

UDC 351.741“364”
DOI: 10.63341/naia-chasopis/4.2025.39

Conducting a surface inspection: Compliance with requirements under martial law

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Abstract

Preventive measures are not widely discussed in the scientific literature. Publications are mainly devoted to checking a person's documents, stopping a vehicle, entering a person's home or other property. The relevance of the stated topic is related to a number of issues that arise during the practical application of surface inspection, the need to improve the provisions of legal regulation considering the legal regime of restrictions on human rights, and the course of transformation processes in law enforcement agencies. The purpose of the study was to investigate the principles of surface inspection as a preventive measure used by authorised entities under martial law. The research methodology consisted of comparative legal, hermeneutical, formal logical, system structural, analytical generalising methods, and graphical modelling. It was established that the current legislation of Ukraine contains significant differences in the scope of powers and procedures for conducting a surface inspection. In particular, they relate to determining the range of objects of verification (person, item, vehicle, goods), the procedure for attracting service dogs, conditions and limits for using special means. Territorial restrictions are also important, which are clearly defined by the legislation for border guards (border control areas, checkpoints, and entry and exit checkpoints), while such territorial borders are not established for police officers. Additionally, there are differences in the procedural stages of verification between police officers and military personnel of the state border service of Ukraine. Conflicts between the provisions of legislative acts and bylaws have been identified, which creates a risk of unequal

Article's History:

Received: 30.06.2025
Revised: 18.10.2025
Accepted: 25.11.2025

Suggest Citation:

Horbach-Kudria, I., Kulikov, V., & Bratel, S. (2025). Conducting a surface inspection: Compliance with requirements under martial law. *Law Journal of the National Academy of Internal Affairs*, 15(4), 39-49. doi: 10.63341/naia-chasopis/4.2025.39.

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law enforcement and requires comprehensive legal regulation to ensure a unified law enforcement practice. The paper analysed the international experience of establishing responsibility for authorised entities in the illegal application of preventive measures. The practical significance of the study lies in the fact that the results of the study can be used to form and improve the regulatory legal provisions of national legislation regulating the activities of law enforcement agencies in the application of preventive measures

Keywords:

preventive measure; check of the person; law enforcement agencies; checkpoint; compliance of evidence; rules of judges; liability

Introduction

The blurring of the boundaries of legal regulation in the application of a number of police measures with measures to ensure proceedings in cases of administrative offences and measures to ensure criminal proceedings has been the subject of much debate in academic literature and attempts to clarify in the decisions of courts of cassation. Despite the fact that the provisions of laws and regulations concerning the verification of a person's documents, stopping a vehicle, entering a person's home or other possession¹ have undergone legislative changes, and a surface inspection, the use of which is urgent in preventing and countering criminal and administrative offences, does not reflect differentiation for peacetime and special period conditions in the activities of authorised entities of the National Police and the State Border Service of Ukraine.

R. Liashuk & V. Vychavka (2024) pointed out that the legal mechanism for performing surface inspection of persons, things, goods (cargo), and vehicles needs to be improved due to the blank nature of its regulatory norms, the conflict of laws of certain provisions of national legislation and bylaws inherent in law enforcement and service-combat activities of the State Border Service of Ukraine features. G. Scherbakova (2022) suggested that the use by law enforcement officers of a single template of behaviour in the application of surface inspection as a preventive police measure to persons with different status of the subject of law leads to significant violations of human rights and freedoms, and the appearance of law enforcement errors in the activities of authorised entities. N. Sergiienko & M. Babiak (2024) attributed the urgency of improving national legislation to the shortcomings of legal regulation of specific legal relations arising during martial law, coordination of actions between bodies authorised to apply preventive measures and ensure a balance between guaranteeing citizens' rights and protecting national security. Z. Bolotashvili *et al.* (2023) expressed the opinion that it is necessary to establish legal liability for persons

who refuse to comply with the requirement of a police officer to independently show the contents of personal belongings or a vehicle and pay attention to the effectiveness of a surface inspection in current conditions and the negative consequences if changes are made to the current legislation concerning the procedure for conducting it. O. Prysiashniuk (2024) emphasised that in the conditions of a full-scale invasion of the Russian Federation on the territory of Ukraine, the tasks of increasing the country's defence capability, creating logistics chains, combating natural disasters, maintaining public order and public security, preventing and countering illegal actions of various types are gaining priority, so the use of methods of the legal paradigm of the state associated with improving the mechanisms of legalised coercion is quite justified.

