

CRIMINAL JUSTICE DURING MARTIAL LAW

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INTRODUCTION

In the context of modern geopolitical challenges, the issue of ensuring the national security of Ukraine is gaining particular importance. Martial law, as a special legal regime, is introduced in response to armed aggression or the threat of an attack, and provides for a number of measures to protect state sovereignty and territorial integrity. In this context, martial law also affects the legal aspects of the qualification of crimes committed during this period.

Article 1 of the Law of Ukraine "On the Legal Regime of Wartime" reveals the essence of martial law as a special legal regime that may be introduced on the territory of Ukraine or in its individual localities in the event of armed aggression, the threat of an attack or a danger to the state independence and territorial integrity of the country. This regime grants the relevant authorities, military command, military administrations and local self-government bodies the powers necessary to avert the threat, resist aggression and ensure national security. At the same time, martial law provides for a temporary restriction of the constitutional rights and freedoms of citizens, as well as the rights of legal entities in order to ensure effective functioning in crisis situations.

It is important to note that a similar formulation is contained in Article 1 of the Law of Ukraine "On the Defense of Ukraine". However, the legislative act on defense does not mention military administrations and does not detail the purpose of powers, such as repelling armed aggression and eliminating threats to state independence. This approach reflects the diversity and contextual requirements of legal regulation in the field of national security and defense.

Martial law imposes additional obligations on citizens and authorities, in particular regarding ensuring national security and public order. Under martial law, the legal assessment of actions that may be qualified as criminal also changes. The Criminal Code of Ukraine provides that certain actions that would not be considered crimes in peacetime may acquire such status in martial law due to the increased threat to the state and society.

In particular, during martial law, the issues of desertion, sabotage, espionage, terrorist acts and other crimes that directly threaten national security are considered particularly acute. Such acts are qualified taking into account the aggravated circumstances, and in accordance with the Criminal Code of Ukraine, may have a more severe punishment. This is due to the fact that during martial law, any actions that undermine the country's defense capability or pose a threat to the civilian population are considered especially dangerous.

Thus, martial law significantly affects the qualification of crimes, taking into account the specific conditions and threats that arise during this period. Law enforcement agencies and courts must take these circumstances into account when investigating and considering criminal cases, which ensures adequate protection of national interests and contributes to maintaining law and order in difficult times for the state.

Martial law in Ukraine not only introduces a special regime of governance and security, but also changes the criminal-legal assessment of certain actions that can be considered crimes, thereby ensuring an adequate response to threats to state sovereignty and territorial integrity.

The current situation in Ukraine, caused by the war and threats to national security, requires constant analysis and improvement of legal mechanisms, including criminal legislation. However, recent changes to the Criminal Code of Ukraine (CC) have given rise to considerable contradictions and problems that are becoming the subject of discussions among lawyers and scholars.

1. Problems of legislation during martial law

The changes introduced by the parliament were intended to strengthen the criminal-legal protection of society from socially dangerous acts. However, the reality turned out to be more complicated. Lawmakers made a number of mistakes that could negatively affect the effectiveness of justice and the legal order.

One of the problems is the unjustified increase in criminal liability for some actions that were previously considered less serious. Such changes can lead to overcrowding of prisoners, overloading of law enforcement agencies and courts, and violation of the principle of proportionality between crime and punishment.

Another problem is the shortcomings in the formulation of new criminal articles and terms. The lack of clarity and unambiguousness in the interpretation of concepts can lead to unlawful or unfair court decisions.

Most scholars agree that rapid changes to the Criminal Code, adopted under an expedited procedure, are not justified. Unjustified haste can only aggravate the situation, instead of solving problems.

Therefore, it is important to pay attention to the current shortcomings of criminal legislation and work on their correction, taking into account the opinions of experts and scientific research. Only in this way can effective protection of society from crime and the rule of law be ensured.

Among the legislative errors, several key problems should be highlighted.

