

# Issues of development of the institution of emergency administrative legal regimes in modern Ukraine

## Питання розвитку інституту надзвичайних адміністративно-правових режимів у сучасній Україні

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### Key words:

*emergency regimes, administrative law, martial law, state of emergency, emergency measures.*

### Ключові слова:

*надзвичайні режими, адміністративне право, військовий стан, надзвичайний стан, надзвичайні заходи.*

The issues of national security have always appeared to be strategically important for a society. The will of each individual state to protect the rights and interests of its own citizens and “promote” its vision certainly understandable. However, the question is, what to do in cases, when interests of different societies are not the same and further “promotion” of personal interests may bring to the emergence of various kinds of conflicts.

The answer to this question we can find in the national security doctrine. Completeness and forethought of doctrine have directly proportional effect on the speed and adequacy of the response to the current threat. One of the options of state response to the danger may be use of the institution of emergency administrative legal regimes.

It's well-known, that under normal circumstances society is supported by political and economic systems and existing well-functioning management system that enables to use state authorities to ensure the stability in society. These measures allow to maintain relative order in society. But they are impact effectively only in a stable environments. Problems arise during emergencies, when situation is getting out of control. It makes government agencies to apply the measures which under normal circumstances can't be used. The measures that restrict constitutional rights of citizens and legal entities and putting on them additional prohibitions and obligations.

Legal regulation of relations arising under different natural disasters, industrial accidents and disasters, socio-political and military conflicts historically carried out by emergency means. Different hazards require regulatory impact that differs from normal one. In case of an emergency as a kind of dangerous social phenomenon, many legal mechanisms do not work anymore because ordinary law can't regulate relations that arise in such conditions. Intensity of legal restrictions at the moment of application of emergency administrative legal regimes testify that such regimes are on the verge of legal system. However, they are necessary for specific regulatory effect on the situation.

This article placed a goal to determine the minimum necessary scope of scientific tasks, which in case of their further research will develop and upgrade institution of emergency administrative legal regimes in Ukraine according to the needs of contemporaneity.

In order to provide qualitative research of the institution of emergency administrative legal regimes and achieve the abovementioned goals, it is seems necessary to make a brief excursus into the history of origin, formation and development of the said legal institution.

At the Privilege of Grand Duke of Lithuania in 1492 among the powers of the noble collegial body (Lithuanian Council of Lords) was determined the question of military defense of the state (border fortifications, military service) as well as the handling of public estates, taxes, duties, governmental borrowings and justice functions<sup>1</sup>.

<sup>1</sup> Bondaruk T. Lithuanian Council of Lords as aristocratic element in the system of government of Grand Duchy of Lithuania (by works of O. Malinovsky) / T. Bondaruk // Actual problems of state and law. – 2009. – № 49. – P. 178–187.

Statute of the Grand Duchy of Lithuania that at Western Ukraine called "Volyn" (First Lithuanian Statute) vested the Grand Duke and Council of Lords with special powers in order to provide the defense of the principality. As per Second Lithuanian Statute, Grand Duke and Council of Lords had the right to declare a general mobilization and use all necessary means to defend the state, including, for example, the imposition of additional taxes and publications of treasury pledge<sup>2</sup>. In the Third Lithuanian Statute dated 1588, on the territory of the Grand Duchy of Lithuania during the period of war and internal conflicts Grand Duke received considerable powers: lead the army, executive and administrative bodies, etc.<sup>3</sup>

Basically, provisions relating to emergency situations as defined by medieval sources, mainly related to taxation, mobilization, command and control at armed forces. Rights and freedoms in the modern sense such provisions almost do not touch.

An important stage in the development of emergency administrative legal regimes, in our opinion, was the appearance of special legislation in France in late XVIII century, namely a law enacted October 21, 1791, which included the introduction of so-called state of siege (fr. *L'état de siège*)<sup>4</sup>.

When Napoleon came to power, French law, which governed the legal regime of the siege, was substantially improved because of permanent warfare, and thus need to control territories in wartime. It were Napoleon's military campaigns that influenced on the borrowing of institution of martial law into other European countries, including Germany and Austria. State of siege was declared in France during all revolutions of the XIX century – 1830, 1848 and 1871. In Germany, the state of siege was also declared at the revolutionary events of 1848–1849 throughout the territory of Prussia, and during the Franco-Prussian War 1870–1871 – in some areas adjacent to the theater of war. German law, which governs the legal regime of the state of siege felt significant influence from French one in 1849. This law enacted in 1851, and later on its individual provisions were part of imperial constitution in 1871<sup>5</sup>.

In tsarist Russia were existed most advanced grading types of emergency legal regimes, such as: 1) provisions of enhanced protection; 2) exceptional measures imposed in neighboring provinces; 3) states of siege and martial law; 4) exceptional powers granted to local administrative authorities. These measures sometimes covered entire regions and at the beginning of the XX century, in different ways, were stated almost everywhere at the territory of Russian Empire<sup>6</sup>.

