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ANTI-CORRUPTION TOOLS DURING THE LEGAL REGIME OF MARTIAL LAW IN UKRAINE: WHAT SHOULD A STATUTORY MODEL BE?

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INTRODUCTION

The imposition of the legal regime of martial law as a special legal regime in Ukraine due to external full-scale armed aggression requires a change in the model, incl. a statutory one, of interaction between public authorities and individuals and legal entities. Vesting public authorities with additional powers to repel aggression and eliminate its consequences provides options for using the capacity of various measures of legal effect involving anti-corruption tools. The specifics of the latter's capacity associated with possible restrictions on rights, freedoms, and legitimate interests of individuals and legal entities attract increased attention to the legality of their use under extreme conditions of state functioning. In turn, it actualizes the relevance of the current statutory model for using anti-corruption tools to wartime requirements and the presence of sufficient factors that would guarantee the absence of preconditions for potential abuses by public authorities and interference in the private autonomy of individuals and legal entities. Thus, the following questions become actual: would it be possible and appropriate to modify a statutory model of anti-corruption tools to ensure response to wartime needs? Would it be possible to effectively combat corruption during wartime via the current legal anti-corruption regulations – a "basic", "standard" statutory model? The answers to these questions can be found, with an emphasis on available results of doctrinal case studies (for example, the works of S. Shatrava, T. Khabarova, O. Dudorov, M. Khavroniuk, O. Vasylenko, O. Mykolenko, V. Kolpakov, S. Kushnir, and others), despite the absence of comprehensive scholarly papers directly devoted to the study of the statutory model for using the potential of anti-corruption tools and its effectiveness under the imposition of the legal regime of martial law in the country. Moreover, it is also essential to consider the uniqueness of the anti-corruption toolkit and its regulatory model and analyze doctrinal and statutory provisions on the legal regime of martial law – a kind of a special legal regime – as an area of objectification of the specific toolkit, clarification of its uniqueness, which, undoubtedly, should be taken into account to shape a statutory model of using anti-corruption tools relevant to the demands of time, state and society

during the term of the legal regime concerned. Formulation of answers to the above questions is accomplishable upon the application of a variety of methods of scientific knowledge, both general scientific, which allow considering the issue in its development and dynamics, and specific ones, along with prioritizing the role and significance of comparative legal, logical and special legal approaches, modeling, expert assessments, etc.

1. The legal regime of martial law in Ukraine as an area of objectification of anti-corruption tools

For a long time, legal regimes have sparked interest from scientists dealing with theory of law (for example, the works of O. Petryshyn, N. Onishchenko, S. Pohrebniak, D. Lukianov, S. Bobrovnyk, et al.) and representatives of various branch doctrinal professional areas (for example, the works of O. Kuzmenko, N. Kovalenko, S. Kuznichenko, T. Minka, et al.), emphasizing the specifics of branch professional insight in the issues concerned. In jurisprudence, the legal regime is traditionally considered as "... a special procedure of legal regulation of a particular realm of public relations through a specific combination and correlation of its methods, ways, and types[1]". Despite the diversity of approaches to defining the legal regime in original contributions of legal scholars, there is a steady tendency to regard it as "... a procedure for legal regulation of public relations", "... a set of measures for such regulation", "... a combination of methods, ways, and types of legal regulation ...", "... a particular legal feature (form) of human activity regulation". Therefore, it is highlighted a legal toolkit regulating public relations (with different scope, branch affiliation, content, etc.) and its orientation towards the latter, the "immersion degree" and the creation of "positive" (additional, favorable) or "negative" (restrictive, unfavorable) for the subjects of relevant relations behavior models and conditions for implementing elements of legal status. Research papers sometimes mention "legal tools", "special tasks for their use" (for example, the works of S. Kuznichenko). At the same time, the proposed definitions differently specify features of the legal regime, which together form its content.

In addition to the "tools" (methods, techniques, and types of legal regulation), giving the so-called "narrow" understanding of the legal regime (with a "narrow" list of its features), other alternatives are also proposed as an example of a "broad" understanding of the legal regime. The latter also comprises such signs of the legal regime: a) the purpose (purposefulness); b) the imperative of implementation and realization; c) legislative

[1] Велика українська юридична енциклопедія : у 20 т. / редкол. : В.Я. Таційй, О.В. Петришин та ін. ; НАПрН України, Ін-т держави і права ім. В.М. Корецького НАН України, Нац. юрид. ун-т ім. Ярослава Мудрого. Харків : Право, 2017. Т. 3 : Загальна теорія права. С. 530.

consolidation; d) responsibility (response measures) for violations; e) subjects of implementation and enforcement; e) spatial and temporal aspects ("limits of action") (for example, the works of N. Kovalenko, O. Petryshyn, et al.). In the aggregate with features of the so-called "narrow" understanding, the entire uniqueness of the legal regime is shaped, the clarification of which requires focusing on the "wide" understanding of its features. The legal toolkit itself, without referring to the limits of its implementation, organizational, statutory and procedural support, does not allow us to imagine the uniqueness of its resource, does not give an idea of the actual purpose of its implementation and the achievement of the desired result from the latter. At the same time, the focus on the "broad" understanding of the legal regime's features eliminates grounds for voluntary, and sometimes illegal, arbitrary, "excessive" implementation with interference in the "private autonomy" of subjects, abuse of entrusted public powers, etc.

