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Regarding the study of certain aspects of the introduction of emergency legal regimes in Ukraine

One of the essential issues of the functioning of the institute of emergency legal regimes in Ukraine is the issue of the grounds for the introduction of these regimes. To understand the model that is unique to Ukraine, it is appropriate to refer to the national systems of other states and international experience.

Already in the early 1960s, the work of H. Foltz "State of emergency and legislation on a state of emergency" was published in the Federal Republic of Germany, in which the scientist gave a detailed elaboration of the reasons for the introduction of emergency regimes, such as: 1) the presence of an external threat to the state, which is expressed in the execution of acts of military threat or military attack by a foreign state, as well as the leadership of a foreign state by the actions of "subversive elements" inside the country; 2) the presence of various types of "internal disorder", rebellions and uprisings; 3) the onset of "constitutional necessity" caused by a violation of the functioning of any constitutional body or a conflict (in a federal state) between the center and a subject of the federation; 4) disruption of the functioning of the state apparatus caused by a strike of civil servants; 5) refusal to pay taxes (tax strike); 6) difficult situation in the field of economy and finance, as well as labor conflicts; 7) catastrophes, epidemics and natural disasters [1]. The works of H. Foltz were partially reflected and confirmed in the national legislation of the Federal Republic of Germany. Thus, according to it, separate grounds are provided for each type of emergency legal regime. For example, in accordance with clauses 2 and 3 of Art. 35 of the Constitution of the Federal Republic of Germany, the grounds for introducing a state of emergency are the need to preserve and restore public safety and order in particularly important cases and natural disasters or accidents [2].

There is some specificity in Great Britain regarding the introduction of emergency legal regimes in certain territories. Thus, in 1926, the Emergency Powers Act was passed, which applied to Northern Ireland, and several anti-terrorism laws, but only the Ulster Act [3] was applied.

According to Clause 1 of Art. 352 of the Constitution of India, the grounds for imposing a state of emergency are conditions when the security of India or any part of it is threatened by war, or external aggression, or armed insurrection. Explanation to Clause 1 of Art. 352 of the Constitution of India speaks of the possibility of imposing a state of emergency before military operations, the beginning of aggression and armed rebellion, if the President comes to the conclusion that such a threat exists. According to Clause 9 of Art. 352 of the Constitution of India, the President can issue proclamations imposing a state of emergency on various grounds regardless of whether such a state has already been imposed by another proclamation.

Another type of emergency legal regime in India is direct presidential rule in individual states. Part 1 of Art. 356 of the Constitution of India enumerates the grounds on which such a regime may be introduced - when the President, on the report of the Governor of the State or otherwise, comes to the conclusion that a situation has arisen in which the administration of the State cannot be carried out in accordance with the provisions of the Constitution. The last emergency legal regime provided for in the Constitution of India is a state of emergency in the field of finance, which can be introduced in accordance with the grounds set out in Clause 1 of Art. 360 when the financial stability of India or any part thereof is threatened [4, p. 34].

When considering the reasons for the introduction of emergency legal regimes in the countries of continental Europe, we note that the Constitution of the Republic of Hungary provides for several reasons for the introduction of an emergency legal regime.

A state of emergency is imposed in the event of war or an immediate threat of an armed attack by a foreign state (item h, item 3, article 19 of the Constitution of the Republic of Hungary). A state of siege is introduced in the case of armed actions aimed at overthrowing the constitutional order or usurping state power, in the case of acts of violence with the use of weapons or those committed by armed groups that significantly and on a large scale threaten the life and property of citizens, as well as under the time of industrial disasters (clauses and clauses 3 of Article 19 of the Constitution of the Republic of Hungary) [5].

