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STATE CONTROL AS A MEANS OF ENSURING THE OBSERVANCE OF CITIZENS' RIGHTS IN CONDITIONS OF THE LEGAL REGIME OF MARITAL STATE IN UKRAINE

ДЕРЖАВНИЙ КОНТРОЛЬ ЯК ЗАСІБ ЗАБЕЗПЕЧЕННЯ ДОТРИМАННЯ ПРАВ ГРОМАДЯН В УМОВАХ ПРАВОВОГО РЕЖИМУ ВОЄННОГО СТАНУ В УКРАЇНІ

The scientific article is devoted to the research of state control as a means of ensuring compliance with the citizen's rights in the conditions of the legal regime of martial law in Ukraine.

Martial law is a special legal regime introduced in Ukraine or in some of its locations in case of armed aggression or threat of attack, danger to the state independence of Ukraine, its territorial integrity and provides for the provision of appropriate state authorities, military command, military administrations and local self-government bodies powers necessary to avert the threat, repulse armed aggression and ensure national security, eliminate the threat of danger to the state independence of Ukraine, its territorial integrity, as well as the temporary, threat-induced, restriction of the constitutional rights and freedoms of human's and citizen's rights and legitimate interests of legal entities with the indication period of validity of these restrictions.

The article defines the ways of improving control and monitoring activities in the conditions of the legal regime of martial law as a means of protecting the rights of citizens in the activities of law enforcement bodies of Ukraine. Various aspects of control and supervision as a phenomenon of legal validity are characterized; the peculiarities of regulatory and legal principles, concepts, meaning and system of administrative and legal means of protection of citizens' rights are defined. The scientific study of control and supervision is mainly aimed at justifying their place in the mechanism of state management in certain spheres of public life, at the same time, not paying due attention to the importance of control and supervision activities in ensuring the protection of the rights, freedoms and legitimate interests of a person and a citizen. in particular, in such a priority area as law enforcement activities. The effective implementation of the law enforcement function of the state requires the granting of law enforcement bodies with sufficient state powers, the possibility of using state coercion in certain cases, the necessary legal means and guarantees for the implementation of the given law enforcement powers in the conditions of the legal regime of martial law. This, as well as numerous shortcomings of the organization of the work of law enforcement bodies, act as a breeding ground for possible abuses, official negligence, employees exceeding official powers, using official positions contrary to the interests of the service, and other violations of law and order.

Key words: *martial law, rights of citizens, administrative and legal means, control, supervision.*

Наукова стаття присвячена дослідженню державного контролю як засобу забезпечення дотримання прав громадян в умовах правового режиму воєнного стану в Україні.

Воєнний стан – це особливий правовий режим, що вводиться в Україні або в окремих її місцевостях у разі збройної агресії чи загрози нападу, небезпеки державній незалежності України, її територіальній цілісності та передбачає надання відповідним органам державної влади, військовому командуванню, військовим адміністраціям та органам місцевого самоврядування повноважень, необхідних для відвернення загрози, відсічі збройної агресії та забезпечення національної безпеки, усунення загрози небезпеки державній незалежності України, її територіальній цілісності, а також тимчасове, зумовлене загрозою, обмеження конституційних прав і свобод людини і громадянина та прав і законних інтересів юридичних осіб із зазначенням строку дії цих обмежень.

У статті визначаються шляхи удосконалення контрольної-наглядової діяльності в умовах правового режиму воєнного стану як засобу захисту прав громадян у діяльності правоохоронних органів України. Охарактеризовано різні аспекти контролю та нагляду як явищ правової дійсності; визначено особливості нормативно-правових засад, поняття, значення та систему адміністративно-правових засобів захисту прав громадян. Наукове вивчення

контролю та нагляду спрямовується переважно на обґрунтування їх місця у механізмі державного управління в тих чи інших сферах суспільного життя, у той же час, не приділяючи належної уваги значенню контрольної-наглядової діяльності в забезпеченні захисту прав, свобод і законних інтересів людини і громадянина, зокрема, у такій пріоритетній сфері як правоохоронна діяльність. Ефективна реалізація правоохоронної функції держави передбачає наділення правоохоронних органів достатніми державно-владними повноваженнями, можливістю застосування у визначених випадках державного примусу, необхідними правовими засобами й гарантіями реалізації наданих правоохоронних повноважень в умовах правового режиму воєнного стану. Це, а також численні недоліки організації роботи правоохоронних органів, виступають живильним середовищем можливих зловживань, службової недбалості, перевищення працівниками службових повноважень, використання службового становища всупереч інтересам служби, інших порушень законності та правопорядку.

