

grounds for closing proceedings in a case and the grounds for leaving an application without consideration have undergone changes. However, in the science of civil procedural law, these changes have not been comprehensively investigated.

**Keywords:** termination of consideration of civil cases without consideration, closing of proceedings in the case, leaving application without consideration, resolution, civil proceedings.

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## **FEATURES OF THE ESTABLISHMENT AND DEVELOPMENT OF THE LEGISLATION OF UKRAINE ON THE PROCEDURE FOR CARRYING OUT ECONOMIC ACTIVITIES UNDER THE CONDITIONS OF MARITAL STATE**

In Ukraine, there is an urgent need to improve the regulatory and legal framework in the field of management as a prerequisite for stable and planned development of the state and the creation of proper conditions for the functioning of the economy and raising the standard of living. One of the aspects of this is, in particular, the development of legislation related to the activities of economic entities under the conditions of the introduction of a special regime - the regime of martial law. The issue of economic and legal regulation of the organization and the implementation of economic activity by economic entities under the conditions of the implementation of the martial law regime has been studied. An analysis was carried out and a systematic description of the main legislative acts regulating the activities of business entities during the period of martial law was presented. Significant shortcomings and gaps in the legislation of Ukraine on the specified issues are pointed out and possible ways of its improvement are suggested. The study allows us to come to the conclusion that today in Ukraine there is no clear legal framework in the field of legal regulation of economic relations during the period of the restrictive special regime - the martial law regime, which would be fully coordinated and meet the modern requirements of the Constitution of Ukraine, which, in turn, raises a large number of issues during the application of relevant legal norms by business entities, since the current regulatory acts to one degree or another contain contradictions and gaps. Thus, within the framework of this article, an analysis of the current legislation in the sphere of economic relations regulation during the implementation of the restrictive legal regime of martial law was carried out and ways of improving the legal framework were proposed. In particular, the key regulatory acts were analyzed, namely the Law of Ukraine "On the Legal Regime of Martial Law", "On the Transfer, Compulsory Alienation or Expropriation of Property in the Conditions of the Legal Regime of Martial Law or State of Emergency", as well as bylaws that directly regulate economic activity, on their compliance with the norms of the Constitution of Ukraine.

**Keywords:** special regime, special economic regime, martial law regime, law enforcement problems, systematization of legislation.

**Formulation of the problem.** With the entry into force of the Economic Code of Ukraine (hereinafter referred to as the Economic Code of Ukraine) [2], which for the first time codified the legal norms establishing the specifics of the organization and implementation of economic activity in certain territories, in certain sectors of the economy. GCU at the legislative level established such a term as "special economic regime", which provided an opportunity for further development of legislation in this area.

Section VIII "Special economic regimes" of the GCU establishes the following types of special economic regimes: special (free) economic zones (Articles 401-405); concessions (Article 406); exclusive (maritime) economic zone of Ukraine (Article 411); state border regime (Article 412); carrying out economic activities in sanitary and protective and other protective zones, on territories and objects that are specially protected (Article 413); management regime in certain sectors of the economy (Article 414); economic activity in the Armed Forces of Ukraine (Part 3 of Article 414); regime of economic activity in conditions of emergency, emergency environmental situation (Article 416); martial law regime (Article 417) [2].

Today, in Ukraine, there is an urgent need to improve the regulatory and legal framework in the field of management as a prerequisite for stable and planned development of the state and the creation of proper conditions for the functioning of the economy and raising the standard of living. One of the aspects of this is, in particular, the development of legislation related to the activities of economic entities under the conditions of the introduction of a special regime - the regime of martial law.

In this regard, it should be noted that, in our opinion, the current state of legal support for economic activity during the period of martial law, the outdated legal framework, does not correspond to the realities of today. The Economic Code of Ukraine in Chapter VIII lists the types of special economic regimes, however, there is a need to study the economic and legal aspects of the issues related to restrictive legal regimes: the order of economic activity in martial law conditions.

