

UDC 343.3

DOI <https://doi.org/10.32849/2663-5313/2024.3.20>**Oleksandr Tarasenko,***PhD in Law, Director of the Department of Education, Science and Sport of the Ministry of Internal Affairs of Ukraine, 10, Akademika Bohomoltsia Street, Kyiv, Ukraine, postal code 01601, Tarasenkooleksandr@ukr.net***ORCID:** orcid.org/0000-0003-0369-520X

Tarasenko, Oleksandr (2024). On the concept of criminal law regulation of law enforcement activities under special period conditions: challenges and prospects. *Entrepreneurship, Economy and Law*, 3, 114–118, doi <https://doi.org/10.32849/2663-5313/2024.3.20>

ON THE CONCEPT OF CRIMINAL LAW REGULATION OF LAW ENFORCEMENT ACTIVITIES UNDER SPECIAL PERIOD CONDITIONS: CHALLENGES AND PROSPECTS

Abstract. Purpose. This article aims to examine the nature and specific features of law enforcement activities, their objectives, functions, and composition of actors in the context of the development of civil society. It also analyzes the criminal law regulation of law enforcement activities, particularly under special period conditions. **Results.** The article considers law enforcement activities as a complex process aimed at maintaining public order, implemented by specially authorized bodies in accordance with the law. It explores key approaches to defining the concept of law enforcement activity, its functions, tasks, and institutional composition. The author analyzes academic perspectives on the role of state and non-state institutions in ensuring public order. Particular attention is given to the role of law enforcement activities amid civil society development and their significance for upholding the rule of law. The main directions of law enforcement bodies' activities, their functional purpose, and the legal foundations for interaction with other institutions are identified. The article examines the criminal law regulation of law enforcement activities during special periods, including martial law and states of emergency. Issues of coordination among branches of government and the need to improve professional training for law enforcement personnel are also addressed. **Conclusions.** It is concluded that a key aspect lies in enhancing preventive measures to reduce the risk of criminal offenses, as well as focusing on work with vulnerable population groups. At the same time, significant attention is paid to the protection of human rights even under temporary restrictions such as curfews or limited access to certain resources. The prospects for the development of law enforcement activities during special periods include the introduction of modern technologies, improved professional training of law enforcement personnel, and the enhancement of the regulatory framework, taking into account the experience of other countries. This will enable the law enforcement system to respond more effectively to threats and ensure the implementation of the rule of law.

Key words: law enforcement activity, public order, law enforcement agencies, legality, rule of law, criminal law regulation.

1. Introduction

Modern societal development is characterized by growing social, economic, and geopolitical challenges that necessitate the improvement of criminal law regulation. Under special period conditions—associated with martial law, states of emergency, or other crisis situations—the criminal justice system must adapt to new threats. A special period requires the creation of specific legal mechanisms to ensure effective crime prevention, protection of national security, and safeguarding of human rights. However, this raises the issue of maintaining a balance between securing public order

and respecting constitutional rights and freedoms.

Moreover, criminal law policy often lacks the flexibility needed to respond to new forms of crime, such as cybercrime, terrorism, or war-related offenses. This calls for a revision of existing norms and procedures, as well as adaptation of international practices to national contexts.

Another pressing issue is the imperfection of coordination mechanisms between law enforcement bodies, the judiciary, and other actors involved in criminal justice. The special period also poses challenges for upholding

human rights standards, since the application of coercive measures often risks violating the principle of the rule of law.

Thus, the criminal law regulation of law enforcement activities during special periods must be comprehensive, innovative, and forward-looking. Addressing these challenges is a crucial step toward ensuring sustainable public order and the protection of fundamental human rights.

The issue of law enforcement activity has been extensively discussed in academic literature, particularly by scholars such as A.D. Voitsechuk, V.M. Dubinchak, O.F. Kobzar, V.V. Mykytenko, O.L. Sokolenko, P.L. Fris, V.V. Shablysty, P.M. Shapirko, S.I. Shevchenko, O.S. Yunin, among others. However, there is no consensus regarding the actors involved and the functional content of law enforcement activities. Some researchers argue that such activities are performed exclusively by state authorities vested with coercive powers, while others highlight the active role of non-state institutions. Particular attention is paid to the legal status of law enforcement agencies and their interaction with other state and civil society structures. At the same time, scholars examine crime prevention as a distinct direction within law enforcement activities. The question of adapting law enforcement functions to the realities of a special period remains a subject of debate and requires further research.

