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ABSTRACT

This scientific article examines the role of constitutional norms in the formation of social standards in the United States, the countries of the European Union, and Ukraine. The article considers theoretical and legal aspects, the definition and review of constitutional provisions, and their comparison with international standards. Attention is drawn to the interaction of international and national law, the implementation of international norms in the constitutional provisions of countries, and possible prospects for developing social norms based on constitutional principles. The article carefully analyses the role of international treaties in forming social standards and their implementation in the constitutional framework, considering the impact of this process on the legal environment. Prospects for developing social norms built on constitutional principles are determined through the expansion of social rights, adaptation to modern challenges, and harmonizing with international standards.

The article's conclusions indicate the importance of constitutional norms in ensuring social standards and indicate potential directions for further development, such as the expansion of social rights, adaptation to modern challenges, and interaction with international standards to create a fairer and more inclusive society. Opportunities for greater protection of citizens' rights and the need to consider modern challenges to develop an equitable and inclusive society based on constitutional principles are noted.

Keywords: *constitutional norms, social standards, international law, European Union, international treaties, legal support, development of social norms.*

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THE CONCEPT AND ESSENCE OF MARTIAL LAW AS AN EMERGENCY LEGAL REGIME

Андрій Сірко. ПОНЯТТЯ І СУТНІСТЬ ВОЄННОГО СТАНУ ЯК НАДЗВИЧАЙНОГО ПРАВОВОГО РЕЖИМУ. У статті висвітлено питання щодо поняття та сутності воєнного стану як надзвичайного правового режиму, розуміння поняття правового режиму, а також характерні ознаки, особливості введення та обмеження, внаслідок настання цього правового режиму воєнного стану. Проаналізовано позиції вчених, щодо розуміння поняття правового режиму та виявлено, що науковці часто ототожнюють поняття правового режиму та правового регулювання. Також в ході дослідження було детерміновано, що на сьогодні правовою основою обмеження прав та свобод людини через воєнний стан є наступні нормативно-правові акти: Конституція України, Закон України «Про правовий режим воєнного стану», Указ Президента України «Про введення воєнного стану в Україні».

Визначено, що правовий режим воєнного стану – це правовий режим який запроваджується у виключних обставинах, що становлять загрозу цілісності держави, загрозу нормальному життю суспільству. Акцентовано на тому, що запровадження воєнного стану жодним чином не повинно впливати на базові права громадян, що затвердженні Конституцією та

обмежуються права лише ті, які теоретично можуть посилити негативні наслідки воєнного стану, які чітко закріплені в Конституції. Визначено, що гарантією захисту прав і свобод людини, особливо в умовах воєнного стану, повинні виступати не лише закони, а й органи та установи, що здійснюють контроль за суб'єктами, які безпосередньо здійснюють таке обмеження прав в рамках закону.

У висновку підсумовано, що, введення правового режиму воєнного стану має відповідати принципам державної, суспільної необхідності, об'єктивності, доцільності та відповідальності за можливі наслідки для держави та суспільства адже не зважаючи на введення правового режиму воєнного стану людина залишається найвищою соціальною цінністю в державі та ті обмеження, що визначені законодавцем не можуть бути підставою для протиправної поведінки відносно людини.

Ключові слова: *права і свободи людини, воєнний стан, правовий режим.*

Relevance of the study. Under the pressure of the threats and challenges facing Ukraine, vital issues that need to be solved, improved and, at the same time, must meet the realities of today, became actualized. Thus, on February 24, 2022, the full-scale invasion of the Russian Federation into Ukraine began, and the decree of the President of Ukraine No. 64/2022 on the same day introduced the legal regime of martial law. During all the years of our country's independence, until February 2022, the legal regime of martial law was never introduced, which was probably the reason why this topic was little studied by scientists and specialists.

That is why, in the conditions of a full-scale military invasion of Russia into Ukraine, it is extremely important to distinguish the general and specific principles of the introduction and functioning of martial law, as well as to investigate the results of the introduction of martial law, its legal consequences.

Recent publications review. There are practically no studies on the definition of the essence, concept and introduction of the legal regime of martial law among scientists. For the most part, scientists investigated the issue more generally, studying legal regimes. Thus, A. Slavko, I. Golosnichenko, V. Zavorodnya, N. Kovalenko, V. Konopliov, M. Lazareva, S. Magda, T. Minka, V. Nastyuk, O. Petryshyn, R. Myronyuk, A. Sobakar and others. Given this, we emphasize the relevance of studying the issues of the essence of martial law as an emergency legal regime.

