



Legal and Organisational Framework of Police Operations in the Occupied Territories

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Abstract. Russia's urgent military aggression against Ukraine is complicated by its non-compliance with international law on the customs of warfare. The current situation demonstrates the imperfection of the system of modern international relations and the need to update agreements regarding the requirements for the conduct of hostilities. Ignoring the latter leads to many victims of various types of offences. At the same time, there are no effective mechanisms to mitigate the risks of these problems. The study aims to analyse the current innovative legal framework of police service and combat activities in the occupied territories. The study's main materials are the sectoral theoretical and methodological developments of domestic and foreign researchers, as well as official statistics. A number of scientific methods were used in the article's research, including analysis and synthesis, structural and logical methods, theoretical generalisation, and comparison. The research substantiates that under conditions of occupation, the military administration must not only ensure the protection of the rights and freedoms of the local population but also actively safeguard those rights and freedoms. It has been established that, to date, the legal status of police officers who find themselves in temporarily uncontrolled Ukrainian territory has not been defined by national legislation. It is argued that it is impossible to regard all such officers as collaborators or traitors without exception; decisions must be made objectively on a case-by-case basis. At the same time, it has been proven that without adopting and regulating societal relations for the protection of citizens' rights and freedoms at the international level, this issue cannot be resolved. The legal status of police officers in the context of their presence in temporarily occupied territory has been defined. Distinctions between related concepts have been clarified, potential action algorithms for police officers have been outlined, and the necessity of continuing to fulfil their duties in the protection of the civilian population has been emphasised. A significant aspect highlighted within the study is the regulation of the relations under investigation and adherence to those regulations by the parties involved in the conflict. In further scientific developments of the research issue, the development of innovative legal principles of service and combat activities of the police in the occupied territories in the context of active digital transformation is considered promising.

Keywords: Collaboration, Combatant, High treason, Military aggression, Occupation administration, Occupation, Police powers.

1. INTRODUCTION

In the context of the military aggression of the Russian Federation and active hostilities on Ukrainian lands, cases of the local population defecting to the side of the aggressor country have become quite common. Due to the novelty of this phenomenon, as well as the persistence of the opinions of certain officials, Ukrainian society is forced not only to oppose the invaders actively but also to fight traitors both in the controlled and occupied territories.

Due to the temporary impossibility of detaining traitors, the public opinion of the Ukrainian people can significantly contribute to condemning their actions. However, in order to call a person a collaborator or traitor, it is necessary to ensure appropriate documentation of such activities and legislate the distinction between such activities and the conditions for the onset of consequences.

Certain life circumstances often force people to choose without considering the consequences. At this time, there should be a distinction between various circumstances that make it impossible to identify the social danger of the act or generally ensure compliance with national legislation and exclude liability altogether.

Today, police officers under occupation also find themselves on the verge of making a choice, but not all of them have chosen the path of freedom and life in their native land. Some, having chosen their homeland, paid the price in their lives. Moreover, some are still trying, even in such conditions of occupation, to protect citizens' rights, freedoms and property. In this aspect, often facing aggression from the occupation administration and military forces of the invading country, the behaviour of such police officers and the limits of the legality of their actions are often limited to saving their own lives and the lives of ordinary civilians.

Determining their status is essential to ensure an accurate understanding of the "limits of what is permissible" for individuals on different sides of a conflict. Although armed conflict is often accompanied by mass violence and other tensions between peoples, states, and classes, this does not mean that there is no limit or absolute freedom of action. Even in wartime, international humanitarian law limits accepted customs, methods, and means.

Thus, in the context of the occupation of Ukraine, the problem of establishing the legal status of police officers becomes an essential task for scholars and police officers who seek to ensure the protection of the rights and interests of the Ukrainian population under occupation.

2. LITERATURE REVIEW

Scientific research on the problem of police activity and the detailing of its features in Ukraine's system of national legislation has not yet found proper coverage in the scientific field. At the same time, certain achievements have been made in this area.

Scientific research on specific aspects of the identified issues was conducted by Pokaichuk,¹ Kolisnyk,² Tinin,³ Kravchuk and Bondarenko.⁵

Rodak⁶ and Riazantseva⁷ covered some issues among journalists. At the same time, despite the topic's relevance, its specificity was formed quite recently, which leads to a lack of scholarly work in this field.

3. MATERIALS AND METHODS

The study aims to analyse the current innovative legal framework for police service and combat activities in the occupied territories.

The research materials were based on scientific developments and publications on the issues under study and legislative and regulatory acts in the field.

The research methodology is based on several modern scientific methods, including the following:

- A systemic method that allows the study of the innovative legal framework of police activity as a systemic entity functioning based on approved theoretical views and effective practices;
- Theoretical methods include analysis, classification, systematisation, and generalisation. Analytical and synthetic research was used to determine the stages and factors of the object's dynamics and various legal and procedural aspects. Induction was used to predict the possibilities of optimising the process under study. Generalisation was used to formulate the study's conclusions.

4. RESEARCH RESULTS

One of the primary determinants of the establishment and development of the system of international relations is the principle of the integrity of the state territory and the inviolability of state borders.⁸ The relevant norms are enshrined in Ukraine, particularly in Article 2 of the Constitution of Ukraine.⁹ Today, the inviolability and territorial integrity of Ukraine has been violated by the Russian Federation through open military aggression.

Thus, according to the official appeal of the Verkhovna Rada of Ukraine (VRU),¹⁰ the Russian Federation's armed aggression against Ukraine has been ongoing since 2014. Since 24 February 2022, it has escalated into a large-scale armed invasion, followed by the occupation of territories and changes in their legal status.