**Analysis of recent publications.** The problem of economic and legal regulation of legal relations in the sphere of special legal regimes is considered in many studies of domestic and foreign scientists. Its various aspects are particularly analyzed in the works of A. G. Bobkova [10], O. V. Butkevich, and O. R. Zeldina [7; 8], L. V. Taran [9], V. K. Mamutova, K. S. Pismennoi, A. V. Semenyshyn, and others. At the same time, it should be noted that the issue of regulation of economic legal relations during the period of martial law, given its relevance in modern conditions, currently remains outside the attention of scientists and is almost not reflected in the scientific literature. In the works devoted to the study of the problems of the special economic regime, only certain aspects of the studied issues are considered fragmentarily.

**Formulation of goals.** The purpose of the article is to analyze the current legislation and develop proposals for improving the mechanisms of legal regulation of the activities of business entities during the implementation of the martial law regime, which is necessary to ensure a competitive environment, investment security, the provision of state support and guarantees for the activities of business entities.

**Presenting main material.** In today's conditions of global economic and political instability and constant military risks, which can lead to social, political, humanitarian and other disasters, industrial accidents, etc., the issue of legal regulation of ensuring the activities of business entities, regardless of the forms of ownership, during introduction of special legal regimes, namely the regime of martial law. The armed aggression of the Russian Federation against Ukraine, which began with the occupation of Crimea in February-March 2014, the hybrid war in Donbas since April 2014 and the open full-scale armed invasion on February 24, 2022, forces us to respond to legal challenges to the regulation of this type for the first time since the Second World War special management regimes. This aggression is accompanied by an unprecedented destruction of the peaceful Ukrainian population, including children, destruction of Ukrainian cities, cultural and spiritual values.

The legislation of Ukraine provides for norms regulating the mentioned issue. Yes, Chapter VIII of the Civil Code of Ukraine, namely Art. 417 provides for the procedure for carrying out economic activities in the conditions of martial law. The above-mentioned norm establishes the possibility of temporarily limiting the exercise of constitutional rights and freedoms of citizens, as well as the rights of legal entities, and imposing additional obligations on them. The legal basis for the implementation of the special legal regime of martial law, in addition to the norms of the Constitution of Ukraine and the Civil Code of Ukraine, is: the Law of Ukraine "On the Defense of Ukraine" dated 06.12.1991 No. 1932-XII [3], the Law of Ukraine "On the Legal Regime of Martial Law" from 05/12/2015 No. 389-VIII [4], Law of Ukraine "On transfer, forced alienation or seizure of property in the conditions of the legal regime of martial law or state of emergency" dated 05/17/2012 No. 4765-VI [5].

The above-mentioned normative acts define certain mechanisms of intervention of state authorities in the economic activity of business entities, which significantly expands their competence, which in turn can lead to unjustified abuses by these authorities, given the fact that all state authorities are moving to work in the conditions of a special period, namely martial law.

According to Art. 1 of the Law of Ukraine "On the Legal Regime of Martial Law" martial law is a special legal regime introduced in Ukraine or in some of its localities in the event of armed aggression or threat of attack, danger to the state independence of Ukraine, its territorial integrity and provides for the provision of appropriate state authorities, to the military command, military administrations and local self-government bodies, the powers necessary to avert the threat, repulse armed aggression and ensure national security, eliminate the threat of danger to the state independence of Ukraine, its territorial integrity, as well as the temporary restriction of constitutional rights and human freedoms caused by the threat and of the citizen and the rights and legal interests of legal entities with an indication of the period of validity of these restrictions [4].

The National Security and Defense Council of Ukraine submits proposals for the introduction of martial law in Ukraine or in some of its localities for consideration by the President of Ukraine. In the case of a decision on the need to impose martial law in Ukraine or in certain areas thereof, the President of Ukraine issues a decree on the introduction of martial law in Ukraine or in certain areas thereof and immediately applies

to the Verkhovna Rada of Ukraine for its approval and submits a corresponding draft law at the same time.

