LAW ENFORCEMENT ACTIVITIES UNDER THE LEGAL REGIME OF MARTIAL LAW IN UKRAINE: PECULIARITIES OF IMPLEMENTATION

The article expands and supplements the concept of law enforcement activity under the legal regime of martial law in Ukraine. The author analyses the approaches to the concept of law enforcement activity and forms the concept of "law enforcement activity under the legal regime of martial law in Ukraine".

The author identifies the priority areas and tasks of law enforcement activities under the legal regime of martial law in Ukraine and identifies and classifies the factors that determine the content and peculiarities of this type of activity.

It is substantiated that law enforcement activities under the legal regime of martial law in Ukraine are aimed at preventing and counteracting internal threats to martial law; facilitating and jointly performing, within the limits of certain powers, the tasks facing the security and defence forces; ensuring law and order; and maintaining public order at an appropriate level. The author proves that the main focus of law enforcement activities under...
Statement of the problem. One of the areas of the State's activities related to ensuring order in society is law enforcement - a particular type of activity of State bodies and officials designed to prevent, prevent offences, stop them, and also use State coercion or public influence on persons who have violated the public order established by law. The large-scale invasion of Ukraine by Russian troops and the introduction of the martial law regime on 24 February 2022 necessitated the State to implement a set of tasks that are atypical for a period of peace. Moreover, despite the extreme conditions, these tasks should be implemented as efficiently as possible. The legal regime of martial law, introduced to avert threats, repel armed aggression and, ensure national security, eliminate threats to Ukraine's state independence and territorial integrity, is a critical factor that has had the most significant impact on the content of the activities of the State of Ukraine in all areas of functioning, including the protection of law, in recent times.

Considering law enforcement as one of the primary forms of state activity both in peacetime and in wartime, we emphasise that the quality of law enforcement under martial law depends not only on the state of public order but also on the state of defence capability internal and national security of Ukraine. The main objects of attention of law enforcement agencies under the martial law regime are such internal threats as a) criminalisation of society; b) war crimes (violation of laws and customs of warfare); c) terrorism; d) war crimes; e) crimes against the foundations of national security; f) violation of law and order, etc. Thus, the military aggression of the Russian Federation against our country and the introduction of martial law in Ukraine in connection with the above legal regime has necessitated the expansion of the content, forms and directions of law enforcement activities, in particular, in the context of new challenges in ensuring the protection and security of the state of Ukraine, as well as human and civil rights and freedoms.

The main activity of the law enforcement agencies of Ukraine under the legal regime of martial law, in addition to those areas inherent in the conditions of peacetime, is countering internal threats of martial law, which, in particular, is implemented in the forms of a) countering crimes against the foundations of national security of Ukraine; b) countering terrorist manifestations; c) countering crime and offences against the legal regime of martial law; d) ensuring law and order and public safety, taking into account the challenges caused by the legal regime in the Accordingly, in the conditions of the legal regime of martial law, the following tasks are of priority importance: a) preventing and counteracting internal threats to martial law; b) facilitating and jointly performing, within the limits of the defined powers, the tasks assigned to the Security and Defence Forces; c) ensuring law and order; d) maintaining public order at the proper level.

Analysis of recent research and publications. The problems of law enforcement activity were comprehensively studied by O. Bandurka, V. Bezchasnyi, V. Bilous, V. Galunko, V. Dubinchak, R. Kaliuzhnyi, A. Kuchuk, O. Martynenko, M. Melnyk, V. Plishkin, V. Serhii, R. Shai, Y. Shemshuchenko and others, whose efforts helped to develop a methodology for studying law enforcement activities, to formulate the categorical and conceptual apparatus, and to define the fundamental principles of this type of activity in the context of the functions of the state. At the same time, the military and political realities of recent years, particularly the practice of implementing the legal regime of martial law in Ukraine, necessitate an analysis of the latest changes in the legal regime of martial law in Ukraine is countering internal threats to martial law. In particular: countering crimes against the foundations of national security of Ukraine; countering terrorist manifestations; countering crime and offences against the legal regime of martial law; ensuring law and order and public security; protecting of human and civil rights and freedoms.

