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RIGHTS OF CIVIL OFFICERS OF THE COURT PROTECTION SERVICE IN THE PUBLIC ADMINISTRATION UNDER THE CONDITIONS OF THE STATE OF MARTIAL

Abstract. The article examines certain legal aspects of exercising the rights of civil servants of the Court Security Service in public administration under martial law in Ukraine. It was found that the Court Security Service is a state body in the justice system to ensure protection and maintenance of public order in courts. It was established that in the conditions of martial law, a person's constitutional right to judicial protection cannot be limited. Attention was drawn to the fact that in the event of a threat to the life, health and safety of court visitors, court staff, and judges, decisions on the temporary suspension of judicial proceedings by a certain court will be promptly made, and the protection of judges is entrusted to officials of the Court Security Service. It has been established that the rights of civil servants of the Court Security Service during martial law are specified through the powers granted to them. It was found that the rights of a civil servant of the Judicial Protection Service during martial law are the limits of the possible or permissible behavior of a civil servant of the Court Security Service guaranteed by the administrative and legal norm, which is established to ensure the public interest and the performance of the specified functions and tasks of the Court Security Service, their officials during martial law. It is proposed to divide the rights of civil servants of the Court Security Service under martial law into general and special rights, which together form a single element of the administrative and legal status of a civil servant of the Court Security Service. It is distinguished that general rights are defined by general legal acts as a set of rights acquired by any civil servant of the Court Security Service, and special rights are those that are mediated by the peculiarities of the service of civil servants of the Judicial Protection Service.
Keywords: rights of civil servants, civil service, public administration, judicial system, martial law, Court Security Service, administrative and legal status, judicial protection

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ПРАВА ДЕРЖАВНИХ СЛУЖБОВЦІВ СЛУЖБИ СУДОВОЇ ОХОРОНИ У ПУБЛІЧНОМУ АДМІНІСТРУВАННІ В УМОВАХ ВОЄННОГО СТАНУ

Анотація. В статті розглядаються окремі правові аспекти реалізації прав державних службовців Служби судової охорони у публічному адмініструванні в умовах воєнного стану в Україні. З’ясовано, що Служба судової охорони є державним органом у системі правосуддя для забезпечення охорони та підтримання громадського порядку в судах. Констатовано, що в умовах воєнного стану конституційне право людини на судовий захист не може бути обмеженим. Акцентовано увагу, що у разі загрози життю, здоров’ю та безпеці відвідувачів суду, працівників апарату суду, суддів оперативно приймаються рішення про тимчасове зупинення здійснення судочинства певним судом та захист суддів покладається на посадових осіб Служби судової охорони. Встановлено, що права державних службовців Служби судової охорони під час воєнного стану конкретизуються через надані їм правомочності. З’ясовано, що права державного службовця Служби судової охорони під час воєнного стану - це гарантовані адміністративно-правовою нормою межі можливії або дозволеної поведінки державного службовця Служби судової охорони, що встановлюється для забезпечення публічного інтересу та виконання визначених функцій та завдань Служби судової охорони, їх посадових осіб під час воєнного стану. Запропоновано права державних службовців Служби судової охорони в умовах воєнного стану поділити на загальні та спеціальні права, які в сукупності утворюють єдиний елемент адміністративно-правового статусу державного службовця Служби судової охорони. Встановлено, що загальні - це визначені загальними нормативно-правовими актами суккупність прав, яких набуває будь-який державний службовець Служби судової охорони, а спеціальні - це ті, які
опосередковано особливостями проходження служби державних службовців Служби судової охорони.

Ключові слова: права державних службовців, державна служба, публічне адміністрування, судоустрій, воєнний стан, Служба судової охорони, адміністративно-правовий статус, судовий захист.

**Formulation of the problem.** According to Article 26 of the Law of Ukraine "On the Legal Regime of Martial Law", justice in the territory where martial law is imposed is administered only by courts. Reduction or acceleration of any form of justice is prohibited [1]. On February 24, 2022, martial law was imposed in Ukraine, the reason for which was the military aggression of the Russian Federation against Ukraine. Due to the ongoing large-scale armed aggression of the Russian Federation against Ukraine, martial law was extended for a period of 90 days until August 23, 2022 [2]. Under martial law, a person's constitutional right to judicial protection cannot be restricted. In case of threat to life, health and safety of court visitors, court staff, judges, a decision will be made to temporarily suspend the proceedings by a certain court [3].