Given the above, the analysis of any legal regime should involve mandatory emphasis on all its features and particularities of their manifestation, which will contribute to clarifying its uniqueness and capacity

In view of a set of features and various external alternatives of their manifestation, it is logical that there is a diversity of legal regimes (depending on the criterion for their differentiation). As a rule, the following types of legal regimes can be found in scientific professional sources. In particular, contributions of law theory specialists commonly deal with the private law regime and the public law regime that is justified, considering the dominant doctrinal view toward the system of law and distinguishing public and private law as its component subsystems (for example, the works of O. Petryshyn, S. Pohrebniak). As a result, the subsystems of law were chosen as a criterion for division. At the same time, it is allowed dividing legal regimes into types depending on other criteria, which are other elements of the legal system: branches, institutions, etc. A sectoral one is a legal regime that "... creates a specific atmosphere of legal regulation of the area (sector) of public relations with effect on all its elements"[2], while the institutional legal regime, as it logically appears from its name, is focused (the purpose) on the object of the corresponding effect.

Emphasizing the dominance in theory of law of the vision of the system of law in terms of a potential separation of substantive law and procedural law[3], another "pair" of types of legal regimes is put forward – substantive

[2] Велика українська юридична енциклопедія : у 20 т. / редкол. : В.Я. Тацій, О.В. Петришин та ін. ; НАПрН України, Ін-т держави і права ім. В.М. Корецького НАН України, Нац. юрид. ун-т ім. Ярослава Мудрого. Харків : Право, 2017. Т. 3 : Загальна теорія права. С. 532.

[3] Петришин О.В., Погребняк С.П. Система права: загальнотеоретична характеристика. *Право України*. 2017. № 5. С. 12.

and procedural legal regimes as "...integral components of any legal activity of state bodies"[4]. Although the division into the mentioned types of legal regimes is actually based on "subsystems of law", such a division is sometimes called "functional" "since it depends on the functional orientation of the relevant legal regime"[5] that makes sense as the uniform result of the proposed diversity is driven by a broad-ranging view on the legal system.

It is also distinctly possible to distinguish other types of legal regimes depending on the "models of combination" ("configurations", "mixing", "integration") of legal means (methods, techniques, types) to achieve the goal, namely: a) general and special: specific, preferential (positive, favorable), restrictive (negative, unfavorable), depending on whether a certain "peculiarity" is provided for the object of legal regulation in terms of exercising subjective rights and legal obligations of legal subjects; b) "strict" and "soft", with a certain target impact ("assistance") toward elements of the legal status of persons, with a degree of "rigidity" in the legal regulation of relations regarding the implementation of the latter, with different limits, degree of freedom, independence, activity of the relevant subjects during imposition, etc.) primary and secondary ("general", "basic", "special", and "exceptional") with specification of additional (toward specific persons, conditions, territorial coverage, etc.) incentives or limits, permissions or restrictions, etc. In branch professional scholarly sources, the last "pair" of types of legal regimes is also called "ordinary and special" depending on "... the depth of changes in the legal status of subjects, which is envisaged upon introduction"[6], or "preferential and burdensome" with an emphasis on "...scale of the will of persons to use opportunities to exercise subjective rights"[7].

Analysis of branch contributions of legal scholars also allows specifying the distribution of legal regimes depending on: a) the time criterion (permanent, temporary, situational, etc.); b) the spatial criterion (general or national and those covering (imposed) in certain territories, areas; c) a separate (direct) object (for example, the legal regime of weapons, the legal regime of poison, etc.); d) activity type (for example, individual business profiles)[8]. The classifications of legal regimes depending on persons covered are equally widespread (namely: the legal regime of refugees, the legal

[4] Велика українська юридична енциклопедія : у 20 т. / редкол. : В.Я. Тацій, О.В. Петришин та ін. ; НАПрН України, Ін-т держави і права ім. В.М. Корецького НАН України, Нац. юрид. ун-т ім. Ярослава Мудрого. Харків : Право, 2017. Т. 3 : Загальна теорія права. С. 532.

