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**NON-MILITARY EMERGENCIES AS THE CIRCUMSTANCES OF
THE CRIMINAL OFFENSE
НАДЗВИЧАЙНІ СИТУАЦІЇ НЕВІЙСЬКОВОГО ХАРАКТЕРУ ЯК
ОБСТАНОВКА ВЧИНЕННЯ КРИМІНАЛЬНОГО
ПРАВОПОРУШЕННЯ**

***Summary.** The concept of "emergency" is studied in the theoretical and legal aspects, the factors of an emergency are identified and its classification has been provided. At the same time, attention is focused on the fact that a state of emergency is associated exclusively with an emergency situation. The essential difference between these terms is that the time limits of a state of emergency and an emergency situation may not coincide. The state of emergency may continue even after the emergency has occurred or ceased. It is argued that any criminal offense committed in an emergency situation is characterized by a higher degree of public danger compared to identical criminal offenses committed under normal circumstances. The article analyzes the characteristics of the emergency situation in which state and local authorities, enterprises, institutions and organizations, the population,*

and the person who uses these destabilizing conditions to commit a socially dangerous act are located. It has been established that the less a person depended on the specific situation in which he or she acted, the less forced his or her act was, and therefore the greater the degree of his or her guilt and responsibility. Based on the example of extreme necessity, it has been found that if the situation excludes the possibility of choosing a variant of lawful behavior, it excludes criminal liability. The criminal legal significance of the circumstances of a criminal offense committed under extreme necessity, which may arise in an emergency situation, is manifested in two ways. First, it causes the emergence of a state of danger. Secondly, the criminal legal significance of

the extreme necessity situation is related to one of the essential conditions for the legality of causing harm in this state, namely, the conditionality of the methods and means used to avert the danger, which are determined by these circumstances.

Key words: criminal law, circumstances of a criminal offense, state of emergency, emergency situation, circumstances affecting the qualification of a criminal offense.

Анотація. У теоретико-правовому аспекті досліджено поняття «надзвичайна ситуація», зазначені фактори надзвичайної ситуації та наведено її класифікації. Водночас акцентується увага на тому, що надзвичайний стан пов'язаний виключно з надзвичайною ситуацією. Суттєва відмінність цих термінів в тому, що часові межі надзвичайного стану та надзвичайної ситуації можуть не співпадати. Надзвичайний стан може тривати і після того як трапилася чи припинилася надзвичайна ситуація. Аргументовано, що будь-яке кримінальне правопорушення, вчинюване в умовах надзвичайної ситуації, характеризується більш високим ступенем суспільної небезпеки

порівняно з тотожними кримінальними правопорушеннями вчинюваними за звичайних умов. У статті проаналізовано особливості надзвичайної обстановки в якій знаходяться органи державної влади і місцевого самоврядування, підприємства, установи і організації, населення і сама особа, що використовує ці дестабілізуючі умови для вчинення суспільно небезпечного діяння. Встановлено, що чим менше особа залежала від конкретної обстановки, в якій вона діяла, тим менш вимушеним був її вчинок, а отже й більшим є ступінь її вини і відповідальності. З'ясовано, на прикладі крайньої необхідності, якщо обстановка виключає можливість вибору варіанту правомірної поведінки, то вона виключає кримінальну відповідальність. Кримінально – правове значення обстановки вчинення кримінального правопорушення при крайній необхідності, стан якої може виникнути в умовах надзвичайної ситуації, проявляється подвійним чином. По-перше, вона обумовлює виникнення стану небезпеки. По-друге, кримінально-правове значення обстановки при крайній необхідності пов'язане з однією із істотних умов правомірності заподіяння шкоди в цьому стані, а саме: обумовленістю застосовуваних для відвернення небезпеки методів і засобів обумовлених даними обставинами.

Ключові слова: *кримінальне право, обстановка вчинення кримінального правопорушення, надзвичайний стан, надзвичайна ситуація, обставини, що впливають на кваліфікацію кримінального правопорушення.*

Problem statement. The impact of the situation on the social danger of the act committed in its conditions, in terms of the grounds for criminal liability, is characterized by two main circumstances. Initially, this procedure results in a substantial alteration in the act's quality. Secondly, this change can lead in two

opposite directions: either the act becomes a social hazard due to the circumstances of its occurrence, or the occurrence of an act in certain types of circumstances results in the loss of its social hazard.

