

**Turība University**

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**SYNOPSIS OF THE DOCTORAL THESIS**

**KARAVĪRA DISCIPLINĀRATBILDĪBA**

**Soldier's Disciplinary Liability**

**Study programme Law Sciences**

**For award of doctor's degree in the  
Field of Law Sciences  
Sub branch State Law**

**Riga 2021**



The doctoral thesis was developed at the Faculty of Law, Turība University during the period 2016 - 2021.

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The defence of the doctoral thesis shall be held at Turība University at the public sitting of the doctoral council for field of Law Sciences on **6<sup>th</sup> of October 2021 at 14:00** at Turība University, Room C 108, Graudu Street 68, Riga.

The doctoral thesis and the synopsis are available for review at the Library of Turība University, Graudu Street 68, Riga.

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**1. THE SCIENTIFIC NOVELTY OF THE RESEARCH** is manifested in the fact that the author's research is the first such doctoral research in Latvia, in which an in-depth study of the legal regulation of a soldier's disciplinary liability has been carried out to identify the problems therein, including those that prevent the soldier from fully defending himself during the entire disciplinary process due to the absence of a counsel and solutions have been proposed for its improvement. The study reviews foreign legal framework to address similar issues and scientific grounds have been developed for the implementation of proposals in the disciplinary practice of each relevant structural unit of the National Armed Forces. The author assumes that the shortcomings and problems revealed within the framework of the Doctoral Thesis and the solutions developed would make a significant contribution to enhancing the right of every Latvian soldier to defence during the entire disciplinary process. Applying the new scientific findings expressed in the study, it would be possible to improve the legal regulation of a soldier's disciplinary liability and in terms of **practical application** it would enable the legislator to introduce scientifically based legal norms.

**2. THE GOAL OF THE RESEARCH** is to develop scientifically based proposals for the improvement of the legal regulation of a soldier's disciplinary liability.

**THE RESEARCH TASKS** set to achieve the goal are as follows:

1) To ascertain the legal concepts related to a soldier's disciplinary liability and formulate definitions based on the interpretation of the relevant legal concepts in conjunction with the regulatory legal norms; 2) To analyse and compare the legal regulation related to a soldier's disciplinary liability in Latvia; 3) To analyse Latvian and foreign legal remedies for soldiers in connection with disciplinary sanctions; 4) To study Latvian and foreign regulatory norms that would help to protect the rights of a soldier during the disciplinary process; 5) To study and analyse disciplinary practice in the decisions of the Appeals Commission of the Ministry of Defence; 6) To study legal literature, judicial and court practice; 7) To develop conclusions; 8) To put forward proposals for amendments in the regulatory enactments regulating the disciplinary liability of existing soldiers, thereby improving and enhancing them.

**3. THE RESEARCH HYPOTHESIS:** Shortcomings in the regulation of legal remedies in the existing regulatory enactments governing a soldier's disciplinary liability, which do not include a soldier's Counsel institute and do not include a prohibition on performing activities related to the soldier's position as a result of illegally using his / her position or conflicts of interest, restricts the soldier's right to defence during the entire disciplinary process, which in general narrows the scope of the rights of a soldier of the National Armed Forces in the context of disciplinary liability in Latvia. As a result of the doctoral research, the author concludes that the research hypothesis has been affirmed.

**4. THE RESEARCH METHODS USED** are as follows: *analytical research method* to identify concepts using scientific literature, legal norms, case law, judicial and court law. *Comparative legal method* used by the author to identify the specifics of legal regulation in Latvia as well as current regulation of the related aspects in Germany, Belgium, Netherlands and Italy which is especially significant in the context of the Doctoral research. The *historical research method* has been used to clarify the origins of a soldier's legal status, which also includes the origins of disciplinary liability, and enables the author to understand both the current content of the regulatory framework and its characteristics in the context. The *descriptive research method* has been used to study in depth the soldier's disciplinary liability, gather information and based on the results of the study explain the nature and problems related to the concept of a soldier's disciplinary liability as well as to analyse the practice of the Appeals Commission, judicial and court practice and case law, and put forward solutions. The *deductive research method* has been used to draw conclusions about disciplinary practice in the National Armed Forces based on the wide range of theoretical findings contained in the decisions of the Appeal Commission. The *inductive research method* was used to derive general conclusions in the context of practical implementation of legal framework based on a single case of Sergeant A.J. in the context of the analysis of expulsion from service for violation of state secret norms and the *dogmatic research approach*, that would enable the proper interpretation of norms related to a soldier's disciplinary liability. The dogmatic approach was applied in order to obtain a correct understanding of the juridical content of legal norms and to elucidate its essence, and thereby achieve the goals set in the work – to draw scientifically based conclusions on the basis of the analysis of the existing norms, which could be used in the process of improvement of the norms of disciplinary liability of a soldier by revising the existing ones or developing new ones. The *logic constructive research method* was applied to draw specific conclusions and for the formulation of specific proposals by the author based on them.

The study also uses the following **methods of interpretation of legal norms**: *grammatical*, to clarify the specific legal norm that defines the meaning of “soldier's disciplinary liability” from the point of view of the interpretation of the wording contained therein and their interrelation; *systemic* in order to ascertain the interconnections of the legal normative regulation of a soldier's disciplinary liability, which is part of a special institute of military law, which in turn is a component of administrative law in Latvia. *Historical* - clarifying the purpose of the specific legal norm and the will of the legislator, taking into account the circumstances that were the basis for the emergence of the specific norm to be interpreted, studying amendments to the norms regulating the disciplinary liability of soldiers, draft laws, tracking the development of these norms; *teleological* in order to clarify the specific norm of military law, which defines the

meaning and purpose of “soldier's disciplinary liability”, to deduce whether the aim of the legislator coincides with the aim of the legal norms from both historical and modern context.

## **5. RESEARCH LIMITATIONS**

The doctoral thesis does not analyse the procedure for accounting of disciplinary sanctions, which is specified in the Cabinet Regulation No. 947 "Regulations of the Military Discipline of Soldiers and National Guards" (Not in force) and "Military Disciplinary Liability Law"

## **6. THE SCOPE AND STRUCTURE OF THE DOCTORAL THESIS**

The scope of the doctoral thesis is 189 pages, and it is structured in four chapters with subsections, it includes 2 tables. The structure of the work consists of an Introduction, which reflects the historical context of the chosen topic, the role, importance and place of the soldier in military service, society and national defence, explains the specifics of military service and military service relations, taking into account the fact that the disciplinary liability of a soldier is governed by both general and special sources of military law and by the rules of administrative law and administrative procedure. The introduction also includes: topicality, concise analysis of previous research, research object and subject, hypothesis, goal and tasks, methods, limitations, theoretical basis and structure, as well as research novelty, approbation of work results and theses. In Chapter 1 of the Doctoral Thesis the author clarifies the legal concept related to the disciplinary liability of a soldier and the substantive interpretation of the related legal concepts in connection with regulatory legal norms, develops a definition of a “soldier”, researches and analyses a soldier as a legal subject within the context of institutes in public administration, the National Armed Forces and the civil. The author also explains the nature of a soldier as a subject of military law and its connection as a subject of military law, general and special sources of law, formulates a definition of "military law", and explores the interaction between military law and administrative law. In Chapter 2, the author studies the legal status of a soldier and all its elements - soldier's rights, restrictions, duties and disciplinary liability and, using the findings of scientific research and legal regulation in Latvia and abroad, explains and analyses these concepts, as well as performs a substantive analysis of the concept of "honour" and historical development trends in civil and military life, ascertains the origin of the soldier's legal status its modern day transformation. In Chapter 3, the author researches and analyses the concepts, essence, theoretical and legal regulation of a soldier's disciplinary liability and disciplinary process, including disciplinary procedures, from a historical and modern point of view, paying special attention to the procedures for initiating, examining and terminating disciplinary proceedings. The author herein also studies and analyses the consequences of a soldier's disciplinary liability, which is a disciplinary sanction and convictions, as well as the theoretical

and legal aspects of the implementation of a disciplinary sanction. In the last - Chapter 4, the author studies and analyses the disciplinary practice of the National Armed Forces, using decisions of the Appeals Commission of the Ministry of Defence during the period from 2012 to 2019, which, upon receipt of a soldier's application for review of military discipline violation materials, assesses the justification of the disciplinary sanction imposed by the structural unit of the National Armed Forces and its appropriateness to the violation committed, as a result of which the disciplinary sanction may be revoked, reduced or upheld by rejecting the application. In the comparative context the author of the Doctoral Thesis studies the aspects of the current legal norms of foreign countries - Germany, Belgium, the Netherlands and Italy, which are considered important in the context of the Doctoral Thesis. Finally, the author's conclusions and proposed recommendations are summarized.