First, granting permission to apply amnesty to persons found guilty of committing high treason and sabotage (Part 4 of Article 86 of the Criminal Code), after they have actually served the terms established by Part 3 of Article 81 of the Criminal Code. This change undermines the principle of the inevitability of punishment for especially serious crimes and can be perceived as leniency towards traitors.

Secondly, the weakening of criminal liability for certain manifestations of collaborationist activity, which were previously qualified as treason, as a result of the addition of Article 111-1 to the Criminal Code. This leads to a mitigation of criminal liability for actions that undermine state sovereignty and creates the risk of insufficient punishment for collaborationism.

Thirdly, the complication of the grounds for bringing to criminal liability for the illegal appropriation of humanitarian aid, charitable donations or free assistance as a result of the addition of Article 201-2 to the Criminal Code. This may complicate the fight against looting and abuse in the distribution of humanitarian aid.

Fourth, excessive strengthening of criminal liability for unauthorized interference in the operation of information (automated), electronic communication, information and communication systems, electronic communication networks (Article 361 of the Criminal Code). Such strengthening may have

disproportionate impact on persons who have committed minor violations, and creates a risk of excessive criminal prosecution.

Legislators sought to improve criminal legislation, but the result is controversial. The new changes have created many problems that will have to be solved in practice. Legislators have made mistakes that worsen the criminal-legal protection of public relations from dangerous acts. These problems have been repeatedly pointed out by scientists.

Legislative innovations are more like an imitation of eliminating the gaps that appeared during the military aggression against Ukraine. The low quality of lawmaking can hardly be regarded as sabotage against Ukraine. Rather, these are banal legislative errors caused by the low competence of people's deputies in the legislative process. The significant level of corruption in the state, which has been repeatedly drawn attention to by scientists, also plays a role.

Part of these problems can be solved by interpreting the relevant criminal-legal norms. V. O. Navrotsky argues that "even a perfect law requires its interpretation as a prerequisite for its correct application." Interpretation can act as a tool for overcoming contradictions in the law, and not as an obstacle to its application. Important in this context are the comments and proposals of M. I. Khavronyuk. He rightly points out that the situation requires the creation of a working group to prepare a draft Law on Amendments to the Criminal Code in order to correct the mistakes made. Such a draft Law must be adopted taking into account the positions of experts and in a two-reading regime. The military aggression against Ukraine highlighted shortcomings in the legislation that require urgent correction. Despite the efforts of legislators, many of the amendments require additional refinement and interpretation. It is important to create a working group to prepare a draft Law on Amendments to the Criminal Code, taking into account expert positions and conducting the procedure in a two-

reading regime. This will contribute to improving legal regulation and ensuring proper protection of public relations in wartime. Among the new changes to the law on criminal liability, the recognition of the commission of a criminal offense in conditions or during a state of war or emergency as circumstances affecting the qualification of individual criminal offenses stands out. This applies to crimes provided for in Part 2 of Article 111, Part 2 of Article 113, Article 114-2 of the Criminal Code, Part 4 of Articles 185–187, Part 4 of Article 189, Part 4 of Article 191 of the Criminal Code, Part 3 of Article 201-2 of the Criminal Code.

Martial law and a state of emergency as circumstances that affect the qualification of a criminal offense or the imposition of punishment have been studied by various scholars, in particular I. A. Petrov, L. M. Ivanova, O. O. Sydorenko, V. A. Pavlenko, O. O. Mykhailiuk, D. G. Koval, R. O. Bondarenko, V. O. Hrytsenko, E. O. Polishchuk, A. A. Levchenko, I. K. Gordienko, V. I. Rudenko, M. I. Savchenko, S. D. Oliynyk, O. M. Kravets, N. V. Semenyuk and others. However, many problematic issues related to the application of these circumstances in practice remain unresolved.

The purpose of this scientific work is to clarify problematic issues of interpretation and application of criminal law provisions on martial law and a state of emergency, as well as to put forward reasoned proposals for their improvement on this basis.

