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**Legal agreement on the status of the USA Armed forces in the Republic of Korea as the anti-Americanism source in the South-Korean society**

*The article is devoted to the peculiarities of the Agreement on the USA Armed forces* ***s****tatus in the**South Korea. In particular, the author analyses the items of agreement, which cause strong criticism, discontent and anti-Americanism in the South-Korean society. Because of the problem of anti-Americanism the agreement was revised twice, but the result did not resolve the problem. Moreover, the new amendments needs are actively used by the internal political forces in the XXI century.*

**Правовое соглашение о статусе Вооруженных сил США в Республике Корея как источник антиамериканизма в южнокорейском обществе**

*Статья посвящена особенностям Соглашения о статусе Вооруженных сил США в Южной Корее. В частности, рассмотрены пункты данного соглашения, которые вызывают жесткую критику, недовольство и проявления антиамериканизма со стороны южнокорейского населения. Из-за проблемы антиамериканизма соглашение дважды подвергалось пересмотру, что, в итоге, так и не разрешило сложившуюся ситуацию. Более того, тема нового внесения новых поправок в документ в XXI в. активно используется внутриполитическими силами в своих интересах.*

***Keywords:*** *US, South Korea, status of forces agreement, SOFA, anti-Americanism, crimes, military personnel, serviceman, society.*

***Ключевые слова:*** *США, Республика Корея, Соглашение о статусе вооруженных сил, антиамериканизм, военный контингент, преступления, СОФА, общество.*

In the territory of the Republic of Korea (further – RK) on the fixed basis the American military bases with the corresponding contingent are placed. The Agreement on mutual defense signed by the parties upon the completion of the Korean war of 1950 – 1953 forms the basis of presence of the Armed forces of the USA in the country. Key function of the military contingent of the United States in South Korea – safety and protection of the ally against the possible aggression from the outside, first of all, from DPRK [15, p. 21].

In the post war years the number of servicemen of the USA which are in RK made 64 thousand people [8, p. 223], gradually this figure decreased, and now the little exceeds 27 thousand persons. Initially the American military contingent in Korea had the exterritoriality right, i.e. military personnel didn't fall under the jurisdiction of the RK law-enforcement system for any violations of the law. However because of the changes of rules of the international law Washington was forced to sign with Seoul the agreement regulating the questions of rights and privileges of military personnel and a part of civil personnel in the adoptive state and also the questions of customs legislation. Such document is signed in 1966 and has the name the Agreement on the status of armed forces (further – SOFA).

This regulatory legal act settled many aspects of the civil and criminal law, at the same time, it limited the powers of the South-Korean judicial system and the structures of execution of punishments in case of making by the American military of crimes in the territory of RK. In particular, the article 22 of the agreement according to which military personnel of the USA could be made responsible by the exclusively judicial system of the United States and by the American legislation is devoted to the principle of operation of the law in space. In this context the Armed forces of the USA were abroad equalized with the diplomatic bodies [11].

The specified agreement in RK gradually turned into a source of the anti-American moods among the South-Korean citizens. The beginning of such tendency was observed in the 1980th – during the active democratization of the country. The basis for growth of anti-Americanism formed the high crime among the American military personnel and impossibility of assignment of punishment to them by the South-Korean courts. So, in 1988 the government of RK published and sent to the National assembly the document under the name "Chronology of crimes of the USA Army in Korea and their consideration", it reflected the all statistics on crimes committed by the American military in the territory of Korea since September 8, 1945. It should be noted that the total number of such crimes in 20 years (from 1967 to 1987) made 39 452, otherwise, on average, 5 illegal acts a day were made. At the same time, the number of American soldiers participating in their commiting made 45 183 people [4].

As a result of criminal acts of military personnel of the USA among the South-Korean population the acts of anti-Americanism made mainly by the radical social groups began to be shown. In 1982 the students organized the procession directed against opening of the American cultural center in Busan [5, p. 252]. In March, 1982 there was the attack on the American YuSIA news agency in Busan, then in May, 1983 the similar incident in Daegu took place, and in 1985 already and the office of YuSIA in Seoul underwent to the attack from the South-Korean radical youth [16, p. 360 – 361]. In Gwangju in 1985 it was held demonstrations against activities of the USA in RK [5, p. 252]. Since 1986 the anti-American acts took place almost continuously [9, p. 142], and the negative attitude to the USA began to be shown stronger and stronger also in mass media. Offenses of the Americans quite often were exaggerated and became very useful to a raising of ratings of TV channels and newspapers, the special attention was drawn by the cases of justification of Americans with the military tribunal [17, p. 54]. The data set of factors promoted an aggravation both the internal political country situation, and the RK relations with the USA.

