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Actual issues of responsibility of civil servants under special legal regimes: International legal experience

Актуальні питання відповідальності державних службовців в умовах особливих правових режимів: міжнародно-правовий досвід

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Abstract

The issue of reforming and modernizing the civil service is relevant in developed European countries, including Ukraine. The basis of this process is the democratization of the public service, aimed at satisfying the interests of the citizen as a client and consumer of public services, and therefore not the last role in this belongs to the issue of legal regulation of the responsibility of public servants. In the conditions of military and state of emergency regimes, it is important to ensure the proper service of provision of public services and the functioning of the state mechanism. In this context, an important role is played by the institution of the responsibility of civil servants. Therefore, we consider it necessary to analyze the international legal experience of prosecution in the conditions of special legal regimes. The purpose of the work is to find out the relevant issues of international experience in regulating the responsibility of civil servants. Research methodology includes such methods as the method of abstraction, the method of analysis, the method of induction and induction, the methods of formalization and idealization, the

Анотація

Питання реформування та модернізації державної служби є актуальним у розвинених європейських країнах, в тому числі і в Україні. Основою цього процесу є демократизація державної служби, спрямована на задоволення інтересів громадянина як клієнта та споживача державних послуг, а тому не остання роль в цьому належить питанням правового регулювання відповідальності державних службовців. В умовах режимів воєнного та надзвичайного стану важливо забезпечувати належний сервіс надання державних послуг та функціонування державного механізму. В цьому контексті важливу роль відіграє інститут відповідальності державних службовців. Тому, вважаємо за необхідне проаналізувати міжнародно-правовий досвід притягнення до відповідальності в умовах особливих правових режимів. Метою роботи є з'ясування актуальних питань міжнародного досвіду щодо регулювання відповідальності державних службовців. Методологією дослідження є такі методи як метод абстрагування, метод аналізу, метод індукції та

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comparative method, the system method, and the functional method. As a result of the study, the peculiarities of regulatory regulation of the mechanisms of bringing civil servants to responsibility, both in Ukraine and in foreign countries, were analyzed. Both the general principles of prosecution and the specific principles of this process under special legal regimes (martial law and state of emergency) are noted.

Keywords: responsibility, civil servants, special legal regime, martial law regime, international legal experience.

Introduction

In the modern realities of the instability of the world legal order, it is important to analyze the specifics of the civil servant's responsibility under special legal regimes, taking into account the specifics of both the legal regime and the status of a public servant. A civil servant is in an employment relationship that is characterized by certain specifics, because the employer is the state in the person of a specific body of state power. At the same time, a civil servant performs a labor function and is obliged to observe official discipline, and in case of violation of discipline or legal requirements - to the responsibility provided by the current legislation.

The Law of Ukraine "On Civil Service" provides a definition of "official discipline" which means strict adherence to the Oath of a civil servant, conscientious performance of official duties and rules of internal official procedure. In order to observe official discipline, a civil servant must not commit acts that are incompatible with his professional status, show a high level of culture, professionalism, respect for citizens, treat state property, public interests, etc. In the conditions of martial law on the territory of Ukraine, the Law of Ukraine "On the Organization of Labor Relations in Conditions of Martial Law" regulates all the intricacies of the general labor rules of civil servants, thereby pushing aside the labor legislation, the Laws of Ukraine "On State Service", "On Service in Local Self-Government Bodies" and other legislative acts regulating the activities of civil servants and officials of local self-government (Law 2136-IX, 2022; Law 889-VIII, 2015; Law 2493-III, 2001).

At the same time, to what extent this decision is correct, it is possible to find out only over time, as well as based on the analysis of the international legal experience of regulating the

індукції, методи формалізації та ідеалізації, порівняльний метод, системного методу та функціонального методу. У результаті дослідження проаналізовано особливості нормативно-правового регулювання механізмів притягнення до відповідальності державних службовців, як в Україні так і в зарубіжних країнах. Зауважено як на загальних засадах притягнення до відповідальності, так і на специфічних засадах даного процесу в умовах особливих правових режимів (режим воєнного та надзвичайного стану).

Ключові слова: відповідальність, державні службовці, особливий правовий режим, режим воєнного стану, міжнародно-правовий досвід.

responsibility of civil servants in the conditions of special legal regimes.

