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The legal provision of military security of the Republic of Kazakhstan: the comparative legal analysis

This paper is devoted to issues of the legal support for the sphere of military security in the Republic of Kazakhstan. This research examines a signification and role of the legal acts in ensuring military security of the Republic of Kazakhstan. The purpose of this research is to establish the effectiveness, interconnections, pace of development and features of legal acts in the field of military security in strengthening the country's security. In the conducting and studying of this research, various methods of analysis among them were the analytical, historical, comparative and comparative-legal methods. After a comprehensive study of the Constitution of the Republic of Kazakhstan, as well as military doctrines of the country, the author formulated the conclusion that these documents play an important role in ensuring military security and regulating the sphere of military service. At the same time, due to the current unstable geopolitical, economic and other circumstances, the author proposes to continue working on issues of legal support in this direction to prevent possible conflicts in the future, and also to protect the national interests of the Republic of Kazakhstan.

Keywords: Republic of Kazakhstan, national security, military security, legal acts, military doctrine Republic of Kazakhstan, legislation, legal support.

Introduction

The comprehensive development of any state in equal relationships with countries in the international arena and the safe well-being of citizens in this country directly depends on many areas that must be fulfilled by the state. As it is known, when the Soviet Union collapsed and countries gained sovereignty, the Republic of Kazakhstan immediately formed its legal system, institutions of public administration, ensured human and civil rights, determined the directions of its foreign policy, and took independent steps in the field of protection against external threats.

Having gained its sovereignty and becoming a member of the United Nations and other international organizations, Kazakhstan faced new problems in foreign policy, defense and national security. Since the dissolution of the existing Warsaw Pact Organization, NATO's role has changed. At this point, there is a need to actively intervene in the European security system by diversifying military ties in interests of our country. Besides, the Republic of Kazakhstan, having renounced nuclear weapons, received guarantees of reliability and territorial integrity of its border territory [1; 24]. Among ten principles of the Helsinki Final

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Act, the principles of territorial integrity of states and the inviolability of borders stand out. These principles, together with the principles of non-violence, are of particular importance for international relations. [2].

One of the basic objectives for Kazakhstan was to ensure security of the country, which has just gained state independence, to be precise, the national security. Of course, not everything was formed at once in the first years of our independence. However, if the country wants to embark on the path of sustainable development, it should first solve the problems of military security, which is an integral part of national security.

In this direction, we note that the following below mentioned legal documents have become and developed the legal acts in the field of the military security. First of all, according to paragraph 2 of the Declaration on State Sovereignty of the Kazakh Soviet Socialist Republic, it has been established that this Republic undertakes obligations to preserve, protect and strengthen its national statehood. This provision emphasizes the importance of measures aimed at ensuring the sovereignty and identity of the republic [3]. However, despite the adoption of a declaration of sovereignty, the settlement of the military sphere may take some time for the young state. On the one side, the collapse of the Soviet Union, which just yesterday had a great impact on the world as a political and military side, on the other hand, this was news not only for Kazakhstan, but also for the post-Soviet republics, which were previously centrally controlled and gained independence. However, for our country, we need to quickly come to our senses, ensure the security of the state by communicating with the world community, and have a clear legal basis for further development.

This was later reflected in Article 16 of the Law on the State Independence of the Republic of Kazakhstan. This Article played a key role in the development of the first legislative act relating to ensuring the military security of our country. It points out that the Republic of Kazakhstan has the right to create its own armed forces in order to protect its independence and territorial integrity, that the Republic independently defines the order and conditions of the military service of its citizens, and resolves issues of the deployment of troops, equipment and weapons in its territory [4].

In accordance with the law, military security is defined as a state of defence of the vital interests of the individual and citizen, as well as of society and the state. This state is aimed at preventing internal and external threats associated with the use or intention to use military force [5].

Although Kazakhstan became independent more than thirty years ago and military and national security issues have been the subject of study by many military experts and jurists, systematic research in this area remains relevant. Discussions concerning the legal regulation of military security are still necessary to further develop and strengthen these aspects. This is due to the new world order, economic, political and military activities and conditions taking place abroad, ecological disasters, man-made disasters demand a re-examination of the directions of development of the states, the effectiveness of foreign relations, a level of the security of their citizens and degree of the military well-being.

