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INTERNATIONAL LEGAL AND INTERNAL STATE INSTRUMENTS FOR COUNTERING THE HYBRID WAR AND HYBRID OCCUPATION

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SUMMARY

The analysis of international legal and internal state instruments for countering of the hybrid war and hybrid occupation are carried out. The concepts of hybrid occupation and effective control, which are identical according to the practice of the European Court of Human Rights, are analyzed. It is determined that hybrid war is a new form of warfare that combines essentially different ways of waging a war. It is proposed to increase accountability for hybrid warfare.

Key words: hybrid war, temporarily occupied territories, effective occupation, hybrid occupation, legal accountability, counteraction to the hybrid war.

МЕЖДУНАРОДНО-ПРАВОВЫЕ И ВНУТРЕННИЕ ГОСУДАРСТВЕННЫЕ ИНСТРУМЕНТЫ ПРОТИВОДЕЙСТВИЯ ГИБРИДНОЙ ВОЙНЕ И ГИБРИДНОЙ ОККУПАЦИИ

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АННОТАЦИЯ

В статье проведён анализ международно-правовых и внутренних государственных инструментов противодействия гибридной войне и гибридной оккупации. Осуществлён анализ понятий гибридной оккупации и эффективного контроля, что в соответствии с практикой Европейского суда по правам человека являются тождественными. Определено, что одной из новых разновидностей войны является гибридная, которая сочетает принципиально разные способы её ведения. Предложено усиление ответственности за ведение гибридной войны.

Ключевые слова: гибридная война, временно оккупированные территории, эффективная оккупация, гибридная оккупация, юридическая ответственность, противодействие гибридной войне.

Statement of the problem. The concept of hybrid war in the domestic legal science is relatively new, but still poorly understood, and therefore it requires thorough theoretical research. Thus, for example, in recent years socio-political realities in Ukraine have demonstrated fundamentally new approaches to the warfare, its forms, as well as its consequences. It is affected by the development of information and communication technologies, current challenges to international and national security, economic and human potential, professional competency, etc.

The relevance of the research topic is confirmed by the degree of non-disclosure of the topic of international legal and internal state instruments for countering of the hybrid war and hybrid occupation. Also, the analysis of the concepts of hybrid occupation and effective control was made, which in accordance with the practice of the European Court of Human Rights are identical. It is offered to increase the responsibility for conducting a hybrid war.

Status of research. The question of war and hybrid war, annexed and occupied

territories is unfortunately not sufficiently studied in domestic scientific literature and research foreign representatives were single. Historical and political science, lawyers rarely turned to the raised issues. It concerns paragraphitan war and peace, the territory of the Member States and of the State borders, postconflict, etc. (the works of H. Grotius, l. Dûgì, G. Ellìneka, S. Baburìna, M. Bajmuratova, V. Berezenka, M. Damìrlì, O. Zadorozhnyi, B. Klimenko, C. Dnìstrânskogo, N. Kaminska, N. Pronûk, Y. Skuratova, I. Trajnìna, T. Cimbalìstogo and others).

The object and purpose of the article is the study of international legal and internal state instruments for countering of the hybrid war and hybrid occupation.

Presentation of the main material. Methods of research are selected taking into account the specifics of the purpose and tasks, the object and subject of the study. The system approach is used, which is based on the combination of the dialectical method of scientific knowledge of constitutional and legal phenomena and processes, as well as special methods of research: historical-legal, comparative-legal, system-structural, logical-legal and general-scientific methods, such as analysis, synthesis, generalization, etc. All of them were applied in the interconnection, which contributed to the comprehensiveness, completeness and objectivity of scientific researches, the concreteness, validity and consistency of the formulated conclusions. With the help of these methods the analysis of international legal and internal state instruments for countering of the hybrid war and hybrid occupation is carried out. The concepts of hybrid occupation and effective control, which are identical according to the practice of the European Court of Human Rights, are analyzed. It is determined that hybrid war is a new form of warfare that combines essentially different ways of waging a war. It is proposed to increase accountability for hybrid warfare.

In particular, a hybrid war is a new form of warfare that combines essentially different ways of waging a war. This form of warfare is considered as an instrument of confrontation, which combines a complex of various instruments of political, economic, military and ideological nature. This concept emphasizes and determines non-traditional, specific, creative nature of the confrontation that occurs through a non-standard, combined strategy and conflict tactics. During the hybrid war, the resources and character of adversaries' actions differ from each other. The main goal is through certain concentration to compensate for the lack of resources and capabilities of one of the parties or to gain the significant advantage in a particular direction within the conflict [1].