Legal responsibility is the object of research in many legal sciences, in particular the theory of the state and law, criminal, civil, labor, administrative law, and many other sciences, since legal responsibility is a guarantee and a mechanism for ensuring the rights and freedoms of subjects of various legal relationships.

As the responsibility of civil servants is one of the most urgent and debatable problems, especially in the conditions of martial law, it should be considered as one of the key issues that requires special attention.

Presented in modern legal science, research on the responsibility of civil servants, as well as comparative legal studies of this problem, mainly concern individual types of legal responsibility or the comparison of individual components of one or another legal system of the EU countries, which does not give a comprehensive idea of the responsibility of civil servants in the conditions of special legal regimes, and therefore this research is relevant.

Given the above, the tasks of the research are:

- 1) To analyze the international experience of bringing civil servants to justice, in particular in the conditions of special legal regimes;
- 2) To study problematic and urgent issues of responsibility of civil servants abroad and in Ukraine;
- 3) To form conclusions regarding current issues of responsibility of civil servants in conditions of special legal regimes (martial law, etc.) and possible ways of solving them.

The object of the study is the international legal experience of the procedure of bringing civil servants to justice under the conditions of special legal regimes of foreign countries. The subject of the study is social relations that arise, change, and cease under the application of responsibility to civil servants in foreign countries.

Theoretical Framework or Literature Review

During the analysis of the international experience of prosecuting civil servants under special legal regimes, the works of the following authors were analyzed. Thus, Andriychuk (2009) analyzed the principle of transparency of communication between state authorities and the population through a conceptual vision. The researcher concluded that transparency as a principle of communication between state authorities and the public is a complex phenomenon, the meaning of which goes beyond the simple provision of information to citizens. The formation of the public's understanding of all aspects of the activities of state authorities, which this principle should provide for, makes it possible to characterize it as the appropriate quality of public life, a type of social relations built on mutual understanding between these authorities and the population.

Moreover, Aleynikova (2022) investigated the peculiarities of civil service in the conditions of martial law. In particular, the article notes the rights and obligations of civil servants, as well as the restrictions caused by the state of war in Ukraine.

Further, Anishchenko (2022) investigated the issue of compliance with the standards of legal responsibility during the organization of the procedural procedure for bringing civil servants to disciplinary responsibility. The author concluded that the norms of the current legislation on disciplinary responsibility should be revised in terms of the implementation of the procedural procedure for bringing civil servants to responsibility and formed in compliance with the standards of legal responsibility, to direct them to achieve the optimal degree of orderliness, since disciplinary responsibility is one of the types of legal responsibility. Also, in the opinion of the author, the Procedure for Conducting Disciplinary Proceedings and the Procedure for Accounting and Working with Disciplinary Cases need to be amended and brought into line with the Procedure for Accounting and Working with Disciplinary Cases, in which it is necessary to define in detail the procedure for familiarization with case

materials, as well as to detail the procedure for determining the place of familiarization with the disciplinary case and making changes to the Procedure for Conducting Disciplinary Proceedings and defining a separate rule in it regarding the rights of the lawyer / another authorized representative in the process of conducting the disciplinary proceedings.

The problematic issues of the institute of disciplinary responsibility of civil servants are studied in the work of Vladovska and Trach (2020). According to the authors, the disciplinary responsibility of civil servants is an institution of labor law, which consists in applying negative consequences of a legal nature to the guilty person in the event of a disciplinary offense committed by him, with the aim of compensation for damage, termination and prevention of violations of official discipline in the future. Also, the authors emphasize that the investigated institute has undergone significant reform since its creation and now needs further improvement in the following aspects: elimination of legislative conflict and duplication of provisions on determining the disciplinary responsibility of a civil servant and the grounds for bringing a civil servant to disciplinary responsibility; canceling the exhaustive list of types of disciplinary offenses and establishing the possibility of their extended interpretation; expanding the list of disciplinary sanctions by supplementing it with a fine; establishing the possibility of applying alternative disciplinary sanctions for a specifically committed disciplinary offense; to create a specialized court for bringing civil servants to disciplinary responsibility.

A comparative analysis of the organization of the civil service in Germany, Australia, and Ukraine was carried out by Geivakh (2012). The main principles of European Union law and their application in public administration became the object of research by Hrytsiak (2004).

