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ПІДХОДИ ДО РОЗУМІННЯ КАТЕГОРІЇ «ОСОБЛИВІ ПРАВОВІ РЕЖИМИ»

Анотація. *У статті досліджуються основні підходи до розуміння правових категорій «правові режими», «особливі правові режими», надається їх класифікація. Особливі правові режими виступають юридичною підставою обмеження прав і свобод людини й громадянина, отже актуальність дослідження поняття, видів і основних ознак особливих правових режимів не викликає сумніву. Автори розглядають співвідношення між категоріями особливий правовий режим надзвичайного стану та воєнного стану, а також характеризують основні підстави їх впровадження. Наголошується на необхідності чіткого, послідовного правового впорядкування моделі поведінки, направленої на подолання і ліквідацію негативних наслідків надзвичайного та воєнного характеру. Акцентується увага на тому, що в Україні впорядкування суспільних відносин, що виникають у зв'язку з надзвичайними та військовими ситуаціями, набуло особливого значення після виникнення воєнного конфлікту на території нашої держави та розповсюдження вірусу COVID-19. У статті надається авторське бачення категорій «правові режими» та «особливі правові режими». Під першими запропоновано розуміти порядок регулювання, який виражений в комплексі правових засобів, що характеризують особливе поєднання взаємодіючих між собою дозволів, заборон та зобов'язань, здійснюючи при цьому особливу спрямованість регулювання. Під другим – форму державного управління, яка передбачає обмеження правосуб'єктності фізичних та юридичних осіб, що вводиться в якості тимчасового заходу, що забезпечується засобами адміністративно-правового характеру, і спрямований на забезпечення безпеки особистості, суспільства та держави. Здійснено класифікацію особливих правових режимів та запропоновано виділяти за змістом та підставою виникнення наступні види: надзвичайний стан, військовий стан, стан облоги, стан війни, стан суспільної небезпеки, стан напруженості, стан оборони, стан загрози, стан готовності, стан пильності*

Ключові слова: *режим, правовий режим, особливий правовий режим, воєнний стан, надзвичайний стан, права людини, обмеження прав*

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APPROACHES TO UNDERSTANDING THE CATEGORY "SPECIAL LEGAL REGIMES"

Abstract. *The study investigates the main approaches to understanding such legal categories as "legal regimes" and "special legal regime", and provides their classification. Special legal regimes serve as the legal basis for restricting human and civil rights and freedoms; therefore, the relevance of the study of the concept, types, and main features of special legal regimes is beyond doubt. The authors of the study consider the relationship between the categories of special legal regime of a state of emergency and martial law, and describe the main grounds for their imposition. The authors noted a need for a clear, consistent legal regulation of the model of behaviour aimed at overcoming and eliminating negative consequences of an emergency and military nature. Attention is focused on the fact that in Ukraine, the regulation of public relations arising in connection with emergencies and military situations has become particularly important after the emergence of a military conflict on the territory of Ukraine and the spread of the COVID-19 virus. The study provides the author's vision of the categories "legal regimes" and "special legal regimes". it is proposed to interpret the legal regimes as the regulatory procedure, which is expressed in a set of legal means that describe a special combination of interacting permits, prohibitions, and obligations, while implementing a special focus of regulation. The latter should be interpreted as a form of public administration that makes provision for the restriction of the legal personality of individuals and legal entities, introduced as a temporary measure provided by means of administrative and legal nature, and aimed at ensuring the security of the individual, society, and the state. The study provides the classification of special legal regimes and contains proposals to distinguish them according to the content and basis of occurrence as follows: state of emergency, martial law, state of siege, state of war, state of public danger, state of tension, state of defence, state of threat, state of readiness, state of vigilance*

Keywords: *regime, legal regime, special legal regime, martial law, state of emergency, human rights, restriction of rights*

INTRODUCTION

Considering the fact that special legal regimes serve as the legal basis for restricting human and civil rights and freedoms, the relevance of the study of the concept, types, and main features of special legal regimes is beyond doubt. Within each country of the modern age and in the international space, emergency situations have repeatedly arisen (aggression, threat to the constitutional order of the state, life and health of people and citizens, natural and anthropogenic emergencies, and other exceptional circumstances), when the normal functioning of society and the state had been complicated. In such circumstances, there is an increasing need for a clear, consistent legal regulation of the behaviour model aimed at overcoming and eliminating the negative consequences of emergency situations.