Ключові слова: воєнний стан, права громадян, адміністративно-правові засоби, контроль, нагляд.

Actuality of theme. Effective implementation of the law enforcement function of the state involves giving law enforcement agencies sufficient state powers, the possibility of applying in certain cases of state coercion, the necessary legal means and guarantees for the implementation of law enforcement powers. This, as well as numerous shortcomings in the organization of law enforcement, are a breeding ground for possible abuse, negligence, abuse of office, use of official position against the interests of the service, other violations of law and order.

It should be noted that various aspects of control and supervision as phenomena of legal reality have previously been considered by such scientists as O.F. Andriyko, S.F. Denisyuk, O.M. Muzychuk, A.Y.Prysyazhnyuk, I.I.Trokhanchenko, V.V.Shemchuk and others. In view of this, the issues of control and supervision activities as a means of protecting the rights of citizens in the activities of law enforcement agencies of Ukraine are considered relevant.

The purpose of this article is to identify ways to improve control and supervision activities as a means of protecting the rights of citizens in the activities of law enforcement agencies of Ukraine.

Achieving this goal involves solving the following tasks:

1) describe various aspects of control and supervision as phenomena of legal reality;

2) to determine the features of normative-legal bases, concepts, meaning and system of administrative-legal means of protection of citizens' rights.

The scientific study of control and supervision is aimed primarily at substantiating their place in the mechanism of public administration in certain spheres of public life, at the same time, without paying due attention to the importance of control and supervision in ensuring the protection of human rights, freedoms and legitimate interests. in particular, in such a priority area as law enforcement.

The current legislation, which determines the legal status of specific law enforcement agencies and certain areas of their activities (operational and investigative, intelligence activities, etc.), establishes only a list of subjects of control and supervision, at the same time, without defining the exact tasks of control. supervisory activities in the law enforcement sphere (the key of which should be ensuring the observance of citizens' rights), nor the competence of such controlling and supervisory bodies, nor the procedure for exercising control and supervision over the activities of law enforcement agencies.

All this actualizes the application of specialized legislation on control and supervision activities in the state in order to protect the rights of citizens. At the same time, we must immediately point out the need to improve the subject of civil control, which is not fully consistent with its objectives. One of such tasks is to create conditions that make it impossible to use law enforcement agencies to restrict the rights and freedoms of citizens, which directly requires the prevention and cessation of violations of citizens' rights in the activities of law enforcement agencies. At the same time, as a subject of the system of democratic civil control, neither the observance of the rights, freedoms and legitimate interests of man and citizen (and not only law enforcement officers) nor legality in the activities of law enforcement agencies are clearly defined. Note that such an incorrect arrangement of the main vectors of civil control over law enforcement agencies has a negative impact on the productivity of this means of protecting the rights of citizens in the activities of law enforcement agencies.

In our opinion, the real adaptation of law enforcement agencies in accordance with the requirements of modern democratic social rule of law requires direct legislative recognition of

the main and priority purpose of control and supervision of law enforcement agencies to ensure, firstly, respect for citizens' rights and, secondly, constitutional legality.

The system of civil control over law enforcement agencies generally consists of the following types of control: parliamentary control; presidential control; government control; municipal control; judicial control; prosecutorial supervision; public control. At the same time, we must immediately determine the methodological error of inclusion of prosecutorial supervision in the system of civil control, which, as already emphasized above, differs significantly from control activities in its nature and procedure of implementation.