The purpose of this article is to examine the essence and specific features of law enforcement activities, their objectives, functions, and actors within the context of civil society development. Additionally, it analyzes the criminal law regulation of law enforcement activities, especially under special period conditions.

2. Law Enforcement Activity in the Context of Civil Society Development

In legal scholarship, there is a perspective that defines law enforcement activity as a process of safeguarding legal order carried out by specially authorized bodies in accordance with procedures established by law. This activity includes handling legally significant matters, identifying offenses, prosecuting individuals responsible for their commission, and, in certain cases, applying coercive measures regulated by law. An essential component also involves representing and protecting the rights and legitimate interests of individuals and legal entities (Krasnokutskyi, 2004).

From this standpoint, it can be stated that law enforcement activity in the context of civil society development possesses the following characteristics: it is carried out on the basis of legal norms and for the purpose of their implementation, it has clearly defined objec-

tives, and it is exercised exclusively by specially authorized entities. However, academic discourse lacks a unified view regarding the precise subjects of such activity.

For instance, P.M. Shapirko argues that law enforcement activity is a type of state function carried out by specially authorized bodies with the aim of safeguarding public order. It involves the application of legal measures while adhering to the regime of legality (Shapirko, 2014).

Similarly, V.M. Dubinchak defines law enforcement activity as an active form of behavior by authorized entities that includes the use of coercive means prescribed by law. Its purpose is to protect, safeguard, and prevent violations, to restore violated rights, freedoms, and legitimate interests, and to ensure the implementation of the state's law enforcement function (Dubinchak, 2007).

In contrast, V.V. Mykytenko challenges the assertion that law enforcement activity is exercised solely by authorities whose decisions are binding. He emphasizes that the function of protecting human rights and freedoms should not be the exclusive prerogative of state institutions vested with public authority. According to the scholar, this function can be fulfilled by both governmental and non-governmental institutions. This claim is supported by the activities of organizations whose very names reflect their goals and purpose (Mykytenko, 2013).

O.L. Sokolenko, in turn, includes in Ukraine's system of law enforcement agencies such institutions as the judiciary, the prosecutor's office, the Security Service of Ukraine, the State Protection Directorate, the Military Law Enforcement Service of the Armed Forces of Ukraine, the State Border Guard Service of Ukraine, the State Criminal-Executive Service, the State Enforcement Service, the National Police of Ukraine, the Internal Troops of the Ministry of Internal Affairs, the Foreign Intelligence Service of Ukraine, the Main Intelligence Directorate of the Ministry of Defense, the Ukrainian Parliament Commissioner for Human Rights, and other law enforcement agencies (Sokolenko, 2013). He also emphasizes that the goal of law enforcement activity is to safeguard and protect the foundations of the constitutional order, human rights and freedoms, and legitimate interests, while ensuring legality and public order. The essence of this activity lies in the practical implementation of legal norms by competent authorities (Sokolenko, 2013).

Accordingly, it is reasonable to recognize law enforcement activity as inherently linked to the law enforcement function of the state, whose principal purpose is the protection and safeguarding of citizens' rights, freedoms, and legiti-

mate interests. Owing to its multifaceted nature, law enforcement activity encompasses both state and non-state institutions that exercise authority in various domains—environmental, social, cultural, and others. In fact, it is difficult to find a body or organization that is not invested in its effectiveness. Law enforcement activity affects the interests of every individual, holds significant social value, and constitutes a key element in the formation of a rule-of-law state (Fomenko, Yunin, Myroniuk, Sobakar, 2022).

Based on the above definitions, law enforcement activity is grounded in the maintenance of public order in society and the state, and the protection of citizens' rights, freedoms, and legitimate interests. Its purpose is revealed through its objectives and functions.

The core objectives of law enforcement activity include the protection of individual rights and freedoms, the constitutional order, property, public order, natural resources and the environment, as well as state and national security and the country's borders. Fulfilling these objectives enables the protection of both individuals and society as a whole, which is achieved through the implementation of the rule of law in all spheres of life. Through law enforcement activities, the state ensures compliance with legal norms by all subjects of law (Yunin, 2013).

