobilization but failed to appear at the territorial recruitment center may be held criminally liable.

Fourth, courts take into account the personal characteristics of the offender and the specific circumstances of the case when determining the punishment for evasion of conscription during mobilization. An analysis of judgments indicates that in most cases, courts impose a sentence of imprisonment close to the minimum term provided for by the sanction of Article 336 of the Criminal Code of Ukraine, namely five years. However, where mitigating circumstances are present—such as sincere remorse, active cooperation with the inves-

tigation, or the presence of minor children in the person's care—courts often apply Article 75 of the Criminal Code and release the individual from serving the sentence with a probationary period (Chorny, 2015).

7. International Experience of Criminal Law Counteraction to Evasion of Military Service

An analysis of international experience in criminal law counteraction to evasion of military service reveals a diversity of approaches to addressing this issue. In most European countries, criminal liability for evasion of military service is prescribed, yet the sanctions for such an act are generally less severe than those in Ukraine.

For instance, in Poland, evasion of military service is punishable by up to three years of imprisonment. In Germany, such evasion may result in imprisonment for up to five years or a fine. In Lithuania, it may be punished by community service, a fine, arrest, or imprisonment for

up to three years. At the same time, most European states provide the possibility of performing alternative (non-military) service for individuals whose religious or other beliefs prevent them from undergoing military service. In Ukraine, the possibility of alternative service is also legally established for certain categories of citizens. However, the scope of such individuals is rather limited and, for example, does not include persons whose philosophical or ethical beliefs prevent them from performing military service.

It is worth noting that following the onset of the full-scale invasion of Ukraine by the Russian Federation, many European countries have strengthened the liability for evasion of military service and intensified efforts to reinforce their armed forces. This indicates a growing awareness of the importance of ensuring national defense capability in the context of modern geopolitical challenges.

8. Ways to Improve Criminal Legislation in the Field of Counteracting Evasion of Mobilization

Based on the conducted analysis, the following directions for improving criminal legislation in the field of counteracting evasion of mobilization can be proposed.

Firstly, it is advisable to differentiate criminal liability for evasion of mobilization depending on the method by which the offense is committed. In particular, stricter liability could be established for evasion committed through the use of forged documents, bribery, self-inflicted injury, and similar means. This would contribute to upholding the principle of fairness in punishment and the individualization of criminal liability.

Secondly, it is expedient to introduce criminal liability for evading the receipt of a summons for military service during mobilization. Currently, such evasion qualifies as evasion of mobilization only when the individual's intent to avoid conscription is proven. In practice, however, proving such intent poses significant difficulties. Therefore, consideration should be given to criminalizing intentional evasion of receiving a summons for military service during mobilization as a separate criminal offense or, alternatively, introducing administrative liability for such actions.

Thirdly, it is necessary to clarify the disposition of Article 336 of the Criminal Code of Ukraine by specifying the meaning of "evasion of mobilization." In particular, it would be appropriate to define this term as the failure to report to the designated assembly point within the period specified in the summons without valid reasons, as well as other deliberate actions (or inaction) aimed at avoiding conscription for military service during mobilization. This

would help to eliminate inconsistencies in the interpretation of this provision and ensure its uniform application in practice.

Fourthly, it is worth considering the introduction of broader opportunities for performing alternative (non-military) service during mobilization. This would strike a balance between the state's interest in ensuring defense capability and the rights of individuals who, due to religious, philosophical, or ethical beliefs, cannot perform military service.

Fifthly, the introduction of a legal mechanism of *active repentance* for individuals who evaded mobilization but voluntarily reported to a territorial recruitment and social support center and expressed a willingness to perform military service should be considered. Such a mechanism would provide incentives for individuals who had previously evaded conscription to voluntarily fulfill their constitutional duty to defend the homeland.

9. Conclusions

The analysis conducted allows for the formulation of the following conclusions and proposals. Evasion of military conscription during mobilization constitutes a socially dangerous act that undermines national security and the defense capabilities of the state. The criminalization of such conduct is justified and consistent with the principle of proportionality, given the heightened public danger of draft evasion during wartime.

Effective counteraction to evasion of mobilization requires a comprehensive approach that encompasses not only criminal law measures but also organizational, informational, and other initiatives. In particular, it is essential to raise citizens' legal awareness, promote a positive attitude toward military service, and ensure adequate conditions for its performance. This includes sufficient material support for service members and their families, as well as proper social protection for combatants.