## **7. BRIEF OUTLINE OF THE CONTENT OF THE DOCTORAL THESIS BY CHAPTERS**

### **1. Legal subject – soldier**

The chapter has three subsections. Historically, the first attempt to legalize the army took place in 1445, when King Charles VII of France established the *Compagnies d'Ordonnance*, which permanently hired mercenaries to defend his kingdom, offering the country an unprecedentedly capable and reliable force led by senior officers who were appointed by the throne and loyal to the monarchy. These units depended on the king's supplies and wages. The first men to receive these regular salaries were called *soldiers (soudeers)*<sup>1</sup>. Today, a soldier is defined as a military personnel who is an official member of the permanent army, sanctioned by the nation state and subject to its authority, and the soldier (lat. *miles, militis*)<sup>2</sup> is a state military person<sup>3</sup>. In Latvia, the Military Service Law (hereinafter - *MDL*) provides a legal definition of a soldier.

The connection of a soldier as a legal entity with public administration is based on the legal doctrine of the Latvian legal system, from which it follows that in public law, which also includes the legal regulation of soldier's disciplinary liability, any public administration institution is obliged to comply with the law. In addition, by excluding the parties' ability to gather and present evidence, where the principle of objective investigation plays a key role in ensuring an objectively correct decision and is based on the presumption that the two parties - the State and the soldier - do not have equal opportunities, thus there is a fundamental inequality

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<sup>1</sup> Varin, C. (2014). *Mercenaries, Hybrid Armies and National Security: Private Soldiers and the State in the 21st Century*. New York: Routledge, pp.29 - 30.

<sup>2</sup> *The Latin Dictionary* (2013). Retrieved 19.10.2020. from <http://latindictionary.wikidot.com/noun:miles>

<sup>3</sup> Dubure, V., Fogels, A., Fridrihsons, I., Indulēns, G., Krastiņš, I. u.c. (1998). *Juridisko terminu vārdnīca*. [Glossary of legal terms.] Rīga: Nordik, 106. p.

of the parties involved in the administrative process<sup>4</sup>. The leading public administration institution in the defence sector in Latvia is the Ministry of Defence (hereinafter - AM). The author has explored the place and role of a soldier as a legal subject in the National Armed Forces (hereinafter - *NBS*) in the historical and modern context, where the *NBS* is a set of military formations formed by a militarily organized, trained and armed part of the nation<sup>5</sup>. The *NBS* Commander, exercising his rights, on June 11, 2014 imposed a requirement for a special licence for access to state secrets for all soldiers of the professional service and in accordance with the section 2 of the *MDL*<sup>6</sup> military service is a type of State service in the field of national defence that is performed by a soldier and that includes active service and service in the National Armed Forces' reserve. The author, researching a soldier as a legal subject in State service, ascertained that the meaning of the term State service is related to the professional activity explained in the legal literature carried out to ensure the implementation of the powers of public authority<sup>7</sup> and soldiers as persons belonging to the State service, are in a special relationship with the state and in a relationship of subordination, respectively, the rights of these persons are limited and special obligations are imposed on them by regulatory enactments, including sources of military law. The author developed a comprehensive and up-to-date definition of "soldier" that could replace the legal definition given in Article 2, first paragraph of the *MDL*.

There are currently several explanations for the concept of military law, but no definition has been developed. The system of military law is to be understood as community relations that are formed through the military activities of the state and consists of separate groups of relations, which take place in different spheres of military activity of the state and are divided into four groups.<sup>8</sup> The subject of military law indicates to which group of relations group the legal norm is aimed at.<sup>9</sup> Sources of military law include the existing general legal provisions binding on soldiers, such as laws and regulations, as well as special regulations - regulations, instructions, rules, instructions, orders and decrees, and the chapter provides their definitions and explanations. When considering issues related to the disciplinary liability of a soldier, the norms of military law, norms of administrative law and norms of administrative procedure are applicable. Military law, like administrative law, has common principles of law. At present, there

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<sup>4</sup> Team of authors. (2008). *Administratīvais process tiesā*. [Administrative proceedings in court] Briede J. (red.). Rīga: Latvijas Vēstnesis, 262.p.

<sup>5</sup> Law on the National Armed Forces. Adopted on 4 November 1999 Published: Latvijas Vēstnesis 388/389, 24.11.1999. Last amended on 03.10.2019, Article 2, first paragraph..

<sup>6</sup> Military Service Law. Adopted on 30.05.2002 Published: Latvijas Vēstnesis 91, 18.06.2002. Last amended 03.10.2019.

<sup>7</sup> Ильясов, С.Г. (1996). *Государственная служба в органах внутренних дел*. [Civil service in the internal affairs bodies], Москва: Право и закон, 7.p.

<sup>8</sup> Lubgāns, V. (2003). Militāro tiesību jēdziens un tiesību avoti. [The concept of military law and sources of law] *Jurista Vārds* Nr.24 (282), pp.1.,4 -5.

<sup>9</sup> Ibid.

is a special institute of military law in Latvia as a component of administrative law, which provides legal remedies against a soldier's disciplinary sanctions both in the military hierarchy and in an administrative court, similar to disciplinary practice abroad, for example, in Italy.<sup>10</sup> In the author's opinion, it is not necessary to create a new branch of military law in the Latvian legal system, because, firstly, the existing legal norms have already regulated legal relations to the full extent, although, there are a few shortcomings which could be corrected by amending the regulatory enactments within the existing military legal system and secondly, the Latvian court system does not include a specialized - Military Court. The author developed a definition of "military law" to be included in Article 2, first paragraph of the *MDL*.

## **2. The legal status of a soldier**

The chapter has two subsections. Legal status is the norm of law that determines the legally fixed position of a person at the relevant time and place, but the status of a soldier<sup>11</sup> is the legal status of a soldier while performing active service. Author, studying the element of the legal status of a Latvian soldier - rights, restrictions, obligations, disciplinary and honour - the concepts, essence and its role refers to the findings of lawyer Pēteris Kušners, who has studied the legal status of military personnel in Latvia, that the precise definition of legal status of military personnel, as well as other groups of society - civil servants, police, judges, prosecutors is essential to determine and understand the rights, duties and responsibilities of the said persons, indicating that the legal status of the military persons is acquired by including the person in the sphere of regulation of rights related to the performance of military. Thus, when military personnel acquire a special legal position - status and, analysing the legal status of an active soldier, Kušners points to the legal definition of a soldier given in the *MDL*, where it is determined that a soldier is a Latvian citizen who performs active service and has been awarded military rank.<sup>12</sup> The author, in general, agrees with the conclusions of lawyer Kushner that the legal status of soldiers is related to the exercise of special rights belonging to a person, including the right to social guarantees and retirement pension; the performance of duties or the performance of military service; protection of the legitimate interests of the person and disciplinary liability.<sup>13</sup> However in her previous research<sup>14</sup> the author considered it necessary to

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<sup>10</sup> Regulations on military discipline (Itālija). Regolamento di disciplina militare (RDM). Adopted 18. 07.1986. Published in the Official Journal no. 545. Paragraph 72. Retrieved 27.04.2020. [http://www.difesa.it/Giustizia\\_Militare/LegislaZIONE/Regolamenti/Pagine/ApprovazioneDelregolamentodidisciplinamilitare.aspx](http://www.difesa.it/Giustizia_Militare/LegislaZIONE/Regolamenti/Pagine/ApprovazioneDelregolamentodidisciplinamilitare.aspx)

<sup>11</sup> Military Service Law. Adopted on 30.05.2002 Published: Latvijas Vēstnesis 91, 18.06.2002.; Latvijas Republikas Saeimas un Ministru kabineta Ziņotājs, 14,25.07.2002. Last amended 03.10.2019 Article 2 (6).