The author proves that a key feature of law enforcement activities under the legal regime of martial law in Ukraine is their implementation in two main areas: traditional law enforcement, which is related to ensuring law and order; protection and safeguarding of human and civil rights and freedoms; and the newest one, which is related to countering martial law threats, and performing and facilitating the tasks assigned to the security and defence forces.

Keywords: law enforcement; martial law; legal regime; law enforcement agencies; law and order; public order; tasks; functions.
in the established concept of law enforcement and its corresponding assessment. Specific issues related to the implementation of law enforcement activities under the legal regime of martial law have recently been developed by S. Husarev [1], S. Yevdokimenko [2], M. Kovaliv [3], S. Kolomiets [4], T. Lysko [5], O. Nikitenko [6], O. Prokopenko [7], A. Romanova [8], O. Svitlychnyi [9], I. Chorna [10], S. Shebetia [11], and others.

The purpose of this article is to study the theoretical foundations of law enforcement in Ukraine, particularly in the context of forming the concept of law enforcement under the legal regime of martial law. The aim is to be achieved by solving the following tasks: 1) to analyse the approaches to the concept of law enforcement and to formulate, taking into account the results obtained, the concept of "law enforcement under the legal regime of martial law in Ukraine"; 2) to identify the priority areas and tasks of law enforcement under the legal regime of martial law in Ukraine; 3) to identify the main factors which determine the content and specific features of law enforcement under the legal regime of martial law in Ukraine.

Summary of the primary material. In pursuing the task of forming the concept of "law enforcement activity under the legal regime of martial law in Ukraine", it should be noted that there is no established interpretation of the concept of law enforcement activity as such in the national legal science. Most often, law enforcement activity is understood as a type of state activity carried out to protect the law by specially authorised bodies through legal means of influence by the law and in compliance with its established procedure. The Legal Encyclopedia, edited by Y. Shemshuchenko, defines law enforcement as a system of measures to ensure the implementation of the Constitution, laws and other regulatory legal acts of the state [12, p. 47]. It is also worth noting the interpretation of law enforcement as a governmental activity of the state carried out for the protection of the law by specially authorised bodies through the application of legal measures of influence by the law and in strict compliance with the procedure established by law. In general, the existing approaches to understanding the concept of law enforcement can be reduced to two main ones - narrow and broad.

According to the narrow approach, this concept is mainly understood as the activities of specially authorised bodies (state and non-state) aimed at protecting the rights and freedoms of citizens, ensuring law and order and ensuring legality, which is implemented in the form established by law and within the limits of the powers granted to these bodies. Within the framework of a broad approach, law enforcement is most often understood as the activity of all state bodies and non-governmental organisations to ensure the observance of citizens' rights and freedoms, their implementation, and the maintenance of law and order. The existing definitions of law enforcement are, in one way or another, correlated with the above. According to a broad approach, V. Koivalkska considers law enforcement as a continuous, coordinated activity of state and non-state bodies and organisations aimed at creating the most favourable conditions for the unimpeded implementation of legal norms, subjective rights and freedoms, prevention and detection of offences in order to prevent, stop, eliminate their consequences, restore rights, compensate for losses, and punish the perpetrators [13, p. 128]. According to R. Shai, law enforcement is a law enforcement activity for the protection of the law, which is carried out by specially authorised bodies by the procedure established by law and consists of consideration of legally significant cases, detection of offences and prosecution of persons guilty of committing them, application of coercive measures to offenders established by law, as well as representation and protection of the rights and legitimate interests of individuals and legal entities [14, p. 15].

Within the narrow approach, V. Girich interprets the concept of law enforcement as "a system of control and audit, operational and investigative, criminal procedural and administrative coercive measures carried out by the procedure established by law in order to maintain law and order, detect and directly stop offences falling under the Criminal Code of Ukraine and the Code of Ukraine on Administrative Offences, as well as to enforce criminal and administrative sanctions against offenders" [15]. S. Rossokha understands law enforcement as the activity of specially authorised state bodies enshrined in regulatory legal acts to enforce the legal order based on the balance of interests of an individual, society and the state [16, p. 9].

