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LEGAL REGULATION OF THE USE OF MILITARY FORCE FOR ENSURING RUSSIAN EMPIRE INTERNAL SECURITY (XIX – EARLY XX CENTURIES)

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In this research paper the author examines the legal basis of the use of military force to ensure the internal security of the Russian Empire in the 19th - early 20th centuries. The study includes the analysis the provisions of special normative legal acts regulating the procedure for conscription of troops to assist civilian authorities in ensuring public order and security. That provisions are estimated for compliance with the norms of modern national and international law.

Keywords: police, police functions, military formations, military force, public order, internal security.

ПРАВОВОЕ РЕГУЛИРОВАНИЕ ПРИМЕНЕНИЯ ВОЕННОЙ СИЛЫ ДЛЯ ОБЕСПЕЧЕНИЯ ВНУТРЕННЕЙ БЕЗОПАСНОСТИ РОССИЙСКОЙ ИМПЕРИИ (XIX – НАЧАЛО XX ВВ.)

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В статье рассматривается правовая основа применения военной силы для обеспечения внутренней безопасности Российской империи в XIX – начале XX веков. Анализируются положения отдельных нормативных правовых актов, регламентирующих порядок призыва войск для содействия гражданским властям в обеспечении общественного порядка и безопасности. Дается их оценка на предмет соответствия нормам современного национального и международного права.

Ключевые слова: полиция, полицейские функции, воинские формирования, военная сила, общественный порядок, внутренняя безопасность.

Introduction. Ensuring public order and safety is the subject of regulation of both national and international law. Relevant legal norms determine the range of subjects carrying out this activity and the scope of their powers. The Code of Conduct for Law Enforcement Officials, adopted by General

Assembly resolution 34/169 of 17 December 1979 (hereinafter: the Code), among the officials fulfilling law enforcement duties, mentions representatives of the military authorities in cases of granting them police powers. The Code allows the use of force (including military, in the meaning of Art. 1) and firearms

only in case of emergency. The corresponding exceptional measure should be based on the principle of proportionality [2]. Thus, the involvement of military personnel in the performance of police functions is recognized as a worldwide practice (historically established).

In the Russian Empire the use of military formations as a police force was associated both with the historical tradition (starting with the princely squad) and with the absence or insufficiency of police officers. Despite the creation of regular police and military police units, military units continued to be systematically involved in exercising police functions [1].

In accordance with the «General Mandate to Civil Governors» of 3 June 1837 military units were empowered to conscript troops:

In the event of the appearance of robbery gangs and other offenders, when insufficient local police. The military teams were entrusted with the tasks of eliminating them and ensuring the safety of movement along the communication routes (§ 55).

If there was disorder and disobedience to the legal authority. Civilian governors were instructed to stop the riots mainly «through suggestions, explanations and exhortations.» The involvement of military teams was used as a preventive measure in the form of a show of force. If necessary, they were accommodated in the village and were kept by the local population as their punishment (§ 56) [4].

In accordance with the «Temporary Order to the County Police» of 16 August 1861 (hereinafter: the Order), in extreme cases (they meant «open resistance to the orders of the authorities, when it cannot be stopped otherwise than by the cooperation of the army and the use of weapons») and «in case of urgent need», the troops could be conscripted by the police officer or the mayor on their own. The police had the right to seek help from the military directly in cases of robbery, murder, etc. or threats of violence; when police actions could not stop the riot from spreading. In oth-

er cases, the legal basis for the use of military force was solely the decision of the governor. Field army troops were involved only in case of insufficient internal guard. The Order specifically noted that before the use of force disobeying people should be persuaded to end the riots. The procedure of the use of weapons by military personnel was regulated in detail in the Order (paragraphs 12-14). It was applied only on the basis of the permission of the governor, and in exceptional cases - by order of the police officers and after a threefold warning. Without warning, weapons were used only when attacking military personnel and when the lives of persons subjected to violence by rioters were threatened. Military teams acted independently only in the absence of leadership from authorized officials (police officer, governor or other authorized official).

The use of extrajudicial repression was prohibited. With the restoration of order, the departure of the military command was carried out at the personal discretion of the governor [5].

With a view to more detailed regulation of the course of actions of troops conscripted to assist local authorities, on 4 September 1861, the monarch approved the «Instructions for military commanders in cases of the use of troops to pacify popular unrest and unrest.» This act supplemented the provisions of the «Temporary Order to the County Police» in terms of the use of weapons by military personnel [6].

Military personnel involved in ensuring law and order and public safety were also guided by the norms of the Charter on Garrison Service and the Charter on Field Service in Wartime. The military command was authorized to give «additional, depending on the circumstances, Instructions to the troops». The relevant norms are reflected in the Code of Laws of the Russian Empire (vol. II, Art. 646) and the Code of Military Regulations (Part 3, Book 1, Art. 463).

In accordance with Article 316 of the

General Institution of the Provincial, in the event of insufficient police forces or ineffectiveness of its actions to «eradicate» bandit gangs, thieves, deserters, fugitives and vagabonds, the governors were empowered to involve troops at their discretion. The procedure military formations involvement was regulated in detail by the «Rules on the procedure for calling up troops to assist civilian authorities» (hereinafter: the Rules), set out in the annex to Art. 316.

