

The concept and features of the martial law regime as an object of administrative and legal support

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Abstract. *The article, based on the analysis of scientific views of researchers regarding the interpretation of the concepts of "martial law" and "legal regime," defines the key features of the legal regime of martial law, as well as the mechanism of its implementation and introduction. Based on the generalisation of the theoretical approaches of scientists, as well as the study of the provisions of the current legislation, the author's approach to defining the legal regime of martial law as an object of administrative and legal support is presented.*

It has been proven that the legal regime is a complex legal category that simultaneously characterizes the existing state order of legal regulation of social and legal relations, the peculiarities of the functioning of public administration bodies (state power and local self-government), as well as the mechanism of ensuring and protecting the rights and freedoms of a person and a citizen. In its original meaning, the legal regime is mostly a theoretical and legal category, because its content comes from the principles and legal foundations existing in the state, which establish the functioning mechanism of the entire legal field of the state.

It is noted that the objective circumstance of the introduction of the legal regime of martial law is such a negative factor as armed (military) aggression or the threat of its commission, which involves the application of a complex of measures, means, actions of a military and other type, which carry real threats and significant risks for the existence of Ukraine, its state independence and territorial integrity, as well as the freedom and security of the population, the normal functioning of the economic, political, legal and other systems of the state's life.

It was found that the key features of the legal regime of martial law include the following: 1) its introduction occurs exclusively in the presence of armed (military) aggression or the threat of its commission, which pose risks to state independence, sovereignty, national security, etc.; 2) it is characterized by territoriality, that is, it can be introduced within the borders of the entire country or individual administrative-territorial units; 3) the introduction of martial law requires proper legal formalization in the form of a Presidential Decree, which must be approved by the relevant law; 4) provides for a special procedure for the work of individual bodies of state power and local self-government; 5) makes it possible to limit the rights and freedoms of a person and a citizen, however, only within the limits and scopes directly provided for by the Constitution and Laws of Ukraine; 6) the implementation of goals, as well as the provision and implementation of measures of the legal regime of martial law, is primarily entrusted to the military command and military state administrations - special, temporary bodies of public administration.

Key words: *legal regime, martial law, administrative and legal support.*

Problem statement. The full-scale war launched by the Russian Federation on February 24, 2022, affected all spheres of public life in the Ukrainian state, significantly changing the country's political, economic, social, legal, and other orientations. The need to repel enemy attacks and ensure effective protection of Ukrainian statehood necessitated the accumulation of all internal resources and their further use in military interests. The implementation of this task became possible, including thanks to the introduction of a special legal regime on the territory of Ukraine - martial law. It provides a specific mechanism for the functioning of the state and state institutions, the application of laws, and ensuring the rights and interests of citizens, in connection with which it requires complex administrative and legal support and guidance.

State of the study. Separate problematic issues, devoted to the characteristics of the legal regime of martial law on the territory of Ukraine, have been considered in their scientific works by: V.O. Bass, V.V. Belevtseva, O.A. Husar, T.G. Korzh-Ikayeva, A.T. Komzyuk, M.A. Komzyuk, O.P. Mandryk, T.P. Minka, O.V. Makovska, S.O. Kuznichenko, and many others. However, modern challenges and realities have shown that a large number of problems remain in this field, both of a theoretical and practical nature, which makes it necessary to study the martial law regime as an object of administrative and legal support.

Purpose and objectives of the study. The purpose of the article is to define the concept and reveal the features of the martial law regime as an object of administrative and legal support. To achieve this goal, it is necessary to solve the following tasks: to reveal the meaning of the concept of "legal regime," to summarise the scientific approaches of scientists regarding the definition of the term "martial law"; to reveal the unique features inherent in the relevant legal regime as an object of administrative and legal regulation.

Scientific novelty of the study. The scientific novelty of the article lies in the fact that in it the theoretical approach to defining the concept and delineating the features of the martial law regime as an object of administrative and legal support was further elaborated.

Presentation of the main material. It is worth noting that the concept of martial law has found its legislative consolidation. Thus, Article 1 of the Law of Ukraine "On the Legal Regime of Martial Law" enshrines the following definition: "This 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 and provides for the provision to the relevant state authorities, military command, military administrations and local self-government bodies with the powers necessary to avert the threat, repulse armed aggression and ensure national

security, elimination of the threat of danger to the state independence of Ukraine, its territorial integrity, as well as the temporary, threat-induced, restriction of the constitutional rights and freedoms of a person and a citizen and the rights and legal interests of legal entities with an indication of the period of validity of these restrictions" [1].