Analysis of recent research. In the criminal law context, the state of emergency has been studied by such scholars as A. A. Vozniuk [8], Y. L. Kurbanov [9], M. O. Filimonchuk [10] and others.

Task statement. To investigate how committing a criminal offense under emergency circumstances affects the determination of whether there is a basis for criminal liability.

Presentation of the main research material. The commission of a crime with the use of a state of emergency or other extraordinary events in accordance with clause 11, part 1, Article 67 of the Criminal Code of Ukraine [1] is an aggravating circumstance.

A state of emergency is a legal regime established in Ukraine or its constituent territories in connection with man-made or natural disasters of national scale that pose a threat to human life and health.

The idea of declaring a state of emergency is outlined in Article 1 of the Federal Law "On the Legal Regime of the State of Emergency" dated March 16, 2000, No. 1550-III allows for a special legal regime known as a state of emergency which can be temporarily established in Ukraine or specific localities during natural or man-made emergencies that reach or exceed the national level. These emergencies may result in human and material losses, pose a threat to citizens' health and lives, or occur during a violent attempt to seize state power or alter Ukraine's constitutional system. Relevant state bodies are empowered to respond accordingly. Local self-government bodies and the military are under the command of the authorities in accordance with the applicable law. This is necessary to avert threats and ensure the safety and health of citizens, as well as the normal functioning of state and local government bodies and the national economy while protecting the constitutional order. Furthermore, this law allows

for temporary restrictions on exercising constitutional rights when they are threatened, along with human and citizen freedoms, and the rights and legitimate interests of legal entities. The period of validity of these restrictions must be indicated [2].

There is no unity in the understanding of the concept of a state of emergency in the legal literature. In explanatory dictionaries, "emergency" is defined as an urgent, sudden, and serious event or an unforeseen change in circumstances that necessitates immediate action to remedy harm or avert imminent danger to life, health, or property [3, p. 66]. "State" should be defined as 1) a set of circumstances, position, or situation; 2) a set of circumstances, or conditions that create certain relations, situations, or position; 3) a set of conditions and circumstances that create a certain situation, cause certain relationships of people, condition, position, situation [4, p. 643].

The most appropriate is to use the term "situation," which should be understood as a set of conditions and factors that arise in a particular territory, which will allow us to distinguish between the terms "state of emergency" and "emergency situation." An emergency situation is characterized by: a factor (an event of a destructive nature); a place - the territory (emergency zone) and certain conditions - i.e., the circumstances caused by such a situation. Essentially, an emergency is a set of emergency events and conditions that have occurred in a certain area.

It seems that an emergency situation should be understood as a situation in a certain territory that has arisen as a result of a dangerous social, natural, or man-made phenomenon, and which poses a real threat to the vital interests of an individual, society, and the state, or has already caused significant casualties, significant material losses, disruption of human life, damage to the environment, and which requires urgent and special legal, organizational and other measures to eliminate.

An emergency situation can be defined as an exceptional circumstance that was unforeseen by the regular way of life of the population.

We deem this definition of emergency situation acceptable for criminal law given that it not only denotes the origin of the emergency (e.g., social, natural, and human-caused hazardous phenomena) but also highlights the necessity to promptly implement appropriate measures to mitigate its repercussions.

Every emergency situation emerges as a consequence of a specific event that occurs in public life.

An emergency situation is always preceded by some specific circumstances that, in their totality, cause it. For example, a fire, destruction of property, or loss of life in the aggregate form a natural disaster. In turn, a natural disaster is a natural phenomenon that is extraordinary and leads to disruption of the lives of more or less significant groups of people, and destruction of material and other values.

The source (factor) of an emergency is various kinds of disasters. The following types are recognized in science:

natural - the effect of certain natural forces: some are instantaneous, quick (hurricanes, storms, tsunamis, earthquakes), others are long-lasting (drought, forest fires);

environmental - they are based on inadequate, anthropogenic impact on nature, and through it - on humans;

technical - accidents in man-made material systems (explosions, fires, equipment breakdowns);

social - leading to population loss and undesirable changes in the demographic and social structure of society [5, p. 83].

According to Art. 2 of the Civil Protection Code of Ukraine, an emergency situation is a situation on a separate territory or a business entity on it or a water body characterized by a violation of normal living conditions of the

population caused by an accident, catastrophe, fire, epidemic, natural disaster, use of destructive agents, epizootic, epiphysis, or other dangerous event that has led (or may lead) to a threat to the life or health of the population, a large number of victims and deaths, significant material damage, as well as the impossibility of carrying out economic activity on such territory or object, or of the population living there [6].