<sup>12</sup> Law on Prevention of Conflict of Interest in the Activities of Public Officials. Adopted on 25.04.2002 Published: Latvijas Vēstnesis 09. 05. 2002, No.69 (2644). Last amended 31.10.2019. Article 4, first paragraph, clause (22).

<sup>13</sup> Kušners, P. (2013). Militārpersonas tiesiskā statusa regulējuma problemātika Latvijā un ārvalstīs. [Problems of regulation of the legal status of a military person in Latvia and abroad] *Juridiskā Zinātne*. Nr.4, pp. 101 -110.



clarify them, namely that a soldier's legal status is linked not only to the exercise of special rights, duties, protection of the person's legitimate interests, but also to disciplinary liability when the soldier may have violated military discipline as a result of which a disciplinary case is initiated and subsequently the special permit for access to state secrets is revoked. This clearly leads to expulsion of the soldier from service and disciplinary liability could be considered as the main reason for the loss of a soldier's legal status, which occurs against the soldier's will. The author emphasizing the importance of the special work of soldiers, which also includes their personal self-denial and devotion for the benefit of Latvia and its society, focuses on the in depth analysis of a soldier's rights, restrictions, duties, disciplinary liability, as well as honour, theoretical and legal characteristics in order to create an understanding of each element of the legal status of a soldier. It stems from the above mentioned that in the Republic of Latvia soldiers perform public service in the field of national defence and the legal status of a soldier are rights, statutory duties and honour guaranteed by the state, as well as military ethical requirements, restrictions and disciplinary liability and are now regulated by both military and administrative law and administrative procedural norms as well. Moreover, understanding the important role of disciplinary liability in the legal status of a soldier, the author has conducted an in-depth study of the origins of a soldier's legal status in the territory of Latvia<sup>15</sup> and has concluded that the text of the Swedish War Articles includes soldiers' rights, duties, as well as honour as a military ethical requirement, liability (criminal and disciplinary) and punishment. Therefore, the specific source of historical law includes all elements of a soldier's legal status in the modern sense and can be considered as the source of the origin of this right in the territory of Latvia.

### **3. Soldier's disciplinary liability and disciplinary process**

The chapter has three subsections. Disciplinary liability is also defined as the liability of a soldier for breaches or violations of military discipline.<sup>16</sup> The legal literature indicates that, although disciplinary offenses and disciplinary sanctions differ significantly from criminal law, the regulation of disciplinary liability has historically arisen and is based on the general principles of penal law.<sup>17</sup> The author agrees with the findings of Latvian law scholars that the

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<sup>14</sup>Golta, I. (2016). Karavīra un tā tiesiskā statusa jēdziens un būtība. [The concept of a soldier and their legal status] Turība University conference proceedings. XVII International Scientific Conference "Competitive Enterprises in a Competitive Country", pp. 71 - 80.

<sup>15</sup>Golta, I. (2016). Karavīra tiesiskais statuss Zviedrijas Kara artikulos Latvijas teritorijā. [The Legal Status of a Soldier in Swedish War Articles in the Territory of Latvia] V International Scientific Conference "Transformation Process in Law, Regional Economy and Economic Policy: Current Problems of Economic-Political and Legal Relations" proceedings, pp. 372 - 376.

<sup>16</sup>Justs, F.(2008). *Militāro jēdzienu skaidrojošā vārdnīca ar pamatterminu tulkojumu angļu valodā 15300 terminu un vārdkopu*. [Glossary of military terms with English translation of key terms - 15300 terms and phrases] Rīga: Avots, 202.p.

<sup>17</sup>Ibid, p.195.

application of disciplinary sanctions must comply with the principles common to penal law, which are most fully developed in the criminal law sub-sector<sup>18</sup> and Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms<sup>19</sup> determining the right of a person to a fair trial, and concludes that the soldier also has the rights arising from this Article. Disciplinary offenses, by analogy with those areas of administrative law which involve punishment, should be treated in the same way as criminal cases, according to the same principles and standards of evidence<sup>20</sup>, as recognized by the European Court of Human Rights.<sup>21</sup> In order for disciplinary liability to arise, it is necessary to establish in each specific case the unlawful conduct of a soldier guilty in the specific circumstances, which is causal in connection with certain losses or damage caused to the NBS and, with a slight derogation from the historical legal framework for military disciplinary liability, the author examines in this context the provisions of the 1930 “Law on Service in the Army and the Navy”<sup>22</sup>, the 1933 Penal Code<sup>23</sup> and the 1937 “War Discipline Regulations”.<sup>24</sup>

The author points out that the legislator must ensure the legal protection of every soldier and legal instruments in its implementation. The law scholar, Dr.iur. Jautrīte Briede researching and translating two Council of Europe documents - Council of Europe Resolution No. (77) 31 of 28 September 1977 “On the Protection of Individuals with regard to Acts Issued by Public Administration” and Council of Europe Recommendation No. (80) 2 of 11 March 1980 “On the Use of Discrete Power in Public Administration”<sup>25</sup> and studying their impact on innovations and administrative practice of Latvian administrative procedural legal norms noted that both documents included general administrative procedural principles - the right to be heard, the right

<sup>18</sup>Briede, J., Danovskis, E., Kovaļevska, A.(2016). *Administratīvās tiesības. Mācību grāmata*. [Administrative law. Textbook] Rīga: Tiesu namu aģentūra, 195. p.

<sup>19</sup> Convention for the Protection of Human Rights and Fundamental Freedoms. Signed in Rome on 04.11.1950. Latvia joined on June 4, 1997. the Law “On the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and its Protocols 1, 2, 4, 7 and 11.”. Published: Latvijas Vēstnesis, 143/144, 13.06.1997.

<sup>20</sup>Golts, E.(2018). Juridiskais pieņēmums kā pierādīšanas pienākuma pārcelšanas pamats. [Legal presumption as a basis for shifting the burden of proof] *Administratīvā un Kriminālā Justīcija*. Nr. 3/2018, 121.p.

<sup>21</sup> European Court of Human Rights case. *Västberga Taxi Aktiebolag and Vulic v. Sweden*, 2002, decision clause 74.

<sup>22</sup>*Law on Service in the Army and Navy. Excerpts from the Code for the period 1919- May 15, 1934 (Lik.kr.1919. g.1-1934. g.130)* (1939)., Rīga: Tieslietu ministrijas Kodifikācijas departamenta izdevums, 539.p.

<sup>23</sup>*Sodu likums ar likumdošanas motīviem un sīkiem komentāriem, kā arī alfabētisko un citiem rādītājiem*. [Penal law with legislative motives and detailed commentaries, alphabetical and other indicators] (1934). Mincs, P., Ehlerss,H., Jakobi,P., Lauva, J.(sast.). Neoficiāls izdevums. Rīgā, 111. pants, 45.p.

