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ADMINISTRATIVE ENFORCEMENT IN THE CONTENT OF THE EMERGENCY LEGAL REGIMES

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In usual circumstances the normal functioning of society is supported by political and economic systems that have been historically developed, as well as the existing well-functioning management system that has an ability to apply its own state authority powers to ensure stability in the society. Such activities allow society to maintain a relative order within the society. However, they exert rather effective impact only in conditions of social-political stability. In case of large-scale emergencies the events go out of control. Under such conditions, traditional forms of law enforcement and public safety stop functioning. In such cases, in order to stabilize the social-political situation and taking it under control, new quality measures that have found their reflection in emergency legal regimes are required.

The institute of emergency legal regimes is familiar for the wold practice, though it also has its history in our country. At first siege regime (as an extraordinary legal regime) was legislatively fixated in France. Then French experience was spread throughout whole Europe and in the XX century it reached the rest of the planet. Emergency regimes were frequently used in Austria-Hungary against the regions populated by national minorities and in Tsarist Russia. Russia used to have the most developed gradation of emergency legal regime types among which are: 1) provisions of enhanced emergency protection; 2) exceptional measures imposed in neighboring provinces; 3) military and siege modes; 4) exceptional powers that local administrative authorities were endowed with. Sometimes these measures were spread throughout several regions and in the beginning of the century were in force throughout the whole Russian Empire expressed in one or another form.[1]

During the first years of Soviet power on the April 3, 1925 All-Russian Central Executive Committee of USSR approved the „Provisions on emergency measures of protection of revolutionary order". It could be explained by the necessity to reinforce the combating contra-revolutionary activities and sabotage. „Provisions on emergency measures of protection of revolutionary order" of 1925 in accordance with the Decree of the Presidium of the Supreme Council of USSR dated November 3, 1962 „On changes and admitting them as such as have lost their power as legislatives Acts of USSR" in accordance with the Decree of the Presidium of the Supreme Council of USSR „On further restrictions of fines imposed under administrative procedure" was accepted as such as lost its power, while there hasn't been any other act that could substitute thereof till recently.

During the Second World War by the Decree of the Presidium of the Supreme Council of the USSR "On military mode" dated June 22, 1941 introduced relevant emergency legal regime that was abolished after the war.

The second part of the 80-s was marked by the dramatic change of the situation in the country. Mass disorders and other emergencies have covered a significant part of its territory acquiring repetitive character. At the same time the Constitution of the USSR in 1977 outlined only one emergency measure designed to protect the Soviet Union from external attack, which was declaration of law. This event was not designed to cover the internal problems of the state.

In 1988 in several cities of Azerbaijan SSR there were mass disorders, which led to casualties. Analysis of the current situation showed that traditional measures do not solve problems concerning stabilization of the situation. Meanwhile, there were no grounds for bringing into force the state of war provisioned by the Constitution of the USSR. Then on the 21st of September of 1988 there was entered an emergency mode on the territory of Nagorno-Karabakh Autonomous Region and Agdam region in Azerbaijan. Subsequently such practice became quite widespread. In particular, in November 1988 there was a state of emergency and curfew established in Baku, Kirovabad and other cities and regions of Azerbaijan, as well as in Yerevan.

Due to already frequent practical necessity in emergency measures the Supreme Council of USSR adopted the Law „On changes and modifications to the Constitution of USSR" on December 1, 1988 that preserved an emergency measure of state of war and provisioned a declaration of emergency mode that is entered in the interests of USSR citizens. Emergency mode got a more detailed regulation within the Law of the USSR dated April 3, 1990 „On emergency mode legal regime".

Today on the territory of our country there is another Law in force that regulates relations under the conditions of emergency mode; the second law regulates the relations under the conditions of the state of war.

Thus, even a quick historical overview let us make a conclusion that in certain circumstances the states resort to emergency measures to ensure their normal life. These measures are of different names. These measures have different names. For example: "State of Siege", "State of War", "State of Emergency", "state of emergency", "Zone of Ecological Emergency" and some others.

Considering the concept of "emergency legal regime" we should refer not only to the existence of certain extraordinary circumstances violating social and state law and order with a necessity of emergency measures for controlling thereof, but to the way of state's responding to mentioned circumstances, as well as administrative influence from the side of state authorities. A definition by Vitsin S.E. seems to be the most relevant stating that „... governing is an impact on the administrative system in order to bring necessary changes to its state within the preset limits".[2]

Recently there have emerged a few works that refer the problems of emergency administrative legal regimes. [3,4,5,6,7] but some authors still accept only one emergency legal regime and this is "State of Emergency", while they consider the "State of War" as a separate case of the State of Emergency [6].