The hybrid war instruments are focused on the following: conflict zone population, rear population, international community. The hybrid war has its own specific feature, that is, it cannot be stopped "by the order from above". Unlike the usual wars of the past, it does not end with the signing of the armistice. A hybrid war is a complex process, which is inactive and not always guided. Researchers dealt with only some of its aspects and consequences, and the others were left out of focus.

Aggressive behavior of the Russian Federation towards our state is the case of a hybrid war, which makes adjustments and has a significant impact on almost all areas of the state policy, including legal policy. In general, the concept of the state's legal policy in the context of hybrid warfare is a modern phenomenon, which requires new approaches to its definition, clarification of nature, content and characteristic features.

Today there's no point to mention the urgency of state legal policy priority issues in the context of the hybrid war in Ukraine. Consequently, practical realization of a theoretical research on this issue can determine the further development of the legal system in Ukraine. Therefore, the main task of the state's legal policy in the context of a hybrid warfare is to create an effective regulatory framework for the proper counteraction to hybrid threats and the adoption of preventive measures, the elimination of separatist sentiments and devastating consequences for the state, territory, population, etc.

The practice shows that separatist ideas and views are rapidly spreading during the hybrid war. They assume the shape of collective forms of expression, activities of social groups, social movements, etc.

Proponents of separatism can use both non-violent actions (propaganda campaigns, political parties, public movements, mass campaigns, referendums, etc.) and military forms and methods of struggle (terrorist acts, sabotage, rebel-guerrilla tactics etc.) [2].

Actions against separatist movements and trends, especially in the face of military confrontation involve regaining of government control over temporarily occupied territories and the state border. Among other things, these results in disrupting channels of material, financial, and personnel provision of the rebels, break their command and control systems. Political and legal settlement of separatist conflicts should be based on the need to protect national interests, territorial integrity and inviolability of the state borders, rights and legitimate interests of the local population.

Another new category we are referring to is a hybrid occupation, which is considered be a form of effective control over foreign territories. First of all, this includes temporarily occupied and annexed territories.

In the current context, when the aggressor's appetite remains unlimited, but it still wants to look civilized, new forms of occupation arise (hybrid occupation), one of which is defined as "effective control". This concept evolved in judgments of the European Court of Human Rights, and later in the Resolutions of the Parliamentary Assembly of the Council of Europe. The concept proceeds from the fact that territorial jurisdiction is closely linked with the state ability to exercise real control over the territory. When the state does not exercise control over a part of its territory that may occur, as a result, of military occupation by another state controlling the territory, the responsibility for the observance of human rights in the territory rests with the controlling state [3].

According to V.P. Gorbulin, a "hybrid invader" aims at achieving political goals with minimal military pressure on the enemy. These approaches relate to the situation prevailing in certain districts of Donetsk and Luhansk regions, which are not under control of the Ukrainian authorities [4].

The so-called "effective control" over the temporarily occupied territories

by the Russian Federation is recognized by the international community, and when granting these territories such an appropriate status, the national legislation of Ukraine cannot be challenged in the framework of international law. We believe that such a long time delay in the unresolved socio-economic, political-legal and military-political conflicts in the temporarily occupied territories of Ukraine are extremely disastrous for all parties to the conflict.

This is also confirmed by international court rulings, for example, judgments of the European Court of Human Rights. For example, the Resolution of 16.06.2015, the European Court of Human Rights in the case of "Chiragov and others v. Armenia", "Ilascu and others against Moldova and Russia", etc. The first one addressed the issue of which state – Armenia or Azerbaijan – is responsible for observing human rights in the territory of so-called "Nagorno-Karabakh Republic" ("NKR"). During the proceedings, the representatives of Armenia adhere to the principle "we are not there", considering this fact the ECHR had to admit, "It is strange to mention Republic of Armenia representatives' statements, which are likely to be contrary to the official position that the Armenian Armed Forces are not deployed in the NKR or in the adjoining territories". Based on numerous reports and statements, the court found, that the Republic of Armenia, as a result of its military presence and the provision of military equipment and expertise, was significantly engaged in the Nagorno-Karabakh conflict from the early period". Thus, as a result of the case hearing, the ECHR actually recognized Armenia occupation of Azerbaijan territory ("NKR") and consequently Armenia's accountability for the observance of human rights in the said territory. According to the above-mentioned ECHR Resolution: "Article 42 of the Convention on the Law and Procedure of Land War (Hague Convention of 1907) defines military occupation as follows: the territory is recognized as occupied if it is actually under the control of a hostile army. <...> The demand for real power is widely recognized as a synonym for effective control" [6].