In Ukraine, the regulation of public relations arising in connection with emergencies has become particularly important after the emergence of a military conflict on the territory of Ukraine and the spread of the Severe Acute Respiratory Syndrome-2 virus (SARS-CoV-2). Thus, starting from January 30, 2020, the World Health Organization declared the coronavirus outbreak a public health emergency, which causes international concern. Within one month, given the alarming level of spread, the World Health Organization announced an outbreak of a global pandemic [1, p. 167]. Political leaders around the world considered the COVID-19 outbreak to be "a war against an invisible enemy" [2], "the biggest challenge since World War II" [3], or "the saddest hours of the state" [4]. Using the term "war" as a metaphor, the leaders of many states announced a number of comprehensive measures to protect against it [1, p. 168].

In this regard, the process of implementing human and civil rights requires more imperative methods of

regulation, justifiably acquires the form of an extraordinary or special order of influence on socio-legal relations, relying not only on means of encouragement, but also on means of coercion. Special legal regimes stipulated by law are introduced to combat the consequences of emergencies and martial law. Special legal regimes are conditioned by natural, socio-biological phenomena of an emergency situation or artificially created hazards, which lead to the establishment of a special administrative and legal regime, described by the introduction of measures that strengthen the powers of state and municipal authorities in order to restore and maintain the proper order of public life, as well as to ensure the security of the individual, society, and the state. The main feature of the special legal regime is the restriction of the legal personality of individuals and legal entities, which is particularly relevant at present and requires further scientific research to develop sustainable solutions to overcome problems in this area. It should be borne in mind that the special legal regime is contradictory in its legal nature, since, on the one hand, its purpose is to restore safe living conditions for a person, and on the other hand, it makes provision for the adoption of measures that restrict human rights and freedoms.

Restriction of human rights and freedoms is an extremely relevant, necessary, and important subject, which is conditioned just by a considerable number of scientific studies of scientists, teachers of higher educational institutions, special academic disciplines, but also by the practical aspect of the coexistence of members of society within the state and global space, when it is necessary to determine how to ensure order in society; which rights can be restricted and which cannot; what is the due procedure for such restriction; how to implement the institution of restriction of human and civil rights and freedoms and still comply with such legal principles as the balance of interests of the individual, society, state, rule of law, legality, proportionality, humanism, etc. In this regard, the legal system of Ukraine is faced with the task of creating legal tools for restrictions on human and civil rights and freedoms under special regimes, aimed at preventing illegal interference in human rights, on the one hand, and ensuring a common interest in maintaining peace and security on the territory of Ukraine, on the other hand.

For a long time, legal science has not paid much attention to the study of special legal regimes. The scientific doctrine of emergency security measures is far from being diverse. In the 19th century in Europe it was represented by the scientific studies of G. Stein [5, p. 57], K. Mittermeier [6, p. 584], T. Reinaha [7, p. 125], which, however, touched only on some aspects of the issue covered in this study. In Soviet legal science, certain issues of legal regimes related to restrictions on human and civil rights and freedoms were investigated in the studies of S. Alekseev [8, p. 187; 9, p. 245], V. Isakov [10, p. 291], and some other scientists.

Some aspects of special legal regimes have become the subject of consideration by modern Ukrainian scholars D. Kosse [11], I. Sokolova [12, p. 11], L. Taran [13, p. 72], Z. Kisil [14, p. 326], N. Kharchenko [15, p. 27], O. Petryshyn [16, p. 146]. Among foreign researchers, some aspects of this subject have become the subject of N. Rusi [1, p. 167], P. Wicke [2], N. Thomas [5, p. 57], P. Cane [17, p. 204], M. Dewey [18, p. 242], M. Tannenberg [19, p. 78], F. Tamburini [20, p. 78], and others. The arguments expressed in legal science regarding the concept and content of legal regimes can be taken into account upon considering the essence of special legal regimes within the framework of this study.

At the same time, a complete theoretical legal study of the category of special legal regimes, which can be considered as a part in relation to the general category of legal regimes in the legal doctrine and in the system of regulations is nowhere to be found. Thus, the main purpose of the study is to identify and specify the inherent features of special legal regimes.

