

**PROVIDING LAW ENFORCEMENT ACTIVITY IN THE MARTIAL LAW REGIME****ЗАБЕЗПЕЧЕННЯ ПРАВООХОРОННОЇ ДІЯЛЬНОСТІ В УМОВАХ ВОЄНОГО СТАНУ**

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In the article, the authors examine the scientific views and provisions of the current legislation of Ukraine which define the content of law enforcement activity, which is determined by a number of elements, including not only the subjects but also the object of law enforcement activity. The authors determine that, according to the nature of the powers exercised, it is advisable to define the following types of law enforcement activities under martial law 1) ensuring public security and order; 2) justice (including judicial control over the execution of court decisions, rulings, and resolutions); 3) detection and investigation of crimes of criminal misconduct (including by means of operational and investigative activities and pre-trial investigation); 4) human rights protection (domestic, international and self-defence); 5) provision of legal aid (legal representation and access to the judicial system). The authors came to the conclusion that law enforcement activity under martial law can be classified into separate independent types according to the following criteria: depending on the subjects of law enforcement activity; depending on the nature of actions of law enforcement subjects; depending on the impact on society (stabilizing and dynamic); depending on the nature of legal facts which cause law enforcement activity (regulatory and protective); depending on the time of law enforcement activity (current and emergency); depending on the sphere of law enforcement (general, departmental and local). The authors came to the conclusion that the subjects of law enforcement activities under martial law should include the following: The National Police of Ukraine, the National Guard of Ukraine, the Security Service of Ukraine, public formations for the protection of public order and the state border in the field of public order protection and territorial defence units of the Armed Forces of Ukraine.

**Key words:** security, citizen, state, evidence, activity, law, protection, law and order, law enforcement officer, war.

У положеннях наукової статті автори досліджують наукові погляди та положення чинного законодавства України які визначають зміст правоохоронної діяльності який зумовлений низкою елементів, серед яких варто назвати не лише суб'єктів, але й об'єкт правоохоронної діяльності. Автори визначають, що за характером виконуваних повноважень доцільно визначити такі види правоохоронної діяльності в умовах воєнного стану: 1) забезпечення публічної безпеки і порядку; 2) правосуддя (зокрема судовий контроль за виконанням судових рішень вироків, ухвал, постанов); 3) викриття й розслідування злочинів кримінальних проступків, (зокрема засобами оперативно-розшукової діяльності та досудового розслідування); 4) правозахисна діяльність (внутрішньодержавна, міжнародна та самозахисна); 5) надання юридичної допомоги (юридичне представництво та доступ до судової системи).

Автори приходять до висновку, що правоохоронна діяльність в умовах воєнного стану може бути класифікована на окремі самостійні різновиди за такими критеріями: залежно від суб'єктів правоохоронної діяльності; залежно від характеру дій суб'єктів правоохоронної діяльності; залежно від впливу на суспільство (стабілізуюча та динамічна); залежно від характеру юридичних фактів, що спричиняють правоохоронну діяльність (регулятивна та охоронна); залежно від часу здійснення правоохоронної діяльності (поточна та надзвичайна); залежно від сфери правоохоронної діяльності (загальна, відомча та місцева). Автори вважають, що до суб'єктів забезпечення правоохоронної діяльності в умовах воєнного стану доцільно віднести: Національну поліцію України, Національну Гвардію України, Службу безпеки України, громадські формування з охорони громадського порядку і державного кордону у сфері охорони громадського порядку та підрозділи територіальної оборони Збройних сил України.

**Ключові слова:** безпека, громадянин, держава, докази, діяльність, закон, охорона, правопорядок, правоохоронець, війна.

**The relevance of the topic** is due to the fact that on 20 February 2014, Russia began the annexation of the Autonomous Republic of Crimea, hereinafter referred to as the ARC, and subsequently on 12 April 2014, the territory of Donetsk and Luhansk regions of Ukraine, which the international community recognised as a military conflict that was international in nature, but local in geographical scope, and it took more than one year for the Law of Ukraine "On the Legal Regime of Martial Law" No. 389-VIII to be adopted on 12 May 2015, which defines the content of the legal regime of martial law, the procedure for its implementation and cancellation, the legal basis for the activities of public authorities, military command, military administrations, local self-government bodies, enterprises, institutions and organisations under martial law, guarantees of human and civil rights and freedoms, and the rights and legitimate interests of legal entities [1]. That is why the issue of ensuring law enforcement under martial law has actually arisen since 2014 and has not ceased to be relevant today for ten years. That is why we believe that the importance of law enforcement for ensuring the sustainable and effective