2. Martial law as a circumstance affecting the qualification of a crime

Martial law as a circumstance affecting the qualification of a crime is a complex and important problem in criminal law. The study of the articles of the Criminal Code relating to martial law and a state of emergency, as well as their analysis, provide grounds for expressing certain reservations. Various variations of combinations of martial law and a state of emergency with other circumstances that aggravate punishment or affect the qualification of a criminal offense require careful analysis.

First, it is important to note the limited and fragmentary list of criminal offenses that take into account qualifying or especially qualifying features associated with martial law or a state of emergency. This raises the question of the criteria by which these circumstances are defined as affecting the qualification. For example, why does this circumstance apply only to certain crimes against the foundations of national security, and not to all serious crimes, such as financing actions aimed at forcibly changing the constitutional order or seizing state power?

Secondly, it is important to take into account a scientifically sound approach to determining the circumstances that affect the qualification of criminal offenses. This will help to avoid misunderstandings and ensure clearer and fairer legal regulation. The application of this approach will allow to expand the list of crimes that fall under these circumstances and ensure the uniform application of the law

in all cases. Such an approach to determining the circumstances related to martial law will allow to avoid shortcomings in criminal legislation, ensure effective protection of society from crime and maintain the stability of the legal environment even in difficult military conditions.

In the Criminal Code, different formulations of the terms used to denote martial law and emergency situations and related circumstances can lead to confusion and ambiguous understanding. In particular, the constructions "under martial law", "during the period of armed conflict", "during the operation of martial law" and others can have different legal consequences and be perceived differently.

For example, a crime committed under martial law may be considered more serious because the very existence of martial law increases the risk to public safety and disrupts the normal order of society. Such circumstances may be decisive in determining the degree of guilt and responsibility of the person who committed the crime.

However, it is important to note that not all combinations of martial law with other circumstances should automatically lead to an aggravation of punishment or a change in the qualification of the crime. Justice and proportionality in the application of the law require careful consideration of each specific case.

In the criminal law of Ukraine, the issue of imposing punishment on persons who have committed a criminal offense is a key aspect of justice and responsibility. According to Article 65 of the Criminal Code, punishment must not only be sufficient to correct the offender, but also necessary to prevent future offenses. The use of more severe types of punishment is possible only in cases where less severe punishment is insufficient to achieve these goals.

One of the circumstances that may aggravate the punishment is the commission of a crime using the conditions of martial law or a state of emergency, as well as other extraordinary events, as specified in Part 1 of Article 67 of the Criminal Code. However, it is worth noting that in addition to this circumstance, there are others that may be taken into account when determining the punishment, such as the commission of a crime repeatedly, by a group of persons, or in connection with the performance of official or public duty. In addition, it is important to note that if a crime is committed during a period of martial law or a state of emergency, this may affect the qualification of the crime. For example, theft during a period of martial law or a state of emergency becomes a particularly qualified element of a crime under Part 4 of Article 185 of the Criminal Code of Ukraine, which provides for more severe penalties. The Law of Ukraine "On Amendments to the Criminal Code of Ukraine on Strengthening Liability for Looting" of March 3, 2022 established criminal liability for theft "under martial law". However, different interpretations of this feature can lead to serious legal problems.

By the decision of the Grand Chamber of the Supreme Court of May 25, 2023 in criminal case No. 722/594/22 (proceedings No. 13-27кc23) [6], the issue related to the interpretation and application of Part 4 of Article 185 of the Criminal Code of Ukraine, which establishes criminal liability for theft "under martial law". In its decision, the panel of judges of the Cassation Criminal Court of the Supreme Court pointed to the widespread and consistent application of incorrect interpretation of the law on criminal liability by the courts. This problem concerns the qualifying feature "in martial law", which is established in Part 4 of Article 185 of the Criminal Code. Despite the fact that this feature is important for determining liability for theft, the courts of first and appellate instances massively apply the incorrect interpretation of this provision. In this regard, the Grand Chamber of the Supreme Court had to conclude on the correct interpretation of the qualifying feature of committing theft "in martial law". On the one hand, it was proposed by the panel of judges of the Criminal Court of Cassation to recognize this feature as effective only on condition that the theft occurred during a real military conflict or during the period of martial law. On the other hand, the courts of first and appellate instances applied a broader interpretation, which covered any situation where martial law or conflict could have influenced the conditions for committing a crime.