In the delimitation of responsibility of persons who assisted the occupation administration, cooperated with the latter and/or contributed in every possible way to the activities of such illegal formations in the occupied territories of Ukraine during martial law, social relations remain unregulated. No algorithm of legal actions for exercising law enforcement functions by police officers in the occupied territories has been established. Indeed, in the context of the actions of foreign military and occupation administrations, a part of the personnel of the National Police of Ukraine remained in the temporarily uncontrolled Ukrainian territories, which, for objective and subjective reasons, did not travel to the controlled territory and did not arrive at the designated place of deployment by the order.¹¹

According to the order of the Head of the National Police of Ukraine,¹² police officers were required to report

¹ Vitaliy Pokaichuk. Law enforcement forces as a system. *Scientific Bulletin of Dnipro State University of Internal Affairs*, vol. 2. 2017. pp. 149–155. Available at: <http://er.dduvs.in.ua/handle/123456789/235>

² Victor Kolisnyk. The Constitutional Principle of the State's Territorial Integrity in the Context of the National and Ethnic Composition of the Border Regions of Ukraine and Russia. *Bulletin of the Constitutional Court of Ukraine*, vol. 3. 2020. pp. 125–142. Available at: <https://ccu.gov.ua/library/konstytucijnyy-pryncyp-terytorialnoy-cilisnosti-derzhavy-u-konteksti-nacionalno-etnichnogo>

³ Dmytro Tinin. The status of a Ukrainian police officer under martial law in case of failure to comply with an order to withdraw from encirclement or occupation (theoretical aspect). *Donbas Law Journal*, vol. 4, no. 81, part 1. 2022a. pp. 204–208. Available at: <https://doi.org/10.32782/2523-4269-2022-81-4-1-204-208>

⁴ Dmytro Tinin. Ways to improve the training of personnel of Ukraine's security and defence forces under martial law. *Collection of Scientific Papers "ΛΟΓΟΣ"*. 2022b. pp. 101–103. Available at: <https://doi.org/10.36074/logos-08.07.2022.027>

⁵ Oleksii Kravchuk, Maryna Bondarenko. Collaborative activity: scientific and practical commentary on the new Article 111-1 of the Criminal Code. *Legal Scientific Electronic Journal*, vol. 3. 2022. pp. 198–204. Available at: <https://doi.org/10.32782/2524-0374/2022-3/45>

⁶ Kateryna Rodak. An open register of state traitors has been launched in Ukraine. The names of politicians, judges and other traitors have been collected on one platform. *Society. Zaxid.net*. 2022. Available at: https://zaxid.net/v_ukrayini_zapratsyuvav_vidkritiy_reyestr_derzhavnih_zradnikov_n1540827

⁷ Alyona Riazantseva. Kharkiv police chief: 21 law enforcement officers fired for working with occupiers during war. *Suspilne. News*. 2022. Available at: <https://suspilne.media/280494-21-pravoohoronce-harkivsini-zvilnili-za-robotu-z-okupantami-pid-cas-vijni-nacalnuk-policii/>

⁸ Victor Kolisnyk. 2020. *Id.*

⁹ 2. Constitution of Ukraine. Article 2. 1996. Official website of the Verkhovna Rada of Ukraine. <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#top>

¹⁰ Resolution of the Verkhovna Rada of Ukraine "On the Appeal of the Verkhovna Rada of Ukraine to the United Nations, the European Commission, the European Parliament, the Council of Europe, the Organisation for Security and Cooperation in Europe and their parliamentary assemblies, governments and parliaments of the world regarding the non-recognition of the organisation and holding of pseudo-referendums by the occupation administrations of the Russian Federation in the temporarily occupied territories of Ukraine" of 29.07.2022 No. 2484-IX. Available at: <https://zakon.rada.gov.ua/laws/show/2484-20#Text>

¹¹ Dmytro Tinin, 2020a. *Id.*

¹² Order of the National Police of Ukraine "On Certain Issues of Service by Police Officers for the Period of Martial Law" No. 239 of 07.04.2022.

to their duty station at a particular time. However, given the temporary occupation or complete suspension of transport links, the above order established a list of police officers and specific categories of persons who had to report to the nearest territorial police unit or the place of temporary residence for those evacuated from the combat zone for registration and registration.

At the same time, if police officers do not arrive within the specified timeframe, urgent measures must be taken to establish the reasons and circumstances that make it impossible for them to arrive and, in the absence of such reasons, to take response measures in accordance with Ukraine's legislation.

Thus, it seems necessary to study the legal framework and legal status of police officers who did not arrive at the place of deployment determined by order of the National Police of Ukraine¹³ and answer the central question: Who is a police officer in such a situation? A defender or a traitor? Moreover, what kind of responsibility awaits him in such circumstances?

Studying the theoretical aspects of modern office work and legal practice, we conclude that in the situation of a police officer under occupation, it is possible to use such terms as combatant, collaborator, high treason, and police officer. In other words, in the same situation, a police officer can receive the status of one of these phenomena and be held accountable. However, certain features need to be distinguished from each other.

According to Art. 43 of Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol 1),¹⁴ "... combatants' are the armed forces of a party to the conflict, consisting of all organised armed forces, groups and units under the command of a person responsible to that party for the conduct of his subordinates, even if that party is represented by a government or authority not recognised by the opposing party".

At the same time, Article 44 of Protocol 1¹⁵ stipulates that, in order to enhance the protection of civilians, combatants are obliged to distinguish themselves from the civilian population while engaged in an attack or a military operation in preparation for an attack.

Analysing the provisions of Additional Protocol 1,¹⁶ we can distinguish the mandatory conditions of a combatant: the presence of appropriate uniforms, insignia, open carrying of weapons, the presence of a person responsible for the command of armed forces and formations, an internal disciplinary system, and compliance with international law. Thus, a police officer may be a combatant under the above conditions if he or she is engaged in hostilities on the side of a country in conflict.