Currently, the Republic of Kazakhstan has developed and enacted a number of legislative acts regulating military service, the legal status of servicemen and their social protection. These laws also cover the organisation of military service in the context of ensuring national security, including aspects relating to military security. Nevertheless, there is currently a number of important issues concerning inter-state relations. These issues include the obligations that states and collective, regional or international organisations have to fulfil under inter-state agreements. In addition, rethinking the views of scientists, improving legislation and ensuring that legal norms in the military sphere comply with the Constitution of the country, as well as studying complaints of interest to the state, have become pressing issues of our time. The main aim of this study is to analyze and reveal their role in ensuring national security, continuity in the regulation of military security by analyzing from a new perspective all the legislative acts adopted during the years of independence and up to the present time to ensure the military security of the Republic of Kazakhstan, which is part of the national security.

Methods and materials

In order to differentiate the guiding legal acts in the area of the military security in the Republic of Kazakhstan the comparative legal methods have been used. In the course of the research, the analytical method was used for a detailed study of the fundamental documents. This concerns, in particular, the Constitution of the Republic of Kazakhstan and the Declaration of Independence. Attention was also paid to the national security legislation in the field of military security and the Military Doctrines of the country. The historical and the comparable legal maintenance of consideration and in the study of the legislation before and after gaining independence have been conducted in the study of the legal support of the military industry

of the Republic of Kazakhstan. The research examined the laws, doctrines, agreements, acts of the international organization aligned with the military service, military security as the scientific papers and research by the foreign and domestic scientists.

Results

Currently, the issues of national security of our state are becoming more and more relevant. The existing problems in the world, including conflicts between states, cataclysms, the natural disaster and increased mirror migration of the foreign nationals, some peculiarities of military service of the countries, cause necessity to revise and differentiate the issues of the national military security, the legislation in this area, and entered into bilateral agreements.

The end of the 20th century was full of historical news for the world. The Soviet Union, we had been in power for 70 years, disintegrated, and the countries that were part of it began to gain their independence and develop as states that have chosen their own development path of a new nature.

The disintegration of the USSR, which was once a unified state, created a number of issues: what will be the unified defense space, will the former military remain, or will the young states form their own military? The well-known scientist K.S. Serikbayev mentions in his work the fact that there are many opinions [6; 45].

As is known, the Republic of Kazakhstan also had to define its own development strategy and choose the path of development. Kazakhstan, which once had a stockpile of nuclear weapons, became famous as a country that followed the path of peaceful life, democratic and legal state in its development to enter into the international relations and establish the equal relationships with other states. Of course, in addition to establishing relations and forming a branch of state power, the main objective is to intensify the border and provide the country's security. Under the former Soviet Union, the formation of independent power structures that were controlled from the center, establishment of legal order in the country, prevention of possible external threats, including the legal regulation of the military sphere which guards the armed forces of Kazakhstan from the internal and external threats, were urgent measures.

Understanding the importance of the current situation, the head of state takes a number of important measures aimed at ensuring the national interests of the country, including military security. The decree of the President of the Republic of Kazakhstan dated May 7, 1992 "About formation of the Armed forces of the Republic of Kazakhstan" laid the legal basis for the military reform in Kazakhstan and work on the organization of the armed forces of the state [7].

Then, the Military Doctrines of the Republic of Kazakhstan were adopted in 1993, 2000, 2011 and 2017. This document is a set of key principles concerning the military security of the state. It covers the use of the Armed Forces and other military formations to prevent wars and conflicts. It also addresses the obligations of the Republic of Kazakhstan under international agreements and the defence of national interests. The legal principle of the Military Doctrine is, primarily, the Constitution of the Republic of Kazakhstan, the international treaties to ensure the laws, military security and other normative acts of the Republic of Kazakhstan, to which the Republic of Kazakhstan is a party. Legal documents in the area of military security in our state, the ongoing reforms should increase the country's military potential, contribute to increasing and developing the level of protection of the national interests and ensuring the military security of the Republic of Kazakhstan.

The Republic of Kazakhstan's accession to the international treaties and documents in the area of security corresponds to the main directions of military policy and military reforms pursued by the state [8; 30]. Its main purposes and objectives are directly related to a concept of the foreign policy of the Republic of Kazakhstan for 2020–2030 [9] and the provisions of the Military Doctrine, of the Republic of Kazakhstan [10].

Discussion

Based on a generally established concept, military security is the protection of the national interest of any state and avoidance of external or internal threats. Many researchers support this definition. In particular, Buzan B. argues that military security is about protecting the national interests of a state. He also emphasizes the importance of preventing military aggression as a key aspect of this security [11].