[5] Ibid.

[6] Коломоєць Т.О. Адміністративне право України. Академічний курс : підручник. Київ : Юрінком Інтер, 2011. С. 201.

[7] Ibid.

[8] Ibid.

regime of internally displaced persons, the legal regime of foreign citizens, etc.), as well as the functions of law which regulate such relations (namely: the legal regime of protection, the legal regime of security, etc.).

Among all these and other types of legal regimes, the legal regime of martial law is also marked. Its doctrinal dimension is manifested in inherent specific nature driven by imposition grounds, the action algorithm for its legalization and, undoubtedly, content. Most works predominantly deal with comparative legal analysis of martial law and the state of emergency, highlighting their "unusual", "exceptional", "specific" content that is undoubtedly logical (since both regimes are not "ordinary" or "general"); however, they are not identical, and cases of their synonymity cannot be considered appropriate. Thus, given the exceptional nature of grounds, content, and subjective support, they should be distinguished from the whole variety of legal regimes. Moreover, it is also advisable to distinguish them from each other, taking into account the uniqueness (and hence the significant difference) of one to another.

No sense in identifying the legal regime of martial law with that in the temporarily occupied territories of Ukraine, which is also discussed by representatives of jurisprudence[9], as well as with the legal regime of the ATO and JFO, which are reasonably types of a special legal regime but differ in their features from the legal regime of martial law. Once again, it confirms the importance of analyzing each of the features of the corresponding legal regime separately and in their totality – capacity uniqueness.

N. Kovalenko identifies a "special form of regulation" of social relations as one of the features of the mentioned legal regimes and rightly notes that it intertwines all the regimes[10]. It stipulates the consideration of the corresponding regime as "an adequate form of a certain state of social relations" in extreme conditions, which determines "... the legality of non-standard activities of public authorities toward the use of emergency means of legal regulation and ... ensuring the correspondence (relevance) of these means to needs of the hour[11]." The particularity as a feature should be synonymous with originality, extremity, extreme importance, and "bind" to imposition grounds. If in relation to the first "block" of characteristics of the legal regime's uniqueness one can discuss its "coverage" of all regimes (sub-

[9] Велика українська юридична енциклопедія : у 20 т. / редкол. : В.Я. Тацій, О.В. Петришин та ін. ; НАПрН України, Ін-т держави і права ім. В.М. Корецького НАН України, Нац. юрид. ун-т ім. Ярослава Мудрого. Харків : Право, 2017. Т. 3 : Загальна теорія права. С. 533.

[10] Коваленко Н.В. Адміністративно-правові режими : автореф. дис. … докт. юрид. наук : 12.00.07 ; Запорізький національний університет. Запоріжжя, 2017. С. 14.

[11] Ibid. С. 19.

types of "special" regimes), while direct grounds for their imposition, and therefore the purpose and content, stipulate their internal division into varieties within the sub-type set of extreme legal regimes.

S. Kuznichenko defines the legal regime of martial law as "... an extraordinary, unique, complex, and extreme type of regime ..."[12], dwelling on the originality of relations between public authorities (with a modification of their organizational structure, functional purpose) and other subjects, tools for resolving the latter with different characteristics of content "rigidity", which affects elements of the legal status of all these subjects.

The specifics (particularity) of the legal regime of martial law are also stressed by other representatives of the science of administrative law who study administrative-legal regimes (for example, the works of V. Lipkan, V. Kobryn, V. Kobrynskyi, and others.). This regime is regarded as one that provides for possible significant changes in the constitutional-legal status of a person, albeit forced, caused by the need to eliminate real threats to state sovereignty, territorial integrity, national security, etc., but with the dominance of the imperative of introducing the levers of "strict" regulation for the period of existence of these causes.

Although the degree of branch doctrinal dimension of the resource of martial law is different, scholars – representatives of various branches – in their works unanimously emphasize the imperative introduction of "heavy" levers of temporary forced legal influence on the relations between public authorities and individuals, modification of the principles and forms of existence of the former and interference in the private autonomy of the latter to ensure an adequate response to the emergence of extreme legal facts and the concentration of available joint efforts to eliminate them. Consequently, contributions of legal scholars are oversaturated with the characteristic of the legal regime of martial law as a type of extreme, special, specific, "heavy", and "strict" legal regime.