In the context of the current occupation of certain Ukrainian territories, some law enforcement officers, including police officers, were forced to find themselves on these lands. Under the influence of the Russian media, some of them went over to the enemy. They carried out law enforcement activities on par with the occupation administration, i.e., they started working for the Russian authorities. These were called "collaborators".¹⁷

The definition of "*Collaborationism*" (from the French word "*collaboration*") is a term in the modern political lexicon with the meaning (in its expanded sense) of cooperation of the state's population with the enemy to the detriment of the state itself or its allies and participation in the persecution of the country's patriots. Sometimes a distinction is made between collaboration and cooperation (forced collaboration).¹⁸

The Explanatory Dictionary of the Ukrainian Language defines "collaborationism" as treacherous cooperation with the Nazi invaders in the countries they occupied during World War II.¹⁹

In March 2022, the Criminal Code of Ukraine²⁰ was supplemented by Article 111-1, "Collaboration Activities", which defines collaboration as cooperation between citizens of the state and the enemy to secure the enemy's interests and to harm their state.

The national legislation of Ukraine does not unanimously define the scientific and practical commentary on the composition of this criminal offence. However, there are still disputes regarding the legal assessment of this crime, and proposals are being made to address these gaps. However, the basis of this article is a set of features that qualify such socially dangerous acts. These include:

1) object – the fundamentals of national security of Ukraine (independence, sovereignty, territorial integrity and the foundations of the constitutional order); part 8 of Article 111-1 of the CC defines life and health of people and property rights as an additional object;²¹

2) the objective side, which is conditioned by the public denial by a citizen of Ukraine of the armed aggression against Ukraine or the fact of temporary occupation; or by public calls by a citizen of Ukraine to support the decisions and/or actions of the aggressor state, cooperation with it, non-recognition of the extension

¹³ Order of the National Police of Ukraine. 2022. *Id.*

¹⁴ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol 1) No. 995_c23 of 08 June 1977. Available at: https://zakon.rada.gov.ua/laws/show/995_199#Text

¹⁵ Protocol Additional to the Geneva Conventions. 1977. *Id.*

¹⁶ Protocol Additional to the Geneva Conventions. 1977. *Id.*

¹⁷ Kateryna Hunko, Dmytro Tinin. The scope of police powers under temporary occupation. Conference proceedings of the International Centre for Training and Research. 2022b. pp. 106–107. Available at: <https://archive.mend.org.ua/index.php/conference-proceeding/article/view/363>

¹⁸ Collaborationism. International experience of regulation, legal mechanisms and sanctions. Information note. Information and Research Centre at the Verkhovna Rada of Ukraine. USAID. Eastern Europe Foundation. 2021. Available at: https://pdf.usaid.gov/pdf_docs/PA00XD9Z.pdf

¹⁹ Dictionary of the Ukrainian Language. Academic Explanatory Dictionary (1970–1980), vol. 4, 216, 1973. Available at: <http://sum.in.ua/s/kolaboracionizm>

²⁰ Criminal Code of Ukraine. 2001. Available at: <https://zakon.rada.gov.ua/laws/show/2341-14#Text>

²¹ Oleksii Kravchuk, Maryna Bondarenko. 2022. *Id.*

of Ukraine's state sovereignty;²²

3) A general subject²³ or a particular subject - a citizen of Ukraine;²⁴

4) Subjective side – direct intent.

At the same time, Article 111 of the Criminal Code of Ukraine defines *treason* as an act intentionally committed by a citizen of Ukraine to the detriment of the sovereignty, territorial integrity and inviolability, defence capability, state, economic or information security of Ukraine: defection to the enemy during an armed conflict, espionage, assisting a foreign state, foreign organisation or their representatives in subversive activities against Ukraine.

As a distinction between collaboration and high treason, it should be noted that a citizen of Ukraine always commits high treason. High treason can be committed in favour of any state, while collaboration can be committed only in favour of the aggressor state. Therefore, judicial practice will be important in distinguishing between the two crimes.²⁵

The imposition of martial law has brought about many new processes and changes in Ukrainian society. One such process of public condemnation was the creation of a register of state traitors by the National Agency for the Prevention of Corruption (NAPC) and the NGO Chesno Movement, which, as of April 2022, had already included more than 100 people. The register contains data on collaborators from 14 regions of Ukraine. The collaborators and traitors include politicians, media professionals, judges, lawyers and law enforcement officers.²⁶

As of the beginning of October 2022, this list included 867 people who had taken the side of the enemy. According to this list, the collaborators include politicians – 423, media professionals – 81, judges and lawyers – 267, and law enforcement officers – 96 (Figure 1).²⁷ The list of law enforcement officers includes police officers, prosecutors, SBU, customs officers, correctional officers, retired police officers, and former police officers who defected to the enemy. As of October 2022, 16 people from the list have been eliminated. Thus, all the others are helping the occupation authorities and opposing the Ukrainian society's desire to regain the occupied territories and establish peace and order.