Involvement of the public in control and supervision of law enforcement and other state bodies is important in terms of building the rule of law and the formation of civil society in Ukraine, one of the factors of which is to guarantee and respect the rights, freedoms and legitimate interests of man and citizen. It is for this purpose that the special urgency of the functioning of a special system of public control over the activities of law enforcement agencies is seen.

For the most part, the public can only request and receive information from law enforcement and other bodies on law enforcement activities, participate in public discussions, conduct public examinations of relevant bills, decisions and programs, and so on. The formation of legal mechanisms for access to public information, including on the observance of citizens' rights in the activities of law enforcement agencies, and there are positive trends of intensifying public monitoring in this area, however, there is still a real inability of the public to legally influence the organization and activities of law enforcement agencies. Public control in Ukraine today remains quite ineffective, not providing sufficient influence on public relations in the field of public administration. Note that another separate type of control O.F. Andriyko calls control by bodies and officials of local government [1, p. 357]. In our opinion, in this case the model of municipal supervision over observance of legality (including the rights of citizens) in activity of law enforcement agencies which should provide not only free, is more acceptable, full and

timely receipt by local governments of relevant information, but also the opportunity to raise the issue of eliminating the identified violations or the law enforcement agencies themselves or other competent institutions. Under this approach, the real involvement of local governments in the control and supervision of law enforcement agencies should be carried out taking into account the principle of autonomy and partnership of state and municipal authorities.

The competence of each subject is an important part of the general parliamentary control, which allows not only to ensure the application of measures to influence the activities of law enforcement agencies, but also in a legal way to identify violations of human rights, freedoms and legitimate interests. Quite promising in the context of protection of citizens' rights in the activities of law enforcement agencies is parliamentary control, which is a special form of state control, which goes beyond the traditional notion of state control. We do not agree with O.M. Muzychuk [2] on the need to reduce all subjects of parliamentary control only to the Verhovna Rada of Ukraine. Based on art. 85 of the Constitution of Ukraine of 28.06.1996 [3] the parliament is endowed with quite effective means of responding to violations of community rights in the activities of law enforcement agencies, which, in particular, are law enforcement, approval of national programs of law enforcement reform and development, participation in staffing management of individual law enforcement agencies.

This is provided by various forms of checking the activities of law enforcement agencies for compliance with the law: parliamentary investigation, parliamentary inquiry, parliamentary appeal, parliamentary hearing, hearing reports of the Commissioner of the Verkovna Rada of Ukraine, other officials and law enforcement officials observance of the rights, freedoms and legitimate interests of a person and a citizen in the activity of law enforcement bodies of Ukraine.

Not all subjects of government control are authorized to control the activities of law enforcement agencies. Thus, those central executive bodies that have subordinate law enforcement agencies directly organize and ensure the implementation of legislation on law enforcement activities; ensure objective and

timely informing of the highest state authorities and the public about the situation in subordinate law enforcement agencies. At the same time, all other executive bodies can only «facilitate» the activities of law enforcement agencies, which in reality is in no way related to control and supervision activities, especially in terms of respect for the rights of citizens.

Thus the development of the system of government control over the observance of citizens' rights in the activities of law enforcement agencies requires the orientation of the entire system of executive bodies to some extent to identify violations of citizens' rights in the activities of law enforcement agencies and ensure their elimination. In addition, it is urgent to define the subjects, grounds, forms, methods, procedures, consequences of government control, as well as its objects, as this government control does not apply to all law enforcement agencies (for example, courts).

The activity of law enforcement agencies is the object of a separate judicial control, which, in fact, is a kind of state control, which is carried out by courts as judicial authorities in a special procedural order to prevent and eliminate violations of law in law enforcement.

V.M. Garashchuk considers judicial control as a law-based activity of courts to verify the legality of acts and actions of executive bodies (public administration), their officials, restoration of violated rights of individuals and legal entities, and if necessary – application to violators of legal sanctions [4; 221]. Note that in science, respect for the rights of citizens as a subject of judicial control over the activities of law enforcement agencies is usually not singled out, instead, it includes compliance with the law: the use of coercive measures; imposition of administrative penalties; making managerial or procedural decisions; conducting certain law enforcement activities. In our opinion, ensuring the rule of law in all these cases, which results in the legitimacy of law enforcement agencies, will inevitably involve ensuring and respecting the rights, freedoms and legitimate interests of man and citizen in the law enforcement sphere.

