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HUMAN RIGHTS AND FREEDOMS BY LAW ENFORCEMENT BODIES IN THE CONTEXT OF MARTIAL LAW: CRIMINAL LAW CHALLENGES

Abstract. Purpose. The purpose of the article is to prove the necessity of introducing independent oversight of law enforcement bodies during martial law based on international experience, and to analyse the criminal law challenges related to ensuring human rights and freedoms under martial law. **Results.** The article studies the issue of ensuring human rights and freedoms by law enforcement bodies under martial law, which is a critical issue for modern Ukraine, which is confronting external aggression. The key challenges that arise in the process of human rights protection are analysed, with due regard for the specifics of law enforcement bodies' functioning during military operations. An emphasis is on the necessity to comply with international human rights standards and to adapt national legislation to the new realities. The impact of martial law on legal guarantees and rights of citizens, including freedom of speech, the right to a fair trial and protection from arbitrariness on the part of state authorities, is studied. The article addresses the issue of the effectiveness of mechanisms for controlling the activities of law enforcement bodies the prevention of human rights violations by them. The importance of the state's cooperation with international human rights organisations to monitor the situation and ensure transparency of law enforcement is analysed. The role of law enforcement agencies in documenting and investigating war crimes, as well as in ensuring fair punishment of perpetrators, is also considered. The need to improve the qualifications of law enforcement officers in the context of human rights protection and the development of specialised training programmes is emphasised. **Conclusions.** Recommendations are made to improve control mechanisms, establish independent oversight bodies and strengthen cooperation with civil society. The article emphasises that human rights protection under martial law is a key factor for preserving democratic institutions and public trust in the State. Moreover, the effectiveness of law enforcement bodies under martial law determines both short-term stability in society and the long-term prospects for restoring law and order and ensuring justice.

Key words: martial law, law enforcement bodies, external aggression, criminal law challenges, prevention and prophylaxis of criminal offences, transparency of law enforcement.

1. Introduction

Martial law, as a special legal regime designed to ensure the security of the State and its citizens, at the same time poses serious challenges to human rights and freedoms. In such circumstances, law enforcement bodies face a difficult task: to ensure public order and protection from external and internal threats without violating fundamental human rights. One of the key challenges is the balance between ensuring national security and respect for constitutional rights, such as the right to liberty, personal integrity, freedom of speech, etc.

Martial law grants state authorities much broader powers, including the ability to restrict certain rights. However, such measures are often subject to abuse, which causes distrust

in law enforcement bodies and exacerbates social tensions. For example, the apprehension of individuals on suspicion of collaboration or espionage often takes place without adequate evidence and judicial review, which may contravene the principle of presumption of innocence.

Another problem is the criminal law qualification of actions related to war crimes, sabotage or treason. Under martial law, law enforcement bodies may not have sufficient resources or time to conduct a full investigation, leading to hasty decisions and potential errors in the qualification of actions.

The regulatory framework for the apprehension of persons, searches, seizure of property, and protection of personal data requires special attention. Violations of these norms may result

in massive complaints and subsequent lawsuits to the European Court of Human Rights.

In addition, martial law increases the risk of political persecution or the use of criminal law to suppress the opposition or abuse it by law enforcement agencies. This creates additional challenges for the rule of law.

Therefore, the issue of ensuring human rights and freedoms by law enforcement bodies in the context of martial law is multifaceted and requires a clear legal framework, proper control over the activities of law enforcement bodies and compliance with international standards. It is necessary to strike a balance between the effectiveness of security measures and the observance of human rights, which remains an urgent task at both the national and international levels.

Some aspects of ensuring human rights and freedoms by law enforcement bodies in the context of martial law have been studied by a number of scholars, such as the following: K. Antonov, V. Bereznik, O. Hrytenko, L. Hula, A. Vorontsov, O. Dudorov, R. Katorkin, P. Nedbailo, L. Nikitenko, I. Nikolaiko, O. Pankevych, P. Rabinovych, S. Tsyhulskyi, V. Shablysty, S. Shevchenko, O. Yunin and others.

The purpose of the article is to prove the necessity of introducing independent oversight of law enforcement bodies during martial law based on international experience, and to analyse the criminal law challenges related to ensuring human rights and freedoms under martial law.