There is also a norm-definition that renders the legal regime of martial law through the presentation of martial law as a "key" category. Thus, martial law is defined as " ... a special legal regime imposed in Ukraine or its regions in case of armed aggression or threat of attack, danger to the state independence of Ukraine, its territorial integrity and involves vesting specific state authorities, military command, military administrations and local self-government bodies with the powers necessary to avert the threat, repel armed aggression and ensure national security, eliminate the threat to the state independence of Ukraine, its territorial integrity, as well as temporary, conditioned by the threat, restriction of constitutional rights and

[12] Кузніченко С.О., Басов А.В. Закон України «Про правовий режим надзвичайного стану»: науково-практичний коментар. Харків : ПРОМЕТЕЙ-ПРЕС, 2006. С. 42.

freedoms of man and citizen and rights and legitimate interests of legal entities, indicating the duration of these restrictions" (Art. 1 of the Law of Ukraine "On the Legal Regime of Martial Law"[13]). Text analysis makes it possible to assert that the following has been subject to statutory fixation: a) a particularity as a sign of the corresponding type of the legal regime, and therefore its difference from the standard, "ordinary", "basic" type of the legal regime; b) understanding that martial law is a legal regime and hence a set of techniques, types, ways, and methods of legal regulation of public relations; c) a spatial feature as a mandatory sign of the corresponding type, with its division into a national and local sub-type ("... or in its separate areas"); d) the extraordinary nature of legal facts as grounds for its introduction and their "threat" to the existence of the state; e) particularity of the target orientation – "... to prevent a threat, repel armed aggression and ensure national security, eliminate a threat to the state independence of Ukraine, its territorial integrity ...", that is, the elimination of those legal facts that triggered the imposition of the corresponding legal regime; f) the temporal aspect – temporality, is crucial given the option of constitutional restrictions, legal freedoms and legitimate interests of individuals and legal entities; g) "strict" content, with indication of entities which have additional imperative powers and the possibility of their exercise with changes in personal constitutional-legal status. Considering the "strictness" of content and effects, "intrusive" and "unfavorable" for the subjects of legal relations details of the relevant legal regime, which are manifested in changes in their legal status, there is a standardized (although not in the definition, but in other articles of the "basic" legislative act – the Law of Ukraine "On the Legal Regime of Martial Law") system of guarantees within the procedure for introducing such a legal regime as urgent and exceptional. Standardized "filters" of such guaranteed nature include a "broad" model of the regime's mandatory features, which must be available for its imposition; the multistage procedure for its imposition, involving representatives of different branches of government and recording the result in the Decree of the President of Ukraine approved by the Verkhovna Rada of Ukraine (p. 2 of the Law of Ukraine "On the Legal Regime of Martial Law"). The "exceptional" nature of a such a type of the legal regime determines the specification of both its features in the act legalizing its introduction and the intensification of law-making to arrange the principles of implementing its content – "strict" and "unfavorable" content (for example, the Law of Ukraine "On the Organization of Labor Relations under Martial Law").

[13] Про правовий режим воєнного стану : Закон України від 12 травня 2015 р. № 389-VIII (зі змінами та доповненнями) / Верховна Рада України. *Відомості Верховної Ради України*. 2015. № 28. Ст. 250. URL: https://zakon.rada.gov.ua/laws/show/389-19#Text.

The legislator actually tried to consolidate "dominant" features of the corresponding type to highlight its uniqueness, peculiarity, mandatory nature, and "strictness" in using legal means of regulating public relations upon specific grounds. The proposed norm-definition can be interpreted as an attempt to take into account the available doctrinal approaches to understanding the relevant legal regime and achieve maximum certainty in its consolidation, understanding and practical application.

Would it be possible to consider the legal regime of martial law as an area of objectification of other means of legal regulation of public relations? Yes, it would be possible and expedient to do so, since, upon its introduction, the legal models of applying such means – restrictions, prohibitions, permits, privileges, etc. – are significantly modified. Anti-corruption tools are no exception, as under trying conditions of the state's existence, they should be addressed given the need to counteract potential manifestations of "corrosion" of public authority, which intensify existing threats and require additional efforts from public authorities to neutralize them.

Because of the introduction of new legal models of relations between public authorities and individuals, the expansion of the "permitted freedom" of the former along with the maximum imperative to impose restrictions on freedoms, legitimate interests, and rights of individuals, there are risks of abuse of such freedom by the former in order to settle their "private" issues, satisfy "private" interests and use their "special status under extreme conditions", which are not the regime of martial law. The above creates additional threats to the "corrosion" of public authority and hence the existence of forcibly implemented models of behavior.

The legal regime of martial law as an area of objectification of anti-corruption tools should be considered as a special (non-standard), extreme (in view of imposition grounds) legal regime with a "complex" ("strict") content regarding the imperative implementation of "special models" of functioning for all public authorities, the use of specific legal tools for regulating public relations, incl. possible multi-stage restrictions of the elements of the latter's legal status, interference with their private autonomy with a standardized guarantee of eliminating the grounds for possible abuses both during the legal regime of martial law and after its abolition (termination). During the mentioned period, the public authority not only keeps existing but also receives additional resources of influence (normalized) on public relations to adequately respond to threats and their manifestations and take measures to eliminate them. Such additional resources provide additional opportunities for various manifestations of public authority, incl. illegal ones. Consequently, there should be statutory recourse tools for legal counteraction to such manifestations, incl. anti-corruption ones.