Control over the activities of law enforcement agencies and the observance of citizens' rights are important administrative and legal means

of protecting the rights of citizens. Improving the system of control and supervision over the observance of citizens' rights in the activities of law enforcement agencies requires a clear establishment of the essence of control and supervision as a means of ensuring legality, as well as legislative definition of observance of citizens' rights as a subject of such control and supervision. supervisory activities.

The full-scale invasion of the territory of Ukraine forced the state to switch to operative functioning under the legal regime of martial law and caused the issue of protection of citizens' rights under martial law. Martial law is a special legal regime introduced in Ukraine or in some of its localities in case of armed aggression or threat of attack, danger to the state independence of Ukraine, its territorial integrity and provides for the provision of appropriate state authorities, military command, military administrations and local self-government bodies powers necessary to avert the threat, repulse armed aggression and ensure national security, eliminate the threat of danger to the state independence of Ukraine, its territorial integrity, as well as the temporary, threat-induced, restriction of the constitutional of human's and citizen's rights and freedoms and the rights and legitimate interests of legal entities with the indication period of validity of these restrictions.

Today, the legal regulation of the protection of human and citizen rights during martial law is regulated by normative acts [5].

Protection of legal rights and freedoms of citizens is one of the key duties of the state. However, in the conditions of the introduction of martial law or a state of emergency, separate restrictions on the rights and freedoms of a person and a citizen are established, namely: inviolability of housing; secrecy of correspondence, telephone conversations, telegraphic and other correspondence; non-interference in personal and family life; freedom of movement, free choice of place of residence, the right to freely leave the territory of Ukraine, with the exception of restrictions established by law; the right to freedom of thought and speech, to the free expression of one's views and beliefs; the right to participate in the management of state affairs, in all-Ukrainian and local referendum, to freely elect and be elected to state and local

self-government bodies; the right to assemble peacefully, without weapons, and hold meetings, rallies, marches and demonstrations; the right to own, use and dispose of one's property, the results of one's intellectual and creative activity; the right to entrepreneurial activity, which is not prohibited by law; the right to work; the right to strike to protect one's economic and social interests; the right to education.

Taking into account the requirements of the legislation, appropriate restrictions of rights are determined: use of capacities and labor resources of enterprises, institutions and organizations of all forms of ownership for the needs of defense, change of their work regime; forced expropriation of property in private or communal ownership, seizure of property of state enterprises, state economic associations for the needs of the state; introduction of a curfew (prohibition of being on the streets and other public places during a certain period of the day without specially issued passes and certificates); checking documents of persons, and, if necessary, conducting an inspection of things, vehicles, baggage and cargo, office premises and citizens' homes, with the exception of restrictions established by the Constitution of Ukraine; prohibition of holding peaceful meetings, rallies, marches and demonstrations, other mass events; establishment of military housing obligation for individuals and legal entities for the quartering of military personnel, members of the rank and file of law enforcement agencies, personnel of the civil defense service, evacuated population and accommodation of military units, divisions and institutions.

It should be noted that these measures cannot significantly limit the fundamental rights of citizens. In addition, any restrictions must be proportionate to the goals they pursue.

It is decisive that the Constitution of Ukraine, as the main guarantor of ensuring and protecting the rights and freedoms of citizens, contains a list of rights that cannot be limited even during the period of martial law: there can be no restrictions based on race, skin color, political, religious and other beliefs, gender, ethnic and social origin, property status, place of residence, language or other characteristics; citizens of Ukraine cannot be deprived of citizenship and the right to change citizenship; the inalienable right to life cannot be violated; on

respect for dignity, freedom and personal integrity; the right to send individual or collective written appeals or to personally address state and local self-government bodies is not subject to restriction; the right to housing, marriage and equal rights and obligations in marriage and family cannot be limited; it is unacceptable to violate the equality of children in their rights, regardless of origin; the right to protect rights and freedoms in court is not subject to limitation; for compensation with the funds of the state or local self-government bodies for material and moral damage caused by illegal decisions of state authorities; the right to professional legal assistance cannot be limited; the right not to be held twice liable for the same kind of legal responsibility for the same offense; presumption of innocence; the right to defense and refusal to testify or to give explanations or statements about oneself, family members or close relatives, whose circle is defined by law. Also a labor obligation may be introduced for able-bodied persons who are not involved in work in the defense sphere and in the sphere of life support of the population and are booked by enterprises for the period of mobilization and wartime for the purpose of performing works of a defensive nature.

