

The law-enforcement system in the civil rights and freedoms protection system: the international comparative aspect

El sistema de aplicación de la ley en el sistema de protección de los derechos y libertades civiles: el aspecto comparativo internacional

Authors

Tymur O. Loskutov¹, Nataliia V. Bilianska², Hanna M. Ustinova-Boichenko³, Viktor M. Beschastnyy⁴, Iryna V. Dubivka⁵

¹Department of Criminal Law Disciplines and Judiciary Expertise, Donetsk Law Institute of the Ministry of Internal Affairs of Ukraine, Kryvyi Rih, Ukraine (Tymloskutov@ukr.net)

²Department of Civil Law and Procedure, National Academy of Internal Affairs, Kyiv, Ukraine (ndemydenko79@gmail.com)

³Department of Criminal Law Disciplines, Kryvyi Rih Faculty, National University "Odessa Law Academy", Odessa, Ukraine (urist10@ukr.net.)

⁴Constitutional Court of Ukraine, Kyiv, Ukraine (Best.vm@ccu.gov.ua)

⁵Department of Pre-trial Investigation, Educational and Scientific Institute No. 1, National Academy of Internal Affairs, Vita-Poshtova, Ukraine (irynadubivka@ukr.net)

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Abstract

The article focuses on the problem of place determination of law-enforcement agencies in the civil rights and freedoms protection system. The emphasis is given to the analysis of international legal instruments in this sphere, in particular: the Convention for the Protection of Human Rights and Fundamental Freedoms; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the EU Charter of Fundamental Rights. The article has proved that law enforcement agencies are mainly aimed at ensuring and protection of human and citizen civil rights and freedoms in all spheres of social relations. Their mission is to provide the rule of law and order as well as to effect the sovereign will of the state in the whole territory. At the same time, the law enforcement bodies are proved to have authority to use legal measures aimed at the limitation of civil rights and freedoms, and it is reflected at the level of international legal instruments. Also, it has been proved that at the level of national legislation, national governments must secure independently volumes, completeness, and borders of measures undertaken by law enforcement agencies to limit legally a number of civil rights. All such cases must be specified and written in laws in such a way as to avoid misunderstanding. The conclusion has been reached that limits, and measures applied by law enforcement authorities to restrict the civil rights, must be adaptive, flexible, and not so detailed in law but shown in protocols and standards of police work. Thus, it is important that efficiency and limits of the possible limitation of civil rights by law enforcement agencies are carried out under the control and monitoring on the part of Civil Society Institutes. Such monitoring and control are aimed at securing permanent correction of law enforcement actions model in the sphere of civil rights and freedoms protection.

Keywords: Law Enforcement System, Civil Rights and Freedoms Protection, International Legal Instruments, Coercive Measures, Civil Society Institutions, Law Enforcement Activities.

Resumen

El artículo se centra en el problema de la determinación del lugar de los organismos encargados de hacer cumplir la ley en el sistema de protección de los derechos y libertades civiles. Se hace hincapié en el análisis de los instrumentos jurídicos internacionales en este ámbito, en particular: la Convención para la Protección de los



Derechos Humanos y Libertades Fundamentales; el Pacto Internacional de Derechos Civiles y Políticos; el Pacto Internacional de Derechos Económicos, Sociales y Culturales; la Carta de los Derechos Fundamentales de la UE. El artículo ha demostrado que los organismos encargados de hacer cumplir la ley tienen como principal objetivo garantizar y proteger los derechos y libertades civiles de las personas y los ciudadanos en todas las esferas de las relaciones sociales. Su misión es proporcionar el estado de derecho y el orden, así como hacer efectiva la voluntad soberana del estado en todo el territorio. Al mismo tiempo, se demuestra que los órganos de aplicación de la ley tienen autoridad para utilizar medidas legales destinadas a la limitación de los derechos y libertades civiles, y esto se refleja a nivel de los instrumentos jurídicos internacionales. Además, se ha demostrado que a nivel de la legislación nacional, los gobiernos nacionales deben asegurar de forma independiente volúmenes, exhaustividad y alcance de las medidas adoptadas por los organismos encargados de hacer cumplir la ley para limitar legalmente una serie de derechos civiles. Todos estos casos deben especificarse y redactarse en las leyes de tal manera que se eviten malentendidos. Se ha llegado a la conclusión de que los límites y las medidas aplicadas por las autoridades policiales para restringir los derechos civiles deben ser adaptables, flexibles y no tan detallados en la ley sino mostrados en los protocolos y estándares del trabajo policial. Por tanto, es importante que la eficiencia y los límites de la posible limitación de los derechos civiles por parte de las fuerzas del orden se lleven a cabo bajo el control y seguimiento por parte de los Institutos de la Sociedad Civil. Dicho seguimiento y control tienen como objetivo asegurar la corrección permanente del modelo de acciones policiales en el ámbito de la protección de los derechos y libertades civiles.

