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RESTRICTIONS AND PROHIBITIONS AS A TYPE OF ADMINISTRATIVE COERCION UNDER THE LEGAL REGIME OF MARTIAL LAW

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Prevention as a form of state coercion is one of the most important means of ensuring public order and security in Ukraine. The use of preventive restrictive measures in the conditions of the legal regime of martial law is provided for by the norms of the Constitution of Ukraine (Article 64) and other regulatory and legal acts [1]. Preventive restrictive measures are constituent elements of state coercion, which include termination, restoration of administrative and procedural support, and administrative responsibility.

The word “coercion” means the necessity to act in a certain way even if you are unwilling to do that, being influenced by someone or something [2, p. 543]. In our case, we are considering the administrative and legal influence of the state, which, under the conditions of martial law, forces people who do not respond to its demands and violate restrictions and prohibitions that operate on the territory of the country. It is worth agreeing with the opinion of V. V. Gordeev, V. K. Kolpakova, A. T. Komzyuk, I. M. Sopilko and other scientists that the state embodies power, the use of which in relation to violators can be considered as violence [3, p. 228].

At the same time, it is worth considering the existence of the “preventive coercion” as one of the methods of legal influence on a subordinate subject, which is used by competent state bodies (officials) in the event of a violation of established legal norms to stop the relevant illegal activity or to prevent such a violation, as well as ensuring that the culprit is brought to justice [4, p. 34].

As we can see, the concept of coercion does not include its application to subjects (natural and legal entities) who are not subordinated to the authority of the subject, which to some extent indicates the need for a broader interpretation of the meaning of this concept. The use of these means is a peculiar reaction of the state to a possible commission or fact of violation of the restrictions acting under the conditions of the legal regime of martial law. It should be mentioned that the restrictions on the duration of the legal regime of martial law put into effect by the Decree of the President of Ukraine (from February 24, 2022) have socio-political and social significance because they are aimed at strengthening law and order in the state.

The mandatory content of restrictions, which are of a preventive nature in the conditions of martial law and in the territory of its operation, can be conditionally divided into:

1) measures of administrative coercion that limit the personal inviolability of citizens. These include: verification of documents certifying the identity of a citizen, inspection of a person and his belongings, administrative detention, administrative expulsion of foreign citizens outside Ukraine or internment of citizens of a state that is at war with Ukraine;

2) measures of administrative coercion that limit the property rights of citizens. These include: confiscation of property and other material assets (weapons, ammunition, poisonous substances, vehicles) for the needs of the country's defence, followed by their compensation. Citizens may be also forced to work;

3) measures of administrative coercion that limit the political activity of citizens. This concerns the suspension of the activities of public national and foreign organizations, the creation of censorship bodies to control the activities of the mass media, as well as other constitutional restrictions on the citizens' political rights and freedoms.

Key words: administrative coercion; legal regime of martial law; subjects of power; restrictions, executive authorities; civil military administrations.

The purpose of the study. To achieve a scientific result through the analysis of normative and legal provisions and theoretical developments of scientists regarding administrative coercion and one of its types – administrative – preventive in the conditions of the legal regime of martial law.

Problem formulation. Administrative coercion is one of the types of state coercion, which is used both for the purpose of preventing and stopping offenses by individuals and legal entities. Questions related to the practice of applying types of administrative coercion in conditions of military aggression by the Russian Federation, as well as the implementation of the legal regime of martial law in Ukraine, which provides for temporary prohibitions and restrictions on physical rights, freedoms, and legitimate interests of individuals and legal entities remain relevant today. The research of this problem was facilitated by the works of scientists and practitioners, such as: V. B. Averyanov, O. M. Bandurka, V. V. Gordeev, I. O. Kartuzova, L. V. Koval, T. O. Kolomoets, V. K. Kolpakov, A. T. Komzyuk, O. V. Kuzmenko, S. O. Kuznichenko, I. M. Sopilko, Schmidt Assmann E. and others.

