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NATIONAL POLICE AS A COMPONENT OF THE SECURITY AND DEFENCE SECTOR IN COUNTERING RUSSIAN AGGRESSION IN UKRAINE

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Based on theoretical and legal analysis, the article summarizes the peculiarities of police activity as a component of the security and defence sector during the period of russian aggression.

It has been proved that despite the full-scale undeclared criminal invasion, the Armed Forces of Ukraine, with the strong financial and military support of Western partners, are victoriously overcoming the resistance of the russian occupiers and are carrying out a systematic counter-offensive against the “world’s second victorious russian army”, and at the same time, heroically destroying the enemy’s military equipment and manpower on a daily basis, far-sightedly take strategic decisions on reforming the activities of public authorities, and especially of the security and defence sector.

It has been determined that the formation and improvement of the security and defence sector of Ukraine has always been relevant, both in peacetime and in the current period of the russian invasion. At the same time, the doctrinal provisions on their legal status and its improvement in wartime remain insufficiently developed and require theoretical and practical in-depth research.

The miscalculations, made in the organization of defence industry procurement, headed by the Ukroboronprom Defence Industrial Concern, have been outlined. However, since the beginning of February 2022, the state has adopted a number of legislative changes aimed at improving the Armed Forces of Ukraine current model, law enforcement agencies and the military-industrial complex, and bringing them in line with NATO and European Union standards.

The state of the police as a security and defence sector entity during martial law proves that Ukrainian law enforcement officers, together with the Armed Forces of Ukraine, are boldly repelling the criminal russian attack, protecting the lives and health of the Ukrainian population, defending the territorial integrity and independence of Ukraine. It has been stated that one of the important factors in optimizing the activities of the police during the war is the concern of the state authorities for improving their social protection.

It has been noted that the police, in addition to performing own duties during martial law aimed at identifying and prosecuting criminals, searching for missing persons, and taking preventive measures to protect public order and security, carry out activities, related to the clearance of enemy mines by the National Police sappers, and the destruction of unexploded ordnance at the risk of life and health. According to statistics, about 50 specialists in pyrotechnics were killed, and more than 100 were injured during humanitarian demining.

It has been stated that at the initiative of the Ministry of Internal Affairs, 8 assault brigades are currently being formed on the basis of the National Police, the State Border Guard Service and the National Guard: “Stalevy Kordon”, “Chervona Kalyna”, “Lyut”, “Rubizh”, “Spartan”, “Kara-Dag”, “Bureviy” and “AZOV”. The basis of the assault brigades will be really motivated and patriotic military personnel and former law enforcement officers. In addition, the main priority in ensuring the safe life of the population under martial law is to strengthen police cooperation with local governments and public organizations and to develop joint measures to protect public order and security.

It has been noted that despite a number of regulations adopted during martial law aimed at improving the conditions of police service, there are still problems with the failure to resolve issues related to strengthening administrative and criminal liability for administrative offences and war crimes; abolition of the average salary at the place of work; unregulated procedure for serving a summons to territorial recruitment centres, etc.

It has been proved that in the course of ensuring public order and security during the russian-Ukrainian war, the police in its professional activity uses not only organizational and legal forms and methods with wide participation of the security and defence forces, territorial defence and public formations, but also hone the skills in conducting operational and search activities aimed at combating crime and eliminating enemy sabotage groups, which enables solving the tasks set in countering russian aggression under martial law.

Key words: National Police, security and defence sector, Armed Forces of Ukraine, russian-Ukrainian war, protection of public order and security, public formations, martial law.

Formulation of the problem. In the context of russian aggression against Ukraine, the primary task and duty of public authorities is to provide administrative and legal support for security and defence needs. Today, the Armed Forces of Ukraine, together with other law enforcement agencies, are conducting successful combat operations, defending the territorial integrity, independence and state sovereignty of Ukraine.

Side by side with the servicemen protecting public order and security under martial law, countering organized crime, identifying individuals, involved in collaboration activities, documenting war crimes of the russian occupiers on a daily basis and performing other procedural actions in accordance with the Constitution and the Law of Ukraine “On the National Police”, the National Police has to carry out life-threatening activities in this difficult time for the country, protecting the rights and freedoms of citizens, society and the state.

The police also has to carry out the difficult work of identifying the dead people who died because of torture caused by the russian aggressor. As a result of Russia’s invasion of Ukraine, 16.502 people died from the actions of russian war criminals in 2022. During this period, the National Police discovered 21 mass graves in the de-occupied territories, from which 1,033 bodies of civilians and soldiers were exhumed [1].¹

¹ According to the National Police, the largest number of dead was found in Donetsk region – 4,746 people, Kharkiv – 3,784, Mykolaiv – 2,207, Kyiv – 2,072, Chernihiv – 899, Luhansk – 815, Kherson – 686, Sumy – 341, Zhytomyr – 283, and Zaporizhzhia – 66 [1].

Analysis of research and publications. The question of the place of the national police as a component of the security and defence sector has been the subject of research by domestic scholars and practitioners in this area. The most active researchers in this area were: H. Atamanov, V. Borshchevskiy, N. Hetmantseva, S. Dombrovska, V. Donenko, S. Yesimov, M. Kovaliv, O. Komisarov, V. Kolpakov, O. Kuzmenko, A. Kryshchenko, O. Kohut, Y. Nazar, V. Ortynskiy, O. Ostapenko, V. Petkov, V. Sokurenko, L. Sopilnyk, V. Fathutdinov, O. Khytra, H. Yarmaki and others. However, the problems of police activity as a component of the security and defence sector in countering Russian aggression in Ukraine during wartime remain insufficiently developed and require theoretical and practical in-depth research

Thus, when defining multifunctional police activities in wartime, it should be noted that they require high professional training, psychological endurance and adherence to the rule of law and discipline.

The purpose of the article. To achieve this goal, the following *tasks* are to be solved:

- to analyse the legal framework for ensuring the activities of the security and defence sector;
- to study the problematic issues of the security and defence sector entities' activities under martial law;
- to determine the administrative and legal support of the police in the state of the russian-Ukrainian war;
- to outline the peculiarities of police activity under martial law;
- to formulate problematic issues of administrative and legal support of the police in the context of russian aggression;
- to propose possible solutions to problematic issues.

