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G.A. Kuanaliyeva¹, G.G.Nubaeva², G. K. Shulanbekova³, A. Sozuer⁴

¹AI-Farabi Kazakh National University, Almaty, Kazakhstan;

²East-Kazakhstan State University named after Sarsen Amanzholov;

³AI-Farabi Kazakh National University, Almaty, Kazakhstan;

⁴Istanbul University, Istanbul, Turkey

kuanalieva.guldanakz@mail.ru, gulmira_7507@mail.ru, gul15-73@mail.ru

MILITARY CRIMINAL OFFENCES: CAUSES AND CONDITIONS (ON THE EXAMPLE OF THE NATIONAL GUARD OF THE REPUBLIC OF KAZAKHSTAN)

Abstract. In this article the authors of the "Military criminal offenses: causes and conditions (on the example of the National guard of the Republic of Kazakhstan)" on the basis of the legal status of the National guard of the Republic of Kazakhstan reveals the importance of the criminal policy of the state in the field of military criminal offenses.

At this stage in the Republic of Kazakhstan liberal and radical tendencies in development of criminal policy of the state which are objectively caused by the dominating ideology in legal system of the state are allocated. The criminal policy of our state is one of the most important social strategies not only of the modern state, but also of civil society as a whole.

The tasks that should be solved at the present stage by means of a balanced criminal law policy are at the strategic level-the real provision of socially acceptable level of security of society from military criminal offenses, at the tactical level-reducing the rate of growth and stabilization of military criminal offenses to the minimum permissible level. Accordingly, these tasks require to determine the capabilities of society, to revise the means, forms and methods of combating this crime, while maintaining an optimal balance of strategic and tactical goals.

The purpose of this article is a comprehensive study of the causes and conditions of military criminal offenses on the example of the National guard of the Republic of Kazakhstan and the development of scientific and practical recommendations aimed at improving the legislation.

The authors criticize the special view of the legislator to the criminal liability of military personnel. The specificity of criminal offenses, according to the authors should be balanced.

The construction of a highly mobile, technically equipped and professionally competent modern National guard of the Republic of Kazakhstan will ensure both national interests and national security of our state. And the main thing is professionalism, as the author emphasizes, reproducing the words of the Supreme commander-the President of the country, the opinion of the Commander-in-chief of the National guard of the Republic of Kazakhstan and leading military scientists. And the main factor affecting the level of offenses among the military is discipline. And one of the effective measures, at the suggestion of the author, is the tightening of legal measures for criminal offenses.

Keywords: military criminal offenses, criminal liability of military personnel, criminal policy of the state, national security.

Introduction

The organization of the rule of law and civil society presupposes, among other things, the harmonization of criminal legislation with its principles. In the context of this issue, this means solving the problem of the correspondence of the paradigm of the criminal policy of the Republic of Kazakhstan in the field of military offences to international norms on human rights, the constitutional norm on the equality of all before the law, and the General provisions of criminal law.

Certainly, the state ideology is extremely necessary for the state at each stage of its construction, since it comprises a certain potential of the integration of the society and self-identification of the state in the world community. The lack of the political ideology capable to explain the national purposes and ideals, doesn't allow integrating all sectors of the society, rather surely [1].

The criminal policy of the state in the field of military criminal offences is based on the special situation of all military formations, including the National guard of the Republic of Kazakhstan, which is reflected in the Charter of the Internal Service of the Armed Forces of the Republic of Kazakhstan. Thus, paragraph 31 of the above document States: "military Personnel, regardless of military rank and position, are equal before the law and bear responsibility established for the citizens of the Republic of Kazakhstan, taking into account the peculiarities of their legal status." And in p. 33: "Military Personnel shall be liable for crimes and other offences in accordance with the laws of the Republic of Kazakhstan" [2].

To resolve this issue, it is necessary to find out what is the special nature of military service, how it differs from service in other state bodies.