Legal regulation of conducting a surface inspection, regulated by the provisions of Law No. 580-VIII², the Law No. 661-IV³, in accordance with the procedure approved by resolution of the Cabinet of Ministers of Ukraine No. 1456⁴, has a conflict-of-laws nature and sub-constitutional limitations in the application of remedies. L. Kovarsky (2023) argued that in such a context, the enforcement of existing national norms acquires the characteristic features of procedural prosecution and is supplemented by internally sensitive elements, which cause incomplete constitutional violations of human rights in the application of preventive measures by authorised subjects.

O. Dzafarova *et al.* (2024) noted that issues of effectiveness and legitimacy of preventive measures, the possibility of their use without human rights violations are key aspects in preventing new threats to Ukraine's national security. Legislative streamlining of the grounds and procedural features of their application will prevent abuses that cause illegal encroachments on the life, health, and rights of a person and citizen, and on national security within the country. N. Thybulnyk (2023) emphasised that to stabilise the political

¹ Law of Ukraine No. 580-VIII "On the National Police". (2015, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/580-19#Text>.

² *Ibidem*, 2015.

³ Law of Ukraine No. 661-IV "On the State Border Guard Service of Ukraine". (2003, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/661-15#top>.

⁴ Resolution of the Cabinet of Ministers of Ukraine No. 1456 "On Approval of the Procedure for Checking Documents of Persons, Inspection of Things, Vehicles, Luggage and Cargo, Office Premises and Housing of Citizens in the Course of Ensuring the Measures of the Legal Regime of Martial Law". (2021, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/1456-2021-%D0%BF#Text>.

and economic situation in the state, it is possible to ensure the rights and legitimate interests of citizens, to increase the level of national security with the active role of the authorities and law enforcement officers. The current situation requires a clear legislative response and the implementation of administrative and legal mechanisms designed to improve the resource, regulatory, material, technical, and social and legal support for the security and defence sector. E. Rho *et al.* (2023) expressed the view that the use of preventive measures is crucial in establishing relations between law enforcement officers and the community. The introduction of institutional dialogue acts related to the skills of police officers, border guards, stopping a person or vehicle, explaining the reason for stopping and requesting documents will have a positive impact on the progress of reforms in law enforcement agencies, and ensure the best implementation of the principles of trust and transparency in their activities. E. Morozov (2022) substantiated the opinion on the need to develop a fundamental approach in building the theoretical, legal, and practical mechanism of institutional capabilities of police procedures. Accurate and systematic approval of the standards of the human-centric approach would allow determining the algorithm for establishing the measure possible and permissible in the implementation of preventive activities by authorised entities and formulate a coordinate system acceptable to the global understanding of building a democratic society. K. Lezhnin (2022) noted that the safety and security of the individual in the state is determined by the development of means used to protect and ensure human rights, its direct protection from potential external and internal threats, and the efficiency of their neutralisation under martial law. Fighting for state interests, strengthening the national security of Ukraine, and protecting each of its citizens actualise the issues of improving existing methods and means of law enforcement, including finding new mechanisms that would simultaneously ensure and guarantee respect for human rights.

The procedural variability of the legal regulation of conducting a surface inspection, the lack of a proper adaptive system that considers the specifics of peacetime and a special period in its application, and the urgency of legal improvement of the system of preventive measures, considering the processes of reform in the security and defence sector, the development of conceptual positions of respect for human rights in the

activities of law enforcement agencies, which was emphasised by scientific communities, influenced the formulation of the goals and objectives of the study. The purpose of the study was to investigate the possibility of unifying the legal mechanism for conducting a surface inspection under martial law. Research tasks were defined as: to identify the main methods, grounds for conducting a surface inspection; to characterise its procedural features, requirements that authorised entities must comply with when applying it; to identify gaps in national legislation that require changes and additions.

Materials and Methods

The implementation of the goal and objectives was ensured by the study of regulatory documents of national legislation, in particular, Law No. 580-VIII¹, the Law No. 661-IV², the Procedure approved by Resolution of the Cabinet of Ministers of Ukraine No. 1456³, literary sources of Ukrainian and foreign authors who raised issues related to the stated topic. The selected empirical materials outlined the procedural aspects of conducting a surface inspection by various authorised persons, determined guarantees for the use of preventive measures, compared the features of the Ukrainian approach for compliance with international human rights standards, and compared it with European practice.

The main methodological tool of the research was the legal analysis of laws and regulations, which was used in combination with comparative legal, hermeneutical, formal logical philosophical methods, and using the system structural, analytical generalising method and the method of graphic modelling.

S. Romashkin (2024) emphasised the effectiveness of the application of legal analysis in studies of legal categories, so the method of legal analysis was used to identify and interpret legal norms containing the definition of the term “surface inspection”, establish its legal nature; assess the interaction of legal norms related to the study of how different legislative acts regulate the same concept, in particular in terms of objects and grounds for applying surface inspection; identify conflicts and gaps in comparing the requirements of legislative and by-laws; substantiate proposals for improving legislation.