The research paper's objective is to clarify the concept and essence of martial law as an emergency legal regime, its characteristic features, features of introduction and restrictions, as a result of the onset of this legal regime.

Discussion. To determine the essence of the legal regime of martial law, let's first define the meaning of the term "legal regime". Scientists and legislators often use the term "legal regime", attaching different meanings to its essence. At the same time, this concept often has different meanings, even if it is used in the same legislative field. Attempts by scholars to define the concept of "legal regime" have not led to unanimous opinion or certainty.

One of the scientific positions recognizes the legal regime in the theoretical sense as a special order of legal regulation, expressed in a combination of legal means – permits, prohibitions, positive prescriptions – which creates and ensures the appropriate degree of favorability or unfavorability for satisfying the interests of legal subjects [5].

We believe that scientists equate different concepts in this definition, that is, the legal regime is defined as a type of legal regulation. In addition, the subjects of provision, purpose, mechanisms of application of the legal regime are not specified.

Yu. Chupryna's opinion is impressive, which emphasizes that the administrative-legal regime should be understood as a specific order of activity of legal subjects in various spheres of social life, the establishment and regulation of which occurs with the help of special legal means [3].

I. Sokolova came to the conclusion that the legal regime should be understood as a set of interrelated legal means based on general principles (types) of regulation, which ensure stable regulatory regulation of a certain sphere of social relations, express the degree of rigidity of legal regulation, favorability or disadvantage for satisfying the interests of sub legal entities, the acceptable level of their activity [24, p. 36].

O. Skakun also noted in her textbook on the theory of state and law that the type of legal regulation determines the type of legal regime [4, p. 496].

The scientific opinion of T. P. Minka deserves attention, which notes that the legal regime cannot be based only on general principles (types) of regulation, since the legal regime,

figuratively speaking, cannot be reduced, that is, based on a system of legal norms, where the principles of law, as general principles, exert their regulatory effect. As an element of legal regulation, the legal regime is a legal and juridical category, and since legal regulation is a social phenomenon, it is not reduced only to the dictates of the state, and therefore the legal regime, as a broader category in relation to the legal regime, is based not only on norms, principles legal regulation, according to types, but also, first of all, on the laws of social development, political, economic, social, cultural system [1, p. 457].

Thus, having clarified the essence and nature of the concept of legal regime, we will proceed to consider the concept of legal regime of martial law. The concept of martial law, as well as the specifics of its introduction and cancellation are defined by the current legislation. In Ukraine, the basic law regulates the legal bases of the activities of state authorities, military command, military administrations, local self-government bodies, enterprises, institutions and organizations in conditions of martial law, guarantees the rights and freedoms of people and citizens, and the rights and legitimate interests of legal entities in conditions of the legal regime of martial law is the Law of Ukraine "On the Legal Regime of Martial Law" dated May 12, 2015.

Thus, 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, and provides for the provision of appropriate state authorities, military command, military administrations and bodies local self-government of the powers necessary to avert the threat, repulse armed aggression and ensure national security, eliminate the threat of danger to the state independence of Ukraine, its territorial integrity, as well as temporary, due to the threat, restriction of the constitutional rights and freedoms of the person and citizen and the rights and legitimate interests of legal entities indicating the period of validity of these restrictions [6]. Analyzing the above concept in the law, we will highlight the most important aspects:

1) The legal regime of martial law is a legal regime that is introduced in exceptional circumstances that pose a threat to the integrity of the state, a threat to the normal life of society, etc.;

2) The introduction of martial law should in no way affect the basic rights of citizens, which are approved by the Constitution;

3) Rights are limited only to those that can theoretically increase the negative consequences of martial law (for example, strikes);

4) The introduction of martial law refers to this type of legal regime, which is associated with the probable introduction of a number of special measures, which in one way or another determine the functioning of state and public institutions;

5) The introduction of the legal regime of martial law must comply with the principles of state, social necessity, objectivity, expediency and responsibility for possible consequences for the state and society as a whole.

In Ukraine, the legal regime of martial law, in addition to the above-mentioned Law, is regulated by a number of important legislative documents.