2. Anti-corruption tools during the legal regime of martial law in Ukraine: which type and regulatory model proved effective?

Anti-corruption tools are traditionally considered in legal science either in the aggregate (as a possible type diversity, system characteristics, praxeological aspect, etc.) or with an emphasis on the application to individual public entities and areas of public relations of resource peculiarities of some types (for example, the works of O. Vasylenko, R. Kukurudz, S. Kushnir, T. Khabarova, and others). However, amidst any original approaches to studying the concerned issue, the focus is on the "standard" statutory model of the relevant tools (subject to "standard", "basic" regulatory conditions of the state's existence). The imposition of a special legal regime – e.g., the legal regime of martial law – undoubtedly implies changes in the statutory model of using such tools.

Analysis of the outcome of legislative activity that ensured the existence of Ukraine under martial law, the use of anti-corruption tools (for example, in terms of prohibitions, restrictions, permits, benefits, response measures for law violations, etc.) shows that such tools can be conditionally divided into two groups: a) one that has remained unchanged and the use of which occurs in the so-called "normal", "basic", "standard" mode (unchanged legal prescriptions of application); b) that whose regulatory usage model has changed, involving practical application. As for the first group, it is essential to discuss, first of all, penal prohibitions and liability (response measures) for committing corruption offenses. Moreover, it can even be argued that, given the social danger of unlawful acts, the response tools have not lost their potential under the extreme conditions of the state's existence and sometimes even augmented it (in relation to individual public authorities, activities, etc.). And this is not surprising, considering the peculiarity of the relevant legal regime, the imposition of a special model of the functioning of public authorities, and changes in the constitutional status of individuals and legal entities during martial law.

At the same time, the anti-corruption toolkit is also characterized by various standardized duties, prohibitions, restrictions, etc., which act as "filters" for potential illegal acts related to the "corrosion" of government. However, they cause concern about their feasibility and usefulness under the extreme conditions of the state's existence. First of all, it refers to declaration (in all its diversity), background check, complete verification of declarations of persons performing the functions of the state or local self-government, notification by a person of a significant change in property status, monitoring of the lifestyle of a person performing the above functions and members of their family, restrictions and prohibitions related to the special status of a public servant, etc. Although this group of anti-corruption measures as an integral part of the entire anti-corruption toolkit is associated

with the specific activity and legal status of a person who is endowed with public authority, but the effectiveness of its application depends on conditions under which the legal regime of military status operates. Moreover, it does not 100% depend on the person who is subject to their action. "External factors" affect (a different degree of manifestation) the reality of the existence and praxeological use of their potential. There are even cases of changes in actual conditions which make it impossible to use a specific measure of the anti-corruption toolkit. In the context of large-scale external armed aggression against Ukraine and, hence, a major change in the conditions for carrying out professional activities by persons authorized to perform the functions of the state or local self-government, incl. in terms of performing duties (for example, regarding the submission of an annual declaration, incl. in the absence of access to electronic resources blocked for security reasons, notification of significant changes in the property status of a person, etc.), prohibitions and restrictions (for example, regarding the joint work of close persons in the context of large-scale migration – involving abroad – processes, updating general "personnel" problems in public service, etc.), the emergence of new relations and the actualization of the need to find an optimal model for their regulation (for example, regarding the possibility or prohibition of receiving humanitarian aid by public officials who were forced to leave the immediate place of service and acquired the status of internally displaced persons), the emergence of additional "barriers" in the activities of public authorities (for example, the impossibility of conducting a competitive procedure for appointing a person to a public service position due to the blocking of electronic registers and portals for national security reasons, the impossibility of conducting a specific verification procedure regarding the persons who won the competition for vacant public service jobs, as well as full verification of annual declarations of persons authorized to perform the functions of the state or local self-government, etc.). In other words, the very impact of "external factors", the appearance of which is caused by the grounds for imposing the legal regime of martial law in Ukraine, determines the prerequisites for introducing an alternative, but exceptional, temporary in nature and effect, regulatory model for using the relevant group of anti-corruption tools.