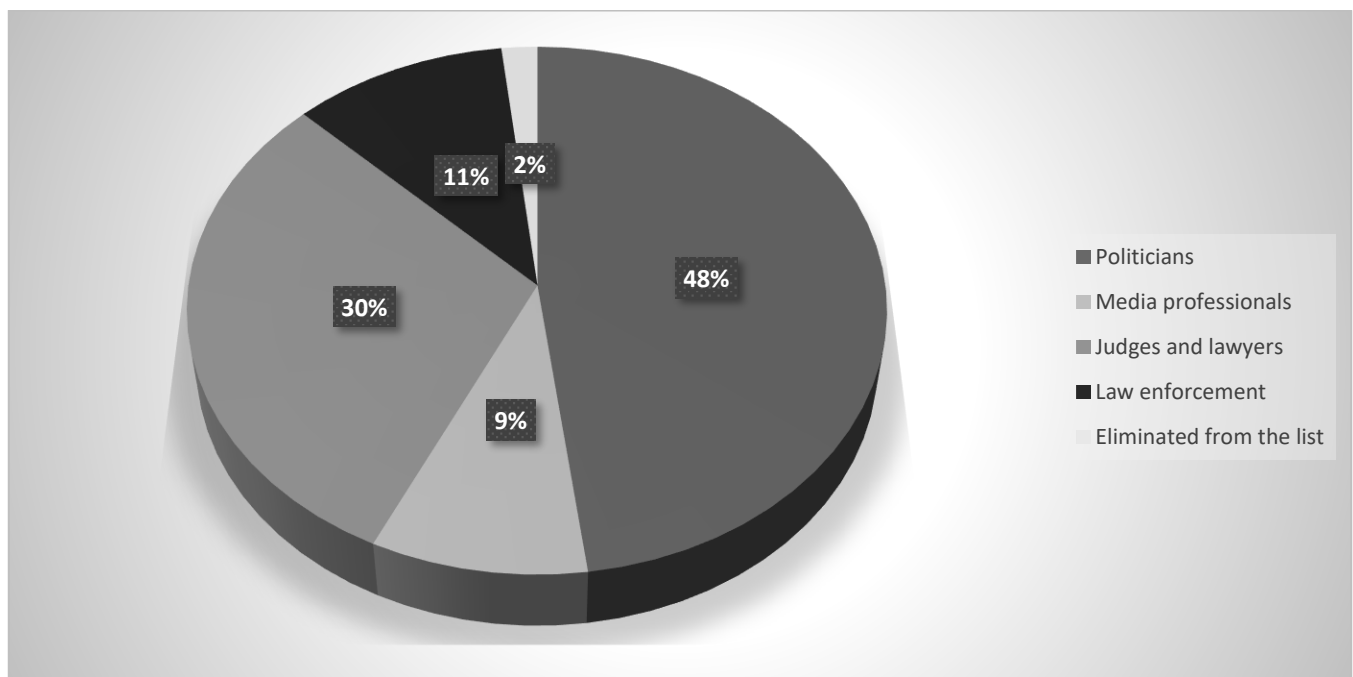


Figure 1: Segmentation of traitors by professional orientation, as of the beginning of October 2022 (867 people)
Source:²⁸

Having checked the official wanted list of the Ministry of Internal Affairs of Ukraine,²⁹ we conclude that the information in the “DerzhZradnyky” register and law enforcement wanted lists has significant discrepancies, as most of the persons on this list are not officially wanted. Thus, documenting the crime of collaboration today has many difficulties, complicated by the novelty of such a crime and the lack of full legislative regulation of all the

²² Liability for conducting collaborative activities. Free legal aid. WikiLegalAid. Categories: criminal offences, martial law. 2023. Available at: https://wiki.legalaid.gov.ua/index.php/Відповідальність_за_здійснення_колабораційної_діяльності

²³ Criminal Code of Ukraine. Article 111-1, part 4 and part 6. 2001.

²⁴ Criminal Code of Ukraine. Article 111, parts 1–3, 5, 7. 2001.

²⁵ Oleksii Kravchuk, Maryna Bondarenko. 2022. *Id.*

²⁶ Kateryna Rodak. 2022. *Id.*

²⁷ State advisers. Platform “Register of state advisers”. NGO “Movement CHESNO”. 2022. Available at: <https://www.chesno.org/traitors/?n=&new=&dead=&category=&geoobject=&geoobject=&party=>

²⁸ NGO “Movement CHESNO”. 2022. *Id.*

²⁹ Letter of the Ministry of Internal Affairs “On processing information on the powers of a police officer in the temporarily occupied territories” No. 7389/1/38-2022 of 11.03.2022.

constituent elements into a single mechanism. One of the difficulties of such regulation is the lack of judicial practice in Ukraine.

Checking the same records as of September 2023, we see the following indicators: the total number of traitors has increased to 1233 people, including 582 politicians, 98 media professionals, 289 judges and lawyers, and 206 law enforcement officers. New categories have also been added to the list of traitors: priests – 42 and stars – 16. As of September 2023, 23 people from the list have been eliminated (Figure 2).

The difference in the number of identified collaborators from early October 2022 to early September 2023 confirms that there are many traitors even on the territory of Ukraine. Therefore, checking citizens arriving from the occupied territory remains a necessary procedure under martial law. The new categories added to the list indicate that traitors and collaborators are from different strata of our society. The increase in the figures compared to Figure 1 and Figure 2 indicates that such precedents will continue to be identified by law enforcement agencies in the future, and therefore we need to be vigilant.