functioning of the state and society cannot be overestimated, as it is about protecting the key values of the country and society defined by legal norms. We agree with scholars who believe that the importance of law enforcement is determined by its purpose, which is to protect human and civil rights and freedoms, public order; ensure public safety; maintain law and order; implement the rule of law, etc. This goal is achieved through the implementation of the tasks and functions assigned by society and the state to this type of activity [6]. We support the opinion of Professor Kobzar O. F. that the exceptional role of the state and law in the life of modern society naturally determines both the theoretical and practical significance of problems related to the state and legal organisation and regulation of public life. One of the most important areas of this activity is the establishment and maintenance of a democratic legal order that complies with international law. It is the rule of law that is the basis and inherent attribute of the state governed by the rule of law, which determines the reality of law, the scope of rights and freedoms of citizens and the state, the correlation of these rights and freedoms

in the real social and political reality. An important means of ensuring these rights is the law enforcement activity of special state bodies [7].

**Analysis of recent research and publications.** The theoretical basis for studying the issues of law enforcement by various entities under martial law is the scientific works of such scholars as: Esimov S. S. Esimov [6], Ivakha V. O. [8], Kobzar O. F. [7], Kovaliv M. V. [6,8], Kuznichenko S. O. [11], Lozynskyi Y. R. [6], Morkvin D. A. [12], Mulyar H. V. [13], Nikitenko O. I. [14], Prokopenko O. Y. [10], Subota S. I. [9], Shai R. Y. [13] and others.

**The purpose of the article is** to study the concept, purpose, essence, of subjects and objects of law enforcement activities under martial law with a view to determining the author's position on improving the regulatory and legal framework for law enforcement activities under martial law in Ukraine.

**Presentation of the research material and its main results.** Considering the problems of ensuring law enforcement under martial law, in our opinion, first of all, it is worth referring to the etymological concepts of law enforcement and martial law. Considering the interpretation of the concept of 'activity' in the general semantic sense, it means the manifestation of force, energy of something; work, functioning of an organisation, institution, machine, etc.; application of one's labour to something [5]. However, it is worth noting that the issue of defining the concept and content of law enforcement activity has been repeatedly the subject of research by many scholars, since the legal literature has not developed a unified approach to an unambiguous understanding of the key characteristics of law enforcement activity.

It is worth noting that the current legislation of Ukraine does not clearly regulate the concept of law enforcement activity, which is a significant drawback in theoretical and law enforcement activities. First of all, it should be noted that the need to define law enforcement arose as a result of the fact that Article 1 of the Constitution of Ukraine states: 'Ukraine is a sovereign and independent, democratic, social, legal state', with its bodies increasingly assuming functions and tasks of controlling, protecting and defending human rights, the interests of civil society and the state itself. The state has assumed the obligation to protect individuals and society from negative manifestations and social deviations. A person, his/her life and health, honour and dignity, inviolability and security are recognised as the highest social value [14, p.98].

We agree with Professor Kobzar O.F. that the very concept of law enforcement activity is widely used in legal and socio-political literature. However, it has not been fully researched, although the legislation on the status of law enforcement agencies, functions, tasks and specific areas of their activities, powers of individual agencies and officials is quite developed. In the academic literature, the features of law enforcement are not clearly defined, the concepts of law enforcement activity and special law enforcement activity are not distinguished, and sometimes law enforcement activity is not distinguished from judicial and human rights activities [7, p.10].

The essence of law enforcement activity is also determined by its purpose, which is to protect human and civil rights and freedoms, public order; ensure public safety; maintain law and order; and implement the rule of law. This goal is achieved through the implementation of tasks and functions assigned by society and the state to this type of activity.

The essential features of law enforcement activities under martial law include the following:

1) law enforcement activities are carried out not by any means, but only through the use of legal measures of influence, which include measures of state coercion and penalties clearly regulated by the law that is in force under martial law;

2) law enforcement activities are carried out in the course of its implementation of legal measures of influence, which must strictly comply with the provisions of the law or other legal act that is in force under martial law;

3) law enforcement activities are carried out in accordance with the procedure established by law in compliance with certain procedures that are in force under martial law;

4) the implementation of law enforcement activities is entrusted primarily to specially authorised state bodies, which are staffed by appropriately trained officials, law enforcement officers, and employees of the country's security and defence forces under martial law.