Presentation of the material. Generally, *administrative coercion* is considered as one of the types of state coercion, which is carried out extra judicially by subjects of public administration bodies within the limits of the powers granted to them by the state. Having a constitutional basis, it is customary to consider administrative coercion taking into account the specifics of the objects of the application of coercion, social relations that are regulated by the norms of administrative law and that may be violated or there is a fact of their violation, subjects who are authorized to carry out coercive actions using “means”, which should be understood as an action by means of which powerful subjects achieve a certain goal [2, p. 237], using certain restrictions [2, p. 449] to prevent actions [2, p. 515] that may be committed or their termination. To the concept of administrative coercion in order to improve its theoretical content, scientists use the available set of criteria, signs, features, methods of legal regulation, forms of organization and enforcement of coercion. Without resorting to detailing the concept of administrative coercion, let's pay attention to separate approaches among scientists regarding its definition. Professor L. V. Koval, considering administrative coercion as one of the types of state coercion, noted that coercive influence can manifest itself in physical influence, in purely coercive actions or mental influence – incitement to certain actions or desired behavior [5, p. 116]. It is coercive influence that is monitored by public administration bodies when ensuring the requirements and order of compliance with the legal regime of martial law by individuals and legal entities. I. O. Kartuzov draws attention to this by analyzing the concepts, features and types of administrative coercion, which is used by competent state bodies (officials) with the aim of

preventing and stopping administrative misconduct, as well as ensuring that the culprit is brought to administrative responsibility [6, p. 209].

Professor A. T. Komzyuk, researching the concept of administrative coercion, concludes that it is the application by relevant subjects, regardless of the will and desire of the latter, provided by administrative and legal norms of measures of influence of a moral, property, personal (physical) and other nature for the purpose of protection relevant social relations through the prevention and termination of offenses, as well as punishment for their commission [7, p. 414].

Professor O. V. Kuzmenko, based on the analysis of the features characteristic of the general method of legal regulation in the application of administrative coercion, concludes about their consistency, which has a regulatory and legal consolidation and includes a group of methods of legal influence (permission, prescription, prohibition) of the behaviour of sub objects of social relations [8, p. 124].

Some scientists, considering the forms of exercise of executive power in terms of content, purpose of use, and method of expression, pay attention to the use of coercion by subjects of executive power to individuals and legal entities in connection with illegal actions [9, p. 125].

The use of administrative coercion at its own discretion by the public administration in the conditions of the legal regime of martial law does not mean “freedom of choice”. E. Schmidt Assmann believes that the behaviour of public administration bodies should be guided by the criteria laid down in the law and the assigned task, with the possibility of weighing their powers during their implementation [10, p. 239]. I. B. Tatsyshyn proposes to consider administrative coercion as the application by authorized bodies and officials of regulatory influence to the object of management and the application of administrative responsibility for its non-fulfilment in order to ensure legality, state discipline, law and order [11, p. 23].

As Professor S. O. Kuznichenko considers, the legitimate limitation of the administrative and legal status of citizens under the conditions of the legal regime provides for special conditions for its regulation by state administration bodies through coercion. It is worth agreeing that the measures taken by the authorities are sometimes quite strict, but they are justified within the limits that correspond to the degree of danger of the situation that has arisen, and should not exceed the necessary, adequate limits [12, p. 238].

Such scientists as V. K. Kolpakov and V. V. Gordeev pay attention to the fact that a characteristic feature of measures to ensure administrative-tort proceedings is that they have a so-called dual legal nature, the essence of which is the presence of connections that are characteristic of both types of administrative coercion and administrative-procedural proceedings [13, p. 124–125]. The elaboration of the concept of administrative coercion in most cases is interpreted by: determination by the norms of administrative law of the methods of application of administrative coercion (physical or psychological influence) on the part of authorized state authorities; determination of the conditions and circumstances that became grounds for the application of administrative coercion; application of means of prevention, termination, and, if necessary, bringing the guilty person to administrative responsibility in the order established by the norms of administrative law [14, p. 72].