For the purpose of stabilization of the situation in 1990 the agreement on modification in the SOFA was reached by Seoul and Washington. As a result, official review of the document took place in 1991. Changes concerned the several questions, but, first of all, differentiation of jurisdiction on the criminal cases. According to the amendments in SOFA, crimes committed by the American military in the territory of RK shall be considered by the tribunal of the USA only if they are made in a case of doing by the citizens of the United States of the job responsibilities or during the wartime, otherwise, the crimes fell under the RK jurisdiction. Besides, review of the document gave the chance to South Korea to make arrest of the military personnel of the USA, to make the corresponding investigations and legal procedures when making of the especially serious crimes by the last, in other cases – after a certain coordination with the American military command [10].

However review of the agreement only for a while reduced the anti-Americanism level in South Korea: the made changes actually didn't lead to the essential reducing crime, and only the small share of all cases with participation of the military personnel of the USA fell under the jurisdiction of the Korean courts. So, according to the data provided by the Ministry of justice of RK at the meeting of National assembly on October 4, 1993 the total quantity of such crimes from October, 1992 to August, 1993 made 850. Among them only 10 cases are considered in the South-Korean courts [2]. Such tendency found reflection in the activities of public organizations of the country which in 1992 created the national campaign directed to cancellation of the special status of the American military personnel in Korea. This campaign got support of the local population and for several years of existence turned into the institutionalized public body capable to exert impact on the social and political situation in South Korea [4].

As a result of intensity increase around SOFA in 1994 in the country parliament it was offered to make the next amendments to the document, and in a view of difficult socio-political situation this initiative got approval. In 1995 the governments of RK and the USA began the negotiation process. Coordination on the matter dragged on, and only in 2000 the parties overcame the all obstacles and the review took place. Points concerning the jurisdiction of the bodies for criminal cases and problems of the environment underwent to a change mainly [3, p. 203].

The ecological perspective during democratization in South Korea began to draw the increasing attention of public masses. In the 1990th in the country consolidation of the forces of ecological movement was observed. So, in 1996 “the Green league” organization united 11 regional ecological communities, and thanks to the created coalition the South-Korean society knew about the negative impact of the American military bases in RK on the environment. Organization members carried out analyses of the tests of water and soil taken to the close objects of the USA. The results showed that content of lead and oil products exceeded the admissible norms, and in some cases required evacuation of the bases. Conducting a course on the fight against "the American pollution", “Green league” for the first time designated one more urgent problem which settlement required amending in SOFA. Subsequently a need of taking measures for this context was stated also by the Ministry of ecology of RK, and on its initiative this point was included into the list of questions discussed at the negotiations on review of SOFA [3, p. 209].

It is remarkable that the review acceleration of SOFA was promoted by the event which drew attention to both South-Korean, and the world community. In 2000 the incident which caused a wide public response occurred: the American soldier on the military base in Yonsana merged 20 gallons of formaldehydes to the river Hanggang flowing through Seoul. The U.S. authorities claimed that concentration of formaldehydes was extremely low, and health hazard of the South-Korean citizens completely was absent. However the local public organizations of the anti-American orientation developed the large-scale promotion in connection with this episode, moreover, the local media actively were connected to them. The agreement existing between two countries not obliging to take the USA measures for preserving the ecological situation at all was criticized [12].

As a result, the event which caused escalation of moods of the anti-American orientation accelerated amendings in SOFA which concerned, mainly, the measures for preserving the environment [3, p. 203 – 204]. Review of the document officially took place on December 28, 2000. According to the article 1 of the updated SOFA, the American side will be respectful to the current legislation of RK in the sphere of ecology and will take necessary measures for neutralization of pollution which occurred because of the American troops and which pose the real and inevitable health hazard to the person. However, if such threat is absent, then actually the United States can return military facilities to the South-Korean authorities without provision of compensation for the required cleaning of the territory and the repair of buildings and constructions [6, p. 109 – 111].

According to the scientific community of RK and the USA, these changes essentially didn't influence the change of ecological situation on the military bases of the USA in South Korea, they first of all were directed to the South-Korean public. As the American specialist in international law of the Bloomberg agency, doctor of jurisprudence J. Ku states, such legal formulation in the document claims as "the real and inevitable health hazard to the person", allowed Washington avoid, as before, liabilities on cleaning of the polluted territories. The pollution caused by the activities of military contingent of the USA often pose threat for the environment, nearby farms etc. and can not pose direct health hazard to the person. Proceeding from it, only in some cases the American side will be obliged to carry out special works on the liquidation of pollution [6, p. 112]. The head of bureau of fight against the American crime in Korea Ken Guo Yu adheres to a similar position. In particular, he specifies that this formulation has conditional character therefore the criteria for evaluation of its availability are washed too away because of what the American side is capable to avoid the costs for preserving the environment [7, p. 5].

Ken Guo Yu also focuses attention that during the second review of SOFA the government of RK insisted on that the South-Korean side carried out the measurements of these or those indicators, and also the conclusion about a state of environment was taken out. However the USA didn't make a compromise, and was decided that the specified procedures will be carried out by the American side. Moreover, Washington refused the requirement of Seoul to provide the detailed report about the done analyses and tests [7, p. 5].