The Law of Ukraine "On the Legal Regime of Martial Law" defines martial law as a special legal regime imposed in Ukraine or in certain localities in the event of armed aggression or threat of attack, threat to state independence of Ukraine, its territorial integrity and provides for the relevant authorities state power, military command, military administrations and local self-government bodies, necessary to prevent the threat, repel armed aggression and ensure national security, eliminate the threat to Ukraine's independence, its territorial integrity, as well as temporary, threatened, restriction of constitutional rights and freedoms of man and citizen and the rights and legitimate interests of legal entities these restrictions [1].

In particular, due to hostilities, the work of the court may be terminated with the simultaneous determination of another court that will administer justice in the territory of the court that ceased to operate and which is closest to the court whose work is terminated only by order of the President of the Supreme Court. The Council of Judges of Ukraine recommended that the courts focus exclusively on conducting urgent court proceedings (detention, extension of detention). Other categories of cases that are not urgent are recommended to be considered only with the written consent of all participants in the proceedings [4]. To ensure the protection and maintenance of public order in the courts during martial law in Ukraine relies on the Court Security Service, which is a state body in the justice system is accountable to the High Council of Justice and controlled by the State Judicial Administration of Ukraine. An important topic in legal doctrine remains the study of the implementation of the rights of civil servants of the Judicial Protection Service during martial law in Ukraine, as before this issue has not been studied in scientific sources. This indicates the relevance and practical significance of this scientific article.
Literature Review. The study of the content and features of the implementation of the rights of civil servants of the Judicial Protection Service during martial law in Ukraine has not yet been conducted in the legal doctrine of administrative law. At the same time, some scholars have drawn attention to certain features of the implementation of this right of civil servants within a more general understanding of this category of science. Yes, Ermak O.O. (2020) studied the specifics of the implementation of the rights of civil servants as an element of administrative and legal status [5], Inshin M.I. (2006) drew attention to certain concepts and established elements of the legal status of civil servants of internal affairs [6]. In particular, Petrishak I.V. (2020) also studied the legal status of judicial bodies as subjects of state protection [7]. The author singled out four groups of entities that have the right to state protection.

The first group of entities entitled to state protection includes judges of the Constitutional Court of Ukraine, judges and court staff. The second group of entities that have the right to state protection, it is proposed to include law enforcement officers. Entities entitled to state protection are classified in the third group. The fourth group includes entities that have the right to state protection against close relatives and persons who meet the characteristics of entities that are classified in groups 1-3. However, the issue of defining the concept of "rights of civil servants of the Court Security Service " during the martial law in Ukraine, their types and identifying problematic issues of their implementation and disclosure of improvements in legislation on these issues remained out of the attention of administrative scientists.

Aims and objectives of the study. The purpose of the study is to study the content and features of the implementation of the rights of civil servants of the Court Security Service during martial law in Ukraine. To achieve this goal, the following tasks were set:

(1) conducting a comprehensive theoretical and legal analysis of the "rights of civil servants of the Court Security Service " during the martial law in Ukraine as a separate element of administrative and legal status of civil servants of the Court Security Service;

(2) to investigate the main types of exercising the rights of civil servants of the Court Security Service during martial law in Ukraine;

(3) to determine the peculiarities of the formation of the rights of civil servants of the Court Security Service during martial law as an element of the administrative and legal status of a civil servant of this Service;

(4) to indicate the legal directions of regulating the exercise of the right of civil servants of the Court Security Service during martial law in the context of the updated legislation on the civil service of Ukraine.

This study is based on a system of general scientific and special methods, which gave us the opportunity to clarify and establish the specifics of the rights of civil servants of the Court Security Service during martial law in Ukraine. The
scientific work also used the libertarian method, in particular when studying the content of the legal structure "the rights of civil servants of the Court Security Service", during the martial law to establish their species, in the implementation of their characteristics.

Methods of analysis and abstraction provided knowledge and disclosure of the content of the types of "rights of civil servants of the Court Security Service" during martial law as an element of their administrative and legal status. To study the subject of this scientific work, instrumental and axiological methods were used, which provided the formulation of the specifics of the implementation of the "rights of civil servants of the Court Security Service" during martial law. Methods only in interaction with each other and in synthesis with other scientific methods in this scientific gave us the opportunity to make scientifically sound conclusions about the legal basis for the implementation of "rights of civil servants of the Court Security Service" during martial law and identify problems of their legal regulation. also directions of optimization of the legislation on these legal questions.