<sup>24</sup>Zavertkins,G.(1931). *Kas jāzina katram jaunkareivim? (Jaunkareivja rokas grāmata)*. [What does every young soldier need to know? (Young Soldier's Handbook)]. Fourth revised edition. Rīga: iespiests Armijas spiestuvē. Neoficiāls izdevums., 35.p.

<sup>25</sup>STENOGRAMMA Satversmes tiesas sēde lietā Nr.04-02(99) [Constitutional Court sitting, case No.04-02 (99)] “Par Ministru kabineta 1997. gada 21. janvāra noteikumu Nr.46 “Noteikumi par vadības līgumiem” atbilstību 1998. gada 20. novembra likumam “Informācijas atklātības likums” [On the Compliance of Cabinet Regulation No. 46 of 21 January 1997 “Regulations on Management Contracts” with the Law “Information Transparency Law” of 20 November 1998],14p.. Retrieved 03.11.2020. [https://www.satv.tiesa.gov.lv/wp-content/uploads/2016/02/04-0299\\_Stenogramma.pdf](https://www.satv.tiesa.gov.lv/wp-content/uploads/2016/02/04-0299_Stenogramma.pdf)

to information, the right to legal assistance and legal counsel, the explanation of grounds and information on the possibilities of appeal <sup>26</sup> under the Statute of the Council of Europe <sup>27</sup> that Latvia as a member of the Council of Europe, has agreed to comply with <sup>28</sup>.

The right to a fair hearing includes two elements: first, the right of a person to defend himself, that is to say, the right to know what offense he is suspected of having committed, and also the right to choose his defence; secondly, the right of a person to exercise his defence through a representative or with the participation of a defence adviser/counsel.<sup>29</sup> Thus, if a soldier wishes to authorize a representative to defend his rights, it is a paid service, as it is likely that the representative will not perform the soldier's task entrusted to him *pro bono* or free of charge.<sup>30</sup>

Researching the institute of a representation in the military service, the author pays special attention to the provisions of the Dutch Military Disciplinary Act (Wet militair tuchtrecht (WMT)), which regulates the Advisory Institute(The Confidential Adviser)<sup>31</sup>, where a soldier may choose his adviser from among where a soldier may choose his adviser from among military and civilian personnel.<sup>32</sup> In Latvia, the third part of Article 10 of the *MDL* stipulates that soldiers have the right to nominate a representative in each unit to defend the interests of soldiers <sup>33</sup>, but the norms of Regulation No. 14-REGL “Rules of Procedure of the Board of Appeal” (hereinafter - *AKDR*) provide that a party may participate in the sitting of the Appeals Commission (hereinafter – *AK*) with the assistance or mediation of a representative<sup>34</sup>, thereby it could be concluded that a soldier's representative in the context of disciplinary liability may start defence of a soldier only at the appeal stage and not from the moment of initiating disciplinary

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<sup>26</sup>STENOGRAMMA Satversmes tiesas sēde lietā Nr.04-02(99) [Constitutional Court sitting, case No.04-02 (99)] “Par Ministru kabineta 1997. gada 21. janvāra noteikumu Nr.46 “Noteikumi par vadības līgumiem” atbilstību 1998. gada 20. novembra likumam “Informācijas atklātības likums” [On the Compliance of Cabinet Regulation No. 46 of 21 January 1997 “Regulations on Management Contracts” with the Law “Information Transparency Law” of 20 November 1998],25. p. Retrieved 03.11.2020. [https://www.satv.tiesa.gov.lv/wp-content/uploads/2016/02/04-0299\\_Stenogramma.pdf](https://www.satv.tiesa.gov.lv/wp-content/uploads/2016/02/04-0299_Stenogramma.pdf)

<sup>27</sup>Briede, J.(1998). Latvijas administratīvi procesuālās normas Eiropas Padomes dokumentu kontekstā. Procesuālais taisnīgums [Latvian administrative procedural norms in the context of Council of Europe documents. Procedural justice]: *LU zinātniskie raksti / Prof. U. Krastiņa redakcijā*, pp. 20 – 60.

<sup>28</sup>Ibid, 22. p.

<sup>29</sup> Autoru kolektīvs. (2012). *Administratīvo pārkāpumu tiesības. Administratīvās atbildības likuma skaidrojumi*. [Administrative violations law. Commentaries on Administrative Liability Law] Danovska, E., Kūtris, G. (zin.red.). Rīga: Tiesu namu aģentūra, pp. 162 -163.

<sup>30</sup> Kane, S. (2021). Legal definition of *pro bono*. Retrieved 23.03.2021. <https://lv.chalized.com/pro-bono-likuma-definicija/>

<sup>31</sup> Military Disciplinary Act (Netherlands), Wet militair tuchtrecht (WMT). National law. Adopted on 14.06.1990. Last amended on 01.04.2020., Article 56, first paragraph. Retrieved 05.11.2020. <https://wetten.overheid.nl/BWBR0004788/2020-04-01#HoofdstukV>

<sup>32</sup> Military Disciplinary Act (Netherlands), Wet militair tuchtrecht (WMT). National law. Adopted on 14.06.1990. Last amended on 01.04.2020., Article 57, first paragraph. Retrieved 05.11.2020. <https://wetten.overheid.nl/BWBR0004788/2020-04-01#HoofdstukV>.

<sup>33</sup> Military Service Law. Adopted on 30.05.2002 Published: Latvijas Vēstnesis 91, 18.06.2002. Last amended 03.10.2019, 10. Article 3, third paragraph.

<sup>34</sup>Regulations No. 14-REGL “Rules of Procedure of the Board of Appeal”. Adopted on 11.09.2011 Ministry of defence. Unpublished material. Last amended 31.01.2012, section 41.

proceedings, which would be in the interest of the soldier. And in order to prevent this, in the author's opinion, the protection of a soldier's rights as a soldier's advisor in the entire disciplinary process could be carried out free of charge by one of the officials of the General Inspectorate of the Ministry of Defence (hereinafter – *GI*), and therefore it is necessary to supplement the section 25.14 of the AM Regulation No. 1 REGL of 5 January 2010 „Regulations of the Audit and Inspection Department” with a sub clause providing a task for the *GI* - to participate throughout the disciplinary process as an advisor who exercises the defence of the soldier as a representative.

The Military Discipline Regulations for Soldiers and National Guards (hereinafter – *KZMDR* which were in force until 01.12.2020, and the *MDL*, which specified the types of disciplinary sanctions, as well as the Military Disciplinary Liability Law (hereinafter - *MIDIL*), in force from 01.12.2020, which also specifies the types of disciplinary sanctions stipulates that the following disciplinary procedures are to be carried out in disciplinary proceedings: review, investigation of violations of military discipline, the imposition and enforcement of disciplinary sanctions, , and each of those stages is governed by a procedure which, in turn, can be divided into three components: the first is the initiation of disciplinary proceedings; second – conduct of disciplinary proceedings; and the third - the termination of disciplinary proceedings , moreover, in a soldier's disciplinary proceedings there is a principle that the burden of proof lies upon the person who affirms but not who denies. (*Ei incumbit probatio, qui dicit, non qui negat*).<sup>35</sup>

During the disciplinary process, the activities of the *NBS* structural unit must always be legally justifiable, realised by making rational considerations and its main task in the administrative process is to ensure, within the competences assigned to it, legally effective and accurate application of legal norms, as well as taking appropriate decisions objectively ascertaining the factual and legal circumstances of the case.<sup>36</sup> During the service investigations and even more at the time of compiling the service report, in order to resolve a legally significant case fairly, it is essential to find and apply the appropriate set of legal acts. However, in order for the relevant provisions to be correctly applied, they must also be understood, it is also necessary to understand the meaning of the applicable (or inapplicable) legal norms, as the outcome of the case may significantly depend on the understanding of the meaning of a legal norm and confidence in its suitability and the interpretation of the legal norm, because only by performing the above-mentioned legal analysis work, using the base of the legal norms in force, the law enforcer comes to the conclusion that the case can be resolved. Moreover, the interpretation of legal norms must take place only within the limits of the legal text, nothing can be added to it

<sup>35</sup> Jakubaņeics, V. (2006). *Tiesiskā apziņa*. [Legal awareness] Fourth supplemented edition. Rīga: P&K, 59. p.