Appropriate legal positions are also reflected in the ECtHR judgment in the case of "Ilascu and others against Moldova and Russia" regarding human rights violations in Transnistria. Here also the "hybrid invader" is mentioned, the ECHR has emphasized that although the international legal understanding of the term "within the jurisdiction" is associated with the territory of the state, the jurisdiction may also be exercised outside the territory of the state. There can be exceptions, when the state does not exercise full control over a part of its territory that may occur, as a result, of military occupation by another state controlling the territory (paragraph 312). State accountability can take place in the course of military actions – both lawful and unlawful – if in practice the state exercises effective control outside the national territory. The obligation to ensure the rights and freedoms of a person on this territory derives from the very fact of such control and proved if armed forces are deployed on this territory or government authorities are located. When a state exercises control outside its national territory, its responsibility is not limited to the actions of soldiers and officers but also related to the actions of the local administration. The state may also be accountable even if its agents act in contravention of its instructions (paragraphs 316, 319). The Moldovan Government, the only legitimate government of the Republic of Moldova under international law, did not exercise the power over part of its territory that was under the control of the Transnistrian Republic (p. 330). In the view of the Court, Moldova had little chance of establishing control over Transnistria, given that the regime was supported by the Russian Federation economically, politically and militarily (paragraph 341 of the Decision). The responsibility of the Russian Federation comes in connection with the illegal actions of the Transdnistrian separatists, taking into account the support of these actions by the Russian Federation (paragraph 382) [7].

Conclusions. Analyzing the stated above, it should be noted, despite the different names (temporary occupation, "effective control", etc.), the practice of the ECHR testifies to the fact that such regimes are virtually identical, but the responsibility for acts committed against these territories is borne by the invading state, in accordance with the existing international legal standards and legitimate national legislation.

At the same time, we emphasize it is the institute of responsibility that should be not only properly regulated, but also really functioning, effective tool for overcoming the negative consequences resulting from the completion of the hybrid war and hybrid occupation, losses reimbursement by the guilty parties, and also in order to prevent similar actions in the future.

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ЛИЧНЫЙ ОБЫСК: ПРОБЛЕМЫ ЗАКОНОДАТЕЛЬНОГО РЕГУЛИРОВАНИЯ

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АННОТАЦИЯ

Статья посвящена исследованию дискуссионных вопросов проведения личного обыска в уголовном судопроизводстве. Анализируются действующее уголовное процессуальное законодательство и разработанные учеными подходы относительно оснований, условий и порядка осуществления такого следственного действия. Уделяется внимание взаимосвязи личного обыска и обыска жилья и иного владения лица, а также проведению указанного следственного действия в связи с задержанием лица по подозрению в совершении преступления. Выявлены отдельные пробелы законодательного регулирования проведения такого вида обыска, отмечается неоднородность и противоречивость правоприменительной практики при таком следственном действии. Предлагается ряд изменений и дополнений к действующему уголовно-процессуальному законодательству относительно осуществления личного обыска.

Ключевые слова: уголовное производство, обыск, личный обыск, постановление следственного судьи.

PERSONAL SEARCH: THE PROBLEMS OF THE LEGAL REGULATION

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SUMMARY

The article is devoted to the study of the discussion issues of the production of personal search in criminal proceedings. The current criminal procedural law and the approaches developed by scientists concerning the grounds, conditions and procedure for carrying out such investigative action are analyzed. The attention is paid to the interrelation of the personal search and search of housing and other possession of the person, as well as the production of the said investigative action in connection with the detention of a person on suspicion of committing a crime. Separate gaps in the legislative regulation of production of this kind of search are revealed, there is a heterogeneity and contradictory law enforcement practice in the production of such investigative action. A number of changes and additions to the current criminal procedure law are proposed concerning the conduct of a personal search.

Key words: criminal proceedings, search, personal search, decision of the investigating judge.

Постановка проблемы. Право лица на свободу и личную неприкосновенность может быть существенно ограничено при проведении личного обыска, что обуславливает необходимость максимально четкого и ясного законодательного регулирования условий, оснований и порядка принятия процессуального решения об упомянутом следственном действии. Конституционные права и свободы человека и гражданина не могут быть ограничены, кроме случаев, предусмотренных Конституцией Украины (ст. 64). Более того Конституцией и законами Украины допускается возможность временного ограничения конституционных прав и свобод человека и гражданина, предусмотренных статьями 30, 31, 32 Конституции Украины [9], при осуществлении оперативно-розыскной деятельности, дознания и досудебного расследования. В ст. 8 Конвенции о защите прав человека и основных свобод 1950 г. предусмотрено, что каждый имеет право на уважение его личной и семейной жизни, его жилища и корреспонденции.