During the World War II (1939–1945), by the Decree of the Presidium of the Supreme Soviet of USSR (legislative body) called "On the state of martial law" on June 22, 1941 was declared relevant legal regime of emergency, which was lifted after the war<sup>7</sup>.

At the mid-eighties of XX century situation in the USSR had been sharply changed. Riots and other emergencies covered significant part of the former USSR territory. At the same time, at the Constitution of the USSR (1977) was stipulated only one emergency measure, designated to protect the Soviet Union from external attacks – the state of martial law. But this measure was not designed to solve internal problems of the state.

In 1988, in several cities of Azerbaijan SSR were held a mass disturbances that caused casualties. The analysis of situation showed that regular measures were not able to stabilize the situation. Meanwhile, the reasons to declare a state of martial law under the USSR Constitution (1977) were absent. At September 21, 1988 on the territories of Nagorno-Karabakh Autonomous Region and Ahdamsk Region of Azerbaijan SSR were declared state of emergency. In subsequent situations such practice was widespread. Particularly, in November, 1988 was declared the state of emergency and imposed a curfew in Baku, Kirovabadi and others cities and regions of Azerbaijan SSR, and in Yerevan<sup>8</sup>.

<sup>2</sup> Doynar T. Statute of the Grand Duchy of Lithuania, 1566 / T. Doynar. – 1st ed. – Minsk : Tesey, 2003. – P. 37.

<sup>3</sup> Tatsiy V. History of the state and law of Ukraine / V. Tatsiy. – 1st ed. – Kyiv : Injure, 2003. – P. 188–189.

<sup>4</sup> French Revolution in documents, 1789–1794 / ed. I. Zakher. – 1st ed. – Leningrad : Priboy, 1926. – P. 47. – [Electronic resource]. – Access mode : <http://istmat.info/node/31671>.

<sup>5</sup> Maystrenko O. State of siege in France and Germany : [Blog] / O. Maystrenko // Internet version of Ukrainian journal "Policy.Law. Life". – 2014. – [Electronic resource]. – Access mode : [http://www.polpravozhit.in.ua/2013/12/blog-post\\_8.html](http://www.polpravozhit.in.ua/2013/12/blog-post_8.html).

<sup>6</sup> Yangol M. Emergency legislation and exceptional legal regimes / M. Yangol. – 1st ed. – Saint Petersburg : GUAP, 2006. – 394 p.

<sup>7</sup> On the state of martial law 1941.

<sup>8</sup> Grigoriev V. Organization of investigations during the state of emergency / V. Grigoriev. – 1st ed. – Tashkent : THS of the MIA of USSR, 1991. – P. 11–12.

Because of the practical needs to use emergency measures, the Supreme Soviet of the USSR (legislative body) on December 1, 1988 adopted a law "On amendments and additions to the USSR Constitution". Under above-mentioned law was saved existed emergency measure – state of martial law and provided another one – state of emergency, which can be declared in the interests of public safety of USSR (On amendments and changes to the USSR Constitution 1988)<sup>9</sup>. Full legislative regulation state of emergency got under the Law of the USSR "On the legal regime of emergency" on April 3, 1990<sup>10</sup>.

Nowadays, Ukraine has already enacted second laws regarding the regulations of the states of emergency and martial law. Ukraine first of the Commonwealth of Independent States' countries adopted the laws "On legal regime of martial law" (On legal regime of martial law 2000) and "On zone of emergency ecological situation"<sup>11</sup>.

Looking on the above-mentioned brief historical overview we can come to the conclusion that in some circumstances state can apply emergency measures in order to restore its regular activities. Such measures can be called differently: "state of siege", "exceptional state", "martial law", "special state", "state of emergency", "regime of emergency ecological situation zone", etc.

Analyzing historical retrospective of the development of emergency administrative legal regimes we see how, over time and complexity of social relationships, necessity to improve old and create new emergency regimes has been arisen. From the legal acts regulating some issues of mobilization and various military taxes to the legislation relating to the issues of emergency ecological situations. The last two centuries have given an incredible impulse regarding to the genesis of origins of emergency administrative legal regimes. And we can say that this trend is going to be sustainable.

An important thing showing the necessity to review some provisions of institution of emergency administrative legal regimes is growing domination of hybrid methods of warfare in the world. Summarizing of mentioned above, we can move forward and formulate a scope of scientific problems, definition of which will help to develop and update the content of the institution of emergency administrative legal regimes.

However we should add that while using term "emergency administrative legal regime" authors generally understand it as the legal form of managerial impact of governmental agencies on the emergency situations of different origins.

1. Authors see the problem to define common understanding of term "regime" as in general law science, as well as in administrative law. The most common views on this definition have professors S. Alexeyev and D. Bahrah. Researchers are usually take the position of one of them. However we can find some specific monographic works concerning legal regimes, such as works of B. Blyahman<sup>12</sup>, E. Shansumova<sup>13</sup> and others<sup>14</sup>.