Main material presentation. Despite the full-scale horrific invasion of the russian aggressor, Ukraine, with the strong support of its Western partners, is doing everything necessary to resist and carry out a systematic offensive of the Armed Forces of Ukraine (AFU) against the russian military terrorists, while heroically grinding down the enemy's military equipment and manpower on a daily basis, and making far-sighted strategic decisions on reforming the activities of public authorities, and especially the security and defence sector.

On March 2, 2022, a UN meeting was convened to address the criminal invasion of Ukraine by the russian occupiers, which adopted the UN General Assembly Resolution "Aggression against Ukraine" (hereinafter – the Resolution). The members of the UN General Assembly, in accordance with PP6 PP12, expressing grave concern at reports of attacks on civilian objects such as residential buildings, schools and hospitals, as well as civilian casualties, including women, the elderly, persons with disabilities and children, and in accordance with PP13 PP13, recognizing that the military actions of the russian federation on the sovereign territory of Ukraine are on a scale that the international community has not seen in Europe for decades and that urgent action is needed to save this generation from the scourge of war, the Resolution demanded that the russian federation immediately, fully and unconditionally withdraw all its armed forces from the territory of Ukraine within its internationally recognized borders [2].

The resolution, except for russia itself, Syria, North Korea, Belarus and Eritrea, was supported by 141 UN states, which is a record number of votes since 2014.

"This resolution is not only an important political signal of isolation of Russia and a record of its crimes, including aggression. It will also be used in international courts"– D. Kuleba emphasized [3].

In addition, the Secretary-General's speech at a meeting with journalists after the UN General Assembly vote on Ukraine expressed a unified assessment of the territorial integrity and sovereignty of Ukraine, which were violated by Russia as a result of its aggression against Ukraine.

The formation and improvement of the security and defence sector of Ukraine has always been relevant, both in peacetime and in the current period of the Russian invasion. Based on the provisions of the Law of Ukraine "On National Security of Ukraine" of June 21, 2018, No. 2469-VIII [4], the security and defence sector consists of four interrelated blocks: 1) security forces, which unite law enforcement,

intelligence agencies, state special purpose agencies with law enforcement functions, civil defence forces; 2) defence forces, which include the Armed Forces of Ukraine, as well as other military formations formed in accordance with the laws of Ukraine, law enforcement and intelligence agencies, special purpose agencies with law enforcement functions; 3) the military-industrial complex, which united more than 100 military legal entities before the war; 4) a wide front of public formations, volunteer movement, which, in the pre At the same time, the doctrinal provisions on their legal status and its improvement in wartime remain insufficiently developed and require theoretical and practical in-depth research.

Given the mistakes made as a result of ineffective military policies before and after 2014, which led to the deterioration of the security and defence sector, Ukraine's aspirations to join the Euro-Atlantic community have determined the general course of security and defence reforms. However, the situation in the defence industry, headed by the giant state-owned defence industry concern Ukroboronprom (UOP), which unites more than 100 uncompetitive and unprofitable industrial entities, is particularly worrying "...for many years...characterized by outdated legal forms of state-owned enterprises and inefficient management practices, which limited opportunities for investment and international cooperation" [5]. On May 27, 2015, under No. 662-p, based on the implementation of the Sustainable Development Strategy "Ukraine-2020", approved by the Decree of the President of Ukraine of January 12, 2015, No. 5 [6], the Cabinet of Ministers of Ukraine adopted the "Strategy for Improving the Efficiency of Business Entities of the Public Sector of the Economy" [7], which stipulates that state unitary enterprises performing mainly commercial functions should be transformed into state joint stock companies and this, foremost, also concerned the transformation of state-owned enterprises in the defence industry. Only later, the process of transformation of Ukroboronprom began in December 2021, which was interrupted by the russian-Ukrainian war. And further hopes for improvement in the organizational and legal field of the UOP with the adoption of the Law of Ukraine "On Peculiarities of Reforming State-Owned Defence Enterprises" of July 13, 2021, No. 1630-IX [8] do not bode well, because as today's realities show "...the gap between the centre that generates the model of state policy in the defence industry (Ministry of Strategic Industry) and the centre that actually manages the enterprises (UOP) is deepening..." [9].

However, already in the first days of the war after February 24, 2022, a number of legislative changes were adopted to improve the current model of the Armed Forces, law enforcement agencies, and the military-industrial complex and bring them in line with NATO and European Union (EU) standards. Thus, pursuant to the Decrees of the President of Ukraine dated February 24, 2022, No. 64 "On the Introduction of Martial Law in Ukraine" and No. 69 "On General Mobilization", the provisions of the Resolution of the Cabinet of Ministers of Ukraine dated February 28, 2022, No. 168 "On Certain Payments to Servicemen, Ranks and Commanders, Police Officers and Their Families During Martial Law" (as amended) (hereinafter – the Resolution) significantly increased the amount of financial support for the security and defence sector entities.

In addition, pursuant to Resolution No. 168 [10], the families of those who died or died within a year as a result of an injury (contusion, trauma, mutilation) sustained while defending the homeland during martial law from among the above-mentioned persons are paid a one-time financial assistance of UAH 15 million, which is distributed equally among all recipients provided for in Article 16-1 of the Law of Ukraine "On Social and Legal Protection of Servicemen and Members of Their Families".

Noteworthy is the Law of Ukraine of 15.03.2022, No. 2135-IX "On Amendments to the Law of Ukraine "On the State Budget of Ukraine for 2022"", which increased the expenditures of the special fund of the state budget for the development, purchase, modernization and repair of weapons, military equipment, facilities and equipment for the Ministry of Defence by UAH 67.6 billion by attracting a loan from the Government of the United Kingdom of Great Britain and Northern Ireland for the implementation of the investment project "Official Credit Support for the Defence Capability of the Armed Forces of Ukraine".

In addition, to ensure the necessary expenditures on national security and defence since the beginning of Russia's military attack, the Cabinet of Ministers of Ukraine adopted a number of decisions

and allocated funds from the state budget reserve fund (the amount of which was further increased, in particular, by reducing state budget expenditures in accordance with paragraph 22 of Section VI of the Budget Code of Ukraine) for the needs of the Armed Forces of Ukraine, other military formations, law enforcement and other state bodies involved in the implementation of relevant tasks to repel armed aggression.