The comparative legal method helped to compare different legislative norms regarding the subject matter and procedure for conducting a surface inspection (laws No. 580-VIII⁴ and No. 661-IV⁵, Procedure approved by Resolution of the Cabinet of Ministers of

¹ Law of Ukraine No. 580-VIII “On the National Police”. (2015, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/580-19#Text>.

² Law of Ukraine No. 661-IV “On the State Border Guard Service of Ukraine”. (2003, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/661-15#top>.

³ Resolution of the Cabinet of Ministers of Ukraine No. 1456 “On Approval of the Procedure for Checking Documents of Persons, Inspection of Things, Vehicles, Luggage and Cargo, Office Premises and Housing of Citizens in the Course of Ensuring the Measures of the Legal Regime of Martial Law”. (2021, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/1456-2021-%D0%BF#Text>.

⁴ Law of Ukraine No. 580-VIII “On the National Police”. (2015, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/580-19#Text>.

⁵ Law of Ukraine No. 661-IV “On the State Border Guard Service of Ukraine”. (2003, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/661-15#top>.

Ukraine No. 1456¹). A. Solomaha (2024) justified the expediency of using a comparative method in the study of “a little-studied or debatable administrative and legal phenomenon, the content of which can be clarified by comparison with a similar legal phenomenon that is stable in legal science”.

Formal legal analysis has contributed to a detailed study of terms and definitions (for example, “surface inspection” as a legal term in the national terminology system). The system and structural method provided a classification of surface inspection within the micro- and macro-systems of police and border measures. Logical and legal analysis of procedures was used to identify and analyse the three stages of the procedure (stopping, visual inspection, completion) and their connection with procedural actions.

Graphical modelling allowed illustrating the grounds for conducting a surface inspection (Fig. 1) and dynamics of legal requirements in case of detection of an offence during a surface inspection (Fig. 2). Using the analytical and generalising method, legislative conflicts were identified, practical problems were identified, and recommendations for harmonisation of norms were formulated.

Results and Discussion

Surface inspection as an element of the term system of national legislation is consolidated in Law No. 580-VIII² and is interpreted through the ways of its implementation or in a combination thereof, namely:

- 1) without physical contact by visual inspection;
- 2) by running a hand over the surface;
- 3) by running a special device or tool over the surface.

The explanation of superficial verification as a professional token was recorded in the Law No. 661-IV³. Paragraph 15 of part 1 of Article 20 of the Law refers to the existence of a procedure that has legal grounds and an established order of conduct. Compared to the definition given in Law No. 580-VIII⁴, the general method of carrying out the event is limited to visual inspection, which is allowed to involve service dogs. A surface inspection is interpreted as a right granted by the state for an authorised person to perform the tasks assigned to the state border service of Ukraine. The use

and use of it by military personnel and employees of a special vehicle in the form of service dogs is provided for by separate norms of the Law No. 661-IV⁵ – subParagraph b) of Paragraph 5 of part 2 of Article 21². The use of service dogs by police officers during a surface inspection does not have direct legal prohibitions, but formally it will be a combination of a preventive police measure and a police coercive measure.

Purpose, grounds, and procedure for conducting a surface inspection in the Law No. 580-VIII⁶ and the Law No. 661-IV⁷ set out in the provisions of individual articles. Despite the fact that in the activities of the police, surface inspection is part of the microsystem of preventive police measures and the macro-system of police measures, surface inspection, which is used in the performance of tasks by law enforcement officers of the State Border Service of Ukraine, is not endowed with classification features. Common to them is the purpose of application – ensuring the fulfilment of the tasks assigned to authorised entities of official activity.

Conducting a surface inspection by the police provides that it can be applied to a person, item, and vehicle. Military personnel and employees of the State Border Service of Ukraine carry out this procedure, in addition to the above, for goods (cargo) and provided that its objects are located within specified territorial boundaries. Law No. 661-IV⁸ defines them as border control areas, checkpoints (control points) across the state border of Ukraine, checkpoint of entry and exit. The grounds for conducting a surface inspection of a person, an item, and a vehicle by police officers, members of the armed forces, and officers of the State Border Guard Service of Ukraine were unified, presented in Fig. 1.

