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PROSPECTS FOR CREATING A MILITARY POLICE IN UKRAINE TO ENSURE DISCIPLINE AND LEGALITY AMONG MILITARY PERSONNEL: GENESIS, CURRENT STATE AND PLACE IN THE STRUCTURE OF THE SECURITY AND DEFENCE SECTOR

The author examines the prospects of creating military police in Ukraine. The differentiation of the functions of the military police from the law enforcement functions of other formations and the military law enforcement service has been conducted. The draft law on the establishment of the military police is analyzed. The author examines regulatory legal acts and provides proposals for amending them in the context of the creation of the military police. It is emphasized that the military police should become a powerful formation for combating crime in the security and defence sector, as well as for preventing disciplinary and administrative offences committed by military personnel.

The international experience of military police activities has been presented. It is noted that the activities of the military police must comply with NATO standards.

It is determined that the most appropriate way is to create military police within the structure of a military formation with law enforcement functions – the National Guard of Ukraine – in order to comply with the principle of independence and impartiality, as well as taking into account the experience of NATO member states.

Keywords: *military police, National Guard of Ukraine, Military Law Enforcement Service, Security and Defence Sector, discipline and legality, NATO standards, military personnel.*

Statement of the problem. In 2019, Ukraine proclaimed a strategic course towards Ukraine's full membership in NATO [1]. The full-scale invasion of our country by the Russian Federation (RF) has only confirmed the strategic necessity of such actions.

One of the components of the military formations of NATO countries is the presence of a unit such as the military police within their structure. Its main functions are: maintaining discipline among military personnel, investigating war crimes, ensuring the safety of transport, protecting military facilities and command structures, ensuring the safety of military personnel, etc.

The guiding document that regulates the activities of military police in NATO member states is the Military Police Doctrine adopted in February 2019 (NATO STANDARD AJP-3.21 ALLIED JOINT DOCTRINE FOR MILITARY POLICE) [2].

During the full-scale invasion of Russia, the number of war crimes committed by military personnel increased by more than 4 times, while this figure does not take into account latent crimes, which, according to the subjective data of commanders of various levels, constitute a significant number [3].

The issue of establishing and ensuring the successful functioning of the military police remains unresolved, as this law enforcement agency is expected to be responsible for preventing and solving military crimes. Unfortunately, even after the start of the full-scale invasion of Russia, such an important unit was not created.

The above, in particular, indicates the relevance and necessity of studying the issue of creating military police in Ukraine to ensure discipline and legality among military personnel.

Analysis of recent research and publications.

The current issues regarding the activities of the military police and military law enforcement service have been addressed in the publications of P. Bohutskyi, V. Kolomiets, I. Koropatnyk, I. Kuzmych, Ye. Kurinnyi and M. Khavroniuk.

Research on ensuring discipline and legality has been conducted by scholars such as O. Bandurko, O. Voluiko, O. Havryshuk, O. Druchek, V. Zaluzhnyi, V. Kolomiets, V. Kolpakov, O. Krivenko, V. Pietkov, S. Poliakov, O. Siniavska, A. Starodubtsev and others.

However, the issues of discipline and legality in the context of the creation of the military police in Ukraine have not been studied.

The purpose of the article is to study the prospects of creating military police in Ukraine to ensure discipline and lawfulness among military personnel.

Summary of the main material. After 24 February 2022, the number of war crimes in the country began to grow rapidly. This is due to quite objective reasons: general mobilization, an increase in the size of military formations, real hostilities, etc.

According to the Prosecutor General's Office [4], the number of war crimes committed by servicemen of all military formations in 2022 and 2023 increased significantly compared to 2021. In particular, it is necessary to note the following indicators.

Criminal offences against the established procedure for military service (military criminal offences) were recorded: in 2021 – 3,037 crimes; in 2022 – 13,766 crimes; in 2023 – 28,666 crimes.

Therefore, the growth is as follows: in 2022 – 453 %, i.e. 4.5 times; in 2023 – 944 %, i.e. 9.4 times compared to the pre-war period.

Especially significant growth occurred in the following types of crimes.

1. Disobedience (Article 402 of the Criminal Code of Ukraine): in 2021 – 19 crimes; in 2022 – 1,574 crimes; in 2023 – 1,678 crimes.

The increase is as follows: in 2022 – 8,284 %, which is 83 times; in 2023 – 8,831 %, which is 88 times compared to the pre-war period.

2. Failure to comply with an order (Article 403 of the Criminal Code of Ukraine): in 2021 – 3 crimes; in 2022 – 28 crimes; in 2023 – 32 crimes.