On one side of the spectrum of interpretations is the approach according to which "in conditions of martial law" should be understood as "using the conditions of martial law". This means that the perpetrator uses the conditions of military conflict to commit the crime, for example, by using violence or taking advantage of the helplessness of the inhabitants. Such an approach reflects the legislator's intentions and helps to prevent inappropriate application of the law.

On the other hand, there is an interpretation that considers "in conditions of martial law" without reference to the use of the conditions of military conflict. This can lead to problems of inconsistency between the gravity of the crime and the imposed punishment, as well as a violation of the principle of individualization of punishment.

To resolve this problem, it is important to take into account the purpose and purpose of the law, as well as to ensure justice and the protection of human rights. This can be achieved by clarifying and harmonizing the interpretations of the qualifying feature "in conditions of martial law" in criminal legislation.

It is worth noting that the problem of interpreting the qualifying feature "under martial law" is complex, but its solution is of great importance for ensuring law and order and justice in society. Special attention should be paid to understanding the legislator's intentions and applying the principles of justice when resolving judicial issues related to this problem.

I believe that the correct interpretation of the qualifying feature of committing theft "under martial law" should take into account the specifics of the military conflict and its impact on the conditions for committing the crime. Such an

approach will avoid excessive interpretation, which can lead to shortcomings in justice. Thus, resolving this issue requires a detailed analysis of the regulatory and legal context and the practice of applying legislation by the courts.

When making a decision, the court takes into account both aggravating and mitigating circumstances, and also takes into account the presence of qualified elements of the crime. Taking into account all these aspects ensures a fair and adequate punishment that corresponds to the crime committed and the goal of preventing similar offenses in the future.

Thus, committing a crime during a state of war or emergency is a serious circumstance that greatly aggravates punishment. This is justified, since such actions are especially dangerous for society and require a decisive response from the legal system.

The use of the terms “during”, “under conditions” and “using conditions” in legal constructions often causes confusion and misunderstanding. In particular, when it comes to committing a crime during martial law or using the conditions of this state to commit a crime, it is important to clearly understand the difference between these circumstances and their impact on the qualification of the crime.

The construction “using the conditions of martial law” is used to denote a circumstance that aggravates punishment in accordance with clause 11, part 1, article 67 of the Criminal Code of Ukraine. This means that the crime is committed in a state of war or emergency, and the perpetrator intentionally uses this situation to achieve his goal. For example, this may be the use of the absence of security or law enforcement officers in a combat zone to facilitate the commission of a crime or to avoid criminal liability.

On the one hand, the construction "under martial law" indicates that the crime was committed during the period of martial law, which limits the place or circumstances of the commission of this crime. This is important to take into account when qualifying a crime, since the time period during which a special legal regime is in effect may determine the time of the commission of the crime and its circumstances. Such an approach makes it possible to take into account the context and circumstances in which the crime was committed, ensuring more informed decision-making on the qualification of offenses.

On the other hand, it is important to note that not every commission of a crime during martial law or the use of the conditions of this state to commit a crime will be recognized as having been committed using the conditions of martial law. For example, if a crime is committed in an area where there is no active hostilities, this may not be considered the use of martial law conditions to commit a crime¹.

¹ Про основні засади забезпечення кібербезпеки України : Закон України від 5 жовт. 2017 р. № 2163-VIII / Верховна Рада України. URL: <https://zakon.rada.gov.ua/laws/show/2163-19#Text> (дата звернення: 10.06.2026).

The introduction of martial law raises complex issues regarding the qualification of crimes committed under such conditions. A review of the different approaches to this issue offered by Vartyletska I. A. and D. G. Mykhailenko reflects the complexity of determining the circumstances that affect the nature and qualification of a crime. On the one hand, the construction "under martial law conditions" indicates that the crime committed during the period of martial law, which limits the place or circumstances of the commission of this crime. This is important to take into account when qualifying a crime, since the time period during which a special legal regime is in effect may determine the time of commission of the crime and its circumstances. This approach makes it possible to take into account the context and circumstances in which the crime was committed, ensuring more informed decision-making on the qualification of offenses.