As at now, there are no universally accepted understanding of the phenomenon of administrative legal regimes. Thus, it leads to profound errors of researchers regarding conception of the institution of emergency administrative legal regimes. This issue is closely related to the problem of institutional accessory of emergency regimes, as some scientists think it might belong to the institution of constitutional law<sup>15</sup> or environ-

<sup>9</sup> On amendments and changes to the USSR Constitution 1988.

<sup>10</sup> On the legal regime of emergency 1990.

<sup>11</sup> On legal regime of martial law 2000.  
On zone of emergency ecological situation 2000.

<sup>12</sup> Blyahman B. Legal regime in the system of regulation of social relations / B. Blyahman. – Kemerovo : Kuzbasvuzizdat, 1999. – 170 p.

<sup>13</sup> Shansumova E. Legal regimes (theoretical aspects) : PhD / E. Shansumova ; Uralian Law Institute of the MIA of Russia. – Ekaterinburg, 2001. – 202 p.

<sup>14</sup> Riazanov I. Administrative legal regimes under the legislation of the Russian Federation, their functions and structure / I. Riazanov // State and law. – 1999. – № 9. – P. 84–91.

Rushailo V. Administrative legal regimes / V. Rushailo. – 1st ed. – Moscow : Shield-M, 2000. – 420 p.

Mailyan S. Administrative legal regimes in the theory of administrative law and practice of public administration of law enforcement agencies / S. Mailyan. – 1st ed. – Moscow : Unity, 2002. – 263 p.

Dolgopopolov A. Theoretical grounds of administrative legal regimes of trafficking of arms and explosives in Russian Federation / A. Dolgopopolov. – 1st ed. – Moscow : VNII of the MIA of RF, 2006. – 300 p.

<sup>15</sup> Griaznov A. The concept and constitutional foundation of the institution of the state of emergency / A. Griaznov // State and law. – 1999. – № 6. – P. 33–43.

Soloviov A. Constitutional legal regulation of the state of emergency in Russian Federation : PhD / A. Soloviov ; Russian academy of public servants of the President of Russian Federation. – Moscow, 2001. – 210 p.

mental law<sup>16</sup>. However, most researchers justify the position about administrative nature of the institution of emergency legal regimes<sup>17</sup>.

2. There is an issue concerning the development of the term “emergency administrative legal regime” in the administrative law science and its separation from similar legal phenomena. Nowadays, most researchers understand this term in a broad sense<sup>18</sup>. But international experience tells us about different levels of legal phenomena. We should not identify the legal forms of response for hazards of different kinds. On our opinion, from a broad understanding of emergency administrative legal regimes we have to separate extreme administrative legal regimes. Such concept has been supported by some researchers<sup>19</sup>. Some authors accept only one emergency legal regime – “state of emergency”, and “martial law” is seen as a special case of the state of emergency<sup>20</sup>. Such ambiguity affects the lack of universally accepted understanding in scientific researches about the definition of emergency administrative legal regimes. To the mentioned above, we have to add the aspect of transition from one regime into another<sup>21</sup> and as a result mixing of the regimes among themselves.
3. It is important to develop a purpose of declaring of emergency administrative legal regimes. We even can say that purpose is the cornerstone (vector) that defines the character of particular regime. Most scientists have common positions regarding the purpose of declaring of emergency administrative legal regimes, but some inconsistencies still occur between the positions of different scientific schools<sup>22</sup>.
4. One of the most difficult scientific challenges in creation of national concept of the institution of emergency administrative legal regimes is to define the legal justification to declare particular regime. We have to determine the subject of regime’s declaring, by what legal act is it necessary to declare the regime, whether there is a need to declare it and by which subject such legal act has to be executed. On these issues science has different views<sup>23</sup>.

<sup>16</sup> Komarnytskiy V. Legal regime of emergency ecological situation zones’ in Ukraine : PhD / V. Komarnytskiy ; Koretsky Institute of State and Law of National Academy of Sciences of Ukraine. – Kyiv, 2002. – 195 p.

<sup>17</sup> Hazanov S. Legal regulation of the state of emergency in the Russian Federation (administrative legal research) : PhD / S. Hazanov. – Ekaterinburg, 1996. – 178 p.

Guschin V. The state of emergency: administrative legal aspect / V. Guschin. – 1st ed. – Moscow : VNII of the MIA of RF, 1996. – 400 p.

Basov A. Administrative legal regimes of the state of emergency : PhD / A. Basov ; Kharkiv National University of internal affairs of the MIA of Ukraine. – Kharkiv, 2007. – 200 p.

Bandurka A. Concept of emergency administrative legal regimes in the legislation of Ukraine / A. Bandurka, S. Kuznichenko // Problems of law-enforcement activity. – 2005. – № 1. – P. 111–118.

Nastiuk V. Administrative legal regimes in the sphere of national security and terrorism contraction / V. NastiuK. – Kyiv : NNC, 2008. – 320 p.