Implementing the task of forming the concept of "law enforcement activity under the legal regime of martial law in Ukraine" requires reference to the concept of the legal regime of martial law. As is known, the special legal regime of martial law in the wake of the armed aggression of the Russian Federation against Ukraine was introduced by the Decree of the President of Ukraine [17] from 05 hrs. 30 minutes on 24 February 2022. According to the Law
of Ukraine "On the Legal Regime of Martial Law" [18], "martial law is 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 provision of the relevant state authorities, military command, military administrations and local self-government bodies with the powers necessary to avert the threat, repel armed aggression and ensure national security, eliminate The Law of Ukraine "On the Defence of Ukraine" [19] defines martial law as "a special legal regime introduced in Ukraine or in some of its localities 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 and local self-government bodies necessary to avert the threat and ensure national security, as well as temporary restrictions on constitutional rights and freedoms of people caused by the threat.

The above-mentioned normative definitions allow us to consider the following as essential features of the legal regime of martial law in Ukraine a) martial law is a special legal regime introduced throughout Ukraine or on its separate territories on the basis of an act of overt armed aggression or threat of attack, undermining the state independence and territorial integrity of Ukraine; b) the essence of martial law is the transfer of all or part of the powers to govern communities to military command, military administrations, local self-government bodies; c) state authorities, military command, military administrations and local self-government bodies have been acting since the introduction of martial law to prevent or eliminate the threat; d) for the period of the legal regime, it is possible to temporarily restrict certain human and civil rights and freedoms defined by the Constitution of Ukraine.

Taking into account the results of the analysis of the concepts of law enforcement and the legal regime of martial law, we propose to understand the concept of law enforcement in the context of martial law in Ukraine as: in the broad sense - the activities of all state bodies and non-governmental organisations to ensure respect for the rights and freedoms of citizens, their implementation, and to ensure law and order, which is implemented in the context and taking into account the content of the legal regime of martial law; in the narrow sense - the activities of specially authorized.

Given the kinship of the concept of law enforcement activity under martial law with the concept of law enforcement activity as such, we would like to draw attention to the similarities and differences in the essential (those which are most closely related to the content of law enforcement activity and best reveal its essence) features of these concepts. The authors of the textbook "Judicial and Law Enforcement Bodies of Ukraine" A. Gel, G. Semakov, S. Kondrakova consider the essential features of law enforcement activity to be: a) power character, which is the ability of relevant bodies and officials to act on behalf of the State; b) law enforcement character, which is the ability and obligation of authorized subjects to act in the direction of preparation and adoption of an individual legal decision in a legal case on legal facts and specific legal provisions; c) the possibility of implementation only with the use of legal means. A. R. Shai believes that law enforcement activity is characterised by the following: a) aimed at protecting the law from any violations; b) is implemented not in any way but only through the application of legal acts, in compliance with legally established procedures, the violation of which leads to the recognition of the decision as illegal; c) must comply with the requirements of substantive law; d) is directly related to the use of coercion against persons who violate the law; e) is implemented by specially authorised bodies, the basis of which is professionally trained and qualified lawyers. In view of the above, the essential features of law enforcement activities under the legal regime of martial law in Ukraine are a) state power character; b) law enforcement character; c) the possibility of implementation only by authorised subjects (state bodies and officials) within the limits of powers granted by the state, using only lawful measures of influence and in the established procedural form; d) focus on prevention and counteraction to internal threats of martial law; e) conditionality of the content by the task of ensuring law and order, public order under the legal regime of martial law.

The above allows us to state that the essence of law enforcement activities under the legal regime of martial law in Ukraine is the implementation by law enforcement agencies of the legally defined tasks of: a) protection of the social and state system in Ukraine established by the Constitution; b) protection and defence of the rights, freedoms and legitimate interests of citizens, enterprises, organisations, institutions, entities of all forms of ownership; c) protection of the sovereignty and territorial integrity of Ukraine; d) protection of society and the state from unlawful encroachments; e) eliminating the causes and conditions that contribute to the commission of offences.
Law enforcement activities under the legal regime of martial law in Ukraine are characterised by specific features reflected in the content of the tasks entrusted to law enforcement agencies, as well as in the forms and directions of their implementation.