Other scientists outline emergency legal regimes regulated by constitutional laws, for example: State of Emergency; State of War; Zone of Ecological Emergency.[6]

Though, the author of the present article supports the opinion of the scientists that beside the aforementioned emergency regimes also outline another regime or a "State of Emergency" or "Extraordinary State". [4,5,8]

The author has already devoted a range of scientific works to justification of the concept of administrative legal

regimes, where he proves the nature and classification of the mentioned regimes [9,10,11].

Studying the existing legislative acts we can have a proof that regulation of the activities of the public authorities in the framework of still in its initial stage. Virtually legal science has not researched this area until the mid 80's. And only critical social conflicts, that took place later, attracted the interest of the specialists in the field of law and governance. Under these conditions, all state authorities are becoming a subject to legal regulation, for it is directly involved in solving the conflicts. Such regulation is supposed to organize subordination thereof, determine the limit of their competence, consistency of tasks solving at different governmental levels. This all has a very important meaning: to obtain an expected result or in other words to properly regulate the mentioned relations in a short period of time we need to create a cohesive integrated system of enforcement measures in order to neutralize the factors of the environment, the presence of which contributes to conflicts development.

In order to better understand the legal nature of the emergency legal regimes, we should refer to the content of that legal phenomenon. According to Rushaylo V.B. there are the following elements of their legal content: law-enforcement activity the bodies of executive power, including exercising the state enforcement; administrative and jurisdictional productions; judicial control over the activities of management personnel; institute of administrative claim. [3, C.33]

In our view it is administrative enforcement (as a part of state enforcement) that makes up the basis for legal content of emergency legal and administrative regimes legal phenomenon.

Some scientists believe that administrative enforcement should necessarily have the nature of an administrative penalty and carried out only in connection with the wrongful acts harmful to society act in a capacity of a reaction to a harmful behavior of an individual [4, C.197-201].

Though, we tend to adhere to the other scientists' views. "Measures of administrative enforcement may be used both in relation to offenders and to persons who have not committed an offense (in order to prevent offenses, or socially dangerous consequences during natural disasters, epidemics, epizootics)" [5, C.198].

Administrative enforcement under circumstances of introducing the emergency legal regime becomes the basis of legal regulation of social relations, kind of penetrating all social relations: labor, civil, constitutional and legal, ecological, etc.

In order to eliminate an impact of negative factors on the public area in the shortest time, we employ legal emergency measures that cause extensive restrictions of civil rights for those citizens who are within the secured area.

Legal restrictions of citizens' administrative legal status, as an action of implementation of emergency regime, were the basis for outlining a special form of administrative regulations. Its peculiarities are within the nature of legal enforcement concerning the relations under specified conditions, and it is expressed through establishing the regime of administrative and legal restrictions. Expanding of the competence of management authorities allows them to change the nature of enforcement impact on citizens and legal bodies. The effect of the regulations on restrictions of rights and freedoms under emergency legal regime does not apply to separate individuals, but the population of the territory. That type of regulation becomes predominant under extraordinary circumstances.

To find out additional and different from other measures of administrative and legal enforcement are used under emergency conditions, we consider referring to a popular classification of administrative enforcement measures, grouping them (according to the way of performance and purpose) as follows: administrative preventive measures, measures of administrative suspension, measures ensuring administrative procedure and administrative penalties [5, C.198].

Let's review each group of the administrative enforcement measures in details using the examples of emergency administrative legal regimes regulated by constitutional law of Ukraine.

Administrative preventive measures.

It is recognized that the main purpose of administrative preventive measures is to eliminate offences and ensure public safety under specific conditions. The peculiarity of such measures is that they have explicit preventive nature. If we refer to legal provisions enshrined within the Laws of Ukraine „On legal regime of the state of emergency", „On legal regime of the state of war", „On a zone of ecological emergency", then we can find out that a considerable amount of the measures pertain to the category of administrative prevention. To our opinion, such measures reflect the legal nature of the emergency regimes. Among them are: extraordinary regime of entry and exit; traffic restrictions and examination of vehicles; ban against public events; ban against strikes; curfew; quarantine; restriction or ban against selling weapons, poisonous substances, alcohol; temporary seizure of firearms and cold steel, ammunition, poisonous or explosive items from citizens, and training military equipment and radioactive materials from the enterprises, etc.