<sup>18</sup> Rushailo V. Administrative legal regimes / V. Rushailo. – 1st ed. – Moscow : Shield-M, 2000. – 420 p.

Spasky A. Legal relationships with participation of interior agencies in emergency situations: theoretical legal aspect : PhD / A. Spasky ; Kharkiv National University of internal affairs of the MIA of Ukraine. – Kharkiv, 2007. – P. 174–175.

Basov A. Administrative legal regimes of the state of emergency : PhD / A. Basov ; Kharkiv National University of internal affairs of the MIA of Ukraine. – Kharkiv, 2007. – 200 p.

Komarnytskiy V. Legal regime of emergency ecological situation zones’ in Ukraine : PhD / V. Komarnytskiy ; Koretsky Institute of State and Law of National Academy of Sciences of Ukraine. – Kyiv, 2002. – 195 p.

Kivalov S. Special administrative regimes: essence and legal regulation / S. Kivalov // Scientific studies of ONLA. – 2002. – № 1. – P. 12–23.

Magda S. Providing rights, freedoms and responsibilities of citizens during emergency administrative legal regimes : PhD / S. Magda ; Yaroslav Mudryi National Law University. – Kharkiv, 2008. – 203 p.

<sup>19</sup> Bityak Y. Administrative law of Ukraine / Y. Bityak, V. Bogutsky, V. Garaschuk. – 3rd ed. – Kharkiv : Pravo, 2013. – P. 280.

<sup>20</sup> Yangol M. Emergency legislation and exceptional legal regimes / M. Yangol. – 1st ed. – Saint Petersburg : GUAP, 2006. – 394 p.

<sup>21</sup> NastiuK V. Administrative legal regimes in the sphere of national security and terrorism contraction / V. NastiuK. – Kyiv : NNC, 2008. – 320 p.

Kuznichenko S. Administration of bodies of internal affairs in extraordinary conditions caused by abnormal phenomena of technogenic and natural disasters / S. Kuznichenko. – 1st ed. – Kharkiv : Osnova, 2001. – P. 53–66.

<sup>22</sup> Kuznichenko S. Scientific-practical commentary of the Law “On the legal regime of emergency” / S. Kuznichenko, A. Basov. – 1st ed. – Kharkiv : Prometei-press, 2006. – P. 21–23.

Hazanov S. Legal regulation of the state of emergency in the Russian Federation (administrative legal research) : PhD / S. Hazanov. – Ekaterinburg, 1996. – 178 p.

Nastiuk V. Administrative legal regimes in the sphere of national security and terrorism contraction / V. NastiuK. – Kyiv : NNC, 2008. – 320 p.

<sup>23</sup> Rushailo V. Administrative legal regimes / V. Rushailo. – 1st ed. – Moscow : Shield-M, 2000. – 420 p.

Hazanov S. Legal regulation of the state of emergency in the Russian Federation (administrative legal research) : PhD / S. Hazanov. – Ekaterinburg, 1996. – 178 p.

Basov A. Administrative legal regimes of the state of emergency : PhD / A. Basov ; Kharkiv National University of internal affairs of the MIA of Ukraine. – Kharkiv, 2007. – 200 p.

Scherba S. Emergency legal regime in Russia and abroad / S. Scherba, A. Domrin, V. Lafitsky and others. – 1st ed. – Moscow : JurIinform, 2006. – 386 p.

5. This problem is closely related to the previous one and consists of the determination of the factual justification to declare emergency regime. That is, the determination of the specific facts which linked to the declaring of such regime. Scientists are still disputing on the issue of exhaustibility or inexhaustibility of the list of circumstances that can cause declaring of emergency administrative legal regime<sup>24</sup>. After World War II there were first scientific researches on such circumstances<sup>25</sup>, but they are quite controversial. This issue is closely linked with the classification of hazards by genesis (horizontal classification) and levels (vertical classification). We welcome approval of the National Classifier of Ukraine – DK 019:2010 “Classification of emergencies”, which contains a list of emergencies depending on the genesis of origin<sup>26</sup>.
6. The problem is development of detailed procedures of declaring, extension and cancellation of emergency administrative legal regimes. For a long time scientists didn't pay a lot of attention on these questions. But recent situation in the world related to the declaring of emergency administrative legal regimes has shown, that the majority of abuses on the part of the authorities happened because of lack of such developments<sup>27</sup>. This problem is linked to the issue of the territory that covered by the regime. Some researchers consider that the emergency administrative legal regimes can only be administered throughout the state, while others consider only in some areas.
7. Required to be solved the scientific task of the regime's duration, its extension and the renewal of such extension. In different countries exist different time frames for particular regimes, but scientifically proved terms do not exist<sup>28</sup>.
8. Declaring of emergency regimes always associated to the issue of persons who will obtain “regime's immunity”, that is those on whom regime do not apply. Research of this issue indicates that this problem is not developed<sup>29</sup>.
9. There is a need to define the list of specific measures for each type of emergency regimes and the rationale for such measures in each regime. It is also important to have a scientific evaluation about the efficiency of each emergency measure. Such researches are carried out some time<sup>30</sup>, and even partly reflected in the existing national legal system.
10. This task is associated with development of comprehensive mechanism of human rights and freedoms protection under emergency administrative legal regimes, stipulating of guarantees of rights and freedoms in these circumstances, rationale of an exhaustive list of grounds for rights restrictions. Although

<sup>24</sup> Basov A. Administrative legal regimes of the state of emergency : PhD / A. Basov ; Kharkiv National University of internal affairs of the MIA of Ukraine. – Kharkiv, 2007. – 200 p.