<sup>36</sup> Baltais, M. (2005). Iestādes rīcības brīvība un lietderības apsvērumi. [Discretion and usefulness of Authority] *Jurista Vārds*. Nr. 18 (373), pp. 7- 13.

and nothing can be removed, but in practice there are still cases when a legal norm is misinterpreted, which leads to an unfair resolution of cases.<sup>37</sup>

The consequences of disciplinary liability are, firstly, a disciplinary sanction or reduction of the rights arising from the employment relationships and, secondly, disciplinary sanctions record, which are time-limited and statutory legal consequences which allow the fact that a soldier has been disciplined to be taken into account for future legal relations<sup>38</sup>. The *MDL* and *MIDIL* rules governing disciplinary sanctions are set out in order, starting with the most lenient - with a reprimand, and ending with the most severe - early dismissal. Disciplinary convictions are governed by the provisions of Article 25 of the *MIDIL*<sup>39</sup>.

Similarly, as regulated in the *KZMDR* norms, a *MIDIL* stipulates that in case a soldier submits an application to the *AK*, the execution of the disciplinary sanction is suspended until the decision of the *AK* is taken<sup>40</sup>. The *AK* examines a soldier's application to challenge a disciplinary sanction on the basis of the *AKDR* regulations on jurisdiction, assessing the merits of the disciplinary sanction imposed and its compliance with the offense committed<sup>41</sup> and the *AKDR* regulations provided that only a party to a *AK* hearing or a soldier who has submitted an application for contesting a disciplinary sanction may participate with the help or mediation of a representative, but neither the previous - *KZMDR* normative regulations, nor the existing - *MIDIL* regulations includes a norm on the soldier's right to exercise defence through a representative during the entire disciplinary process, which deprives the soldier of a full opportunity to defend himself, thus narrowing the scope of the soldier's rights in the context of disciplinary liability. According to the author, the second paragraph of Article 18 of the *MIDIL* "Investigation of Military Discipline Violations" should be supplemented with the additional sentence that in case of initiating a service investigation the commander (chief) is obliged to invite a "soldier's adviser" to defend the soldier throughout the disciplinary proceedings as his representative.

Thus, each structural unit of the *NBS* on a daily basis over a long period of time, while implementing the disciplinary process and the relevant disciplinary procedures - reviewing, investigating violations of military discipline, imposing and enforcing disciplinary sanctions, has developed its own practice, which can be called disciplinary practice.

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<sup>37</sup>Zeitmanis, M.(2004). Tiesību normu iztulkošanas un tiesību tālākveidošanas robežšķirtnes problēmas(1). [Problems concerning interpretation of legal norms and separation for further development of rights] *Likums un Tiesības*. Nr.5 (57), pp.153 - 155.

<sup>38</sup> Briede, J., Danovskis, E., Kovaļevska, A.(2016). *Administratīvās tiesības. Mācību grāmata.*[Administrative law. Textbook] Rīga: Tiesu namu aģentūra, 197p.

<sup>39</sup> Military Disciplinary Liability Law. Adopted on 05.11.2020. Published: Latvijas Vēstnesis 223, 17.11.2020. No amendments. Article 25. Retrieved 02.02.2021 <https://likumi.lv/ta/id/318749-militaras-disciplinaratbildibas-likums>.

<sup>40</sup> Ibid, Article 25 Section 3

<sup>41</sup>Regulations No. 14-REGL "Rules of Procedure of Appeals Commission". Adopted on 11.09.2011 Ministry of defence. Last amended 31.01.2012, clause 15. Unpublished.

#### 4. Soldier's disciplinary practice

The chapter has 4 subsections. Disciplinary practice is a system established in the armed forces for rewarding soldiers and using disciplinary sanctions, which is intended to promote their upbringing and strengthen military discipline based on the due enforcement of laws and military regulations.<sup>42</sup> Within the framework of the chapter, the author performed an analysis of 47 *AK* decisions (hereinafter - *AK* Decisions). The *AK* upon receipt of a soldier's application for review of military discipline violation, assess the justification of the disciplinary sanction imposed by the *NBS* structural unit and compliance with the violation. The author concludes that during the time period 2012-2019, a total of 1254 soldiers sentenced to disciplinary action, 47 soldiers have appealed to the *AK* against the disciplinary action imposed, of which the *AK* has upheld and annulled disciplinary sanctions for 16 soldiers, 4 soldiers had their disciplinary sanctions reduced, thereby partially upholding their appeals, 1 application was left without a review and applications of 26 soldiers were rejected and out of them 13 soldiers were disciplined with reprimand, 4 soldiers with disciplinary punishment - a warning of non-compliance with the position held, 1 soldier was sentenced to a 20% reduction in monthly salary for 6 months, 1 soldier was sentenced to an out of turn secondment and seven soldiers were sentenced to early retirement. Three representatives of soldiers and one for the claimant have participated in the *AK* meetings. Eight soldiers have contested the rejection of their appeal by the *AK* to the administrative court which in turn upheld the decision of the *AK*.

According to the author, the fact that only three of the forty-seven *AK* sittings were attended by a soldier's representative reaffirms her assertion that a soldier cannot defend himself properly from the outset of a military service investigation because he/she, in essence, is not aware of their rights and obligations neither during the disciplinary proceedings initiated against them and nor during the ensuing procedures. A soldier is in a state of subordination throughout the entire disciplinary process, and he/she cannot or is unable to point out the conflict of interest, does not understand whether his / her actions have been properly classified and whether his / her guilt has been proven, and does not understand the consequences of the disciplinary sanction as well. The author is convinced that it is not excluded that for various reasons (through persuasion, threats or fraudulently) a soldier does not submit an application at all in the *AK*, because he/she is not aware of the consequences of not appealing the disciplinary sanction imposed by the *NBS* unit following a military investigation and its concluding report. It can be concluded from the *AK* Decisions that a large part or half of the soldiers' appeals were upheld and the disciplinary sanctions were revoked, which, in turn, is probably not in the interests to the officials of the *NBS*

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<sup>42</sup> Justs, F.(2008). *Militāro jēdzienu skaidrojošā vārdnīca ar pamatterminu tulkojumu angļu valodā 15300 terminu un vārdkopu*. [Glossary of military terms with English translation of key terms - 15300 terms and phrases] Rīga: Avots,203. p.

structural unit who imposed disciplinary sanctions, and therefore, the soldier's adviser is required right from the moment of initiation of disciplinary proceedings, that is, the soldier's adviser, as a representative, must be present throughout the disciplinary proceedings, and free of charge.

With regard to the above *AK* Decisions, the author concludes that by examining both the factual and legal aspects in the context of military disciplinary liability, including the competence of military service investigators, the content of military investigation reports and the legal norms applied therein, the *AK* in its decisions has upheld the soldiers' appeals fully or partly mostly on the grounds that the military investigations were based on unverified and unproven facts, there were no indications in the disciplinary violation investigation materials of a direct causal connection between the actions or omissions by a soldier, which would be considered as a discipline violation, and the fact that the *NBS* unit in its disciplinary practice had not legal classified the violation at all or had provided an incorrect classification, had applied the wrong legal norms or had also had a conflict of interest as well.

