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SPECIFICS OF LEGAL REGULATION OF ECONOMIC ACTIVITIES IN EXTRAORDINARY CONDITIONS

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Problem statement. The extremely difficult situation in our country today requires not only unpopular decisions to address current problems, but also to determine the vectors of the state's development after the end of the war. Given the previous experience of managing, first of all, economic processes in special, extraordinary conditions, there is an urgent need to address the issue of filling the gaps in both the legislative sphere and certain theoretical developments.

The main problem is that the state was not ready for a number of challenges and negative phenomena that significantly affect both the public life of the nation and the ability to ensure the functioning of the state of Ukraine itself. It should be emphasized that some of the challenges (war, pandemic) are not completely new to our society. For example, military operations have been ongoing in Ukraine since 2014, but no appropriate measures have been taken to minimize risks to business or the public. The situation is the same with the Covid-19 pandemic: during the years of independence, there have been cases of mass infection of the population with various types of influenza and other diseases dangerous to the nation's health, but again, the state policy in this area has not undergone significant modifications.

It is obvious that today an effective mechanism for counteracting the main challenges and threats should be developed and enshrined in law, at least based on the analysis of previous and current experience.

An analysis of recent studies and publications shows that legislative regulation in this area is either fragmented, chaotic, or absent as such. An analysis of theoretical and legal concepts suggests that no such thorough economic and legal research has been carried out. Thus, certain issues of regulation of economic activity in the context of the COVID-19 pandemic and full-scale war are reflected in the works of such scholars as: Y. Pavliuchenko, M. Prokhorenko, N.Serhieieva,

ЗБІРНИК НАУКОВИХ СТАТЕЙ

S.Serebriak. Legal aspects of taxation of economic activity of business entities in Ukraine under martial law were considered in the works of N. F. Mentukh and O. R. Shevchuk. The problems of ensuring the economic security of the state were studied in the works of Bilousova Ye. M., Kozachenka G. V., Pogorelova Yu. S. and others. However, conceptual approaches to the functioning of business in extraordinary conditions have not yet been developed. However, this issue is becoming particularly acute in today's environment.

The purpose of this article is to summarize and analyze the status of regulatory and legal regulation of economic relations in the context of extraordinary periods, to classify them and to define the main features of the concept of "extraordinary economic regime". Another important task is to address the issue of the role and functions of the State in the process of ensuring the stability of the economic system in general and the business environment in particular.

Summary of the main material. Doing business has always been and will be a risky activity (according to the characteristics of this activity). However, in the face of special, unfavorable conditions, doing business is either impossible at all or even associated with such risks and challenges that constantly threaten the development of the national economy as a whole, as well as threaten the national economic security of the state. That is why the state must protect not only the economic system but also national business. Accordingly, it is the state that should bear the burden of solving business problems during such extraordinary periods, develop certain compensatory mechanisms, as well as model such situations in advance and have ready-made solutions and packages of regulations for this period.

In this context, we should agree with a number of scholars who explicitly emphasize that wartime economic management necessitates the use of special methods, tools and approaches to the development of the economy of a war-torn country. The totality of these special methods, tools and approaches is based on determining the most effective forms, fiscal methods and tools to support producers and the population through the provision of subsidies, state aid, financial support, budget support, protection of producers, etc. [1, p. 164].

It is worth noting that certain steps have been taken to implement the state policy in the field of business. Thus, Section VIII of the

Commercial Code of Ukraine regulates special economic regimes [2]. At the same time, the Code does not reflect the procedure for conducting economic activity under the conditions of the special period. Although certain peculiarities of such economic activity are enshrined in the following regulations:

1) conclusion of agreements (contracts) by enterprises, institutions and organizations that are executors of mobilization tasks (orders) in accordance with the Law of Ukraine “On Mobilization Preparation and Mobilization” [3];

2) introduction of measures of the legal regime of martial law according to the Law of Ukraine “On the Legal Regime of Martial Law” [4];

3) introduction of measures of the legal regime of the state of emergency in accordance with the Law of Ukraine “On the Legal Regime of the State of Emergency” [5];

4) guaranteeing economic activity and property rights of enterprises in accordance with the Law of Ukraine “On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine” [6];

5) imposition of a moratorium on inspections by bodies and officials authorized by law to exercise state supervision (control) in the field of economic activity, state registration of legal entities and individual entrepreneurs under a special procedure, exemption from payment for the use of state and municipal land plots, cancellation of rent for the use of state and municipal property in accordance with the Law of Ukraine “On Temporary Measures for the Period of Anti-Terrorist Operation” [6];

6) public procurement in accordance with the Law of Ukraine “On Public Procurement” [8];

7) appointment of the state reserve on the basis of the Law of Ukraine “On State Reserves” [9];

8) functioning, preparation for the functioning of the unified transport system in a special period and its management, which is regulated by the Law of Ukraine “On the Functioning of the Unified Transport System of Ukraine in a Special Period” [10], etc.

