

UDC 342.77

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COMPARATIVE LEGAL CHARACTERISTIC OF THE EMERGENCY STATE IN DIFFERENT COUNTRIES OF THE WORLD

In the article the author attempted to characterize the emergency state in different countries of the world. It is analyzed the determinants of the formation of the emergency state according to the government, the regime and the territorial organization of each state.

Keywords: emergency state; regime; order of entering; critical state; siege regime.

The definition of «emergency» has two meanings: emergency as «a sudden or unexpected event that requires immediate actions», extreme need (exigency), crisis (crisis), an urgent need (necessity), the critical state (pass), coincidence (conjuncture) as a state (or regime) of emergency [1].

Public-legal regime of the emergency state is an essential element of national security in most countries. Its existence is due to the possibility of occurrence of various kinds of extreme situations that pose a risk to a significant number of people threaten constitutional order or the state in general. The emergency state prior to the onset of a sequence defined conditions. The first such lists reasons for the state of emergency was made even by the West German scientists A. Hamann and H. Folz [2].

A. Hamann, in turn, highlighted the following reasons:

- 1) an attack on the country;
- 2) public speaking to violate the current constitutional regime;
- 3) serious offenses that threaten the order and security;
- 4) disasters, strikes in the branches of industries, economically vital;

5) the disruption of enterprises, institutions and organizations that provide activities of the population;

6) the difficulties in the economy and finances.

J. Foltz gives proper interpretation of the grounds of emergency state:

1) the existence of an external threat to the state, resulting in the commission of acts of foreign states that have military threat or the possibility of military attack, as well as management actions of state foreign «hostile elements» in the country;

2) the existence of various «internal unrest», riots and unrests;

3) the occurrence of «constitutional necessity» caused by disruption of functioning of certain constitutional body or conflict (in the federal state) between the central government and the subject of the Federation;

4) the disruption of the functioning of the state apparatus, caused by a strike of state employees;

5) the refuse to pay taxes, so-called tax strike;

6) the difficult situation in the branch of economy and finance, and labor conflicts.

Comparative legal analysis of the national legislation of foreign countries indicates the presence of various kinds of regulations of different regimes, united by a common concept of «emergency state» [3]:

actual emergency state (the UK, the USA, Canada, India, Ireland, South Africa, Zimbabwe, Portugal, Algeria, Cyprus, Egypt, France, Germany, Malaysia, Jordan, Kenya, Republic of Korea, Jamaica, Spain, Poland, Romania, Bulgaria, Finland etc.);

siege state (Belgium, France, Argentina, Brazil, Venezuela, Greece, Spain, Portugal, Algeria, Mali, Hungary, the Netherlands, Angola, Senegal, Congo and others);

martial state (the UK, the USA, India, the Netherlands, Poland, Bulgaria, Romania, Yugoslavia, South Korea, Thailand, Gabon, Indonesia, Jordan, South Africa, Philippines, Bangladesh, Pakistan, Vietnam and others.);

state of war (Belgium, Italy, Cape Verde, and others.);

the state of public danger (Italy);

tensions (Germany);

state of defense (Germany, Costa Rica, Finland);

state of threats (Spain);
state of anxiety (Gabon).

It would be wrong to consider these regimes as different legal institutions because the same features that determine a state of siege or state of threat in some countries (e.g., Argentina and Spain), is the basis of appropriate defense or state of emergency in others (such as Germany and the UK).

Overview of the constitutions of 36 countries made under the UN made it possible to make an exhaustive list of cases of serious threats to the state, under which justified taking exceptional measures, including a state of emergency, the group of experts has defined seven groups of such circumstances [4]:

1) the external threat (international conflict, war, foreign intervention, defense or security of the state as a whole or certain parts of it);

2) civil war, insurrection, «subversive actions of revolutionary elements»;

3) break of the peace, public order or peace;

4) the threat of constitutional order;

5) the disasters;

6) the threat of economic life or certain parts of it;

7) the disruption of vital sectors functioning of the economy or public services.

In the United States at the constitutional level the problems of the emergency state are not regulated in detail. Moreover, the legislation does not make comparisons between separate types of emergency regime, considering it as the only institution of emergency state. This is shown in the law on the national emergency state, which not only distinguishes the types of emergency regime, but does not specify the grounds for their entering. The doctrine and practice differ two types of emergency state – emergency state and martial state. The first is associated with emergencies that arise within the state (rebellion, riots, epidemics, etc.). The second – with emergency situations caused by external threat (war or the possibility of the outbreak of hostilities, international terrorism, etc.). In addition, it is distinguished also the national and local emergency regimes depending on the area of their action [2].

In most countries the power to the entering of emergency state is imposed on the head of state. A typical example in this case is the entering of emergency state in France. It is recognized that the form of the government in France is noted as a clear priority of the legislative to executive authority [5].