Palabras clave: Sistema de Aplicación de la Ley, Protección de los Derechos y Libertades Civiles, Instrumentos Legales Internacionales, Medidas Coercitivas, Instituciones de la Sociedad Civil, Actividades de Aplicación de la Ley.



Introduction

Civil rights and freedoms are those unconditional civilizational values, which a democratic state protects and defends by all possible means creating them as guarantees of a social contract. The state must protect public order, create and form appropriate living standards and terms for the public life of citizens as well as for the realization of the rights volume, that is set as a social contract between the state and society. All these are implemented through the state apparatus, its mechanism, and legislative rules, which regulate the order of public relations realization and exercise. However, these orientation attributes of the statehood must be turned into action and legal reality immediately and fully. It is secured by the special system of state institutions – law enforcement agencies, which control, supervise and correct citizens' behavior; and, in case of misconduct modus finding, eliminate it. Thus, law enforcement agencies, being a part of the system of states and seeking to protect enunciated standards of human rights guaranteed by the state a priori, have a high level of risk to limit or even violate them on rare occasions by their actions. It also refers to forced measures of individual rights limitations to achieve a common good. Consequently, in the modern development phase of the society, to neglect the possibility of human rights violations by law enforcement agencies is utopia. It is necessary to take into account the real possibility of such a violation. Therefore, the minimization mechanism of the negative consequences of this violation and mechanisms of the violation monitoring and detecting at the time should be developed. The tools to prevent a possible violation of human rights are also to be created.

Within the research, we will try primarily to find a response not on a question about how not to allow human rights violations by law enforcement agencies but about what set of measures must exist aiming at minimization of the damage and harm reduction of such human rights violation. To recognize the fact that such violation is impossible is to deny the necessity to use law enforcement agencies for the public good and state protection from the free and broad interpretation and understanding of the limits of their own rights by citizens.

This problem is of particular relevance in the context of the Ukrainian society transformation and Ukrainian state development on the way to European standards on law enforcement agencies work and protection of human and civil rights.

Literature review

Many Ukrainian and foreign researchers conducted a study on the problem of law enforcement agencies' work organization in the context of human rights protection. In particular, Gritsenko (2015) studied modern conditions and problems of law enforcement agencies' work for protection of the civil rights.

Belyaeva and Antonova (2017) studied the world experience on the organization of law enforcement agencies work in the context of respect for human and civil rights and freedoms. The scientists emphasized the study in such a way that more significant national legal provisions, EU countries, in particular, were the focus of the research. It enabled to determine the correlation between permissible limitations of civil rights and freedoms and international standards of their realization.

The studies by Rover and Bienert (2017), Ahl (2019) and others are directed in a different way – in the way of the police role determination in the sphere of human and civil rights ensuring. In their works, the scientists dwell on the cooperation of law enforcement agencies, civil society institutions, and citizens to increase democratic rights ensuring for the last category. Meanwhile, it is necessary to understand that the police accept the possibility to violate civil rights to reach the goals of public security, civil order, and other issues establishment.

Akani (2019) and others draw their attention to problems of rights and freedoms realization on the part of the police in the context of police implementation of the pressure and coercive means of the state's will execution. This is a crucial aspect of the study because it proves the permissibility of police officers' legal understanding of the necessity and possibility to limit civil rights and freedoms.

Mikaila and Lemonik (2020) in their research emphasize the expediency of conducting the comparative analysis of the legislative support for the activities of law enforcement agencies in the field of restricting civil rights and freedoms in different countries.

Silberglitt, Chow and Hollywood (2015) investigate the possibilities of law enforcement agencies in the field of ensuring human and civil rights and freedoms using information technologies. Notably, the authors mark the tendency towards a natural reduction in civil rights with an increase in the level of informatization of the police community.

Nguyen and Gill (2016) as well as Aburabia (2017) examine the role of law enforcement agencies in the framework of addressing the problem of illegal



migration. The researchers note that law enforcement agencies have the right to restrict the rights and freedoms of foreigners in order to achieve the national security goals and public order on the territory of the state and for the benefit of its citizens.