Thus, a certain framework already exists, but the existing regulatory framework for conducting economic activity during the

special period currently requires a theoretical and legal analysis for proper harmonization of legal norms by subject matter and hierarchical structure with a view to further submitting proposals for amendments to the current economic legislation of Ukraine.

Thus, based on the analysis of the above and other legal acts, it is possible to draw conclusions about the types of extraordinary regimes. Thus, they include: the legal regime of martial law, the legal regime of the state of emergency, the legal regime in the temporarily occupied territory of Ukraine, the anti-terrorist operation, mobilization, prevention of the occurrence and spread of coronavirus disease, etc. Of course, they are not equal in terms of their impact on the economy, business, population, and the state as a whole. That is why the measures to be taken are also quite diverse and adequate to the situation.

It is well known that the special regime of economic activity is applied by the legislator in case of necessity to introduce special conditions for economic activity in a certain territory of the state, in a certain sector of the economy or during the execution of a relevant agreement. The concept of a special economic regime is substantiated as a legal regime that establishes a special procedure for organizing and carrying out economic activity in a certain territory, in a certain sector of the economy, which differs from the general regime of economic activity provided for by law, and is introduced by the state with the aim of ensuring a reasonable combination of public and private interests by establishing restrictions and/or incentives for business entities [11, p. 4]. Economic activity under the special economic regime is regulated by general legislation, taking into account the peculiarities established by special legislation. Establishment of a special economic regime makes it possible to achieve the effectiveness of the implementation of legal norms in those territories or sectors of the economy where general legal norms are not sufficient for this [12, p. 146].

It is worth noting that special regimes do not arise by themselves. Thus, as emphasized by M. Prokhorenko, a special regime exists when: 1) there is a need to introduce special economic conditions; 2) the state has introduced or established a special legal regime under a special procedure; 3) special rules of law are applied, as opposed to general rules, since the effect of general rules of law is insufficient to achieve

the purpose of introducing a special legal regime. Regulatory and legal regulation of economic activity in a special period and further proper application and implementation of the rules of law in this area make it possible to introduce effective conditions for economic activity that allow achieving the goal of introducing such regimes [13, p. 153].

Certain issues of legal regulation of the introduction of special economic regimes during a pandemic and the legal regime of martial law were considered in the works of S. V. Serebriak. The scientist quite rightly notes that in the context of a pandemic, the state faces significant challenges, as the process of building business relations is changing dramatically. In particular, since the beginning of the pandemic related to the spread of the COVID-19 virus in Ukraine, a significant number of enterprises have ceased operations due to the inability to do business due to quarantine, including beauty salons and cosmetology offices, gyms and group exercise facilities, shops (except for household and grocery stores), markets, cafes and restaurants (except for delivery), long-distance carriers, etc. Some businesses are moving exclusively to the online space, which has also led to a reduction in markets for goods and services and, accordingly, in the amount of income from commercial activities. At the same time, the obligations of companies and individual entrepreneurs remain, and contracts or the law provide for liability for their failure to fulfill them. That is why force majeure in the current conditions can become a kind of saving tool for Ukrainian business [14, p. 252].

It is also worth agreeing with some scholars that due to the introduction of quarantine in Ukraine, business entities had to adapt to the conditions determined by the authorities, consider the prohibitions or recommendations on the conditions of conducting economic activities, consider the massive spread of the coronavirus infectious disease COVID-19 and provide their employees with safe working conditions. We believe that these actions are appropriate in terms of ensuring the protection of human life and health, although, at the same time, the state should not forget that it is business entities that ensure the development of the national economy, pay taxes and fees, and therefore their daily activities should not be subject to unreasonable restrictions and measures of influence [15, p. 138].