At the same time, the criminal law measures directed at addressing draft evasion during mobilization require further refinement. It is advisable to:

- Differentiate criminal liability based on the method of commission (e.g., use of forged documents, bribery, self-inflicted injuries).
- Introduce liability for intentional evasion of receiving a draft summons during mobilization.
- Clarify the disposition of Article 336 of the Criminal Code of Ukraine by specifying what constitutes "evasion of mobilization"—including failure to report to the assembly point without valid reason or other intentional actions (or omissions) aimed at avoiding military conscription.

– Expand opportunities for performing alternative (non-military) service during mobilization, particularly for individuals with religious, philosophical, or ethical objections.

– Establish a legal mechanism for **active repentance** for individuals who previously evaded mobilization but voluntarily report to the Territorial Recruitment and Social Support Center and express a willingness to serve.

Judicial practice also plays a crucial role in addressing evasion of military service during mobilization. Courts must ensure consistency and stability in the application of law, consider all relevant circumstances of the case and the personality of the offender, and uphold the principles of justice and individualized liability when imposing punishment.

International experience in criminal law responses to military service evasion may be valuable for improving Ukrainian legislation in this area. However, such experience should be adapted with consideration for the specific features of Ukraine's legal system, national traditions, and the current threats to national security.

In conditions of martial law, it is particularly important to maintain a balance between the state's interest in ensuring national security and defense capability on the one hand, and the protection of citizens' rights and freedoms on the other. This balance must be upheld both in legislation and in law enforcement practice.

Therefore, improving the criminal law mechanisms for countering evasion of military conscription during mobilization is a vital task. Its successful implementation will contribute to strengthening national security and defense capacity, as well as ensuring the fulfillment

of citizens' constitutional duty to defend their homeland.

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КРИМІНАЛЬНО-ПРАВОВІ ОЗНАКИ УХИЛЕННЯ ВІД ПРИЗОВУ НА ВІЙСЬКОВУ СЛУЖБУ ПІД ЧАС МОБІЛІЗАЦІЇ: ЗАГАЛЬНОТЕОРЕТИЧНА ХАРАКТЕРИСТИКА

Анотація. Метою статті є здійснення комплексного теоретико-правового аналізу кримінально-правових ознак ухилення від призову на військову службу під час мобілізації, визначення проблемних аспектів кваліфікації даного злочину та формулювання пропозицій щодо вдосконалення кримінального законодавства у цій сфері. **Результати.** У статті здійснено комплексний аналіз кримінально-правових ознак ухилення від призову на військову службу під час мобілізації. Розглянуто основні елементи складу злочину, передбаченого статтею 336 Кримінального кодексу України, із урахуванням специфіки мобілізаційного періоду. Досліджено об'єктивні та суб'єктивні ознаки даного кримінального правопорушення, проаналізовано актуальну судову практику та законодавчі зміни, що відбулися в умовах воєнного стану. Визначено проблемні аспекти кваліфікації ухилення від призову під час мобілізації, зокрема розмежування з іншими суміжними складами злочинів. Запропоновано шляхи вдосконалення

кримінально-правової протидії таким правопорушенням та підвищення ефективності правозастосовної практики.

Аналіз міжнародного досвіду кримінально-правової протидії ухиленню від військової служби свідчить про різноманітність підходів до вирішення даної проблеми. У більшості європейських країн передбачено кримінальну відповідальність за ухилення від військової служби, але санкції за таке діяння є менш суворими, ніж в Україні. Зроблено висновок, що міжнародний досвід кримінально-правової протидії ухиленню від військової служби може бути корисним для вдосконалення українського законодавства у цій сфері. Водночас, запозичення зарубіжного досвіду повинно здійснюватися з урахуванням особливостей правової системи України, національних традицій, а також актуальних викликів та загроз національній безпеці України. В умовах воєнного стану особливого значення набуває забезпечення балансу між інтересами держави щодо захисту національної безпеки та обороноздатності, з одного боку, та захистом прав і свобод громадян, з іншого боку. Цей баланс повинен бути забезпечений як на законодавчому рівні, так і в правозастосовній практиці. Таким чином, вдосконалення кримінально-правової протидії ухиленню від призову на військову службу під час мобілізації є важливим завданням, вирішення якого сприятиме забезпеченню національної безпеки та обороноздатності України, а також реалізації конституційного обов'язку громадян щодо захисту Вітчизни.

Ключові слова: кримінальне право, ухилення від призову, мобілізація, військова служба, кримінальна відповідальність, склад злочину, воєнний стан, кваліфікація злочинів, національна безпека.

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