Rushailo V. Administrative legal regimes / V. Rushailo. – 1st ed. – Moscow : Shield-M, 2000. – 420 p.

Hazanov S. Legal regulation of the state of emergency in the Russian Federation (administrative legal research) : PhD / S. Hazanov. – Ekaterinburg, 1996. – 178 p.

Mailyan S. Administrative legal regimes in the theory of administrative law and practice of public administration of law enforcement agencies / S. Mailyan. – 1st ed. – Moscow : Unity, 2002. – 263 p.

<sup>25</sup> Avdeev Y. Emergency legislation of Federal Republic of Germany / Y. Avdeev, L. Volkov, I. Lebyah and others. – 1st ed. – Moscow : Legal literature, 1969. – P. 15–21.

<sup>26</sup> Bandurka O. Management of crisis situations / O. Bandurka, V. Pietkov, Y. Dubko and others. – 1st ed. – Kirivograd : KLI of NUUA, 2007. – 210 p.

Kornienko M. Activities of the bodies of internal affairs at complications of operative situation (based on the materials of the Ministry of Internal Affairs of Ukraine) / M. Kornienko. – 1st ed. – Moscow : VNII of the MIA of RF, 2008. – P. 34–53.

Laptiy V. The bodies of internal affairs during emergency situations: legal regulation of management activities / V. Laptiy // UAIA: Scientific journal. – 1996. – № 1. – P. 71–77.

Porfiriev B. Governmental management in emergency situations: analysis of methodology and problems of organization / B. Porfiriev. – 1st ed. – Moscow : Nauka, 1991. – 270 p.

Maidikov A. On concept of actions of the bodies of internal affairs during emergency situations / A. Maidikov // Works of Academy of MIA of RF. – 1993. – № 1. – P. 10–19.

<sup>27</sup> Yangol M. Emergency legislation and exceptional legal regimes / M. Yangol. – 1st ed. – Saint Petersburg : GUAP, 2006. – 394 p.

<sup>28</sup> Domrin A. Constitutional institution of a state of emergency in the foreign countries (on examples of the United Kingdom and India) : PhD / A. Domrin ; Institute of legislation and comparative law of the Supreme Soviet of Russian Federation. – Moscow, 1992. – 198 p.

Scherba S. Emergency legal regime in Russia and abroad / S. Scherba, A. Domrin, V. Lafitsky and others. – 1st ed. – Moscow : Jurllinform, 2006. – 386 p.

<sup>29</sup> Basov A. Administrative legal regimes of the state of emergency : PhD / A. Basov ; Kharkiv National University of internal affairs of the MIA of Ukraine. – Kharkiv, 2007. – 200 p.

<sup>30</sup> Komziuk A. Measures of administrative compulsion in the law enforcement activities of police: definition, types and organizational legal issues of implementation / A. Komziuk. – 1st ed. – Kharkiv : NUUA, 2002. – P. 67–96.

Kolomoiets T. Administrative compulsion in the public law of Ukraine: theory, experience and practice of implementation : PhD / T. Kolomoiets ; National University of internal affairs. – Kharkiv, 2005. – P. 166–174.

Basov A. Administrative legal regimes of the state of emergency : PhD / A. Basov ; Kharkiv National University of internal affairs of the MIA of Ukraine. – Kharkiv, 2007. – 200 p.

this task is quite researched in legal science it still raises many questions. It is important to fulfill international obligations concerning the human rights<sup>31</sup> while regime is in force.