The decree of the President of Ukraine on the introduction of martial law in Ukraine or in some of its localities, approved by the Verkhovna Rada of Ukraine, is subject to immediate announcement through mass media or publicized in another way. In the case of the announcement of the decree of the President of Ukraine on the introduction of martial law in Ukraine or in some of its localities, the Verkhovna Rada of Ukraine shall meet for a two-day period without convening and consider the issue of approving the decree of the President of Ukraine on the introduction of martial law in Ukraine or in some of its localities in the order, established by the Constitution of Ukraine and the Regulations of the Verkhovna Rada of Ukraine. The decree of the President of Ukraine on the introduction of martial law in Ukraine or in some of its localities, approved by the Verkhovna Rada of Ukraine, is officially published together with the law on the approval of such a decree of the President of Ukraine and enters into force simultaneously with the entry into force of such a law.

The Law of Ukraine "On the Legal Regime of Martial Law" provides for a number of measures that can be implemented during its introduction. These measures, in our opinion, require a separate study and analysis to identify gaps in the legislation. In particular, these are measures such as: 1) to establish (strengthen) the protection of critical infrastructure facilities and facilities that ensure the vital activities of the population, and to introduce a special mode of their operation; 2) to introduce labor obligation for able-bodied persons not involved in work in the defense sphere and protection of critical infrastructure and not reserved for enterprises, institutions and organizations for the period of martial law for the purpose of performing works of a defensive nature; 3) use the capacities and labor resources of enterprises, institutions and organizations of all forms of ownership for the needs of defense, change their mode of operation; 4) forcibly alienate property that is in private or communal ownership; 5) introduce in order, curfew, etc. [4].

As already mentioned above, the Law of Ukraine "On the Legal Regime of Martial Law" provides for forced alienation or confiscation of property from legal entities, but at the same time, this normative legal act does not provide for the procedure for confiscation of such property. In addition, Ukraine adopted the Law "On Transfer, Forced Expropriation or Expropriation of Property under the Legal Regime of Martial Law or State of Emergency" dated May 17, 2012, which, however, also does not clearly define on what grounds and what property can be forcibly alienated or withdrawn for the needs of the state. We also note that the current law does not prescribe the procedure for compensation of the value of property, which should be fixed precisely in this law. Currently, only the Procedure for considering applications and making payments for the next full compensation for property forcibly expropriated under the conditions of the legal regime of martial law or a state of emergency" is provided, which was approved by the Resolution of the Cabinet of Ministers of Ukraine dated 10/31/2012 No. 998 [6].

Also, the Law provides for the possibility of changing the mode of operation of enterprises, institutions, organizations of all forms of ownership, their reorientation to

the production of products necessary in the conditions of martial law, other changes in production activities, with the aim of performing works of a defensive nature. The legislator gives the right to reorientation of the enterprise's production, which is necessary in the conditions of martial law, but does not provide guarantees to business entities. So, in our opinion, it is necessary to decide on the solution of a number of issues. First, determine the body that will deal with the reorientation of production. It can be either a specially created entity or the management of the enterprise. Secondly, to determine the procedure for providing the enterprise with a raw material base, since a quick reorientation of production will not make it possible to urgently find suppliers of the raw material base, and in conditions of martial law, time is of the essence. Important issues that need to be resolved are also determining the profitability, or at least the profitability of the enterprise, in order to ensure the possibility of paying wages and carrying out repairs of the necessary equipment, exemption from taxation during the reorientation of production, as well as the possibility of receiving further tax benefits and providing guarantees state support. Therefore, the task arises, firstly, to fill the Law with norms that would regulate this issue, and, secondly, to expand the norms of Chapter VIII of the Economic Code of Ukraine as a codified legal act.

All these are necessary measures in situations that require an immediate response from the authorities and prevention of negative consequences that can lead to numerous losses, and therefore, their ineffective legal regulation under such conditions is unacceptable. At the same time, it should be noted that in addition to the issues discussed above, today in the current legislation there are still a number of urgent problems that require resolution and mutual agreement. Therefore, although the restriction of the rights of citizens and legal entities provided for by the Constitution of Ukraine is a forced measure, the application of which is inevitable in the event of the introduction of special legal regimes, but at the same time a set of measures should be developed that would make it impossible for the bodies themselves to exceed their powers authorities in situations where the protection of rights provided for by the Constitution of Ukraine is limited due to extraordinary circumstances, and amendments to the Constitution and laws are impossible.