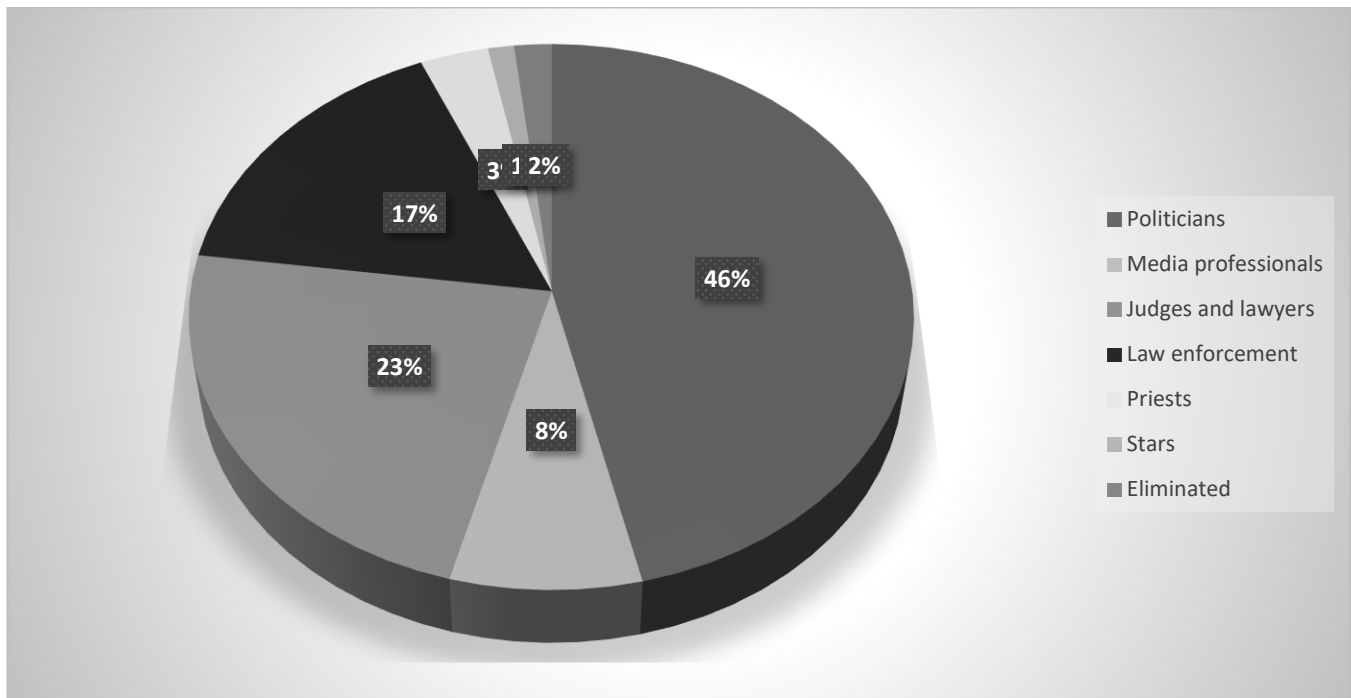


Figure 2: Segmentation of traitors by professional orientation, as of September 2023 (1233 people).

Source: ³⁰

Checking the same records as of December 2023, we see the following figures: the total number of traitors has increased to 1,355, including 654 politicians, 105 media professionals, 292 judges and lawyers, 243 law enforcement officers, 42 priests, and 23 stars. As of the beginning of December 2023, 25 people have been eliminated from the entire list (Figure 3).

³⁰ NGO "Movement CHESNO". 2022. *Id.*

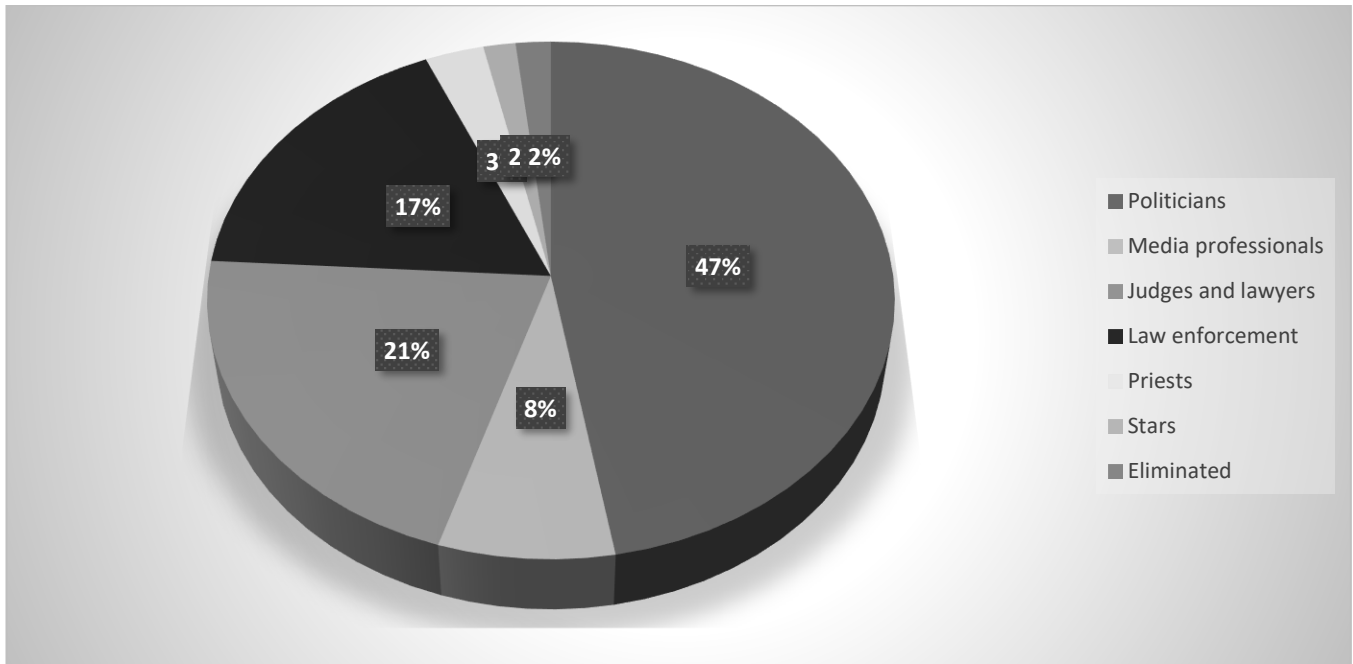


Figure 3: Segmentation of traitors by professional orientation, as of the beginning of December 2023 (1355 people).

Source:³¹

In conclusion, the fight against collaboration and high treason on Ukraine's territory is gaining momentum, taking into account the existing experience and changes made to national legislation under martial law. However, many collaborators who are officially on the list are currently outside our country's borders. Therefore, a fair trial awaits them if they are detained or extradited by other countries that are parties to international agreements.

So, under what circumstances will a police officer act legally, and will his/her activities not have legal consequences for bringing him/her to justice in the event of the territory's de-occupation?

It is crucial to consider the provisions of the Declaration on Police³² (from now on – the Declaration). Section C. “War and Other Public Emergency – Occupation by a Foreign Power”, sets out international norms regarding police officers under occupation by a foreign power, excluding military police officers. In this case, this document is the only one that establishes the legal status and limits of powers of a police officer in the occupied territory by the aggressor party. This framework is defined in seven parts, which will be analysed below.