In particular:

– the Ministry of Defence: for the development, purchase, modernization and repair of weapons, military equipment, facilities and equipment – UAH 36.4 billion, for the support of the Armed Forces of Ukraine – UAH 10.4 billion (Government Decisions No. 231 of 08.03.2022, No. 211-p of 11.03.2022, No. 234-p of 21.03.2022, No. 270-p of 05.04.2022);

– the Ministry of Internal Affairs to ensure the payment of additional remuneration and provision of food – UAH 26.8 billion (Government Decision No. 238-r of 03.22.2022, No. 252-r of 03.29.2022);

– the Security Service of Ukraine to ensure proper payment of salaries to military personnel (Government Decision No. 267-r of April 5, 2022) – UAH 1.45 billion.

In other words, since the beginning of full-scale hostilities, the Government's decisions have allocated UAH 75.05 billion from the state budget reserve fund to meet the key needs of our army [11].

The volunteer movement, which has been joined by numerous Ukrainian citizens and foreign citizens from all over the world who are not indifferent to the enemy aggression, is providing invaluable assistance to the security forces in countering the russian invasion. For example, "...according to the Ministry of Digital Transformation of Ukraine, posted on the official Telegram channel, more than UAH 260 million has been raised for the army through the Diya app, and more than 250,000 people have joined the fundraising. Thanks to these donations, the Ukrainian servicemen have already received: 12,206 bulletproof vests; 5,660 helmets; 12,666 communications equipment; 3,782 thermal imaging and daylight optics; 2,793 quadcopters; 11 pcs. military unmanned aerial systems; 1703 generators and other power sources; 72 cars; 2197 pieces of equipment for command posts (monitors, computers, printers and other office equipment); 1391 laptops; 2783 smartphones and tablets for artillery and aerial reconnaissance; 309 pieces of demining equipment" [11].

As for the international partners' resistance to russian aggression, their contribution amounted to 60 % of all additional funding received by the Ukrainian budget. As a result, from February 24 to December 14, Ukraine's budget received \$ 28.1 billion in international support from foreign partners, according to a report by the Center for Economic Strategies (CES). Among these funds, approximately UAH 12 billion are grants. The biggest contributors to the Ukrainian state budget were the United States, the EU, Germany, Canada, and the United Kingdom. Aid from these countries accounts for a third of the expenditures of the Ukrainian consolidated budget for 2022 as of early November, according to the CES [12].

After 2014, the world once again saw in the face of russia a real voracious predator disguised as an innocent lamb, which demonstrates all the cynical lies of the russian propaganda information product. In the russian-Ukrainian war, the russian information machine has set out not only to destroy the Ukrainian nation, but also to weaken the unity of the countries of the civilized world in supporting the Ukrainian people, who, firstly, are fighting for freedom at the cost of the lives of the state's defenders and defending European values from further revengeful destruction.

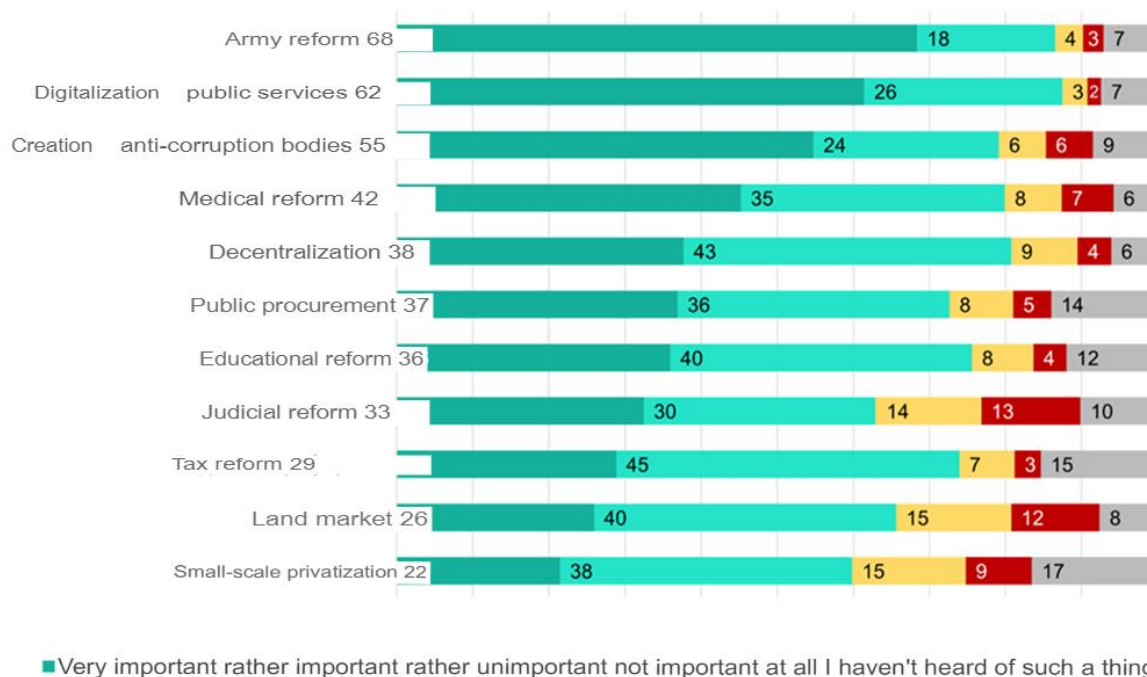
According to the head of British intelligence Jeremy Flemming, "The cyber-attacking tools used by the russian military were irresponsible and indiscriminate. The information operations were clumsy and interrupted by the publication of intelligence information. And the russian military's attempts to disrupt Ukraine's digital infrastructure and sow discord through digital means were met with a steady, professional and effective defence by Ukrainian cyber specialists" [13].

Thus, Ukraine is now the subject of a global struggle not only on the political, economic and social fronts, but also in the information field. Undoubtedly, the above-mentioned organizational and legal reform measures are primarily aimed at strengthening the defence potential and safety of the security and defence sector. It is difficult to agree with the opinion of some political scientists and sociologists that the pace of

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reforms in 2022 has slowed down somewhat compared to last year. The most important thing in achieving the goal of today's security and defence sector reform is to protect the country's defence and security forces and resources from a russian military invasion. The introduction of new defence and security legislation during the period of martial law was a kind of incentive that opened a window for new opportunities for its implementation, becoming a kind of catalyst for its improvement.

