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STUDY OF THE SYSTEM OF ADMINISTRATIVE AND LEGAL FRAMEWORK FOR DETENTION OF PRISONERS OF WAR IN UKRAINE: CONCEPT AND CONTENT

Abstract. ***Purpose.*** The purpose of the study is an attempt to define the content of the concept of "administrative and legal framework"; to characterise the state of the "system of administrative and legal framework for the detention of prisoners of war". ***Results.*** The article proves that the system of administrative and legal framework for the detention of prisoners of war in Ukraine is a holistic and orderly, specialised organisational and legal structure designed to guarantee the regulatory, organisational and ideological components necessary for legal adjustment and practical managerial activities aimed at keeping captured representatives of the other party to a military conflict out of combat, in compliance with the provisions of international humanitarian law and the principles of humanism. It is substantiated that the system of administrative and legal framework for the detention of prisoners of war is characterised by dynamism of development, with its most active stage occurring in Ukraine after the beginning of the full-scale Russian military invasion. ***Conclusions.*** The development of the system derives from a combination of two aspects that determine its essence and development. These are the principles of humanism, primarily formed and enshrined in international legal treaties consented to be binding by the Verkhovna Rada of Ukraine, and the solution of functional tasks of practical orientation. In the national administrative law, this system is enshrined in laws and a set of bylaws. For proper practical implementation, the detention of prisoners of war also required the coordinated activities involving a large number of state bodies, and sometimes the creation of new entities whose competence is now defined in legislation. The main body in the system of central executive authorities responsible for formulating and implementing legal public policy on the detention of prisoners of war is currently the Ministry of Justice of Ukraine, the activities thereof are directed and coordinated by the highest body in the system of executive authorities – the Cabinet of Ministers of Ukraine.

Key words: system, national system, administrative and legal framework, prisoners of war, rights of prisoners of war, detention of prisoners of war.

1. Introduction

The system of administrative and legal framework for the detention of prisoners of war is characterised by dynamism of development, with its most active stage occurring in Ukraine after the beginning of the full-scale Russian military invasion. The development of the system derives from a combination of two aspects that determine its essence and development. These are the principles of humanism, primarily formed and enshrined in international legal treaties consented to be binding by the Verkhovna Rada of Ukraine, and the solution of functional tasks of practical orientation. In the national administrative law, this system is enshrined in laws and a set of bylaws. For proper practical implementation, the detention of prisoners of war also required the coordinated activities involving a large number of state bodies, and sometimes the creation of new entities whose competence is now defined in legislation. The main body in the system of central executive authorities responsible for formulating and implementing legal public policy on the detention of prisoners of war is currently the Ministry of Justice of Ukraine, the activities thereof are directed and coordinated by the highest body in the system of executive authorities – the Cabinet of Ministers of Ukraine.

The foregoing prompts a study of the system of administrative and legal framework for the detention of prisoners of war in the current context.

The importance of the issue under study has been highlighted by scholars, such as: V. Aloshyn, A. Amelin, Yu. Badiukov, P. Bohut-

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skyi, M. Buromenskyi, Ya. Hodzek, A. Hryhoriev, M. Hrushko, O. Dzhafarova, A. Dmitriev, O. Drozd, S. Yehorov, O. Zhytnyi, J. Zhukorska, V. Zavhorodnii, V. Kaluhin, F. Kalskhoven, F. Kozhevnikov, F. Kryl, V. Lysyk, V. Lisovskyi, H. Melkov, V. Moroz, S. Nishchymna, A. Poltorak, V. Repetskyi, L. Savynskyi, L. Tymchenko, O. Tiunov, M. Khavroniuk, P. Khriapinskyi, M. Tsiurupa, S. Shatrava, and others.

The purpose of the study is an attempt to define the content of the concept of "administrative and legal framework"; to characterise the state of the "system of administrative and legal framework for the detention of prisoners of war".