11. There is a need to define the subject of emergency measures' implementation and provide comprehensive development of interagency and institutional management system that will work in these conditions<sup>32</sup>. Another aspect is to determine the manager of such system for every kind of emergency administrative legal regime. The work in this direction has started and contains a wide range of scientific views<sup>33</sup>.
12. Another important problem is redistribution of powers while emergency administrative legal regime is in force between the center and the regions, between the central executive bodies and local authorities. Views on this issue are almost opposite in different scientific schools and require detailed researches<sup>34</sup>.
13. One of the main problems is development of the conception of constitutional responsibility of the subjects of emergency administrative legal regimes for illegal declaring/non-declaring of such regimes. Works on such problem almost does not exist. This issue closely related to the problem of the detailed development of the institution of legal liabilities in these conditions. Certain aspects of the specific criminal, administrative, disciplinary, financial and civil liabilities in terms of emergency administrative law regimes we can find, but the level of scientific development of this problem is still low<sup>35</sup>.
14. This problem is associated with the systematization of regime's standards and development of national approach to the formation of the emergency legislation. Works on this issue are conducting, but have, so far, only controversial nature<sup>36</sup>.
15. An important issue is readiness of state agencies and local authorities to act within frames of emergency administrative legal regimes. Some aspects of this issue are: training and re-training of personnel how to act during emergency regimes; questions concerning determination of mobilization reserve and conducting of mobilization; system of propaganda and public explanation to society of all terms and conditions of emergency administrative legal regimes. Researches devoted to stated issues conducted within the legal and comprehensive studies for a long time, but still there are some views that have to be harmonized<sup>37</sup>.
16. Finally we would like to highlight the scientific problem concerning international cooperation regarding emergency administrative legal regimes and informing neighboring countries and international organizations about declared emergency regime in the country. Also there is need to make a clear distinction between internal and international emergency regimes.

We can surely say that stated above scientific tasks (problems, issues) are certainly not exhaustive. However they, in our opinion, can provide an opportunity to reflect on existing national model of emergency administrative legal regimes, critically refer to it and get a new way to look on contradictions and gaps in the field of legal provision of governmental management of national security of Ukraine. Currently, there is significant demand for scientific development of issues related to emergency situations, especially of social and military nature. So resolving of the mentioned above tasks will assist to build a national model of the institution of emergency administrative legal regimes. This model is undoubtedly highly specific for every national legal system and closely

<sup>31</sup> Convention for the Protection of Human Rights and Fundamental Freedoms 1950.

<sup>32</sup> Ivanov Y. The organization of civil defense in foreign countries / Y. Ivanov, A. Stepanov. – 1st ed. – Moscow : Moscow Academy of internal affairs, 1993. – 260 p.

Basov A. Administrative legal regimes of the state of emergency : PhD / A. Basov ; Kharkiv National University of internal affairs of the MIA of Ukraine. – Kharkiv, 2007. – 200 p.

Rushailo V. Administrative legal regimes / V. Rushailo. – 1st ed. – Moscow : Shield-M, 2000. – 420 p.

<sup>33</sup> Pchelinstev S. Legal regulation of the martial law in Russian Federation : PhD / S. Pchelinstev ; Military University. – Moscow, 1998. – P. 120–195.

<sup>34</sup> Magda S. Providing rights, freedoms and responsibilities of citizens during emergency administrative legal regimes : PhD / S. Magda ; Yaroslav Mudriy National Law University. – Kharkiv, 2008. – 203 p.

Basov A. Administrative legal regimes of the state of emergency : PhD / A. Basov ; Kharkiv National University of internal affairs of the MIA of Ukraine. – Kharkiv, 2007. – 200 p.

Kuznichenko S. Peculiarities in crimes qualification during emergency administrative legal regime under criminal legislation of Ukraine / S. Kuznichenko // Forum of law. – 2008. – № 3. – P. 274–280.

<sup>35</sup> Yangol M. Emergency legislation and exceptional legal regimes / M. Yangol. – 1st ed. – Saint Petersburg : GUAP, 2006. – 394 p.

<sup>36</sup> Bandurka O. Management of crisis situations / O. Bandurka, V. Pietkov, Y. Dubko and others. – 1st ed. – Kirivograd : KLI of NUIA, 2007. – 210 p.

<sup>37</sup> Nastiuk V. Administrative legal regimes in the sphere of national security and terrorism contraction / V. Nastiuk. – Kyiv : NNC, 2008. – 320 p.

Ruilskaya M. The internal armed conflict – problems of resolving (organizational legal aspect) : PhD / M. Ruilskaya ; All-Russian Scientific Research Institute of the Ministry of Internal Affairs of Russian Federation. – Moscow, 2001. – P. 116–137.

Ushakov N. Legal regulation of the use of force in international relationships / N. Ushakov. – 1st ed. – Moscow : ICL of RAS, 1997. – P. 45–93.

related to the historical and cultural traditions of resolving crises in particular country and level of legal awareness of society and state apparatus.

### Summary

Modern world is changing very fast. War against ISIS, immigration crisis in Europe, Russian – Ukrainian conflict and dropping of oil prices – these are only few things that have significantly impacted on us last couple years. Stability and sustainable development that nations were looking for after World War II are in huge danger. But especially when situation is getting out of control and governmental authorities are preparing for a tough times, law as a unique regulator of social relationships can assist society to find the balance between restrictions and rights. This article is devoted to the development of emergency administrative legal regimes, which will be used by authorities in order to stabilize the system and bring society to usual activities. They are developed to show how people are going to act during emergencies. That is why, it is very important to research them broadly and create such regimes that will be able to protect us, our countries and our rights.