Also, Gubanov (2016) carried out a comparative analysis of the procedure for bringing civil servants to disciplinary responsibility in Ukraine and Germany. Summarizing the analysis of the disciplinary legislation of Ukraine and the Federal Republic of Germany, the author concluded that, in contrast to the disciplinary responsibility of employees according to the norms of labor law, the detailed regulation of the procedure for bringing civil servants to disciplinary responsibility is aimed at protecting precisely public legal interests, ensuring the proper level of public administration, stability and authority of the state.

In the work of Zubrytskyi (2021), the experience of Germany regarding the legal regulation of the legal responsibility of civil servants was investigated.

Further, Derets (2022) noted the issue of balancing military optimization and public service. Kaida (2022) examined the features of public service during the period of martial law.

Researcher Krupyak (2015) surveyed the general principles regarding the organization of civil servant activities, as well as the problematic issues of such an organization.

Moreover, Neselevska (2018) examined the foreign experience of legal regulation of disciplinary liability of civil servants and directions of its implementation in Ukraine. Okhrimenko and Ivanova (2015) considered the issue of social responsibility as a component of the legal responsibility of a civil servant.

Charkina (2016) reviewed the principles of civil service in the countries of the European Union using the example of Poland and Germany. Shapovalova (2022) considered the positive experience of Germany regarding the legal regulation of social protection of civil servants in modern conditions of information communications. Some issues of protection of the rights of civil servants and their responsibilities are analyzed in the work of Dr. Peter Grech (2006).

Kolomoiets, Verlos, & Pyrozhkova (2018) studied some manifestations of corruption with the participation of civil servants, related to giving them gifts. Kolomoiets, Kolpakov, Kushnir, Makarenkov, & Halitsyna (2020) analyzed the anti-corruption standards of legal regulation of the activities of civil servants outside the civil service. Kolomoiets, Tsybulnyk, Moroz, Prymachenko, & Khashev (2021) investigated the impact of corruption of civil servants on the state of national security of the country.

Methodology

During the study of topical issues of responsibility of civil servants in the conditions of special legal regimes, the method of abstraction was used, which involves separating a certain feature of the researched subject as a criterion for systematizing information about this subject. Thanks to this method, the responsibility of civil servants was considered both in normal

conditions and in conditions of war and emergency.

The use of analysis methods helped to break down information about the subject of research into constituent elements. Thus, the international experience of prosecuting various categories of civil servants was analyzed.

The method of abstraction along with the method of analysis helped to fulfill the main task of the research – to analyze the international experience of bringing civil servants to justice, in particular in the conditions of special legal regimes.

The help of methods of induction and deduction can make it possible to formulate objective conclusions and summarize information about the international experience of bringing civil servants to justice. Thus, deduction means making a general conclusion based on a partial fact, reducing the whole to a partial fact, and induction, which means making a partial conclusion from a more general premise, that is, reducing a partial fact to a general basis, helped to understand how special legal regimes in states affect the institution of accountability. These methods helped to fulfill one of the tasks set by the authors of this article, namely - to form conclusions regarding current issues of responsibility of civil servants in conditions of special legal regimes (martial law, etc.) and possible ways of solving them.

The methods of formalization and idealization helped to examine the already existing legislation and generalize the actually available information about the subject of research, as well as to formulate an idea of how it could be.

The system method makes it possible to consider public administration phenomena in the aggregate of social relations, identify the whole and its parts, helped to study individual components of the public administration apparatus in the general system of organization of state power, as well as the place of responsibility of the public servant in this system. The use of this method helped to focus on the organizational and structural forms in which management activities are carried out and to consider the organization of several processes in the conditions of special legal regimes as a holistic phenomenon, where all components are interconnected by goals, functions, principles, methods, structures, processes, personnel and resource provision. So, this method, which involves structuring and ranking problems, made it possible to consider the phenomenon under

study as a system, that is, many interdependent and interconnected elements.

With the help of the functional method, paying attention to the specifics of the content of the institute of responsibility of civil servants, objectively necessary functions of state administration at this stage of state formation, and finding optimal options for their distribution in the state administration apparatus, were identified.