The increase is as follows: in 2022 – 933 %, which is 9 times; in 2023 – 1,066 %, which is 10.5 times compared to the pre-war period.

3. Desertion (Article 408 of the Criminal Code of Ukraine): in 2021 – 117 crimes; in 2022 – 3,214 crimes; in 2023 – 7,755 crimes.

The increase is as follows: in 2022 – 2,747 %, which is 27 times; in 2023 – 6,628 %, which is 66 times compared to the pre-war period.

As for military administrative offences, according to T. Stiekhina, there is no clear statistics on military administrative offences committed since 24 February 2022 and up to now. There is only an opportunity to analyze the court practice, which indicates that the most frequent offences are those under Articles 172-10, 172-11 and 172-20 of the Code of Administrative Offences (CAO) [refusal to comply with the lawful requirements of the commander (chief), unauthorized leaving of a military unit or place of service and drinking

alcoholic or low-alcohol beverages or using narcotic drugs, psychotropic substances or their analogues] [5].

The number of disciplinary offenses by military personnel has also significantly increased since the introduction of the legal regime of martial law. This is evidenced by the statistics of the units for personnel work and moral and psychological support of military formations, which are presented to servicemen during various meetings and summaries of the unit's activities.

Unfortunately, the existing law enforcement bodies have not been able to prevent these crimes. Crimes committed in the context of actual hostilities are mostly solved after the fact by units of the State Bureau of Investigation (SBI) within the framework of criminal proceedings, but this wastes the necessary time for immediate operational and investigative measures. Of course, these actions cannot be carried out by the Military Law Enforcement Service of the Armed Forces of Ukraine (MLS), but must be carried out by the military police (MP), which has not yet been created.

It should be noted that there are several ways to improve the state of discipline and the rule of law among military personnel. One of them is the development of the legal culture of a serviceman. Among its components, O. Danylchenko cites the following:

- legal knowledge and understanding;
- traditions, needs and skills to act in accordance with national and international law;
- practical activity is carried out in strict compliance with the legislation, in accordance with legal principles and convictions;
- legal activity;
- intolerance to manifestations of lawlessness and offences [6].

Another way to improve the state of discipline and lawfulness among military personnel was to adopt the Law of Ukraine "On Amendments to the Criminal Code of Ukraine, the Code of Administrative Offences and Other Legislative Acts of Ukraine on the Peculiarities of Military Service under Martial Law or in a Combat Situation" [7].

Its purpose was "to harmonize the current legislation between the Criminal Code of Ukraine and the Code of Administrative Offences of Ukraine in matters of liability for offences committed by military personnel during military service under martial law or in a combat situation". In fact, according to the norms defined in the adopted law, it was a question of increasing responsibility among military personnel.

According to the authors of the article, the adoption of this Law contributed to solving the problematic issues of ensuring discipline and legality among military personnel only partially, and not to the extent expected by the legislator.

There are many more ways to improve discipline and lawfulness among military personnel: increased attention of unit commanders to strengthen this area of work, work of psychologists with certain categories of military personnel, legal explanatory work by legal advisers of military units, work of units for moral and psychological support and work with personnel, etc.

According to the authors, one of the main areas of combating war crimes, administrative and disciplinary offences should be the creation of a specialized law enforcement unit of the security and defence forces – the military police.

The issue of creating military police has long been debated in Ukrainian society. In fact, it has been going on since the restoration of Ukrainian statehood in 1991.

According to V. Kolomiets, in accordance with Article 2 of the Law of Ukraine "On State Protection of Judicial and Law Enforcement Officers" of 23 December 1993, the Military Law Enforcement Service became part of the system of law enforcement agencies, which also includes the prosecutor's office, the Ministry of Internal Affairs, the Security Service of Ukraine and others that perform law enforcement or law enforcement functions. In other words, the specific status of the Military Law Enforcement Service, a purely military formation with law enforcement functions, was enshrined in law. However, the process of forming new law enforcement agencies in the Armed Forces of Ukraine was delayed and is still incomplete. The creation of a qualitatively new law enforcement system within the structure of the Armed Forces of Ukraine began only with the adoption of the Law of Ukraine "On the Military Law Enforcement Service in the Armed Forces of Ukraine" on March 7, 2002 [8].