Troops could be conscripted by the civilian authorities if the police forces were insufficient to ensure order and internal security (to protect public order during mass events; in case of natural disasters, epidemics, epizootics; to escort prisoners; to catch fugitive prisoners and deserters; for capture and detention of criminals; to prevent or stop riots, etc.). The right to conscript troops on the basis of Articles 1 and 3 was granted to governors-general, governors, town governors, police officers, chiefs of police, as well as senators during the audit of provinces. Police officers and chiefs of police could appeal directly to the head of the garrison only when it was necessary to provide assistance from the military in the execution of court sentences. In the cases specified in Art. 1, they could only call up troops with the consent of the governor or mayor. The exceptions were «cases of extreme urgency» and «if unrest, disorder and outrage spreads despite police commands».

The decision to use weapons against rioters in the case of exhaustion of other means was also taken by civilian authorities. At the same time, it was stipulated that in the absence of civilian authorities at the scene of the riots, “the military commander who arrived with the army will give orders at his own discretion”. The Rules recommended that the military command “generally resort to persuasive means, as far as they are deemed possible”. Besides the Rules described in detail the procedure of the use of firearms “only in case of inevitable necessity, when it would be

impossible to end the disorder by any other means” [7, p. 31, 177-180].

Historical documents have preserved various facts of the application of mentioned legal norms, including mass riots that took place in the territory of Bessarabia. For example, as a result of the refusal of the peasants of the Khotyn uyezd to fulfill the villein-socage, the district police officer, in a report of 27 May 1870, addressed to the Bessarabian governor, Major General EE Gangardt, asked to quarter “for pacification” one battalion in each village. At his disposal two battalions from the 15th Infantry Division were commanded. Military force was used as a preventive measure to preclude possible unrest in the territories adjacent to the area of peasant unrest. For this purpose, the military teams were sent “to the billet and to other villages at the request of the need.” At the same time, the district police officer was instructed “clearly read at a full meeting of society the laws establishing punishment for disobedience and resistance to orders of the government and police authorities in villages that do not obey the requirements of the law” [3, p. 55, 56].

Prince S. D. Urusov, being the governor of Bessarabia in 1903–1904, rather critically assessed the activities of the city and district police, speaking of the low quality of its personnel both in terms of professionalism and a tendency to take bribes. He noted the lack of proper interaction between the police and troops in the maintenance of public order, despite the fact that “gentlemen officers moved across the street in dirty weather riding a policeman”. The governor drew attention to the obsolescence of certain norms of the “Rules on the conscription of troops to assist civilian authorities” (on 7 February of 1906, in connection with the revolutionary events, the tsar approved a new edition of the Rules), which did not allow the operational use of military formations and regulate their actions at the same time in different parts of the city. These shortcomings were revealed under the previous governor R.S. von Raabene dur-

ing the suppression of the Jewish pogrom in Chisinau. According to Urusov, the existing Rules “made it possible for the troops to be inactive during the riots, without incurring any responsibility”, in connection with which acts of violence against the Jewish population continued from 6 to 7 April of 1903. The police also did not take active action against pogromists. However, order was quickly restored after the chief of the garrison, General Beckman, received the right to use military force and make arrests.

To increase the efficiency of the measures applied to restore order, the new Bessarabian governor proposed to make some additions to the existing Rules. The norm provided the duty of the commanders of military units called up to assist the civilian authorities to act independently in suppressing riots that threaten the life and property of ordinary people. However, this procedure shifted responsibility from the civilian authorities to the military. The War Department could not accept that. Therefore, Urusov was able to implement his proposal only through a personal agreement with General Beckman, with the consent of the commander of the Odessa military district Musin-Pushkin and bypassing the War Ministry. Military units were determined as part of a company and a squadron for daily duty in Chisinau. The places of their deployment were reported to the chief of police and bailiffs. The request for the troops could be carried out by any police rank

endowed with such a right by the governor. The duty unit had to move to the indicated area within ten minutes, without waiting for the order of the military command. In case of the involvement of significant military forces, they were distributed among the sections of the city in accordance with a previously developed plan.

“It is very important,” wrote S.D. Urusov, - of course, in such cases to have power in the form of “ultimae rationis”, a disciplined military unit; but this power should be kept in the literal sense of the word behind oneself, and not in front of oneself, in order to use it only as a last resort, in the form of an action, and not in the form of an argument”. Due to this position, the governor managed to stop the unrest of the peasants in the villages of Beletsky and Orhei districts, without using military force against them [8].

Conclusion. Thus, the analysis of the provisions of certain normative legal acts of the Russian Empire, regulating the police functions of the armed forces, allows us to conclude that they mainly reflected the class essence of the state and law. However, at the same time, that legal norms are consistent with modern legal acts, international documents in the field of security, including the Code of Conduct for Law Enforcement Officials (primarily in terms of consolidating the principles of exclusivity and proportionality in the use of military force).

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