On the other hand, it is important to note that not every commission of a crime during martial law or the use of the conditions of this state to commit a crime will be recognized as having been committed using the conditions of martial law. For example, if a crime is committed in an area where there are no active hostilities, this may not be considered as using the conditions of martial law to commit a crime.

However, when it comes to property crimes, the situation becomes more complicated. According to Kravchuk's proposal, it is not always possible to clearly determine the connection between the commission of a property crime and martial law. For example, if a crime was committed during martial law, but outside the zones of active hostilities and without the use of martial law conditions, it may be difficult to justify the application of a qualifying characteristic.

The proposed differentiated approach is a basis for discussion. Should martial law conditions really be a qualifying characteristic for all types of crimes committed under such conditions? Can the application of this characteristic be justified only in the case of direct use of martial law conditions to commit a crime?

It is also worth considering the position of R. O. Movchan, who believes that any crimes committed during martial law should be qualified as those committed under martial law conditions, regardless of the place of their commission and the circumstances. In light of these different approaches, it is important to conduct a coordinated discussion to resolve this issue².

It can be noted that domestic legislators, consciously or not (which is more likely), have strengthened the differentiation of liability for any criminal offenses committed in certain circumstances, regardless of: 1) the location and context of their commission, i.e. whether they were directly related to the use of martial law conditions; 2) whether there was an encroachment on the foundations of national security of Ukraine (Articles 111, 113 of the Criminal Code), or another criminal

² Про Службу безпеки України : Закон України від 25.03.1992 р. № 2229-XII / Верховна Рада України. URL: <http://zakon3.rada.gov.ua/laws/show/2229-12> (дата звернення: 10.06.2026).

offense against property, the elements of which are formulated similarly ("in conditions of martial law or a state of emergency"). Such an approach deprives law enforcement officers of the opportunity to conduct a differentiated legal assessment based on different methods of interpretation: literal – for encroachments on national security; restrictive (logical) – for offenses against property, which is based not on the norms of the law, but on the declared purpose of the relevant draft law. This is confirmed by the practice of applying the relevant norms, in particular, by the initiation of proceedings under parts 4 of articles 185, 186, 187 of the Criminal Code even for offenses against property in territories without active hostilities and without connection with martial law. The construction "during" in the qualifying features provides for the commission of an offense during the existence of certain circumstances, regardless of the place or circumstances of its commission. In the draft Criminal Code, such a construction increases the severity of some crimes by one degree. Thus, the commission of a criminal offense "during" or "under the conditions" of the circumstances under study are actually identical situations. At the same time, the construction "during" seems less debatable, and therefore more optimal for improving legislation.

No less important is the consideration of the expediency of recognizing the commission of criminal offenses during a state of war or emergency as a circumstance affecting the qualification or imposition of punishment. Scientists note that the guilty person in such a situation uses circumstances unfavorable for society to facilitate the commission of a crime.

Scientists draw attention to the increased social danger of criminal offenses and guilty persons if these crimes are committed in particularly unfavorable circumstances for society. The guilty person deliberately chooses the most difficult time for society, difficult conditions in order to facilitate committing a crime³. Crimes are committed by taking advantage of a situation that threatens the life, health, safety and property of many people. Criminals take advantage of situations when the attention of the authorities and citizens is focused on averting threats to people's lives and property. Under such circumstances, homes, property of citizens and organizations are often left unattended. In practice, criminals have indeed used such periods in the state to commit crimes. For example, during the events in Chernobyl and the resettlement of people from there, property thefts occurred. During the floods in Western Ukraine, thefts of citizens' property also intensified. Thus, scientists emphasize that criminals deliberately choose difficult periods for society in order to take advantage of the unfavorable situation and lack of control to commit crimes, which increases their social danger.

