

## Legal Basis for The Activities of Law Enforcement Agencies Under the Legal Regime of Martial Law

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### Abstract

*Problematic issues related to the legal basis of the activities of law enforcement agencies under the legal regime of martial law are caused by significant threats to Ukrainian statehood, sovereignty, and territorial integrity of Ukraine. These aspects have become particularly acute after February 24, 2022, as a result of the full-scale invasion of the Russian Federation, which determines the relevance of the topic. The purpose of the study is to determine the legal basis for the activities of law enforcement agencies under the legal regime of martial law in the light of the latest socio-economic, ideological and security issues. Such methods as analysis, synthesis, deduction, induction, logical and legal method and forecasting were used in the article. Within the scope of the study, separate organizational and legal principles were singled out, which most widely illustrate the depth of changes in the activities of law enforcement agencies under martial law. The principle of situational implementation of new services to help the population is reduced to the fact that law enforcement personnel provided services to accommodate the population in shelters, provide drinking water and food to vulnerable groups, etc. The rule here is that for there to be an effective content in countering a separation, there is that need in revealing the prism's that exist which will be able in preventing the measures used in preventing armed group which to a greater extent will continue to be a threat in State's building a stable foreign policies.*

**Keywords:** Legal Basis, Law Enforcement Agencies, Martial Law, Services, Public Relations, Separatism

### INTRODUCTION

It will always be of utmost importance that the Ukrainian state has enacted new stage of its development, which is connected with many factors of a legal and social nature. Some of this factors include: 1) forming civil society, which has currently become an active participant in decision-making in the state and a driving force in the management of state affairs; 2) changes in ideology and role of the state in the realization of human and citizen rights and freedoms; 3) aspirations of civil society to become a part of the European community and to introduce standards of functioning of state institutions at the level of developed countries of the world; 4) forming active civil position regarding the fight against corruption in state authorities; 5) adoption of a number of normative legal acts, which oblige to adapt the national legislation to the legislation of the European Union and a number of others (Morhunov et al., 2023, p. 454-455). At the same time, in the new conditions of the functioning of domestic law enforcement agencies, that will raise the level of protecting public order and even to an extent ensures public safety which in most instances out in safeguarding principles of the rule of law, through the activities of law enforcement officers out in protecting human rights and freedoms. The issue here is that there is always that necessity in protecting the interests of citizens and the country by ensuring the unity of all law enforcement agencies of the state, active interaction with the population, provision of social and legal assistance to society, etc. (Ishchenko, Buhaichuk et al., 2022, p. 265).

Russia's full-scale war against Ukraine has caused changes in the everyday life of Ukrainians, as well as in the functioning of state bodies and institutions (Salmanov, 2023; Ablamskyi et al., 2023). In the light of recent events, as noted by V. T. Komziuk, Y. O. Zahumenna, A. L. Borko, S. M. Bortnyk (2023, p. 510), the full-scale

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invasion of the Russian Federation on February 24, 2022, posed significant threats to Ukrainian statehood, sovereignty and territorial integrity of Ukraine, given the facts of documented war crimes against civilians by the Russian military, which allows us to speak of a threat to the existence of the Ukrainian nation as such. These challenges faced both the leadership of the Ukrainian state and representatives of various segments of Ukrainian society. In particular, such challenges also occurred in the activities of domestic law enforcement agencies, restructuring their activities in accordance with the new security realities.

The study of the legal framework for law enforcement agencies' activities under the martial law regime is becoming particularly relevant and important. Only their comprehensive critical examination can lead to qualitative changes in law enforcement and strengthening of human rights guarantees, since under martial law, domestic law enforcement agencies have faced new challenges that have restructured their activities in accordance with the new security realities. In this aspect, the fundamental principles of law are the limits of the legal system development, and such limits are especially important in times of dynamic transformation. The Ukrainian experience demonstrates to the world the other side of the transformations associated with the full-scale invasion of the Russian Federation on February 24, 2022. Under such conditions, state institutions face fundamentally new problems that have neither methodological foundations for solving nor examples to follow in other countries.

Thus, all the problematic issues of the legal basis for law enforcement activities under the martial law regime are relevant, but only their comprehensive critical consideration can lead to qualitative changes in law enforcement and strengthening of human rights guarantees in the field of domestic law enforcement activities.

### **The Purpose and Objectives of the Study**

The purpose of the article is to determine the legal basis for law enforcement activities under the martial law regime. To achieve this goal, it is necessary to solve the following tasks:

- to analyze the existing scientific views on the essence of the legal basis, including its moral basis;
- to characterize the depth of transformations in Ukrainian society related to the full-scale invasion of the Russian Federation;
- to single out and thoroughly analyze the essence of certain organizational and legal basis which most widely illustrate the depth of restructuring in the activities of law enforcement agencies under martial law.