Result. The Supreme Court of Ukraine clarified that under martial law, a person's constitutional right to judicial protection cannot be restricted. In case of threat to life, health and safety of court visitors, court staff, judges, a decision will be made to temporarily suspend the proceedings by a certain court [3]. Regarding the beginning of the formation of the Court Security Service, this countdown begins on April 4, 2019, when the High Council of Justice approved the Regulations on the Court Security Service, which began the creation of this state body with law enforcement functions. [8]. In September 2020, the Ministry of Education and Science of Ukraine issued a license to the Territorial Department of the Court Security Service in Vinnysia region to conduct educational activities in the specialty "Security Guard" and "Security Guard" was opened the first Training Center of the Judicial Security Service [9]. Decree of the President of Ukraine of October 6, 2021 № 508/2021 approved the symbols of the Court Security Service [10].


- establishment of the civil service in the Court Security Service and its territorial subdivisions [12;13; 14;15;16;17];
- extension of the Disciplinary Statute of the National Police of Ukraine to judicial protection officers, as well as determination of the powers of the Head of the Court Security Service and other heads of the Service to apply incentives and impose disciplinary sanctions on subordinate employees;
- enabling the staff of the Court Security Service to form trade unions and trade unions in order to protect their rights and legitimate interests in accordance with the Law on Trade Unions, Their Rights and Guarantees of Activity.

Also, the Law of Ukraine of 27.04.2021 № 1417-IX "On Amendments to the Law of Ukraine" On the Judiciary and the Status of Judges "and some laws of Ukraine on certain issues of legal status of employees of the Court Security Service" [14] also amended a number of other legislative acts, namely:

- to the Law of Ukraine “On Civil Service” - on granting the Head of the Service the powers of the head of the civil service in the Court Security Service, and to the heads of territorial subdivisions - in the territorial subdivisions of the Service;
- to the Law of Ukraine "On Trade Unions, their rights and guarantees of activity" - on the peculiarities of application in the Court Security Service;
- to the Law of Ukraine "On liability of servicemen and persons equated to them for damage caused to the state" - to extend its effect to employees of the Court Security Service;
- to the Law of Ukraine "On Military Duty and Military Service" - to extend to employees of the Court Security Service a special order of military registration established for police officers, officers and privates of the Ministry of Internal Affairs of Ukraine, Civil Protection Rescue Service, State Penitentiary services of Ukraine;
- to the Law of Ukraine "On the Disciplinary Statute of the National Police of Ukraine", approved by the Law of Ukraine “On the Disciplinary Statute of the National Police of Ukraine” regarding the extension of its effect to employees of the Court Security Service. Thus, the Law of Ukraine “On Civil Service” applies to civil servants in the Court Security Service. In addition, the positions of civil servants of the Court Security Service belong to the relevant categories of civil service positions in the manner prescribed by law.

The rights of civil servants of the Court Security Service as a component of the powers of the Court Security Service and methods of their implementation are defined in Chapter 4 of the Law of Ukraine "On the Judiciary and the Status of Judges". In its activities, the Court Security Service is guided by the Constitution of Ukraine, international treaties of Ukraine, the Law of Ukraine "On the Judiciary and the Status of Judges" and other laws of Ukraine, acts of the President of Ukraine and the Cabinet of Ministers of Ukraine, and other regulations. We will note that on December 22, 2021, the first civil servants of Service of judicial protection solemnly took the Oath of the civil servant [14]. In Article 1 of the Law of Ukraine "On Civil Service” a civil servant is a citizen of Ukraine who holds a civil service position in a public authority, other state body, its staff (secretariat), receives a salary from the state budget and carries out established for this position has powers directly related to the performance of tasks and functions of such a state body, as well as adheres to the principles of civil service. From the analysis of Section II of the Law of Ukraine "On Civil Service", in the general sense we can distinguish the rights of civil servants
as (1) general and (2) special (special) and additional rights to regulate the process of civil service. [16].

The Court Security Service is a state body in the justice system to ensure the protection and maintenance of public order in the courts [16]. As you know, the Court Security Service is accountable to the High Council of Justice and controlled by the State Judicial Administration of Ukraine. The Law of Ukraine “On the Judiciary and the Status of Judges” stipulates that maintaining public order in court, ending contempt of court, as well as protecting court premises, bodies and institutions of the justice system, performing functions related to state personal security of judges and their families, employees of the court, ensuring the safety of participants in the trial of the court is carried out by the Court Security Service (Article 160) [14]. Employees of the Court Security Service include: (1) persons who have been awarded special ranks of employees of the Court Security Service; (2) civil servants; (3) persons who have concluded an employment contract with the Court Security Service (Article 1621 of the Law of Ukraine “On the Judiciary and the Status of Judges”). Thus, among the employees of the Court Security Service there is such a category as civil servants, the formation of whose rights began in December 2021.