Rappaport (2015) and Cassimatis (2019) in their works search for the most favorable forms and mechanisms of international interaction between law enforcement agencies in terms of achieving the goals to ensure human and civil rights and freedoms.

Kowalick and Connery (2019) put an emphasis on the search for new models for the implementation of their powers by law enforcement agencies, taking into account the need to expand the functions of the law enforcement system to achieve national security goals. However, the researchers come to the conclusion as for the necessity of compulsory encumbrance and restriction of the civil rights of an individual aimed at achieving a state of public order.

Materials and methods

The research is based on the methods of systemic and structural analysis; comparative legal and formal logical method. The law enforcement system varies depending on the characteristics of the national legislation in each country. At the same time, there are general principles, fundamental prerequisites and objectives for the law enforcement system to function effectively. In modern democracies they are based on such values, which comprise the system of civil rights and freedoms of an individual and citizen. International legal acts in the field of protection and guarantee of human rights and freedoms form the basis of the law enforcement agencies' operational activities. That is why the formal-logical method makes it possible to reveal the mechanisms of the practical implementation of those provisions that shape the imperative of inviolability and the impossibility for the civil rights to be reduced in democratic countries.

Systemic and structural analyzes make it possible to reveal the features of the law enforcement agencies' activities in relation to human rights, demonstrate the existence of a factual need to reduce the scope of such rights under certain conditions. Hence, applying the method of systemic analysis, the conclusion was made that the national security interests present a force that enables the state and law enforcement agencies to limit and reduce the scope of civil rights. Such a conclusion is justified, since the national security system is a system of a higher order in relation to the system of civil rights

and freedoms; it is precisely in the conditions of national security that the maximum realization of civil rights is attained. Comparative and legal analysis is an integral element of comparing various approaches and models of organizing the activities of law enforcement agencies, especially in the context of restricting civil rights and conversely, the adequacy of their implementation.

In the methodological aspect, the study will be built on the analysis of international legal instruments concerning the possibility to limit the set of civil rights volume and completeness by law enforcement agencies and the state, in general. The next step will be the experience analysis of practical, organizational and legal ensuring of this state's possibility in the jurisprudence of the law enforcement agencies at the national level. The formal and logical, comparative and legal methods as well as the system approach and a complex of analytical methods tools while axiological method implementation will enable to get the necessary results.

Results

The system of civil rights protection is created by the state to provide the widest possible securing of citizens' freedom during the realization of their personal status. Law enforcement agencies are specially created by the state to ensure the legal order established, an integral part of which is the civil rights of the population. However, we should remember that the place of the law enforcement system in the system of civil rights and freedoms protection is determined by the limits of the admissible influence of these authorities on the achievement of civil rights balance in the society taking into account their limitations embodied by law. It is explained by the fact that the state's guarantees to provide and secure civil rights and freedoms are most often related to the need to limit the same amount of other citizens' rights. Such necessity is directly stipulated in international legal instruments, and in our view, it is the key condition to solve the problem of the article.

Thus, in line with Articles 12, 18, 19, 22 of International Covenant on Civil and Political Rights (United Nations, n.d./a) adopted by the Resolution 2200 A (XXI) of the General Assembly dated 16.12.1966, which guarantee rights of freedom to move, freedom of consciousness, religion and other, the possibility to limit this right usage is recognized and secured at the international legal level in cases that "imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the



rights and freedoms of others". This regulation is reflected more clearly in Article 29 of The Universal Declaration of Human Rights (United Nations n. d./ b), which states that "in the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society". In this regard, the Muaddi Darraj's (2010) statement that grounding of civil rights and freedoms is a wide state's declaration to maximize the limits of a person to use the set of possibilities provided by laws is the right one. This approach means that natural limitations and conditions for their permissible application exist in the system of civil rights.

The International Covenant on Economic, Social and Cultural Rights has also the same limitations. It states that "The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society" (United Nations, n. d. /a). The common good has the highest priority in comparison with other civil rights and freedoms, which reflects the social orientation of the democratic state to the will, wish and well-being of the majority. The individual rights can be and, in the logic of international legal instruments, must be restricted in cases when it is necessary to provide the general regime of law and order.

In our opinion, the most precious is the provision stated in Article 18 of The Convention for the Protection of Human Rights and Fundamental Freedoms. It states that "The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed" (Council of Europe, n. d.). This norm means that limitation of human rights and freedoms is possible in rare cases and only within this Convention. Any other limitations cannot be permitted and they cannot be established even by rules of the national law; it contradicts directly with the Convention's articles. On the one hand, it puts the system of national legislation and law-enforcement system in a situation when they can and have possibilities to take a decision on the completeness, content, and what is more important, on terms of "common good" existence and those risks that can affect it on the part of citizens realization of their rights and freedoms.