Yes, the basis is the Constitution of Ukraine dated June 28, 1996, which provides for the procedure for declaring a state of war. Yes, according to clause 19. Art. 106 The President of Ukraine submits to the Verkhovna Rada of Ukraine a petition to declare a state of war and, in the event of armed aggression against Ukraine, makes a decision on the use of the Armed Forces of Ukraine and other military formations formed in accordance with the laws of Ukraine; according to Clause 9 of Art.85 The powers of the Verkhovna Rada of Ukraine include the declaration of a state of war and the conclusion of peace at the request of the President of Ukraine, approval of the decision of the President of Ukraine on the use of the Armed Forces of Ukraine and other military formations in the event of armed aggression against Ukraine [7].

One of the important normative legal acts on the investigated issues is the Law of Ukraine dated 02.03.2015 No. 141-VIII "On Military-Civil Administrations", which defines the organization, powers and procedure of operation of military-civilian administrations, which are formed as a temporary forced measure with elements of the military management organization to ensure security and normalization of the life of the population in the area of repelling armed aggression of the Russian Federation, in particular in the area of the anti-terrorist operation, which does not aim to change and/or cancel the constitutionally enshrined right of territorial communities to local self-government [8].

The next document is the Presidential decree on the introduction of martial law, as well as, if necessary, on the extension of this state of affairs, because according to the Constitution of Ukraine, only the President of Ukraine makes, in accordance with the law, the decision to introduce martial law in Ukraine or in some of its localities in the event of a threat of attack, danger to the state independence of Ukraine. The Decree of the President of Ukraine "On the introduction of martial law in Ukraine" No. 64/2022 dated February 24, 2022 [9] is currently in force in Ukraine. In connection with the full-scale invasion, the Decree of the Cabinet of Ministers of Ukraine dated February 24, 2022 No. 181-r "Issues of introducing and ensuring the implementation of measures of the legal regime of martial law in Ukraine", regarding the implementation of the measures specified in this plan and established responsible structures: Ministries, other bodies involved in the implementation of measures of the legal regime of martial law, together with the Security Service, the Foreign Intelligence Service, the State Security Department and local self-government bodies [10].

Conclusions. So, currently, the current legislation of Ukraine regulates the introduction and procedure for extending martial law. The Constitution of Ukraine, Laws, Decrees of the President, orders of the Cabinet of Ministers of Ukraine.

We can state that the normative and legal provision that regulates the introduction and enforcement of the legal regime of martial law, in the same introduction of martial law, refers to this type of legal regime, which is associated with the probable introduction of a number of special measures, which in one way or another determine the functioning state and public institutions, as a result of which the rights of citizens are limited, and therefore the introduction of a legal regime of martial law must comply with the principles of state, social necessity, objectivity, expediency and responsibility for possible consequences for the state and society as a whole.

Conflict of Interest and other Ethics Statements

The author declares no conflict of interest.

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ABSTRACT

The article highlights the issue of the concept and essence of martial law as an emergency legal regime, the understanding of the concept of legal regime, as well as characteristic features, features of the introduction and restrictions, as a result of the onset of this legal regime of martial law.

The positions of scientists regarding the understanding of the concept of legal regime were analyzed and it was found that scientists often equate the concepts of legal regime and legal regulation. Also, during the research, it was determined that today the legal basis for restricting human rights and freedoms due to martial law is the following normative legal acts: the Constitution of Ukraine, the Law of Ukraine "On the Legal Regime of Martial Law", the Decree of the President of Ukraine "On the Introduction of Martial Law in Ukraine".

It was determined that the legal regime of martial law is a legal regime that is introduced in exceptional circumstances that pose a threat to the integrity of the state, a threat to the normal life of society.

It was emphasized that the introduction of martial law should in no way affect the basic rights of citizens, that the rights approved by the Constitution are limited only to those rights that theoretically can increase the negative consequences of martial law, which are clearly enshrined in the Constitution. It was determined that the guarantee of protection of human rights and freedoms, especially in the conditions of martial law, should be provided not only by laws, but also by bodies and institutions that exercise control over entities that directly exercise such restriction of rights within the framework of the law.

The conclusion concluded that the introduction of the legal regime of martial law must comply with the principles of state, social necessity, objectivity, expediency and responsibility for possible consequences for the state and society, because regardless of the introduction of the legal regime of martial law, a person remains the highest social value in the state and those restrictions defined by the legislator cannot be the basis for illegal behavior in relation to a person.

Keywords: *human rights and freedoms, martial law, legal regime.*