As rightly emphasised by Shai R.Y., law enforcement activity is heterogeneous in content, which is manifested in the relative diversity of functions performed by it, the content of which is determined by the main areas of this type of activity. These functions include: justice; judicial control; prosecutorial supervision; investigation of crimes; provision of legal aid; organisational support of courts and other bodies.

Each of these areas aims to achieve specific results, namely:

1) elimination of violations of the Constitution of Ukraine;

2) fair hearing of civil and criminal cases, cases of administrative offences, and arbitration cases;

3) detection and elimination of violations of the law by means of prosecutorial response;

4) detection of crimes and exposure of persons guilty of committing them;

5) preparing materials for court proceedings in specific cases;

6) providing qualified legal aid to all those who need it, especially to persons who are held legally liable, as well as other legal services;

7) creating conditions for the normal operation of courts and other bodies [15, p. 14-15].

We believe that the content of law enforcement activity is determined by a number of elements, among which we should mention not only the subjects, but also the object of law enforcement activity.

We agree with the opinion of Professor Kobzar O. F. that the objects of law enforcement activity as elements of its content include:

1) inalienable (natural) human rights and freedoms, and human rights in the positivist sense (subjective law and legitimate interests)

2) the fundamentals of the constitutional order, in particular, the fundamentals of the social and state order defined by constitutional norms, and the fundamentals of local self-government;

3) the rule of law in society;

4) law and order as a state of social relations;

5) issues of security of an individual, society and the state;

6) the state of legal awareness and legal culture in society [7].

We support the opinion of Morkvin D. A. that the listed objects in combination with such elements of the content of law enforcement activity as the powers of the subjects of its implementation, their goals and objectives make it possible to identify the areas of law enforcement activity [12, p.38].

The main areas of law enforcement activity should include: protection of rights, freedoms and legitimate interests of participants in relevant social relations; ensuring an appropriate level of public order in society; ensuring public safety; prevention of offences; detection of offences and collection of evidence in order to bring perpetrators to legal responsibility; participation in activities aimed at applying state coercion to offenders; provision of qualified legal assistance; legal propaganda and agitation.

We believe that these areas of law enforcement activity can be considered as its varieties. Thus, according to the nature of the powers exercised, it is advisable to define the following types of law enforcement activities: 1) ensuring public security and order; 2) justice (including judicial control over the execution of court decisions, verdicts, resolutions); 3) detection and investigation of crimes (including through operational and investigative activities and pre-trial

investigation); 4) protection of human rights (domestic, international and self-defence); 5) provision of legal aid (legal representation and access to the judicial system).

Morkvin D. A. is right in his opinion that the key criteria for classification of law enforcement activity should include:

1) by subjects of implementation:

firstly, law enforcement activity as a direction of implementation of managerial powers of a significant number of subjects, including legislative authorities, local self-government bodies, as well as representatives of the public, who, within the limits determined by law, carry out measures to protect and defend the established legal order;

secondly, law enforcement activity, which is carried out within the framework of its functional purpose by a number of specially authorised law enforcement agencies;

2) by the specifics of the powers exercised by law enforcement entities. This is due to the specific goals and objectives of the subjects of its implementation, for example, law enforcement activities carried out by the National Police, the National Guard, the Security Service of Ukraine, etc.

We believe that law enforcement activity under martial law can be classified into separate independent types according to the following criteria: depending on the subjects of law enforcement activity; depending on the nature of actions of law enforcement entities; depending on the impact on society (stabilizing and dynamic); depending on the nature of legal facts which give rise to law enforcement activity (regulatory and protective); depending on the time of law enforcement activity (current and emergency); depending on the field of law enforcement activity (general and special).

We agree with Morkvin D. A. that law enforcement activity as an object of administrative and legal regulation is a set of organisational, legal, informational and other measures implemented by specially authorised entities with the aim of ensuring the internal security of the state, as well as protecting the legitimate rights, freedoms and interests of each individual, society and the state as a whole. Law enforcement activities can be best understood in both broad and narrow terms. Thus, according to the broad approach, it is the activity of all state and non-state subjects that, within the limits of the powers granted to them by law, exercise their rights and obligations to protect the values protected by law, in particular: human and civil rights and freedoms, the constitutional order, property, the environment, etc. In a narrow sense, law enforcement is the activity of executive bodies of state power, which are clearly regulated by law and are defined as law enforcement bodies due to their primary implementation of the law enforcement function of the state [12, p. 40]. We agree with the point of view that in today's conditions, a number of issues are important for the effective implementation of the law enforcement function of the state, in particular