An important role in this study was played by the comparative method, which contributed through the study and use of the practice of bringing civil servants to justice in the conditions of special legal regimes - made it possible to identify the trends and directions of development of public administration, its relationships with other subjects of public power, and to determine its place in the state mechanism in conditions of war and emergency. Through the application of this method, it became possible to search for the optimal model of executive power, and local self-government, and to test successful foreign mechanisms for solving urgent issues. This method helped to fulfill one of the tasks of this research, in particular – to compare problematic and urgent issues of responsibility of civil servants abroad and in Ukraine.

Results and Discussion

The current conditions of the military aggression of the Russian Federation on the territory of Ukraine made it necessary to review the issue of the responsibility of civil servants. Such a situation is justified and is observed in countries where the war is ongoing and has been. Given this, we consider it necessary to consider the experience of foreign countries regarding the responsibility of civil servants under special legal regimes. At the same time, it is equally important to pay attention to the experience of progressive countries regarding this issue.

First of all, let's find out how such regulation is currently carried out in Ukraine. The Law "On the Organization of Labor Relations in the Conditions of Martial Law" (Law 2136-IX, 2022) defines key issues regarding the performance of duties by employees, including military personnel. Civil servants are liable for violations of legality and official discipline, non-performance or improper performance of their official duties.

But before starting a detailed consideration of each of the issues we identified, let's consider the

concept of the standard of legal responsibility and examine the importance of this term for disciplinary proceedings. Thus, it seems logical to state that the processes that take place within the limits of various types of legal responsibility (among which are traditionally distinguished constitutional, administrative, criminal, civil, disciplinary, and material) should meet certain general standards, i.e. have typical form and content. However, we agree with the opinion that such standards should consist of a set of signs and principles of legal responsibility and features of the procedural design of the responsibility procedure.

In particular, the signs of legal responsibility include:

- 1) the fact of committing an offense is the basis for legal liability;
- 2) legal responsibility is expressed in the legal obligation of the offender to suffer deprivation of certain values that belonged to him;
- 3) is carried out within the framework of legal relations voluntarily or by decision of a court or other jurisdictional body;
- 4) measures of state-authority influence, as it revealed, are applied in a procedural-procedural manner;
- 5) is a negative reaction of the state to the offense and the subject guilty of its commission;
- 6) is a legal fact and gives rise to legal consequences (for example, a criminal record) (Vladovska & Trach, 2020).

Disciplinary responsibility must correspond to the above signs of legal responsibility. Therefore, it is appropriate to conclude that the standard of legal responsibility can be defined as generalized rules for the organization of procedural and procedural order, based on general features and principles of legal responsibility, the purpose of which is to observe the legality, completeness of consideration and objectivity of the decision on the case.

At the same time, the grounds for civil servants' liability under special legal regimes, as well as the procedure itself, may change. Thus, despite the principle of stability of the civil service, it is possible to introduce changes that will be justified to ensure national security.

Let's consider the issue of the responsibility of civil servants in foreign countries in more detail (Table 1).

Table 1.
Comparative legal analysis of the prosecution of civil servants in foreign countries.