Based on this, there is a need to clarify the legal status of the National guard of the Republic of Kazakhstan (hereinafter – the national guard), due to the object of the attack. Taking into account the specifics of military criminal offenses, it is necessary, in our opinion, to find out first the nature of the institution of the National guard, as a circumstance that causes a special attitude of the legislator to the criminal liability of military personnel. With this in mind, it seems appropriate to critically examine the existing situation, to present their own understanding, as well as to make proposals for the further development of criminal policy in the field of war crimes, bearing in mind that "the ban and the sanction should be balanced among themselves, take into account the changes taking place in the country and in its criminal policy" [3, p.3].

Following global trends, many institutions of society acquire a new paradigm and, accordingly, evolve. These problems are most clearly reflected in the dynamics of crime, and, corresponding to each institution specific varieties. The military Department was no exception. For more than two decades of existence, the national guard has undergone significant changes. They mainly relate to the logistical and structural situation of the troops. In matters of criminal responsibility, outdated stereotypes continue to exist, with troops dominating other state structures. The mismatch paradigm of the National guard of new realities led to the growth of crime among military personnel. However, the actual legislative measures to prevent military offences was not accepted.

At the next stage of building civil society and the rule of law, new national interests are formed in all spheres of society, including the military field. Coming out of the nuclear club, the Republic of Kazakhstan demonstrated the principle of non-interference and good neighborliness in foreign and domestic policy. In the Military Doctrine of the Republic of Kazakhstan, in Chapter 3, Clause 3.3. noted: "The main objectives of the defense policy of the Republic of Kazakhstan are to strengthen international and regional security, internal political stability in the country, prevent military conflicts and maintain the readiness of the Armed Forces, other troops and military formations for the armed defense of the Republic of Kazakhstan and its allies" [4].

In the modern international situation, possession of strategic reserves of raw materials is no less a strong argument, on the one hand, and external threat, on the other: "In our era, as the world moves away from military confrontations, rivalry is transferred from the military to the political and economic spheres", Noted in the Strategy "Kazakhstan-2050" [5]. Therefore, the Republic of Kazakhstan maintains the demand for military defense components.

Methods

Structural analysis method, analysis of the method of analysis, the analysis of the historical method, etc.

Results

The main goal of military construction in the Republic of Kazakhstan. The military doctrine defines the creation of a well-equipped, highly mobile National Guard, capable of protecting public order both within the state and the vital national interests of the state from existing and potential military threats. And to the present, the words spoken by the Head of State - Supreme Commander-in-Chief of the Armed Forces of Kazakhstan - N.A. Nazarbayev, December 29, 2001, in developing the Program to strengthen the positive image of the Armed Forces of the Republic of Kazakhstan and the military profession for 2001-2005 ": " And the military, people of the military profession should become the foundation of the new army, the Armed Forces " [6].

In 2005, in the monograph "National Interests: Past and Present," Doctor of Military Sciences, Professor Col. Akhmetov Zh.H. noted the need for the Internal Troops "... taking into account the changed realities in the world and region, new threats to the country's security, qualitative changes in the means of warfare and the nature of modern military conflicts (Internal Troops - author's comment) must adapt to the emerging the interests of the Republic of Kazakhstan " [7, p. 142].

In 2013, the words and thoughts of the Supreme Commander of the Armed Forces of Kazakhstan were reflected in the article of the Commander-in-Chief of the National Guard of the Republic of Kazakhstan, Ph.D.

Lieutenant General RF Zhaksylykova "Adaptation to the realities of the world educational space of the training system for Internal Troops", where the author, speaking at the International Scientific and Theoretical Conference on the topic: "Implementing the Strategy Kazakhstan-2050 - priorities of military education", held at the Military Institute of the National Guard of the Republic of Kazakhstan Petropavlovsk, focused on new qualification requirements for military specialists: "In the center of military professional training, a modern specialist becomes like Nosta and as a professional, the formation of the system of knowledge, systemic thinking, abilities, which allow quickly assess the social and military-professional situation " [8, p. 9-10].

At the present stage of the development of the rule of law and civil society, the improvement of the public service institution and the enhancement of the ethical and legal culture of the civil servant is an important and urgent problem.

Transformations taking place in the system of public service of the Republic of Kazakhstan can be developed only in conditions of comprehensive and effective legislative support and increasing the legal awareness and legal culture of a civil servant.