The realization of law enforcement objectives is achieved through functions such as: prevention of legal violations, identification of offenses, their suppression, examination and investigation, restoration of violated rights, and the imposition of sanctions on offenders (Yunin, 2013). These functions are aimed not only at combating unlawful acts but also at restoring citizens' legitimate rights and interests, thereby promoting the rule of law.

Thus, law enforcement activity serves as a guarantor for the implementation of legal norms. It is an integral part of the state's functioning, ensuring the effectiveness of law itself. The overarching goal of law enforcement activity is the protection and safeguarding of law, which is expressed through the implementation of the principle of the rule of law.

However, the primary objective of law enforcement agencies is to exert preventive and deterrent influence by preventing offenses and maintaining public order. This encompasses not only combating crime but also protecting public order, the constitutional system, public health, environmental safety, and other related spheres. The fight against crime includes the entire range of measures aimed at the protection of law.

As previously noted, law enforcement activity, as a type of state function, is carried out

by various governmental bodies that are affiliated with different branches of power. Law enforcement agencies possess a complex, multi-tiered structure. According to some scholars, this structure can be categorized into major groups based on the areas of activity. These include combating general crime, organized crime, and economic crime; preventive work; maintaining public order; and others. The types of law enforcement activity vary depending on the regulatory subject matter, which is governed by different branches of law. For instance, justice is considered one form of law enforcement activity, with its subtypes including administrative and criminal proceedings (Yunin, 2021). In this context, some researchers argue that the ideal model of a law enforcement system presupposes the absence of subordination of law enforcement agencies to executive bodies that are not tasked with ensuring legality. All types of state activity must comply with the law and be carried out in accordance with legally established procedures.

Depending on the functions performed by law enforcement bodies, law enforcement activity may be divided into the following areas: maintaining public order in the sphere of social relations; counteracting offenses; ensuring public safety; combating crime, including detecting, solving, and investigating criminal offenses; monitoring compliance with legal norms; enforcing court decisions and rulings of other bodies within the limits established by law; implementing state policy in the field of justice; providing professional legal assistance to both individuals and organizations; and the operations of notarial institutions, private security companies, and detective agencies.

At the same time, scholars emphasize that it is unreasonable to expect law enforcement agencies to completely eradicate crime; however, a significant reduction is possible. To that end, law enforcement activity operates in two principal forms. The first involves the detection, registration, documentation, investigation, judicial review of criminal cases, and execution of penalties. The second takes the form of identifying the conditions conducive to the commission of offenses, safeguarding public order and property, ensuring public safety, and conducting comprehensive preventive measures and legal awareness campaigns.

Another notable area of law enforcement activity is the removal of obstacles that hinder citizens from exercising their legitimate rights and freedoms. In this regard, crime prevention may be recognized as a distinct type of activity, separate from the core concept of law enforcement. It is worth supporting the constitutional principles that emphasize the importance

and purpose of state and local authorities' efforts to create conditions for individuals to exercise their rights and freedoms. At the same time, it is noted that preventive work should be grounded in the results of law enforcement activities; otherwise, its direction will remain vague and ineffective (Kosytsia, 2017).

Therefore, we contend that crime prevention is an integral part of law enforcement activity, as it is aimed at ensuring legality. From this perspective, law enforcement activity can be understood as a set of diverse yet interrelated measures carried out by both state and civil society institutions. These measures are aimed at preventing criminal offenses, eliminating the conditions that give rise to or facilitate them, and ultimately creating favorable conditions for citizens to realize their rights, freedoms, and obligations. Practical experience shows that prevention is most effective when it is conducted jointly by governmental and non-governmental organizations. For example, civil associations contribute significantly to the implementation of the state crime prevention system, particularly by encouraging citizen involvement in such activities.

Some scholars equate law enforcement activity with so-called "legal coercion," asserting that the legal status of state institutions obliges them to apply coercive measures (Kosytsia, 2017). These institutions are defined as those tasked with the mandatory enforcement of public order. At the same time, the concept of coercion is interpreted broadly, encompassing not only direct (physical) influence but also indirect methods such as inspections, directives, prohibitions, and restrictions. It should be emphasized that the law enforcement activity of state bodies is inherently coercive in nature, as only the state possesses the legitimate authority to apply coercion.