To carry out the study, a system of methods of scientific

1. MATERIALS AND METHODS

cognition was applied, in particular general philosophical, general scientific (dialectical, analysis, synthesis, abstraction, analogies), particular methods of scientific cognition used in the branches of many sciences (comparative analysis, quantitative and qualitative analysis), as well as special legal methods (formal legal, comparative legal, system-structural). The authors of this study applied the general philosophical (universal) method of cognition at all stages of the cognitive process. The dialectical method was used to analyse doctrinal approaches to the definition of the terms "legal regimes" and "special legal regimes". Using the method of analysis, the study covered the inherent features and identified the individual features of legal regimes, analytical interpretation made it possible to engage in reverse engineering of the concept, in particular, to distinguish a special legal regime and investigate it as a separate part of the whole. Using the analysis method, special legal regimes were also studied and their constituent elements were identified – a special legal regime of state of emergency and martial law, each of the selected elements was considered separately.

Using the abstraction method, the author defines the categories "legal regimes", "special legal regimes", "special legal regimes of a state of emergency", "special legal regimes of martial law". The method of deduction made it possible, based on the doctrinal opinions of scientists, to draw a general conclusion regarding the inherent features of special legal regimes, the existing grounds for their classification. Inductive method of cognition of the provisions of the Law of Ukraine "On the Legal Regime of the State of Emergency"[1] and the Law of Ukraine "On the Legal Regime of Martial Law"[2] provided an opportunity to obtain a general opinion on the inherent

1. Law of Ukraine No. 1550-III "On the Legal Regime of the State of Emergency". (2000, March). Retrieved from https://zakon.rada.gov.ua/laws/show/1550-14#Text.

2. Law of Ukraine No. 389-VIII "On the Legal Regime of Martial Law". (2005, May). Retrieved from https://zakon.rada.gov.ua/laws/show/389-19#Text.

features of the state of emergency and martial law. The historical method of cognition contributed to the coverage of the term "legal regimes" from the standpoint of its origin and development in the legal doctrine, made it possible to achieve an in-depth understanding of its essence and justify new recommendations for its improvement.

Special legal methods have also been used, in particular, formal legal and system-structural methods used in the development and research of the terminology of this paper, namely, in clarifying the content of the categories "legal regime", "special legal regime", as well as upon formulating the definition of the specified legal categories.

The regulatory framework for this study includes the current laws of Ukraine regulating social and legal relations that arise in connection with the conduct of special legal regimes on the territory of the Ukrainian state, in particular: the Law of Ukraine "On the Legal Regime of the State of Emergency" and the Law of Ukraine "On the Legal Regime of Martial Law"; sub-legislative acts that establish the specific features of the conduct of these legal regimes, in particular: Resolution of the Cabinet of Ministers of Ukraine No. 573 "Issues of Introduction and Implementation of Certain Measures of the Legal Regime of Martial Law" of July 8, 2020[1]; Resolution of the Cabinet of Ministers of Ukraine No. 733 "On Approval of the Regulation on the Organisation of Notification of the Threat or Occurrence of Emergency Situations and Communications in the Field of Civil Protection" dated September 27, 2017[2]. In addition, the study uses doctrinal sources that cover the content and features of legal and special legal regimes.

2. RESULTS AND DISCUSSION

The legal regime is a meaningful legal phenomenon that connects an integral set of legal means of influencing public relations in accordance with the methods of legal regulation and its types. In general terms, a legal regime can be interpreted as the regulatory procedure, which is expressed in a set of legal means that describe a special combination of interacting permits, prohibitions, and obligations, while implementing a special focus of regulation. Each regime contains all the listed methods of legal regulation, one of which is dominant depending on the intended purpose of a particular regime. Proceeding from the degree of imperativeness of a particular regime, its concept may include mainly restrictions.

