

THE BASIS OF RESPONSIBILITY OF MILITARY PERSONNEL IN THE REPUBLIC OF KAZAKHSTAN AND ITS TYPES

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All military personnel, regardless of rank and service, bear the universal responsibility established by the Republic of Kazakhstan for citizens with an outdated legal status.

The general rules for bringing military personnel to justice are determined by the law of the Republic of Kazakhstan dated 16.02.2012 "on military service and the status of military personnel" [1].

Military personnel are brought to justice depending on the degree of their socially dangerous actions.

Like all citizens of the Republic of Kazakhstan, military personnel are subject to disciplinary, administrative, civil, material and criminal liability.

Military personnel are brought to the following public responsibility for defaming the military in violation of the internal order of military service and public order: along with consideration at a meeting of personnel, the actions of ensigns and midshipmen are considered at a meeting of ensigns and midshipmen, the actions of officers are considered at an officer's meeting. At the same time, the actions of the military are considered in the Civil Court of conscience.

The measure of public influence on the actions of military personnel is approved by the military charter and other regulatory acts.

Military personnel are brought to disciplinary responsibility on the basis of the military charter approved by the Armed Forces of the Republic of Kazakhstan.

On the basis of the acting disciplinary responsibility of the Armed Forces of the Republic of Kazakhstan, the disciplinary responsibility applied by the leaders to their subordinates, approved by the decree of the president of the Republic of Kazakhstan dated 27.11.1998, is indicated. It is applied to the military who have violated military discipline and public order.

Bringing to disciplinary responsibility does not exempt from bringing to other responsibility.

Bringing to disciplinary responsibility is carried out no later than 2-3 days.

Military personnel can appeal to a higher authority or court if they consider their actions to be misjudged. Disciplinary liability must be fulfilled no later than one month later. After the expiration of one month, the disciplinary sanction is not subject to execution, but is registered on the imposition of a disciplinary sanction. As a result, a person who does not fulfill disciplinary responsibility is brought to justice.

Disciplinary liability is announced to the personnel by order, by means of a meeting. When reading the decision to bring to disciplinary responsibility, it is announced in the decision the reason for bringing to disciplinary responsibility and what punishment will be applied.

The following norms form a series of constantly violated norms:

- application of disciplinary responsibility by an official who is not a manager;
- bringing to disciplinary responsibility by their leaders, regardless of the commission by the military of criminal acts provided for by criminal legislation[2].

Civil liability the military is liable for improper performance of actions specified in civil legislation in connection with property damage caused to the state, a legal entity to citizens and

in connection with damage caused to the parties provided for by other legislation of the Republic of Kazakhstan.

Material liability is compensated by a serviceman in connection with the damage caused by his actions to the state, the Armed Forces of the Republic of Kazakhstan, legal entities and persons provided for by other legal norms of the Republic of Kazakhstan in connection with incomplete execution of the contract[1].

The series of war crimes consists of actions provided for in Chapter 16 of the Criminal Code. The defendants of these actions are conscripts who are called up for urgent military service, who are performing military service under a contract and who are in reserve at the time of training[3].

The description of war crimes follows from Article 36 of the Constitution of the Republic of Kazakhstan. It says: "the protection of the Republic of Kazakhstan is the duty of every citizen" [4].

The army and Navy are distinguished from other state institutions by strict centralization.

Only special military relations are allowed here. The number of war crimes is the crimes provided for in Chapter 16 of the Criminal Code of the Republic of Kazakhstan. When describing the causes of crimes in military service, one should proceed from the general definition given in forensics. The causes of a specific crime can be defined as the phenomenon and processes that prompted a particular person to commit a thoughtful crime or led to its careless Commission.

Before considering the question itself, it is better to analyze the concepts of "violation of the order of reciprocity", "anti-statutory relationship", types of offenses between the relations of military personnel. These are expressed as a set of socially negative actions of a criminal nature, based on negative military traditions that are becoming a historical past. They are associated with the fact that some military personnel beat and threaten other military personnel in order to subjugate them for a mercenary purpose.

Crime in the ranks of the army is as diverse as crime in society. Most of the types of crimes in the ranks of the army are anti-partisan actions among military personnel, which are called "hazing". The term "hazing", depending on its content, is not used in the legal sense, and the term "anti-charter relations" is more common, in this concept it is associated with non-performance of military duties. In addition, these actions are sometimes performed by complying with the provisions of the charter. In this regard, the phenomenon we are considering can be called, specifically, violence and humiliation of military personnel.

The reasons for this phenomenon lie in two linearity. Firstly, they will be beyond military limits, and secondly, they will lie in the service itself. At the same time, the reasons are interrelated and mutually conditioned.