In addition to the principal ("basic", "standard") statutory model, the alternative nature allows introducing another one, the effect of which is conditioned by specific grounds (the emergence of legal facts that were the basis for imposing the legal regime of martial law in Ukraine: "due to the military aggression of the Russian Federation against Ukraine, on the basis of the proposal of the National Security and Defense Council of Ukraine, in accordance with paragraph 20 of part one of Article 106 of the Constitution

of Ukraine, the Law of Ukraine "On the Legal Regime of Martial Law"[14]), the effect of which is intended only for the period of the legal regime of martial law ("temporary aspect"), the imposition of which is forced, objectively conditioned, and the content of which provides for a "pause" – suspension in compliance with regulatory provisions on the use of capacity of anti-corruption tools (fulfillment of obligations, conduct of procedures, compliance with prohibitions, restrictions, etc.).

Unlike the measures of the first group, whose statutory model is permanent even during martial law and hence stable, the statutory model of measures of the second group of anti-corruption tools is two-aspect (complex, two-part) and envisages the option of introducing an alternative model during the period of the special legal regime, while suspending their "basic" statutory model.

Thus, a vivid example is the introduction of amendments to the Law of Ukraine "On Prevention of Corruption" in terms of regulating the principles of compliance with anti-corruption restrictions for persons authorized to perform the functions of the state or local self-government regarding the receipt of gifts or "external" activities. According to paras. 2-3 of Section XIII "Final Provisions" of the Law of Ukraine "On Prevention of Corruption" "... temporarily, from the date of the imposition of martial law by the Decree of the President of Ukraine dated February 24, 2022 "On the Imposition of Martial Law in Ukraine", approved by the Law of Ukraine "On Approval of the Decree of the President of Ukraine "On the Imposition of Martial Law in Ukraine" (with subsequent additions), for the period until the termination or cancellation of martial law, as well as within one month from the date of its termination or cancellation, the requirement for the correspondence of gifts to generally recognized notions of hospitality and restrictions on the value of gifts established by Part 2 of Art. 23 of the said Law shall not apply to the commission of such actions during the specified period ..."[15]. It is additionally specified that such actions may involve: "...1) receipt of funds fully used (if the use of the funds received in full for one or more of the said purposes is confirmed) solely for the following purposes: a) transfer to allocated accounts set up by the National Bank of Ukraine to support the Armed Forces of Ukraine and/or for humanitarian aid for persons affected

[14] Про введення воєнного стану в Україні : Указ Президента України від 24 лютого 2022 р. № 64/2022 / Президент України. URL: https://www.president.gov.ua/documents/642022-41397.

[15] Про запобігання корупції : Закон України від 14 жовтня 2014 р. № 1700-VII (зі змінами та доповненнями) / Верховна Рада України. *Відомості Верховної Ради України*. 2014. № 49. Ст. 2056. URL: https://zakon.rada.gov.ua/laws/show/1700-18#Text.

by the armed aggression of the russian federation against Ukraine; b) making charitable donations under the procedure established by law in favor of the Armed Forces of Ukraine; c) making charitable donations under the procedure established by law to support and protect persons affected by the armed aggression of the russian federation against Ukraine; d) spending for the procurement and delivery of goods with their subsequent transfer to the possession of the Armed Forces of Ukraine, other army units established following the laws of Ukraine, voluntary units of territorial communities, intelligence agencies, law enforcement bodies; e) spending for the procurement and delivery of goods, payment for works or services provided as humanitarian aid to persons affected by the armed aggression of the russian federation against Ukraine; 2) receiving of goods free of charge or below market with their subsequent transfer to the possession of the Armed Forces of Ukraine, other military units established following the laws of Ukraine, voluntary units of territorial communities, intelligence agencies, law enforcement bodies (if the transfer of such goods in full is confirmed); 3) receipt of goods free of charge or below market provided as a charitable donation or humanitarian aid for persons affected by the armed aggression of the russian federation against Ukraine (if the provision of such goods in full for the mentioned purposes is confirmed); 4) receipt of the following free of charge or below market by persons who actually reside in the temporarily occupied territories of Ukraine or in the territories which are (were) involved in warfare, or persons who were forced to leave their actual place of residence as a result of temporary occupation (threat of temporary occupation), conduct (threat of conduct) of hostilities: accommodation or housing services; transport or carriage services due to the change of the place of actual residence and/or return to the place of residence; medical services; medicines; goods, works or services recognized as humanitarian aid (other than vehicles, other self-propelled machines and mechanisms, except for passenger cars equipped for the transportation of persons with disabilities and transferred to persons with disabilities)"[16]. At the same time, it is clearly noticed the legislator's position regarding the recognition of these provisions as those that enshrine the principles of using the specific anti-corruption measures precisely as a forced alternative statutory model for a person authorized to perform the functions of the state or local self-government to realize their professional activities under extreme conditions, and hence the prevention of possible "corrosion" of public authorities.