2. Framework for ensuring human rights and freedoms by law enforcement bodies

IHL is a key component of the system of international law governing relations during armed conflicts. It is a set of legal provisions and principles that aim to limit the impact of war on people and ensure humanity even in the most difficult circumstances. The main goal of IHL is to protect persons not involved in hostilities, such as civilians, medical personnel, and prisoners of war. An important feature of IHL is to regulate the methods and means of warfare, prohibiting the use of certain weapons and tactics that may cause excessive suffering or indiscriminate harm.

The formation of modern international humanitarian law began in the nineteenth century, but it developed most significantly after the Second World War. It was then that the Geneva Conventions of 1949 and their Additional Protocols were adopted, which are the basis of modern IHL. Together with the Hague Conventions, these documents define the rules of warfare and ensure humane treatment of victims of conflicts. In addition, international documents such as the Universal

Declaration of Human Rights (Universal Declaration of Human Rights: adopted and proclaimed by Resolution 217 A (III) of the UN General Assembly, 1948), the European Convention on Human Rights (Convention for the Protection of Human Rights and Fundamental Freedoms, 1950) and the International Covenant on Civil and Political Rights (1966) enshrine fundamental human rights that apply in both peacetime and wartime. While IHL and human rights share a common goal of protecting human dignity and life, IHL is a more specific tool in armed conflict. It not only protects rights, but also regulates hostilities, which makes it extremely important in situations where other legal mechanisms may not be effective. The principles of IHL not only set limits for military operations, but also create mechanisms of accountability for their violation. It should be noted that war crimes committed during the war do not have a statute of limitations, which allows the perpetrators to be brought to justice even decades after the end of the conflict.

The law enforcement function of the State is one of the main instruments for ensuring law and order and protecting the rights of citizens. This function covers a wide range of tasks, including fighting crime, ensuring national security, and protecting state sovereignty and territorial integrity. In the context of Russia's armed aggression against Ukraine, the role of law enforcement bodies has increased significantly, as they not only ensure order in the rear, but also document war crimes, demine the territories and provide assistance to victims.

Ukraine's legislation provides a framework for law enforcement, but needs to be further improved to meet current challenges. Nowadays, different law enforcement bodies operate in Ukraine, including the prosecutor's office, internal affairs bodies, the Security Service of Ukraine, the Border Guard Service and others. Their tasks are not limited to fighting crime, but also include protecting citizens' rights, providing social support and various administrative services (Bereznik, 2023).

In the context of war, Ukraine's law enforcement system is adapting to new challenges. It should be noted that Ukrainian legislation does not contain a clear list of state institutions that are law enforcement bodies. The latter can include: prosecutor's offices; internal affairs bodies; bodies of the Security Service of Ukraine; military law enforcement service in the Armed Forces of Ukraine; customs bodies; state border protection bodies; penitentiary bodies and institutions; state tax authorities; state control and audit authorities; fishery protection bodies; state forest protection bodies; other bodies performing law enforcement or

law enforcement functions (according to part 1, article 2 of the Law of Ukraine 'On State Protection of Judicial and Law Enforcement Officers') (Law of Ukraine On State Protection of State Authorities of Ukraine and Officials, 1998).

Moreover, the performance of functions by law enforcement bodies is permanent, systematic and takes place throughout the existence of objectively determined tasks facing them. Functions are formed, implemented and developed in accordance with the tasks performed by these units. However, the functions of law enforcement bodies have never been defined, and their dialectical development continues.

In the context of Russia's full-scale armed aggression against Ukraine, the units of the Ministry of Internal Affairs (hereinafter - the MIA of Ukraine) are forced to radically review and adapt their activities to new challenges. These challenges cover a wide range of tasks: from ensuring national security and combating crime to maintaining the normal life of the country's population. Their activities are aimed at fulfilling several important functions: law enforcement, social and service (Yunin, Shablysty, Berezhniak, Kuryliuk, 2023). The subject matter of our scientific research is law enforcement, as it plays a key role in activities, especially under martial law, including the fight against crime, anti-terrorist operations, documentation of war crimes, as well as demining of liberated territories and liquidation of the consequences of hostilities. The main units of the MIA, such as the National Police of Ukraine (NPU) and the National Guard of Ukraine (NGU), ensure law and order and security both in the rear areas and in the newly de-occupied territories. Their work contributes to maintaining stability and legality throughout Ukraine.