So, among the approaches we have been researching regarding the characterization of the concept of administrative coercion, its main elements should be considered:

- the possibility of applying physical and psychological volitional influence on a person by the authorities;
- lack of functional subordination of individuals and legal entities by subjects of authority;
- the authority of state bodies (officials) to apply administrative coercion;
- administrative-legal regulation of coercive measures of influence with the help of means and methods of legal regulation;
- the use of coercion by subjects of the executive power against individuals and legal entities in connection with their illegal actions;
- the possibility of subjects of power to apply coercion at their own discretion, but within the limits of the law;

Restrictions and prohibitions as a type of administrative coercion under the legal regime of martial law

- the existence of a “dual legal nature” of administrative coercion, which contains connections between types of coercion and administrative and legal measures of proceedings;
- conditions and circumstances that are grounds for the application of administrative coercion in accordance with current administrative legislation;
- the application of administrative coercion extends to the activities of state authorities (officials) in case of violation of restrictions, prohibitions and other violations of public order and public safety provided for by the norms of administrative law, for which the guilty person is held accountable;
- administrative responsibility that arises for violations of requirements, rules, norms by subjects is a component of administrative coercion;
- the application of measures of administrative coercion is carried out by the powerful subjects of the executive authorities on the basis of the norms of material and procedural law within the limits of the powers granted to them with the use of mental, physical, material or other influence determined by the Law;
- the application of administrative coercion is legally enshrined in the relevant legal prescriptions with the fixing of consequences for a person who knowingly violates the rules of social behaviour (for example, under the conditions of the legal regime of martial law);
- the object of administrative coercion is the behaviour of a person to whom extrajudicial coercion may be applied by an authorized subject of power;
- administrative coercion is carried out within the limits of specially protected social relations (for example, in the conditions of temporary restrictions and prohibitions in effect during martial law).

We believe that administrative coercion, carried out by subjects of power under martial law, is one of the legal tools for influencing the behaviour of a person who may violate, or has violated temporary Constitutional restrictions for which administrative responsibility arises.

The analysis of the constituent elements that are the basis of the concept of administrative coercion and its types has features that affect its application by subjects of authority. One of the most common systematization of features characterizing administrative coercion is the systematization proposed by Professor A. T. Komzyuk. It includes: objects in relation to which coercion is applied; subjects authorized to carry out administrative coercion and control the legally significant measures adopted in accordance with it [7, p. 412].

Taking into account the logically grounded and wide-ranging systematization of the features of administrative coercion proposed by Professor A. T. Komzyuk, we suppose it appropriate to consider it taking into account the use of coercion under the conditions of the legal regime of martial law. Given this:

1. Administrative coercion is due to the occurrence of a possible or actual violation of the requirements and procedure for compliance with the legal regime of martial law on the part of individual and collective subjects of social relations.

2. Administrative coercion is legally enshrined, as a rule, in the norms of administrative law (for example, the Code of Ukraine on Administrative Offenses).

3. Measures of administrative coercion are used to prevent the legal regime of martial law in order to ensure public order and public safety in the territory of martial law.

4. Means of administrative coercion during martial law are authorized to be applied by executive authorities. This applies to: prevention of administrative offenses (Article 6 of the Code of Ukraine on Administrative Offenses); granting the right to persons to draw up protocols on administrative offenses (Article 255 of the Code of Ukraine on Administrative Offenses); granting the right to executive authorities (officials) and other subjects of authority equivalent to them to consider cases of administrative offenses and to make decisions on them (Chapter 111 “Bodies authorized to consider cases of administrative offenses” – the Code of Ukraine on Administrative Offenses).

5. The grounds for the application of administrative coercion during martial law are a possible and real threat of violation of the requirements and order of the martial law regime and the occurrence of socially dangerous consequences for individual and collective subjects of social relations.

6. The application of administrative coercion has a simplified procedural procedure, the implementation of which requires compliance with the legal regime of justice on the part of officials authorized to do so.