### **MATERIALS AND METHODS**

The purpose was achieved and objectives of the study were fulfilled by selecting and summarizing sources on legal and organizational issues of law enforcement agencies' activities under martial law. For this purpose:

- a) the works of domestic and foreign researchers on the essence of the legal basis were studied and analyzed;
- b) the sources on the restructuring of law enforcement agencies under martial law were analyzed.

This made it possible to: a) characterize the depth of certain restructuring in Ukrainian society related to the full-scale invasion of the Russian Federation; b) identify the key organizational and legal principles in the activities of law enforcement agencies under martial law.

The following methods were used in the study:

- a systematic approach was used to understand the essence and significance of the legal basis for law enforcement agencies' activities under the legal regime of martial law;
- descriptive analysis was used to study the changes in Ukrainian society related to the full-scale invasion of the Russian Federation;
- the logical and legal method was used to identify the peculiarities of certain organizational and legal principles in the activities of law enforcement agencies under martial law;

- the forecasting method was used to determine the prospects for improving the activities of law enforcement agencies in the context of implementation of certain organizational and legal principles.

## **LITERARY REVIEW**

The generalization of the research gave reason to highlight several aspects to which scholars pay special attention:

1. Modern legal theories, in particular those that determine the place of morality in understanding the essence of legal principles (Amado J., 2022; Kirichenko Tetyana, 2018).
2. Determining the essence of legal principles through the prism of their relationship with the rules and analysis of the functions they perform in legal reasoning (Etcheverry J., 2019), as well as the relationship between legal progress and the fundamental principles (foundations) of law in the context of their implementation at different levels of the legal system (Kyrychenko Y., Maksakova R., Kyrychenko V., Riezanova N., Sokolenko J., 2022).
3. Law enforcement agencies as a key element in the system of legal mechanism for ensuring the rights and freedoms of citizens by performing a special role in maintaining law and order in the state (Panova O. A., Tanko A., Povydysh V. V., Aliksieieva O. V., 2020).
4. The powers of the police in the field of social services as having a preventive nature, since their main purpose is to prevent possible violations of the law and provide assistance during natural disasters, fires and other emergencies (Ishchenko I., Buhaichuk K., Tokarchuk O., Rudoi K., Tsareva I., 2022).
5. The point of interest is that there are materials of the Ministry of Internal Affairs of Ukraine and the National Police of Ukraine leadership continues to place reports as to the challenges and problems that the bodies of the Ministry of Internal Affairs had to face as a result of military aggression by the Russian Federation have been considered, as well as on the available results and successes in countering the threats of war by the police and implementing their normal tasks and functions under martial law (Ivanov A. O., 2022).
6. There is huge peculiarity of the activities of the police bodies regarding the protection of citizens' rights during the legal regime of martial law being that of disclosing the activities in question. For the differences is always in the granting to various police bodies during peacetime and countermeasures against internal threats of martial law have been characterized (Bezpalova O. I., 2022).
7. The peculiarities of the legal regulation of the use of coercive police measures in Ukraine under martial law conditions have been determined. The legal, social, domestic and psychophysiological factors that affect the decision-making by police officers on the possibility of using a registered firearm have been given (Borovyk M. O., Nadutyi A. V., Lukin B. P., 2023).

In the context of martial law, law enforcement agencies face new challenges, which makes it important to determine the essence of the legal, especially organizational and legal, principles of law enforcement activities during emergencies and martial law. In general, it is necessary to distinguish the legal principles that most broadly illustrate the depth of restructuring in the activities of law enforcement agencies under martial law, namely: situational implementation of new services to assist the population; partnership with the public and counteraction to separatism both among law enforcement personnel and in society as a whole.

The scientific novelty of the study lies in the fact that, for the first time in the domestic legal doctrine, it singles out individual organizational and legal principles that most widely illustrate the depth of changes in the activities of law enforcement agencies under martial law, and provides their author's understanding.

## **RESULT AND DISCUSSION**

The topic of legal principles (foundations) has been widely discussed in legal theory since it first arose as a result of discussions on the nature of legal norms and sources of law in the second half of the 20th century (Kersic, 2020, p. 65). At the same time, according to J. Amado, modern legal theories that contradict legal positivism are necessarily associated with moral objectivism. They place true morality above positive legal norms, as well as above the constitution, and position true morality as the authentic constitution. Since morality is the most

important thing in law, and morality is presented in law in the form of principles, there is no antinomy between principles and there are no unjust legal principles (Amado, 2022, p. 273). Such an understanding of the essence of principles (foundations) through the prism of morality is closely related to the views of individual scholars on problems in the moral and spiritual sphere of society, in particular in the family sphere, namely the problems especially when it deals with divorce and marital fidelity; lack of mutual respect; loss of the value of femininity and masculinity; loss of the value of motherhood and fatherhood; weakening of family relationships, the role of the family in raising children (Kirichenko, 2018, p. 54).

