THE USA JOURNALS
THE AMERICAN JOURNAL OF POLITICAL SCIENCE LAW AND CRIMINOLOGY (ISSN- 2693-0803)
VOLUME 06 ISSUE01

PUBLISHED DATE: - 31-01-2024
DOI: - https://doi.org/10.37547/tajpslc/Volume06Issue01-24 **PAGE NO.: - 122-126**

RESEARCH ARTICLE **Open Access**

FEATURES OF RESPONSIBILITY FOR MILITARY CRIMES IN SOME FOREIGN COUNTRIES

Z.T.Isakov
Master Student At Tashkent State University Of Law, Uzbekistan

Abstract
This article analyzes the issues of criminal liability for military crimes in the CIS and European countries. Within the framework of the article, the author points out the increased public danger of military crimes and the design features of the corpus delicti.

Keywords Military service, criminal law, CIS, Europe, special subject.

INTRODUCTION

An analysis of the military criminal legislation of the CIS member states, which is an integral part of criminal laws, shows that there are many similarities in the regulation of criminal liability for the commission of such a crime, but there are certain features.

The Criminal Codes (hereinafter referred to as the Criminal Code) of the Republic of Azerbaijan, the Republic of Armenia, the Republic of Belarus, the Republic of Kazakhstan, the Republic of Moldova, the Republic of Tajikistan, Turkmenistan, the Russian Federation, and Ukraine have adopted the concept of distinguishing common offenses against military service from other common offenses against the interests of the service. The consequence of this was the consolidation of two common (generic) compositions in the criminal codes of these States .

Chapter 35 "Crimes against military service" of the eponymous section XII of the Criminal Code of the Republic of Azerbaijan, Chapter 32 "Crimes against the order of military service" of the eponymous section XII of the Criminal Code of the Republic of Armenia, chapter 37 "Military crimes" of Section XIV "Crimes against the order of military duty" of the Criminal Code of the Republic of Belarus, chapter 16 "Military crimes" of the Criminal Code of the Republic of Kazakhstan, chapter XVIII "Military crimes" of the Criminal Code of the Republic of Moldova, chapter 33 "Crimes against military service" of the eponymous section XIV of the Criminal Code of the Republic of Tajikistan, Chapter 34 "Military crimes" of the eponymous section XIV of the Criminal Code of Turkmenistan, chapter XXIV "Military official crimes" of section 7 "Crimes against the order of military service" of the Criminal Code of the Republic of Uzbekistan, section XIX "Crimes against the established order of military service (military crimes)" of the Criminal Code of Ukraine, contain the general composition of military negligence, which in all cases The above–mentioned criminal codes are referred to in the same way - "Negligent attitude to service."

The norms of the Criminal Codes of the Republic of Azerbaijan (Part 1 of Article 342), the Republic of Armenia (Part 1 of Article 376), the Republic of Kazakhstan (Part 1 of Article 381), the Republic of Moldova (Part 1 of Article 378), Ukraine (Part 1 of Article 425) identically fix a criminal act as a sign of the objective and subjective sides of military service negligence in the form of "negligent attitude to the service", without disclosing its content.

Definitions of the Criminal Codes of the Republic of Tajikistan (Part 1 of Article 392), Turkmenistan (Part 1 of Article 359), the Republic of Uzbekistan (part 1 of Article 302) identically fix a criminal act through signs of objective and subjective side of military negligence in two forms: "non-fulfillment" (passive form) or "improper fulfillment" (active form) the subject of the crime "of his official duties as a result of negligent or unfair" attitude towards them (to the service – in the Criminal Code of Turkmenistan).

Part 1 of Article 456 of the Criminal Code of the Republic of Belarus establishes a special definition of "negligent attitude" to military service: "negligent or frivolous performance by a superior or other official of his duties." This definition partially appeals to the author, firstly, because the legislator fixed in it a careless form of guilt to a crime (an intentional form of guilt to an action or omission committed contrary to the interests of the service is fixed in independent articles of the Criminal Code), secondly, it is devoid of evaluative concepts such as: "improper" or "unscrupulous." Based on the scientific and practical commentary to the Criminal Code of the Republic of Belarus, the term "performance" means both active action and passive behavior of a person - inaction. However, by semantic properties, the word "fulfillment" means an action according to the meaning of the verb "to fulfill", the implementation, bringing to life the assigned, necessary and does not cover passive behavior – inaction.