According to the Law [9], the Military Law Enforcement Service in the Armed Forces of Ukraine is a special law enforcement formation within the Armed Forces of Ukraine, which is designed to ensure law and order and military discipline among the military personnel of the Armed Forces of Ukraine in the places of deployment of military units, in military educational institutions, institutions and organisations, military camps, on the streets and in public places; to prevent and suppress criminal and other offences in the

Armed Forces of Ukraine; to protect the life, health, rights and legitimate interests of servicemen and women liable for military service during their training, employees of the Armed Forces of Ukraine, as well as to protect the property of the Armed Forces of Ukraine from theft and other illegal encroachments, and to participate in countering sabotage and terrorist acts at military facilities.

The next historic step was the introduction of draft law No. 1805 to the legislature in 2015 [10]. According to the project, the Military Police was envisioned as a military law enforcement formation tasked with maintaining law and order among citizens of Ukraine who are military personnel, conscripts, and reservists during their training sessions. Its duties included preventing and detecting criminal and other offenses committed by military personnel and employees of the Ministry of Defense of Ukraine and the Armed Forces of Ukraine, as well as ensuring the safety of military traffic, protecting the rights and freedoms of military personnel and military property from unlawful encroachment, participating in countering sabotage and terrorist acts, and stopping unlawful actions by military personnel and civilians at military facilities.

However, the mentioned project once again did not address the issue of extending the functions of the Military Police to other military formations, including the National Guard of Ukraine (NGU), through amendments to the Law of Ukraine "On the National Guard of Ukraine." Without making appropriate changes, such activity of the military police unit within the NGU would be illegal. Additionally, the project did not provide for interdepartmental cooperation of the military police, which would be part of the Ministry of Defense and the National Guard, with the State Border Guard Service of Ukraine (SBGS), which is part of the Ministry of Internal Affairs (MIA) of Ukraine.

The issue of creating military police was further developed and, as noted by Ye. Kurinnyi, in June 2015, by a resolution of the Verkhovna Rada of Ukraine, a Legislative Support Plan for Reforms in Ukraine was approved, which envisaged granting the Military Law Enforcement Service (MLES) authority to conduct pre-trial investigations of criminal offenses and engage in operational-search activities (albeit jointly with the National Police of Ukraine), as well as the creation of the Military Police (MP) based on it. Additionally, in June 2016, the Strategic Defense Bulletin and in March 2017, the State Program for the Development of the

Armed Forces of Ukraine for the Period until 2020 (both documents are approved by the Decree of the President) envisaged the transformation of the MLES into the Military Police (MP) with the authority to conduct pre-trial investigations of crimes and carry out operational-search activities. In November 2019, as part of the transition of the Armed Forces of Ukraine to NATO standards, President Volodymyr Zelensky instructed the leadership of the Ministry of Defense to create a modern and effective law enforcement agency – the Military Police by December 31, 2019. The idea at that time of transforming the MLES into the MP also included empowering the newly created agency with the authority to conduct pre-trial investigations [11].

A few days before the full-scale invasion into our country, on February 15, 2022, a draft Law of Ukraine "On the Military Police" No. 6569-1 was submitted to the Verkhovna Rada of Ukraine. According to this draft law, the Military Police was envisioned as a central executive authority with special status, responsible for safeguarding the interests of the state in the defense and national security sphere of Ukraine through law enforcement activities aimed at preventing, detecting, stopping, investigating, and solving crimes and criminal offenses under its jurisdiction. Additionally, it was tasked with implementing preventive measures to ensure legality and order within the Armed Forces of Ukraine and other military formations established in accordance with Ukrainian laws.

As for the functional content, the draft law provides for the military police to carry out law enforcement activities to prevent, detect, stop, investigate and solve crimes and criminal offences under its jurisdiction in accordance with the provisions of the Criminal Procedure Code of Ukraine, etc. It is also envisaged that the military police is actually created on the basis of the Military Law Enforcement Service in the Armed Forces of Ukraine.

Unfortunately, this draft law was not adopted either. Moreover, it was not even considered by lawmakers in the first reading.

As for granting investigative functions to the newly established military police, the authors of the article strongly oppose this, as they believe it could disrupt the system of preliminary investigation in Ukraine. It should be reminded that it was precisely for the independence of investigators and the partial transfer of the functions of the former military prosecutor's office that the State Bureau of Investigation was established, which, according to the Law [13], solves the tasks of preventing, detecting, stopping, solving and investigating

crimes against the established order of military service (war crimes), except for the crimes provided for in Article 422 of the Criminal Code of Ukraine. However, due to the limited number of SBI employees (1,600) in relation to the total number of military personnel in Ukraine (more than 300,000, and after mobilization measures since February 2022 – more than 1 million), the SBI cannot physically perform the functions provided for by law. Therefore, the logical way out of this situation is to increase the number of SBI investigators to investigate crimes committed by military personnel and to gradually (with planning for several years) correlate their staffing levels with the projected number of military personnel in the country, depending on the legal regime (peacetime, special period or martial law).