On October 120–30, 2022, the InfoSapiens sociological agency commissioned by Vox Ukraine with the support of the International Renaissance Foundation and the Embassy of Sweden in Ukraine conducted an all-Ukrainian online public opinion poll on the perception of reforms by Ukrainians.



Scheme 1. [14]

For example, more than two-thirds of respondents (68.4 %) consider army reform to be very important, 18.1 % consider it rather important, while only 2.7 % of respondents consider this reform to be not important at all.

Digitization of public services is very important for 61.5 % of respondents, rather important for a quarter of respondents (26 %), and completely unimportant for only 1.8 %. Decentralization is very important or rather important for 81 % of Ukrainians, and medical reform for 80 %. The creation of anti-corruption bodies was called very important by more than half (54.8 %) of respondents, rather important by about a quarter (24.3 %), and completely unimportant by 3.8 %.

Ukrainians named judicial reform, the implementation of the land market, and small privatization among the least important and those they had not heard of. In particular, judicial reform is very important or rather important for every third respondent (30.4 % and 32.5 %, respectively), while 13 % of respondents consider it not important at all, and rather unimportant – 13.9%. Land reform is considered very important and rather important by 26 % and 39.7 % of respondents, respectively, and by 11.6 % and 15.1 % as completely unimportant and rather unimportant. Small privatization is very important for 21 % of Ukrainians, rather important for 38 % of Ukrainians, rather or not at all important for 24 % of Ukrainians [14].

Also interesting is the sociological research conducted from August 5 to 12, 2022 by the Democratic Initiatives Foundation named after Ilka Kucheriva together with the sociological service of the Razumkov

Center – citizens of Ukraine believe in victory in this war. It is 72.5 % of respondents who believe that this faith unites Ukrainian society the most [15].

Turning to the analysis of the activities of the National Police in the Russian-Ukrainian war, starting from February 24, 2022, a significant number of amendments and additions were made to its legal status as a full-fledged subject of the security and defence sector, which regulate legal relations in this area. Thus, Article 8 of the Law of Ukraine “On the National Police” [16] was supplemented by part four, which states that “...during martial law, the police shall act in accordance with the purpose and specifics of its activities, taking into account those restrictions on the rights and freedoms of citizens, as well as the rights and legitimate interests of legal entities, which are determined in accordance with the Constitution of Ukraine and the Law of Ukraine “On the Legal Regime of Martial Law”.

In 2022, significantly expanded powers of the police were enshrined in Article 23 of the Law of Ukraine “On the National Police”, where, in addition to receiving free of charge from state bodies and territorial communities, legal entities of the state form of ownership, information necessary for the performance of the powers and tasks of the police, with the provision of an answer to the request of police officers within 10 days, they are also granted the right to detain, in cases provided for by law, persons detained for committing criminal or administrative offences in temporary detention centres; Competencies for demining operations of an operational nature; implementation of technical and forensic support for inspection of the scene of the event, including those related to fires and special explosive engineering works based on the facts of the explosions; receipt of reports about the discovery of explosive objects, the threat of an explosion; cooperation with Europol and act as the National Contact Point between the competent authorities of Ukraine and Europol; organization of interaction of law enforcement agencies and other state bodies of Ukraine with Interpol and Europol, as well as competent bodies of other states on issues related to the sphere of activity of Interpol and Europol, etc.

Section 5 of the Law of Ukraine “On the National Police” has undergone significant changes, similar to martial law, which expanded the list of police measures. This applies, respectively, to Article 32(1) part 1 of the Law, which grants the police the right to check documents and record the data contained in the documents, if a person has external features similar to those of a person who has left a place of detention of prisoners of war without a permission; the right to stop vehicles if there is information indicating that the driver or passenger of the vehicle is a person who has left a place of detention of prisoners of war without a special permission; Article 42(5) part 5 of Article 42 gives the police the right to use any means at hand, not only those special means provided for in Article 45 of the Law, and if necessary, to repel an attack that threatens the life or health of a police officer or other person, and to eliminate the danger in a state of emergency or when detaining a person who has committed an offence and/or is resisting [16].

Positive in ensuring social protection of the police is the Resolution of the Cabinet of Ministers of Ukraine of January 06, 2023, No. 15 “On Amendments to the Procedures Approved by the Resolutions of the Cabinet of Ministers of Ukraine of August 3, 2006, No. 1081 and September 2, 2015, No. 728”, which defines the Procedure for providing military personnel and their family members with the housing unit [17].

For the duration of martial law, in accordance with the Law of Ukraine of March 15, 2022, No. 2123-IX “On Amendments to the Laws of Ukraine “On the National Police” and “On the Disciplinary Statute of the National Police of Ukraine” [18], in order to optimize the activities of the police, the Disciplinary Statute of the National Police of Ukraine (hereinafter – DS NPU) was supplemented with Section 5, which reveals the content of the peculiarities of conducting an internal investigation during this period. Thus, in accordance with the terms of the internal investigation, it must be completed within 15 calendar days from the date of its appointment by the authorized head instead of the previously established 30 days during the non-wartime period (Article 26(3) of the NPU DS). In accordance with Article 26(6) of the Statute of the SB NPU, the day of completion of the internal investigation is the day of signing an order to bring a police officer to disciplinary responsibility or a certificate of absence of a disciplinary offense in the actions of a police officer, which is subject to registration with the police body. With regard to the

suspension of a police officer from performing official duties (position) for the duration of an internal investigation during martial law, under Article 28(1) of the MAPU, he or she may be temporarily assigned to another position. Another novelty of the MAPCU is that, according to Article 28(2) of the MAPCU, if a decision is made to entrust a suspended police officer with temporary performance of duties in another position, his/her service ID, special badge, service firearms and special equipment shall not be withdrawn. Another argument for increased responsibility for police officers in wartime is that a police officer may be brought to disciplinary responsibility for being on duty in a state of alcohol, drug and/or other intoxication, as well as for leaving the place of service without valid reasons that cannot be attributed to minor disciplinary offences (Article 29(4)(2) of the DS NPU).

