

LAW ENFORCEMENT FUNCTIONS OF THE STATE UNDER THE CONDITIONS OF THE STATE OF MARTIAL

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Annotation. In order to clarify law enforcement functions, the article analyzes the provisions of the Constitution of Ukraine, Laws of Ukraine: «On National Security of Ukraine», «On the Legal Regime of Martial Law», «On the Defense of Ukraine», «On Military-Civil Administrations», Decree of the President of Ukraine. About the Comprehensive strategic plan for the reform of law enforcement agencies as part of the security and defense sector of Ukraine for 2023-2027 and scientific opinions, the category «law enforcement function of the state» was investigated. It was established that in the Ukrainian state there is a significant number of law enforcement agencies, as well as other state agencies, which, in addition to the performance of the main tasks, are entrusted with the performance of individual law enforcement functions. Attention is drawn to the fact that legislative acts in general do not provide a final idea of which bodies should be considered law enforcement. Attention is drawn to the fact that after February 24, 2022, Ukraine was subjected to full-scale military aggression by the Russian Federation, as a result of which a martial law regime was introduced in the country, which provides for a special legal regime and which limited the constitutional rights and freedoms of citizens, and the law enforcement functions of the state, its law enforcement officers bodies was significantly expanded in order to ensure national security, territorial integrity of the state. It was established that under the influence of an external factor, namely military aggression, the law enforcement internal function of the state underwent significant changes, which in turn affected the activities of all state bodies, including law enforcement agencies. The conclusions emphasize that the lack of a normative definition of the system of law enforcement bodies affects the implementation of law enforcement functions, inhibits the activity of law enforcement bodies, which in general negatively affects the law enforcement function of the state, and therefore the state needs to define the system of law enforcement bodies, which in general will have a positive effect on the implementation of law enforcement functions of the state. A theoretical definition of the concept of «law enforcement function of the state» is given.

Key words: bodies, war, law, police, security, system, authority.

1. Introduction.

Today, it is difficult to imagine the activities of any state that does not perform a law enforcement function, for the purpose of which it has appropriate bodies entrusted with the performance of various law enforcement functions. Our state is no exception in this matter. The main functions of the state (internal and external) are enshrined in the Basic Law of Ukraine. Considering the subject of our research in part 3 of Art. 17 of the Constitution of Ukraine contains the imperative of the most important functions of the state, among which the provision of state security and the protection of the state border of Ukraine are entrusted to the relevant military formations and law enforcement agencies of the state, the organization and procedure of which are determined by law. At the same time, the category «law enforcement agencies of the state» used in the Constitution of Ukraine acquires an important meaning, and therefore we can talk about specific features of the law enforcement function of the state, the implementation of which is ensured by law enforcement agencies.

2. Analysis of scientific publications.

The scientific basis of the topic under study was the work of domestic legal scientists who studied the concepts and types of functions of the state in general and the law enforcement function of the state in particular. Scientists whose works were used in writing this article include: V. Bashkatova, O. Bezpалovu, Yu. Holodnyka, O. Zaichuka, N. Onishchenko, O. Maruschaka, O. Sokolenko and others. At the same time, a number of important aspects regarding the law enforcement function of the state under martial law remain insufficiently researched.

3. The purpose of the work.

Given the existing realities of today, the purpose of the article is to study the internal function of the state in the conditions of the introduced martial law regime and, on this basis, to carry out a study of the concept of «law enforcement function of the state», to characterize its main features and to provide the author's definition of this concept.

4. Review and discussion.

Before directly examining the category «law enforcement function of the state», it is worth emphasizing that in general, the functions of the state are a basic scientific category of the theory of the state and law, which was formed in legal science through the evolution of legal, political and philosophical thought [1, p. 67]. Agreeing with the given thesis, given the subject of our research, it should be noted the urgent need to move from the general to the identification of the direct object of research. The provision and implementation of the law enforcement function of the state is based on a set of basic elements based on the Constitution and laws of Ukraine. Today, the law enforcement function of the state and its bodies cannot be considered without normative acts, in particular, the Law of Ukraine «On National Security of Ukraine» dated 21.06.2018 No. 469-VIII, which entrusts the following law enforcement agencies: the National Police of Ukraine, the National Guard of Ukraine, the State border services of Ukraine, the Security Service of Ukraine, as well as other state bodies, which, in addition to the performance of the main tasks, are entrusted with the performance of certain law enforcement functions, must ensure the national security of Ukraine.