Scientists mostly agree with the legal definition, but at the same time, as a rule, they emphasise the need for its comprehensive characterisation because the content of this legal category simultaneously consists of several important factors. For example, O.V. Kohut, on this occasion, emphasised that: firstly, martial law is a special legal regime; secondly, the grounds and purpose of its introduction are legally established; thirdly, special powers are granted to the bodies of executive power, military command, and local self-government bodies; fourthly, the introduction of the legal regime of martial law involves a temporary restriction of the constitutional rights and freedoms of a person and a citizen, and the rights and legal interests of legal entities, with an indication of the period of validity of these restrictions [2, p. 1174]. At the same time, S.S. Skrypka emphasises the specific legal nature of martial law, which makes it a risk factor for state legitimacy. The scientist writes: "The legal regime of martial law is a very important issue, as it reflects the balance between the needs of the state and society in extreme conditions and the rights and freedoms of citizens. The introduction of martial law serves as the evidence of the highest degree of crisis situation in the country, which requires immediate and, quite often, drastic measures to ensure the safety and survival of the Ukrainian people and the state. On the one hand, martial law provides the state with additional powers to effectively fight the enemy, as well as to ensure public order and security. On the other hand, this regime can lead to a violation of the fundamental rights and freedoms of a person and a citizen, therefore, it is extremely important that the introduction of martial law be justified, temporary, balanced, and limited in its consequences" [3, p. 202].

The existence of the discussion proves the need for a more detailed scientific evaluation of the definition set out in the Law of Ukraine, "On the Legal Regime of Martial Law," with the aim of revealing all the key features of the category described in it and formulating a new approach to its definition as an object of administrative and legal support, taking into account modern realities and examples of practical application. Yes, first of all, it is necessary to point out that martial law is a special legal regime. From the position of S.M. Oleynikov, the legal regime is a logical continuation of the state regime and a higher degree of organisation and organic combination with the state regime. The concept of "legal regime" is a multidimensional, multifaceted phenomenon and should be divided into the regime of legality, the regime of state discipline, and the regime of law and order. The legal regime is primarily expressed in the system of current legislation, the set of methods of legal regulation, the processes of law-making and law enforcement, and the legal consciousness of society. Therefore, one of the important indicators of the quality of the legal regime is legality. At the same time, the

scientist emphasises that it will also be fully justified to consider state discipline and legal order as an indicator of the legal regime together with legality, which, being closely related to legality, have their own individualisation, which is expressed in its own content and subjective composition [4, p. 122; 5]. N. Kovalenko came to the conclusion that the legal regime is a normatively established exceptional order of state regulation of special social relations, which is objectified through a structured set of various regulatory and legal methods, the complex of which is determined by the specifics of the regulated relations. The main attributes of the legal regime, which determine its separate status among other legal phenomena, are as follows: firstly, it is the order of regulation, ordering of social relations, historically brought to life by the political regime of democracy and closely related to the political and legal regime of legality; secondly, the defining feature of the legal regime is its mandatory normative enshrinedness, formulation in specific normative legal acts; thirdly, legal regimes are determined and sanctioned exclusively by the state, which, in the person of authorized bodies, is obliged to carefully monitor the nuances and trends of the development of individual situations, provisions and social relations that require regulation, in addition, the legal regime is a structured set of regulatory and legal methods (restrictions, prohibitions, permits, additional obligations); fourthly, the application of the legal regime is always an exception to the systemic legal regulation of social relations in the state, associated with the need to limit or, on the contrary, provide additional rights and powers to individuals in a specific area or in a specific situation. Finally, the application of the legal regime should take place with mandatory restrictions on such parameters as the time of application, the territory of application, the object, and the subject [6, p. 257-258].

Therefore, considering the above-mentioned, the legal regime is a complex legal category that simultaneously characterises the existing legal order of social and legal relations in the state, the peculiarities of the functioning of public administration bodies (state authorities and local self-government), as well as the mechanism for ensuring and protecting rights and human and citizen freedoms. In its original meaning, the legal regime is mostly a theoretical and legal category because its content comes from the principles and legal foundations existing in the state, which establish the functioning mechanism of the entire legal field of the state.