Although, the basic definition of military security is the same or similar, and the concept itself has a different place in different legal acts in different countries. For instance, the meaning of military security is established in the law of the Republic of Kazakhstan on national security as Type I, i.e. the national security in

the Republic of Kazakhstan, except as defined by the military doctrine of the Russian Federation. This concept is indicated in many legal documents, but the ultimate goal is to ensure the military security of the state, as well as the fact that the country's military doctrine is based on state policy and the Constitution, the laws of the Republic of Kazakhstan and international treaties. The direct mention of this concept of military security in the law, in our opinion, is of great importance.

An important condition for military security is the conclusion of agreements with international organizations and neighboring states for mutual assistance, friendly relations and corporation. As part of this important measure, today our state primarily resolves issues in the border area of neighboring states and concludes agreements on operations, the Collective Security Agreement (May 15, 1992). The military cooperation agreement is the main guarantee of our military security in the future. To be specific, the Republic of Kazakhstan first signed the treaty of friendship, corporation and mutual assistance which the Russian federation dated October 7, 1992, an agreement on non-proliferation of nuclear weapons and elimination of its consequences of the emergencies with the United States of America on December 13, 1993, the treaty on the military corporation, which the Russian Federation on March 28, 1994 and many other agreements related to military security, such as the agreement on non-proliferation of nuclear weapons, strengthening of confidence in the military sphere in the border area, and sign it agreements and memoranda.

In 2014, the First President of the Republic of Kazakhstan in his message to the people of Kazakhstan "Kazakhstan's path 2050: a single and common interest, a single feature" stated that the country's national security and its participation in solving global and unique problems are the main objectives of the entire country [12].

The legitimacy of these documents, all the provisions in the field of military security in force on the territory of the country, is the proper result of the implementation of the main objectives on the way to creating the basic principles specified in the Constitution of the Republic of Kazakhstan: a legal, democratic, secure and secular society.

The main purpose of any state is to counter a military threat on its territory. For this purpose, the state must have an appropriate state body to organize, manage and develop the affairs of such a direction. To this end, on July 13, 1992, the president of the country signed the decree "On organization of estate security committee of the Republic Kazakhstan". The functional responsibilities, of the special service are clearly defined here.

Taking into account the new objectives and instructor of the committee, which had to deal with military Security issues in the early years of independence, the Military Intelligence Department, the General Department of Border Troops, the General Department of Government Communications, and their subordinate troops were created. Normative acts were brought into compliance with the requirements of the Law and the duties assigned to the NCS.

The Ministry of Defence of the Republic of Kazakhstan was developed by the Presidential Decree dated May 07, 1992. This structure is the body directly regulating and responsible for the military sphere, military security issues in the country.

It is known that the Republic of Kazakhstan has formed its own military policy, carried out military reform in the field of military security, adopted military doctrine, and contentions to develop [13; 61].

We fully agree with Zh.H. Akhmetov's opinion on work in the sphere of ensuring Kazakhstan's military security, which states that "despite the significant objective and subjective difficulties of the process of creation and military reform of the Armed Forces, other troops and military formations, which is taking place within the state building and search for ways to develop the country, we are able to manage these processes sufficiently and maintain their combat readiness" [14; 6].

The main document forming a significant direction in insuring security in the country within the state defence is a military doctrine of the Republic of Kazakhstan. The military doctrine is to prevent wars and treats, conflicts to ensure the military security of the state, the application of the military structure in the country, the Armed forces of the Republic of Kazakhstan other troops and military formations to fulfil the international organizations and national interests of the Republic Kazakhstan.

The Republic of Kazakhstan has already adopted several military doctrine to ensure military security. Over time, relations between states, the geopolitical situation, the new piece development, and measures to ensure military security have changed.

The opinions of scientists about the first military doctrine in Kazakhstan differ. Scientist A. Kusmanuly notes that the military doctrine in 1993 was not successful, i.e. it was a format based on the previous Soviet

approach. It also could not form the economic, political, scientific, technical, social and the military strategic system [15; 56].

The author's view expressed above is mostly correct, but we can partially agree with it. After all, Military Doctrine in 1993, during the formation of our country as an independent state, has its impact on formation of the system for ensuring of the military security. As it is known, the Military Doctrine in 2000 was adopted on the basis of the first Military Doctrine, and is in the nature of continuity. There are several factors that lead to the adoption of this doctrine: concretization of national interests in the life of the state, including in the military sphere, based on changes that arose on the way to the formation of a legal and democratic state.