With regard to the legal regime of martial law, the peculiarity of economic activity here is the provision of the relevant public authorities, military command, military administrations and local self-government bodies with the powers defined by the Law of Ukraine “On the Legal Regime of Martial Law”, the implementation of which may be carried out by restricting the constitutional rights and freedoms of man and citizen and the rights and legitimate interests of legal entities.

And here it is quite important to define the role of the state during the extraordinary period. Because it is the state that is able to ensure the operation of business entities in special conditions. It is not only about the survival of individual entrepreneurs, but also about ensuring the economic security of the state. The emphasis on threats to the national socio-economic system when it comes to the economic security of the state means that the content of the concept of “economic security of the state” is considered in the context of the security approach - as a condition for the sustainable functioning and development of the socio-economic system of the state.

This reflects its susceptibility to threats of various nature and origin in accordance with the needs, knowledge, and attitudes that currently exist. The higher the level of vulnerability of the socio-economic system, the socio-economic system, the worse its economic security. And, accordingly, vice versa: the lower the level of susceptibility of the socio-economic system to threats, the higher the level of economic security [16, p. 138]. Therefore, the identification of the type and nature of threats, the study of the nature of threats, the study of their development (features and dynamics of the process) should be preceded by the following

- a clear understanding of the meaning of the word “threat”;
- consideration of threats in the context of the process approach, which provides for a procedural view of the emergence and development of the threat, demonstrating successive phase changes, which changes, if not disturbed, end with the materialization of the threat and the consequences it brings and the consequences it brings;
- Forecasting threats to the socio-economic system of the state and the course of their development, as well as research on forecasting

threats to the socio-economic system of the state and the course of their development, as well as research on its inhibitors and catalysts;

- prognostic analysis of scenarios describing the possible interaction of threats to the socio-economic system of the state in case of their realization;

- prognostic analysis of the likely consequences of the implementation of individual threats, as well as their combination, as well as their combination with the simultaneous verification of the readiness of the socio-economic system of the state to overcome these consequences [17, p.304-305].

That is why satisfaction of the state's need for economic security, which involves timely detection and recognition of threats to the national socio-economic system, should be constantly in the focus of attention of regional authorities, as they are one of the checkpoints on the way to forming the state's economic policy and its legal support, as well as the policy of countering threats.

The choice of specific ways, tools, means and procedures for protecting Ukraine's fundamental economic interests depends on the type and nature of threats to the country's socio-economic system, trends and features of these threats, as well as their complementarity, due to their ability to supplement and reinforce each other.

It is important to consider what an extraordinary economic regime is and its features. Obviously, this is a type of special legal regime that is restrictive in nature: due to special conditions, it is impossible to introduce incentive mechanisms. This regime naturally arises only in certain conditions characterized by the following features:

1) conducting business is difficult or impossible for a certain period of time, due to the difficulty of ensuring the safety of life and health of both employees and consumers, the destruction of the financial system, logistics chains, etc;

2) the extraordinary regime is temporary, but it is extremely difficult to determine the timeframe;

3) such a regime is actually a one-time event, since it is not repeated either before or after its cancellation;

4) the extraordinary regime affects the activities of enterprises in different sectors of the economy (sometimes equally, and sometimes

disproportionately, destroying more one of the sectors of the economy, while others simply “sink” as a domino effect);

5) the extraordinary regime always provides for a special procedure of work and special functions of state authorities and local self-government bodies;

6) the extraordinary regime is sometimes aimed at restricting human and civil rights and freedoms, entrepreneurial activity, and sometimes involves the use of stricter means of control over economic activity in general or over certain sectors of the economy;

7) the introduction of an extraordinary economic regime always has its own specific global goal, such as ensuring territorial integrity, ensuring the safety of citizens and property, eliminating threats to the health of the nation, reducing the impact of emergency factors on the operation of the economic system and the state as a whole, etc.

As some scholars rightly point out, economic activity in a pandemic is regulated by general legislation, considering the specifics established by special legislation [18, p. 463].

Finally, it should be emphasized that the extraordinary economic regime should not automatically terminate and the so-called “general” regime of economic activity should be applied. It is imperative to apply a transition period for a gradual return to “normal” business conditions. During this transitional period, state support and state protection of business should be gradually reduced and eventually reduced to zero.

Conclusions. At the legislative level, it is necessary to approve action plans in case of extraordinary conditions. These conditions can be roughly modelled on the basis of the already existing negative experience of the functioning of both our state as a whole and the procedure for conducting business in such conditions. This should be something like a “suitcase of worries” that would specify the main areas of work, responsible authorities and/or officials, and the main vectors for ensuring the functioning of the economic system as a whole and its individual sectors.

