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LEGAL REGULATION OF THE PROCEDURE FOR TREATMENT WITH PRISONERS OF WAR DURING MARTIAL LAW

The article examines the norms of international humanitarian law in force in Ukraine regarding prisoners of war and the history of their implementation in the Ukrainian legal field. A thorough analysis of the norms of international humanitarian law and their implementation in national legislation is made. The legal regulation of the treatment of prisoners of war during martial law is considered. Attention is focused on the treatment of prisoners of war during martial law or hostilities, observance of their rights and performance of their duties. Threats of possible violations of the rights of prisoners of war are identified. In particular, it is noted that prisoners of war may be subjected to torture and ill-treatment, and may be used as labour without providing them with proper working conditions.

The main reasons for the violation of the rights of prisoners of war are given: military operations, unwillingness to comply with international law, and imperfect national legislation.

The article identifies the importance of compliance with international law on the treatment of prisoners of war. In order to address the problem of violations of the rights of prisoners of war, it is necessary to ensure compliance with international law, improve national legislation, and create mechanisms for monitoring the observance of the rights of prisoners of war.

Keywords: prisoner of war, martial law, rights of prisoners of war, legal regulation.

Statement of the problem. The procedure for the treatment of prisoners of war during martial law is regulated by the Geneva Conventions relative to the Protection of War Victims of 1949 and their Additional Protocols of 1977. Ukraine is a party to these conventions and protocols.

According to international humanitarian law, prisoners of war are persons who belong to the armed forces of the belligerent state, to militias or volunteer units that are part of the regular armed forces, as well as those who are not part of the regular armed forces but are armed and wearing open insignia and are directly involved in hostilities.

Prisoners of war have the right to respect for their person and honour. They must not be subjected to acts of violence or intimidation, as well as to abuse and humiliation. All of this has become relevant since the beginning of Russia's full-scale aggression against Ukraine.

Analysis of recent research and publications. The issues of legal regulation of the treatment of prisoners of war have been the subject of scientific research by a number of specialists in the field of both criminal law and general theoretical jurisprudence.

In particular, these are such Ukrainian scholars as I. Zharovska, Y. Shevchuk [1], V. Maltsev [2], I. Yakovets [3], K. Schilke, I. Ozerna [4], J. Hodzek [5] and others. However, with the outbreak of full-scale hostilities and the emergence of a large number of prisoners of war, this issue is only beginning to acquire proper legal regulation, and therefore requires additional research.

The purpose of the article is to analyse the legal regulation of the procedure for treatment of prisoners of war during martial law in Ukraine and worldwide and to find the best ways to resolve problematic issues related to the treatment of prisoners of war.

Summary of the main material. The legal regulation of the procedure for treatment of prisoners of war during martial law is based on international treaties and Ukrainian legislation.

According to international law, prisoners of war are persons belonging to the armed forces of an enemy state or to militias and regular forces that are not part of the armed forces but wear visible insignia and who have been taken prisoner during hostilities.

The rights and obligations of prisoners of war are defined by the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949 [6]. This Convention is binding on Ukraine, as it is a member of the International Committee of the Red Cross and the International Red Cross Organisation. After capture, prisoners of war are evacuated as soon as possible to camps located in an area sufficiently distant from the area of hostilities to ensure their safety.

Camps for prisoners of war must provide the conditions necessary to preserve their health and life. Prisoners of war have the right to adequate food, clothing, housing, medical care and other necessary items. Prisoners of war have the right to correspond with their families, as well as to receive postal items from them. Prisoners of war may not be forced to work that endangers their health or life or that is related to military purposes.

The holding power is responsible for the treatment of prisoners of war. They must be protected at all times, in particular from violence or intimidation, as well as from insults and public interest. Prisoners of war are entitled to respect for their person and honour in all circumstances. Women must be treated with all the respect due to their sex.

In accordance with the Geneva Convention [6], prisoners of war have the right to do so:

- respect for their person and honour;
- humane treatment;
- adequate food, clothing and housing;
- medical care and treatment;
- correspondence;
- visits;
- exchange of information about themselves and their relatives.

Prisoners of war cannot be held criminally liable for actions committed in connection with their military duties. They also cannot be forced to perform labour that is contrary to human dignity.

The Law of Ukraine "On the Legal Status of Foreigners and Stateless Persons" stipulates that foreigners and stateless persons who are prisoners of war enjoy the rights and freedoms provided for by international treaties of Ukraine, in particular the Geneva Convention relative to the Treatment of Prisoners of War [7]. If a prisoner of war commits a crime, he or she may be held criminally liable in accordance with the legislation of the state that holds him or her in captivity.

The national legislation of Ukraine also enshrines the main provisions of international law on the treatment of prisoners of war. In particular, the Law of Ukraine "On the Legal Regime of Martial Law" provides that prisoners of war have the right to:

- humane treatment;
- proper maintenance and medical care;
- a fair and impartial trial in case of accusations of war crimes or crimes against humanity;
- release and repatriation after the end of hostilities [8].

In addition, on 1 April 2022, the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on the Regulation of Issues Related to Prisoners of War in a Special Period" came into force [9]. This law defines the legal status of prisoners of war, the rights and obligations of the state that holds them captive, and the procedure for taking measures to treat them.

In addition, the above Law of Ukraine provides that:

- POWs are under the authority of the state that holds them captive, not individuals or military units;
- The capturing state is responsible for the treatment of prisoners of war;
- any physical or mental torture and any other form of coercion may not be used against prisoners of war;
- A prisoner of war may be punished only once for the same offence or on the same charge;
- A prisoner of war has the right to protection from arbitrariness and to a fair trial;
- A prisoner of war has the right to respect for his religious and cultural traditions [9].

The Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on the Regulation of Issues Related to Prisoners of War in a Special Period" also stipulates that:

- POWs may be released from captivity for health reasons, age or other humane reasons;
- prisoners of war who cannot be released from captivity may be repatriated after the end of hostilities;
- Prisoners of war who commit crimes may be prosecuted in accordance with the laws of the state that holds them in captivity [9].

During the period of martial law in Ukraine, there are also other legal acts that regulate the treatment of prisoners of war, in particular: The Resolution of the Cabinet of Ministers of Ukraine "On Approval of the Procedure for the Implementation of Measures for the Treatment of Prisoners of War in a Special Period" of 2022 [10]; the Procedure for the Detention of Prisoners of War approved by the Cabinet of Ministers of Ukraine in 2022 [11].

These acts establish additional rules for the treatment of prisoners of war during martial law, namely:

- prisoners of war may be interned in prisoner of war camps;
- prisoners of war can be involved in work for the benefit of the state that holds them captive;

– prisoners of war may be held criminally liable for serious crimes committed against the civilian population of the state that holds them in captivity.

Thus, the procedure for the treatment of prisoners of war during martial law in Ukraine is regulated by both international and national legislation. This legislation is aimed at ensuring humane treatment of prisoners of war and respect for their rights.

Despite the existence of certain guarantees of the rights of prisoners of war, violations of these rights are often observed in the practice of military conflicts. For example, prisoners of war may be subjected to torture, ill-treatment, and may be used as labour without being provided with adequate working conditions. One of the problems is the lack of awareness of the rights of prisoners of war. This can lead to the fact that prisoners of war do not receive proper protection. Another problem is the lack of mechanisms to monitor the observance of the rights of prisoners of war, which can lead to abuse by military commanders or others dealing with prisoners of war.

The main reasons for the violation of the rights of prisoners of war are as follows.

1. Military operations. In the context of armed conflict, there is often confusion about who is a prisoner of war and who is not. This can lead to the possibility that persons entitled to POW status may be subjected to ill-treatment.

2. Unwillingness to comply with international law. Some states are unwilling to comply with international norms on the treatment of prisoners of war. This may be due to a desire to avenge losses incurred during a military conflict or to gain military advantage.

3. Imperfection of national legislation. In some countries, national legislation does not fully comply with international standards on the treatment of prisoners of war. This can lead to prisoners of war not receiving adequate rights and guarantees.

Conclusions

Ukraine is a state that adheres to international norms on the treatment of prisoners of war. This is confirmed by the fact that Ukraine is a party to the Geneva Conventions relative to the Protection of War Victims of 1949. However, even in such cases, the possibility of violating the rights of prisoners of war cannot be ruled out. Therefore, it is important to constantly improve legislation and mechanisms for monitoring the observance of these rights.

To address the problem of violations of the rights of prisoners of war, the following is necessary.

1. Ensure compliance with international law. All states must comply with international norms on the treatment of prisoners of war.

2. Improve national legislation. The national legislation of countries involved in military conflicts should fully comply with international standards on the treatment of prisoners of war.

3. Establish effective mechanisms to monitor the observance of the rights of prisoners of war, which could respond to cases of their violation.

In addition, it should be borne in mind that under martial law, there may be situations where certain rights of prisoners of war may be restricted in order to ensure security or other legitimate interests. In such cases, it is important that these restrictions are proportionate and temporary.

Thus, the legal regulation of the treatment of prisoners of war during martial law in Ukraine ensures the observance of their rights and freedoms guaranteed by international law and Ukrainian legislation.

Promising areas of research include further study of the international experience of legal regulation of the treatment of prisoners of war during martial law and ways to improve national legislation.

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ПРАВОВЕ РЕГУЛЮВАННЯ ПОРЯДКУ ПОВОДЖЕННЯ З ВІЙСЬКОВОПОЛОНЕНИМИ ПІД ЧАС ВОЄННОГО СТАНУ

Досліджено чинні в Україні норми міжнародного гуманітарного права щодо військовополонених, а також історію їх імплементації в українське правове поле. Проведено ретельний аналіз норм міжнародного гуманітарного права та їх імплементації в національне законодавство. Розглянуто правове регулювання поведження з військовополоненими під час воєнного стану. Акцентовано увагу на поведженні з військовополоненими під час воєнного стану чи ведення бойових дій, дотриманні їх прав та виконанні обов'язків.

Виявлено загрози щодо можливих порушень прав військовополонених. Зокрема, зазначено, що військовополонених можуть піддавати тортурам і жорстокому поводженню, їх можуть використовувати як робочу силу без забезпечення їм належних умов праці. Однією з проблем є недостатня поінформованість про права військовополонених. Це може призвести до того, що військовополонені не отримають належного захисту. Ще однією проблемою є недосконалість механізмів контролю за дотриманням прав військовополонених, що може спричинити зловживання з боку військового командування чи інших осіб, які мають справу з військовополоненими. Наведено основні причини порушення прав військовополонених: військові дії, небажання додержуватися норм міжнародного права, недосконалість національного законодавства.

Визначено важливість дотримання норм міжнародного права щодо поведження з військовополоненими. Для вирішення проблеми порушення прав військовополонених необхідно забезпечити дотримання норм міжнародного права, вдосконалити національне законодавство, створити механізми контролю за дотриманням прав військовополонених.

Ключові слова: *військовополонений, воєнний стан, права військовополонених, правове регулювання.*

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