2. The essence and main elements of military captivity

Firstly, it should be noted that the essence of military captivity as a social and historical phenomenon is quite obvious. The purpose of military captivity is to ensure that persons participating in hostilities on the side of the enemy are held by the other party to a military conflict outside of combat without their physical destruction. However, as life shows, there are actually many options for implementing such detention: from quite humane to completely inhumane. Thus, the question arises: what standards, rules, and approaches should be used to regulate the detention of prisoners of war? After all, such actions certainly cannot be spontaneous and uncontrolled by each of the warring parties. Therefore, we should talk about a certain regulatory and legal system for their settlement, ordering and provision. The study of such a system should begin with clarifying the essence of the main terms.

When we define the concepts relevant to our study, we immediately encounter various interpretations of the main categories and phenomena. For example, the word "framework" is used in the legal terms of national legislation quite widely – more than 350 times (Official website of the Parliament of Ukraine – Legislation of Ukraine, 2023). Of these, the term "framework" is defined 11 times in specific legal regulations (mostly national regulations and international legal agreements related to financing, settlements and accounting) [2]. For example, the Rules for Accounting for Income and Expenses of Banks of Ukraine define "framework" as: "an obligation with an indefinite term or amount" (Resolution of the Board of the National Bank of Ukraine On the Approval of the Rules for Accounting of Income and Expenses of Banks of Ukraine, 2018). Therefore, the existing official terminological explanations do not fully meet the needs of our search, and we should turn to a more generalised, interdisciplinary interpretation of this concept.

The *Ukrainian Language Dictionary* (ULD) explains the word "framework" as an action with the meaning of "to support" or "to ensure". The latter, in turn, can be interpreted in several ways: "1. To supply something in sufficient quantity to satisfy someone or something in some need; 2. To create reliable conditions for the implementation of something; to guarantee something; 3. To protect, to guard someone or something from danger" (Bilodid, 1972). Therefore, "framework" implies the creation of the necessary conditions, including legal ones, to guarantee the expected result.

However, less generalised and closer to the field of law is the definition proposed, for example, by DCAF (Geneva Centre for the Democratic Control of Armed Forces, established in 2000 at the initiative of the Swiss government. DCAF is a foundation that aims to improve security sector governance through reforms) (Geneva Center for security sector governance (integrity of the security sector), 2023). The Centre actively operates, for example, with the concept of "regulatory framework", suggesting what it means: “Regulatory frameworks are legal mechanisms that exist on national and international levels” (Geneva Centre for security sector governance (integrity of the security sector), 2023).

Therefore, the semantic content and structure of the concept of "framework" varies significantly depending on the scope of application and the clarifications added to it. For this reason, we should review more closely the content of the entire conceptual construct – "system of administrative and legal framework".

This formulation is widely used in the professional literature but is rarely explained in detail. However, the most common explanations relate to the first part of the above construction which is the category of "administrative law system". First of all, it is contained in textbooks and manuals (Melnyk, Bevzenko, 2014; Pysarenko, 2018; Bytiak, Balakarieva, Bielikova, 2023). Describing the content of this entity, scholars mostly list the structural parts of the branch of law – general, specific, sometimes special parts, as well as the relevant individual sub-branches. Or, on the contrary, they use a different approach to classification and identify certain important constituent elements of this category, such as provisions, principles, institutions, procedures, etc. These features clearly demonstrate that different classification options may be used to characterise the construction of the "system" as such. In addition, it can be stated that in the above cases it refers to the entire branch of "administrative law" in general. We are only interested in a specific line of work (namely, the detention of prisoners of war).

In this regard, it should be noted that in articles and studies referring to a specific subject matter, the wording "administrative and legal system" is mostly used (quite similar to the above). In combination with certain clarifications regarding the issues under study, this wording is used as a more specific (specialised or focused) one. However, its content is less clearly defined in the professional literature. Therefore, the concept of "administrative and legal system" should be further analysed.

To begin with, we should clarify the meaning of the word "system". The Free Encyclopedia reports the origin of this word from the ancient Greek "σύστημα" – a combination, whole or connection (Wikipedia (Free Encyclopedia), 2023). The Dictionary of Foreign Words confirms the Greek origin of the word "system" and suggests translating it as "formation" or "composition". The dictionary provides several interpretations of this concept and describes the content of this category as: "an order caused by the correct arrangement of parts, an orderly series, a connected whole; or as a set of parts connected by a common function..." (Lukianiuka, 2023).