The concept of "rights of civil servants of the Court Security Service " is not defined in the legal literature. In the Dictionary of the Ukrainian language of meanings, the definition of "law" is the basis, ability, ability to do, do something, use something due to certain circumstances. The term "rights" is the ability to perform acts or omissions during public service. This understanding of the term "law" is provided in the Procedure for developing job descriptions for civil servants of categories "B" and "B", which was approved by the order of the National Agency of Ukraine for Civil Service on September 11, 2019 №172-19 [18]. In scientific sources, among the structural elements of the legal status of civil servants, distinguish such groups of rights as general and special (basic, minor or additional), as well as duties and restrictions, guarantees, economic security and liability [15, p.45]. Given the above, it is possible to distinguish two groups of rights of civil servants of the Court Security Service during martial law, namely: (1) general rights acquired by any civil servant (including civil servants of the Court Security Service) and (2) special rights, which are acquired by civil servants of the Court Security Service, among which can be distinguished (a) basic, or (b) additional). The rights of a civil servant of the Court Security Service during martial law are specified through the powers granted to them.

The rights of a civil servant of the Court Security Service during martial law may be enshrined in job descriptions, regulations on the Service, in the employment contract, in agreements, in Art. 7 of the Law of Ukraine "On Civil Service", as well as in the Laws of Ukraine "On the Judiciary and the Status of Judges" and other legislative acts. At the same time, the most detailed rights of a civil servant of the Court Security Service during martial law are defined in job descriptions, regulations, orders on the division of powers between the deputy heads of the Court
Court Security Service. Thus, the High Council of Justice of Ukraine by a decision of April 4, 2019 № 1052/0 / 15-19 approved the Regulations on service by employees of the Court Security Service [16] in Section II entitled "Rights, Duties and Responsibilities" in which the staff of the Court Security Service enjoys the rights and perform their duties in accordance with the law and this Regulation, and Section XIII indicates the equal rights and opportunities of women and men in service.

This normative legal act does not provide a list of "rights of civil servants of the Court Security Service ", does not provide a definition of the above legal structure. From our point of view, under the general rights of a civil servant of the Court Security Service during martial law, we propose to understand the set of rights defined by general regulations, which acquires any civil servant of the Court Security Service. The special rights of civil servants of the Court Security Service during martial law include those indirectly related to the specifics of the service of civil servants of the Court Security Service, including the right to receive from state bodies, enterprises, institutions and organizations, local governments the necessary information issues within its powers, in cases established by law; the right to apply state protection measures and others.

The term "rights of a civil servant of the Court Security Service " during martial law should be understood as the limits of possible or permitted conduct of a civil servant of the Judicial Protection Service guaranteed by administrative law, established to ensure the public interest and perform certain functions and tasks of the Court Security Service during martial law state. The Basic Law of our state during martial law guarantees a civil servant, as well as for all citizens of Ukraine, the following rights:

(1) respect for his dignity (Article 28);
(2) to liberty and security of person (art. 29);
(3) the inviolability of the home (art. 30);
other rights defined by articles.

To the general rights acquired by any civil servant of the Court Security Service during martial law, we propose to include, in particular:

(1) the right to proper working conditions;
(2) the right to adequate logistics;
(3) the right to remuneration depending on the position held in the civil service, the results of official activities,
(4) the right to receive civil service experience and the rank of civil servant;
(5) the right to leave, social security and pensions in accordance with the law;
(6) the right to promotion, taking into account professional competence and conscientious performance of official duties;
(7) to form trade unions and trade unions in accordance with the Law on Trade Unions, their rights and guarantees of activity and others.

For example, in order to exercise their powers during martial law, officials of the Court Security Service have the right to:
(1) require persons entering the court premises, bodies and institutions of the justice system to present an identity document;

(2) to verify the identity documents of persons entering the premises of the court, bodies and institutions of the justice system and to restrict the admission of such persons to the premises of the court, bodies and institutions of the justice system in cases specified by law;

(3) carry out a superficial inspection of persons entering the premises of the court, bodies and institutions of the justice system, by their (1) visual inspection and inspection of their belongings, (2) conducting on the surface of the clothes of persons with a special device or means; (4) to detain persons who have illegally entered or are attempting to enter the premises of the court, bodies and institutions of the justice system, to check their identity documents, to carry out a personal search of detainees and their belongings in accordance with the law; and pass them on to law enforcement.