Schematic representation of the grounds for conducting a surface inspection in Fig. 1 indicates that its main object is an item that is prohibited, restricted for circulation, may pose a threat to human life and health, be located in the place of commission, or be an instrument of an offence. A surface inspection of the vehicle is carried out if a person or item is found in it, or it is an instrument of an offence or is located in the place of commission of the latter. If the norms of the Law No. 580-VIII⁹ provide for conducting a surface inspection of items and vehicles when they are located in the place of committing a criminal offence, then for

¹ Resolution of the Cabinet of Ministers of Ukraine No. 1456 “On Approval of the Procedure for Checking Documents of Persons, Inspection of Things, Vehicles, Luggage and Cargo, Office Premises and Housing of Citizens in the Course of Ensuring the Measures of the Legal Regime of Martial Law”. (2021, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/1456-2021-%D0%BF#Text>.

² Law of Ukraine No. 580-VIII “On the National Police”. (2015, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/580-19#Text>.

³ Law of Ukraine No. 661-IV “On the State Border Guard Service of Ukraine”. (2003, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/661-15#top>.

⁴ Law of Ukraine No. 580-VIII “On the National Police”. (2015, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/580-19#Text>.

⁵ Law of Ukraine No. 661-IV “On the State Border Guard Service of Ukraine”. (2003, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/661-15#top>.

⁶ Law of Ukraine No. 580-VIII “On the National Police”. (2015, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/580-19#Text>.

⁷ Law of Ukraine No. 661-IV “On the State Border Guard Service of Ukraine”. (2003, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/661-15#top>.

⁸ Ibidem, 2003.

⁹ Law of Ukraine No. 580-VIII “On the National Police”. (2015, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/580-19#Text>.

authorised subjects of the state border service of Ukraine, the Law No. 661-IV¹ expands the grounds in this part, including the place of committing an administrative offence in the list.

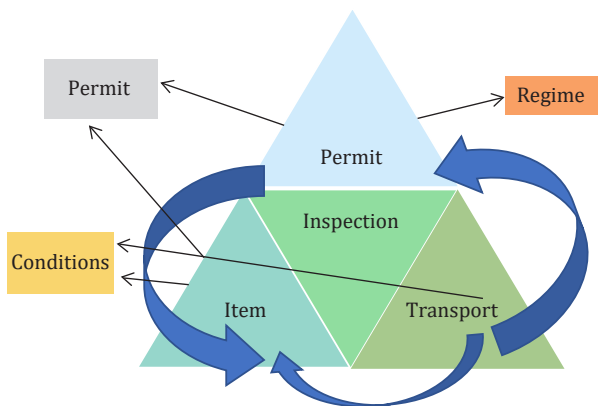


Figure 1. Grounds for conducting a surface inspection by an authorised person

Source: developed by the authors based on the study of the Law No. 580-VIII² and the Law No. 661-IV³

A person is the object of a surface inspection if regime violations are committed and there is no permit to stay in a certain territory. If the position the Law No. 661-IV define military personnel and employees of the State Border Service of Ukraine, subjects of conducting a cursory check of a person, item, or vehicle, then the Law No. 580-VIII⁴, despite the fact that it covers all the listed objects with the possibility of applying a preventive police measure to them, it restricts police officers in its use against the person, referring to the observance of human rights and the rule of law consolidated in Articles 3, 24 of the Constitution Of Ukraine⁵. The Law No. 661-IV⁶ establishes a separate category of persons for whom a surface inspection is not carried out – these are persons who, in accordance with the law, enjoy the right of inviolability or have diplomatic immunity. N. Sergiienko & M. Babiak (2024) drew attention to the expansion of the list of authorised enti-

ties that can carry out a surface inspection to ensure measures of the legal regime of martial law. In particular, in addition to the National Police and the State Border Guard Service of Ukraine, this right is granted to authorised persons of the Security Service of Ukraine, the National Guard, the State Migration Service of Ukraine, the State Customs Service of Ukraine and the Armed Forces of Ukraine⁷. Simultaneously, the need to confirm the granted powers for police and military personnel and employees of the State Border Service of Ukraine causes a conflict between the provisions of Paragraph 3 of the Procedure approved by Resolution of the Cabinet of Ministers of Ukraine No. 1456⁸, and Paragraph 3 of part 1 of Article 31 of Law No. 580-VIII⁹, Paragraph 15 of part 1 of Article 20 of the Law No. 661-IV¹⁰, accordingly.

The procedural features of conducting a cursory check cover the three-stage mechanism detailed in the Law No. 580-VIII¹¹, namely: stopping the person, conducting a visual inspection, and completing the inspection. I. Pidbereznykh *et al.* (2024) noted that structuring operational procedures of subjects of the national security and defence sector and its step-by-step detailing allows improving the coordination organisation of units' activities under martial law, their effective response to threats. This approach is important not only for optimising national security, but also for establishing cooperation with foreign partners and compliance with international security standards.

