

SECTION 1. ADMINISTRATIVE LAW, ADMINISTRATIVE PROCESS

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1.1 Legal aspects of protection of critical infrastructure objects in Ukraine during marital state

In the conditions of large-scale armed aggression and the introduction of martial law in Ukraine, more and more discussion and actions regarding combating crimes in various spheres of life are becoming of primary importance [4, c. 12], including military offenses. The increase in the level of danger for the functioning of critical infrastructure requires legal regulation in order to ensure their legal recognition, protection, countering criminal manifestations, destruction or partial damage, failures of the sustainable functioning of these objects, determination of legal responsibility for this type of offenses. During the bombing, the destruction, partial damage or malfunction of critical infrastructure objects directly affects the level of national security of each state. In wartime, these factors only increase. From February 24, 2022, in accordance with the Law of Ukraine "On the Legal Status of Martial Law", the martial law regime was introduced in Ukraine, and according to the Decree of the President of Ukraine No. 573/2022 of August 12, 2022 "On the extension of the period of martial law in Ukraine", it the validity period has been extended by 90 days from August 23, 2022.

An analysis of the national legislation regarding the specifics of the protection and legal regime of work and safety of critical infrastructure in the conditions of a special period, and the state of war is one of them, showed that today these issues are regulated by the following laws of Ukraine: "On critical infrastructure", "On amendments to some legislative acts of Ukraine regarding the foundations of the state regional policy and the policy of restoration of regions and territories", "On the legal regime of martial law", "On the functioning of the unified transport system of Ukraine in a special period", "On defense of Ukraine", "On the procedure for admission and conditions of stay of units of the armed forces of other states on the territory of Ukraine", "On state secrets", "On local self-government in Ukraine", "On local state

administrations", "On the basic principles of ensuring cyber security of Ukraine" , "On the national security of Ukraine".

The Law of Ukraine "On Critical Infrastructure" defines: "security of critical infrastructure – the state of protection of critical infrastructure, which ensures the functionality, continuity of work, restoreability, integrity and stability of critical infrastructure" [9]. An analysis of the content of this law provides grounds for asserting that it regulates the basic principles of the formation of a system for the protection of critical infrastructure objects and ensuring the effectiveness of its functioning, including the period of martial law. In particular, the following are outlined: tasks of state policy in this area; levels of management of this national system; criticality categories of critical infrastructure objects; register of critical infrastructure objects; certification of critical infrastructure objects; subjects of the national critical infrastructure protection system; modes of operation of the national critical infrastructure protection system; authorized body in the field of protection of critical infrastructure of Ukraine; functional bodies in the field of critical infrastructure protection; sectorial bodies in the field of critical infrastructure protection; local bodies of executive power (military-civilian administrations – in case of formation) in the field of critical infrastructure protection; tasks, rights and obligations of critical infrastructure operators; monitoring of the security level of critical infrastructure facilities; interaction of the national critical infrastructure protection system with other protection systems in the field of national security; public-private partnership in the field of critical infrastructure protection; parliamentary control in the field of critical infrastructure protection; public supervision in the field of critical infrastructure protection; responsibility for violations of legislation in the field of critical infrastructure protection; international cooperation in the field of critical infrastructure protection.

With the introduction of martial law, changes were made to normative acts of specialized content, which reveal the mechanism for resolving situations regarding certain categories of critical infrastructure objects. In particular, such documents were edited:

- the resolution of the Cabinet of Ministers of Ukraine "Some issues of critical infrastructure objects", which outlined the "Procedure for forming the list of critical information infrastructure objects", "The procedure for entering critical information infrastructure objects into the state register of critical information infrastructure objects, its forming and ensuring functioning" [2];

- Resolution of the Cabinet of Ministers of Ukraine "On Approval of General Requirements for Cyber Protection of Critical Infrastructure Objects", supplemented by a List of Basic Requirements for Ensuring Cyber Protection of Critical Infrastructure Objects [6];

- Resolution of the Cabinet of Ministers of Ukraine "On Approval of the Procedure for Monitoring the Security Level of Critical Infrastructure Objects", which presents the Act of Assessing the State of Security of Critical Infrastructure Objects [8];

- the decree of the Cabinet of Ministers of Ukraine "On the approval of the Concept of the creation of a state system for the protection of critical infrastructure" led to the actualization of the strategic approach to the issue of protection of systems, objects and resources that are critically important for the functioning of society, the socio-economic development of the state and the provision of national security;

- the resolution of the Cabinet of Ministers of Ukraine "Some issues of identification of high-risk objects" which presents the Procedure for identifying high-risk objects and keeping their records, as well as starting work on the State electronic register of high-risk objects [1];

- the resolution of the management of the National Bank of Ukraine "On the approval of the Regulation on the organization of cyber protection in the banking system of Ukraine and amendments to the Regulation on the identification of critical infrastructure objects in the banking system of Ukraine", which provides a list of critical infrastructure objects in the banking system [7];

- the resolution of the Cabinet of Ministers of Ukraine "On the establishment of the State Service for the Protection of Critical Infrastructure and Ensuring the National

Stability System of Ukraine" enters into force and will regulate the mechanism for the establishment of a central executive body with a special status;

- the resolution of the Cabinet of Ministers of Ukraine "Some issues of conducting an external audit of the activity of an authorized body in the field of protection of critical infrastructure of Ukraine", which regulates the preparation by the Accounting Chamber of a report on the external audit of the activity of an authorized body in the field of protection of critical infrastructure of Ukraine [3], etc.