The rights of civil servants of the Judicial Protection Service during martial law should be distinguished from the category of guarantees of civil servants of the Court Security Service, as these definitions are different in nature and level of their legal regulation. Guarantees of civil servants of the Court Security Service are an appropriate way and conditions for exercising the relevant rights. Guarantees of civil servants of the Court Security Service are regulated by the Constitution, the Law of Ukraine "On the Judiciary and the Status of Judges" [14], the Law of Ukraine "On Civil Service" [10], agreements, contracts and other legislation. The Law of Ukraine “On Civil Service” defines general guarantees, which apply to all civil servants, including civil servants of the Court Security Service. For example, guarantees of a sufficient level of remuneration of civil servants for the professional performance of official duties; creating healthy and safe conditions necessary for the proper performance of their duties by civil servants; guarantees of the rights of civil servants during the application of disciplinary sanctions, guarantees of proper social security, housing, etc.

The Law of Ukraine “On the Judiciary and the Status of Judges” as a special Law on the Exercise of the Rights of Civil Servants of the Judicial Protection Service during Martial Law is defined in Chapter 4 of the “Judicial Protection Service”. In particular, part 2 of Article 2 of this Law states that the Judicial Protection Service and its civil servants have the right to exercise the powers entrusted to them: (1) use information resources in the manner prescribed for the National Police of Ukraine by the Law of Ukraine "On the National Police", receive in the prescribed manner from the heads of state authorities of Ukraine, local governments, enterprises, institutions, organizations regardless of ownership upon written request The Service or its deputies information necessary for the exercise of the powers vested in the Service; (2) take measures to prevent unlawful encroachments on judges, members of their families and members of the judiciary; (3) involve, in agreement with the heads of law enforcement and other state bodies, their employees, employees,
servicemen, technical and other means; (4) use weapons, physical measures and special means in the manner and cases specified by the laws of Ukraine "On the National Police" and "On Security Activities" and others [17].

It should be noted that an important aspect of the legal guarantee of a civil servant of the Court Security Service during martial law is reflected in his right to state protection, the terms of which are defined by the Law of Ukraine "On State Protection of Judicial and Law Enforcement Officials". On March 3, 2022, the Verkhovna Rada of Ukraine adopted the Law of Ukraine “On Amendments to the Law of Ukraine “On the Judiciary and the Status of Judges ”on Changing the Jurisdiction of Courts” 2112-IX, which stipulates that another court which will administer justice in the territory of the court which has ceased its activity and which is closest to the court whose work has been terminated [18; 19]. To date, there is a list of 121 courts in various regions of Ukraine, whose territorial jurisdiction has been changed due to the inability to administer justice during martial law. That is, the issues of security of judges who are in the temporarily uncontrolled territories of Ukraine remain relevant. In this regard, certain members of the Court Security Service are empowered to evacuate judges from the occupied territories.

**Conclusion.** Under martial law, a person's constitutional right to judicial protection cannot be restricted. Justice on the territory of Ukraine, where martial law has been imposed, is administered only by courts. Reduction or acceleration of any form of justice is prohibited. The rights of a civil servant of the Court Security Service during martial law are the limits of possible or permitted conduct of a civil servant of the Court Security Service established by administrative law, established to ensure the public interest and perform certain functions and tasks of the Court Security Service during martial law. The rights of civil servants of the Court Security Service during martial law can be divided into general and special rights, which together form a single element of the administrative and legal status of a civil servant of the Court Security Service. General - is defined by general regulations a set of rights acquired by any civil servant of the Court Security Service. Special ones are those that are indirectly related to the peculiarities of the service of civil servants of the Court Security Service.

**References:**


Література:

1. Про правовий режим воєнного стану: Закон України від 12.05.2015 р. № 389-VIII. Відомості Верховної Ради. 2015. № 28. ст.250.

2. Про затвердження Указу Президента України "Про продовження строку дії воєнного стану в Україні": Закон України від 22.05.2022 р. № 341/2022. [Електронний ресурс]. – Режим доступу: https://zakon.rada.gov.ua/laws/show/2263-20#n5


7. Петрішак І. В. Судові органи як суб'єкти державного захисту. Прикарпатський юридичний вісник. 2020. № 6 (35). С.139–143.


18. Про внесення зміни до частини сьомої статті 147 Закону України "Про судоустрій і статус суддів" щодо визначення територіальної підсудності судових справ: Закон України від 03.03.2022 р. № 2112-IX. [Електронний ресурс]. – Режим доступу: https://zakon.rada.gov.ua/laws/show/2112-20/card2#Card