

陸海空軍刑法爭議問題研析

— 兼評相關實務判決

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關鍵詞：軍刑法、抗命、哨兵、值星官、長官、上官

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摘要

官兵未獲長官同意，私下調換戰情輪值或請他人代值，有判決以行為人欠缺「主觀上使該命令所欲達成之目的無法遂行或難以遂行」為無罪判決；特定值班人員開小差，有判決以欠缺「衛兵」與「哨兵」之「守衛軍事地區之安全者」性質為無罪判決；值星官凌虐、懲罰下屬，下屬對值星官暴行脅迫，值星官究為長官、上官？又強暴行為是否以擊中長官人身為既遂？脅迫行為是否以長官心生畏怖為既遂？（軍）司法實務不一，本文評析相關判決，期能釐清實務爭議。護金融市場秩序，以保障消費者及投資人的權益。

Research and Analysis on the Contentious Issues of Armed Forces Criminal Law-Review of the practical judgments

Li, Ruei-Dian

Abstract

Several acquittal cases hold the ground that the defendants of military duty shift or seeking substitute form another without consent of superior officer subjectively lack the thought not to follow the order or to make it harder to execute. In addition, some acquittal cases hold that special duty personnel deserting the office lack the guardian or sentry's obligation to keep the safety of the military district. Shall the defendant of the case in which orderly officer abuses or punishes his subordinators or a subordinator inflicts violence upon orderly officer be regarded as a superior officer or higher ranking officer? Meanwhile, is it necessary for a violent case defendant to inflict wound on his superior officer? Does a coercion case ask for superior officer subjectively threatened? The holding grounds differ from military courts and civilian courts which exist much leeway. This article tries to analyze the cases concerned in the hope to clarify the legal practicum controversy.