### Анотація

Сучасний світ дуже швидко змінюється. Війна з ІДІЛ, імміграційна криза в Європі, російсько-український конфлікт та падіння цін на нафту – це лише декілька речей, які суттєво вплинули на нас за останні декілька років. Стабільний і сталий розвиток, у пошуках якого перебували нації після Другої світової війни, нині у величезній небезпеці, особливо коли ситуація виходить із-під контролю та уряд готується до складного періоду. Тільки закон як унікальний регулятор соціальних відносин може допомогти суспільству віднайти рівновагу між обмеженнями й правами. Статтю присвячено розробці надзвичайних адміністративно-правових режимів, які будуть використовуватись владою для того, щоб стабілізувати систему та привести суспільство до звичайної діяльності. Вони розроблені, щоб показати, як люди збираються діяти в надзвичайних ситуаціях. Саме тому дуже важливо ґрунтовно їх дослідити та створювати режими, здатні захистити нас, наші країни й наші права.

### References:

1. Avdeev Y. Emergency legislation of Federal Republic of Germany / Y. Avdeev, L. Volkov, I. Lebyah and others. – 1st ed. – Moscow : Legal literature, 1969. – 200 p.
2. Bandurka A. Concept of emergency administrative legal regimes in the legislation of Ukraine / A. Bandurka, S. Kuznichenko // Problems of law-enforcement activity. – 2005. – № 1. – P. 111–118.
3. Bandurka O. Management of crisis situations / O. Bandurka, V. Pietkov, Y. Dubko and others. – 1st ed. – Kirivograd : KLI of NUUA, 2007. – 210 p.
4. Basov A. Administrative legal regimes of the state of emergency : PhD / A. Basov ; Kharkiv National University of internal affairs of the MIA of Ukraine. – Kharkiv, 2007. – 200 p.
5. Bityak Y. Administrative law of Ukraine / Y. Bityak, V. Bogutsky, V. Garaschuk. – 3rd ed. – Kharkiv : Pravo, 2013. – 300 p.
6. Blyahman B. Legal regime in the system of regulation of social relations / B. Blyahman. – Kemerovo : Kuzbasvuzizdat, 1999. – 170 p.
7. Bondaruk T. Lithuanian Council of Lords as aristocratic element in the system of government of Grand Duchy of Lithuania (by works of O. Malinovsky) / T. Bondaruk // Actual problems of state and law. – 2009. – № 49. – P. 178–187.
8. Convention for the Protection of Human Rights and Fundamental Freedoms 1950.
9. Dolgoplov A. Theoretical grounds of administrative legal regimes of trafficking of arms and explosives in Russian Federation / A. Dolgoplov. – 1st ed. – Moscow : VNII of the MIA of RF, 2006. – 300 p.
10. Domrin A. Constitutional institution of a state of emergency in the foreign countries (on examples of the United Kingdom and India) : PhD / A. Domrin ; Institute of legislation and comparative law of the Supreme Soviet of Russian Federation. – Moscow, 1992. – 198 p.
11. Doynar T. Statute of the Grand Duchy of Lithuania, 1566 / T. Doynar. – 1st ed. – Minsk : Tesey, 2003. – 156 p.
12. Griaznov A. The concept and constitutional foundation of the institution of the state of emergency / A. Griaznov // State and law. – 1999. – № 6. – P. 33–43.