With regard to appealing against a disciplinary sanction imposed during martial law, Article 31 of the MAPCU provides that a police officer has the right to file a report with his/her direct supervisor within 3 days to review or cancel the disciplinary sanction (if it concerns dismissal from office or service, within 5 days, but not later than the issuance of an order on the personnel to implement such a sanction); the report is reviewed within 7 days by checking the arguments of the police officer (the response is sent according to the same rules as the order for disciplinary action); within 15 days from the date of familiarization with the order, the police officer may appeal it to the administrative court [18].

It should also be noted that the police, like other law enforcement agencies, exercising their powers during martial law, in accordance with Article 901 of the Law of Ukraine “On the National Police”, given the performance of tasks with a risk to their lives, health and citizens, protection of public order and security, repulsion of russian aggression, are deprived of the right of the public to exercise public control during martial law. Namely, during martial law, there can be no annual report on the activities of the police; no-confidence resolution against police chiefs; meetings with local governments and the public; involvement of the public in the consideration of complaints about the actions or inaction of police officers [16].

In this regard, it should be noted that while the security and defence sector entities are successfully destroying the Russian predator, killing it on our land, searching for and bringing collaborators to justice, and investigating crimes committed by the Russian occupiers against the civilian population, during the period of martial law, some civil servants do not stop their corrupt activities, successfully warming their hands on criminal schemes in the “criminal distribution” of the state budget, The most dangerous today is the corruption that has penetrated the upper echelons, which has caused some of our partners to be concerned about the accounting and logistics program for financial and military aid, as well as the resonant dismissals of officials from the Ministry of Defence and the Ministry of Community Development of Territories and Infrastructure in early February, with searches of their premises and suspicions. And these criminal schemes continue after such sad statistics, which show that only “...last year, after internal audits, 621 officials from the Armed Forces of Ukraine and the Ministry of Defence were brought to justice...” [19]. Undoubtedly, martial law requires certain restrictions on the rights and freedoms of citizens, and as mentioned above, there is no public control over the activities of the security and defence sector. However, we are convinced that the russian aggressor can be defeated only with clean hands, with further counteraction to corruption and withdrawal from the war without its existence.

Today, in wartime, there is no territory that is safe for the police and citizens, especially when it comes to the clearance of enemy mines and the destruction of unexploded ordnance by the National Police sappers.

According to statistics, about 50 deminers were killed and more than 100 injured during humanitarian demining. Ukraine needs tens of billions of dollars to detect and neutralize explosive devices in a large-scale war. The United States of America intends to allocate \$ 89 million to Ukraine for demining [20].

In its activities, the police on demining and destruction of explosive devices are guided by the interagency order of the Ministry of Internal Affairs and the Ministry of Defence No. 833/443 of December 21, 2021 “On Approval of the Procedure for Implementing Priority Measures for the Disposal

(Destruction) of Explosive Devices on the Territory of Ukraine and Organization of Cooperation during their Implementation” [21].

The dangerous work of defusing (destroying) explosive ordnance, which requires maximum steel endurance, requires the police to follow consistent professional actions, starting with searching, demining and selecting unexploded ordnance for controlled detonations in places remote from populated areas to minimize risks to the public. “So far, the police have provided stabilization measures in 568 liberated settlements. In total, the SES units have inspected and cleared 76 hectares of territory and seized more than 300.000 explosive devices. About 30 % of the country’s territory still needs demining. Police and the State Emergency Service are the first to enter the de-occupied territories after the military. In extremely difficult conditions, they carry out stabilization measures – demining the territories, conducting “cleansing”, recording war crimes and working with the local population” [22]. In order to coordinate actions between the Ministry of Internal Affairs, the Ministry of Defence and the Ministry of Economy during martial law, on February 11, 2023, under the chairmanship of Prime Minister Denys Shmyhal, a decision was made at a coordination meeting to “...establish a state institution, the Ukrainian Centre for Humanitarian Demining, which will serve as a secretariat and think tank and which will collect and summarize information on demining needs from the Ministry of Defence, the Ministry of Internal Affairs, the State Emergency Service, regional military administrations, partner countries and international organizations” [23].

Developing the topic of the national police as a component of the security and defence sector in countering russian aggression in Ukraine, we cannot ignore the urgent issue of the formation of 8 assault brigades on the basis of the National Police, the State Border Guard Service and the National Guard at the initiative of the Ministry of Internal Affairs: “Stalevy kordon”, “Chervona Kalyna”, “Lyut”, “Rubizh”, “Spartan”, “Kara-Dag”, “Bureviy” and “AZOV”. The assault brigades will be composed of highly motivated and patriotic military personnel and former law enforcement officers who have raised to defend Ukraine since 2014, defending Donetsk and Luhansk regions, as well as soldiers with combat experience in the full-scale war to liberate the capital, Sumy, Kharkiv, Zaporizhzhia, Kherson and other regions of Ukraine. After passing a five-level medical and psychological test, a positive result in physical training, and several months of training and combat coordination, candidates for assault brigades will perform tasks in cooperation with the Armed Forces of Ukraine to liberate the temporarily occupied territories from the russian aggressor.

Police activities during the war became part of a powerful legal front to bring to justice russian war criminals and collaborators who have violated the basic human rights declared by the civilized international community. Ukrainian legislation does not contain the concept of “collaborator”, but by its very nature this term falls under the newly introduced Article 111-1 of the Criminal Code of Ukraine “Collaboration Activities” and in order to establish the circumstances of a criminal offence, it is necessary to conduct certain investigative (search) actions and operational measures related to the establishment and interrogation of witnesses...; review of information contained in the open Internet...; other covert investigative (search) actions, etc. By the way, to ensure the availability of information in open sources, the Office of the Prosecutor General, referring to the decision of the panel of judges of the Second Judicial Chamber of the Criminal Court of Cassation of the Supreme Court of 24.11.2020 in case No. 481/227/18, indicates that it should be digitally stored by archiving, which allows protecting and preserving information over time, including its authenticity, accessibility, identity, permanence, rendering (visualization) and comprehensibility [24]. Since the beginning of russia’s full-scale invasion of Ukraine, investigators of the National Police of Ukraine have opened 59.992 criminal proceedings on the facts of crimes committed on the territory of Ukraine by members of the armed forces of the russian federation and their accomplices.