Crime in the army and Navy cannot be explained separately from crime in the country. Because they are growing among young people and young people, and the number of organized crime is growing. All this is alarming.

In addition to the lack of a sense of responsibility for military service, the fact that some military personnel put their personal interests above official ones is a common reason for the commission of a war crime.

The causes of war crimes are associated with social, economic, ideological, organizational and other circumstances inherent in the crime as a whole.

The presence of crime in the ranks of the army is influenced by unemployment of the population, poverty, and a decrease in labor productivity.

Increasing the awareness of the population, increasing the cultural level, well-being, and increasing military training in the army, organization and military discipline – prevention of crime.

When referring to the cause of the crime, we mean the situation that prompted that person to commit the crime. For example: the army of the zhaas faces an escape from the ranks of the army, the reason for which is a misdemeanor on the part of others

However, the reason may also be a negative attitude of the culprit: a young person who does not want to pass military service refuses to join the army. This voluntary act is the result of the antisocial attitude of the culprit.

The incorrect attitude of a serviceman to society, habits can be manifested in a lack of respect for military leaders, disregard for the military charter, low morale, lack of strict requirements for work.

In the practice activities of an official, there is an excessive application of disciplinary rights, especially incorrect establishment of a term of detention for a subordinate serviceman for behavior not related to the order of military service. (for example, traffic violations).

At present, the question has arisen of providing the army ranks with clothing with the necessary food. A break in this case will lead to a violation of discipline in the ranks of the army.

The commission of crimes in the ranks of the army can be attributed to two main reasons:

- pre-military development, education of the individual;
- negative social phenomena that affect the state of a serviceman.

Improper development of the personality causes the emergence of antisocial attitudes, habits, and skills.

It is important here to establish family, school education of the character of his domestic weapon labor activity. All this has a positive effect on the pre-military moral, ideological, labor, physical formation of the individual.

For example, a young man lives with his parents before the army and gets used to a free life. when he joined the army, he found himself in a restricted barracks, far from his family. Here he meets a new nature of relations between people. All this cannot but affect the young army.

The second type of reason for crimes and offenses committed by military personnel is associated with the specifics of military service.

The specifics of military life, the ratio of military personnel, seniors and juniors, leaders and subordinates, and small social groups all have a significant impact on the formation of a soldier as a person. In the organization of the service, the rejection of the statutory requirement, the viability of misconduct, the weakness of the fight against alcohol addiction, formality, and the development of bureaucracy affect the negative maturity of the individual.

A special feature of war crimes is that the Order of military service of the Armed Forces of the Republic of Kazakhstan is the object of war crimes, approved by the relevant legislation, the decree of the president of the Republic of Kazakhstan, military legal norms, and the order of the Minister of Defense.

The subjects of war crimes are persons called up for urgent military service, persons undergoing military service under contract, as well as during training military training with reserve troops.

The subjects of war crimes are sergeants, petty officers, ensigns, Midshipmen and officers of the army and Navy.

Nevertheless, the subjects of war crimes are the military of the national security bodies. 1

Military personnel are recognized as employees of the internal troops. Chapter 16 of the Criminal Code of the Republic of Kazakhstan applies to these persons for actions committed in the course of their activities[3].

The volume of war crimes is accounted for by acts encroaching on military – service relations.

In revealing the essence of war crimes, we are combined with the concept of participation in a crime. The concept of participation in a crime is equally used for war crimes, but with a peculiarity.

The person involved in the crime may also be a serviceman or ordinary citizen. Citizens are not held accountable for their actions by articles dedicated to war crimes, because they did not take military oaths. They only exist as organizers or helpers. With this, the participation of the military in war crimes is limited.

The Joint Commission of a criminal act is a special threat. This is due to the fact that such actions involve two or more persons who intend to commit a criminal act.

This may be the fact of joining the action by the executive of a special military service.

The most important danger is possessed by criminal acts that push the military leader to commit his activities to criminal acts.

The danger of war crimes is that they grossly violate military discipline, causing losses to discipline, weakening military discipline and, as a result, weakening military training.

Military personnel are brought to administrative responsibility on the basis of the code of administrative offenses.

In accordance with Article 35, Part 1 of the code of administrative offenses, military personnel and citizens on military training are liable for administrative offenses under their disciplinary statutes[5]. Prosecutors, ordinary and senior staff of internal affairs bodies, employees of the financial police and customs authorities are responsible for administrative offenses in accordance with regulatory legal acts regulating the procedure for serving in the relevant bodies.

Among the military serving administrative responsibility under disciplinary sanctions are reserve soldiers who have arrived at military training camps.