Paragraph 1 of this section states that “the police officer shall continue to exercise his or her powers to protect persons and property in time of war and hostile occupation in the interest of the civilian population. In this regard, he shall not have the status of a ‘party to the conflict’ and shall not be subject to the provisions of the Third Geneva Convention”.³³ However, this part of the Declaration³⁴ does not specify how the police of the legitimate authorities have the right to exercise their legitimate powers since a military administration of a foreign state is established in the occupied territory. It also does not specify a mechanism or a clearly defined algorithm for the work of a police officer under occupation. Consequently, law enforcement officers face the following problems: the procedure for documenting criminal activity is not possible, the procedure for bringing perpetrators to justice in the occupied territory under Ukrainian law is not possible, and judicial institutions and the prosecutor's office have been evacuated.

Also, taking into account the legality of the use of police coercive measures in accordance with Articles 42–46 of the Law of Ukraine “On the National Police”,³⁵ the issue of police officers using firearms and the procedure for verifying the legality of such use, as well as the possibility of police officers keeping firearms in accordance with the current legislation of Ukraine in the occupied territory, remains unregulated by law.

Part 1 of Section C of the Declaration³⁶ sets out in a rather vague manner the range of powers of a police officer under occupation: “to perform their tasks of protecting citizens and property in time of war and hostile occupation in the interests of the civilian population”. No specific list of his/her powers is clearly defined. The lack of specifics can be explained by the individuality of the national legislation of the countries that have ratified this Resolution.

³¹ NGO “Movement CHESNO”. 2022. *Id.*

³² Declaration on Police. Parliamentary Assembly of the Council of Europe. 1979. Available at: <https://xn--80aagahqwyibe8an.com/zakonodavstvo-fundamentalne/rezolyutsiya-690-1979-parlamentskoy-assamblei-15618.html>

³³ Geneva Convention relative to the Protection of Civilian Persons in Time of War. 1949. Available at: https://zakon.rada.gov.ua/laws/show/995_154#Text

³⁴ Declaration on Police. 1979. *Id.*

³⁵ Law of Ukraine “On the National Police” No. 580-VIII of 02.07.2015. Available at: <https://zakon.rada.gov.ua/laws/show/580-19#Text>

³⁶ Declaration on Police. 1979. *Id.*

Studying the content of Article 75, “Fundamental Guarantees” of Additional Protocol 1,³⁷ one can identify a clearly defined list of crimes that “are and shall remain prohibited at any time and in any place, whether committed by members of civilian or military authorities”. These include violence against the life, health and physical and mental condition of persons (murder, corporal punishment, all forms of torture, mutilation); outrages upon human dignity; taking hostages; collective punishment; and even threats to commit any of the above.

According to Part 3 of the Declaration,³⁸ the Occupying Power shall not instruct police officers to perform tasks not covered by Part 1 of the Declaration. In our opinion, even when a police officer cooperates with a foreign administration under occupation, providing such instructions by the aggressor country is inevitable. After all, the interim administration in the occupied territory does not aim only to ensure the population’s everyday life but is trying to establish complete control over the occupied territory to enrich itself further. The parties’ disagreements and material interests lead to conflict situations, which are difficult for the local population to prevent under martial law without weapons. In such a situation, cases of murder and kidnapping of civilians, police officers and other persons liable for military service are pretty standard to prevent further resistance to the new administration.

Also, according to Part 4 of the Declaration,³⁹ a police officer should not be employed during the occupation:

- to take part in actions directed against members of the resistance movement;
- to participate in implementing measures aimed at using the population for military purposes and protecting military facilities.

Part 5 of the Declaration⁴⁰ is one of the most successful and likely secure guarantees for a police officer under occupation. According to it, if a police officer is dismissed during a period of hostile occupation because he or she is forced to carry out illegal orders contrary to the interests of the civilian population and because he or she finds no other way out in this situation, the latter shall be reinstated in his or her position after the occupation of the territories without violation of his or her rights and income that he or she would have received if he or she had remained in service.

Therefore, under such conditions, a police officer’s execution of orders and instructions of the occupation authorities in a certain territory should be considered personally by the police officer at his/her discretion as to the need for its execution if it contradicts the norms of international law and does not relate to the interests of the civilian population. In this case, any actions that lead to cooperation with the occupation authorities will indicate signs of police collaboration.

Moreover, according to Art. 7, the Occupying Power should not bring a police officer to disciplinary or criminal liability because he or she carried out orders of the lawful authorities before the occupation. This circumstance is determined by the fact that the police officer is on duty, and his/her main task under occupation can only be to protect civilians and their property from unlawful attacks.

Thus, if such a police officer exercises his/her powers in the occupied territory legally by Ukrainian law, there is still a lack of regulation of service activities in terms of ensuring several human rights and freedoms declared in national legislation and international law. These include deciding whether to initiate proceedings (administrative or criminal), working with the evidence base, expert research, prosecutorial supervision, procedural guidance, recording of such information, provision of legal aid, engagement of a defence counsel, and appealing against actions and decisions of officials.

5. DISCUSSION

The public opinion on the differentiation of the concept of betrayal of a police officer under occupation is represented by the commentary of the head of the Kharkiv police V. Tymoshko: “Is a policeman who did not leave the occupied territory because he has parents with disabilities a traitor or not? No, he is not a traitor. Traitors are those who take active steps to deliberately help the occupiers. Suppose a police officer, when the territory was occupied, changed into civilian clothes, hid his issued weapons and did not take any actions to cooperate with the occupiers. In that case, he is not a traitor”.⁴¹

V. Tymoshko also reported that some police officers from the Kharkiv region who remained in the occupied territories cooperated with the Russian military. Since the full-scale invasion of Russia, 21 law enforcement officers have been dismissed, and 40 are still under investigation.⁴² The latter also states that such police officers are subjected to appropriate checks for the possibility of cooperation with the enemy through the “polygraph” procedure, as well as work with society and public opinion.