At the same time, this legislative act does not give us a final idea of which bodies should be classified as law enforcement. In contrast to the Law of Ukraine «On the National Security of Ukraine» in the Law of Ukraine «On the Legal Regime of Martial Law» dated 12.05.2015 No. 389-VIII, which defines the involvement of law enforcement agencies in the implementation of measures of the legal regime of martial law and the Law of Ukraine «On Defense of Ukraine» dated 06.12.1991 No. 1932-XII, which defines the tasks and participation of law enforcement agencies in the sphere of state defense, does not indicate at all which law enforcement agencies should perform the assigned law enforcement functions of the state in conditions of martial law. This fully applies to the Law of Ukraine «On Military-Civil Administrations» dated February 3. 2015 No. 141-VIII, according to part 5 of Art. 3 of which, in the event that the district, regional state administration acquires the status of the corresponding district, regional military-civilian administration, the positions of civil servants in such administrations may be replaced by servicemen of military formations formed in accordance with the laws of Ukraine, by members of the rank and file of law enforcement agencies, who are seconded to them in accordance to the procedure established by the legislation for the performance of tasks in the interests of the defense of the state and ensuring its security with retention in military service, service in law enforcement agencies without exclusion from personnel lists, as well as by decision of the head of the district, oblast military-civilian administration to the positions of civil servants in such an administration other persons with special knowledge and experience may be appointed without competitive selection.

However, the norms of this legislative act also do not determine which law enforcement agencies should perform the specified functions. This also applies to other legal acts. At the same time, the

legal uncertainty of the system of law enforcement agencies in the issue of implementation of the law enforcement function of the state implies mutual obligations of the state to protect the rights and freedoms of citizens, public and state interests. Therefore, a clear definition of the system of law enforcement bodies of the state at the normative level is no less a component of the implementation of the law enforcement function. This also applies to the regulatory definition of the terms «law enforcement agencies» and «law enforcement agencies», as their use in numerous regulatory legal acts leads to misunderstandings. Let's give a concrete example. In the Comprehensive Strategic Plan for the Reform of Law and Order Bodies as a Part of the Security and Defense Sector of Ukraine for 2023-2027, approved by the Decree of the President of Ukraine No. 273/2023 of 11.05.2023, it is stated that despite the armed aggression of the Russian Federation against Ukraine, priority for the bodies the rule of law is to guarantee the rights and freedoms of a person and a citizen, as well as the further development of a democratic state in which the rule of law is consistently ensured. Along with this, the need to accelerate digitalization, to ensure maximum efficiency and effectiveness of work in the public sector is deepening. This request is more than relevant for the system of law enforcement agencies, which must strengthen their strategic and operational potential in order to properly perform the functions defined by the legislation of Ukraine. However, in the final provisions of this regulatory act, it is emphasized that the Comprehensive Strategic Plan applies, in particular, to the prosecutor's office, the Ministry of Internal Affairs of Ukraine, the National Police of Ukraine, the State Border Guard Service of Ukraine, the State Bureau of Investigation, the Bureau of Economic Security of Ukraine, the Security Service of Ukraine and State Customs Service of Ukraine.

Based on the understanding of the specified regulatory act, it is worth noting that, firstly, it also applies to other law enforcement agencies, and secondly, in clause 50 of the National Security Strategy of Ukraine, approved by the Decree of the President of Ukraine dated September 14, 2020 No. 392/2020, it is stated that the state should perform only the necessary functions, primarily security, foreign policy, social, regulatory. Law enforcement, tax and customs authorities will protect the rights, freedoms and legitimate interests of citizens, in particular in relation to doing business.

Unlike the Comprehensive Strategic Plan, this regulatory act does not refer the State Customs Service of Ukraine to law enforcement agencies. At the same time, the mentioned fact undoubtedly points to existing problematic issues in the definition of the system of law enforcement agencies and is not aimed at defining the law enforcement function of the state, at the same time it affects the implementation of law enforcement functions, which inhibits the activity of law enforcement agencies, besides, in the specified and other normative acts, law enforcement the function of the state in the conditions of martial law underwent significant changes, which could not affect law enforcement agencies – whose activities underwent significant changes, in particular, by granting additional powers, in order to protect the life and health of citizens, the interests of society and the state. The absence of a normative definition of the system of law enforcement bodies during the entire period of independence of the Ukrainian state, despite numerous attempts by officials of public authorities, did not find its legislative confirmation, which generally affects the implementation of law enforcement functions of the state.

In order to clarify the law enforcement function of the state, we will analyze scientific positions regarding this legal category. According to legal theorists O. Zaichuk and N. Onishchenko, the specific features of the law enforcement function are manifested in the following: first, it characterizes law as a special way of influencing people's behavior, which is expressed in the influence on their consciousness by the threat of sanctions, the establishment of prohibitions and the realization of legal responsibility;

secondly, it informs the subjects of social relations about which social values are protected by means of legal prescriptions; thirdly, it is an indicator of the political and cultural level of society, humane principles contained in the law [2, p. 326].