The norm stated above had the appendix in the EU Charter of Fundamental Rights in accordance with Article 52, which states that "any limitation on the exercise of the rights and freedoms recognized by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognized by the Union or the need to protect the rights and freedoms of others" (Verkhovna Rada of Ukraine, 2000). The proportionality principle and few terms of civil rights and freedoms limitations stipulated by this Article are a baseline to form the system of restriction measures that can be used by law enforcement agencies at the national level. Thus, the law enforcement agencies' actions are aimed at the protection of civil rights and freedoms by limitation of these rights and freedoms for a certain category of persons to maintain their balance in the society as well as to reach the common good.

Meanwhile, according to Rover and Bienert (2017), the state takes the duty to respect that is the duty not to violate human rights and not to put more limits on the rights than it is necessary for fulfilling the state's duties as a guarantee and protection of rights of others. The duty is to secure the implementation of human rights, that is to provide all people with main public services and living conditions as much as it is possible, which will allow the citizens to apply their rights fully. The researchers avoid a discussion on the interpretation of a maxim "as much as it is possible" on purpose, which means that the mechanism of taking decisions in case of permissible or possible limitation of human rights by law enforcement agencies to protect these rights remains unclear. The mechanism aims to protect and defend these rights, and consequently, all bodies and state institutions, including officials and public servants of law enforcement agencies, should protect them.

The system analysis of national peculiarities of such guarantees realization by law enforcement agencies of EU countries enables to conclude that the sphere of law enforcement agencies operation includes particular groups of public relations related to the personality and state protection against criminal and other illegal assaults, providing public order and security, objects protection regardless their forms of property, detecting and investigating crimes, securing compliance with the rules of foreigners or stateless persons, etc. stay in the country. Thus, traditionally, the emphasis is done on the roles of law enforcement agencies in the system of criminal pursuing, crime-fighting, public order maintenance

during the increase of disobedience campaigns, protests, confrontations and so on. So, we have to tell that the human rights orientation of the majority of law enforcement agencies functions has resulted from the priority of security tasks.

It would be wrong to state that only human rights tasks are paramount for these agencies. The protection of civil, economic, administrative, social, and other rights realized by citizens in certain spheres of public relations is also essential. The basis of law enforcement agencies operating in the EU is principles of supremacy of law, both national and common European, aimed at reaching the common good.

Growing expectations entrusted to the police officers are directly connected with the increase of expectations on the part of society members related to the fact that police work will reflect some fundamental values and respect certain key principles. Such values and principles are written in

the European Convention on Human Rights. Even though a variety of national police mechanisms and internal systems of criminal justice are respected, the growing feeling of minimal European expectations in respect of police work must not be regarded as the threat to police service. Rather, the application of legal protection approach to the police work will help maintain productive relations between police and society. Based on the stated above, we conclude that the implementation of measures aimed at limitation of human rights can be the consequence of the maximum level of population's trust to law enforcement agencies, which help them reach the goals set on legal order maintenance more easily.

Overall, this gives us the ground to single out the models of interaction and interdependence of the degree and completeness of implementing the civil rights by citizens themselves and the measures and models of law enforcement agencies' activities to ensure them (Figure 1).