3. Specific features of law enforcement bodies' activities under martial law to ensure human rights and freedoms

Under martial law, Ukraine's law enforcement bodies face a particularly challenging task of ensuring human rights and freedoms, balancing the need to maintain law and order with respect for the fundamental rights of citizens. The implementation of this function is accompanied by a number of criminal law challenges that require new approaches and increased efficiency of the relevant structures.

In particular, martial law creates situations in which ordinary human rights protection mechanisms may be limited or revised in accordance with the law. However, the key task remains to ensure fundamental rights, including the right to life, liberty and security of person (Yunin, Shevchenko, 2023). Law enforcement bodies control compliance with these rights, in

particular through: preventive measures: organising patrols of vulnerable areas, preventing looting, ensuring law and order during evacuation; documenting criminal offences: recording the facts of genocide, crimes against humanity, war crimes and crimes of aggression for further prosecution of the perpetrators; special measures: operational work of units to prevent violations by military or civilians in the combat zone.

In addition, Ukraine's law enforcement bodies work to ensure access to justice for all citizens, even in wartime. This is done through the functioning of investigative bodies: investigations of war crimes, criminal offences against peace, human security and international law and order and other offences are carried out with strict adherence to procedural norms; and the rights of apprehended persons are protected: An important component is the introduction of the Custody Records system, which records every stage of apprehension and controls the observance of rights in police stations; cooperation with international institutions: documenting war crimes in coordination with the ICC helps bring perpetrators to justice (Order of the Ministry of Internal Affairs of Ukraine On approval of the Instructions for the formation and maintenance of the Custody Records information subsystem of the information and communication system "Information Portal of the National Police of Ukraine", 2022).

It should be noted that law enforcement bodies are actively involved in ensuring the safety of internally displaced persons, who are one of the most vulnerable categories of the population during the war. Law enforcement activities are aimed at: controlling humanitarian corridors: ensuring the safe evacuation of civilians from dangerous areas; responding to cases of discrimination: preventing any manifestations of discrimination or hate crimes against IDPs.

In the current environment, countering information aggression is an important component, which also affects human rights. Law enforcement bodies work actively to identify enemy agents and saboteurs whose activities threaten national security; combat propaganda: identify and block disinformation campaigns that could harm public order.

However, it should be noted that law enforcement bodies can be potential violators of human rights and freedoms, as they are authorised to apply coercive measures, while ensuring and protecting human and civil rights and freedoms provided for by the Constitution of Ukraine. In this case, maintaining parity relations that do not cause criticism or complaints is a very difficult task. Therefore, the Draft Law on Amendments to the Criminal Code of Ukraine on Strength-

ening the Responsibility of Law Enforcement Officers: Draft Law of Ukraine 7657 of August 11, 2022, the explanatory note to which states that the adoption of the draft law will strengthen the guarantees of observance of citizens' rights, as well as criminalisation of the listed illegal actions of law enforcement agencies, having a preventive value and will become a factor that reduces the level of violations of citizens' rights in criminal proceedings (Draft Law of Ukraine on Amendments to the Criminal Code of Ukraine to Strengthen the Responsibility of Law Enforcement Officers, 2022). However, the draft law was withdrawn due to significant shortcomings. In this context, it is worth paying attention to the opinion of A. Hrytenko, who states that "if we give a specific assessment of the need for the existence of the proposed provision in the Criminal Code of Ukraine as a special corpus delicti of a criminal offence, then this also raises doubts, since the existing criminal law provisions envisaging liability for a significant violation of human rights and freedoms in the course of criminal proceedings are already sufficient" (Hrytenko, 2022). In this context, it recommends exploring the possibility to strengthen disciplinary or administrative liability of law enforcement bodies for relevant violations that are not covered by the CC of Ukraine. In contrast, we argue that the creation of a separate Regulation on independent oversight of law enforcement bodies could be a new step in overcoming arbitrariness and ensuring transparency of law enforcement activities, in particular under martial law. Such regulation may include: the specifics of the functioning of a special civilian oversight commission made up of representatives of different social groups and legal experts to review complaints about law enforcement misconduct; the introduction of mechanisms for regular audits of law enforcement actions during martial law, including analysis of the use of force and human rights; mandatory investigation of violations, with the commission empowered to access internal investigations of law enforcement agencies; protection of the rights of complainants and witnesses in the complaint process to prevent any harassment or reprisals; public reporting by the commission on the results of investigations and recommendations to increase transparency and accountability of law enforcement bodies. We believe that the introduction of independent oversight mechanisms based on international experience will help Ukraine strengthen control over the activities of law enforcement bodies in wartime. This will ensure transparency and public trust, especially in cases of possible human rights violations.