Guarantees for the protection of the economic and social interests of Ukrainian citizens: in the course of the work of persons subject to compulsory labor, compliance with such standards as the minimum wage, the minimum vacation period and rest time between shifts, the maximum working time, taking into account the state of health is ensured persons, etc. During the involvement of a working person in the performance of labor service outside the place of his work under the employment contract, after the execution of such work, the appropriate workplace (position) is kept for him.

One of the fundamental values of human civilization is a human dignity. The use of torture and ill-treatment completely destroys the principle of human dignity. Therefore, the fundamental basis for protecting the rights of citizens under martial law is the prohibition of torture. It has found its inclusion in all major international instruments, starting from the general principles of international law, international documents of customary law to international treaties at the universal and regional levels [6].

The system of administrative and legal means consists of legal phenomena, instruments, measures, actions of different nature and purpose, carried out by different subjects and at different stages of human rights activity, which jointly solve the task of preventing and stopping violations, as well as restoring rights, freedoms and legitimate interests of a person and a citizen under martial law.

For the protection of their legal rights and interests under martial law, citizens should contact law enforcement agencies – units of the National Police of Ukraine, the Prosecutor's Office, the Security Service of Ukraine, as well as other authorities that continue to work in the area. You can also protect your rights by going to court [7].

Martial law, by definition, is a restriction of citizens' rights. The only possible option for challenging restrictions on civil liberties is a lawsuit to the European Court of Human Rights [8].

For today, because of the introduction of martial law, some state bodies have suspended the provision of responses to citizens' appeals and requests for public information not related to martial law, military activities, provision of medical aid, evacuation of the population, etc.

The impossibility of proper and timely processing of appeals, requests and providing answers is due to the fact that state bodies, first of all, carry out the measures necessary to avert the threat, repel armed aggression and ensure national security. Such measures, which may affect the possibility of realizing individual rights of the applicants, are: establishment of enhanced security and a special mode of operation of the authority, the institution to which the appeal is submitted; introduction of a curfew in a certain territory; establishment of a special regime of entry and exit, restriction of freedom of movement, as well as the movement of vehicles.

Given the implementation of these and other security measures, the following rights of applicants may be restricted: the right to be personally

received by managers and other officials of state authorities, local governments, enterprises, institutions, and organizations, regardless of ownership; the right to be present at the consideration of an application or complaint, to present arguments in person to the person who checked the application or complaint, to get acquainted with the inspection materials; the right to submit additional materials directly to the person reviewing the appeal, etc.

Thus, the timeliness of consideration of appeals, requests for public information depends on the object to which the appeal or request is sent, its mode of operation and the availability of technical capabilities to process correspondence (means of communication, the Internet), the proximity of the institution to the venue of military operations, the nature of the requested information and urgent need for it, etc. Therefore, measures regarding work under martial law in this case can be: the use of telephone communication (if possible through hotline phones) to provide citizens with answers to questions, the solution of which belongs to the competence of the institution, as well as socially important information; providing a response through official websites, social networks, providing information related to life, health, freedom and security (for example, about safe evacuation routes, providing medical assistance, providing humanitarian assistance, etc.); ensuring the timely publication of reliable and accurate other socially important information (for example, about the state of the environment, accidents, disasters and other extraordinary events that have occurred or may occur and threaten the safety of citizens) on the administrator's official web pages and in social networks; in case of providing information in response to a request, choose the most acceptable method, for example via e-mail, and in the case of providing the requested information in printed form, consider the possibility of exempting the requester from payment of reimbursement of the actual costs of copying and printing in the conditions of martial law.

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