Of these:

– 48.221 – according to the Article 438 of the Criminal Code of Ukraine (Violation of the laws and customs of war);

– 9.225 – according to the Article 110 of the Criminal Code of Ukraine (Trespass against the territorial integrity and inviolability of Ukraine);

- 2.348 – according to the Article 111-1 of the Criminal Code of Ukraine (Collaboration activities);
- 113 – according to the Article 111 of the Criminal Code of Ukraine (High treason);
- 37 – according to the Article 113 of the Criminal Code of Ukraine (Sabotage), etc. [25].

In addition, in the context of war, the functional responsibilities of the police have been expanded, and now include humanitarian missions related to the delivery of food and essential items to the population in the liberated territories, as well as to those on the front line. As the head of the National Police notes, “...despite the problems of wartime, the National Police continues to develop the Custody Records system, which has become mandatory for implementation in all temporary detention centres and police stations. This project has shown its effectiveness in ensuring human rights” [26].

The main priority in ensuring the safe life of the population under martial law remains the strengthening of police cooperation with local governments and civil society organizations and the development of joint measures to protect public order and security. The only special legal act that regulates relations in the field of public order and security is the Law of Ukraine of June 22, 2000, No. 1835-III “On the Participation of Citizens in the Protection of Public Order and the State Border” (hereinafter – the Law) [27]. According to part 2 of Article 6 of the Law, the mandatory basis for the creation of public formations is the decision on its creation, supported by the relevant body of the National Police (on the initiative of a community police officer)...”.

Public associations that declare their intention to protect public order and security, but have not been registered as public order protection groups, are considered as illegal.

Under martial law, the police, in cooperation with NGOs, not only ensure the protection of public order and security, but also take preventive measures to identify enemy agents, terrorist and intelligence groups and the danger in the territories of communities where hostilities are or have been conducted.

Conclusions. Despite a number of legal acts adopted under martial law aimed at improving the conditions of police service, namely: expanding powers to protect public order and security; increasing bonuses; medical treatment abroad; providing psychological rehabilitation services; receiving timely vacations, etc., the legal support for police activities could be improved. For example, there are still problems with unresolved issues of strengthening administrative and criminal liability for administrative offences and war crimes; abolition of the average salary at the place of work; unregulated procedure for serving a summons to territorial recruitment centres (the legislation does not currently define the procedure for where summons can be given, or cannot be given). This once again confirms the urgent need to use the research potential in this area to develop a new mechanism for administrative and legal support of public security in Ukraine. Even earlier, in 2014, at the beginning of the Russian aggression that began in the East of Ukraine, there was an attempt to develop the main provisions of the Doctrine of Public Security of Ukraine, but for some unknown reason the problem of implementing this legal act was not resolved.

Thus, it should be noted that in ensuring public order and security during the Russian-Ukrainian war, the police use not only organizational and legal forms and methods with wide participation of the security and defence forces, territorial defence and public formations, but also hone their skills in conducting operational and search activities aimed at combating crime and eliminating enemy sabotage groups, which makes it possible to solve the tasks of countering Russian aggression under the martial law conditions.

REFERENCES

1. *Viyina Rosiyi proty Ukrayiny: politsiya vyyavyla ponad 16,5 tisyachi zahyblykh u desyaty oblastiakh.* (2023). [Russia’s war against Ukraine: police find more than 16.5 thousand dead in ten regions]. URL : <https://tsn.ua/ato/viyina-rosiyi-proti-ukrayini-policija-viyavila-ponad-16-5-tisyachi-zagiblih-u-desyati-oblastyah-2241226.html> [in Ukrainian].
2. *Ahresiya proty Ukrayiny : rezolyutsia Heneralnoyi Asambleyi OON vid 2 bereznya 2022 roku.* (2022). [Aggression against Ukraine: UN General Assembly resolution of March 2, 2022]. URL : <https://www.ukrinform.ua/rubric-world/3418304-agresia-proti-ukraini-rezolucia-genasa-mblei-oon.html> [in Ukrainian].