The new *MIDIL* regulation prohibits an official who has or may have a conflict of interest in a particular military disciplinary case from conducting an official investigation.<sup>43</sup> But the 6th paragraph of Article 19 of the *MIDIL*<sup>44</sup> that stipulate that if there are circumstances that prevent the investigator from conducting a service investigation, the investigator is obliged to submit a substantiated report to the commander (chief). However, the author points out that still the wording of the clause 4 of paragraph 1 of Article 15 of the *MDL*<sup>45</sup> prohibiting soldiers from taking part, personally or through the intermediation of another person, in transactions, upon the entering into or the fulfilment of which soldiers may unlawfully use their service position or come into a conflict of interest, does not unequivocally indicate the inadmissibility of a conflict of interest in the performance of activities related to the position of a public official and such regulation is, in the author's opinion, to be considered incorrect and immediately rectified. The author is convinced that a soldier remains legally vulnerable throughout the military investigation process, as he/she has no legal tools to completely prevent the inclusion of parties with vested interest in the military investigation commission, thus protecting his/her rights and can only rely on the integrity of the unit commander and the members of the military investigation commission, including military investigations aimed at proving his/her guilt in disciplinary violations taking into account the fact that a soldier must unconditionally comply with the lawful orders of the commander (chief), in accordance with the provisions of Section 7,

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<sup>43</sup> Military Disciplinary Liability Law. Adopted on 05.11.2020. Published: Latvijas Vēstnesis 223, 17.11.2020. No amendments. Article 19, first paragraph, clause 4. Retrieved 02.02.2021 <https://likumi.lv/ta/id/318749-militaras-disciplinaratbildibas-likums>

<sup>44</sup> Ibid, Article 19, sixth paragraph.

<sup>45</sup> Military Service Law. Adopted on 30.05.2002 Published: Latvijas Vēstnesis 91, 18.06.2002. Last amended on 03.10.2019, Article 15, first paragraph, clause 4



Paragraph two of the *MDL*. The author, considering that the above-mentioned shortcomings in the existing legal framework in the context of disciplinary liability, cause a significant violation of the soldier's rights even after the entry into force of MIDIL, proposes to amend two legal norms in order to prevent such a situation - *MDL* and „Rules of Procedure for the Military Service”, which determines the general duties of soldiers, duties of officials, mutual relations of soldiers, procedures for the performance of active service and internal organization of units (subunits) in the *NBS* by supplementing both with a prohibition on soldiers from entering into conflicts of interest and abusing their position.

## **8. VALIDATION OF DOCTORAL RESEARCH RESULTS**

The results of the doctoral research have been presented and discussed at both Latvian and international scientific conferences.

- 1) *On May 18, 2017*, the author presented a report „Dienesta izmeklēšana par karavīra militārās disciplīnas pārkāpumiem: teorija un prakse” [“Military Investigation on a Soldier's Disciplinary Violations: Theory and Practice”] at the XVIII International Scientific-Practical Conference “Communication in a Global Village: Interests and Influences” organised by Turība University.
- 2) *On December 9, 2016*, the author presented a report „Karavīra tiesiskais statuss Zviedrijas Kara artikulos Latvijas teritorijā” [The Legal Status of a Soldier in Swedish War Articles in the Territory of Latvia] at the 5th International Scientific Conference “Transformation Process in Law, Regional Economy and Economic Policy: Current Problems of Economic-Political and Legal Relations” organized by BIA, RSU, DU and *Uniwersytet Przyrodniczo-Humanistyczny w Siedlcach*.
- 3) *On March 31, 2016*, the author presented a report „Karavīra un tā tiesiskā statusa jēdziens un būtība” [The Concept of a Soldier and their Legal Status] at the XVII International Scientific Conference “Competitive Enterprises in a Competitive Country” organised by Turība University.

The author has also reflected the results of the doctoral research in scientific articles and collections of articles of international scientific conferences:

- 1) *In 2017*, the article „Dienesta izmeklēšana par karavīra militārās disciplīnas pārkāpumiem: teorija un prakse” [“Military Investigation on a Soldier's Disciplinary Violations: Theory and Practice”] was published in the proceedings of the XVIII International Scientific-Practical Conference “Communication in a Global Village: Interests and Influences”, Turība University.
- 2) *In 2016*, the article “Karavīra un tā tiesiskā statusa jēdziens un būtība” [“The Concept and Essence of a Soldier and Its Legal Status”] was published in the proceedings of the



XVII International Scientific Conference “Competitive Enterprises in a Competitive Country”, Turība University.

- 3) In 2016 the article „Karavīra militārās disciplīnas pārkāpuma izskatīšana” “Review of a Soldier’s military disciplinary violations” in the law journal *Administratīvā un Kriminālā Justīcija*.
- 4) In 2016, the article “Karavīra tiesiskais statuss Zviedrijas Kara artīkulos Latvijas teritorijā” [The Legal Status of a Soldier in Swedish War Articles in the Territory of Latvia] was published in the proceedings of the 5th International Scientific Conference “Transformation Process in Law, Regional Economy and Economic Policy: Current Problems of Economic-Political and Legal Relations” organized by BIA, RSU, DU and *Uniwersytet Przyrodniczo-Humanistyczny w Siedlcach*.

## 9. MAIN SOURCES OF SCIENTIFIC LITERATURE USED IN THE DOCTORAL THESIS

Theoretical aspects of military law have been very little studied in Latvian legal science, but with regard to the disciplinary liability of a soldier, it must be admitted that it has not been researched by Latvian legal scholars at all. At present, only a few authors have outlined the problems related to the disciplinary liability of a soldier in their works, and the main authors from Latvia: F.Justs, who has compiled a glossary explaining military concepts<sup>46</sup>, and articles published by authors: L.Balode<sup>47</sup>, military law researcher, lawyer Mg.iur. P.Kušners<sup>48 49 50 51 52</sup>, I. Logina<sup>53</sup>, V. Lubgāns<sup>54</sup>, J. Melderis<sup>55</sup> and R. Tiliks<sup>56</sup>. The author also notes recognised

<sup>46</sup> Justs, F.(2008). *Militāro jēdzienu skaidrojošā vārdnīca ar pamatterminu tulkojumu angļu valodā 15300 terminu un vārdkopu*. [Glossary of military terms with English translation of key terms - 15300 terms and phrases]Rīga: Avots, 1231.p.

<sup>47</sup> Balode, L. (January 8, 2019) Disciplināri sodītu pilsoni var pieņemt gan militārajā, gan citā valsts dienestā. [A citizen with disciplinary conviction may be admitted to both military and other public service] Retrieved 03.04.2019. no <https://lvportals.lv/skaidrojumi/301195-disciplinari-soditu-pilsoni-var-pienemtgan-militaraja-gan-cita-valsts-dienesta-2019>

<sup>48</sup> Kušners, P. (2013). Militārais dienests kā viens no valsts dienesta veidiem politisko un pilsonisko tiesību ierobežojumu izpratnē. [Military service as one of the types of public service in the context of restrictions on political and civil rights] *LU 71.konferences Rakstu Krājums*,pp. 288 – 293.

<sup>49</sup> Kušners, P. (2013). Militārpersonas tiesiskā statusa regulējuma problemātika Latvijā un ārvalstīs. [Problems of regulation of the legal status of a military person in Latvia and abroad] *Juridiskā Zinātne* Nr.4, pp. 101 -110.

<sup>50</sup> Kušners, P.(2012). Par kļūdainu Augstākās tiesas Senāta spriedumu militārā dienesta jomā. [On an erroneous judgment of the Senate of the Supreme Court in the field of military service] *Jurista Vārds* nr.39, 23.p.