This step should have been taken a long time ago to avoid hasty decision-making in the event of extraordinary periods, such as war, pandemic, various kinds of disasters, etc. This will reduce the number

of ineffective decisions that will be made in the face of panic and lack of time.

1. Zablodska, I., Rohozian, Y., Sieriebriak, S., Plietnov, M., & Vakhlakova, V. (2022). *Special mode of economic development of European countries in the post-war period: legal experience*. *Amazonia Investiga*, vol. 11(57), pp. 162–171.
2. *Economic Code of Ukraine dated January 16, 2003, No. 436-IV*. URL: <https://zakon.rada.gov.ua/laws/show/436-15#Text> (accessed on 25.11.2024).
3. *On Mobilization Preparation and Mobilization: Law of Ukraine dated October 21, 1993, No. 3543-XII*. URL: <https://zakon.rada.gov.ua/laws/show/3543-12#Text> (accessed on 25.11.2024).
4. *On the Legal Regime of Martial Law: Law of Ukraine dated May 12, 2015, No. 389-VIII*. URL: <https://zakon.rada.gov.ua/laws/show/389-19#Text> (accessed on 25.11.2024).
5. *On the Legal Regime of a State of Emergency: Law of Ukraine dated March 16, 2000, No. 1550-III*. URL: <https://zakon.rada.gov.ua/laws/show/1550-14#Text> (accessed on 25.11.2024).
6. *On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine: Law of Ukraine dated April 15, 2014, No. 1207-VII*. URL: <https://zakon.rada.gov.ua/laws/show/1207-18#Text> (accessed on 25.11.2024).
7. *On Temporary Measures for the Period of the Anti-Terrorist Operation: Law of Ukraine dated September 2, 2014, No. 1669-VII*. URL: <https://zakon.rada.gov.ua/laws/show/1669-18#Text> (accessed on 03.01.2025).
8. *On Public Procurement: Law of Ukraine dated April 10, 2014, No. 1197-VII*. URL: <https://zakon.rada.gov.ua/laws/show/1197-18#Text> (accessed on 25.11.2024).
9. *On State Reserves: Law of Ukraine dated August 9, 2023, No. 3310-IX*. URL: <https://zakon.rada.gov.ua/laws/show/3310-20#Text> (accessed on 25.11.2024).
10. *On the Functioning of Ukraine's Unified Transport System in Special Periods: Law of Ukraine dated October 20, 1998, No. 194-XIV*. URL: <https://zakon.rada.gov.ua/laws/show/194-14#Text> (accessed on 25.11.2024).
11. Zeldina O. R. *Theoretical Aspects of the Special Economic Regime: Ph.D. dissertation abstract in Law: 12.00.04 / O. R. Zeldina; National Academy of Sciences of Ukraine, Institute of Economic and Legal Research. Donetsk, 2007. 35 p.*

12. Oliinyk O. S. *Concept and Features of the Special Legal Regime in Modern Economic Conditions. Current Issues of Improving Ukraine's Legislation. Vol. XXVI: Collection of scientific articles (Ivano-Frankivsk, 2011) / Vasyly Stefanyk Precarpathian National University. Ivano-Frankivsk, 2011. 320 p.*
13. Prokhorenko M. M. *Legal Regulation of Economic Activity and Economic Relations in a Special Period. Legal Bulletin, 2 (39), 2016, pp. 151-161.*
14. S. V. Serebriak. *Features of the Introduction of Special Economic Regimes During a Pandemic and Martial Law. Current Issues of Law: Theory and Practice, No. 46 (2023), pp. 248-259.*
15. Serhii, K., Victor, B., Stanislav, S., Sergii, S., Maksym, B. (2024). *Conducting Business Activities in Special Conditions: Problems of Legal Regulation. In: Nechyporuk, M., Pavlikov, V., Krytskiy, D. (eds) Integrated Computer Technologies in Mechanical Engineering - 2023. ICTM 2023. Lecture Notes in Networks and Systems, vol. 996. Springer, Cham. https://doi.org/10.1007/978-3-031-60549-9_11.*
16. Kozachenko G. V., Pogorelov Yu. S., Bilousova A. Yu. (2019). *Development of Threats to Enterprise Activity. Security of the XXI Century: National and Geopolitical Aspects: Collective Monograph. Prague, Czech Republic, Nemoros s.r.o., pp. 134-140.*
17. Kozachenko, G., Pogorelov, Y., Olshanskyi, O., Kramchaninova, M., & Vakhlakova, V. (2021). *COVID-19 Pandemic as a Threat to Ukraine's Socio-Economic System: Materialization Features, Indicators, and Consequences. European Journal of Sustainable Development, 10 (3), p. 303. <https://doi.org/10.14207/ejsd.2021.v10n3p303>.*
18. Savchuk, O., Matvieieva, A., Kritskiy, D. (2023). *Legal Support of Economic Activity in the Conditions of the Pandemic. In: Nechyporuk, M., Pavlikov, V., Kritskiy, D. (eds) Integrated Computer Technologies in Mechanical Engineering - 2022. ICTM 2022. Lecture Notes in Networks and Systems, vol. 657. Springer, Cham. https://doi.org/10.1007/978-3-031-36201-9_39.*