[16] Про запобігання корупції : Закон України від 14 жовтня 2014 р. № 1700-VII (зі змінами та доповненнями) / Верховна Рада України. *Відомості Верховної Ради України*. 2014. № 49. Ст. 2056. URL: https://zakon.rada.gov.ua/laws/show/1700-18#Text.

Reference to the purpose and full ("... if the use of the received funds in full for one or more of these purposes is confirmed; solely for such purposes ...") transfer of revenues characterized as a "gift" by a person) further emphasizes the legislator's solid position regarding the introduction of an additional (as relevant to particular conditions of reality) model of regulating the behavior of a person, which is implemented only if they are observed by the latter[17]. That is, even during the period of the legal regime of martial law in the state, anti-corruption instruments are preserved and, as an alternative for the period of such a regime, their regulatory principles are "softened", given the actual conditions under which their effect can be as efficient as possible.

Depending on the regulatory model that was imposed in Ukraine during the legal regime of martial law, the second group's tools can be conditionally divided into: a) those whose statutory model consists of provisions on the suspension of their use during a special legal regime – an unconditional alternative statutory model (for example, a background check, a full check of the declaration of a person authorized to perform the functions of the state or local self-government). According to Article 10 of the Law of Ukraine "On the Legal Regime of Martial Law" holds that "... during martial law, a background check is not carried out toward persons applying for major or sensitive positions, and positions with an increased corruption risk, the list of which is approved by the National Agency on Corruption Prevention, as well as the check prescribed by the Law of Ukraine "On Purification of Government" in relation to persons applying for positions which are subject to measures of purification of government (lustration)[18]". This does not mean that the lack of an effective filter will give to the first comer an access to public service that will entail a violation of one of the fundamental principles of public service. The "pause" in the effect of the relevant regulations is temporary and the implementation of the background check for persons, whose admission

[17] Коломоєць Т.О., Кремова Д.С. «Антикорупційні обмеження» для публічних службовців в Україні в умовах правового режиму воєнного стану. *Юридичний науковий електронний журнал*. 2022. № 4. С. 77–82. URL: http://lsej.org.ua/4_2022/16.pdf.

Коломоєць Т.О., Кушнір С.М., Кремова Д.С. «Цільове подарункове обмеження» – новела вітчизняного антикорупційного законодавства України в період дії правового режиму воєнного стану. *Юридичний науковий електронний журнал*. 2022. № 8. С. 68–71. URL: http://lsej.org.ua/8_2022/13.pdf.

[18] Про правовий режим воєнного стану : Закон України від 12 травня 2015 р. № 389-VIII (зі змінами та доповненнями) / Верховна Рада України. *Відомості Верховної Ради України*. 2015. № 28. Ст. 250. URL: https://zakon.rada.gov.ua/laws/show/389-19#Text.

takes place during such a "pause" in the context of a special legal regime, is mandatory after the cancellation (termination) of both the specified regime and "pause" in the use of this anti-corruption tool. The legislator explicitly expressed its position – "... the organization of a background check in relation to persons appointed during the period of martial law will take three months from the date of termination or cancellation of martial law, except dismissal of such a person before the date of termination or cancellation of martial law or the end of the specified inspections during martial law"[19]; b) the toolkit, the regulatory model of which provides for the suspension of "basic" provisions for the period of martial law ("alternative model") only if specific conditions are mandatory (conditional alternative model). It is exemplified by the provisions of Articles 2-3 – 2-5 of the Law of Ukraine "On Prevention of Corruption" regarding the observance of restrictions on the receipt of gifts in terms of monetary or tangible revenues and their full transfer to the entities defined in the Law. Only subject to compliance with the requirements of the targeted and complete transfer of received assets, a person is not obliged to declare and report significant changes in their property status ("... to establish that in case of income, acquisition of property, expenditure ... notification of significant changes in the property status is not required"[20]), that is, to comply with the specified anti-corruption legal order, and accordingly cannot be held legally liable for its breach. Consequently, the corresponding alternative statutory model of anti-corruption tools is complicated, since it implies, even under extreme relations, compliance with particular statutory requirements, although it is an alternative (during the special legal regime) in relation to the main model.

Can the Ukrainian lawmaking experience of modifying the statutory framework for using anti-corruption tools during martial law be considered efficient? In order to answer this question, it is essential to find out the purpose of the relevant legislative activity. What did the relevant period require from the state and society? Under extreme conditions of the state existence, real threats to its further existence, the need to find resources to repel external aggression, eliminate its consequences, the necessity to concentrate all the efforts of public authority with its organizational and functional support relevant to the actual requirements of the time, it was urgent to search for such a statutory framework for anti-corruption tools, which, on the one hand, would eliminate any prerequisites for committing

[19] Про правовий режим воєнного стану : Закон України від 12 травня 2015 р. № 389-VIII (зі змінами та доповненнями) / Верховна Рада України. *Відомості Верховної Ради України*. 2015. № 28. Ст. 250. URL: https://zakon.rada.gov.ua/laws/show/389-19#Text.