All the main components of military negligence are of a material nature: they occur when the consequences specified in the law occur. Criminally punishable negligence in military service is determined by its consequences. As a constructive sign of the objective side of military negligence, "significant harm" is recorded in the Criminal Codes of the Republic of Azerbaijan, the Republic of Armenia, the Republic of Kazakhstan, and Ukraine. In the criminal law of Turkmenistan - "significant harm to the interests of the service, the rights and legitimate interests of military personnel and other citizens." For the main type of military negligence provided for in the criminal codes of the named countries, this consequence is named as the only one. The concept of "substantial harm" is evaluative and is not disclosed in criminal codes. The above-mentioned consequence is generally not a mandatory sign of the objective side of military negligence under the Criminal Code of the Republic of Belarus, the Criminal Code of the Republic of Moldova, the Criminal Code of the Republic of Tajikistan, the Criminal Code of the Republic of Uzbekistan.

The criminal laws of the Republic of Tajikistan and the Republic of Uzbekistan refer to the consequences of the main type of the crime in question as "major damage or other grave consequences". The Criminal Code of the Republic of Belarus is "damage on a particularly large scale or other grave consequences", and the Criminal Code of the Republic of Moldova is only damage on a large scale .

Some qualified military negligence formulations formulated by the legislator as an "act" or "acts" provided for in this article committed "in wartime" or "in a combat situation", for example, Part 2 of Article 342 of the Criminal Code of the Republic of Azerbaijan, Part 3 of Article 376 of the Criminal Code of the Republic of Armenia, part 3 of Article 381 of the Criminal Code of the Republic of Kazakhstan, part2 Articles 392 of the Criminal Code of the Republic of Tajikistan, Part 3 of Article 359 of the Criminal Code of Turkmenistan, part 2 of Article 302 of the Criminal Code of the Republic of Uzbekistan, part 3 of Article 425 of the Criminal Code of Ukraine – based on the letter of the law, have a formal character, since they do not contain indications of consequences. I consider it unacceptable to use the words "acts provided for in this article" to mean the entire first part, including the consequences. The qualified personnel is most successfully formulated in Part 2 of Article 456 of the Criminal Code of the Republic of Belarus as "negligent attitude to service in wartime or in a combat situation", since the definition of negligent attitude to service is set out in part 1 of Article 456, which is by its nature a material composition. We believe that the legislation of these states should define such a qualified type of military negligence more precisely, since in all the above-mentioned CIS member countries, the strictest penalties are established for committing crimes "in wartime", "in a combat situation", "during martial law", "war",

"under martial law" responsibility.

A qualified type of military negligence in the Criminal Code of the Republic of Azerbaijan (Part 2 of Article 342), the Criminal Code of the Republic of Armenia (part 2 of Article 376), the Criminal Code of the Republic of Kazakhstan, the Criminal Code of the Republic of Moldova (part 2 of Article 378), the Criminal Code of Turkmenistan (part 2 of Article 359), the Criminal Code of Ukraine (part 2 of Article 425) is considered negligent attitude to military service, which entailed "grave consequences", which is an evaluative concept, is not explained by criminal law .

There is a single disposition among the compared norms that establishes criminal liability for negligence in military service with an indication of a specific grave consequence, Part 2 of Article 359 of the Criminal Code of Turkmenistan, which deals with the punishability of military negligence that caused the "death of a person".

On the subjective side, negligent attitude towards military service can only be committed through negligence. Two types of careless forms of guilt for a criminal act are mentioned only in Part 1 of Article 456 of the Criminal Code of the Republic of Belarus, the careless form of guilt for qualified consequences of military negligence is fixed only in part 2 of Article 376 of the Criminal Code of the Republic of Armenia.

The subjects of the investigated crime may be a "military official" (Part 1 of Article 425 of the Criminal Code of Ukraine); an "official" (part 1 of Article 342 of the Criminal Code of the Republic of Azerbaijan, part 1 of Article 376 of the Criminal Code of the Republic of Armenia, part 1 of Article 381 of the Criminal Code of the Republic of Kazakhstan),

"chief" (Part 1 of Article 342 of the Criminal Code of the Republic of Azerbaijan, Part 1 of Article 376 of the Criminal Code of the Republic of Armenia, part 1 of Article 381 of the Criminal Code of the Republic of Kazakhstan; as well as "chief or other official" (part 1 of Article 456 of the Criminal Code of the Republic of Belarus, part 1 of Article378 of the Criminal Code of the Republic of Moldova, part 1 of Article 392 of the Criminal Code of the Republic of Tajikistan, part 1 of Article 359 of the Criminal Code of Turkmenistan, part 1 of Article 302 of the Criminal Code of the Republic of Uzbekistan). In the criminal codes of all the above-mentioned States, there is a legislative definition of an "official". However, only the Criminal Code of the Republic of Belarus legislatively defines the term "chief", which, according to Part 6 of Article 4 "Clarification of certain terms of the Criminal Code" means "a person who is subject to the status of a serviceman and who, by his official position or military rank, has the right to give orders to subordinates and demand their execution."