<sup>51</sup> Kušners, P.(2009). Pavēle par karavīra disciplinārsodišanu, tās apstrīdēšanas kārtība. [Order on disciplinary punishment of a soldier, the procedure for contesting it] *Jurista Vārds* nr. 35 (578). Retrieved 15.04.2020. no <https://juristavards.lv/doc/196705-pavele-par-karavira-disciplinarsodisanu-tas-apstridesanas-kartiba/>

<sup>52</sup> Kušners, P. (2014. gada 10. jūnijs). Vēlreiz par atļaujas pieejai valsts noslēpumam nozīmi. [Once again about the importance of permission to access state secrets] Retrieved 31.03.2019. no <https://www.tvnet.lv/5186075/velreiz-par-atlaujas-pieejai-valsts-noslepumam-nozimi>

<sup>53</sup> Logina, I.(2000). Paper “Likumdošanas iniciatīvas un tiesību reglamentācijas jautājumi bruņotajos spēkos. [Legislative initiatives and legal regulation issues in the armed forces] “*Administratīvā Kriminālā Justīcija*”. Nr..3, pp. 40 - 43.

<sup>54</sup> Lubgāns, V. (2003). Militāro tiesību jēdziens un tiesību avoti. [The concept of military law and sources of law] *Jurista Vārds*. Nr.24 (282), pp. 1.,4-5.

administrative law researches and scholars such as, K.Dišlers<sup>57</sup>, team of authors: J.Briedes, E.Danovska and A.Kovaļevskas<sup>58</sup>, also the works of J.Briedes<sup>59</sup>, E.Danovska<sup>60</sup> and J.Načisčionis<sup>61</sup>, foreign administrative law scholar F.J.Paines<sup>62</sup> and military law researchers such as G. B.Davis<sup>63</sup>, D. Kennedy<sup>64</sup>, D.Luban<sup>65</sup>, J.A.Lynn<sup>66</sup>, G.Nolte<sup>67</sup>, P.Rowe<sup>68</sup>, P.Olsthoorn<sup>69</sup> and team of authors: M.F.Brandebo, J.Österberg, A.K.Berglund<sup>70</sup> and law scholars such as, I.Baricina, I.Bošno<sup>71</sup>, V.Nersesjanca<sup>72</sup>, J.Ivļeva<sup>73</sup> and N.Rozina<sup>74</sup> as well publications of the author of this present doctoral research<sup>75</sup>.

<sup>55</sup> Melderis, J. (2000). Par militāriem reglamentiem un ekspertu nozīmēšanu Nacionālajos Bruņotajos spēkos. [On military regulations and appointment of experts to the National Armed Forces.] *Administratīvā un Kriminālā Justīcija*. Nr.3, pp. 43 - 44.

<sup>56</sup> Tiliks, R. (2006). Disciplinārās atbildības jautājumu krustcelēs [Disciplinary liability at the crossroad]. *Jurista Vārds*. Nr. 4 (407)., pp.12 – 19.

<sup>57</sup> Dišlers, K.(2002). *Ievads administratīvo tiesību zinātnē*. [Introduction to administrative law science.] Rīga: Tiesu namu aģentūra, 274. p.

<sup>58</sup> Briede, J., Danovskis, E., Kovaļevska, A. (2016). *Administratīvās tiesības. Mācību grāmata*. [Administrative law. Textbook] Rīga: Tiesu namu aģentūra, 351.p.

<sup>59</sup> Briede, J. (1998). Latvijas administratīvi procesuālās normas Eiropas Padomes dokumentu kontekstā. Procesuālais taisnīgums [Latvian administrative procedural norms in the context of Council of Europe documents. Procedural justice]: *LU zinātniskie raksti / Prof. U. Krastiņa redakcijā*, pp.20 – 60.

<sup>60</sup> Danovskis, E. (2013). Valsts dienesta jēdziens. [Concept of state service] *LU 71. konference Rakstu Krājums*, pp. 283 - 287.

<sup>61</sup> Načisčionis, J. (2018). *Administratīvās tiesības*. [Administrative law] Fourth edition. Rīga: SIA „Biznesa augstskola Turība”, 518.p.

<sup>62</sup> Paine, F.J. (2003). Eiropas administratīvo tiesību ietekme uz dalībvalstu administratīvajām tiesībām. [The impact of European administrative law on the administrative law of the Member States] *Likums un Tiesības*. 5.sējums. Nr.4 (44), 114.p.; Paine, F. J. (2002). *Vācijas vispārīgās administratīvās tiesības. Vācijas Administratīvā procesa likums*. [General German administrative law. German Administrative Procedure Law] Rīga: Tiesu namu aģentūra, 84.p.

<sup>63</sup> Davis, G. B. (1915). A treatise on the military law of the United States together with the practice and procedure of courts-martial and other military tribunals (3rd ed.). New York: J. Wiley & Sons., p.1.

<sup>64</sup> Kennedy, D. (2009). Of War and Law. Princeton: Princeton University Press, p. 191.

<sup>65</sup> Luban, D. (2013). Military necessity and the cultures of military law armed forces. *Leiden Journal of International Law*, pp. 315 - 349. DOI:10.1017/S092215651300006X

<sup>66</sup> Lynn, J. A. (1989). Toward an Army of Honor: The Moral Evolution of the French Army, 1789-1815. *French Historical Studies*, 16(1), p. 166.

<sup>67</sup> Nolte, G. (2003). *European military Law System*. Berlin: De Gruyter Recht, p.302.

<sup>68</sup> Rowe, P. (2006). *The Impact of Human Rights Law on Armed Forces*. Cambridge University Press, p. 259.

<sup>69</sup> Olsthoorn, P. (2005). Honor as a Motive for Making Sacrifices. *Journal of Military Ethics*, 4(3), p. 190.

<sup>70</sup> Brandebo, M. F., Österberg, J., Berglund, A. K. (2019). The Impact of Constructive and Destructive Leadership on Soldier's Job Satisfaction. *Psychological Reports*, 122(3), pp.1068. -1069. DOI:10.1177/0033294118771542

<sup>71</sup> Барциц, И.Н, Бошно, С.В. (2007). Источники служебного права. [Sources of military law] Москва: РАГС., 53.p.

<sup>72</sup> Нерсисянц, В.С.(2001). *Теория права и государства*. [Theory of law and state] Москва.: Издательство НОРМА, pp..253 -256.

<sup>73</sup> Ивлев, Ю. В. (2000). *Логика для юристов*. Учебник для вузов. [Logic for lawyers. Textbook] Москва: Дело, 2000, pp.182 - 183.

<sup>74</sup> Розин, Н.И.(1910). *Оглавление книги: Об оскорблении чести: Уголовно-юридическое исследование* *Общая часть. Опозорение* [On Defamation: A Criminal Law Study. Disgrace] 2-е изд., Томск: Т-во "Печатня С. П. Яковлева", 21.p.

<sup>75</sup> Golta, I. (2016). Karavīra militārās disciplīnas pārkāpuma izskatīšana. *Administratīvā un Kriminālā Justīcija*. Nr.4 (77) 40. - 47. lpp. Golta, I. (2016). Karavīra un tā tiesiskā statusa jēdziens un būtība. [The concept of a soldier and their legal status] Turība University conference proceedings. XVII International Scientific Conference "Competitive Enterprises in a Competitive Country", pp.71 - 80. .; Golta, I. (2016). Karavīra tiesiskais statuss Zviedrijas Kara artikulos Latvijas teritorijā. [The Legal Status of a Soldier in Swedish War Articles in the Territory of Latvia] V International Scientific Conference "Transformation Process in Law, Regional Economy and Economic Policy:

The issues analysed in the doctoral thesis have not been summarized in legal literature or research in Latvia so far, but the author's findings, definitions, conclusions and proposed proposals will help to expand the scope of the National Armed Forces soldier's rights in the context of disciplinary liability in Latvia and improve the legal regulation of soldier's disciplinary liability.