- creation of high-quality legal and regulatory framework governing the activities of law enforcement agencies, as well as strict observance of human and civil rights and freedoms;

- control over the work of law enforcement agencies and their officials, as well as over the activities of security providers in the state;

- proper staffing, material and technical, and information support of law enforcement agencies;

- informing the population about the possibility of influencing the state of security in the state, as well as exercising public control over the activities of law enforcement agencies, legal education of the population, enhancing the cultural development of the regions, and introducing real educational programmes aimed at the development of children and teenagers;

- quality crime prevention to avoid the commission of crimes and offences;

- establishing a mechanism for the implementation of laws and bylaws aimed at exercising the law enforcement function of the state, eliminating conflicts in this area;

- introduction of foreign experience and activities of the law enforcement system, taking into account both positive and negative experience in order to prevent gaps in this area [16, p. 1029].

It should be noted that in contrast to the absence of a clear concept of law enforcement activity, the legislator has clearly defined the concept of martial law – a special legal regime introduced in Ukraine or in certain areas of Ukraine in the event of armed aggression or threat of attack, threat to the state independence of Ukraine, its territorial integrity and provides for the granting of powers to the relevant state authorities, military command, military administrations and local self-government bodies necessary to avert the threat, repulsing armed aggression and ensuring national security, eliminating threats to the state independence of Ukraine, its territorial integrity, as well as temporary restrictions on constitutional rights and freedoms of man and citizen and the rights and legitimate interests of legal entities, caused by the threat, with indication of the term of validity of these restrictions [1].

In our opinion, it is worth noting that the Law of Ukraine ‘On the Legal Regime of Martial Law’ [1] and the Decree of the President of Ukraine on the imposition of martial law in Ukraine or its separate localities, approved by the Verkhovna Rada of Ukraine [2], regulate that the military command, within its powers, issues binding orders and directives on issues of defence, public safety and order, and the implementation of measures of the legal regime of martial law.

It is worth noting that on 16 July 2021, the Verkhovna Rada of Ukraine adopted the Law of Ukraine ‘On the Principles of National Resistance’ [3], which stipulates that one of the tasks of the territorial defence of the Armed Forces of Ukraine is to participate in ensuring public safety and order in settlements.

It is also worth noting that the Law of Ukraine ‘On the Participation of Citizens in the Protection of Public Order and the State Border’ [4] stipulates that the main tasks of public formations for the protection of public order and the state border in the field of public order protection are as follows:

- assisting the National Police in ensuring public order and public safety, preventing administrative and criminal offences;

- informing the National Police about criminal offences committed or being prepared, places of concentration of criminal groups;

- assisting the National Police in detecting and solving criminal offences, searching for the perpetrators, protecting the interests of the state, enterprises, institutions, organisations and citizens from criminal encroachments; participating in ensuring road safety and combating child neglect and juvenile delinquency.

**In conclusion**, we believe that it is advisable to amend the current legislation of Ukraine in terms of a clear definition of the concept of law enforcement, namely, we propose to supplement the Law of Ukraine ‘On National Security of Ukraine’ in part 1 of Article 1 ‘Definition of Terms’ with the following definition, law enforcement activity is a type of state activity carried out with the aim of protecting the law by specially authorised bodies through the use of legal measures of influence in strict accordance with the law and in strict compliance with the established procedure.

Law enforcement activity under martial law is characterised by the fact that: firstly, it is carried out on the basis of and with the aim of implementing the provisions of the law that are in force during a special period; secondly, it has a specific purpose; thirdly, it is carried out by specially authorised subjects, which include the security and defence forces. The content of the main tasks of law enforcement activity under martial law is to protect and defend: a person, his/her rights and freedoms; constitutional (state) system and the foundations of local self-government; property; law and order; natural resources and the environment; national (state) security; state

and customs border of Ukraine, etc. Thus, law enforcement activity under martial law is ensured by the relevant authorised entities, which include the security and defence forces, for the personal safety of a person, individual, citizen, as well as the safety of the entire civil society and the state.

The subjects of law enforcement activity under martial law should include: The National Police of Ukraine, the National Guard of Ukraine, the Security Service of Ukraine, public formations for the protection of public order and the state border in the field of public order protection, and territorial defence units of the Armed Forces of Ukraine.

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