Corresponding specific features are also characteristic of martial law as a special order of functioning of the legal and public-administrative fields. In particular, the objective circumstance of its introduction is such a negative factor as armed (military) aggression or the threat of its commission, which involves the application of a complex of measures, means, actions of military as well as of other types against Ukraine, which carry real threats and significant risks for the existence of it, its state independence, and territorial integrity, as well as the freedom and security of the population and the normal functioning of the economic, political, legal, and other life systems of the state. Active operations and actions that make

up the content of military (armed) aggression or the threat of committing it can be both mass in nature, i.e., affecting the entire territory of our country, and local - take place within the boundaries of the respective locations.

From the latter comes another feature of the legal regime of martial law - the territoriality of its application. According to it, the legal regime can be introduced both within the framework of the entire territory of Ukraine and limited to its administrative-territorial components, that is, introduced in individual regions, districts of regions, cities, towns, villages, etc. It should be noted that territoriality is a unique feature of the state of war because, apart from the state of emergency, there are no legal regimes that differ in a similar characteristic.

The next distinguishing feature of the legal regime of martial law is the practical and legal method of its introduction and cancellation. According to the provisions of the Constitution of Ukraine, the decision to introduce martial law in Ukraine or in some of its localities in the event of a threat of attack or danger to the state independence of Ukraine is made by the President of Ukraine (paragraph 20 of Article 106 of the Constitution) [7].

The introduction of a legal regime of martial law on the territory of Ukraine or its part involves a special procedure for the work of individual bodies of state power and local self-government, as well as the effect of regulatory and legal acts. According to the articles of the Law of Ukraine "On the Legal Regime of Martial Law," in the conditions of martial law, the President of Ukraine, the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine, other state authorities, military command, and military administrations act exclusively on the basis, within the limits of their powers, and in the manner determined by the by the Constitution and laws of Ukraine. In addition, during the period of martial law, the powers of the President of Ukraine, the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine, the National Bank of Ukraine, the Commissioner of the Verkhovna Rada of Ukraine for Human Rights, courts, prosecutor's offices, bodies carrying out operative and investigative activities, pre-trial investigation, intelligence agencies, and agencies whose subdivisions carry out counter-intelligence activities [1].

One of the most important features of the legal regime of martial law is the possibility of limiting the rights and freedoms of a person and a citizen during the application of the measures of the legal regime of martial law provided for by the Law of Ukraine "On the Legal Regime of Martial Law." At the same time, such a restriction is possible only within the limits and scope provided by the Constitution and Laws of Ukraine [7].

The last feature of the legal regime of martial law is a specific model of the implementation of goals, as well as the provision and implementation of

measures of such a regime, which relies on special, temporary public administration bodies that exercise their powers together with the general bodies of state power and local self-government. These include military administrations and military command. These are extraordinary public administration bodies, the powers and activities of which are limited to the time of the introduction of martial law, as well as the Law of Ukraine "On the Legal Regime of Martial Law" dated 05/12/2015 No. 389-VIII and the Presidential Decree on the Introduction of the Legal Regime [1].

Conclusions. Based on the above, it is necessary to present the following, in our opinion, more correct and logical definition of martial law instead of the one set forth in Article 1 of the Law of Ukraine, "On the Legal Regime of Martial Law." According to the formulated point of view, the legal regime of martial law is a special procedure for the functioning of the legal system of the state and society, which is put into effect by the decree of the President of Ukraine on the entire territory of the state, or within the limits of individual administrative and territorial units, in the event of an armed (military) aggression against Ukraine or a threat to commit it, which carries risks to state independence, sovereignty, national security, which provides for a special mechanism for the functioning of state authorities, the effect of normative legal acts, the possibility of restrictions, in strictly defined by the Constitution and Laws cases of Ukraine, the rights and freedoms of a person and a citizen during the implementation of martial law measures, as well as the creation of specially authorized temporary public administration bodies - military command and military administrations.

Therefore, the conducted research makes it possible to highlight the following key features of the legal regime of martial law: 1) its introduction occurs exclusively in the presence of armed (military) aggression or the threat of its commission, which pose risks to state independence, sovereignty, national security, etc.; 2) it is characterized by territoriality, that is, it can be introduced within the borders of the entire country or individual administrative-territorial units; 3) the introduction of martial law requires proper legal formalization in the form of a Presidential Decree, which must be approved by the relevant law; 4) the martial law provides for a special procedure for the functioning of individual bodies of state power and local self-government; 5) it makes possible to limit the rights and freedoms of a person and a citizen, however, only within the limits and scopes directly provided for by the Constitution and Laws of Ukraine; 6) the implementation of goals, as well as the provision and implementation of measures of the legal regime of martial law, is primarily entrusted to the military command and military state administrations - special, temporary bodies of public administration.

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