It should also be added that the creation of another investigative body in the state, its staffing with relevant professional personnel, training, support, and updating of the organizational structure is an unreasonable step.

Separately, the authors note that they do not support the possibility of returning the Soviet rudiment – the military prosecutor's office (military courts), which is a relic of the past, a totalitarian form of government (which our state has already abandoned, including at the constitutional level, in view of the European and democratic course of development), despite the radically different position of respected scholars, lawyers and experts [14, 15].

So, to this day, despite the full-scale invasion by the Russian Federation, the military police has not been established. Since the creation of the Military Law Enforcement Service in the Armed Forces of Ukraine, which has been functioning fully in the country for over 20 years, it has not evolved into full-fledged military police similar to those in NATO member countries. Among the main shortcomings of the work of the MPS are the following:

- the failure to extend the functions of the Military Law Enforcement Service to other military formations established in accordance with the law in Ukraine (National Guard of Ukraine, State Border Guard Service, Main Intelligence Directorate, Security Service of Ukraine, etc.);

- the lack of operational and investigative functions to combat crime in military formations and, thus, the inability to independently (without involving employees of the Security Service of Ukraine, the State Bureau of Investigation, or the National Police of Ukraine) take measures to prevent and solve both military crimes and crimes

of a general criminal nature and corruption, which are most often committed by military personnel;

– insufficient personnel potential, not properly trained to perform the functions of the military police in combating crime; ability to perform only security (convoy) functions; insufficient number of necessary specialists with experience and professional higher legal or law enforcement education.

Let us now turn to NATO standards for military police. The guiding document that regulates the activities of military police in NATO member states is the Military Police Doctrine adopted in February 2019 (NATO STANDARD AJP-3.21 ALLIED JOINT DOCTRINE FOR MILITARY POLICE) [16].

In addition, military police activities must comply with NATO standards – "NATO Combined Military Police" (STANAG 2085 (Ed. 4) NATO COMBINED MILITARY POLICE, IDT) and "NATO Military Police. Guidelines and Procedures" (STANAG 2226 (Ed. 2) / ATP-3.7.2 (Ed. A) NATO MILITARY POLICE GUIDANCE AND PROCEDURES, IDT) [17].

Of course, the issues of bringing legislation in line with international standards within the framework of international cooperation are also gaining great attention, because, as scholars note, "certain forms of cooperation, its directions and means of implementation primarily depend on the states themselves, in particular, the needs and material resources, international obligations and domestic legislation. Instead, it is worth noting that international cooperation should not only be useful for two, three, etc. states between which it exists. Cooperation should bring benefits to the entire global community" [18].

Thus, the activities of the newly created military police must comply with NATO standards, be interoperable with similar units and operate within the legal framework of our country's international cooperation.

Here are examples of the world experience of military police in NATO countries. In Italy, military police is a part of the Italian National Gendarmerie (Carabinieri). In France, military police is an integral part of the National Gendarmerie of the French Republic. In Poland, these tasks are performed by the Polish Military Gendarmerie. Of course, there are other examples, such as subordination to the Ministry of Defence, the army, or being a separate body.

Another important issue is to determine the place of the military police in the structure of state bodies or military formations: whether it should be a separate executive body or part of the Ministry of

Defence of Ukraine, the Armed Forces of Ukraine, the National Guard of Ukraine, other military formations, etc. It should be noted that the creation of a new central executive body would require unreasonably high material costs.

The National Guard of Ukraine has already been created in Ukraine and is successfully performing combat missions, which as a military formation with law enforcement functions fully corresponds to similar formations of NATO countries (gendarmerie or police forces in the status of a military institution). Thus, it is the NGU, given its size, subordination to the Ministry of Internal Affairs of Ukraine and, in some cases, the Ministry of Defence of Ukraine, the presence of higher military educational institutions that train law enforcement specialists with higher military education at the tactical and operational level in the Specialities of Law and State Security, as well as professional scientific and pedagogical staff, that can become the basis for the creation of a military police.

This opinion is shared by other scholars and experts. In particular, Ye. Kurinnyi notes that "the borrowing of unique positive practices of foreign countries into the domestic legal space should take into account the authenticity of the national legal system and meet the real conditions of today. Ukraine already has a "gendarme-type" power structure – the National Guard of Ukraine, built on the principles of the International Association of Gendarmerie and Police Forces in the status of a military institution (FIEP)" [11].