Observance of culture, ethics, morality and moral values should always be manifested, not only in the state structure, but also in society [9]. Summarizing the above, we can conclude that Kazakhstan is committed to a relatively small, mobile, highly skilled, able to consciously, intelligently navigate the surrounding reality of the army. And here the question is not only in the technical equipment of the Armed Forces of the Republic of Kazakhstan, but, first of all, in the high culture of military personnel, including legal. If a soldier does not comply with the law, if the law places the soldier in a privileged position, compared to other citizens, allowing him to bear a milder punishment for a similar criminal offense, including consequences, not to mention the concept of military honor, which is incompatible with the commission of a criminal offense: similar An army creates a danger and poses a potential threat not to an external enemy, but to its own civil base, which supports and nourishes it. Therefore, in the ranks of the Armed Forces, only citizens who have a sense of responsibility to make a conscious choice of a solution aimed at the benefit of the entire Fatherland and their family should be served, while possessing a strong moral core.

The main feature characterizing the position of servicemen in the criminal law field is the interconnectedness and interdependence of all components of the problem. The basis of any army troops, its main characteristic and difference from civilian formations is discipline. Its low level determines crime. Every year, the regulations of the Ministry of Internal Affairs of the Republic of Kazakhstan state the need to strengthen discipline, provide specific requirements, however, the level of discipline, and, accordingly, the crime rate does not practically change.

As noted by Professor Kim Serikbayev, Honored Worker of the Republic of Kazakhstan, "... the state of discipline in any military formation depends on the effectiveness of educational work, however, as practice shows, the level of discipline of each military person is directly dependent on the preparedness of young citizens for military service."

In the work "Found independence - reliable protection" Kim Serikbayev focuses on educating young people both during the pre-conscription period and during army service, the goal. The main feature characterizing the position of servicemen in the criminal law field is the interconnectedness and interdependence of all components of the problem. The basis of any army troops, its main characteristic and difference from civilian formations is discipline. Its low level determines crime. Every year, the regulations of the Ministry of Internal Affairs of the Republic of Kazakhstan state the need to strengthen discipline, provide specific requirements, however, the level of discipline, and, accordingly, the crime rate does not practically change.

As the Honored worker of the Republic of Kazakhstan, Professor Kim Serikbayev noted "... the state of discipline in any military formation depends on the effectiveness of educational work, however, as practice shows, the level of discipline of each soldier is directly dependent on the readiness of young citizens for army service". In the work "Gained independence-reliable protection" K. Serikbayev focuses on the education of young people both in the pre-conscription period and during the army service, the purpose of which is the formation of the personality of a young man as a future defender of the Motherland. At the same time, the author cites many examples from Kazakhstan's practice, including Patriotic round tables, conferences, restoration of patronage relations with military units, incentive scholarships, evenings-meetings of young people with participants of the great Patriotic war, soldiers-internationalists, and with acting officers, etc. [10, p.120-122].

"Military discipline is one of the main conditions for ensuring the combat readiness of the troops", article 2 of the Disciplinary Charter of the Armed Forces of the Republic of Kazakhstan reads. Article 1 of the specified regulatory act defines military discipline as strict and exact observance by the military personnel of the order and rules established by laws, General military charters, other regulatory legal acts and orders of commanders (chiefs) [2]. Thus, the observance by the military personnel of the established order of military service means strict observance of discipline and law and order. "Consequently, the requirement of legality the rule of law constitute a solid Foundation and a starting base for military discipline and education discipline, and for legal work to strengthen military discipline" [11]. Discipline is based on the ideology, which is defined by the Charter as a high awareness of each soldier of his military duty and personal responsibility for the protection of his homeland – the Republic of Kazakhstan, selfless devotion to his people, high moral and psychological and combat qualities, conscious obedience to commanders (chiefs).

Support ideology and determine the degree of violation of discipline and law and order with appropriate punishment, that is, monitor their compliance with the commanders, with the help of military law enforcement agencies: so article 5 of the Charter of the Internal Service of the Armed Forces, other troops and military formations of the Republic of Kazakhstan p. 5 reads: "by personal example and daily demands of commanders (chiefs) to subordinates in proper performance of duties of military service and constant control of their performance, respect for the rights and personal dignity of military personnel, constant care of them, skillful combination and correct application of measures of encouragement, belief, coercion and public influence of collective" [2]. Depending on the content of ideology and, accordingly, criminal policy, crime prevention is carried out.