**Conclusions and prospects for further research.** The conducted research allows us to come to the conclusion that today in Ukraine there is no clear legal framework in the field of legal regulation of economic relations during the period of the restrictive special regime - the martial law regime, which would be fully coordinated and meet the modern requirements of the Constitution of Ukraine, which, in turn, raises a large number of issues during the application of relevant legal norms by business entities, since the current regulatory acts to one degree or another contain contradictions and gaps. Thus, within the framework of this article, an analysis of the current legislation in the sphere of economic relations regulation during the implementation of the restrictive legal regime of martial law was carried out and ways of improving the legal framework were proposed. In particular, the key regulatory acts were analyzed, namely the Law of Ukraine "On the Legal Regime of Martial Law", "On the Transfer, Compulsory Alienation or Expropriation of Property in the Conditions of the Legal Regime of Martial

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## ОСОБЛИВОСТІ СТАНОВЛЕННЯ ТА РОЗВИТКУ ЗАКОНОДАВСТВА УКРАЇНИ ПРО ПОРЯДОК ЗДІЙСНЕННЯ ГОСПОДАРСЬКОЇ ДІЯЛЬНОСТІ В УМОВАХ ВОЄННОГО СТАНУ

Нагальною потребою в Україні є вдосконалення нормативно-правової бази у сфері господарювання як передумови стабільного й планомірного розвитку держави та створення належних умов функціонування економіки й підвищення рівня життя. Одним із аспектів цього є, зокрема, розвиток законодавства, пов'язаного з діяльністю господарюючих суб'єктів в умовах введення в дію спеціального режиму – режиму воєнного стану.

Досліджено питання господарсько-правового регулювання організації та здійснення господарської діяльності суб'єктами господарювання в умовах введення в дію режиму воєнного стану. Проведено аналіз і подано системний опис основних законодавчих актів, які регулюють діяльність суб'єктів господарювання в період дії режиму воєнного стану. Указано на суттєві недоліки й прогалини в законодавстві України із зазначеної проблематики та запропоновано можливі шляхи його удосконалення.

Дослідження дозволяє дійти висновку, що сьогодні в Україні немає чіткої нормативно-правової бази у сфері правового регулювання господарських відносин у період дії обмежувального спеціального режиму – режиму воєнного стану, яка повністю була б взаємоузгоджена і відповідала б сучасним вимогам Конституції України, що, своєю чергою, порушує велику кількість питань під час застосування відповідних правових норм суб'єктами господарювання, оскільки чинні на сьогодні нормативні акти тією чи іншою мірою містять суперечності й прогалини. Так у рамках цієї статті було здійснено аналіз чинного законодавства у сфері регулювання господарських відносин під час введення в дію обмежувального правового режиму воєнного стану та запропоновано шляхи вдосконалення нормативно-правової бази. Зокрема, проаналізовано ключові нормативні акти, а саме Закон України «Про правовий режим воєнного стану», «Про передачу, примусове відчуження або вилучення майна в умовах правового режиму воєнного або надзвичайного стану», а також підзаконні нормативні акти, які безпосередньо регулюють господарську діяльність, на їх відповідність нормам Конституції України.

**Ключові слова:** спеціальний режим, спеціальний режим господарювання, режим воєнного стану, проблеми правозастосування, систематизація законодавства.

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## ПРОЦЕСУАЛЬНА АНАЛОГІЯ В ГОСПОДАРЬКОМУ СУДОЧИНСТВІ

Стаття присвячена з'ясуванню передумов і причин появи процесуальної аналогії в господарському судочинстві загалом та практиці Касаційного господарського суду у складі Верховного Суду зокрема.

Дослідження процесуальної аналогії здійснено саме в історичному контексті розвитку господарського процесуального законодавства, щоб можна було відслідкувати, як неприпустиме раніше явище ставало ніби прийнятним, адже процесуальна аналогія за час дії попередніх редакцій Господарського процесуального кодексу України вважалася настільки недозволеною, що навіть очевидні випадки, коли вона, здавалось, могла би бути виправданою, заборонялися.

Процесуальна аналогія в господарському процесуальному законодавстві прямо не заборонена, але їй законодавчих підстав її застосувати в суддів господарських судів немає. Проте це не заважало її практикувати, коли це потрібно самим суддям, а не