In total, 179 works of various Latvian and foreign authors, 37 legal acts of the Republic of Latvia, 4 topical aspects of legal norms of Germany, Belgium, the Netherlands and Italy that the author considers important in the context of the Doctoral Thesis and which will enable recommending the best solution for the improvement of the existing legal norms regulating the disciplinary liability of soldiers, 4 EU legal acts, 6 international agreements, 29 court and case law judgments, 48 NBS disciplinary practice materials have been used.

## 10. CONCLUSIONS AND PROPOSALS

**Conclusion 1:** The Military Service Law does not provide an exhaustive definition of "soldier", and the definition of "military rights" is not included in the legal framework at all. An explanation of these terms is also not provided in the glossary of legal terms.

**Proposal:** To amend the fifth paragraph of Section 2 of the Military Service Law by inserting an exhaustive definition of "soldier" instead of the legal definition therein with the following wording:

### ***„Section 2.***

***5) A soldier is a citizen of the Republic of Latvia who, as a civil service official, performs active service, who has been granted the rank of military service and who qualifies for access to a state permit for access to state secrets, who acts in a subordinate capacity in the service and has special responsibilities, increased legal liability and limited rights."***

**Proposal:** To supplement the first part of Section 2 of the Military Service Law with Part<sup>1</sup> including in it the definition of "military law", worded as follows:

### ***„Section 2.***

***1<sup>1</sup>) Military law is a set of special legal norms established by the state in the field of administrative law, which determines the obligations of various persons serving in the armed forces, as well as the rights that these persons may exercise, defines violations of military discipline and seeks to prevent them by imposing appropriate penalties."***

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Current Problems of Economic-Political and Legal Relations" proceedings, pp. 372 - 376. .; Golta, I. (2017). Dienesta izmeklēšana par karavīra militārās disciplīnas pārkāpumiem: teorija un prakse" publication. [Military investigation into Soldier's Military Disciplinary Violations: Theory and Practice] XVIII International Scientific-Practical Conference "Communication in a Global Village: Interests and Influences", 18.05.2017. Rīga: Biznesa augstskola Turība, conference proceedings, pp.76 - 87.

**Conclusion 2:** The existing legal framework does not include a soldier's advisory institute, and does not include a norm on the soldier's right to defend themselves through a representative during the entire disciplinary process, which deprives soldiers of a full opportunity to defend themselves.

**Proposal** it is necessary to supplement the clause 25.14 of the AM Regulation No. 1 REGL of 5 January 2010 “Regulations of the Audit and Inspection Department” with an additional paragraph, expressing it in the following wording:

*„25. Tasks of the General Inspectorate: 25.14. [...] **25.14.1. to participate throughout the disciplinary process as an advisor who exercises the soldier's defence as a representative**”.*

**Conclusion 3:** A soldier's commander (chief) is an official who, with an order to initiate a military investigation against a soldier, is entitled to initiate disciplinary proceedings, but the soldier cannot fully exercise the right of defence.

**Proposal:** The commander (chief) would have an additional obligation by proposing to invite an “adviser” to the disciplinary case for the implementation of the soldier's defence throughout the disciplinary process as a representative, amending the provisions of part 2 of Article 18 of the Military Disciplinary Law “Review of Military Disciplinary Violations” supplementing it with an additional sentence in the following wording:

*„(2) The commander (chief) shall commence the investigation of the violation of military discipline immediately or not later than within five working days as soon as he or she becomes aware of a possible violation of military discipline. When examining violations of military discipline, a military investigation may be performed in accordance with the procedures specified in this Law. **In case of initiating a military investigation, the commander (chief) is obliged to invite an adviser who implements the soldier's defence throughout the disciplinary process as a representative**”.*

**Conclusion 4:** Even after the entry into force of the Military Disciplinary Law, a soldier remains legally vulnerable throughout the service investigation process, as he has no legal tools to completely prevent the inclusion of parties with vested interest in the military investigation commission and thereby cannot protect his rights, given the fact that a soldier must unconditionally obey the lawful orders of the commander (chief).

**Proposal:** to amend two legal norms - the “Military Service Law” and the “Rules of Procedure for the Military Service”, both of which are to be supplemented with a prohibition for soldiers from entering into a conflict of interest and illegally using their service position:

The supplement the first part of Section 15 (Prohibitions for Soldiers) of the Military Service Law with Paragraph 5 and express it in the following wording: **”5. To perform activities**

*related to the position illegally, using one's official position or in the event of a conflict of interest."*

To supplement Section 3.1 "General Duties of Soldiers" of the "Rules of Procedure for the Military Service" with Paragraph 29 and to express it in the following wording: ***"29. A soldier is prohibited from performing activities related to the position illegally, using his or her official position or in the event of a conflict of interest."***

## **11. THESES PUT FORWARD FOR DEFENSE**

Thesis 1: The Military Service Law does not provide an exhaustive definition of a "soldier", therefore, a modern definition of "soldier" should be included in this provision instead of a legal one, defining that a soldier is a citizen of the Republic of Latvia who, as a civil service official, performs active service, who has been granted the rank of military service and who qualifies for access to a state permit for access to state secrets, who acts in a subordinate capacity in the service and has special responsibilities, increased legal liability and limited rights.

Thesis 2: The definition of "military law" is not included in the Latvian legal framework or in the glossary of legal terms, therefore the provisions of the Military Service Law must be supplemented by determining, that Military law is a set of special legal norms established by the state in the field of administrative law, which determines the obligations of various persons serving in the armed forces, as well as the rights that these persons may exercise, defines violations of military discipline and seeks to prevent them by imposing appropriate penalties.

Thesis 3: In order to improve the existing legal framework, which does not include a soldier's advisory institute and does not include a soldier's right to defend himself through a representative throughout the disciplinary process, which deprives the soldier of a full opportunity to defend himself, it is necessary to supplement it is necessary to supplement the tasks of the General Inspectorate of the Audit and Inspection Department of the Ministry of Defence, taking into account that the defence of a soldier's rights as a soldier's adviser within the entire disciplinary process could be carried out free of charge by one of the officials of the General Inspectorate of the Audit and Inspection Department of the Ministry of Defence.

Thesis 4: A commander (chief) of a soldier is an official who, by an order to initiate a service investigation against a soldier, is entitled to initiate disciplinary proceedings, but in order for the soldier to fully exercise the right of defence, the commander (chief) would have an additional obligation to initiate a disciplinary case by inviting a "adviser" for the implementation of the soldier's defence, throughout the disciplinary process, as a representative, by amending the provisions of the Military Disciplinary Law.

Thesis 5: Even after the entry into force of the Military Disciplinary Law, a soldier remains legally vulnerable throughout the service investigation process, as he has no legal tools to completely prevent the inclusion of parties with vested interest in the military investigation commission and thereby cannot protect his rights, given the fact that a soldier must unconditionally obey the lawful orders of the commander (chief) therefore the provisions of the “Military Service Law” and the “Rules of Procedure for the Military Service” must be supplemented with a prohibition for soldiers from entering into conflicts of interest and abusing their official position.

## ACKNOWLEDGMENTS

*I thank my supervisor, Professor Dr.iur. Jānis Načisčionis for inexhaustible patience and support! You gave me inspiration and faith in myself even before I started working on my topic and through the whole process of writing! Thank you!*

*I thank my dear family – my daughters Sarah Marta and Laura, my son Madars and my husband Edgars for their infinite love and selfless help! You gave me the strength and endurance to finish the job! Thank you!*