"The military team is a complex in its internal structure, an active social organism, the formation of which is subject to objective laws. Understanding these patterns and processes in the team, it is an indispensable condition for effective management in everyday life and activities" [12, p. 302]. Therefore, for the successful implementation of crime prevention measures in the military, it is necessary to understand the reasons for their Commission, to identify those patterns that in reality lead to such destructive phenomena that threaten not only the normal functioning of the National guard, but also the national security of the entire state.

As a destabilizing phenomenon, crime is a threat to the security of the state. In this light, military criminal offences represent a particular danger, as a phenomenon that hinders the normal functioning of one of the institutions designed to ensure public security within the country. The presence of criminal phenomena indicates serious violations in the structure of formal and informal relations. Military criminal offenses are characterized by a high degree of public danger due to the specifics of military service, this is one of the main reasons for the traditional definition of these types of criminal offenses by the legislator in a separate Chapter of the Criminal code of the Republic of Kazakhstan (Chapter 18. Military criminal offenses) [13].

The threat of military crime is precisely the purpose of the National guard as a security Agency. Troops called upon to protect public order within the country must be the personification of national security. Military crime, on the contrary, makes society look at the military as a threat to its own security. The reality does not meet modern ideas about the soldier, as a reflection of the values prevailing in society, so it is necessary to create in the eyes of society a positive image of a warrior with a high legal culture in the first place.

Conclusion

Discipline, as the basis of order, is based on two bases: ideology and the threat of punishment. They have a hard determination. The qualitative content of punishment depends on ideology, ideology is supported by the existing Arsenal of punishments. The implementation of ideology depends on the commanders on the ground. The task of commanders to monitor compliance with discipline. Their work is regulated, that is, they are given direct instructions: what ideology prevails, what Arsenal of punishment has.

Normative acts of the military Department have the force of law. Therefore, any violation of the order of military service, that is, the statutes, is a violation of the law. We agree with the views of the following authors that "... educational and socio-legal work (EaSLW) personnel ... is an integral part of the entire system of military construction of the state" and "... the preventive role of military criminal law depends on a number of interrelated factors ... among these factors, the greatest influence on the fight against offenses is exerted by the law enforcement activities of the command and the bodies of military justice" [14, p.187], [15, p. 162]. While practice shows that commanders are not always aware of this fact.

The lack of clear control over the activities of commanders in the field leads to the fact that commanders often replace the official ideology with assimilated atavisms. In particular, officers, and, accordingly, ordinary soldiers, refer to hazing as a means of maintaining discipline, transferring military experience, and, in general, a necessary attribute of military service. The relative closeness of the National Guard activities contributes to the existence of army traditions, the roots of which go down in the history of the formation of the armed forces as a public institution.

The moral and psychological qualities of recruits, their physical fitness and intellectual level leave much to be desired. Despite the fact that recently there has been a tendency to increase the number of people who want to undergo military service, most often this desire is associated with the desire to get a military ID card for further employment in law enforcement agencies or security services. Unfortunately, by the definition of I.M.Matskevich "outsiders", that is, "young men who did not get into institutions or failed to find a job, which gives the right to postponement. Here one should also include conscripts whose parents could not find other (often illegal) ways of evading military service" [16, p. 58].

It is necessary to recognize the fact that the long years of the world not for the better affect not only the combat capability of the Armed Forces, but also the attitude of the population towards it: they no longer seem as necessary as they were in the era of the transformation of our state. The problem is complemented by the widespread habits of non-statutory relationships. As a result, the military no longer enjoys such respect, as before, the status of a soldier in the ranking of occupations is quite low.

Thus, the prevention of crime in the army is the elimination of the above and other reasons contributing to the growth of war crime. In the context of this issue, we are interested in the criminal law possibilities of eliminating the causes contributing to the commission of criminal offenses by military servicemen. Before the law, all citizens, regardless of their occupation, must be equal.