Thus, an emergency situation as a special (extraordinary) type of social relations is formed as a result of extraordinary circumstances, which in turn entails the occurrence of conditions used by a person in committing a criminal offense.

The nature of such person's actions will be determined by the objective situation in which he/she is at the time of committing the criminal offense. That is, the main content of an emergency situation is the situation in which state and local authorities, enterprises, institutions and organizations, the population, and the person who uses these destabilizing conditions to commit a socially dangerous act are located. The State Classifier of Emergencies No. 019:2010 [7] defines emergencies:

1) technogenic emergencies, which include transport accidents (catastrophes), fires, explosions, accidents with release (threat of release) of hazardous chemical, radioactive and biologically dangerous substances, sudden destruction of structures; accidents in power systems, life support systems, telecommunications systems, at treatment facilities, in the systems of the oil and gas industrial complex, hydrodynamic accidents, etc;

2) natural emergencies, which include dangerous geophysical, geological, meteorological, or hydrological phenomena, soil or subsoil degradation, fires in natural ecological systems, changes in the state of the air basin, infectious diseases, and mass poisoning of people, infectious diseases of domestic animals, mass death of wild animals, damage to agricultural plants by diseases and pests, etc;

3) social emergencies, which include emergencies related to illegal actions of terrorist and unconstitutional nature, or related to the disappearance (theft) of weapons and dangerous substances, accidents with people, etc;

4) military emergencies, which include emergencies related to the consequences of the use of conventional weapons or weapons of mass destruction, during which secondary factors of damage to the population arise, as defined by separate regulatory documents.

It should be noted that the Criminal Code in clause 11, part 1 of Article 67 also refers to other emergency cases, which are understood as those that can lead to the introduction of a state of emergency, but are characterized by a level lower than the national (regional or local) one (for example, a major fire, an accident at an enterprise, a natural disaster) (O.O. Dudorov, E.O. Pismenskyi); fire, flood, earthquake, major accident, large-scale terrorist act, if the state of emergency was not declared in the relevant area or the crime was committed before such declaration (S.D. Shapchenko); events that are usually less large-scale and global in nature than a state of war or a state of emergency (for example, a fire in a separate apartment building, a major accident or strike at an enterprise, etc. I. Tiutiugin); natural disasters (flood, earthquake, hurricane, etc.), major man-made accidents, large-scale terrorist attack, etc. that did not reach the national level (V. A. Klymenko, N. V. Shepeleva); infectious diseases and death of animals (epizootics), infectious diseases of plants (epiphytotics) in large areas, crop failure on a significant number of lands, which can lead to famine, etc. (I. A. Vartyletska); natural disasters, such as earthquake, flood, fire, etc.

The analysis of these provisions gives grounds to assert that another emergency event means nothing more than an emergency situation - the situation on a separate territory or an economic entity on it or a body of water, characterized by a violation of normal living conditions of the population, caused by a catastrophe, accident, fire, natural disaster, epidemic, epizootic, epiphytotic, use of destructive agents or other dangerous event that has led (may

lead) to a threat to the life or health of the population, a large number of dead and injured, significant material damage, as well as the inability of the population to live in such a territory or facility, or to conduct economic activity there. As noted by A. A. Vozniuk, it should be taken into account that the state of emergency is associated exclusively with an emergency situation. The essential difference between these terms is that the time limits of the state of emergency and the emergency situation may not coincide. The state of emergency may continue even after the emergency has occurred or ceased [8, p. 311-312].

As stated above, in accordance with clause 11 of part 1 of Article 67 of the Criminal Code of Ukraine, the commission of any crime using the conditions of a state of emergency or other emergency situations may be taken into account by the court as an aggravating circumstance. If any of the aggravating circumstances is provided for in an article or part of an article of the Special Part of the Criminal Code of Ukraine as a qualifying or especially qualifying feature of a criminal offense or is a crime-forming feature, the court cannot take it into account again when imposing a sentence as an aggravating circumstance.

The damage caused by the criminal actions of the perpetrator in an emergency situation increases significantly. In addition, in such an environment, the commission of a criminal offense is greatly facilitated, since the attention of state authorities, local governments, and the population is directed to solving other problems. The perpetrator is aware of all these circumstances and takes advantage of them.