In this regard, Bakaev L. emphasizes that the military doctrine of the Republic of Kazakhstan is oriented towards defensive strategies, strictly complying with the UN Charter and international legislation [16; 45]. This means that the military doctrine adapts in accordance with the country's development and changes in the global environment. Thus, it continues to evolve in response to new challenges and threats.

To this end, our state is clarifying key aspects of the National Security Strategy and the Military Doctrine. It is also developing a number of legal acts that regulate joint actions with allied states to ensure military security in the border area of the Republic of Kazakhstan. In addition, emphasis is placed on organizing the country's defense in the event of threats and ensuring collective military security.

Scientist G. Dubovtsev substantiates his point of view, considering this doctrinal position as an important step in ensuring the military security of the state. He emphasizes that this provision is the basis for strengthening the country's external security. Moreover, the new normative act opens up prospects for improving the military organization at the state level [17; 105].

In this direction, M.A. Samatov compares the adopted Military Doctrines and notes that their structure changes with each new document adopted. Specifically, the military doctrine of 2007 had a separate "International military corporation" section, while in the subsequent military doctrine of 2011 the side section was included in the "Basic Rules" section, in the Military Doctrine of 2017 the "International military corporation" section was expanding the participation of the Republic of Kazakhstan in ensuring of the international security" included in the section [18; 17].

Based on the military reforms made in the country, a military organisation and real community have been developed, and included the Armed Forces, military structures, troops and bodies. Here the Armed forces are the only provider of military security in the country. The peace time includes the country's military administration bodies, special forces, the rear, military schools and the military institutions. Time of the war includes the internal security troops of the Ministry of Internal Affairs, border troops of the National Security Committee. National Guard, territorial and civil defence structures. Thus, it can be concluded that provisions of the Military Doctrine cover the basic duties of the above-mentioned institutions and bodies to ensure the military security [19; 33].

Conclusions

The military policy of the state and military security of the state are interrelated concepts in the peaceful life of the country. Based on the military doctrine, military policy of the Republic of Kazakhstan is targeted to develop the system of the international relationships where the value of the military force is minimized. Conflicts will be resolved between states, social groups and peoples using the diplomatic and political, economic, informational, legal and other non-military means [20]. The basic directions adopted in the country in the new military doctrine in the Republic of Kazakhstan do not set any state as an enemy. The Republic of Kazakhstan strengthens its security in foreign policy and the military sphere. Kazakhstan is based on the principles of creating friendly peaceful relations with neighboring countries, their further development, formation of joint activities and establishment of partnerships [21; 40].

Nevertheless, if we are talking exclusively about disputes, the inappropriate documents relating to the military security of the Republic of Kazakhstan clearly outline the objectives aimed at achieving a peace agreement. These documents emphasize the need for peaceful resolution of international conflicts and the renunciation of violence or the use of force. In addition, they stress the importance of optimizing the country's external military organization to prevent and deter military aggressions. Therefore, the above and unspoken principles must be observed in all legal acts adopted in the field of military security in the contractual and interstate relations.

Points of the military doctrine adopted in the country that the Republic of Kazakhstan does not regard any state as its adversary, in the military and political spheres, the military security of the Republic of Ka-

Kazakhstan pursues a policy focused on establishing mutual corporation and friendly neighbourly relations with other states, and in the event of international disputes, to peacefully resolve them.

It is stated that this will be resolved so as not to be the first to use military force in existing conflicts, in order to strengthen the military organization of the country and to take effective measures to prevent the suppression of military threats to the Republic of Kazakhstan.

These principles, as it is known, should be the basic principles that must be observed in any legal acts, agreements in relations adopted in the area of the military security.

To date, the Republic of Kazakhstan has implemented some important measures in the military security. The agreements have been concluded with neighbouring countries to establish borders, consolidated the foundation of our country, peaceful coexistence and accession to the international legal documents.

In order to ensure military security, the Republic of Kazakhstan has resolved the issues of legal security in the legislative framework regulating its Armed Forces, military equipment and management.

However, these steps were taken in connection with the current unstable geopolitical, economic and other situations, the emergence of unexpected military conflicts between certain states, the prevention and avoidance of potential conflicts, the desire to preserve the strategic importance of the country and protect the national interests of the Republic of Kazakhstan. Thus, it is necessary to continue to address the issues of legal support in the specified direction.