At the first stage, a mandatory condition for conducting a surface inspection is that the authorised representative of the same sex as the person being inspected must stop the person. In urgent cases, a surface inspection is allowed by persons of the opposite sex with the person being checked, but only if a special device or tool is used. The distribution of the rights of police officers, military personnel and employees of the State Border Service of Ukraine, authorised persons who provide measures of the legal regime of martial law, to use special devices or means in visual inspection, depending on the object, is reflected in Table 1.

¹ Law of Ukraine No. 661-IV "On the State Border Guard Service of Ukraine". (2003, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/661-15#top>.

² Law of Ukraine No. 580-VIII "On the National Police". (2015, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/580-19#Text>.

³ Law of Ukraine No. 661-IV "On the State Border Guard Service of Ukraine". (2003, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/661-15#top>.

⁴ Law of Ukraine No. 580-VIII "On the National Police". (2015, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/580-19#Text>.

⁵ Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/en/254к/96-вр?lang=uk#Text>.

⁶ Law of Ukraine No. 661-IV "On the State Border Guard Service of Ukraine". (2003, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/661-15#top>.

⁷ Resolution of the Cabinet of Ministers of Ukraine No. 1456 "On Approval of the Procedure for Checking Documents of Persons, Inspection of Things, Vehicles, Luggage and Cargo, Office Premises and Housing of Citizens in the Course of Ensuring the Measures of the Legal Regime of Martial Law". (2021, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/1456-2021-%D0%BF#Text>.

⁸ Resolution of the Cabinet of Ministers of Ukraine No. 1456 "On Approval of the Procedure for Checking Documents of Persons, Inspection of Things, Vehicles, Luggage and Cargo, Office Premises and Housing of Citizens in the Course of Ensuring the Measures of the Legal Regime of Martial Law". (2021, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/1456-2021-%D0%BF#Text>.

⁹ Law of Ukraine No. 580-VIII "On the National Police". (2015, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/580-19#Text>.

¹⁰ Law of Ukraine No. 661-IV "On the State Border Guard Service of Ukraine". (2003, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/661-15#top>.

¹¹ Law of Ukraine No. 580-VIII "On the National Police". (2015, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/580-19#Text>.

Table 1. Application of special devices or tools in visual inspection

	Person	Item	Vehicle
police officers	+	+	+
border guards	+*	-*	-*
martial law regime	+	+	+

Notes: + – allowed to apply; - – application not provided for; * – the analysed provisions consider cases without the use and application of special animals

Source: developed by the author

The material systematised in Table 1 indicates the priority imitation of police procedures for the use of special devices or means under martial law. Conducting a surface inspection, regulated by the provisions of Law No. 580-VIII¹, focused on compliance with the principle of legality, respect for the honour and dignity of a person (Article 3 of the Constitution of Ukraine²), non-discrimination on any ground (Article 24 of the Constitution of Ukraine³), and provides that police officers must act correctly, with restraint, without threats or coercion, they are prohibited from seizing personal belongings without legal grounds, and in the event of a person's disagreement with the inspection – to provide primary legal assistance, explaining their rights and the possibility of appealing against the actions of a police officer, in accordance with the second part of Article 41 of the Law No. 580-VIII⁴. O. Dmytrenko (2023) emphasised that such activities of authorised entities are in close interaction with the procedures of coercive measures, determining the probability of further use of the latter in order to stop the offence, eliminate the causes and conditions of their occurrence, and carry out group or individual influence.

At the second stage, the procedure for conducting a surface inspection provides that the police officer, according to part three of Article 18 of the Law No. 580-VIII⁵, must introduce themselves, inform the person of their last name, position, special title, and present a service certificate at a request, providing an opportunity to get acquainted with the information set out in it, without letting it out of their hands, explain the legal grounds with a quote of specific norms for conducting a surface inspection, ask the person to independently present the contents of hand luggage or open clothes, if necessary, open the trunk lid and/or interior doors, carry out a visual inspection of items without their withdrawal or physical contact, in case of detection of prohibited items – take measures in accordance with

the current legislation (drawing up a protocol, calling an investigative task force), notify the person of the completion of the check and thank a person for understanding. Yu. Shovkun (2024) explained the presence of etiquette forms in the legal regulation at the second stage of conducting a surface inspection as a mandatory moral and ethical aspect that concerns the behaviour of a public person and is crucial in relations with citizens. “A public servant, regardless of their position, is a representative of the state, so it is important that their behaviour does not have a negative impact on the image” of the body (division) in which they serve, and does not affect the perception of state activities.