D. Kosse noted that the legal regime constitutes a meaningful feature of specific regulations that should organise a certain part of human life. The legal regime can make provision for a specific mechanism of legal regulation, its special procedure, which is aimed at particular types of subjects and/or objects of law [11]. V. Isakov defined the legal regime as a social regime of an object (phenomenon or process), which is enshrined in legal provisions and provided with a set of legal means. Proceeding to cover this thesis further and based on the meaning of the French term "regime" (i.e., management, regulation), Isakov addresses such an essential feature of the legal regime as its purposefulness, and explains that the social regime itself constitutes a relatively stable relationship of some social object (phenomenon, process, subsystem) with other social objects, which ensures the achievement of certain goals. The author defines the content as the most complex element of the legal regime, as it reflects the connection between the object (carrier) and the environment within which this object exists, as well as the main features of their interaction [10, p. 291]. In this opinion, the legal regime is considered in an objective focus, without taking into account the subjective factor. The problem of objective and subjective conditions of determination becomes relevant in modern conditions of social development in connection with the reassessment of social values towards humanisation and increasing the role of human dignity in social creation. The realisation of a person's status – to be a subject of the social process, that is, the human factor, is determined by objective and subjective conditions and their dialectical unity.

O. Petryshyn aptly noted that the term "legal regime" defines a holistic set of legal means developed from the elements of legal regulation to be applied – methods (dispositive and imperative), means (permissions, prohibitions, and obligations), types of regulation (generally permitted and specially permitted). This ratio is determined by the different degree of dominance of some and the auxiliary role of other methods, means, and types of legal regulation, it constitutes an expression of the degree of rigidity of regulation, the presence of certain restrictions and benefits, the limits of legal independence of subjects [16, p. 146].

P. Cane noted that the interpretation of government systems in a given state and the model of distribution of state power reflect the inherent features of government regimes. The government regime establishes the exercise of administrative power within the country. It is a structural element of a management system comprising a certain set of institutions, provisions, and legal practices. It is useful to distinguish between three types of control of administrative power, which can be called political, legal, and bureaucratic, respectively. Political control is related to the political goals and results of administration; legal control concerns the issue of whether the government regime is implemented in accordance with the spirit and the letter of the law; and the problems of bureaucratic control can be summarised in the classic three components of state audit (economy, efficiency, and effectiveness) and the values of the process, such as fairness, consistency, and immediacy [17, p. 204].

M. Dewey suggests to understand the regulatory

1. Resolution of the Cabinet of Ministers of Ukraine No. 573 "Issues of Introduction and Implementation of Certain Measures of the Legal Regime of Martial Law". (2020, July). Retrieved from https://zakon.rada.gov.ua/laws/show/573-2020-%D0%BF#Text.

2. Resolution of the Cabinet of Ministers of Ukraine No. 733 "On Approval of the Regulation on the Organisation of Notification of the Threat or Occurrence of Emergency Situations and Communications in the Field of Civil Protection". (2017, September). Retrieved from https://zakon.rada.gov.ua/laws/show/733-2017-%D0%BF#Text.

regime as the infrastructure used by regulatory authorities to achieve regulatory goals [18, p. 242]. In this regime, it is necessary to distinguish three groups of legal entities between which there are analytical differences:

1. Persons who set the rules (political figures who establish regulatory regimes and receive the right to make laws as a result of temporary political control over the state);

2. Persons who enforce these rules (state agencies, ministries, departments, etc., who monitor compliance with regulatory prescriptions and are entrusted with legal competence to ensure compliance with legislative requirements);

3. Persons who accept the rules (individual and collective entities that are required to comply with the law by virtue of their participation in a particular activity).

The legal regime in its simplest form can be interpreted as a system of rules for performing certain actions consolidated by legal provisions. These provisions regulate the rights and obligations of all participants in certain relations and express the degree of inclusiveness of legal regulation, the presence or absence of restrictions, and the limits of legal activity of subjects of the law. The very category of legal regime, from its procedural side, describes the breadth of coverage, the level of statutory regulation, and the principles of implementation of legal relations. And it is the theory of law that is designed to show what regimes are needed, whether special statutory regulation of certain types of activities is justified, and to which territories and objects can a particular special regime apply. Summarising the previously expressed positions, it is proposed to interpret the legal regime as an officially established special regulatory procedure that reflects the totality of legal and organisational means used to consolidate the social and legal state of objects of influence and is aimed at ensuring their sustainable functioning. The legal regime is expressed in a certain combination of legal means that create the desired social status and a specific degree of favourability or disadvantage to satisfy the interests of legal entities.