According to Kravchuk O., the laws of March 2022 allow for a more fair response to criminal acts, in particular, numerous documented cases of robberies

³ Про Національну систему конфіденційного зв'язку : Закон України від 10.01.2002 р. № 2919-III /Верховна Рада України. URL: <https://zakon.rada.gov.ua/laws/show/2919-14#Text> (дата звернення: 10.06.2026).

and thefts by Russian military personnel in abandoned houses, shops, and even the theft of chickens from civilians. However, in practice, such increased responsibility applies only to citizens of Ukraine.

At the same time, not all scientists support recognizing the circumstance of committing a crime during martial law as affecting qualification.

Khavronyuk M. believes that the current penalties for theft, robbery, etc. in wartime are quite sufficient, since there is already an aggravating circumstance of using martial law (Article 67 of the Criminal Code). The problem lies not in the lenient penalties, but in the reasons for not exposing many such crimes and their improper investigation and compensation for damage. Movchan R. rightly notes that it is inappropriate to qualify any encroachments on property during the war, including those not related to the use of martial law, under parts 4 of the articles on theft. He gives examples of incrimination of theft of products from shops in peaceful cities and believes that the public danger of such actions does not require an inevitable imprisonment of 5 to 8 years. In wartime, law enforcement agencies should focus on protecting the state, and not on less important things. However, it is also impossible not to react to thefts, because during this period both professional thieves and ordinary citizens become more active, taking advantage of the circumstances of war (occupation, destruction of buildings, etc.) for mass theft, which complicates the situation in the country. At the same time, Ukraine has not officially recorded a sharp increase in thefts, which can be explained by the active civic position of citizens regarding the detention of thieves, increased responsibility, as well as the high latency of such crimes, especially in the occupied territories, as evidenced by the media.

But it is worth paying attention to some negative consequences of recognizing the commission of a criminal offense during martial law as a qualifying or especially qualifying feature.

First, even minor thefts, for example, of products from a store, are now classified as a serious crime under Part 4 of Article 185 of the Criminal Code. Such persons are often subjected to the most severe preventive measure during wartime – detention, which seems excessive. Although there is a nuance – according to Article 616 of the Criminal Procedure Code, a suspect or accused in custody has the right to apply for the cancellation of the preventive measure in order to undergo military service during mobilization.

Secondly, previously, criminal offenses under Part 1 of Article 185 of the Criminal Code (petty theft) were dealt with by the investigation bodies, and this constituted a small part of their workload. Now, any theft, even a minor one, must be investigated by an investigator, since it is a serious crime. Accordingly, the workload on the investigation has significantly increased, and on the investigation bodies has decreased. Thus, the recognition of the circumstance of martial law as a qualifying feature for theft has led to the fact that even minor thefts entail strict preventive measures and now they must be investigated by investigators, redistributing the workload in law enforcement agencies. It is also worth paying attention to the shortcoming of Part 1, Article 11 of Article 67 of the Criminal

Code, where the circumstance of "committing a crime using the conditions of martial law or a state of emergency" applies only to crimes, not criminal offenses. This seems illogical, because in wartime the response should be intensified for all offenses regardless of category. Movchan rightly notes that when qualifying under Part 1 of Article 190 of the Criminal Code (criminal misdemeanor) there is no reason to refer to this aggravating circumstance, since it applies only to crimes. Therefore, it is logical to change the term "crime" to "criminal offense" in Part 11 of Article 67 of the Criminal Code. Movchan also recommends replacing the wording "in wartime" with "using wartime conditions" in Part 4 of the relevant articles. At the same time, "commitment during wartime" (even without the use of relevant conditions) could become another aggravating circumstance in Article 67 of the Criminal Code. In the future, the differentiation of liability should only concern the commission of the analyzed crimes "using wartime conditions", which should appear in the updated norms instead of the existing reference to "wartime conditions". Thus, it is proposed to improve the legislation in order to take into account the commission of any criminal offenses in wartime conditions as an aggravating circumstance, and to differentiate liability only for the use of these conditions when committing a crime.