At the same time, Professor V. K. Kolpakov believes that the existing system of measures of administrative coercion, taking into account the means of prevention, termination and responsibility with some assumptions, forms a separate group of procedural termination [15, p. 128]. Let's pay attention to the fact that the administrative and legal content of preventive measures means that their observance in the conditions of martial law is obligatory (imperative) for both individual and collective subjects. At the same time, administrative warning measures can be applied by the entities authorized to do so, when there is no fact of committing the established requirements, rules, norms, but there are real grounds that they will be violated, as well as when it is necessary to prevent the commission of certain violations. It should be noted that the measures of administrative and legal warning, taking into account their normative and legal consolidation and application by authorized state authorities (officials) in conditions of martial law, provide for a set (complex) of methods and means of coercive influence, which are used to eliminate the causes that influence their commission [16, p. 202].

Taking into consideration the types of administrative coercion (administrative and preventive measures, administrative suspension measures, administrative liability measures), we will consider only administrative preventive measures, which are numerous and diverse, and their application by powerful subjects in martial law requires appropriate specialization and professional skills, aimed at preventing offenses. For a better understanding and application of administrative preventive measures during martial law, they can be conditionally divided into the following types:

- 1) administrative and preventive measures, after the application of which there are no legally significant consequences;
- 2) administrative and preventive measures applied after the commission of an administrative offense;
- 3) administrative and preventive measures that have a "dual" meaning and can simultaneously affect the prevention of violations, as well as their termination.

The first type of administrative preventive measures under martial law includes:

- forced eviction of citizens from the residential premises;
- forced hospitalization of individuals with infectious diseases;
- forced implementation of the mandatory preventive vaccinations;
- change in the organization of traffic for vehicles (only in a certain direction, for a certain time, by certain types of transport);
- inspection of property and other material values that are imported or exported from the area of hostilities, and of radioactive, chemical, bacteriological and other pollutant;
- prohibition of entry and exit to the territory where hostilities are taking place, as well as to the polluted territories of certain types of vehicles, with the exception of specialized ones;
- temporary prohibition or restriction of access of citizens to the territory or objects that may be closed in connection with hostilities, conducting search operations, introduction of quarantine, as well as with natural disasters, epidemics and epizootics;
- prohibition and restriction of certain types of work in the border zone;
- prohibition of the production and use of individual and collective means of protection, which do not meet the requirements of work and the standards introduced in production;
- suspension of the activity of production facilities and organizations that produce products, storage goods, transportation, the disposal of which creates threats to the natural environment;
- evacuation of material and cultural values from the territory or objects located in the area of hostilities in natural disaster zones and places where quarantine and liquidation measures are being carried out.

Restrictions and prohibitions as a type of administrative coercion under the legal regime of martial law

The second type of administrative preventive measures in the conditions of the legal regime of martial law includes:

- the right to temporarily seize of residential premises and other objects, territories by officials authorized to do so (for example, officials of law enforcement agencies, the Armed Forces of Ukraine and other equivalent formations);
- implementation of control/supervision by checking documents certifying the identity of a citizen, vehicles, as well as their inspection.

The third type of administrative preventive measures under the legal regime of martial law includes:

- introduction of the legal regime of martial law in a certain territory with the determination of the time of its effect, restrictions, prohibitions and the order of their observance;
- limiting the speed of vehicles on certain sections of the road in the settlements of Ukraine;
- prohibition of parking or stopping of vehicles in certain places (for example, near military units and special purpose objects that are under guard);
- prohibition or temporary restriction of the movement of people and the movement of vehicles in the areas controlled by the Armed Forces of Ukraine and formations equivalent to them;
- full or partial suspension under the conditions of the legal regime of martial law of the activities of the executive authorities and entrusting the execution of their functions to the bodies of the civil military administration;
- prohibition of holding demonstrations, meetings, strikes, picketing in public places of production facilities, organizations, institutions.

It is worth mentioning that the considered administrative and preventive coercive measures in the conditions of the legal regime of martial law have certain features that affect their introduction and application depending on the goals, tasks of their provision and implementation.

Considering the issue of the application of the methods to ensure the legal regime of martial law by subjects of power, we have to admit that the method of coercion and the method of persuasion are the main methods of their activity. In addition, according to their content, they are a component of the general method of legal regulation, which contains internally interconnected elements that characterize a certain set of legal features peculiar to a separate field of law [17, p. 16–17].