Such legal guidelines regarding protection and increasing the stability of critical infrastructure are extremely necessary in view of the relevance of threats of military actions.

All these steps emphasize the direction of state policy on protection, timely response to threats, neutralization of damage or destruction of critical infrastructure objects, this requires multi-sectoral consolidation of resources. According to the current legislation, the authorized bodies of state power responsible for the sector (subsector) of critical infrastructure are:

Ministry of Energy of Ukraine – fuel and energy sector;

Ministry of Digital Transformation of Ukraine – information sector;

Ministry of Development of Communities and Territories of Ukraine – life support systems;

Ministry of Economy of Ukraine – food industry and agro-industrial complex;

Ministry of Health of Ukraine – health care;

National Commission for Securities and Stock Markets of Ukraine – capital markets and organized commodity markets;

Ministry of Infrastructure of Ukraine – Transport and Post;

Ministry of Strategic Industries of Ukraine – Industry;

The Ministry of Internal Affairs of Ukraine – civil protection of the population and territories;

Ministry of Finance of Ukraine – financial sector.

Collection, generalization, preliminary analysis of data on critical infrastructure facilities and proposals for inclusion of such facilities in the Register within the defined sectors are carried out by the listed Sectoral Bodies.

Also, the protection of critical infrastructure during wartime is entrusted to the following executive authorities: the National Police of Ukraine, the Ministry of Emergency Situations, the Security Service of Ukraine, the National Guard, the Armed Forces of Ukraine, military administrations, the State Service for Special Communications and Information Protection, the State Nuclear Inspection Regulation of Ukraine, National Bank of Ukraine.

The war imposes new, strengthened requirements for counter-intelligence, counter-terrorist and counter-sabotage protection of the following facilities: energy and nuclear energy; oil, gas, food industry; information technologies and electronic communications; life support networks; agro-industrial, transport complex, post office, communication systems; health care facilities; strategically important areas of the national economy; banking sector, etc.

It is important to name the categories of criticality of critical infrastructure objects, which are fixed by the Resolution of the Cabinet of Ministers of Ukraine "Some issues of critical infrastructure objects" in the document "Methodology of categorization of critical infrastructure objects":

I criticality category – especially important objects that have national importance and a significant impact on other critical infrastructure objects, the disruption of which will lead to the emergence of a crisis situation of national importance;

II criticality category – vital objects, the malfunctioning of which will lead to the emergence of a crisis situation of regional importance;

III criticality category – important objects, the malfunctioning of which will lead to the emergence of a crisis situation of local importance;

IV criticality category – necessary facilities, the malfunctioning of which will lead to the emergence of a crisis situation of local importance.

We characterize the factors of negative impact on the provision of basic services in case of destruction, damage or disruption of the functioning of a critical infrastructure object (sectorial criteria) [2] in wartime:

- sector «Services provided by the electric power sub-sector and the nuclear power sub-sector» – electricity supply in the country will stop;
- sector «Services provided by the oil and oil products subsector» – the supply of oil and oil products for consumption in the domestic market of Ukraine will decrease;
- sector «Services provided by the gas supply subsector» – gas supply will stop;
- sector «Services provided by the information sector» – the facility's provision of basic services will cease or be disrupted;
- sector «Thermal energy and hot water supply services» – supply of thermal energy and/or hot water will be interrupted (during the heating season);
- sector «Centralized water supply services» – centralized water supply is stopped;
- sector «Centralized drainage services» – centralized water drainage and wastewater treatment have been discontinued;
- sector «Household waste management services» – collection, storage, safe processing (disposal) of household waste has been stopped;
- sector «Services provided by the air transport subsector» – suspension of air traffic for the time of restoration of the regular mode of operation;
- sector «Services provided by the road transport subsector» – blocking (termination) of traffic on international and national roads;
- sector «Services provided by the railway transport subsector» – suspension of railway traffic on main railway lines;
- sector «Services provided by the sea and river transport sub-sector» – termination of maritime services in seaports;
- sector «Services provided by the postal subsector» – the provision of postal services has been discontinued;
- sector «Services provided by the financial sector» – will lead to non-provision of basic financial services by the facility, instability of the banking system;

- sector «Services provided by the sector of the food industry and agro-industrial complex, the sector of health care, the sector of industry, the sector of civil protection of the population and territories» – will lead to non-provision of basic services by the facility.