Only such measures, in our opinion, will contribute to the compliance of the paradigm of the criminal policy of the Republic of Kazakhstan in the field of military criminal offenses with international human rights norms, the constitutional norm of equality of all before the law, the principles of the Criminal Law of the Republic of Kazakhstan.

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Г.А. Қуаналиева¹, Г.Г. Нубаева², Г.Қ. Шуланбекова³, А. Sozuer⁴

¹әл-Фараби атындағы Қазақ Ұлттық Университеті, Алматы, Қазақстан;

²С.Аманжолов атындағы Шығыс-Қазақстан мемлекеттік университеті, Өскемен, Қазақстан;

³әл-Фараби атындағы Қазақ Ұлттық Университеті, Алматы, Қазақстан;

⁴Стамбұл Университеті, Стамбұл, Түркия

«ӘСКЕРИ ҚЫЛЫМСТЫҚ ҚҰҚЫҚ БҰЗУШЫЛЫҚ: СЕБЕПТЕРІ ЖӘНЕ ЖАҒДАЙЛАРЫ» (ҚАЗАҚСТАН РЕСПУБЛИКАСЫ ҰЛТТЫҚ ҰЛАНЫ МЫСАЛЫНДА)

Аннотация. «Әскери қылмыстық құқық бұзушылық: себептері және жағдайлары» (Қазақстан Республикасы Ұлттық ұланы мысалында) мақаласында авторлар әскери қылмыстық құқық бұзушылық саласындағы мемлекеттік қылмыстық саясаттың маңызына талдау жасап ашып көрсетеді

Осы кезеңде Қазақстан Республикасында мемлекеттің құқықтық жүйесінде үстем идеологиямен объективті түрде анықталған мемлекеттің қылмыстық саясатының дамуында либералдық және радикалды үрдістер бар. Біздің

мемлекетіміздің қылмыстық саясаты тек заманауи мемлекеттің ғана емес, тұтастай алғанда азаматтық қоғамның әлеуметтік маңызды стратегиясының бірі болып табылады.

Қазіргі кезеңде теңдестірілген қылмыстық-құқықтық саясат арқылы шешілетін міндеттер стратегиялық деңгейде - әскери қылмыстық әрекеттерден қоғамдық қауіпсіздіктің қоғамдық қолжетімді деңгейін нақтылы қамтамасыз ету, тактикалық деңгейде - өсу қарқынының төмендеуі және әскери қылмыстық құқық бұзушылықтарды ең төменгі деңгейге дейін тұрақтандыру болып табылады. Осы міндеттерге сәйкес, қоғамның мүмкіндіктерін анықтау, осы қылмыстылыққа қарсы күрес құралдарын, нысандары мен әдістерін қайта қарау, сонымен қатар стратегиялық және тактикалық мақсаттардың оңтайлы теңдігін сақтау қажет.

Осы мақаланың мақсаты Қазақстан Республикасының Ұлттық гвардиясы мысалында әскери қылмыстық құқық бұзушылық әрекеттердің себептері мен жағдайларын жан-жақты зерделеу және заңнаманы жетілдіруге бағытталған ғылыми-практикалық ұсыныстарды әзірлеу болып табылады.

Авторлар әскери қызметшілердің қылмыстық жауапкершілігіне заң шығарушының ерекше көзқарасын сынайды. Аталған қылмыстық құқық бұзушылықтардың ерекшелігін ескере отырып, авторлардың пікірінше бұл мәселе теңдестірілуі керек.

Қазақстан Республикасының жоғары дәрежелі, техникамен жабдықталған және кәсіби құзыретті заманауи Ұлттық Гвардиясы құрылысы біздің мемлекетіміздің ұлттық мүдделері мен ұлттық қауіпсіздігін қамтамасыз етеді.

Ең бастысы жоғары басымдылық Елбасымыздың Қазақстан Республикасы Ұлттық гвардиясының Бас қолбасшысының сөздерін алға тарта отырып ол - кәсіпқойлық деп ерекше айтуға болады. Әскери қызметкерлер арасында құқық бұзушылық деңгейіне әсер ететін басты фактор - тәртіп. Авторлардың ұсынысы бойынша тиімді шаралардың бірі - әскери қылмыстық құқық бұзушылық жасағаны үшін құқықтық шараларды қатайту болып табылады.