From the code of administrative offenses of 1983, the current new code contains a list of persons brought to intra – regional responsibility as a general rule in part 1 of Article 35.

The Code of administrative offenses adopted in 1983 contained the following provisions and norms:

- rational use and protection of subsurface resources;
- rational use of land and Air Resources;
- rational use of atmospheric air;
- the world of animals and plants;
- traffic rules;
- customs;
- due to quarantine plants;
- smuggling.

The new code of administrative offenses contains the following norms and rules:

- mode of passage through the customs post;
- fire safety requirement;
- traffic rules;
- customs regulations outside the place of Service;
- norms that make up the content of tax legislation;
- hunting and fishing skills;
- provisions of the norms of Rational Use and protection of Natural Resources.

It should be noted here that the norm of this code does not apply when it is under Universal administrative responsibility in connection with the following circumstances specified in Part 1 of Article 35 of the code of administrative offenses:

- restriction or prohibition of the right to store cold weapons;
- during the administrative arrest.

Administrative fines and penalties for involvement in correctional labor are not applied to a serviceman performing urgent military service, cadets (trainees) of special and military educational institutions.

In order to satisfy the rule of law, the legislator has the right to apply responsibility to the authorized person applying administrative punishment or to transfer the materials to the relevant authorities.

Responsibility for office work in the life of administrative proceedings is borne by a serviceman in connection with the establishment of one of the responsibilities specified in the disciplinary Charter.

List of references:

1. The Law of the Republic of Kazakhstan "On military service and status of military personnel" dated 16.02.2012 <https://adilet.zan.kz/kaz/docs/Z1200000561>
2. Aryngazieva E.A. Fight against corruption in the Republic of Kazakhstan. -Astana: Academy of Public Service under the President of the Republic of Kazakhstan, 2005. -322 p.
3. Criminal Code of the Republic of Kazakhstan. 14.07.2014 № 226-V. <https://adilet.zan.kz/kaz/docs/K1400000226>
4. Constitution Of The Republic Of Kazakhstan. 30.08.0995 <https://adilet.zan.kz/kaz/docs/K950001000>
5. Code of the Republic of Kazakhstan on administrative offenses. 05.07.2014 No. 155-II. <https://adilet.zan.kz/kaz/docs/K1400000235>

ОСОБЕННОСТИ ПРИЗНАНИЯ СДЕЛОК НЕДЕЙСТВИТЕЛЬНЫМИ ПРИ БАНКРОТСТВЕ

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На сегодняшний день еще не преодолено несоответствие законодательного урегулирования недействительных сделок и сформировавшейся практике гражданских правоотношений. Законодатель в настоящее время не смог достаточно оторваться от подходов, которые сформировались в условиях других общественных отношений. Ведь и рыночные отношения очень далеки от идеала и формирование правового инструмента регулирования института недействительности сделок является очень важным. Участники гражданских правоотношений (в большинстве случаев, недобросовестные) имеют склонность злоупотреблять институтом недействительности сделок с целью скорейшего и необоснованного обогащения и более всего нормами данного института пользуются не по назначению участники банкротства, а именно должник. Споры по признанию сделок недействительными в современный период по разным основаниям приобретают массовый характер. Существенная часть данных споров инициирована недобросовестными лицами, которые стремятся избежать исполнения обязательств, которые были ими приняты.

Поскольку принятый 30 декабря 2022 года Закон Республики Казахстан «О восстановлении платежеспособности и банкротстве граждан Республики Казахстан» начнет свое действие через 60 дней после официального опубликования, а именно 03 марта 2023 года, пока не представляется возможным оценить степень эффективности настоящего Закона. Однако уже сейчас можно говорить о том, что регламентированная новым законом процедура банкротства может снизить количество споров по признанию сделок недействительными.

Во-первых, этому способствует требование законодателя о проведении в отношении должника процедур по урегулированию задолженности до подачи заявления на банкротство. В связи с данным нововведением значительно повышается возможность исполнения обязательств должником перед кредиторами посредством отсрочки и (или) рассрочки исполнения обязательств должника, переводом долга и других механизмов урегулирования задолженности. Данное положение регулируют статья 5 и статья 6 Закона РК «О восстановлении платежеспособности и банкротстве граждан Республики Казахстан».

Во-вторых, законодателем дальновидно предусмотрено наличие главы 4. Мирное соглашение в Законе РК «О восстановлении платежеспособности и банкротстве граждан Республики Казахстан». Данная глава регламентирует ряд условий, на которых должник и кредитор, а также третьи лица могут заключить мирное соглашение на любой стадии банкротства и таким образом содействовать исполнению обязательств должником.