Provisions of part 6 of Article 21⁷ of the Law No. 661-IV⁶ give military personnel and employees of the State Border Service of Ukraine the right to demand the opening of a bag, backpack, briefcase, bag or other means of moving things, hood, trunk lid and/or interior doors of the vehicle, showing the contents of the pockets of clothing of the person in respect of whom the inspection is being conducted. The simplified procedure for the second stage of surface inspection in the Procedure approved by Resolution of the Cabinet of Ministers of Ukraine No. 1456⁷ allows authorised persons who ensure the measures of the legal regime of martial law to apply analogies of procedural law in each individual case. V. Somina (2025) pointed out that this way it is possible to quickly eliminate legislative gaps in practice. This will be justified and within the single branch will not contradict the requirements of legality.

At the third and final stage of the inspection, if no violations were detected by the authorised person, the person against whom the procedure was applied can continue driving without restrictions. If an administrative or criminal offence is detected, measures are taken to ensure proceedings in cases of administrative offences, measures to ensure criminal proceedings, and evidence of an offence is collected.

¹ Law of Ukraine No. 580-VIII “On the National Police”. (2015, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/580-19#Text>.

² Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/en/254к/96-бп?lang=uk#Text>.

³ Ibidem, 1996.

⁴ Law of Ukraine No. 580-VIII “On the National Police”. (2015, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/580-19#Text>.

⁵ Ibidem, 2015.

⁶ Law of Ukraine No. 661-IV “On the State Border Guard Service of Ukraine”. (2003, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/661-15#top>.

⁷ Resolution of the Cabinet of Ministers of Ukraine No. 1456 “On Approval of the Procedure for Checking Documents of Persons, Inspection of Things, Vehicles, Luggage and Cargo, Office Premises and Housing of Citizens in the Course of Ensuring the Measures of the Legal Regime of Martial Law”. (2021, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/1456-2021-%D0%BF#Text>.

The requirements for carrying out procedural measures may change at the second and third stages of the audit. The determinants in this process are the goal that the authorised subject faces, namely: prevention of an offence, documentation of an offence, collection of evidentiary information – and its involvement in the mechanism for implementing a superficial check. For example, at the second stage of conducting a surface inspection, if the investigative task force is called, the authorised person stops using a preventive measure, because the investigator begins procedural actions to document a criminal offence or collect evidentiary information. N. Banetka (2022) emphasised the importance of clear differentiation of actions performed by authorised entities. The “good faith” of a

police officer will not satisfy the requirements of propriety if a search of a person is conducted without justification. G. Edmond (2024) pointed out that failure to comply with applicable rules, procedures and safeguards at any stage may lead to litigation or result in biased and speculative opinions being formed when a decision is made. T. Meyer & G. Sitarman (2023) emphasised that law enforcement agencies’ disregard for guarantees and restrictions on human rights under martial law will require additional control by the judicial branch of government and negatively affect the stability of national security to internal threats. Schematically, the dynamics of legal requirements in case of detection of an offence during a surface inspection is shown in the Fig. 2.

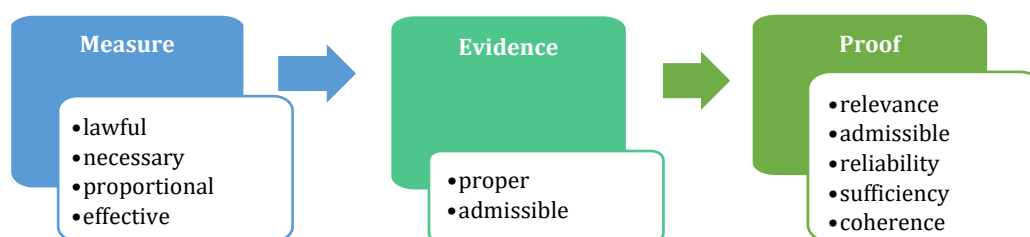


Figure 2. Dynamics of legal requirements in case of detection of an offence during a surface inspection

Source: developed by the author

Graphic material shown in Fig. 2, indicates a direct link between preventive measures, documenting an offence, and collecting evidentiary information. The specificity of applying measures to ensure proceedings in cases of an administrative offence, measures to ensure criminal proceedings is that their practical implementation can accompany the implementation of all these actions and simultaneously have an autonomous disclosure. The differentiation of police measures with measures to ensure production and procedural actions is mainly considered by researchers from the standpoint of their tactics, leaving unresolved issues of whether there are conflict-of-laws norms in national legislation. If Article 29 of the Law No. 580-VIII¹ contains requirements for the use of a surface inspection as a police measure, then in the following cases: the Law No. 661-IV² they apply only to coercive measures (Article 21). The Procedure approved by Resolution of the Cabinet of Ministers of Ukraine No. 1456³, also contains no requirements for conducting a surface inspection.

