

ABSTRACT

Koval V. P. Administrative and legal status of servicemen in Ukraine under the legal regime of martial law. Qualification scholarly paper: a manuscript.

Thesis submitted for obtaining the Doctor of Philosophy degree in Law, Speciality 081 – Law. – Karazin Kharkiv National University, Ministry of Education and Science of Ukraine, Kharkiv, 2021.

The dissertation is devoted to a comprehensive study of issues related to the administrative and legal status of servicemen under the legal regime of martial law. The legislative regulation of the administrative and legal status of servicemen in Ukraine is studied in the work. Emphasis is placed on the fact that an important aspect in the system of national security and defence in the current conditions of Ukrainian statehood is a clear and detailed regulation of the administrative and legal status of servicemen, including in the direction of regulating the implementation of multifaceted tasks in peacetime as well as within the legal regime of martial law.

A thorough analysis of doctrinal approaches to understanding the term “military legislation” and, on the basis of the latter, a proposal to understand a clearly structured system of regulations and legal institutions that comprehensively regulate the organisation and functioning of the Armed Forces of Ukraine and other military formations, the legal status of servicemen, and military administration bodies in order to ensure the most effective national security and defence capabilities of Ukraine. The essence of military legislation, the revelation of its orientation, and the criteria of efficiency of legal regulation of the questions making its subject are examined.

Based on the analysis of current military legislation and the practice of its application in terms of standardisation of issues related to the legal status of servicemen, a conclusion is made on the peculiarities of the formation of the legal status of servicemen during the establishment of Ukraine as a sovereign and independent state. Among the factors influencing the formation of the administrative and legal status of servicemen in Ukraine, the dissertation highlights, *inter alia*, the lack of a systematic and consistent legal policy to reform the administrative and legal status of servicemen, violation of the rules of legislative technique during the preparation of

regulations in this area, the complexity and diversity of issues related to the implementation of the administrative and legal status of servicemen, including in the legal regime of martial law, and the constant underfunding of the defense needs of Ukraine.

The paper reveals the elements that are part of the structure of the administrative and legal status of servicemen. It is substantiated that such a structure should include responsibilities, rights (including legal obligations), guarantees of realization of duties and rights, as well legal liability. At the same time, special emphasis is placed on the fact that the current military legislation, in constructing the administrative and legal status of servicemen, focuses on responsibilities, which is a natural approach given the tasks in the field of national security and defense.

The dissertation analyses the main types of special legal regimes, due to the fact that the organisation and functioning of the security and defence sector of Ukraine, the implementation of the administrative and legal status of servicemen can be carried out within different legal regimes, each with its own specific implementation. It is stated that the legal regime is a certain legal order, which creates a certain social status as a specific state of social status as a specific state of social relations governed by legal norms. The legal regime is a broader category than the legal status, because it includes a special legal order within which the state takes the necessary measures. Among the legal regimes, a separate group consists of special legal regimes. The consequence of a state of emergency is a special legal regime (i.e. a special legal order) the emergence of which is due to the declaration of a special legal status. The state of emergency, by its legal nature, is in fact also a special period, as the period is a certain period of time within which certain events occur and the emergency powers of public authorities are exercised to neutralise the relevant threats. By its legal nature, a state of emergency corresponds to the main features of a special period and can hypothetically be covered by it.

The paper formulates the administrative and legal concept of martial law, which consists of the following components: 1) organisational component, which includes the concept of martial law, the purpose of its introduction and the time limits of the introduction of regime measures; 2) the normative component (legal basis) of the

martial law regime; 3) causal (motivational) component, which contains the circumstances in the presence of which the imposition of martial law is carried out (or potentially may be the introduction of the specified legal regime); 4) procedural component, which allows the regulation of all procedural aspects of the introduction, functioning and termination (abolition) of martial law; 5) security component, which includes a set of economic, political, administrative, military and other measures aimed at creating conditions for the implementation of the goals and objectives of the martial law regime; 6) a meaningful component that is a key element of the martial law regime; 7) a competent component, which establishes the existence of powers of public authorities, local governments, military command and military administration in martial law and certifies the transformation of the administrative and legal status of servicemen directly involved in the implementation of martial law; 8) personal component, the addressee of which are individuals and legal entities (i.e. live in the territory where martial law is imposed, carry out activities at enterprises, institutions, organisations under martial law and have access to documentation related to martial law state).

Taking into account the proposed concept, the paper reveals the theoretical and practical aspects of martial law as a special legal regime. From these positions, it is proposed to consider it as a special legal regime, as a legal institution, as a means of ensuring military security, as a basis for the transformation of administrative and legal status and as a comprehensive institution of administrative law. Emphasis is placed on the legal consequences of the introduction of martial law, including, on the one hand, the granting of additional rights and additional responsibilities to military authorities, military command and relevant servicemen, and, on the other hand, restrictions on certain rights. Based on this, a conclusion is made about the transformation of the administrative and legal status of servicemen on the basis of the legal regime of martial law. It is stated that it is carried out in order to create the appropriate preconditions for the clear and unconditional performance of their duties by servicemen and the implementation of measures of the legal regime of martial law.

The paper analyses the main directions of transformation of the administrative and legal status of servicemen under the legal regime of martial law and identifies the

following three areas, namely pre-transformation, competent and elemental. The dissertation states that the pre-transformation direction in the context of the general transformation process presupposes the existence of legal grounds and additional factual grounds, which are the appropriate basis for the beginning of a consistent change (transformation) of the general legal status of a citizen as a person who did not have administrative status. This direction also affects the fact that the administrative and legal status of servicemen who served in the military regime (or the beginning of a special period) before the introduction of the legal regime of martial law is changing (transformed), because within the mobilization there is a transition to new (expanded) states which entails, first of all, the expansion of responsibilities, rights and responsibilities of the respective commanders (superiors), a significant increase in their responsibility. In turn, the competence indicates a temporary change of names, tasks, powers, organisational structure of bodies operating under the legal regime of martial law on the ground (defence councils, military-civil administrations, the Supreme Commander-in-Chief's rate, etc...) , as well as the temporary transfer of authority from some entities (civilians) to other entities (servicemen). Finally, the dissertation of the third direction is elementary, which provides for a temporary change in content (its expansion or restriction (narrowing)) of a particular element or elements of the administrative and legal status of servicemen under the legal regime of martial law. Emphasis is placed on the criteria that determine the specific types of transformation of the elements of the administrative and legal status of a serviceman. In particular, the dissertation includes such criteria as the volume of transformation; availability of mutually corresponding rights and obligations; the degree of specificity of duties and legal obligations that a serviceman can perform only within the legal regime of martial law; the degree of detail of the rights and responsibilities that a serviceman can exercise under the legal regime of martial law.

Key words: military legislation, legal status, administrative and legal status of servicemen, legal regime, special legal regime, legal regime of martial law, transformation of legal status.