3. **Kuleba D.** (2022). *Rezolyutsiya “Ahresiya proty Ukrainy” bude vykorystana u mizhnarodnykh.* [D. Kuleba. Resolution “Aggression against Ukraine” will be used in international courts]. URL : <https://www.ukrinform.ua/rubric-politics/3418288-kuleba-pro-rezoluciu-genasamblei-oon-tak-vigladae-antivoenna-koalicia-za-ukrainu.html> [in Ukrainian].
4. **Pro natsionalnu bezpeku Ukrainy : Zakon Ukrainy vid 21 chervnya 2018 roku** No. 2469-VIII. (2018). [On the National Security of Ukraine: Law of Ukraine of June 21, 2018, No. 2469-VIII]. URL : <https://zakon.rada.gov.ua/laws/show/2469-19/print> [in Ukrainian]
5. **Naperekir usomu: protses oboronnoyi reformy v Ukraini.** (2022). [Against all odds: the process of defense reform in Ukraine]. URL : <https://nako.org.ua/media/naperekir-usyomu-proces-oboronnoyi-reformi-v-ukrayini> [in Ukrainian].
6. **Stratehiya staloho rozvytku “Ukrayina-2020” : Ukaz Prezidenta Ukrainy vid 12 sichnya 2015 r. No. 5.** (2015). [Sustainable Development Strategy “Ukraine-2020”: Decree of the President of Ukraine of January 12, (2015), No. 5]. URL : <https://zakon.rada.gov.ua/laws/show/5/2015#n10> [in Ukrainian].
7. **Stratehiya pidvyshchennya efektyvnosti diyalnosti subyektiv hospodaryuvannya derzhavnoho sektoru ekonomiky: postanova Kabinetu Ministriv Ukrainy vid 27 travnya 2015 r. No. 662-r.** (2015). [Strategy for Improving the Efficiency of Business Entities in the Public Sector of the Economy: Resolution of the Cabinet of Ministers of Ukraine 27.05.2015. No. 662-r.]. URL : <https://zakon.rada.gov.ua/laws/show/662-2015-%D1%80#Text> [in Ukrainian].
8. **Pro osoblyvosti reformuvannya pidpriemstv oboronno-promyslovoho kompleksu derzhavnoyi formy vlasnosti : Zakon Ukrainy vid 13 lypnya 2021.** No. 1630-IX. (2021). [On Peculiarities of Reforming the State-Owned Defense Industry Enterprises: Law of Ukraine of July 13, 2021, No. 1630-IX]. URL : https://urstm.com.ua/download_act/pro_osoblyvosti_reformuvannia_pidpriemstv_oboronno_promyslovoho [in Ukrainian].
9. **Bukryeyeva L. Shlyakh v nikudy, abo pro reformu “oboronky”, aviatsiynu haluz ta sytnyy Ukroboronprom.** (2022). [Bukreeva L. The road to nowhere, or about the defense reform, the aviation industry and the hearty Ukroboronprom]. URL : https://defence-ua.com/minds_and_ideas/shljah_v_nikudi_abo_pro_reformu_oboronki_aviatsijnu_galuz_ta_sitnij_ukroboronprom-6051.html [in Ukrainian].
10. **Pytannya deyakykh vyplat viyskovosluzhbovtsyam, osobam ryadovoho i nachalnytskoho skladu, politseyskym ta yikh simyam pid chas diyi voyennoho stanu : postanovy Kabinetu Ministriv Ukrainy vid 28 lyutoho 2022 r.** No. 168. (2022). [Issues of certain payments to servicemen, rank-and-file and senior officers, police officers and their families during martial law : Resolution of the Cabinet of Ministers of Ukraine of February 28, 2022, No. 168]. URL : <https://zakon.rada.gov.ua/laws/show/168-2022-%D0%BF#Text> [in Ukrainian].
11. **Zabezpechennya Zbroynykh Syl Ukrainy – klyuchovyy prioritet derzhavy zadlya dosyahnennya myru ta zberezhennya derzhavy.** (2022). [Providing for the Armed Forces of Ukraine is a key priority of the state to achieve peace and preserve the state]. URL : <https://www.rada.gov.ua/news/razom/221895.html> [in Ukrainian].
12. **Skilky hroshey Ukrainy otrymala v 2022 rotsi vid SSHA ta mizhnarodnykh soyuznykiv.** (2022). [How much money Ukraine received in 2022 from the United States and international allies]. URL : <https://suspilne.media/280175-skilki-grosej-ukraina-otrimala-vid-ssa-ta-mizhnarodnih-souznikov/> [in Ukrainian].
13. **Putin prohraye informatsiynu viynu proty Ukrainy – ochilnyk rozvidky Brytaniyi.** (2022). [Putin is losing the information war against Ukraine – British intelligence chief]. URL : <https://www.eurointegration.com.ua/news/2022/08/19/7145213/> [in Ukrainian].
14. **Komanda “Voks Ukrainy”.** (2022). [Vox Ukraine team]. URL : <https://voxukraine.org/opytuvannya-spryjniattia-reform-ukrayintsyamy-u-period-povnomashtab-noyi-vijny/> [in Ukrainian].
15. **Podiyi, yaki sformuvaly i zmitsnyuyut Nezalezhnist Ukrainy.** (2022). [Events that shaped and strengthened the Independence of Ukraine]. URL : <https://www.radiosvoboda.org/a/podii-shcho-formuyut-nezalezhnist/31405953.html> [in Ukrainian].
16. **Pro Natsionalnu politysiyu : Zakon Ukrainy vid 2 lypnya 2015 r. No. 580-VII.** (2015). [On the National Police: Law of Ukraine dated July 2, 2015, No. 580-VII]. URL : <https://zakon.rada.gov.ua/laws/show/580-19/print> [in Ukrainian].
17. **Pro vnesennya zmin do poryadkiv, zatverdzhennykh postanovamy Kabinetu Ministriv Ukrainy vid 3 serpnia 2006 r. No. 1081 i vid 2 veresnya 2015 roku № 728 : postanova Kabinetu Ministriv Ukrainy vid 06**

sichnya 2023 r. № 15. (2023). [On Amendments to the Procedures Approved by the Resolutions of the Cabinet of Ministers of Ukraine of August 3, 2006, No. 1081 and September 2, 2015 .No. 728 : Resolution of the Cabinet of Ministers of Ukraine of January 06, 2023, No. 15]. URL : <https://www.kmu.gov.ua/npas/pro-vnesennia-zmin-dopriadkiv-zatverdzhzhe-nykh-p-a15/> [in Ukrainian].

18. *Pro vnesennya zmin do zakoniv Ukrainy "Pro Natsionalnu politsiyu" ta "Pro Dystyplinarnyy statut Natsionalnoi politsiyi Ukrainy" : Zakon Ukrainy vid 15 bereznya 2022 roku No. 2123-IX.* (2022). [On Amendments to the Laws of Ukraine "On the National Police" and "On the Disciplinary Statute of the National Police of Ukraine" : Law of Ukraine of March 15, 2022, No. 2123-IX]. URL : <https://zakon.rada.gov.ua/laws/show/2123-20#Text/> [in Ukrainian].

19. *Za rik do vidpovidalnosti prytyahnyly ponad 600 posadovtsiv ZSU ta Minoborony.* (2022). [More than 600 officials of the Armed Forces and the Ministry of Defense were brought to justice over the year]. URL : <https://suspilne.media/380675-za-rik-do-vidpovidalnosti-pritagnuli-ponad-600-posadovciv-zsu-ta-minoboroni-reznikov> [in Ukrainian].

20. *U MVS vidpovily, skilky potribno vytratyty na rozminuvannya terytoriyi Ukrainy.* (2023). [The Ministry of Internal Affairs answered how much should be spent on demining the territory of Ukraine]. URL : <https://dengi.ua/ua/finance/7135107-v-mvd-otvetili-skolko-nuzhno-potratit-na-razminirovanie-territorii-ukrainy/> [in Ukrainian].

21. *Pro zatverdzhennya Poryadku zdiysnennya pershocherhovoykh zakhodiv shchodo zneshkodzhennya (znychchennya) vybukhonebezpechnykh predmetiv na terytoriyi Ukrainy ta orhanizatsiyi vzayemodiyi pid chas yikh vykonannya: nakaz MVS ta MO No. 833/443 vid 21 hrudnya 2021 roku.* (2021). [On Approval of the Procedure for Implementation of Priority Measures for the Disposal (Destruction) of Explosive Ordnance on the Territory of Ukraine and Organization of Cooperation during their Implementation: Order of the Ministry of Internal Affairs and the Ministry of Defense No. 833/443 of December 21, 2021]. URL : <https://ips.ligazakon.net/document/RE39070?an=1> [in Ukrainian].