The main features of the legal regime include: 1) the establishment and guarantee of the legal regime by the state and its institutions; 2) orientation towards the value dimension of law in the establishment of legal regimes; 3) the presence of a goal determined by objective factors to regulate public relations in a specific way, highlighting the specific subjects and objects of law in time and space; 4) a special set of legal means and their variable combination.

The scientific literature contains many grounds for classifying legal regimes. S. Alekseev was one of the first researchers to propose the division of legal regimes into primary and secondary (special regimes) [8, p. 187]. The author understands primary legal regimes as complexes of legal means that express the general order of correlation of means of legal regulation in a certain sphere of social existence. Secondary legal regimes constitute modifications of general regimes that make provision for either special benefits reflected in additional rights, or special restrictions reflected in additional prohibitions or obligations [9, p. 245]. Based on the specified classification, I. Sokolova suggests to divide legal regimes into general and special, which can be preferential or restrictive. If the norm of law establishes a different, but also the same range of subjective rights and legal obligations of certain subjects of law in relation to the same object of legal regulation, a new type of legal regime arises – a special one [12, p. 11].

L. Taran suggests to interpret the the special legal regime as a special order of legal regulation of certain social relations, which is established for a particular range of objects or areas of their activity and which differs from the general regime by a preferential or restrictive nature of regulation, which is conditioned by public interest manifested in all elements of its mechanism, in particular, through guarantees, benefits, forms of state support, restrictions, prohibitions, and additional grounds for legal liability [13, p. 72]. Z. Kisil classified legal regimes according to the scale of the will of citizens and organisations to use their opportunities to exercise their subjective rights – to preferential and restrictive regimes; according to the depth of changes in the constitutional status of citizens and organisations – to ordinary and emergency regimes [14, p. 326]. N. Kharchenko justifiably proposes to supplement the general theoretical classification of legal regimes with such types of legal regimes as regimes of legal conditions (state of emergency, martial law, quarantine zones) [15, p. 27].

When considering the legal regime as a specific type of legal regulation, it should be taken into account that it can be expressed in a certain set of legal restrictions. In this regard, it is possible to distinguish such a type of legal regimes as a legal regime of restriction, which, among all types of means, is filled with obligations and prohibitions, non-performance of which leads to the possibility of using coercion. Such legal restriction regimes include state of emergency and martial law regimes, which make provision for a considerable reduction in the content of human and civil rights and freedoms. Therewith, it should be emphasised that there is a close interrelation between the direct content of the legal regime, which includes appropriate restrictions on human and civil rights and freedoms with the goals for which it is introduced and operates. These circumstances largely determine the degree of imperativeness of specific regulation of relations arising in connection with certain restrictions, which reaches the highest degree in a state of emergency or martial law.

Classifying special legal regimes as varieties of legal regimes, the following types can be distinguished according to the content and basis of occurrence: 1) state of emergency (Great Britain, India, Canada, Portugal, USA); 2) martial law (Bulgaria, Netherlands, Poland, Romania); 3) state of siege (Argentina, Brazil, Hungary, Greece, Spain, France); 4) state of war (Belgium, Italy); 5) state of public danger (Italy); 6) state of tension (Federal Republic of Germany); 7) state of defence (Federal Republic of Germany, Costa Rica, Finland); 8) state of threat (Spain); 9) state of readiness (Norway); 10) state of vigilance (Gabon), and others.

At the beginning of the 21st century, attention to the study of special legal regimes has increased. This fact is caused by an increase in the number of military conflicts, natural and anthropogenic emergencies, and epidemiological hazards. In this context, it is important