Vivid examples of law enforcement behaviour are provided by Kysko⁴³: “In February 2014, two law

³⁷ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol 1) No. 995_c23 of 08 June 1977. Available at: https://zakon.rada.gov.ua/laws/show/995_199#Text

³⁸ Declaration on Police. 1979. *Id.*

³⁹ Declaration on Police. 1979. *Id.*

⁴⁰ Declaration on Police. 1979. *Id.*

⁴¹ Alyona Riazantseva. 2022. *Id.*

⁴² Alyona Riazantseva. 2022. *Id.*

⁴³ Artem Kysko. Non-combatants: a literary and artistic publication. Aldi+. 2022.

enforcement officers disguised themselves in civilian clothes and hid their weapons and IDs. With only copies of their passports in hand, they had to cover a distance of 5 km to the nearest Ukrainian government-controlled settlement. Occupation checkpoints were located, and thorough checks were carried out to overcome this distance. If it wasn't for the shelling of one of the checkpoints as we were approaching, it is not known what would have happened to us."

In broad sense, we must agree with the appeal of former Minister of the Ministry of Internal Affairs D. Monastyrskyi on processing information on the powers of a police officer in the temporarily occupied territories under current martial law.⁴⁴ According to it, in the temporarily occupied territories of Ukraine a police officer has no right:

- 1) to participate in actions directed against members of the resistance movement;
- 2) to participate in the implementation of measures aimed at using the population for military purposes and protection of military facilities;
- 3) to cooperate and execute orders of the occupation authorities, except for those aimed at protecting the rights and interests of the civilian population;
- 4) to participate in the activities of the occupation authorities, except for those aimed at protecting the rights and interests of the civilian population;
- 5) to be part of the units (groups) of the occupation authorities or otherwise contribute to strengthening the influence of the occupation authorities in the respective territories (i.e., they must remain Ukrainian police officers and not defect to the enemy).

It should be noted that law enforcement officers' actions only mention the scope of their powers as officials. However, no word is mentioned about conducting educational activities on the existing and possible dangers during armed conflicts and active hostilities. One such need is to educate the civilian population about mine risk and first aid.

According to Tymofeiev and Tinin,⁴⁵ after the occupation, a large number of Ukrainian territories were mined for various reasons. However, during the de-occupation, the invaders' military administration did not carry out demining and did not leave maps of the locations of such minefields. This led to injuries and deaths of civilians who, for various reasons, were forced to perform certain work on such lands.

The current concept of the National Police of Ukraine envisages active communication between the police and citizens based on trust, partnership, communication, and dialogue. The level of professionalism of a police officer will build public trust in such a law enforcement system in the future.

6. CONCLUSION

Summing up the above, we conclude that before the full-scale invasion of Ukraine by the armed forces of the Russian Federation, none of the documents defined such terminology and mechanisms for police work in such conditions. After all, most international law refers to the armed forces of countries in conflict. Each state determines this need by the existing precedent and principles of national legislation.

Today, there is an urgent need to legislate the powers of police officers performing their duties in the temporarily occupied territories and protecting the interests and property of the civilian population. This need is due to the time these police officers stay in the occupied territories and the absence of any legislatively defined algorithm of actions under occupation.

Moreover, after the de-occupation of such territories, it will be difficult to assess the actions of police officers who performed their duties under occupation and check these activities for signs of collaboration.

The most successful solution in such a situation is always to bring national legislation in line with the norms and standards of international law. In the context of martial law in Ukraine, foreign control and monitoring of delegations and organisations to observe the norms and standards of international law in the occupied territory is essential. This problem is caused by the fact that the military occupiers commit crimes, including war crimes while disregarding the customs of warfare and violating the interests of the civilian population. They do not hesitate to commit murder, looting, rape, hostage-taking, extortion and other crimes.

In the context of an aggressive war on the territory of Ukraine, it should be remembered that during an armed conflict, both sides must adhere to the rules and customs of warfare. After all, if the occupying power is only concerned with its enrichment and does not help the civilian population, they will have no way to protect themselves from illegal attacks. It should also be remembered that military operations in the conflict area will continue until the legitimacy and recognition of certain territories as a part of a particular state is determined. During this time, there will be many illegal actions and criminal encroachments on the rights and interests of citizens. In this regard, law enforcement agencies should exercise their powers under the current legislation until the territorial aspects are resolved.

⁴⁴ Search records of the Ministry of Internal Affairs of Ukraine. <https://wanted.mvs.gov.ua/searchperson/> Search. Search records of the Security Service of Ukraine. 2023. Available at: <https://ssu.gov.ua/u-rozshuku?page=12>

⁴⁵ Volodymyr Tymofeiev, Dmytro Tinin. Procedure for police officers in the temporarily occupied and de-occupied territories. Conference proceedings of the International Centre for Training and Research. 2023. pp. 139–141. Available at: <https://archive.mcmd.org.ua/index.php/conference-proceeding/article/view/637>

These aspects can exist and be implemented if both sides of the conflict adhere to the customs of warfare, do not violate the rules, and, even better, adhere to the conditions of warfare on the battlefield, not in the city and the homes of ordinary citizens.