Natural disasters disorganize the existing legal regime. They temporarily, and sometimes for a long period, paralyze the activities of law enforcement agencies, significantly complicating the maintenance of proper order and lawfulness. As a result, in such conditions, the level of targeted preventive work by both law enforcement agencies and organizations that exercise public control in the respective territories is sharply reduced.

The increased public danger of criminal offenses committed in an emergency situation is associated with the availability of objects of unlawful encroachment, which is due to circumstances such as damage to buildings and structures, places of storage of material assets, reduction of the protective properties of buildings and structures (damage to doors, locks, failure of alarms, lack of security, etc.), which undoubtedly leads to an increase in mercenary, and mercenary and violent criminal offenses.

Under these conditions, the population and the authorities naturally focus their attention on combating the disaster caused by these circumstances, saving people and material assets. Therefore, the perpetrator's use of a disaster and state of emergency facilitates the commission of criminal offenses and, as a result, increases their social danger. Any criminal offense committed under such conditions is characterized by a higher degree of public danger compared to the same criminal offense committed under normal circumstances.

A person who has committed a criminal offense uses conditions that significantly facilitate the commission of a criminal offense due to the fact that a significant part of the population in the disaster area typically leaves it and is evacuated.

Negative processes, as noted by Y. L. Kurbanov, [9] caused by natural, technogenic and social disasters, have a sharply negative impact on the state, level and structure of crime.

A serious reason for the increase in crime during emergencies is the growing level of anxiety in society. This can be explained, on the one hand, by the unsatisfied basic needs and interests, and, on the other hand, by the uncertainty of the immediate prospects of existence for most inhabitants of the disaster areas. The destruction caused by the emergency is associated with both the loss of housing and property and the loss of a source of income. The acute hardship that citizens face after a disaster is not perceived as a temporary condition to be "endured", but rather as a way of life that awaits them shortly.

An emergency situation, as a rule, can provoke an increase in aggression in society, cause the spread of violent attacks, introduce elements of disorganization in all spheres of social life of territorial entities within the disaster zone, paralyze the social infrastructure, which facilitates the realization of criminal intentions [10, p. 203-204].

From the standpoint of individualizing liability, it is worth paying attention to cases in which the current situation distorts the subject's perception of events, does not allow for proper control of his actions, and thus contributes to the occurrence of a criminal result. This is typical of negligence-based criminal offenses, where it is essential to determine whether the person had the chance to anticipate the occurrence of criminal consequences in the current circumstances. Unusual situations can disorient an individual, resulting in a loss of control over their actions and potentially leading to a criminal offense. The less an individual relied on the particular circumstances in which they acted, the less compelled their action was. Thus, their level of culpability and accountability is subsequently higher [5, p. 87].

The main cause of criminal offenses committed during emergencies is exceeding the limits of extreme necessity. According to Article 39 of the Criminal Code of Ukraine, extreme necessity is the lawful infliction of damage to the interests of law enforcement in order to eliminate an imminent danger, if it could not be eliminated by other means in a given situation and the damage caused is less than the damage averted. The right to cause harm during a state of emergency is an auxiliary right. It may only be exercised by a citizen if inflicting harm is the necessary, extreme, and final option to eliminate the danger in a particular situation. The state of emergency arises when there is a relevant ground consisting of two elements:

- danger that threatens the interests of a person, society, or the state protected by law

- the impossibility of eliminating this danger by other means, except for harming the interests of entities not involved in the creation of such a danger.

The first sign of an emergency is the danger that may arise from various sources: negligent handling of weapons, ammunition, explosives, radioactive, flammable, corrosive substances, and other objects that have the intrinsic objective ability to injure a person, cause death or bodily harm, destroy, damage or destroy property or other valuables. The danger may be caused by natural forces (floods, landslides, landslides, rainstorms, etc.), animal attacks, etc.

The danger must threaten the individual, the rights of the individual protected by law, or the public or state interests protected by law, and must be present, i.e., directly threaten the interests protected by law. If such a danger has not yet arisen or, on the contrary, has already been realized in the damage caused, this excludes the state of extreme necessity. The initial moment of danger is the stage when there is already a threat of direct harm (for example, an immediate threat of flooding, accident, death, etc.). The final moment of the existence of such a danger is determined either by the cessation of this threat or its realization (for example, a fire has destroyed property or is extinguished, the flood has subsided, the landslide has stopped, the accident has been averted, etc.