Among the main threats, in order of seriousness of consequences, for critical infrastructure should be mentioned cyber-attacks, terrorist and sabotage acts, military operations. All this leads to the occurrence of accidents at high-risk facilities, as a result, it can lead to emergency situations at the regional, state or global level. We will give examples of such situations.

The conduct of military operations on the territory of Ukraine by the armed forces of the aggressor country does not bypass the nuclear energy facilities (Zaporozhe and Southern Ukrainian nuclear power plants), which poses a serious potential threat to the entire world.

Missile and artillery shelling of Ukraine's energy industry facilities has a negative impact on the safety of critical infrastructure facilities. In particular, significant damage was caused by shelling the energy system:

- hydroelectric power station – Dnipro, Kremenchug, Kyiv, Kakhovka;
- thermal power plants – Kyiv, Trypil, Kharkiv, Starobeshiv, Slovyan, Myroniv, Luhansk, Kurakhiv, Zuiv, Zmiiv, Zaporizhzhya, Vugleghir.

Infrastructure objects for ensuring the vital activities of the population, power grids, objects for generating and transmitting electricity, water supply, heat and gas networks, telephone lines, etc. constantly exposed to shelling throughout the territory of Ukraine. This is particularly acute in Zaporizhzhya, Kherson, and Mykolaiv regions, occupied and de-occupied areas, and territories where military operations are being conducted.

Significant damage (partial destruction or liquidation) due to the conduct of military operations was caused to port facilities, transport highways, bridges, crossings, industrial facilities, oil pipelines and storage facilities; gas pipelines, etc. objects of critical infrastructure throughout the territory of our state.

The government additionally allocates funds from the reserve fund of the state budget for financial support of damaged critical infrastructure objects from hostilities, sabotage, terrorist acts caused by military aggression. For example, the resolution of the Cabinet of Ministers of Ukraine "On Amendments to the Procedure for the Execution of Powers by the State Treasury Service in a Special Mode in the Conditions of Martial Law", the Resolution of the Cabinet of Ministers of Ukraine "Some Issues of Defense and Public Procurement of Goods, Works and Services in the Conditions of Martial Law", the order of the Cabinet of Ministers of Ukraine "On the allocation of funds from the reserve fund of the state budget for financial support of the utility company "Oblvodokanal" of the Zaporizhzhia Regional Council", resolution of the Cabinet of Ministers of Ukraine "Some issues of receipt, distribution, use and accounting of humanitarian aid to meet the needs of the energy sector in the conditions of martial law", etc. However, such a number of neutralized and damaged objects of the national network of critical infrastructure of Ukraine requires international intervention and significant financial rehabilitation. Accordingly, the work of the legislative branch of government continues today to regulate the legal space in this matter.

Legislation on issues of state regional policy regarding the restoration of critical infrastructure facilities during martial law is regulated by the laws of Ukraine: "On Amendments to Some Legislative Acts of Ukraine Regarding the Basics of State Regional Policy and the Policy of Reconstruction of Regions and Territories", "On Basics of Internal and Foreign Policy", "On Local State Administrations", "On Local Self-Government in Ukraine", "On regulation of urban planning activities", "On cross-border cooperation", "On state forecasting and development of economic and social development programs of Ukraine", "On state target programs", "On the General scheme of planning the territory of Ukraine", "On making changes to some legislative acts of Ukraine regarding the specifics of the financial sector in connection with the introduction of martial law in Ukraine" and other regulatory and legal documents. Such steps of the state policy are aimed at the efficiency and acceleration of the work of specific objects of critical infrastructure throughout the territory of our country.

In order to strengthen the system of protection of critical infrastructure, it is also necessary to prescribe in the legislation the possibility of applying state coercion measures for violations (both intentional and unintentional) of security requirements in relation to critical infrastructure objects, as well as disregarding the legal requirements of the controlling entities (depending on the circumstances – of a disciplinary, administrative and criminal nature) regarding responsible officials as individuals. In relation to legal entities, the possibility of implementing a system of financial sanctions or certain restrictions in specialized economic activities should be considered (since its conduct in conditions of insufficient security of the critical infrastructure object can lead to serious consequences and pose a direct threat to national security) [5, c. 71-72].

The state of security of critical infrastructure facilities is a component of the country's national security. In the conditions of the introduction of martial law in Ukraine, ensuring the reliable, stable and uninterrupted functioning of critical infrastructure facilities is of primary importance. Today, there are acute problems of financial and logistical support of those critical infrastructure objects that suffered as a result of military operations. In a short time, the regulatory and legal framework for the creation of effective conditions for the operation and reconstruction of critical infrastructure in the conditions of martial law was finalized. This issue is basic in the process of creating productive mechanisms in the sphere of ensuring the national security interests of our state.