Responsibility for military crimes in European countries

War crime is a collective term denoting particularly grave violations of international humanitarian law during the conduct of military (combat) operations:

killing, torturing and enslaving prisoners of war, as well as civilians trapped in a war zone;

Hostage-taking and killing;

unjustified destruction of civilian infrastructure;

the destruction of homes and settlements without military necessity, and so on.

War crimes of a massive nature, with a large number of victims, are considered crimes against humanity and are subject not to national military courts, but to international military tribunals. Due to the exceptional seriousness of crimes against humanity, the statute of limitations does not apply. It is necessary to distinguish war crimes from military crimes, that is, crimes against military service committed by military personnel (non—fulfillment of orders, desertion, and the like).

Throughout history, most of the perpetrators of war crimes and crimes against humanity have not been punished.

Modern military criminal legislation, consisting mainly of norms describing specific elements of military crimes, contains a number of provisions that can be attributed to the General part of criminal law. These provisions in some countries take the form of a complete General Part of the military criminal law (Germany) or the code of

military justice (France), in others they are located without any system in articles of military legal acts (EU, Great Britain), in others they are set out in an unclassified form in the criminal code (Russia).

The legislative experience of Russia and other countries shows that the optimal structure of the General part of military criminal legislation should contain, at a minimum, norms defining:

- the limits of military criminal law in space and in the circle of persons;
- the concept of a military crime (crimes against military service);
- features of the application of general types of criminal penalties to military personnel;
- types of special military punishments and the procedure for their application both in peacetime and in wartime;
- the legal grounds for the release of military personnel from criminal liability and punishment .

The experience of European countries allows us to draw the following conclusions:

1. Military criminal legislation is a set (system) of criminal law norms isolated in the legal space of a separate state, applicable only to military personnel and persons equated with them in matters of criminal responsibility and punishment.

Depending on the military doctrine and legal technologies adopted in a particular country, as well as the position of the army in the political system of society, such separation can be formalized in the form of an independent military criminal law (FRG), a section (chapter) in the legislation on military justice (France), special sections and norms in a single criminal code the law (Russia). The experience of foreign countries and the history of the development of domestic military criminal legislation indicate the expediency of regulating a number of issues of criminal liability and punishment of military personnel and other subjects of military-service relations in special norms of criminal law.

2. Military criminal legislation, being a mandatory attribute of the state, is located at the junction of two branches of law - criminal and military, in connection with which it is called military criminal. As an integral part of modern legal systems, it functions in accordance with the military legal ideology and principles adopted in a particular state, and also bears the imprint of belonging to the relevant legal family.

The military criminal legislation of France and Germany was formed within the framework of European continental law, which forms the basis of the Romano-German legal family. The formation of Russian military criminal legislation took place within the framework of the Romano-German legal family; in the Soviet period it acquired the features of socialist law; in the post-Soviet period it was formed as an integral part of the unified criminal law of a country undergoing a transitional period.

3. Modern military criminal legislation consists of a system of norms that define the specifics of the application of institutions and norms of the General part of criminal law in the conditions of the armed forces, as well as formulate specific compositions of military crimes (against military service).

The structure of the General part of the military criminal legislation of most countries includes norms defining: the limits of military criminal legislation in terms of persons and on a territorial basis; the concept and signs of a military crime; types of military punishments and the procedure for their application, the grounds for exempting military personnel from criminal liability and punishment.

A special part of military criminal legislation consists, as a rule, of norms providing for liability for crimes against the order of subordination and observance of military honor, evasion of military duties, violations of special rules of military service, crimes against military property, military official offenses, crimes committed in wartime and combat situations.

REFERENCES

1. Щербаков В. Ф., Маршакова Н. Н. Военные преступления в системе Особенной части Уголовного кодекса Российской Федерации // Военное право. — 2011. — № 4. — С. 11–18.

2. https://geopolitique.eu/en/articles/criminology-of-war-and-criminal-policy-of-the-european-union/
3. https://www.europol.europa.eu/crime-areas/genocide-crimes-against-humanity-and-war-crimes
4. https://omamvd.ru/diss