If a person, causing harm, mistakenly believes that the danger exists, the criminal law qualification is carried out according to the rules of criminal law qualification of an act committed in the presence of imaginary extreme necessity [12, p. 593].

The second sign of the ground of extreme necessity is the absence of a real opportunity to eliminate the threatening danger by other means than causing harm to the interests protected by law.

This means that in the current situation, a person is compelled to cause harm because no other options exist to eliminate the immediate danger. In other words, causing harm to the interests of law enforcement should be the only possible means of protection against such a danger. According to Article 39,

Part 1 of the Criminal Code of Ukraine, it is not a criminal offense to cause damage to law enforcement interests in a state of extreme necessity, i.e. to eliminate a danger that directly threatens a person or the legally protected rights of that person or other persons, as well as the interests of the state or the public interest, if this danger could not be eliminated by other means in the given situation and the limits of extreme necessity have not been exceeded. Therefore, if a person has multiple options for eliminating the danger, including those that do not pose a risk of causing harm, it indicates that they are not in a state of extreme necessity. Consequently, any harm resulting from their actions cannot be deemed legal. However, this principle only applies in situations where the individual had knowledge of different methods to mitigate the danger but deliberately avoided the ones that did not jeopardize the interests protected by law [11, p. 41].

In addition, when qualifying an act committed in case of exceeding the limits of extreme necessity, it should be established that the person, being in a state of extreme necessity, violated the requirements for its proportionality, namely, to prove that the intentionally caused damage to the law enforcement interests is more significant than the prevented damage. At the same time, it should be borne in mind that according to Part 3 of Article 39 of the Criminal Code of Ukraine, a person is not criminally liable for exceeding the limits of extreme necessity if, as a result of strong emotional distress caused by the threatened danger, he or she could not assess the proportionality of the damage caused to this danger [12, p. 595].

The situation manifests its criminal law significance in case of extreme necessity in two ways. First, it determines the emergence of a state of danger. In this regard, the law states that the state of extreme necessity arises from an objectively existing danger that threatens to harm the interests of the protected persons, thus emphasizing the existence of a certain dangerous situation. In addition, scientific studies analyzing the nature of the dangerous situation have

established that its sources are diverse. Secondly, the criminal law significance of the situation of extreme necessity is associated with one of the essential conditions for the legality of causing harm in this state, namely, the conditionality of the methods and means used to avert the danger due to these circumstances. I consider it appropriate to note that it seems unlikely that it is theoretically possible to give an accurate description in advance of the measures used in case of emergency to eliminate the danger. In setting out the normative provisions relating to the conditions for the legality of causing harm in this case, the legislator used the formulation of evaluative content - "if this danger in this situation could not be eliminated by other means".

This indicates that the condition of legality under consideration is characterized by a high level of relativity, so its correct criminal law assessment can be made on the basis of the totality of all circumstances of the harm caused, among which the situation of the event takes the leading place.

Conclusion. An emergency situation is a special (extraordinary) type of social relations formed as a result of extraordinary circumstances, which in turn lead to the occurrence of conditions used by a person in committing a criminal offense.

The actions of an individual in such a situation are generally determined by the objective circumstances present at the time of the offense. In other words, the critical aspect of an emergency situation is the situation itself. The categorization of a criminal offense as an objective entity can be analyzed by its objective content and subjective meaning. The objective content of the offense reflects its characteristics (properties) and ability to influence the behavior of the subject in general. This effect is then translated into a specific motive for behavior that is reflected in the subject's mindset.

A situation that facilitates the commission of a criminal offense may give rise to the intention to commit a criminal offense immediately in a person with persistent anti-social attitudes. In other cases, the same situation may not affect

the person's behavior or even give rise to an intention to take socially beneficial actions aimed at changing the situation.

In the process of committing a criminal offense, the situation may be a reason that determines the commission of a criminal offense, or a condition that only facilitates the commission of a criminal offense.

If the situation excludes the possibility of choosing the option of lawful behavior, it excludes criminal liability, for example, in case of extreme necessity. In cases where the situation does not exclude the choice of lawful behavior, but due to its complexity, the subject chooses the option of unlawful behavior, criminal liability is not excluded, and such a situation may be taken into account as a circumstance mitigating the punishment.

The situation of a state of emergency, which is a condition that facilitates the commission of a criminal offense, facilitates the realization of a criminal intent, is understood by the subject, and is deliberately used in the commission of a criminal offense, should be taken into account as an aggravating circumstance.

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