to remember that the main and fundamental human right, which occupies a central place in the system of non-property rights aimed at ensuring the natural existence of an individual, is the human right to life [21, p. 175]. On the other hand, the legal consciousness of people has developed a belief regarding the dangers of inaction of state and international institutions, civil society institutions in the occurrence of conditioned situations, on the one hand, and threats of excessive, non-legal use of their powers by power structures under special regimes, on the other hand. The above tasks the legal science to engage in additional consideration of a number of scientific issues caused by the emergence of special legal regimes. The main of these circumstances include: a) the use of different terminology in describing special legal regimes, including concepts such as "extraordinary legal regime", "state legal regime", "special legal regime", and "emergency legal regime", which lack clear differentiation in the scientific literature; b) the extension of such regimes to different rights and obligations of the subjects of regime regulation; c) participation of norms of various branches of law – constitutional, administrative, international, criminal, military, financial, etc. – in the construction of these regimes. Hence, there is a need for scientific research aimed, first of all, at a clearer terminological definition of the concept and content of special legal regimes. According to the results of the study, it is proposed to interpret the "special legal regime" as a form of public administration that makes provision for limiting the legal personality of individuals and legal entities and is introduced as a temporary measure, provided by means of an administrative and legal nature and is aimed at ensuring the security of the individual, society, and the state. The main purpose of such regimes is to ensure constitutional security in the event of threats to the sovereignty of the state. Special legal regime is the procedure for functioning of legal entities determined by extraordinary circumstances, aimed at regulating public relations in the state or in its particular administrative-territorial unit, by applying specific methods and means stipulated in the legal provisions.

The current legislation of Ukraine stipulates such a term as the legal regime of a state of emergency. The Law of Ukraine "On the Legal Regime of the State of Emergency"[1] defines the content of such a regime, the grounds for its introduction, the rights and obligations of state and municipal authorities in the conditions of the state, responsibility for violations of human and civil rights and freedoms, and its legitimate interests. Based on the analysis of this law, it is proposed to interpret the emergency regime as a special legal regime of activity of state authorities determined by life circumstances, which allows limiting the legal personality of individuals and legal entities, introduced as a temporary socially objective and legal measure to ensure the safety of a person and citizen, society, and the state. In addition to the legal state of emergency, the current legislation of Ukraine makes provision for a special legal regime of martial law. Thus, the Law of Ukraine "On the Legal Regime of Martial Law"[2] defines such a state, covers its content, establishes the procedure for its imposition, as well as the powers of state and municipal authorities, specially created military bodies (command, administrations), guarantees of respect for human and civil rights and freedoms, their legitimate interests. Resolution of the Cabinet of Ministers of Ukraine No. 573 "Issues of Introduction and Implementation of Certain Measures of the Legal Regime of Martial Law" of July 8, 2020[3] establishes the procedure for implementing measures during the introduction of curfews and the establishment of a special blackout regime in certain areas where martial law has been introduced.

Depending on the grounds for imposition of a special legal regime, the latter can be classified into:

– special state of emergency;

– special martial law regime.

Notably, special legal regimes should include not only states of emergency and military nature, but also other special legal regimes that include the need to apply special measures, which in terms of the scope of legal restrictions are significantly inferior to those used under the state of emergency and martial law. This refers to the presence of certain restrictions and prohibitions in conditions when a state of emergency or martial law has not been declared. In particular, the Resolution of the Cabinet of Ministers of Ukraine No. 733 "On Approval of the Regulation on the Organisation of Notification of the Threat or Occurrence of Emergency Situations and Communications in the Field of Civil Protection" dated September 27, 2017[4] defines the procedure for organising notification of state and municipal authorities and the population of the country on the threat of emergency situations, their further informing in order to take security measures. That is, from the moment of notice on a threat, a special special regime may arise, which would make provision for restrictions on human and civil rights and freedoms in order to prevent dangerous consequences.

Similar to the reaction to war or natural disaster are the current measures aimed by Ukraine and other countries of the world at combating the pandemic, which are described by restrictions on human rights and freedoms, and which the public authorities need to combine with the democratic principles of government. The most common

1. Law of Ukraine No. 1550-III "On the Legal Regime of the State of Emergency". (2000, March). Retrieved from https://zakon.rada.gov.ua/laws/show/1550-14#Text.

2. Law of Ukraine No. 389-VIII "On the Legal Regime of Martial Law". (2005, May). Retrieved from https://zakon.rada.gov.ua/laws/show/389-19#Text.

3. Resolution of the Cabinet of Ministers of Ukraine No. 573 "Issues of Introduction and Implementation of Certain Measures of the Legal Regime of Martial Law". (2020, July). Retrieved from https://zakon.rada.gov.ua/laws/show/573-2020-%D0%BF#Text.