Continuing the considerations on improving the circumstances that affect the qualification or imposition of punishment, the following proposals can be made:

1. To set out Clause 11, Part 1, Article 67 of the Criminal Code in a new wording: "Committing a criminal offense in a special period, during a state of emergency or an emergency situation". This will allow for the imposition of a more severe punishment in the presence of these circumstances for any criminal offense. However, the court will retain the right not to recognize them as aggravating depending on the nature of the act.

2. More dangerous are circumstances directly related to the use of the conditions of a special period, emergency situation or state to commit a criminal offense. Such acts are actually more threatening, since a person cynically uses a difficult situation for illegal actions.

3. Two ways are proposed to increase responsibility for such behavior:

- a) Supplement the components of individual crimes with the qualifying feature: "commitment using the conditions of a special period, emergency situation or situation";

- b) Supplement Article 67 of the Criminal Code with a norm on the imposition of a penalty of at least 2/3 of the maximum if the act is committed using the specified circumstances.

Thus, the emphasis is placed on the need to differentiate responsibility not only for the very fact of committing a crime during special periods, but also to increase it for using these circumstances to commit illegal acts.

CONCLUSIONS

The recognition of a state of war or emergency, as well as related circumstances, as affecting the qualification of a criminal offense or the

imposition of punishment, is due to the fact that their presence facilitates the commission of a criminal offense, increases the risk of becoming a victim, and law enforcement agencies have limited resources for an adequate criminal-legal response. The problems of interpretation and application of criminal-legal provisions on a state of war and emergency, as well as related circumstances affecting the qualification of a criminal offense or the imposition of punishment, can be solved by:

1. The application of a scientifically based approach to the inclusion of the studied circumstances as qualifying or especially qualifying features in separate components of criminal offenses will allow for better adaptation of criminal legislation to the realities of a state of war or emergency.

2. The unification of these circumstances, taking into account the form of their existence (circumstances that aggravate punishment and circumstances that affect the qualification of a criminal offense), as well as optimal constructions for their differentiated application in the Criminal Code (“during” and “using conditions”) will contribute to a clearer and fairer application of the law.

3. The prohibition of the simultaneous use of the terms “martial law” and “special period” in the same construction of a circumstance that aggravates punishment or affects the qualification, given that the special period covers martial law, will reduce legal confusion and increase the effectiveness of law enforcement.

4. Replacing in Clause 11 Part 1 of Article 67 of the Criminal Code the term “crime” with “criminal offense” and the term “other extraordinary event” with “emergency situation” will ensure the clarity and relevance of legislative norms.

The circumstances that aggravate the punishment, provided for in Clause 11 Part 1 of Article 67 of the Criminal Code, should be set out in the following wording: “Committing a criminal offense during a special period, during a state of emergency or an emergency situation”. The commission of a criminal offense during a special period, during a state of emergency or an emergency situation should be understood as its commission during the entire period of the existence of one of these circumstances, regardless of whether the person took advantage of it during the commission of the criminal offense, as well as regardless of the place of its commission.

SUMMARY

More dangerous are the circumstances that can be designated by the construction “committing a criminal offense using the conditions of a special period, emergency situation or state of emergency”. Under committing a criminal offense using the conditions of a special period, emergency situation or state of emergency, it should be understood that the person who committed the criminal offense uses the situation that developed during a special period, emergency situation or state of emergency to his advantage. In particular, to facilitate the commission of a tort, its concealment, avoidance of criminal liability. For example, using the lack of security, law enforcement officers, property owners as

a result of evacuation from a combat zone or occupied territory, etc. This construction can be used in the relevant qualified and especially qualified criminal offenses.

The impact on increasing the degree of punishment imposed in the presence of such circumstances can be achieved by establishing a special rule for imposing punishment in the presence of circumstances, such as committing a criminal offense using the conditions of a special period, emergency situation or state of emergency. This will guarantee the inevitability of severe punishment for such actions, increasing the effectiveness of justice and strengthening public order in times of crisis.

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