[20] Ibid.

corruption and corruption-related acts (the probability of which significantly increased after granting additional powers to public authorities and legalizing the possible restriction of constitutional rights, freedoms, and legitimate interests of individuals and legal entities) and, on the other hand, given significant changes in the conditions of professional activities of persons authorized to perform the functions of the state and local self-government, the exercise of public power in general, and strengthening security measures for the existence of the state and society, would eliminate the prerequisites for leveling the role and significance of anti-corruption tools and public opposition to their presence as an "additional burden" in this special period of the state existence. Following the general anti-corruption trend in ensuring the functioning (exercise) of public authority in Ukraine during the legal regime of martial law, the introduction of a somewhat variable statutory model of using anti-corruption tools, with a balanced approach to the resource of each of such tools, should be regarded as a positive outcome of domestic lawmaking, relevant to the needs of the hour and focused on the optimal use of all anti-corruption tools under extreme conditions of the state's existence. A systematic view of the potential of anti-corruption tools determines the possibility of its internal stratification depending on the praxeological value of its application under specific conditions, and this, in turn, provides for the possibility and expediency of a rapid development of several statutory models for the latter. While keeping a common "basic" approach to understanding the role and importance of anti-corruption tools in ensuring the functioning of public authority as a whole and considering the peculiarities of its exercise under extreme conditions – during martial law in Ukraine, it is essential to make the most of potential as tools and of each of the tools separately, with an emphasis on the effectiveness of such application. The diverse options in the formation of statutory models of using anti-corruption tools during the legal regime of martial law in Ukraine, as evidenced by the analysis of the practice of anti-corruption entities for 2022–2023[21], would allow both keeping positive "anti-corruption" practices in the state and responding to the requests of martial law on time and launching new ones, incl. with active cooperation with foreign partners.

It is also actualized the following question: what potential consequences for the anti-corruption policy of the state under martial law would have been if an alternative statutory model of using anti-corruption tools had not been introduced? Given these tools are quite different in their type diversity,

[21] Національне агентство з питань запобігання корупції. Річний звіт 2022. URL: https://nazk.gov.ua/wp-content/uploads/zvit-2022/NACP-annual-report.pdf.

the lack of a statutory model adequate to the needs of the hour, which would allow for each specific measure to respond to a particular need for using its potential and would prevent the effectiveness of anti-corruption activities in the state, since the real opportunity to apply some of these measures would be doubtful (for example, declaration, because it is impossible to submit a declaration if there is no access to electronic registers, and therefore it is necessary either to suspend the provision on the mandatory submission for public officials of a declaration or to open access to these registers, once again, when a reliable system for their protection against possible external threats as protection of the national interests of the state has already been developed) that ultimately would adversely affect public service staffing during this period of state existence by "blocking" it and hence "blocking" the whole functioning of the state.

The above leads to the conclusion that the legislator should respond to the needs of the hour on time and search for a relevant statutory model of using anti-corruption tools to make them effective under extreme conditions of the state's existence.

CONCLUSIONS

Amidst the imposition of the legal regime of martial law in Ukraine due to external large-scale armed aggression, one of the topical lawmaking issues is the problem of ensuring a statutory framework adapted to the needs of the hour for the most effective use of the potential of those tools that, even under such conditions, maintain the existence of the state. One of such tools is the anti-corruption toolkit, which allows preventing and responding to cases of "corrosion" of public authority dully. Wartime challenges actualized the necessity for a timely search for an updated statutory model of using anti-corruption tools, since the "basic" one did not fully meet the requirements of the extreme conditions in which the state found itself after the unleashing of external armed aggression. In view of the above and the purpose of implementing the most effective anti-corruption activities in the state during martial law, it is worth conducting multi-vector legislative activities focused on: a) maintaining the "basic" statutory model for anti-corruption tools, whose use does not depend on "external factors", additional (those arose during the specified period) factors; b) modification of the current anti-corruption legislation by introducing an alternative (forced, objectively driven, intended for the period of a special legal regime, such as martial law) statutory model of using alternative toolkit, with its conditional division into two subtypes: 1) with the suspension of the principles for the application of individual anti-corruption measures for the period of martial law (unconditional alternative statutory model); 2) with suspension ("pause") of grounds for

the application of other anti-corruption tools, provided that persons comply with legal provisions (alternative conditions). Such an approach to introducing an alternative statutory model of using anti-corruption tools contributes to an effective anti-corruption policy in the state under extreme existential conditions – during martial law – the preservation of all anti-corruption tools and timely response to requests for its actualization.

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