Unlike state structures, law enforcement activity carried out by non-state actors is based on public influence measures. One of the key indicators used to assess the effectiveness of law enforcement agencies—particularly the Military Law Enforcement Service of the Armed Forces of Ukraine—is public opinion. The level of public trust and support plays a decisive role in shaping the positive image of law enforcement agencies. Therefore, in order to strengthen public trust, law enforcement bodies should actively engage citizens and civil society organizations in cooperation and joint initiatives.

It is apparent that the criminal law regulation of law enforcement activity under special period conditions is complex and multidimensional. A special period encompasses situations arising from states of emergency, armed conflicts, technological or natural disasters, and other

crisis conditions that require the adaptation of legal mechanisms. Under such circumstances, law enforcement agencies not only perform their traditional functions of maintaining public order but also assume additional responsibilities aimed at reinforcing national security and maintaining social stability.

4. Conclusions

In the context of a special period, law enforcement activity acquires new characteristics shaped by crisis-related challenges that require prompt response and the adaptation of criminal law mechanisms. The key features of such activity lie in its orientation toward ensuring national security, maintaining public order, and safeguarding the rights and freedoms of citizens under extraordinary circumstances. Law enforcement agencies play a crucial role in fostering stability, which is achieved through effective coordination among various state institutions and international partners.

A fundamental aspect in such conditions is the strengthening of preventive measures aimed at reducing the risk of criminal offenses, alongside targeted engagement with vulnerable groups. At the same time, significant attention is devoted to the protection of human rights, even under temporary restrictions such as curfews or limitations on access to certain resources.

The future development of law enforcement activity during a special period includes the integration of modern technologies, enhancement of the professional training of law enforcement personnel, and improvement of the regulatory and legal framework in line with international best practices. These measures enable the law enforcement system to respond more effectively to emerging threats and to uphold the principle of the rule of law.

Thus, criminal law regulation under complex circumstances serves as a vital tool for ensuring societal stability, protecting public interests, and strengthening trust in state institutions. It enables the establishment of appropriate conditions for citizens' security and the functioning of a rule-of-law-based state even in times of crisis.

References

- Dubinchak, V.M. (2007). *Sutnist pravookhoronnoi diialnosti* [The essence of law enforcement activity]. *Pravova derzhava*, (18), 577–583. (in Ukrainian)
- Fomenko, A.Ye., Yunin, O.S., Myroniuk, R.V., Sobakar, A.O., et al. (2022). *Politseiska diialnist* [Police activity]. Dnipro: Dnipropetrovsk State University of Internal Affairs. (in Ukrainian)
- Kosytsia, O.O. (2017). *Komparatyvno-pravovyi analiz politseiskoi ta pravookhoronnoi diialnosti (na osnovi subiektnoho kryteriiu)* [Comparative legal analysis of police and law enforcement activities (based

on the subjective criterion)]. *Pravo i suspilstvo*, (3), 123–128. (in Ukrainian)

Krasnokutskyi, S.V. (2004). *Yurydychna pryroda nederzhavnoi pravookhoronnoi diialnosti v Ukraini (teoretyko-pravovyi aspekt)* [Legal nature of non-state law enforcement activities in Ukraine (theoretical and legal aspect)]. Kyiv. (in Ukrainian)

Mykytenko, V.V. (2013). *Zabezpechennia prav i svobod liudyny u sluzhbovo-boiovii diialnosti syl okhorony pravoporiadku: do postanovky problemy* [Ensuring human rights and freedoms in the service and combat activities of law enforcement forces: problem formulation]. *Forum prava*, (3), 384–389. (in Ukrainian)

Shablustyi, V.V., & Khashev, V.V. (2022). *Deiaki pytannia vyznachennia obiekta prytiahnennia zavidomo nevinnoho do kryminalnoi vidpovidalnosti* [Some issues of determining the object of bringing a knowingly innocent person to criminal liability]. *Prava liudyny v epokhu tsyfrovyykh transformatsii*, (2), 360–362. (in Ukrainian)