In the conditions of the legal regime of martial law, by the Law of Ukraine "On the Legal Regime of Martial Law" [18], other legal acts, law enforcement agencies, by its purpose and specificity, alone or in cooperation with other subjects of the Security and Defence Forces, solve tasks related to the introduction and implementation of measures of the legal regime of martial law. In particular, these include: a) ensuring the operation of checkpoints; b) evacuation measures; c) checking documents and vehicles; d) recording and documenting war crimes; and e) countering general criminal offences and war crimes.

Law enforcement activities in the context of the martial law regime in Ukraine are influenced by a set of factors that have a different social nature and manifest themselves at different levels. We consider the following factors to be of a general social nature: a) complication of the conditions for law enforcement officers to perform their functional duties, in particular, in the context of the emergence of new and strengthening of existing sources and factors of danger; b) the need to experience social and psychological difficulties and problems associated with military events. Functional factors are: a) expansion of powers of bodies and officials, increase in the scope of official duties and workload; b) implementation of new forms and directions of subjective interaction; c) the need to implement multilateral and bilateral cooperation. The organisational factors include: a) the need to organise the allocation/formation of special units, groups/individual specialists to perform certain functions or activities, determined by the needs of wartime; b) the need to develop new approaches to personnel policy, the staffing process, and to find methods and ways to increase the motivational component; c) the processes of modernising the relevant education and training system.

To summarise, the key feature of law enforcement activities under the legal regime of martial law in Ukraine is the need to implement them in two main areas: traditional ones related to ensuring law and order and protecting and safeguarding human and civil rights and freedoms, and newer ones related to countering threats to martial law and performing and facilitating the tasks assigned to the Security and Defence Forces.

Conclusions and Prospects for Further Research. Based on the above, we draw the following conclusions and generalisations:

1. The concept of law enforcement activity under martial law in Ukraine is understood as: in the broad sense - the activity of all state bodies and non-governmental organisations to ensure the observance of the rights and freedoms of citizens, their implementation, ensuring law and order, which is implemented in the context and taking into account the content of the martial law regime; in the narrow sense - the activity of specially authorised (law enforcement) bodies to protect the rights and freedoms of citizens, ensuring law and order, which is implemented in the form prescribed by law and within the powers granted to these bodies, in the context and subject to the legal regime of martial law in Ukraine.

2. The features of law enforcement activities under the legal regime of martial law in Ukraine are a) state power; b) law enforcement; c) the possibility of implementation only by authorised subjects (state bodies and officials) within the limits of the powers granted by the state, using only lawful measures of influence and in the established procedural form; d) focus on prevention and counteraction to internal threats of martial law; e) content is conditioned by the task of ensuring law and order, public order in the conditions of martial law.

3. Law enforcement activities under the legal regime of martial law in Ukraine are aimed at a) preventing and counteracting internal threats to martial law; b) facilitating and jointly performing, within the limits of the defined powers, the tasks assigned to the security and defence forces; c) ensuring law and order; d) maintaining public order at the proper level.

4. The main directions of law enforcement activity under the legal regime of martial law, in addition to the directions inherent in the conditions of peacetime, are countering internal threats of martial law, in particular a) counteraction to crimes against the foundations of national security of Ukraine; b) counteraction to terrorist manifestations; c) counteraction to crime and offences against the legal regime of martial law; d) ensuring law and order and public safety; e) protection of human and civil rights and freedoms in the face of challenges caused by the norms of the legal regime of martial law.

5. Law enforcement activity under the legal regime of martial law in Ukraine has peculiarities, which are objectively reflected in its tasks and content and in the forms and directions of implementation. The key feature of law enforcement activity under the legal regime of martial law in Ukraine is its implementation in two main areas: traditional, related to ensuring law and order, protection and safeguarding of human and civil rights and freedoms, as well as new, related to countering
threats to martial law, performing and facilitating the tasks assigned to the security and defence forces.

Further development of the concept of law enforcement activity under the legal regime of martial law is associated with improving knowledge of the tasks, content and forms of interaction of the subjects of this type of activity.

References