13. Grigoriev V. Organization of investigations during the state of emergency / V. Grigoriev. – 1st ed. – Tashkent : THS of the MIA of USSR, 1991. – 320 p.
14. Guschin V. The state of emergency: administrative legal aspect / V. Guschin. – 1st ed. – Moscow : VNII of the MIA of RF, 1996. – 400 p.
15. Hazanov S. Legal regulation of the state of emergency in the Russian Federation (administrative legal research) : PhD / S. Hazanov. – Ekaterinburg, 1996. – 178 p.
16. Ivanov Y. The organization of civil defense in foreign countries / Y. Ivanov, A. Stepanov. – 1st ed. – Moscow : Moscow Academy of internal affairs, 1993. – 260 p.
17. Kivalov S. Special administrative regimes: essence and legal regulation / S. Kivalov // Scientific studies of ONLA. – 2002. – № 1. – P. 12–23.
18. Kolomoiets T. Administrative compulsion in the public law of Ukraine: theory, experience and practice of implementation : PhD / T. Kolomoiets ; National University of internal affairs. – Kharkiv, 2005. – 210 p.
19. Komarnytskiy V. Legal regime of emergency ecological situation zones' in Ukraine : PhD / V. Komarnytskiy ; Koretsky Institute of State and Law of National Academy of Sciences of Ukraine. – Kyiv, 2002. – 195 p.
20. Komziuk A. Measures of administrative compulsion in the law enforcement activities of police: definition, types and organizational legal issues of implementation / A. Komziuk. – 1st ed. – Kharkiv : NUIA, 2002. – 240 p.
21. Kornienko M. Activities of the bodies of internal affairs at complications of operative situation (based on the materials of the Ministry of Internal Affairs of Ukraine) / M. Kornienko. – 1st ed. – Moscow : VNII of the MIA of RF, 2008. – 270 p.
22. Kuznichenko S. Administration of bodies of internal affairs in extraordinary conditions caused by abnormal phenomena of technogenic and natural disasters / S. Kuznichenko. – 1st ed. – Kharkiv : Osnova, 2001. – 350 p.
23. Kuznichenko S. Peculiarities in crimes qualification during emergency administrative legal regime under criminal legislation of Ukraine / S. Kuznichenko // Forum of law. – 2008. – № 3. – P. 274–280.
24. Kuznichenko S. Scientific-practical commentary of the Law "On the legal regime of emergency" / S. Kuznichenko, A. Basov. – 1st ed. – Kharkiv : Prometei-press, 2006. – 180 p.
25. Laptiy V. The bodies of internal affairs during emergency situations: legal regulation of management activities / V. Laptiy // UAIA: Scientific journal. – 1996. – № 1. – P. 71–77.
26. Magda S. Providing rights, freedoms and responsibilities of citizens during emergency administrative legal regimes : PhD / S. Magda ; Yaroslav Mudriy National Law University. – Kharkiv, 2008. – 203 p.
27. Maidikov A. On concept of actions of the bodies of internal affairs during emergency situations / A. Maidikov // Works of Academy of MIA of RF. – 1993. – № 1. – P. 10–19.
28. Mailyan S. Administrative legal regimes in the theory of administrative law and practice of public administration of law enforcement agencies / S. Mailyan. – 1st ed. – Moscow : Unity, 2002. – 263 p.
29. Maystrenko O. State of siege in France and Germany : [Blog] / O. Maystrenko // Internet version of Ukrainian journal "Policy. Law.Life". – 2014. – [Electronic resource]. – Access mode : [http://www.polpravozhit.in.ua/2013/12/blog-post\\_8.html](http://www.polpravozhit.in.ua/2013/12/blog-post_8.html).
30. Nastiuk V. Administrative legal regimes in the sphere of national security and terrorism contraction / V. Nastiuk. – Kyiv : NNC, 2008. – 320 p.
31. On amendments and changes to the USSR Constitution 1988.
32. On legal regime of martial law 2000.
33. On the legal regime of emergency 1990.
34. On the state of martial law 1941.
35. On zone of emergency ecological situation 2000.
36. Pchelinstev S. Legal regulation of the martial law in Russian Federation : PhD / S. Pchelinstev ; Military University. – Moscow, 1998. – 215 p.
37. Porfiriev B. Governmental management in emergency situations: analysis of methodology and problems of organization / B. Porfiriev. – 1st ed. – Moscow : Nauka, 1991. – 270 p.
38. Riazanov I. Administrative legal regimes under the legislation of the Russian Federation, their functions and structure / I. Riazanov // State and law. – 1999. – № 9. – P. 84–91.
39. Ruilskaya M. The internal armed conflict – problems of resolving (organizational legal aspect) : PhD / M. Ruilskaya ; All-Russian Scientific Research Institute of the Ministry of Internal Affairs of Russian Federation. – Moscow, 2001. – 230 p.
40. Rushailo V. Administrative legal regimes / V. Rushailo. – 1st ed. – Moscow : Shield-M, 2000. – 420 p.
41. Scherba S. Emergency legal regime in Russia and abroad / S. Scherba, A. Domrin, V. Lafitsky and others. – 1st ed. – Moscow : Jurlitinform, 2006. – 386 p.
42. Shansumova E. Legal regimes (theoretical aspects) : PhD / E. Shansumova ; Uralian Law Institute of the MIA of Russia. – Ekaterinburg, 2001. – 202 p.
43. Soloviov A. Constitutional legal regulation of the state of emergency in Russian Federation : PhD / A. Soloviov ; Russian academy of public servants of the President of Russian Federation. – Moscow, 2001. – 210 p.
44. Spasky A. Legal relationships with participation of interior agencies in emergency situations: theoretical legal aspect : PhD / A. Spasky ; Kharkiv National University of internal affairs of the MIA of Ukraine. – Kharkiv, 2007. – 210 p.
45. Tatsiy V. History of the state and law of Ukraine / V. Tatsiy. – 1st ed. – Kyiv : Injure, 2003. – 354 p.

46. Ushakov N. Legal regulation of the use of force in international relationships / N. Ushakov. – 1st ed. – Moscow : ICL of RAS, 1997. – 284 p.
47. Yangol M. Emergency legislation and exceptional legal regimes / M. Yangol. – 1st ed. – Saint Petersburg : GUAP, 2006. – 394 p.
48. French Revolution in documents, 1789–1794 / ed. I. Zakher. – 1st ed. – Leningrad : Priboy, 1926. – [Electronic resource]. – Access mode : <http://istmat.info/node/31671>.

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