Country	Features
Israel	<p>The main problems include:</p> <ul style="list-style-type: none"> ● bureaucratization of the civil service corps; ● excessive centralization (administrative, political, financial); ● insignificant role of citizens in the decision-making process. <p>The constant military threat stands in the way of the adoption of successful reforms in the field of civil service. In Israel, we are used to the fact that the speed of decision-making is often a matter of "life or death". However, this approach was erroneously extended not only to the defense industry, where no one doubts its usefulness but also to the rest of the spheres, where it is not needed at all. In conclusion, the lack of public administration reform is one of the features that holds Israel back and prevents it from being compared to other developed countries that are constantly improving their public administration (in terms of innovation, openness, inclusiveness, etc.). At the same time, the responsibility of civil servants is distinguished by their brutality.</p>
Germany	<p>The Basic Law of the Federal Republic of Germany defines that officials in the Federal Republic of Germany are a special group of people performing public service, bound to the state by public-legal relations of service and loyalty. Persons employed in the public service of the Federal Republic of Germany are divided into three categories: officials, employees, and workers of state institutions. The procedure for bringing civil servants to disciplinary responsibility in the Federal Republic of Germany is regulated by the Federal Disciplinary Statute of the Federal Republic of Germany dated July 9, 2001. The Federal Disciplinary Statute of the Federal Republic of Germany, under paragraph 1, applies both to civil servants and to retired civil servants in the event of the discovery of disciplinary offenses committed by them during their former employment in the civil service. According to paragraph 5 of the Federal Disciplinary Statute of the Federal Republic of Germany, the following types of disciplinary sanctions may be applied to civil servants: 1) reprimand; 2) fine; 3) salary reduction; 4) reduction in position; and 5) dismissal from a civil service position, and disciplinary measures against retired civil servants are: 1) reduction of pension; and 2) deprivation of pension.</p> <p>The most important changes in public authorities in Poland during the reform period are as follows:</p> <ul style="list-style-type: none"> — qualitative changes in relations between politics and administration (allocation of political positions, civil servants); — strengthening the principle of subsidiarity; — implementation of the dominance of the territorial principle over the branch principle (decentralization of the decision-making process, tasks, and funds, limitation of the size of the state apparatus); — detailed regulation of the decision-making process; — increasing the transparency of the activities of authorities and access to public information; — replacement of hierarchical relationships with horizontal ones (both within individual institutional structures and between them); — transition from quantitative to qualitative criteria for evaluating the activities of executive authorities; — introduction of social dialogue mechanisms into the process of making important decisions (for example, the tripartite commission mechanism); — the creation of guarantees of proper behavior of officials.
Poland	<p>Informing citizens about the administration's intentions to improve the provision of services, holding competitions, and other measures aimed at improving work has become a constant direction of the work of Polish authorities. Within the program. Thus, the projects implemented by the Polish authorities initiate changes in administrations, especially regarding the dissemination of the experience of openness of actions and provide citizens with information about the most important procedures of administrative bodies, the direction of services, documents, and payment. In Poland, information managers include all state and local government bodies, as well as those institutions that use funds from the budgets. Refusal to provide information in Poland can only be due to its confidentiality (personal data protection, right to privacy, state, professional, financial, statistical). The refusal is made in the form of an administrative decision. Also, in Poland, the following disciplinary sanctions are applied to civil service employees: warning, reprimand, deprivation of the possibility of assigning a rank for 2 years, reduction of the basic salary by no more than 25% for no more than 6 months, reduction of the rank of the civil service, suspension from the civil service. The following disciplinary sanctions are applied to persons holding senior civil service positions and civil service employees: warning; reprimand; reduction of the basic salary by no more than 25% for no more than 6 months; suspension from work, which may result in termination of employment. In our opinion, the list of Ukrainian disciplinary sanctions could be supplemented with such types of disciplinary sanctions as a reduction of the basic salary by no more than 25% for no more than 6 months and a reduction in rank.</p>

Data provided by Tsina Derzhavy (2016); Geivakh (2012); and Charkina (2016).

From the above analysis, it can be said that there are different approaches to the responsibility of civil servants in foreign countries. At the same time, special legal regimes make corrections to the usual state of affairs, which leads both to changes to the procedure for bringing responsibility (prompt response to violations), and to strengthen the responsibility of civil servants for committing offenses. Effective regulation of the responsibility of civil servants and the procedure for carrying out official investigations in conditions, for example, of martial law, plays an important role in bringing the guilty person to justice.

Conclusions

As a result of the analysis of current issues of the responsibility of civil servants in the conditions of special legal regimes, the following conclusions were drawn based on international experience:

- 1) Summarizing the analysis of the disciplinary legislation of Ukraine and the Federal Republic of Germany, Israel, and Poland, it can be concluded that, in contrast to the disciplinary responsibility of employees according to the norms of labor law, the detailed regulation of the procedure for bringing civil servants of foreign countries to disciplinary responsibility is aimed at protecting precisely public legal interests, ensuring the proper level of public administration, stability and authority of the state. This is important for Ukraine to take into account, especially in the conditions of martial law or a state of emergency.
- 2) The list of disciplinary sanctions of foreign countries is extended, compared to the list determined by the Ukrainian legislator. The majority of disciplinary sanctions in Ukraine are aimed at establishing restrictions of a moral, social, and organizational nature for civil servants.
- 3) To carry out effective state administration in wartime conditions, it is important to promptly detect violations of legislation committed by civil servants, conduct investigations of offenses and bring them to justice.

In general, the objective of the research has been achieved.

Concerning further scientific research, we consider it necessary to analyze the specifics of criminal liability of state liability of civil servants

under martial law and the problematic issues of its application.

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