The agreement between RK and the USA causes a discontent of the South-Korean public also because of the availability of certain differences between the SOFA of the USA and RK, and also SOFA, signed by the USA with the other states, such as the countries of NATO or Japan. Supporters of the document review declare its injustice and consider it as a tool of the USA for maintaining with South Korea of the unequal relations. If to compare two documents, then the SOFA of the USA – NATO protect from the South Korean legal proceedings only of the American military personnel, and the SOFA of the USA – RK – both the military personnel, and that part of civil personnel which formally is a part of military contingent of the USA in Korea [6, p. 107].

If to speak about the environmental protection, then in the agreement existing between the USA and Germany it is specified that in case of impossibility of use of the transferred objects because of their wear the USA is obliged to pay demolition of buildings and constructions and the subsequent cleaning of the territory. In the item 5 of the article 63 of the document it is noted that in addition the matter shall be resolved at the corresponding negotiations between the parties. In the document existing between the USA and RK similar points didn't appear even after the second editing [6, p. 113].

Thus, among the South-Korean population the belief about the not equal rights of SOFA was firmly created. According to the polls in 2001, in South Korea 75,7% of citizens of RK counted SOFA as unequal, 18,9% – equal [3, p. 203].

The current situation began to be used by the internal political forces subsequently. At the beginning of December, 2002 in the country the large scandal caused by the death of two South-Korean schoolgirls whom the American armored car ran down burst. The military personnel driving it was on service and in this connection, they were judged by the military court of the USA which pronounced the verdict of not guilty. Such turn of events caused the large-scale reaction of the South-Korean public. As a result, in December, 2002 in the large cities of the country there took place meetings of the anti-American nature: only in Seoul near the American Embassy 10-thousand demonstration took place. The anti-Americanism wave which overflowed RK at the end of 2002 allowed the candidate for president from the Democratic party of new millennium No Mu Khen to win a victory on the elections on December 19, 2002. In his election campaign he allocated the points on amending in SOFA and the general review of relations with the USA that sharply upgraded subsequently his rating in the pre-election race.

During his presidency No Mu Khen really changed approaches to the military-political cooperation with the United States. RK began to conduct more independent policy in this connection, military contingent of the USA in the country was slightly reduced. Measures for the crime decrease among the military personnel deployed in RK began to be carried out to this period by Washington actively: they included also special lectures about the Korean culture, and a prohibition on dismissals more than 2 days, and a fight against alcohol intake, etc. The results of such actions significantly reduced the activity of the anti-American movement, but, despite it, SOFA by But Mu Hen didn't undergo new changes.

With coming to the power in 2008 of the conservative administration taking the pro-American position the question of review of SOFA by the government of the country wasn't brought up at all. However the need for it gradually grows: more than for 20% number of criminal offenses with participation of the American military increased. Such tendency led to activization of the anti-American movement and to the new requirements for the review of SOFA [18, p. 93].

In this context the special attention of the South-Korean public was drawn by the incident which took place in May, 2015. Then the American defense ministry mistakenly directed to the U.S. Air Force base in Osane the container containing the live spores of anthrax. The emergency hospitalization of 22 employees of the military facility and the hit of information on it in the local media became a result of such mistake that, eventually, and caused a wide public response in South Korea [1]. This event staticized the question of the SOFA review again. The article 9 of the agreement which concerns the customs examination and the tariffs was criticized. According to it, officials of the customs authorities of South Korea have no right to examine military freights of the USA a rmy [11, 13].

After the incident professor of the university Hankuk Li Chan Hee declared that from three countries in the world with the greatest American military contingent – South Korea, Japan and Germany – South Korea is the unique state which the United States are formally not obliged neither to notify in advance, nor to consult on it about the import of different arms and dangerous goods. Li Chan Hee focused attention that as this question is directly connected with the safety of the South-Korean citizens, SOFA shall be reviewed [15].

Soon after the incident there took place the meeting of the joint American-South-Korean commission on the questions of SOFA created in 1967. During discussion by the South-Korean side the subject of the third review of the document was arosen. Representatives of the ruling party f Senuri also supported taking the measures, interfering to the USA freely to import into RK hazardous to health and human lives substances. As a result, a number of negotiations of different level was devoted to this problem: it was discussed at the meeting of representatives the of MFA of RK and the military command of the USA in Korea, and also within the joint working group on the military questions. However the position of Washington is aimed at preserving the status quo in this connection the discussions about the existing problem didn't lead to its permission [13].

Now the problem keeps the relevance and causes a certain socio-political tension in RK. In the country regularly there take place peaceful meetings for revision of the "unequal" document, moreover, SOFA continues to remain a subject of discussions in the scientific community of RK. Separate scandals connected with the criminal activity of the American military personnel draw attention of the broad public masses and can be used by the internal political forces. The TV host, popular in South Korea, and PR promoter Cho Gap Che in his comments has noted that at the upcoming presidential elections in 2017 the question of revision of SOFA the same as in 2002, active can be actively used by the candidates. According to Cho Gap Che, during the pre-election period the subject of anti-Americanism can become a subject of internal political "games" [14].

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