We also believe it is appropriate to draw attention to the leading role of the moral component for a society that is going through a period of new shocks, which are inextricably linked to the imperfection of the regulatory, legal, organizational and managerial support for the functioning of any organization, including law enforcement agencies.

Argentine scholar J. Etcheverry (2019, p. 321) draws attention to some aspects of the discussion on the characterization of legal principles and their differences in comparison with rules. In particular, the researcher proposes to distinguish principles from rules, taking into account the functions they perform in law, in particular, the functions of guidance and justification, rather than their structural differences. The scholar believes that different types of prescriptions, known as principles (foundations), perform a justifying function in legal reasoning.

It is worth noting here that there are some national scholars who are always revealing the relationship that exists between legal progress and the fundamental principles (foundations) of law as to their context implementation at different levels of the legal system, emphasizing the importance of justice, freedom, equality and humanity as an instrument of legal progress. The position here is that researcher advocate the position that the fundamental principles of law are the limits of the development of the legal system (Kyrychenko et al., 2022, p. 124).

Such limits are especially important in the period of dynamic transformations, which are generally characteristic of the world of postmodern society in the context of rapid scientific and technological development and development of artificial intelligence technologies. At the same time, the Ukrainian experience shows the world the other side of the transformations associated with the full-scale invasion of the Russian Federation on February 24, 2022. In such conditions, state institutions face fundamentally new problems that have neither methodological foundations for solving them, formed by many years of practice, nor examples to follow in other countries of the world due to the aggressor state's use of new forms and methods of warfare, as well as openly terrorist acts against the civilian population and civilian infrastructure of Ukraine

The legal basis of law enforcement activities is largely related to and derived from the specifics of their functioning. Based on the analysis of the history of social relations, some researchers argue that law enforcement agencies have always been a key element in the system of legal mechanism for ensuring the rights and freedoms of citizens. This is due to the fact that it is precisely through the effective and coordinated activities of law enforcement agencies aimed at protecting inalienable human rights and freedoms that law and order in the state can be maintained at the proper level. At the same time, the neglect or improper performance of their duties by law enforcement officials leads to human rights violations, since authorized officials have such restrictive tools that no other public authority or other official has (Panova et al., 2020, p. 78).

In the context of martial law, law enforcement agencies face new challenges, which raises the issue of determining the essence of the legal, especially organizational and legal, principles of law enforcement agencies' activities during emergencies and martial law. Within the framework of this study, we have identified certain principles which most broadly illustrate the depth of restructuring of law enforcement agencies under martial law.

1. *The principle of situational implementation of new public assistance services.* Analyzing the range of responsibilities of such a law enforcement agency as the National Police of Ukraine (hereinafter - police), some domestic scholars and practitioners are of the opinion that the problem is not with the aspect of combatting crimes, but equally the exercise of other powers in the field of social services. They believe that the latter are essentially preventive

in nature, since their main purpose is to prevent possible violations of the law and provide assistance (for example, in case of family conflicts, during natural disasters, fire and other emergencies) (Ishchenko, Buhaichuk et al., 2022, p. 267). In the context of martial law, such powers have acquired not only a preventive, but also a compensatory nature in relation to other public authorities. After all, the personnel of law enforcement agencies, primarily the police, did not leave the place of service, including in those settlements where active hostilities were taking place, providing services for the accommodation of the population in shelters on the territory of police bodies and units, providing drinking water and food to representatives of vulnerable groups of the population, etc. Special attention should be paid to the key role of police bodies and units in organizing interaction with the population of those public authorities that were forced to relocate to other settlements, especially at the very beginning of the full-scale armed invasion. It should also be noted that such police activity is fundamentally new in the global context, so its epistemological potential for international scientific thought can hardly be overestimated.

At the same time, under martial law, society itself faces new challenges, which, in turn, set the vector for the newest areas of law enforcement activity. The armed conflict of the Russian Federation on the territory of Ukraine, which began on February 24, 2022, posing the annexation of Crimea making many people fleeing from their homes and moving to safer regions of the country. The negative nature of the mass phenomenon of internal migration processes is due to the fact that when citizens leave these territories, they lose housing, work, property, financial resources, and documents (Ishchenko, Shvets et al., 2022, p. 171). In the light of these processes, a fundamentally new category of the population of internally displaced persons appeared in the field of view of the police, whose representatives, from the point of view of criminology, were in a state of increased victimization, and from the point of view of management processes, they required the development of new approaches and specific preventive measures by the police, including services aimed at social assistance to such persons.