I. Litvinova & D. Lobay (2022) indicated the introduction of certain specifics in the process of applying measures to ensure proceedings in cases of

administrative offences and conducting procedural actions in criminal proceedings, which consists in expanding the rights of victims and violating the rights of the person who committed the offence. However, the above analysis shows a different picture. Under martial law, the list of grounds for conducting a surface inspection has increased and the procedure for applying a preventive measure has been simplified. Compliance with the requirements of part 3 of Article 18 of Law No. 580-VIII⁴ by police officers is formalised or not enforced at all. It is obvious that I. Litvinova & D. Lobay (2022) did not consider the fact that the expansion of rights for victims and the violation of the rights of the offender is determined by the increase in powers with internally sensitive elements for the National Police, the State Border Service of Ukraine, the Security Service of Ukraine, the National Guard, the State Migration Service of Ukraine, the State Customs Service of Ukraine, and the Armed Forces of Ukraine. In this aspect, the results obtained are consistent with the opinion of M. Parayko (2023), who reported abuses by officials motivated by the need to ensure personal safety from attack. The conclusions of these researchers, considering the results of this

¹ Law of Ukraine No. 580-VIII “On the National Police”. (2015, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/580-19#Text>.

² Law of Ukraine No. 661-IV “On the State Border Guard Service of Ukraine”. (2003, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/661-15#top>.

³ Resolution of the Cabinet of Ministers of Ukraine No. 1456 “On Approval of the Procedure for Checking Documents of Persons, Inspection of Things, Vehicles, Luggage and Cargo, Office Premises and Housing of Citizens in the Course of Ensuring the Measures of the Legal Regime of Martial Law”. (2021, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/1456-2021-%D0%BF#Text>.

⁴ Law of Ukraine No. 580-VIII “On the National Police”. (2015, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/580-19#Text>.

study, can be considered in a different plane, in particular, regarding the implementation of international experience in operational law enforcement procedures in national legal norms. G. Ogapde (2024), using the example of a legal analysis of the powers of the police in the Republic of Ireland, refers to the “Rules of Judges” as best practices that allow law enforcement officers to perform their professional duties without constant accusations of human rights violations and to interact effectively with the public.

Statement by G. Ogapde (2024) that the imperativeness of judges’ rules to prevent offences by citizens seems debatable. But the provisions of Ukrainian legislation provide for personal responsibility for the illegality of actions for authorised entities. In case of violation of the procedure for conducting a preventive measure, the person against whom it was applied has the right to file a complaint. Illegal actions of a police officer during a surface inspection are grounds for disciplinary liability¹, which, according to a number of researchers, is ineffective for ensuring a human-centred approach in the application of surface inspection.

O. Pavlyshyn *et al.* (2021) point to the priority effectiveness of social responsibility over disciplinary responsibility. The functioning of the institute of social responsibility of state authorities in the context of the professionalism of authorised entities is a significant indicator of their professional growth and the level of trust of citizens in law enforcement agencies. Compliance with generally accepted social norms, fulfilment of assigned powers, readiness to report on their own actions requires law enforcement officers to purposefully differentiate work with the population, strengthen interdepartmental interaction and coordination, which in the context of public administration affects the effective counteraction to threats and prompt response to them by subjects of the security and defence sector. Y. Kryvytskyi *et al.* (2024) supported the opinion of O. Pavlyshyn *et al.* (2021) and argued that the main areas for optimising the procedures of authorised entities in the application of police measures should be determined with a focus on international standards and international experience in the field of human rights. The introduction of a special liability mechanism for law enforcement officers will prevent abuse and allow adapting, approximating, and harmonising the best European practices. L. Soleimani-Alyar *et al.* (2024), examining the legal regulation and practice of applying preventive measures by law enforcement officers in the Islamic Republic of Iran and the French Republic, emphasised the effectiveness of determining responsibility for each person (victim and authorised person) when applying preventive measures. Factors leading to the emergence/breaking of a causal relationship, such

as intimidation, coercion, fear for the victim’s own safety, and the quality of damage from the actions of an authorised person are crucial for bringing or releasing a police officer from civil liability.

Thus, despite scientific discussions around the proportionality of human rights violations under martial law experienced by victims and persons who have committed offences, and the determining factor of decision-making by authorised entities, researchers are unanimous in their conclusions about the effectiveness of implementing social responsibility for the latter. The institution of responsibility does not provide for the functioning of such a mechanism. The current provisions of Ukrainian legislation determine that law enforcement officers may face administrative, criminal, civil, and disciplinary liability. The current practice of conducting a surface inspection reflects the disharmonisation of international norms in the field of human rights protection with national ones and requires reducing internally sensitive elements in the field of human rights. The conflict of laws of the norms analysed in the study, which are based on peacetime, calls into question the relevance of preventive procedures under martial law to international standards. Ukraine’s own experience may be useful for other states to follow in the future.