Матвєєва А. В. Особливості правового регулювання провадження господарської діяльності в екстраординарних умовах.

У статті проведено аналіз специфіки правового механізму регулювання господарської діяльності в особливих умовах. Визначено основні ознаки, які характеризують поняття екстраординарного режиму господарювання. Встановлено, що до екстраординарних режимів слід віднести правовий режим воєнного стану, правовий режим надзвичайного стану, правовий режим на тимчасово окупованій території України, проведення антитерористичної операції, мобілізація, запобігання виникненню і поширенню коронавірусної хвороби тощо. Ви-

значено, що кожен екстраординарний правовий режим має свою специфіку та повинен мати свій власний набір засобів правового регулювання, зважаючи на обставини та інші умови його запровадження.

До основних ознак екстраординарного правового режиму господарювання слід віднести наступні: 1) в цей період здійснення господарської діяльності ускладнене або неможливе взагалі; 2) екстраординарний режим носить тимчасовий характер; 3) цей режим фактично носить разовий характер; 4) він впливає на діяльність підприємств різних секторів економіки; 5) екстраординарний режим завжди передбачає також і особливий порядок роботи та особливі функції органів державної влади та місцевого самоврядування; 6) цей режим подекуди спрямований на обмеження прав і свобод людини і громадянина, підприємницької діяльності; 7) запровадження екстраординарного режиму господарювання завжди має свою конкретну глобальну мету.

Наголошено, що господарська діяльність в умовах дії екстраординарного режиму регулюється загальним законодавством з урахуванням особливостей, встановлених спеціальним законодавством. Екстраординарний режим господарювання не повинен автоматично скасовуватись і замінюватись так званім «загальним» режимом здійснення господарської діяльності, оскільки це може потребувати поетапного переходу або збереження окремих спеціальних умов.

Ключові слова: спеціальний режим господарювання, господарська діяльність, екстраординарний режим, воєнний стан, надзвичайний стан, пандемія, державна політика.

Matvieieva A.V. Specifics of legal regulation of economic activities in extraordinary conditions

The article analyzes the specifics of the legal mechanism for regulating economic activities under extraordinary conditions. Key characteristics defining the concept of an extraordinary economic regime are identified. It has been established that extraordinary regimes include the legal regime of martial law, the legal regime of a state of emergency, the legal regime in temporarily occupied territories of Ukraine, anti-terrorist operations, mobilization, and measures to prevent and contain the spread of coronavirus disease, among others. It is determined that each extraordinary legal regime has its own specific features and should have a tailored set of legal regulatory tools, considering the circumstances and conditions of its implementation.

The main characteristics of an extraordinary legal regime for economic activities include its temporary and one-time nature, significant complications or impossibility of conducting economic activities, its impact on enterprises across various economic sectors, the introduction of a special mode of operation and unique functions for state and local authorities, potential restrictions on human rights and entrepreneurial freedoms, and its pursuit of a specific global objective.

It is emphasized that economic activities under an extraordinary regime are regulated by general legislation, supplemented by specific provisions set forth in special legislation. The extraordinary economic regime should not be automatically abolished and replaced with the so-called «general» regime of conducting economic

activities, as this may require a phased transition or the preservation of certain special conditions.

Keywords: special economic regime, economic activity, extraordinary regime, martial law, state of emergency, pandemic, state policy.