2. *The principle of partnership with the public largely stems from the previous one, forming the organizational basis for the provision of police services.* A. Komziuk and O. Kyrychenko (2021, p. 47) placed more emphasis in ensuring that there should be effective exercise of powers in when it concerns aspect of public safety and order, the National Police of Ukraine has to interact with other state authorities, local self-government bodies, citizens and public organizations. Thus, the complexity and importance of the tasks entrusted to law enforcement agencies pushes them to effectively interact with governmental and non-governmental organizations, as well as public organizations.

Really, placing an analysis in essence of principle before the introduction of martial law where some domestic scholars pointed out that the effectiveness of interaction between public authorities and civil society is reduced due to the bureaucratization of this process, which is manifested in the dominance of a purely statistical approach to analyzing citizens' appeals, disregard for public consultations, ignoring the proposals of public expert commissions, and a formal approach to the functioning of public councils under ministries (Tikhonova et al., 2022, p. 168–169).

Under martial law, this organizational and legal basis for the activities of domestic law enforcement agencies has undergone significant restructuring, as the new security realities have brought law enforcement agencies closer to the public. Police officers, as a service under martial law, were one of the key agents of this "rapprochement" in terms of their daily communication with the public, including through social media and messengers. The extreme living conditions of the population under martial law leveled out certain elements of ostentation and superficiality in the course of law enforcement agencies' public relations activities. At the same time, the effectiveness of such interaction and the presence of police officers at the place of service required from police managers of different levels appropriate organizational and managerial support at the level of management decisions aimed at ensuring long-term residence of personnel in police premises, preventing bad habits among personnel permanently staying in such premises, and preventing fires and other emergencies. A separate element of organizational and managerial support for police interaction with the public is the provision of recreation and sports areas for police personnel in police premises, since, as some researchers note, significantly better mental health indicators (well-being, activity, mood, mental performance) are found in law

enforcement officers with a high level of physical fitness, which is especially important in martial law conditions (Okhrimenko et al., 2022, p. 482).

3. *The principle of countering separatism among law enforcement personnel and in society as a whole.* According to scholars, the ensuring a proper enforcement of intelligence services and capable armed forces are an constitutes an important factor in matters concerning countering separatism. Definitely the success in fighting separatism largely depends on the effectiveness of preventive measures aimed at preventing the formation of separatist armed groups and the state's ability to build an adequate national and foreign policy. With all this is place, it becomes the responsibility of the State of Ukraine in improving its legal framework f

all in the combating of separatism. What is of peculiar here is in advising the development and implementation of effective preventive, punitive and restorative mechanisms in order in counteracting and preventing separatism and related phenomena in a more clear and detailed manner (Gusarov et al., 2020, p. 35).

It is law enforcement agencies that have the primary role in the process of countering separatism in Ukraine. The complexity of this process is largely due to the external financial and organizational support of separatist sentiments by the aggressor state, as well as the presence of fundamentally new problems for domestic public servants and their families who were forced to find themselves under occupation. The solution to these problems largely comes down to establishing training for future law enforcement officers in higher education institutions with specific learning conditions, fostering the relevant qualities and values in them, as well as active participation of research and teaching staff and students in law enforcement activities and national and patriotic education of the younger generation.

## CONCLUSIONS

It is summarized that in the conditions of martial law, domestic law enforcement agencies faced new challenges that restructured their activities in accordance with new security realities.

In the course of analyzing the essence of legal principles, we drew attention to the leading role of the moral component for a society which is going through a period of recent upheavals inextricably linked to imperfect regulatory, legal, organizational and managerial support for the functioning of any organization, including law enforcement agencies.

The position was developed that the fundamental principles of law are beyond the limits of the development of the legal system. Such boundaries become especially important in the period of dynamic transformations. At the same time, the Ukrainian experience demonstrates to the whole world another side of the transformations associated with the full-scale invasion of the Russian Federation on February 24, 2022. In such conditions, state institutions face fundamentally new problems that have neither methodological foundations for solutions formed by many years of practice, nor models for imitation in other countries of the world due to the appeal by the aggressor state to new forms and methods of conducting hostilities, as well as frankly terrorist acts against the civilian population and civilian infrastructure of Ukraine.

The study opens up the prospects for developing a comprehensive system of organizational and managerial support for the long-term stay of law enforcement personnel in barracks status, prevention of bad habits among personnel, prevention of fires and other emergencies, as well as prospects for active participation of research and teaching staff and students of higher education institutions with specific learning conditions in law enforcement activities and national and patriotic education of the younger generation.

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