The Encyclopaedia of Literature also associates the word "system" with the Greek "systêma", that is, "formation". This source emphasises that this concept refers to a unity caused by the orderliness of its components. Moreover, the integrity of the system is not reduced to the sum of its components, each of which has a specific place and function in the structure that determines their hierarchy and the operation of the entire system (Kovaliv, 2007).

Therefore, a "system" is characterised by its specific function or purpose. Proceeding from the above, it can also be argued that a "system" is a general scientific concept that denotes a set of ordered elements united into a single structure that acquires qualities different from its individual parts.

As a matter of fact, the concept of "legal system" has also been repeatedly studied by scholars and is widely used in scientific practice. In this regard, it would be appropriate to quote the description given to this legal construct by the Centre for Legal Reform and Legislative Work at the Ministry of Justice of Ukraine. According to the definition of the Centre: the concept of "legal system" expresses a specific historical, actually existing complex of interdependent legal means and phenomena of the state, including regulatory, organisational, social and cultural aspects... (Ministry of Justice of Ukraine (official website), 2023).

The Liga 360 platform provides the following background information on the content of the category "legal system": "1) the entirety of legal means (phenomena) through which the regulatory, organisational and stabilising influence of the state on social relations is exercised. The legal system is a complex, integrative category that *reflects the entire legal reality*, which is considered in static and dynamic aspects. *The static aspect of the legal system* is formed by: a) legal provisions, legal institutions and legal principles (the regulatory dimension of the legal system); b) law-making, law application and law enforcement bodies and organisations (the organisational dimension of the legal system); c) legal views, ideas, concepts (the ideological dimension of the legal system). *The dynamic aspect of the legal system* is formed by law-making, law application and law enforcement activities of competent actors; ..." (Liga 360 (IT platform), 2023).

3. Legal and regulatory framework for the detention of prisoners of war in Ukraine

The "legal reality" referred to above is an overly broad category. Therefore, we have to clarify the meaning of the part of the terminological construction that narrows it. Specifically, it is necessary to characterise what is meant by the "administrative and legal" orientation.

In this regard, this article will address the meaning of the terms "administration" and "administrative". "They originate from the Latin word *administratio*, which literally means 'management', 'activities to manage something'. Hence, administrative law is an independent branch of law that regulates homogeneous social relations, mainly in the field of public administration. Public administration is understood as organising activities of executive authorities and local self-government bodies, which are aimed at ensuring the implementation of laws and other legal regulations by all state actors" (Ostapenko, Kovaliv, Yesimov, 2021).

To sum up, there are grounds to assert that the "administrative and legal system" is a complex, purposefully formed entity which may relate to administrative law in general or be considered only as part of it when it comes to ensuring a specific focus of work or regulating the solution of a particular social problem. However, in any case, this "system" provides a regulatory, organisational and ideological basis for the proper regulatory framework for a specific type of relationship and creates a regulatory basis for the work of state actors that are supposed to support and perform the relevant activities.

Therefore, the "system of administrative and legal framework" includes not only a set of legal regulations, but also a range of specific state actors that support and ensure the actual effect of legal requirements, rules and provisions in practice.

Therefore, we have outlined the list of components that currently require further research (legal regulations and participants or implementers). Before that we have proven that this "system" in our country is in the process of being formed. Some of its elements are being improved, and some are being created for the first time. However, compliance with generally recognised international requirements, that is, their practical implementation (filling the system with content), depends on the real capabilities of the state (that is, available resources and goals). For example, transportation, feeding, medical care, accommodation and other activities carried out during the detention of prisoners of war require costs. Different countries have different resources, so there is a natural variation in implementation. Some activities require the creation of new state actors. These include, for example, the "Coordination Headquarters for the Treatment of Prisoners of War" mentioned above. Therefore, given its inherent dynamism, it is impossible to assess the real state of the "system of administrative and legal framework for the detention of prisoners of war" by relying only on the analysis of the structure outlined above. For this purpose, it is necessary to at least clarify the "essence" of the said "system". After all, only its understanding will provide a proper criterion for an adequate assessment of the current state of affairs.