Shapirko, P.M. (2014). *Yurydychna pravookhoronna ta operatyvno-rozshukova diialnist: aspekty spivvidnoshennia* [Legal law enforcement and operational-investigative activities: correlation aspects]. *Yurydychnyi visnyk*, (6), 153–158. (in Ukrainian)

Sokolenko, O.L. (2013). *Systema ta vydy pravookhoronnykh orhaniv Ukrainy* [The system and types of law enforcement agencies in Ukraine]. *Naukovyi visnyk Dnipropetrovskoho derzhavnoho universytetu vnutrishnikh sprav*, (3), 143–149. (in Ukrainian)

Yunin, O.S. (2013). *Politsiia v systemi derzhavnykh orhaniv ta zabezpechennia hromadskoi bezpeky* [The police in the system of state bodies and ensuring public safety]. *Derzhava ta rehiony*, 1(39), 59–63. (in Ukrainian)

Yunin, O. (2021). *Hromadskiy kontrol za diialnistiu politsii: mizhnarodna praktyka ta dosvid okremykh zarubiznykh derzhav* [Public control over police activities: international practice and experience of certain foreign states]. *Naukovyi visnyk Dnipropetrovskoho derzhavnoho universytetu vnutrishnikh sprav*, (2), 25–30. (in Ukrainian)

Олександр Тарасенко,

кандидат юридичних наук, директор Департаменту освіти, науки та спорту Міністерства внутрішніх справ України, вулиця Академіка Богомольця, 10, Київ, Україна, індекс 01601, tarasenkooleksandr@ukr.net

ORCID: orcid.org/0000-0003-0369-520X

ДО ПОНЯТТЯ КРИМІНАЛЬНО-ПРАВОВОГО РЕГУЛЮВАННЯ ПРАВООХОРОННОЇ ДІЯЛЬНОСТІ В УМОВАХ ОСОБЛИВОГО ПЕРІОДУ: ВИКЛИКИ ТА ПЕРСПЕКТИВИ

Анотація. *Мета* статті є дослідження сутності та особливостей правоохоронної діяльності, її завдань, функцій та суб'єктного складу в контексті розвитку громадянського суспільства. Також аналізується кримінально-правове регулювання правоохоронної діяльності, зокрема в умовах особливого періоду. **Результати.** У статті розглянуто правоохоронну діяльність як комплексний процес, що спрямований на охорону правопорядку та реалізується спеціально уповноваженими органами відповідно до законодавства. Досліджено основні підходи до визначення поняття правоохоронної діяльності, її функцій, завдань та суб'єктного складу. Проаналізовано позиції науковців щодо ролі державних і недержавних установ у забезпеченні правопорядку. Особливу увагу приділено місцю правоохоронної діяльності в умовах розвитку громадянського суспільства та її значенню для утвердження верховенства права. Визначено основні напрямки діяльності правоохоронних органів, їх функціональне призначення та правові засади взаємодії з іншими інституціями. Розглянуто кримінально-правове регулювання правоохоронної діяльності в умовах особливого періоду, зокрема воєнного стану та надзвичайних ситуацій. Висвітлено питання координації між різними гілками влади та підвищення рівня професійної підготовки співробітників правоохоронних органів. **Висновки.** Зроблено висновок, що ключовим аспектом є посилення превентивних заходів, які зменшують ризик виникнення кримінальних правопорушень, а також робота з вразливими категоріями населення. Водночас значну увагу приділяють захисту прав людини навіть за умов тимчасових обмежень, таких як комендантська година чи обмеження доступу до певних ресурсів. Перспективи розвитку правоохоронної діяльності в особливий період включають запровадження сучасних технологій, підвищення рівня професійної підготовки працівників правоохоронних органів та вдосконалення нормативно-правової бази з урахуванням досвіду інших країн. Завдяки цьому правоохоронна система здатна ефективніше реагувати на загрози й гарантувати реалізацію принципу верховенства права.

Ключові слова: правоохоронна діяльність, правопорядок, правоохоронні органи, законність, верховенство права, кримінально-правове регулювання.

The article was submitted 13.11.2024

The article was revised 04.12.2024

The article was accepted 24.12.2024