Among the scientists who researched the problematic issues of law enforcement agencies, O. Sokolenko defines the law enforcement function of the state as a complex integral priority direction of state policy, aimed at ensuring, in accordance with the principles of the rule of law and the priority of human rights, the protection of law and legal relations, as well as the protection of the foundations of the constitutional system, including the rights, freedoms and legitimate interests of a person and

a citizen, legality and law and order [3, p. 851]. The above indicates that even in the conditions of martial law, we should not forget that the observance of human rights and freedoms, the creation of a proper and effective national system of protection and protection of the rights of human and citizen interest becomes one of the main tasks of the state [4, p. 67].

Among the analyzed works, the most comprehensive legal mechanism for implementing the law enforcement function is provided by O. Bezpalova, who includes among the main tasks of state policy in the law enforcement sphere: creation of legal grounds for defining and consolidating the strategy for the development of the law enforcement sphere, updating the legal framework for the implementation of state policy in the law enforcement sphere by developing new regulatory legal acts and introduction of changes and additions to existing ones, ensuring consistency in the system of regulatory legal acts, eliminating gaps and conflicts in the legislation; creation of a scientifically based model of entities that must perform a law enforcement function in accordance with the needs of building a public service model of public administration; creation of the necessary political and legal conditions for overcoming corruption in the activities of state authorities and local self-government; creation of the necessary legal guarantees for the observance of the rights, freedoms and legitimate interests of a person and a citizen, in particular, reliable and effectively working mechanisms for guaranteeing the human need for security; ensuring compliance with the principles of the rule of law in the activities of state authorities and local self-government bodies; expansion of forms of civil democratic control over the activities of state entities implementing the law enforcement function of the state; ensuring conditions for citizens of Ukraine and other persons to receive quality services provided by state entities implementing the law enforcement function of the state; creation of effective mechanisms for the interaction of subjects implementing the law enforcement function of the state and coordination of their activities; development of an effective mechanism for the prevention of offenses and the fight against crime; creation of a modern flexible system of training and professional development of personnel for law enforcement agencies; expanding the participation of state authorities in international law enforcement cooperation; formation of a new positive image of law enforcement agencies, in particular by increasing the public's trust in them, ensuring their partnership and interaction; increasing the efficiency and practical orientation of scientific support for the implementation of the law enforcement function of the state; activation of the activities of civil society institutions regarding the formation of state policy in the law enforcement sphere and its implementation; formation of legal consciousness and legal culture of the population, overcoming legal nihilism, legitimization of moral values [5, p. 104-105].

Among modern researchers, the position of Y. Holodnyk deserves credit, who believes that in implementing the law enforcement function of the state, law enforcement agencies combine a number of special techniques and methods that are related to the specifics of the activity of a specific law enforcement agency during the period of martial law. In his opinion, the law-enforcement function of the state covers the activity of law-enforcement bodies defined by the Constitution and laws of Ukraine, the activity of which, depending on specific circumstances, can change and acquire new features [6, p. 76].

So, we can state that under the influence, first of all, of an external factor, namely military aggression against Ukraine, the law enforcement function of the state underwent significant changes, which in turn affected the law enforcement activities of its bodies.

Perceiving the above-mentioned approaches to the law enforcement function of the state, we cannot pay attention to the opinion of one of the main theorists of legal positivism, Hans Kelsen, who noted that the interpretation of the function of the state allows the identification of the main directions of the state's activity with its activity itself [7, p. 180]. In particular, the famous Austrian and British philosopher and sociologist K. Popper, in his most famous work «The Open Society and its Enemies», wrote: «The state is the main and center of all contractual elements in the life of the people: art, law, morality, religion, science... » [8, p. 73].

The above indicates that the functions of the state are implemented in all spheres of social relations. The law enforcement function is no exception in this matter.

In view of the above, within the limits of tasks defined by the legislator, law enforcement agencies in their everyday practical activities implement the law enforcement function of the state, which may change or undergo certain changes under the influence of various internal and external factors.

5. Conclusions.

Thus, taking into account the considerations set out above, we can conclude that in modern conditions, the law enforcement function of the state is under the influence of external factors, military aggression, as a result, the law enforcement function of the state under the influence of the introduction of martial law has undergone significant internal changes, which is due to the needs of ensuring the legal regime of martial law, affected the law enforcement activities of state bodies, whose law enforcement function underwent changes. The absence of a normative definition of the system of law enforcement bodies affects the implementation of law enforcement functions, inhibits the activity of law enforcement bodies, which in general affects the law enforcement function of the state, and therefore the state needs to define the system of law enforcement bodies of the state, which in general will positively affect the implementation of the law enforcement function of the state, preventive and law enforcement activities of law enforcement agencies.

We understand the law enforcement function of the state as one of its main directions aimed at guaranteeing the rights and freedoms of citizens, the interests of society and the state, which entrusts law enforcement agencies with the implementation of state tasks, the activities of which are characterized by a clear distribution of powers, which under the influence of external and internal factors can undergo significant changes.

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