At the same time, the authors of the article do not share the opinion of the leading expert in the field of military justice P. Bohutskyi, who notes that "there are no grounds for referring a law enforcement body with police functions, which should operate in the field of defence, to other institutions of the state, in particular, the Ministry of Internal Affairs, whose functions do not relate to the activities of the defence forces and are incompatible with the legal regime of military service" [19]. In this case, it should be noted that the National Guard of Ukraine is precisely such an agency within the Ministry of Internal Affairs of Ukraine, which, on one hand, is a military formation (with law enforcement functions), and on the other hand, carries out police functions.

At the same time, there is no doubt that the National Guard of Ukraine is both a military formation and a law enforcement entity, as noted, in particular, in the study by one of the authors of this article [20]. Thus, there should be no questions (among legislators, experts, scholars) about the

failure to comply with the provisions of Article 17 of the Constitution of Ukraine regarding the inadmissibility of restriction of the rights and freedoms of citizens by military formations, since the NGU, given its law enforcement functions, is in fact a law enforcement agency of our state.

In addition, the National Guard of Ukraine successfully performs law enforcement functions inherent in the military police, in particular protection of important state facilities, critical infrastructure facilities, participation in the elimination of the consequences of crisis situations at the critical infrastructure facilities protected by it, protection of special cargo, participation in special operations to neutralize armed criminals, in the fight against sabotage and reconnaissance forces of the aggressor (enemy), stopping the activities of paramilitary or armed groups, organized groups and criminal organisations on the territory of Ukraine, defence of important state facilities, special cargo, escorting persons taken into custody, sentenced to imprisonment or arrest, etc.

Therefore, the National Guard should be the mainstay of the creation of military police in Ukraine in accordance with NATO standards.

Conclusions

1. With the beginning of the full-scale invasion of Ukraine by the Russian Federation in 2022, the level of military criminal, administrative and disciplinary offences among servicemen began to grow rapidly, and therefore the main direction of counteracting this trend should be the creation of a specialized unit of the security and defence forces – the military police.

2. Given the legal regime of martial law and Ukraine's strategic course towards NATO membership, it is imperative to create a military police as soon as possible.

3. The National Guard of Ukraine as a military formation with law enforcement functions should become the basis for the creation of military police, taking into account the experience of leading NATO countries.

4. The Military Law Enforcement Service should become part of the military police as one of its constituent structures, performing its inherent functions, while other areas of service will be performed by other military police units, for example, in the field of internal and personal security, crime detection, operational search activities and covert investigative search activities.

Further scientific research will be aimed at

improving the organizational structure of the military police and delineating its powers from those of other law enforcement agencies.

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ПЕРСПЕКТИВИ СТВОРЕННЯ ВІЙСЬКОВОЇ ПОЛІЦІЇ В УКРАЇНІ ДЛЯ ЗАБЕЗПЕЧЕННЯ ДИСЦИПЛІНИ І ЗАКОННОСТІ СЕРЕД ВІЙСЬКОВОСЛУЖБОВЦІВ: ГЕНЕЗИС, СУЧАСНИЙ СТАН ТА МІСЦЕ У СТРУКТУРІ СЕКТОРУ БЕЗПЕКИ І ОБОРОНИ

Досліджено перспективи створення військової поліції в Україні. Проведено розмежування функцій військової поліції з правоохоронними функціями інших формувань та військової служби правопорядку. Проаналізовано законопроект про створення військової поліції. Розглянуто нормативно-правові акти і надано пропозиції щодо внесення змін до них у контексті створення військової поліції. Наголошено, що військова поліція повинна стати потужним формуванням із протидії злочинності у секторі безпеки і оборони, а також профілактики дисциплінарних та адміністративних правопорушень, що вчиняються військовослужбовцями.

Розглянуто міжнародний досвід діяльності військової поліції. Зазначено, що діяльність військової поліції повинна відповідати стандартам НАТО – «Об'єднана військова поліція НАТО» (STANAG 2085 (Ed. 4) NATO COMBINED MILITARY POLICE, IDT) та «Військова поліція НАТО. Керівництво та процедури» (STANAG 2226 (Ed. 2) / ATP-3.7.2 (Ed. A) NATO MILITARY POLICE GUIDANCE AND PROCEDURES, IDT).

Визначено, що найдоцільнішим є створення військової поліції у структурі військового формування з правоохоронними функціями – Національної гвардії України – з метою дотримання принципу незалежності та неупередженості, а також з урахуванням досвіду країн-членів НАТО.

Ключові слова: військова поліція, Національна гвардія України, військова служба правопорядку, сектор безпеки і оборони, дисципліна і законність, стандарти НАТО, військовослужбовці.

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