4. Resolution of the Cabinet of Ministers of Ukraine No. 733 "On Approval of the Regulation on the Organisation of Notification of the Threat or Occurrence of Emergency Situations and Communications in the Field of Civil Protection". (2017, September). Retrieved from https://zakon.rada.gov.ua/laws/show/733-2017-%D0%BF#Text.

of these measures, applied by almost all states in the fight against COVID-19, is the restriction of people's freedom of movement. Other restrictions that are caused by the need to contain the pandemic include restrictions on social gatherings, the closure of schools, offices, and universities. Notably, the society does not always have a positive and approving attitude towards the stipulated restrictions and expresses such disagreement through protests and rallies. There are cases when the authorities of democratic countries restrict the freedom of expression of citizens, enlisting the support of the military [22]. Therewith, the government usually justifies why the regime they have chosen has the right to use coercion. M. Tannenberg lists the factors that condition the use of coercion as follows: general results of government process that are favourable to society; personality of the leader; rational legal procedures; ideology [19, p. 78].

In some places, the use of coercion does not correspond to the principles of reasonableness and balance of interests of the state, society, and the individual. Thus, F. Tamburini cites the example of North African countries (Egypt, Algeria, and Morocco), which have been severely affected by COVID-19 compared to other African countries. Therewith, North African governments have taken active legal measures to combat the virus threat, protecting public health, but also used repressive and invasive mechanisms that in some cases jeopardise fundamental freedoms and rights. A comparative analysis of the legislation against COVID-19 indicates that the legislative measures of these countries reflect the level of transition to democracy, the lack of transparency of certain regimes, the use of the pandemic to strengthen repressive control over society, violating the balance of health safety of the country's population and democratic institutions [20, p. 78].

CONCLUSIONS

In emergency and military situations (aggression, threat to the constitutional order of the state, life and health of people and citizens, natural and anthropogenic emergencies and other exceptional circumstances), when the normal functioning of society and the state is impossible, the need for a clear, consistent legal regulation of the behaviour model aimed at overcoming and eliminating the negative consequences of emergencies increases. In Ukraine, the regulation of public relations arising in connection with emergencies and military situations has become particularly important after the emergence of a military conflict on the territory of Ukraine and the spread of the COVID-19 virus. In this regard, the process of implementing human and civil rights requires more imperative methods of regulation, justifiably acquires the form of an extraordinary or special order of influence on socio-legal relations, relying not only on means of encouragement, but also on means of coercion. Special legal regimes stipulated by law are introduced to combat the consequences of emergencies and martial law.

The legal regime is a meaningful legal phenomenon that connects an integral set of legal means of influencing public relations in accordance with the methods of legal regulation and its types. In general terms, a legal regime can be interpreted as the regulatory procedure, which is expressed in a set of legal means that describe a special combination of interacting permits, prohibitions, and obligations, while implementing a special focus of regulation. Each regime contains all the listed methods of legal regulation, one of which becomes dominant depending on the intended purpose of a particular regime. The higher the degree of imperativeness of a particular regime, the more restrictions it will contain. According to the results of the study, it is proposed to interpret the "special legal regime" as a form of public administration that makes provision for limiting the legal personality of individuals and legal entities and is introduced as a temporary measure, provided by means of an administrative and legal nature and is aimed at ensuring the security of the individual, society, and the state. The main purpose of such regimes is to ensure constitutional security in the event of threats to the sovereignty of the state. Special legal regime is the procedure for functioning of legal entities determined by extraordinary circumstances, aimed at regulating public relations in the state or in its particular administrative-territorial unit, by applying specific methods and means stipulated in the legal provisions.

Based on the analysis of the current legislation of Ukraine, it is proposed to interpret the emergency regime as a special legal regime of activity of state authorities determined by life circumstances, which allows limiting the legal personality of individuals and legal entities, introduced as a temporary socially objective and legal measure to ensure the safety of a person and citizen, society, and the state.

RECOMMENDATIONS

The scientific value of the study lies in the fact that it develops the author's concept of the legal category "special legal regime" based on the study of theoretical and statutory issues problems, provides its main features, and classifies its types. The conclusions obtained as a result of the study can be used in research work – for further general and special scientific research in the field of law; in law-making – in the process of developing and improving national legislation, harmonising Ukrainian legislation with international legal provisions; in the educational process – during the study in legal educational institutions of academic disciplines of general theory of law and the state, constitutional law.

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