Already in the mid-1960s, a review of the Constitutions of 36 countries of the world was conducted under the auspices of the United Nations, with the aim of establishing an exhaustive list of those serious threats to the state, in the presence of which the adoption of exceptional measures, including the introduction of emergency regimes, is justified. Based on the results of this work, the authors of the review identified seven such circumstances: external threat (international conflict, war, foreign invasion, defense or ensuring the security of the state as a whole or any of its parts); civil war, rebellion, "subversive actions of revolutionary elements"; breach of peace, public order or tranquility; threat to the constitutional order; disaster; a threat to the economic life of the country or any of its parts; violation of vitally important sectors of the economy or public services [3].

Reflecting on the topic of formulating an exhaustive list of conditions for the introduction of an emergency regime, the following question should be asked: is it possible to formulate such a list? On the one hand, it would be possible to limit ourselves to general formulations, such as violations of the normal activity of state authorities, the need to restore constitutional law and order, a mass crossing of the state border from the territories of neighboring countries, etc. Proponents of an exhaustive list of circumstances believe that this will limit the administrative arbitrariness of the authorities and prevent the free interpretation of legal norms that determine the grounds for introducing a state of emergency. On the other hand, when preparing such an important law, the legislator must analyze the history of the establishment of this institution, the historical and foreign experience of the application of emergency legal

regimes and, based on the information received, foresee all possible situations of the introduction of the said regime.

It would be possible to agree with the supporters of a closed (full) list of circumstances. But a closed (full) list risks putting the law enforcement officer in a difficult position. Yes, an emergency situation may arise, and the circumstances that caused it are not specified in the law. This, of course, prevents the application of emergency measures, and the only way out of such a situation is to amend the law.

In our opinion, the list of circumstances that are grounds for the introduction of emergency legal regimes should have only a recommendation nature. The legislator can only cite the most characteristic social phenomena and circumstances and emergency situations that may lead to the introduction of the specified regimes. For example, today the life of society depends mostly on computer technology and cybernetic space, which is created by man, but the legislation of none of the countries of the world recognizes extraordinary events or emergency situations that may arise in cybernetic (virtual) space as grounds for introducing an emergency legal regime in reality. Therefore, the issue of open and closed lists of grounds for the introduction of emergency legal regimes is considered differently in world practice.

Analyzing the legislation of Ukraine. It should be noted that it has absorbed a lot of useful information from international and foreign experience, but it also has its own national features that are not characteristic of other states.

Thus, Article 1 of the Law of Ukraine "On the Legal Regime of Martial Law" states that martial law is a special legal regime introduced in Ukraine or in some of its localities in the event of armed aggression or threat of attack, danger to the state independence of Ukraine, its territorial integrity [9], which are grounds for introducing martial law. The article also states that martial law is imposed to repel armed aggression and ensure national security, to eliminate the threat of danger to the state independence of Ukraine, its territorial integrity [6], which is the purpose of imposing martial law.

An exhaustive list is provided, however, in addition to the terms "aggression", "threat of attack (aggression)", "territorial integrity of the state" clearly defined in international law [7, p. 44], there is also a broad evaluative concept of "danger to the state independence of Ukraine". A whole spectrum of dangerous situations can be included in this evaluative concept.

The basis for the introduction of an emergency legal regime in accordance with international standards can only be a "threat to the life of the nation", and not any territory in which even a significant part of the state's population lives (International Convention on Civil and Political Rights of 1966 (part 1 Article 4); the European Convention on the Protection of Human Rights of 1950 (Part 1 of Article 15); the European Social Charter of 1961 (Article 30)) [3].

Conclusions. Considering the above, we came to the following conclusions:

1. In our opinion, the list of circumstances that are grounds for the introduction of emergency legal regimes should only be of a recommendatory nature. The legislator can only cite the most characteristic social phenomena and circumstances and emergency situations that may lead to the introduction of the specified regimes.

2. We propose to specifically, separately provide for an exhaustive list of grounds for introducing martial law by analogy, as is done in the Law of Ukraine "On the Legal Regime of a State of Emergency".

3. An emergency legal regime can be introduced in the state when a dangerous factor threatens the entire state, which in turn corresponds to international regulations. Therefore, the introduction of an emergency legal regime is possible only in an emergency situation of the state level.

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