REFERENCES

- Collaborationism. International experience of regulation, legal mechanisms and sanctions. Information note. Information and Research Centre at the Verkhovna Rada of Ukraine. USAID. Eastern Europe Foundation. 2021. Available at: https://pdf.usaid.gov/pdf_docs/PA00XD9Z.pdf
- Constitution of Ukraine. Official website of the Verkhovna Rada of Ukraine. 1996. Available at: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#top>
- Criminal Code of Ukraine. 2001. Available at: <https://zakon.rada.gov.ua/laws/show/2341-14#Text>
- Declaration on Police. Parliamentary Assembly of the Council of Europe. 1979. Available at: <https://xn--80aagahqwiybe8an.com/zakonodavstvo-fundamentalne/rezolyutsiya-690-1979-parlamentskoy-assamblei--15618.html>
- Dictionary of the Ukrainian Language. Academic Explanatory Dictionary (1970–1980), vol. 4, 216, 1973. Available at: <http://sum.in.ua/s/kolaboracionizm>
- Geneva Convention relative to the Protection of Civilian Persons in Time of War. 1949. Available at: https://zakon.rada.gov.ua/laws/show/995_154#Text
- Geneva Convention relative to the Treatment of Prisoners of War. 1949. Available at: https://zakon.rada.gov.ua/laws/show/995_153#Text
- Kateryna Hunko, Dmytro Tinin. Peculiarities of regulating police competence under conditions of temporary occupation at the national level. Conference proceedings of the International Centre for Training and Research. 2022a. pp. 119–121. Available at: <https://archive.mcmd.org.ua/index.php/conference-proceeding/article/view/364>
- Kateryna Hunko, Dmytro Tinin. The scope of police powers under temporary occupation. Conference proceedings of the International Centre for Training and Research. 2022b. pp. 106–107. Available at: <https://archive.mcmd.org.ua/index.php/conference-proceeding/article/view/363>
- Victor Kolisnyk. The Constitutional Principle of the State's Territorial Integrity in the Context of the National and Ethnic Composition of the Border Regions of Ukraine and Russia. Bulletin of the Constitutional Court of Ukraine, vol. 3. 2020. pp. 125–142. Available at: <https://ccu.gov.ua/library/konstytucijnyy-pryncyp-terytorialnoy-cilisnosti-derzhavy-u-konteksti-nacionalno-etnichnogo>
- Oleksii Kravchuk, Maryna Bondarenko. Collaborative activity: scientific and practical commentary on the new Article 111-1 of the Criminal Code. Legal Scientific Electronic Journal, vol. 3. 2022. pp. 198–204. Available at: <https://doi.org/10.32782/2524-0374/2022-3/45>
- Artem Kysko. Non-combatants: a literary and artistic publication. Aldi+. 2022.
- Law of Ukraine “On the National Police” No. 580-VIII of 02.07.2015. Available at: <https://zakon.rada.gov.ua/laws/show/580-19#Text>
- Letter of the Ministry of Internal Affairs “On processing information on the powers of a police officer in the temporarily occupied territories” No. 7389/1/38-2022 of 11.03.2022.
- Liability for conducting collaborative activities. Free legal aid. WikiLegalAid. Categories: criminal offences, martial law. 2023. Available at: https://wiki.legalaid.gov.ua/index.php/Відповідальність_за_здійснення_колабораційної_діяльності
- Order of the National Police of Ukraine “On Certain Issues of Service by Police Officers for the Period of Martial Law” No. 239 of 07.04.2022.
- Vitaliy Pokaichuk. Law enforcement forces as a system. Scientific Bulletin of Dnipro State University of Internal Affairs, vol. 2. 2017. pp. 149–155. Available at: <http://er.dduvs.in.ua/handle/123456789/235>
- Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol 1) No. 995_c23 of 08 June 1977. Available at: https://zakon.rada.gov.ua/laws/show/995_199#Text
- Resolution of the Verkhovna Rada of Ukraine “On the Appeal of the Verkhovna Rada of Ukraine to the United Nations, the European Commission, the European Parliament, the Council of Europe, the Organisation for Security and Cooperation in Europe and their parliamentary assemblies, governments and parliaments of the world regarding the non-recognition of the organisation and holding of pseudo-referendums by the occupation administrations of the Russian Federation in the temporarily occupied territories of Ukraine” of 29.07.2022 No. 2484-IX. Available at: <https://zakon.rada.gov.ua/laws/show/2484-20#Text>
- Alyona Riazantseva. Kharkiv police chief: 21 law enforcement officers fired for working with occupiers during war. Suspilne. News. 2022. Available at: <https://suspilne.media/280494-21-pravoohoronca-harkivsini-zvilnili-za-robotu-z-okupantami-pid-cas-vijninacalnik-policii/>
- Kateryna Rodak. An open register of state traitors has been launched in Ukraine. The names of politicians, judges and other traitors have been collected on one platform. Society. Zaxid.net. 2022. Available at: https://zaxid.net/v_ukrayini_zapratsyuvav_vidkritiy_reyestr_derzhavnih_zradnikiv_n1540827
- Search records of the Ministry of Internal Affairs of Ukraine. <https://wanted.mvs.gov.ua/searchperson/> Search. Search records of the Security Service of Ukraine. 2023. Available at: <https://ssu.gov.ua/u-rozshuku?page=12>
- State advisers. Platform “Register of state advisers”. NGO “Movement CHESNO”. 2022. Available at: <https://www.chesno.org/traitors/?n=&new=&dead=&category=&geoobject=&geoobject=&party=>
- Dmytro Tinin. The status of a Ukrainian police officer under martial law in case of failure to comply with an order to withdraw from encirclement or occupation (theoretical aspect). Donbas Law Journal, vol. 4, no. 81, part 1. 2022a. pp. 204–208. Available at: <https://doi.org/10.32782/2523-4269-2022-81-4-1-204-208>
- Dmytro Tinin. Ways to improve the training of personnel of Ukraine's security and defence forces under martial law. Collection of Scientific Papers “ΛΟΓΟΣ”. 2022b. pp. 101–103. Available at: <https://doi.org/10.36074/logos-08.07.2022.027>
- Volodymyr Tymofieiev, Dmytro Tinin. Procedure for police officers in the temporarily occupied and de-occupied territories. Conference proceedings of the International Centre for Training and Research. 2023. pp. 139–141. Available at: <https://archive.mcmd.org.ua/index.php/conference-proceeding/article/view/637>