22. *Blyzko 30 % terytoriyi Ukrainy potrebuyut rozminuvannya – MVS. URL : pid holovuvannyam Premyer-ministra.* (2022). [About 30 % of the territory of Ukraine needs demining – MIA. under the chairmanship of the Prime Minister]. URL : <https://www.ukrinform.ua/rubric-ato/3631742-blizko-30-teritorii-ukraini-potrebuyut-rozminuvanna-mvs.html> [in Ukrainian].

23. *V Ukraini bude stvoreno tsentr humanitarnoho rozminuvannya, – Premyer-ministr.* (2023). [Humanitarian demining center to be established in Ukraine, – Prime Minister]. URL : <https://dsns.gov.ua/uk/news/ostanni-novini/v-ukrayini-bude-stvoreno-centr-gumanitarno-go-rozminuvannia-premjer-ministr> [in Ukrainian].

24. *Postanova kolehiyi suddiv Druhoyi sudovoyi palaty Kasatsynoho kryminalnoho sudu Verkhovnoho Sudu vid 24.11.2020 u spravi No. 481/227/18 (provadzhennya No. 51 – 2539 km 20).* (2020). [Decision of the panel of judges of the Second Judicial Chamber of the Criminal Court of Cassation of the Supreme Court of 24.11.2020 in case No. 481/227/18 (proceedings No. 51 – 2539 km 20)]. URL : <https://reyestr.court.gov.ua/Review/93119786> [in Ukrainian].

25. *Zlochyny, vchyneni viyskovymy rf pid chas povnomasshtabnoho vtorhnennya v Ukrainu (stanom na 27 sichnya).* (2023). [Crimes committed by the Russian military during the full-scale invasion of Ukraine (as of January 27)]. URL : <https://www.npu.gov.ua/news/zlochyny-vchyneni-viiskovymy-rf-pid-chas-povnomasshtabnoho-vtorhnennia-v-ukrainu-standom-na-27-sichnia> [in Ukrainian].

26. *Ihor Klymenko. Pid chas viyny politseyski zadokumentuvaly desyatky tysyach porushen prav lyudyny, za yaki okupanty mayut vidpovisty.* (2022). [Ihor Klymenko. During the war, police officers documented tens of thousands of human rights violations for which the occupiers must be held accountable]. URL : <https://www.npu.gov.ua/news/pid-chas-viyny-politseyski-zadokumentuvaly-desiatky-tysyach-porushen-prav-liudyny-za-iaki-okupanty-maiut-vidpovisty-ihor-klymenko> [in Ukrainian].

27. *Pro uchast hromadyan v okhoroni hromadskoho poryadku i derzhavnogo kordonu : Zakon Ukrainy vid 22 chervnya 2000 roku No. 1835-III.* (2022). [On the participation of citizens in the protection of public order and the state border : Law of Ukraine of June 22, 2000, No. 1835-II]. URL : <https://zakon.rada.gov.ua/laws/show/1835-14/print> [in Ukrainian].

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НАЦІОНАЛЬНА ПОЛІЦІЯ ЯК СКЛADOVA СЕКТОРУ БЕЗПЕКИ ТА ОБОРОНИ У ПРОТИДІІ РОСІЙСЬКІЙ АГРЕСІЇ В УКРАЇНІ

Узагальнено, на підставі теоретико-правового аналізу, особливості діяльності поліції як складової сектору безпеки та оборони в період російської агресії.

Доведено, що, незважаючи на повномасштабну неоголошену злочинну навалу, Збройні сили України за потужною фінансовою та воєнною підтримкою західних партнерів переможно долають спротив російських окупантів та здійснюють планомірний контрнаступ на “другу в світі переможну російську армію” й при цьому щоденно, героїчно перемелюючи військову техніку та живу силу ворога, далекоглядно приймають стратегічні рішення щодо реформування діяльності органів публічної влади, і насамперед суб’єктів сектору безпеки та оборони.

Вказано на прорахунки, які були допущені в організації забезпечення оборонної промисловості, очолюваної оборонно-промисловим концерном “Укроборонпром”. Проте, вже з початку лютого 2022 року державою був прийнятий ряд законодавчих змін, спрямованих на удосконалення сучасної моделі ЗСУ, правоохоронних органів й оборонно-промислового комплексу та приведення їх до стандартів НАТО та Європейського Союзу.

Стан діяльності поліції як суб’єкта сектору безпеки та оборони у період воєнного стану доводить, що українські правоохоронці разом із Збройними силами України зухвало дають відсіч злочинному російському нападу, боронячи життя та здоров’я українського населення, відстоюючи територіальну цілісність та незалежність України. Констатовано, що одним із важливих факторів щодо оптимізації діяльності поліції в період війни є прояви турботи державних органів щодо поліпшення їх соціального захисту.

Зазначено, що поліція, окрім виконання своїх обов’язків у період воєнного стану, спрямованих на виявлення та притягнення до відповідальності злочинців, розшук зниклих безвісті осіб, превентивних заходів щодо охорони публічного порядку та безпеки, здійснює з ризиком для життя та здоров’я заходи, пов’язані із розмінуванням саперами Національної поліції ворожих мін та знищення нерозірваних снарядів.

У роботі зазначено, що, незважаючи на ряд прийнятих в період воєнного стану нормативно-правових актів, спрямованих на покращення умов проходження служби поліцією, залишаються невирішені проблеми щодо: посилення адміністративної та кримінальної відповідальності за вчинення адміністративних правопорушень та воєнних злочинів; скасування середньої заробітної плати за місцем роботи; неурегульованості порядку вручення повістки до територіальних центрів комплектування тощо.

Доведено, що під час виконання своїх обов’язків у період російсько-української війни поліцією використовуються не лише організаційно-правові форми та методи з широкою участю сил безпеки та оборони, територіальної оборони та громадських формувань, але відточуються майстерність щодо проведення оперативно-розшукових заходів, спрямованих на протидію злочинності та ліквідації ворожих диверсійних груп, що дає змогу поліції вирішувати визначені завдання у протидії російській агресії в умовах воєнного стану.

Ключові слова: Національна поліція, сектор безпеки та оборони, Збройні сили України, російсько-українська війна, охорона публічного порядку та безпеки, громадські формування, воєнний стан.