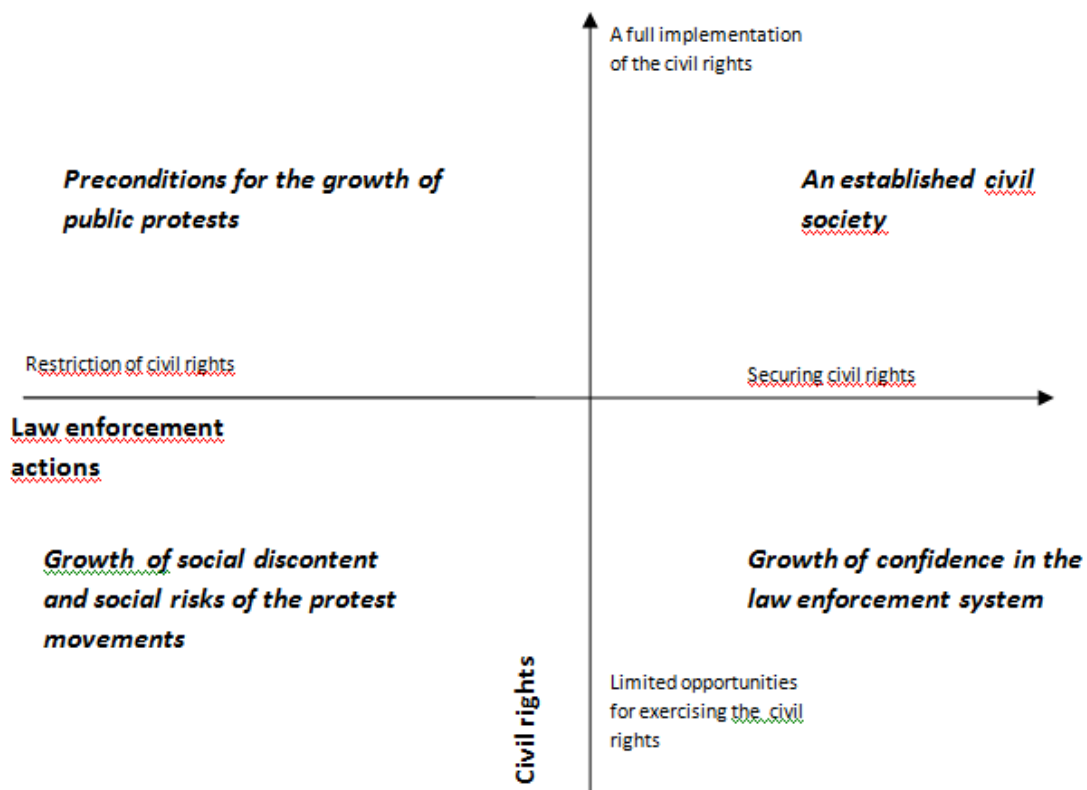


Figure 1. The interdependence of models for the implementation of civil rights and the activities of law enforcement agencies for their implementation

Source: Author's development

Hence, we see that it is the implementation, the entirety of achieving the degree of civil liberties that is the priority for the law enforcement agencies. And the level of public confidence in law enforcement agencies depends specifically on the activities of the latter ones in terms of ensuring the

civil rights. That said, the surge of social protests and social tension is quite natural when the scope of rights and freedoms is reduced, even taking into account the understanding of the need to reduce them in the national security interests.



Discussion

Analyzing the position of the law enforcement system in the system of civil rights protections, we must emphasize that these agencies are mainly state institutions, and consequently, their operation must be subject to general principles and rules of the state apparatus functioning. The second focus is that these agencies obtain a license to use legal coercive measures and possibilities for limitations of civil rights only from the state and only in a legally recognized form.

Belyaeva and Antonova (2017) notice, that these agencies must be based on the principles of legality, humanity and inadmissibility of civil rights and freedoms violation. Consequently, the mechanism of human rights and freedoms protection in general, its content and peculiarities, is applicable to all state bodies, including law enforcement ones. However, this conclusion is correct only with some amendments on admissibility and legitimate necessity to use the system of measures that are directed or can be directed at limitation of civil rights and freedoms by law enforcement agencies.

In this regard, Bilas (2016) states that police are a service department providing services to people in a particular territory, and its work must not be limited by fights against criminals or must not be confined to its inner tasks. Police must not operate against people. Its task is to work for people developing the system of specific services provided to them, taking into account its social purpose. The UNO in cooperation with the Amnesty International issued the methodological manual "Human rights and law enforcement agencies." They clarify articles of international legal instruments. Also, they can be regarded as unique means to unify approaches to law understanding and legal practice regarding limitation admissibility of human rights by law enforcement agencies for all democratic states and their governments.

Russian scientists, noticing the necessity to regulate law enforcement agencies in case of civil rights and freedoms violation, concluded that their main task is to take a system of legal actions that force an individual and a legal entity to cease, stop or change the form and modus of behavior to terminate creation of negative consequences and damage that is the consequence of their misconducts, according to Yakimova and Efimova (2019). It means that law enforcement agencies must force to follow the behavior rules set in the state and set forth in the rights system by legal force measures. It provides the necessary understanding of the essence and role of such

measures as a tool to correct the legal reality by the state.

Analyzing the experience of France in this area, Gritsenko (2015) stated that law enforcement agencies were aimed at securing legal order by all available means. Availability is determined by results achievability in a case if these agencies need to cease or limit the realization of the people right in their subjective understanding.