Conclusions

The subject of study in the study was related to compliance with the requirements for conducting a surface inspection under martial law. Considering the legal mechanism of a preventive measure, an attempt was made to unify its procedural aspects, in particular, to identify ways of implementation, grounds for application, and to find out the regulatory provisions that require further improvement. A surface inspection is carried out to fulfil the tasks of official activity by police officers, military personnel, and employees of the State Border Service of Ukraine, authorised subjects of the Security Service of Ukraine, the National Guard, the State Migration Service of Ukraine, the State Customs Service of Ukraine, and the Armed Forces of Ukraine. Law enforcement officers carry it out in three stages, performing it according to the chosen method: by visual inspection without contact, holding it on the surface with a hand or a special device or tool, or in combination. A mandatory condition for the first stage of conducting a surface inspection is to stop the person. Under martial law, its additional function is to protect the life and health of an authorised person from an attack with weapons or other objects. When conducting a surface inspection in the activities of military personnel and employees of the State Border Service, it is permissible to use a special tool – a service dog. At the second stage, when

¹ Law of Ukraine No. 2337-VIII “On the Disciplinary Statute of the National Police of Ukraine”. (2018, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/2337-19#Text>.

an offence is detected, it is possible to simplify the procedure for conducting a surface inspection, which consists in replacing it with measures to ensure proceedings in cases of an administrative offence, measures to ensure criminal proceedings or procedural actions in the event of a change of the law enforcement officer by the relevant authorised subject.

The objects of a surface inspection are a person, belongings, and a vehicle. A special feature of the preventive measure procedure is its variable adaptability to the conditions of martial law and the tasks of law enforcement. The implementation of the second and third stages of a surface inspection allows involving measures to ensure proceedings in cases of administrative offences, measures to ensure criminal proceedings when detecting an administrative and/or criminal offence. Depending on the purpose and legal status of the authorised entity, the legal requirements for detecting an offence change dynamically. If ensuring the

legality, necessity, proportionality, and effectiveness of the preventive measure is sufficient for the prevention of offences, then belonging, admissibility, reliability, sufficiency, and interrelationship are relevant in documenting and collecting evidentiary information.

Special attention of researchers should be paid to the specifics of implementing the principle of respect for human rights when applying a preventive measure, specifying the grounds for its implementation and the responsibility of law enforcement officers for illegal actions.

Acknowledgements

None.

Funding

The study received no funding.

Conflict of Interest

None.

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Проведення поверхневої перевірки: дотримання вимог в умовах воєнного стану

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Анотація

Превентивні заходи в науковій літературі не є предметом широкого обговорення. Публікації здебільшого присвячені перевірці документів особи, зупиненню транспортного засобу, проникненню до житла чи іншого володіння особи. Актуальність заявленої теми пов'язана з низкою питань, що постають під час практичного застосування поверхневої перевірки, необхідністю вдосконалення положень нормативно-правового регулювання, з огляду на правовий режим обмежень прав людини та перебіг трансформаційних процесів у правоохоронних органах. Метою статті було дослідження принципів поверхневої перевірки як превентивного заходу, що використовують уповноважені суб'єкти в умовах воєнного стану. Методологія дослідження була представлена порівняльно-правовим, герменевтичним, формально-логічним, системно-структурним, аналітико-узагальнювальним методами та методом графічного моделювання. Встановлено, що в чинному законодавстві України наявні суттєві відмінності в обсязі повноважень і процедурах проведення поверхневої перевірки. Зокрема, вони стосуються визначення кола об'єктів перевірки (особа, річ, транспортний засіб, товари), порядку залучення службових собак, умов і меж використання спеціальних засобів. Важливими є й територіальні обмеження, які для прикордонників чітко визначені законодавством (контрольні прикордонні райони, пункти пропуску та контрольні пункти в'їзду-виїзду), натомість для поліцейських таких територіальних меж не встановлено. Додатково зафіксовано відмінності в процедурних етапах перевірки між поліцейськими та військовослужбовцями Державної прикордонної служби України. Виявлено колізії між положеннями законодавчих актів і підзаконних документів, що створює ризик неоднакового правозастосування та потребує комплексного нормативного врегулювання для забезпечення єдиної правозастосовної практики. Проаналізовано міжнародний досвід встановлення відповідальності для уповноважених суб'єктів у неправомірному застосуванні превентивних заходів. Практичне значення роботи полягає в тому, що результати дослідження можуть бути використані для формування та вдосконалення нормативно-правових положень національного законодавства, що регулюють діяльність правоохоронних органів під час застосування превентивних заходів

Ключові слова:

превентивний захід; огляд особи; органи правопорядку; блокпост; відповідність доказів; правила суддів; відповідальність