For comparison, let's pay attention to the definition of the management method proposed by Professor O. M. Bandurka. The essence of the definition is that the management method is a set of techniques, operations and procedures for preparation and adoption, organization and control of the implementation of management decisions, which are taken by participants in the management process [18, p. 63]. The day-to-day practice of public administration bodies in the conditions of the legal regime of martial law convincingly proves that there is a need to apply administrative coercion to individuals and legal entities that violate the restrictions and prohibitions established by the norms of administrative law.

The general purpose of the methods of administrative restrictions is that they are aimed at ensuring and observing the legal regime of martial law in the state on the territory of which hostilities are taking place, as well as at ensuring the personal safety of citizens by establishing for them temporary restrictions and prohibitions of constitutional rights and freedoms.

At the same time, the content of administrative coercion consists in the establishment of restrictions/prohibitions that may be imposed individually on a specific person or material object in order to organize and ensure relations connected with the legal regime of martial law. Under the influence of deviant or administrative-tortious conduct behavior, an individual who violates the requirements of the legal regime of martial law and public security may be subject to administrative-preventive measures of influence. At the same time, it is worth distinguishing existing methods of administrative restrictions and methods of administrative coercion. The general purpose of the methods of administrative restrictions is that they are aimed at ensuring and observing the legal regime of martial law in the state on the territory of which hostilities are taking place, as well as at ensuring the personal safety of citizens by establishing for them temporary restrictions and prohibitions of constitutional rights and freedoms.

Moving on to the direct consideration of the methods of administrative coercion and their application in the conditions of the legal regime of martial law, we should note that these methods are aimed at stopping the illegal behavior of individual and collective subjects with the status of a legal entity in order to ensure that they are brought to administrative responsibility or other types of state coercion. It should be also mentioned that the methods of administrative coercion and their application in violation of the legal regime of martial law have certain features that should be considered, taking into account the:

1) factual grounds for applying administrative coercion methods to individual and collective subjects. Among them, there are: committing an offense by an individual or legal entity; non-performance or violation by a natural or legal entity of the duties assigned to them during the legal regime of martial law;

2) inflicting physical, psychological and other influence on a natural person in order to prevent the occurrence of administrative and punitive consequences for violating the legal regime of martial law;

3) methods of administrative coercion for violation of the legal regime of martial law may be applied only by authorized subjects of power. For example, violations of the procedure for entering the temporarily occupied territory of Ukraine and leaving its borders (Article 204-2 of the Criminal Code of Ukraine on Administrative Offenses), violation of the procedure for entering or leaving the area of an anti-terrorist operation (Article 204-4 of the Criminal Code of Ukraine on Administrative Offenses), are considered by bodies (officials) of the State Border Guard Service of Ukraine, while violations of the procedure for moving goods to or from the area of an anti-terrorist operation (Article 204-3 of the Criminal Code of Ukraine on Administrative Offenses), are considered by district, district in a city, city or city-district courts (judges) – Article 221 the Code of Ukraine on Administrative Offenses);

4) the purpose of applying administrative coercion in case of violation of the legal regime is to: stop the commission of offenses by individuals and legal entities under the conditions of the legal regime of martial law; ensuring the necessary conditions for bringing persons who have committed offenses under the legal regime of martial law to legal responsibility; ensuring that individuals and legal entities fulfill the obligations assigned to them in accordance with the law regarding compliance with the requirements of the legal regime of martial law.

Conclusions. The Ukrainian state has a wide range of types of administrative coercion to ensure the defense and protection of the rights and freedoms of individuals and legal entities. Taking into account the military aggression on behalf of the Russian Federation, the state authorities were forced to introduce a legal regime of martial law, which includes temporary prohibitions and restrictions that are ensured by measures of administrative coercion. Measures of administrative coercion, taking into account its peculiarities, features, and methods of enforcement, depend to a certain extent on its types. The purpose of our research became the administrative coercive measures, the application of which, taking into account their specific features, has an effective meaning and positive impact for ensuring public order and public safety in the conditions of the legal regime of martial law. The analysis of the theoretical aspects of administrative coercion and the peculiarities of its application in the conditions of martial law indicates the relevance and necessity of further research in this direction of the activities of state authorities in order to achieve a single goal aimed at protecting the statehood of Ukraine and ensuring the safety of its population.