It should be noted in this regard that, for example, the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949 (which revised the Convention concluded in Geneva on July 27, 1929) in Article 3 requires that “persons ... shall in all circumstances be treated humanely...” (Geneva Convention relative to the Treatment of Prisoners of War, 1949). Further, this Article of the Convention lists the actions that are prohibited.

Therefore, international law insists on adherence to the principles of humanism and indicates activities that are inhumane, while providing a specific list of such actions. In other words, the Convention states certain human rights that shall remain inviolable. Moreover, the international legal instrument does not clearly (in detail and in full) establish and, for obvious reasons, cannot establish how the relevant national "system" of its «framework" should be built (by which state actors, in what scope and budgets it should be implemented, on what features it should be emphasised, etc.) Therefore, international law establishes the conceptual and ideological basis, but the very construction of the "system" and its "essence" must still be formed in national legislation, and primarily at the level of law.

The search for national legal provisions that can denote the "essence" of the relevant "system" opens up the provisions of the Criminal Code of Ukraine (CCU), adopted in 2001. For example, Chapter XIX of the Criminal Code of Ukraine "Criminal Offences against the Established Order of Military Service (Military Criminal Offences)" contains Article 434 "Ill-treatment of Prisoners of War". The following is its content: "Ill-treatment of prisoners of war that has *occurred repeatedly, or is associated with particular cruelty*, or is against the sick and wounded, as well as negligent performance of duties towards the sick and wounded by persons entrusted with their treatment and care, in the absence of signs of a more serious crime, shall be punishable by imprisonment for up to three years" (Criminal Code of Ukraine, 2001).

However, this Code provides for punishment not only for "repeated ill-treatment or cruelty". In this context, the content of Article 438 of the Criminal Code of Ukraine, which we have already mentioned, is also important. It is included in Section XX of the Code "Criminal Offences Against Peace, Human Security and International Law and Order". This Section contains a total of 14 articles.

According to Article 438 of the Criminal Code of Ukraine "Violation of the Laws and Customs of War": "1. Ill-treatment of prisoners of war ... other violations of the laws and customs of war provided for in international treaties consented to as binding by the Verkhovna Rada of Ukraine, as well as the ordering of such actions, shall be punishable by imprisonment for a term of eight to twelve years. 2. The same acts, if combined with premeditated murder, shall be punishable by imprisonment for a term of ten to fifteen years or life imprisonment" (Criminal Code of Ukraine, 2001).

The Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949 was signed on behalf of Ukraine on 12 December 1949 and ratified by Ukraine on 03 July 1954. The Convention entered into force for Ukraine on 03 January 1955. Then, on February 08, 2006, the modern independent State of Ukraine issued the Law "On Withdrawal of Reservations of Ukraine to the Geneva Conventions for the Protection of War Victims of 12 August 1949". In particular, the Law states: Ukraine declares that the provisions of Articles 10, 12, 85 of the Geneva Convention relative to the Treatment of Prisoners of War (995_153) ... shall apply to cases that may arise from the date of receipt by the Depositary of the notification of the withdrawal of Ukraine's reservations (Law of Ukraine On the withdrawal of Ukraine's reservations to the Geneva Conventions for the Protection of War Victims of August 12, 1949, 2006).

The context of the above quote suggests consideration of Article 12 of the relevant

Convention, which states: "Prisoners of war are in the hands of the enemy Power, but not of the individuals or military units who have captured them. Irrespective of the individual responsibilities that may exist, the Detaining Power is responsible for the treatment given them" (Geneva Convention relative to the Treatment of Prisoners of War, 1949).

Therefore, our state, assuming responsibility for the humane treatment of persons in its captivity, established that inhumane treatment is a criminal offence at the very first step of building the relevant "system of framework". This established the proper ideological basis for further legal, regulatory, structural and organisational development at the national level. Therefore, the "essence" of the entire "administrative and legal framework for the detention of prisoners of war" is reduced to building a "system" that should prevent specific criminal offences and guarantee humane conditions of detention.