4. Conclusions

In the context of the full-scale armed aggression of the Russian Federation against Ukraine,

law enforcement bodies play a key role in ensuring stability, law and order and human rights. Given the challenges of martial law, their activities cover a wide range of tasks: from fighting crime to documenting genocide, crimes against humanity, war crimes and crimes of aggression. Law enforcement officers also focus on maintaining the security of internally displaced persons, preventing looting and other criminal offences, and organising safe evacuation of the population. In addition, the challenges of information aggression force law enforcement to actively counter disinformation and identify enemy agents who pose a threat to national security.

Despite the challenging conditions, the NPU and NGU are working to ensure the rule of law even in the areas of hostilities. Meanwhile, law enforcement officers face limitations in the implementation of traditional human rights protection mechanisms, which requires new approaches to adapting the regulatory framework. Maintaining a balance between security and respect for citizens' rights remains a major challenge and task for law enforcement agencies.

Therefore, the effectiveness of law enforcement bodies under martial law determines both short-term stability in society and the long-term prospects for restoring law and order and ensuring justice.

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ЗАБЕЗПЕЧЕННЯ ПРАВ І СВОБОД ЛЮДИНИ ПРАВООХОРОННИМИ ОРГАНАМИ У КОНТЕКСТІ ВОЄННОГО СТАНУ: КРИМІНАЛЬНО-ПРАВОВІ ВИКЛИКИ

Анотація. Мета. Метою статті є обґрунтування необхідності запровадження незалежного нагляду за діяльністю правоохоронних органів під час воєнного стану на основі міжнародного досвіду на підставі аналізу кримінально-правових викликів, пов'язаних із забезпеченням прав і свобод людини в умовах воєнного стану. **Результати.** У статті досліджується проблема забезпечення прав і свобод людини правоохоронними органами в умовах воєнного стану, що є критично важливим питанням для сучасної України, яка протистоїть зовнішній агресії. Аналізуються основні виклики, що виникають у процесі захисту прав людини, з урахуванням особливостей функціонування правоохоронних органів під час воєнних дій. Особлива увага приділяється необхідності дотримання міжнародних стандартів у сфері прав людини та адаптації національного законодавства до нових реалій. Досліджується вплив воєнного стану на правові гарантії та права громадян, включаючи свободу слова, право на справедливий суд і захист від свавілля з боку державних органів. Стаття висвітлює питання ефективності механізмів контролю за діяльністю правоохоронних органів, зокрема запобігання випадкам порушень прав людини з їхнього боку. Проаналізовано важливість співпраці держави з міжнародними правозахисними організаціями для моніторингу ситуації та забезпечення прозорості правоохоронної діяльності. Окремо розглядається роль правоохоронних органів у документуванні та розслідуванні воєнних злочинів, а також у забезпеченні справедливого покарання винних осіб. Наголошується на необхідності підвищення кваліфікації працівників правоохоронних органів у контексті захисту прав людини та розвитку спеціалізованих програм підготовки. **Висновки.** Запропоновано рекомендації щодо вдосконалення механізмів контролю, створення незалежних органів нагляду та посилення співпраці з громадянським суспільством. У статті підкреслюється, що забезпечення прав людини в умовах воєнного стану є ключовим фактором для збереження демократичних інституцій і довіри громадян до держави. Також, ефективність діяльності правоохоронних органів у період воєнного стану визначає як короткострокову стабільність у суспільстві, так і довгострокову перспективу відновлення правопорядку та забезпечення справедливості.

Ключові слова: воєнний стан, правоохоронні органи, зовнішня агресія, кримінально-правові виклики, запобігання та профілактика кримінальним правопорушенням, прозорість правоохоронної діяльності.