Officers of law enforcement agencies have to provide the implementation of domestic law. Thus, they often have to interfere and limit the completeness of the civil rights of some people (Amnesty International, 2018). We support this point of view, although we think that such a statement is too authoritarian. International legal instruments allow the possibility to limit civil rights only by being embedded in national legislation. Thus, to tell that law enforcement agencies "have to" is not correct. We declare that it is appropriate to use the term "have authority in the sphere of civil rights and freedoms limitations." The state legitimates this process and therefore it delegates the power to its institutions.

For example, Ahl (2019) points to the necessity of the strict and full respect for such principles as: the principle of legality and precaution; necessity; proportionality; and non-discrimination. Such a set of principles does not prevent negative consequences of human and civil rights and freedoms limitation by law enforcement agencies but it allows the creation of a unified model or system of criteria to apply these measures.

An impactful conclusion is made in the studies of Silbergliitt, Chow and Hollywood (2015), in particular in noting the fact that along with the development of modern information and digital technologies, law enforcement agencies will increasingly have more opportunities to restrict civil rights. A total control and public order surveillance should not cross the line of personal freedom, privacy, nor limit a person's civil rights without apparent reason. In their turn, Sereni-Massinger, Bawden and Rowe (2015) note that it is also necessary to be careful with the use of preventive measures by law enforcement officers. Currently, the development of information technologies considerably expands the analytical capabilities of law enforcement agencies. Therefore, it is important to restrict their influence on the sphere of private interests and civil rights.



Akani (2019) concluded the same about the need for control on the part of the public. Based on the example of many African countries, the researcher states that police can provide the necessary level of civil rights and freedoms implementation not applying measures aimed at their limitations for the common good achievement. Such measures are justified only on the scale of national stability. The constant dialogue between law enforcement agencies and institutions of civil society is necessary for local goals and aims to maintain legal order.

Conclusions

Law enforcement agencies perform the important task – they implement the system of state's guarantees of the breadth of civil rights and freedoms realization. Nevertheless, during their work law enforcement agencies are aimed at securing public order, territorial integrity of the state, completeness of its power and sovereignty. All these include the presence of the public interest of all citizens, and in this case, it should have a priority higher than the individual one. This conclusion is correct, and it is provided by the necessary level of international legal consolidation. However, it is done without detailing.

It has been determined that national governments must individually consolidate volumes, completeness, and borders of execution and implementation of human and civil rights and freedoms at the level of national legislation. In addition, limits and possibilities to restrict some civil rights by law enforcement agencies are perpetuated in national legislation. Such limitations must be justified by goals of social stability and terms of a public agreement.

Human and civil rights and freedoms limitation by law enforcement agencies must be recognized as a specific model of work or response on particular signals of these agencies, and therefore must be unified. For this purpose, on the example of EU countries, the possibility of such unification through European authorities is shown at the level of the EU law. However, at the global international level, such unification is reached by the participation of the UNO, which aims to provide methodological help to law enforcement agencies, including detailing and the interpretation of the provisions of international legal instruments.

Besides, the efficiency and completeness, more precisely borders of the possible limitation of civil rights by law enforcement agencies, demand the

participation of civil society institutions. The last is aimed to serve as elements of control and monitoring over admissibility and adequacy of measures applied by law enforcement agencies in the sphere of civil rights and freedoms limitation.

The first task of law enforcement agencies is to secure and protect human and civil rights and freedoms both in the sphere of security and other aspects of public relations. Law enforcement agencies have the power to apply legal measure that aims at the limitation of the completeness of civil rights and freedoms. Such limitations must be clearly stated in the legislation and they cannot extend beyond limits set by international legal instruments. The system of measures on limitation of civil rights is inextricably linked to coercion measures of civilian population obedience, thus, regarding common good as a priority in comparison with an individual one.

The search for interaction mechanisms between society and law enforcement agencies should be considered the most promising area for further research, in particular to ensure the interests of national security and public order. On the coattails of public protests in various countries, which have at the same time become an extreme form of society's reaction to a number of restrictive measures by state authorities, it is necessary to revisit the methodological approaches to determining the possible limits of restrictions, civil rights and freedoms of a person and a citizen in the interests of national security and public order. The system of law enforcement agencies should become a guarantee of security for society itself, and for this it is necessary to create such organizational and legal support for their activities, in particular in the context of the forced partial restriction of human and civil rights and freedoms. This should ensure an awareness of the state goals transparency solely for achieving the interests of national security, which society should take as the highest social and public value. Without achieving the national security, the existence of the state and society itself is beyond thought, and it is hardly possible to ensure the protection of citizens' rights and freedoms.

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