However, the above-mentioned national legal provisions are not without their drawbacks. After all, the very definition of the relevant criminal offences in national legislation is not clear enough and requires mandatory reference to numerous provisions of international humanitarian law. It should be emphasised that attempts to correct this imperfection are being made by lawmakers with varying degrees of success. By this we mean, for example, the Draft Laws of Ukraine: "On Amendments to Some Regulations of Ukraine on the Implementation of International Criminal and Humanitarian Law" (Registry No. 2689 of December 27, 2019; on June 07, 2021, the Law was sent to the President of Ukraine for approval) (Draft Law of Ukraine On Amendments to Certain Legislative Acts of Ukraine Regarding the Implementation of International Criminal and Humanitarian Law, 2019) and "On Amendments to the Criminal Code of Ukraine and the Criminal Procedure Code of Ukraine" (Registry No. 7290 of April 15, 2022; Draft Law of Ukraine On Amendments to the Criminal Code of Ukraine and the Criminal Procedure Code of Ukraine, Draft Law No: 3562-IX of 06 February 2024) (Draft Law of Ukraine On Amendments to the Criminal Code of Ukraine and the Criminal Procedure Code of Ukraine, 2022). In both cases, the initiatives of these draft laws relate, inter alia, to amendments to Articles 434 and 438 of the CC of Ukraine, which we have discussed above.

Conclusions

The system of administrative and legal framework for the detention of prisoners of war in Ukraine is a holistic and orderly, specialised organisational and legal structure designed to guarantee the regulatory, organisational and ideological components necessary for legal adjustment and practical managerial activities aimed at keeping captured representatives of the other party to a military conflict out of combat, in compliance with the provisions of international humanitarian law and the principles of humanism.

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ДОСЛІДЖЕННЯ СИСТЕМИ АДМІНІСТРАТИВНО-ПРАВОВОГО ЗАБЕЗПЕЧЕННЯ ТРИМАННЯ ВІЙСЬКОВОПОЛОНЕНИХ В УКРАЇНІ: ПОНЯТТЯ ТА ЗМІСТ

Анотація. ***Мета.*** Метою дослідження є спроба окреслити зміст поняття «систем адміністративно-правового забезпечення»; охарактеризувати стан «системи адміністративно-правового забезпечення тримання військовополонених». ***Результати.*** В науковій статті доведено, що система адміністративно-правового забезпечення тримання військовополонених в Україні представляє з себе – цілісне й упорядковане, спеціалізоване організаційно-правове утворення, призначене гарантувати нормативну, організаційну та ідеологічну складові, які необхідні для правового впорядкування і здійснення практичної управлінської діяльності, спрямованої на утримування захоплених представників іншої сторони військового конфлікту поза боєм, із дотриманням при цьому положень міжнародного гуманітарного права і засад гуманізму. Обґрунтовано, що система адміністративно-правового забезпечення тримання військовополонених характеризується динамічністю розвитку, найбільш активний етап якого відбувся в Україні після початку повномасштабного російського військового вторгнення. ***Висновки.*** Розбудова системи витікає з поєднання двох аспектів, які визначають її сутність та розвиток. А саме, із засад гуманізму передусім сформованих та закріплених в міжнародних правових договорах, згода на обов'язковість яких надана Верховною Радою України, та вирішення функціональних задач практичної спрямованості. В національному адміністративному праві означена система знайшла своє закріплення на рівні законів та сукупності підзаконних нормативно-правових актів. Тримання військовополонених для належної практичної реалізації також потребувало злагодженої діяльності численної кількості державних органів, а подекуди й створення нових суб'єктів, компетенція яких наразі визначна в законодавстві. Головним органом у системі центральних органів виконавчої влади, що забезпечує формування та реалізує державну правову політику з питань утримання військовополонених наразі є Міністерство юстиції України, діяльність якого спрямовується і координується вищим органом у системі органів виконавчої влади – Кабінетом Міністрів України.

Ключові слова: система, національна система, адміністративно-правове забезпечення, військовополонені, права військовополонених, тримання військовополонених.