Thus, the scientific approaches and justifications studied and discussed above give us reason to conclude that the Republic of Kazakhstan today in the field of its military security should constantly improve and develop the solution of issues of legal support for the country's military security by observing national interests, establishing peaceful relations with neighbors and concluding treaties to ensure collective security for the peaceful existence of citizens in the country. After all, only a clear military policy, clear legal regulation and ensuring national security, including military, can guarantee the preservation of sovereignty and the safe peaceful life of our country.

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Қазақстан Республикасының әскери қауіпсіздігін құқықтық қамтамасыз ету: салыстырмалы-құқықтық талдау

Мақала Қазақстан Республикасындағы әскери қауіпсіздік саласын құқықтық қамтамасыз ету мәселелерін қарастыруға арналған. Зерттеу барысында Қазақстан Республикасы өз тәуелсіздігін алған сәттен бастап бүгінге дейін қабылданған мемлекеттің ұлттық қауіпсіздігінің бір бөлігі болып табылатын әскери қауіпсіздікті реттеуге байланысты және әскери саланы басқаруда басшылыққа алынатын құқықтық актілердің маңызы мен рөлі қарастырылды. Зерттеудің мақсаты әскери қауіпсіздік саласындағы құқықтық актілердің ел қауіпсіздігін нығайтудағы тиімділігін, өзара байланыстарын, қалыптасуын және ерекшеліктерін анықтау. Зерттеу жұмыстарын жүргізу, зерделеу кезінде талдау әдісі, тарихи және компаративтік яғни салыстырмалы-құқықтық әдістері қолданылды. Автор бұл зерттеуді жүргізу кезінде еліміздің әскери қауіпсіздігін құқықтық реттеуде және құқықтық қамтамасыз етуде басшылыққа алынатын Қазақстан Республикасының Конституциясына, әр жылдары қабылданған Қазақстан Республикасының Әскери доктриналарына, өзге де қауіпсіздік саласындағы заңнамаларға жүргізілген терең ғылыми ізденіс нәтижесінде бұл құжаттар әскери қауіпсіздік саласында, әскери қызмет саласын реттеуде маңызды құжат деген қорытындыға келді. Сонымен қатар, қазіргі тұрақсыз геосаяси, экономикалық және тағы басқа да жағдайларға байланысты, кейбір мемлекеттер арасында күтілмеген әскери қақтығыстардың орын алуы, ел үшін стратегиялық маңызы бар негізді құрайтын, болашақта ықтимал дау жанжалдардың алдын алу, болдырмау, әркез Қазақстан Республикасы ұлттық мүдделерін қорғап қалу үшін әлі де аталған бағытта құқықтық қамтамасыз ету сұрақтарын жалғастырып отыруы керек деген ұсыныс жасалды.

Кілт сөздер: Қазақстан Республикасы, ұлттық қауіпсіздік, әскери қауіпсіздік, құқықтық актілер, әскери доктрина, заңнама, құқықтық қамтамасыз ету.

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Правовое обеспечение военной безопасности Республики Казахстан: сравнительно-правовой анализ

Статья посвящена рассмотрению вопросов правового обеспечения военной безопасности в Республике Казахстан. В ходе исследования изучены значение и роль правовых актов, связанных с регулированием военной безопасности, являющихся частью национальной безопасности государства, принятых с момента обретения Республикой Казахстан Независимости. Целью исследования является определение эффективности, взаимосвязей, темпов развития и особенностей правовых актов в области военной безопасности в укреплении безопасности страны. В ходе исследовательской работы применялись следующие методы: анализ, исторический, компаративный, то есть сравнительно-правовые методы. В результате всестороннего изучения Конституции Республики Казахстан, военных доктрин Республики Казахстан, принятых в разные годы, и иных законодательных актов в области

безопасности, руководствующихся правовым регулированием и правовым обеспечением военной безопасности страны при проведении данного исследования, автор пришел к выводу, что эти документы являются важными в области военной безопасности, в регулировании сферы воинской службы. Вместе с тем, в связи с нынешними нестабильными геополитическими, экономическими и другими обстоятельствами, возникновением между некоторыми государствами непредвиденных военных конфликтов, автор предлагает продолжить работу касательно вопросов правового обеспечения в данном направлении для предотвращения возможных конфликтов в будущем, а также защиты национальных интересов Республики Казахстан.

Ключевые слова: Республика Казахстан, национальная безопасность, военная безопасность, правовые акты, военная доктрина, законодательство, правовое обеспечение.

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