The reviewed measure within the administrative procedure attains particular importance under the emergency regimes. In conditions of critical social conflict public authorities should establish an extraordinary control over the personnel arriving to or leaving the secured area, as well as the number and type of transported goods. Armed conflicts in Central Asia, Transcaucasia, Moscow and other areas have demonstrated that in the circumstances of expanding of social conflicts, this territory is flooded or invaded by a large number of supporters of one or another part. Their intentions often have provocative nature and lead to escalation of tension and violence.

Under such circumstances it would be legal to establish an extraordinary entry mode on the territory with the emergency regime. This regime is a necessity for stabilizing the situation and restoring of law and order.

Establishing of a curfew is one of the widespread legal measures to ensure public order and security in the area of emergency regime. Its history comprises several dozens of years. Curfew is defined as the prohibition to stay at any public places during set hours without special passes and identifying documents verifying the person at specified times of the day. Based on tactical considerations curfew is usually set for the evening and night hours, for this is the time when it is more difficult to control the public order outside of accommodations and other premises. The exact duration of curfew is determined by public authorities that are endowed with the powers to control the secured area. Establishing of curfew meets a number of organizational measures. In practice it means operative assessment of the situation within a particular area, the calculation of

forces and means necessary for ensuring adherence to the curfew, their location, establishing of the control over the service duties, etc.

Along with the prohibition for the citizens to stay in public places without permits during set hours, curfews also restrict the free flow of transport, the activities of the trade and catering enterprises, educational institutions, consumer services, as well as suggest some other arrangements ensuring the adherence to the curfew. For example, the relevant instruction can introduce the ban against the activities of entertainment facilities during the curfews or even before its establishing, in order to let the citizens to reach their accommodations in advance. The curfew may also imply the prevention of the flow of public transport, as well as any other instructions issued in order to ensure the curfew.

The bodies exercising the control over the secured area are responsible for determining a list of persons who can get the permits, their types, requisites and order of issuance.

The next group of the restriction of rights is comprised of the measures concerning limitation or prohibition to sell the items and materials the use of which may lead to the aggravation of the situation, wherein sometimes the mentioned items and materials may be seized too. These items include: amplifying hardware and copying equipment; weapons, ammunition, poisonous and explosive materials; training military equipment and radioactive materials and alcohol.

Measures of administrative suspension.

To stop the violations of public order and realize the emergency regime it is traditional to implement many different law enforcement powers provided by law, starting with the delivery of offenders, seizure of things and documents, and ending with the use of weapons in exceptional situations. The essence of these measures is in forced suspension of illegal actions of citizens, officials, enterprises, institutions and organizations that violate the order.

Along with generally used measures of administrative suspension, emergency legal regimes imply such a specific measure as suspension after relevant warning referring to the activities of political parties, organizations and movements that prevent the process of normalizing the situation. To our opinion this list can also include a temporary ban against production of information material, which can also lead to aggravation of the situation before the emergency regime is cancelled. The seizure of prohibited substances and items also can pertain here.

Constitution of Ukraine guarantees citizens' right to assembly, however, it prohibits the establishment and activities of public associations whose goal or actions aimed at violent change of the constitutional organization and violation of the integrity of Ukraine, undermining national security, creation of armed groups, inciting social, racial, national and religious hatred.

Under the conditions of emergency legal regimes acute social conflicts arise, while political parties, public organizations and mass movements often take either side in the conflict. Wherein, their activities may acquire extremist direction contributing to the further escalating of the conflict. In this case, the authorities and governing bodies of the emergency regime territory are empowered to suspend the activities of such NGOs for the duration of the regime. It should be noted that the activities of political parties, organizations and movements almost everywhere are beyond the administrative-territorial units, wherein the powers of the authorities responsible for implementing the regime apply just to the territory outlined in the legal act that establishes the emergency regime. The governing body of the secured area can fully suspend the activities of public organizations area only in case when their structures and activities are located and take part in the limits of the outlined borders.

Measures ensuring administrative procedure.

It should be noted that one of the specific features characteristic of administrative enforcement procedure is that the proposed measures are used to identify violations, secure and identify violations evidence, create other conditions necessary for a comprehensive and objective consideration of an offense case, as well as timely and full implementation of the imposed penalty.

A number of conventional measures ensuring administrative procedure, such as examination, documents check, administrative detention restrict the legal rights and d under conditions of an emergency regime acquire a special meaning, different from the ones under normal conditions.

Executing of examination along with the general grounds therefor, also implies special grounds. One of the grounds according to the Laws of Ukraine "On legal emergency regime", "On the state of law legal regime" and "On ecological emergency zone" is possession of the prohibited items among the population.