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Restrictions and prohibitions as a type of administrative coercion under the legal regime of martial law

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**ОБМЕЖЕННЯ ТА ЗАБОРОНИ ЯК РІЗНОВИД АДМІНІСТРАТИВНОГО ПРИМУСУ
В УМОВАХ ПРАВОВОГО РЕЖИМУ ВОЄННОГО СТАНУ**

Запобігання (превенція) як форма державного примусу є одним із важливих засобів забезпечення громадського порядку і безпеки в Україні. Використання запобіжних обмежувальних заходів в умовах правового режиму воєнного стану передбачено нормами Конституції України (ст. 64) та іншими нормативно-правовими актами [1]. Запобіжні обмежувальні заходи є складовими елементами державного примусу, до якого належать припинення, відновлення адміністративно-процесуального забезпечення та адміністративна відповідальність.

Слово "примус" означає зумовлену кимось або чимось необхідність діяти певним способом, незалежно від бажання [2, с. 543]. В аналізованому випадку ми розглядаємо адміністративно-правовий вплив держави, яка в умовах воєнного стану примушує осіб, що не реагують на

її вимоги і порушують обмеження та заборони, які діють на території країни. Варто погодитись з думкою В. В. Гордєєва, В. К. Колпакова, А. Т. Комзюка, І. М. Сопілко та інших науковців про те, що держава уособлює владу, застосування якої щодо порушників можна розглядати як насильство [3, с. 228].

Водночас варто говорити про існування “запобіжного примусу” як одного зі способів правового впливу на підвладний суб’єкт, який застосовують правомочні державні органи (посадові особи) у разі порушення встановлених законодавчих норм для припинення відповідної протиправної діяльності або з метою запобігання такому порушенню, а також забезпечення притягнення винного до відповідальності [4, с. 34].

Як бачимо, поняття примусу не передбачає його застосування до суб’єктів (фізичних і юридичних осіб), які не мають підпорядкування зі сторони суб’єкта владних повноважень, що певною мірою свідчить про потребу ширшого тлумачення змісту цього поняття. Застосування цих засобів є своєрідною реакцією з боку держави на можливе вчинення або факт порушення обмежень, які діють в умовах правового режиму воєнного стану. Зазначимо, що введені в дію Указом Президента України (24 лютого 2022 р.) обмеження на час дії правового режиму воєнного стану мають суспільно-політичне і соціальне значення, оскільки спрямовані на зміцнення законності та правопорядку в державі.

Примусовий зміст обмежень, що є запобіжними в умовах воєнного стану і на території його дії, можна умовно поділити на:

1) заходи адміністративного примусу, що обмежують особисту недоторканність громадян. До них належать: перевірка документів, що посвідчують особу громадянина, огляд особи та її речей, адміністративне затримання, адміністративне видворення іноземних громадян за межі України або інтернування громадян держави, яка воює з Україною;

2) заходи адміністративного примусу, які обмежують майнові права громадян. До них належать: вилучення майна та інших матеріальних цінностей (зброї, боєприпасів, отруйних речовин, транспортних засобів) для потреб оборони країни з подальшим їх відшкодуванням. Стосовно громадян може бути введено примусове залучення до праці;

3) заходи адміністративного примусу, що обмежують політичну активність громадян. Це стосується призупинення діяльності громадських національних та іноземних організацій, створення органів цензури для контролю за діяльністю засобів масової інформації, а також інших конституційних обмежень політичних прав, свобод громадян.

Ключові слова: адміністративний примус; правовий режим воєнного стану; суб’єкти владних повноважень; обмеження; органи виконавчої влади; цивільні військові адміністрації.