In some countries – Ireland, Spain, Canada, Cyprus, Lebanon, France and some African countries – the right to announcement of emergency state has the government.

Only about in a dozen of countries, including Germany, Israel, Angola, Malta and Bulgaria, the Parliament itself authorized to declare a state of emergency, although some of them this right depend on the circumstances or the type of emergency state.

The question of whether there are sufficient legal grounds for declaring an emergency state in most of the world decided the chief executive alone.

In France and some developing countries, for example, the president can use his exceptional powers after talks with the Prime Minister, heads of houses of the Parliament, as well as the Constitutional Council. President of India issues a proclamation on the emergency state «on advice» of the Cabinet, and the president of Venezuela enters a state of siege in the country at the Council of Ministers [4].

As you can see, the key role played by the emergency state the executive. Meanwhile, the International Committee on ensuring the human rights legislation of the International Bar Association in his report «Minimum Standards of Human Rights Norms in Exceptional Circumstances», adopted at the Paris Conference in its report presented a different point of view. According to this conclusion, «one of two political bodies – legislative and executive – has the primary responsibility for the emergency state and it belongs to the legislative power» [6].

The original model of the institute of emergency state was proposed by the authors of the Spanish Constitution of 1978, Article 116 of the Basic Law oversees the introduction of three different types of emergency, state of threat, proper state of siege and emergency regime [5].

Thus, the state of threat is announced by government in case of natural disasters, the occurrence of epidemics, disruption of

normal functioning of basic public services or providing the means essentials. This type of emergency is entered for 15 days, but by the decision of the Parliament may be extended. In the event of threats to public order, civil liberties or the normal functioning of democratic institutions, the Council of Ministers, after prior approval of the Congress of Deputies declares an emergency state for 30 days with the right to re-continue.

In conditions of more serious threats such as rebellion, the emergence of direct threats to national sovereignty, territorial integrity or the Spanish Constitution in the presence of an absolute majority of the Congress of Deputies may put siege without previously limited period.

The legal institution of emergency state usually reflects the nature of power and social orientation modes.

Meanwhile, according to 4 Pact on Public and Political rights, and also Art.15 of the European Convention on Human Rights and Fundamental Freedoms of 1950 and Art. 30 of the European Social Charter, is talking about the basis for declaring a state of emergency in the states participating in these international agreements may be only «threat to the life of the nation» and not a specific territory with a population albeit much of society [7].

We consider it appropriate to bring attention to the practice of Russian Federation, where exclusive powers are given specially created bodies – bodies of special administration of the territory on which the emergency state of:

a) temporary special control territory in which the emergency state is entered;

b) federal body of the territorial government on which the emergency state is entered.

The second body is created in case the first fails to effectively carry out the duties assigned to him.

In some states, all power (or part of it) for the duration of the special situation transferred specially created bodies upon the occurrence of exceptional circumstances, the so-called emergency authorities: the General Committee in Germany, the Swedish military delegation, the Council of National Defense in Cuba.

Military delegation in Sweden, for example, is a kind of «mini-parliament» elected annually and consists of 50 deputies led

by the Speaker and shall exercise the powers which in normal conditions belong to Riksdag. Military delegation «itself decides on the form of its activities» [4].

Exceptional powers in conditions of state defense in Germany endowed the General Committee, composed of 33 deputies of the Bundestag (appointed on the basis of proportional representation of factions) and Bundesrat (one representative from each of the land). The form of government slightly changes vector management. Thus, the absolute majority of General Committee can confirm that «insurmountable difficulties» impeding the convening of the Bundestag or that he cannot make decisions. This statement leads to the replacement of the General Committee of the Bundestag and the Bundesrat and the assumption by the execution of their mandate. If necessary, the General Committee by a majority vote may elect the Federal Chancellor or express no confidence in it [3].

Credentials committee is not absolute. He cannot change the Basic Law, to cancel or suspend its act in whole or in certain parts, carry out a redistribution of federal territories, pass the supreme authority to other institutions.

The act of laws, adopted by the General Committee, is limited to six months from the date of cancellation of the state of defense, if they will not be canceled by the decision of the Bundestag and the Bundesrat previously.

For example, in the UK the consequences of emergency state are expressed in empowering the president the right to publication of the normative acts that have the force of law (statutes, decrees, orders).

Thus, each country has its own procedure for the emergency state, but emergency state institute is a system of agreed legal norms that include elements, presence of which causes the entering this regime:

- the reasons for the entering of emergency state;
- public body (or bodies) authorized to enter an emergency state;
- the procedure for its entering;
- temporal and spatial boundaries of action;

special regime of activities of public authorities an governing, enterprises, institutions and organizations that allow restrictions on rights and freedoms and the rights of legal entities and reliance on them additional responsibilities;

in the federal states – temporary changes in the division of powers between the federal and state authorities and authorities of the Federation and other governing changes in social relations during emergency state.

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