Under the conditions of emergency regime the grounds for documents check become more solid. If under normal conditions we need sufficient information about the committed offense to execute the action, or any information about its preparing, i.e. in relation to specific individuals; while after establishing emergency regime the documents check is possible in relation to the indefinite number of persons. The condition of such a check is the fact of citizens' assembly. The aim thereof is not only to disclose possible offenders, but also determining the quality content of those who take part in the assembly, which in turn helps to predict and influence the further developments in secure area.

Administrative penalties.

Administrative penalty, unlike other types of administrative enforcement measures, is a punishment for administrative offense and its ultimate goal is educational impact on the offender and other individuals and thereby prevent the the commitment of new administrative offenses.

As it was stressed, emergency regimes can introduce different requirements. These are: the prohibition of mass events, establishing of quarantine and curfews, etc. a list of such legal restrictions is reflected within the President's Decree, which introduces a relative legal emergency regime. Further detailed regulation of the emergency regime requirements is provisioned within the regulations of the governing body that exercises control over a secured area, for example the local administration directives, orders of Operation Headquarters. Actions violating mentioned requirements entail administrative responsibility.

Studying the administrative penalties imposed under extraordinary conditions we may emphasizes that their main peculiarity is severing of the responsibility compared to the one that is entailed for the offense committed under normal circumstances.

Making a conclusion, we can say that emergency regimes are characterized by significant changes in the legal status of subjects of administrative legal relations; accordingly, the competence of public authorities and administration is expanded at the expense of restrictions of the rights of

civil and legal bodies. It is due to a drastic increase in the mechanism of legal regulation of administrative preventive measures with no features of an administrative penalty.

Summarizing all the above said, we can stress that extraordinary administrative legal regimes are a system of legal regulations of administrative nature that are expressed through the restrictions of human rights and freedoms, as well as the rights of legal entities, the expand in powers of public authorities that have been introduced on the specific area provided there are circumstances defined as those within the extraordinary legislature with the aim to normalize the situation as soon as possible.

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ДЕЯКІ ПИТАННЯ ДІЙСНОСТІ ДОГОВОРІВ У ВИПАДКУ ВСТАНОВЛЕННЯ ФІКТИВНОСТІ КОНТРАГЕНТІВ АБО ВЕДЕННЯ НИМИ ФІКТИВНОГО ПІДПРИЄМНИЦТВА

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Стаття присвячена дослідженню питання визнання угод недійсними у зв'язку з фіктивністю їх контрагентів та іншими наслідками укладення договорів з фіктивними підприємствами. Проаналізовано судову практику щодо визнання угод недійсними з підстав фіктивної діяльності контрагентів. Визначено поняття та ознаки фіктивного підприємництва, зазначені питання які потребують законодавчого урегулювання, виявлено коло проблем, пов'язаних з існуванням фіктивного підприємництва в Україні. Розглянуто можливі підходи до боротьби з наявними фіктивними підприємствами та способи запобігання появі нових. Аналізуються ознаки нереальних, безтоварних операцій, а також наслідки визнання недійсними угод у зв'язку з фіктивністю контрагента, визначенні умови визнання недійсними угод з підстав фіктивності контрагентів та можливі способи перевірки контрагентів на наявність фіктивної їх діяльності. Автори досліджують правові засади регулювання, організації, ведення бухгалтерського обліку та складання фінансової звітності в Україні.

Ключові слова: *фіктивне підприємство, фіктивна фірма, фіктивність контрагентів, недійсність договору.*

Проанализирована судебная практика о признании сделок недействительными по основаниям фиктивной деятельности контрагентов. Определено понятие и признаки фиктивного предпринимательства, рассмотрены вопросы, требующие законодательного урегулирования, выявлен круг проблем, связанных с существованием фиктивного предпринимательства в Украине. Рассмотрены возможные подходы к борьбе с имеющимися фиктивными предприятиями и способы предотвращения появления новых. Анализируются признаки нереальных, бестоварных операций, а также последствия признания сделок недействительными в связи с фиктивностью контрагента, определении условия признания недействительными сделок по основаниям фиктивности контрагентов и возможные способы проверки контрагентов на наличие признаков фиктивности в их деятельности. Авторы исследуют правовые основы регулирования, организации, ведения бухгалтерского учета и составления финансовой отчетности в Украине.

Ключевые слова: *фиктивное предприятие, фиктивная фирма, фиктивность контрагентов, недействительный договор.*

Статья посвящена исследованию вопроса признания сделок недействительными в связи с фиктивностью их контрагентов и другими последствиями заключения договоров с фиктивными предприятиями.

The necessity of forming a new system of public administration as a tool for overcoming the crisis in Ukraine is due to radical social and economic transformations that have taken place in recent years and raised a number of