Түйін сөздер: әскери қылмыстық құқық бұзушылықтар, әскери қызметкерлердің қылмыстық жауаптылығы, мемлекеттің қылмыстық саясаты, ұлттық қауіпсіздік.

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Г.А. Куаналиева¹, Г.Г. Нубаева², Г.К. Шуланбекова³, А. Sozuer⁴

¹Казахский Национальный Университет имени аль-Фараби, Алматы, Казахстан;

²Восточно-Казахстанский государственный университет имени С.Аманжолова;

³Казахский Национальный Университет имени аль-Фараби, Алматы, Казахстан;

⁴Стамбульский Университет, Стамбул, Турция

ВОИНСКИЕ УГОЛОВНЫЕ ПРАВОНАРУШЕНИЯ: ПРИЧИНЫ И УСЛОВИЯ (НА ПРИМЕРЕ НАЦИОНАЛЬНОЙ ГВАРДИИ РЕСПУБЛИКИ КАЗАХСТАН)

Аннотация. В статье авторы «Воинские уголовные правонарушения: причины и условия (на примере Национальной гвардии Республики Казахстан)» на основании правового положения Национальной гвардии Республики Казахстан раскрывают значение уголовной политики государства в сфере воинских уголовных правонарушений.

На данном этапе в Республике Казахстан выделяются либеральные и радикальные тенденции в развитии уголовной политики государства, которые объективно обусловлены господствующей идеологией в правовой системе государства. Уголовная политика нашего государства является одной из важнейших социальных стратегий не только современного государства, но и гражданского общества в целом.

Задачами, которые должны решаться на современном этапе посредством взвешенной уголовно-правовой политики, являются на стратегическом уровне - реальное обеспечение социально приемлемого уровня безопасности общества от воинских уголовных правонарушений, на тактическом - снижение темпов роста и стабилизация воинских уголовных правонарушений до минимально допустимого уровня. Соответственно этим задачам требуется определять возможности общества, пересматривать средства, формы и методы борьбы с данной преступностью, сохраняя оптимальное соотношение стратегических и тактических целей.

Цель данной статьи заключается в комплексном исследовании причин и условий воинских уголовных правонарушений на примере Национальной гвардии Республики Казахстан и выработка научно-практических рекомендаций, направленных на совершенствование законодательства.

Авторы критически высказывается в отношении особого взгляда законодателя к уголовной ответственности военнослужащих. С учетом специфика уголовных правонарушений, по мнению авторов должна быть сбалансирована.

Строительство высококомбинированной, технически оснащенной и профессионально грамотной современной Национальной гвардии Республики Казахстан обеспечит как национальные интересы, так и национальную безопасность нашего государства. И основное это профессионализм, как подчеркивают авторы, воспроизводя слова Верховного главнокомандующего – Президента страны, мнение Главнокомандующего Национальной гвардии Республики Казахстан и ведущих военных ученых. И основным фактором, влияющим на уровень правонарушений среди военнослужащих является дисциплина. И одним из действенных мер, по предложению авторов, является ужесточение правовых мер за совершение воинских уголовных правонарушений.

Ключевые слова: воинские уголовные правонарушения, уголовная ответственность военнослужащих, уголовная политика государства, национальная безопасность.

Information about authors:

Kuanaliyeva Guldana Amangeldiyevna doctor of Law, Associate Professor of Customs, Financial and Environmental Law Department in al-Farabi Kazakh National University; E-mail: kuanaliyeva.guldanakz@mail.ru; <https://orcid.org/0000-0002-3633-4876>;

Nubaeva Gulmira Galymovna Senior Lecturer of the Department of Criminal Law and Criminal Procedure of the East Kazakhstan State University S.Amanzholova; E-mail: gulmira_7507@mail.ru; <https://orcid.org/0000-0002-3713-2192>;

Shulanbekova Gulmira Kuralbekovna Senior Lecturer of Customs, Financial and Environmental Law Department in al-Farabi Kazakh National University; E-mail: gull15-73@mail.ru; <https://orcid.org/0000-0001-9001-821X>;

Sozuer A. Doctor, Professor Istanbul University. <https://orcid.org/0000-0001-6664-5221>

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