

## STATE OF EMERGENCY AS A KIND OF SPECIAL CONDITIONS: THE INTERNATIONAL PRACTICE, THE BASICS OF PREVENTING AND COMBATING

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**Abstract:** This paper examines the theoretical and practical aspects of applying the legal institution of state of emergency in special conditions. This legal institution is complex, so its research is rather complex as well, yet it is of great scientific interest. The focus of the authors aims to study the preventive mechanisms of that institution, understudied in the contemporary legal literature. The authors analyzed the regulations of a number of states on special conditions and studied foreign experts' opinions regarding the procedure and mechanisms of the functioning of the authorities during mass rioting caused by various factors. The main problematic issues related to the prevention of such social manifestations were identified as well as the basic laws of formation and development of the causes of mass rioting. On this basis, a number of recommendations were offered to improve the work of law enforcement agencies on their prevention and suppression.

**Keywords:** Special conditions, state of emergency, prevention of criminal offenses, riots.

### INTRODUCTION

Legal regulation is a special instrument of law, the true purpose of which is to create optimal conditions for pre-emptive action in the society of economic, political, social and cultural factors, the assertion of justice, the rule of law.

The state in certain periods of its existence, purposefully influencing social relations through special legal tools and techniques, which aim to stabilize and put them in order, can be faced with emergency situations of natural, technogenic and social nature. Creating a threat to the security of individuals, society and the state, an emergency requires the latter to settle it via some other normative legal influence than that operating under normal conditions (Kuntuev 2014).

Such regulatory and legal influence is applied in conditions that predetermine possible complication of operative conditions, so-called special conditions. Special conditions mean a situation of increased danger to human lives and keeping material and cultural things (Martyshov 1972). This situation is caused by natural, biological, technological and social phenomena, while creating a potential threat of disruption of public order and public security, as well as complicating the activities of the state authorities to ensure the protection of public order and public safety.

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There are difficulties in prevention, identification and investigation of criminal offenses, carrying out investigative work, etc. All this together creates a threat to the security of individuals, society and the state. Therefore, the state introduces enhanced measures to protect public order and public safety in the whole or part of the territory suffering from the factors that caused the appearance of an emergency (Domrin 1992).

The problems of crime combating, in particular, preventing the commission of criminal offenses in special conditions, are more actualizing. This fact causes the need for a special study of the corresponding social relations emerging in such situations.

### **METHODOLOGY**

The study of sentencing institution requires an integrated approach, which explains the diversity of research methods used in writing this paper.

The specifics of applying legal and organizational mechanisms of state of emergency in special conditions on the level of legal research can only be successfully studied based on strictly scientific methodological approach that allows through different means and methods of cognition to identify the specificity and nature of the interaction between different elements within the legal institution under consideration, combining the elements of the constitutional (state) criminal and/or administrative law, to justify their causality and dependence. At the same time, one of these methods is dominant, because it allows more fully considering the object of the study. Scientific knowledge of intra-relationships involves the use of structural and systematic method of study which is analyzing the nature and significance of the links between various levels of the system elements: between the general rules of the constitutional law; between the rules of the constitutional law and the rules of criminal and administrative law; between the elements of the General Part and the Special Part of the criminal and administrative law. Structural and systemic methodological approach (method) to study inter-branch links in the system of law and intra-links in the law allows discovering the essence and significance of the research object, and using the results to solve one of the most important scientific problems of a complex legal institution – state of emergency as an orderly process of interaction and unity of the elements that form this institution. The second most important research method used in the present study is historical; it has helped identify the succession of positions of scholars from different times and their differences, as well as the formulation of the basic theoretical positions on the issue.

In addition to these, by means of comparative, logical method, the transition from general to specific, this paper explores the roots of the current law-making and law implementation basics in connection with state of emergency.

## RESULTS

In the course of a shift to special conditions in the emergency regulation of social relations there is a change of the legal status of entities operating in a certain area, the system of controls and the establishment of measures aimed at ensuring the security of individuals, society and the state. The legal instrument of such regulation is state of emergency (Solovyov 2001).

In legal literature, a variety of terms can be used for describing the special conditions mode – “state of siege”, “state of defense”, “state of threat”, etc. The differences between these terms contained in national legislation are not so important. All these states are covered by the term “state of emergency” in which the life of the nation is threatened. It allows states to temporarily restrict individual rights and freedoms for the interests of national security and public order (Van Hoof 1991). Usually this means a temporary abandonment of the guarantees of inviolability of person and home, strengthening the administrative and criminal liability while limiting the procedural guarantees thus legalizing simplified (or accelerated) court proceedings (Fawcett 1967).

Therefore, it can be concluded that there is a special kind of legal regulation, which is very different from that operates under normal conditions. In turn, the mechanism of action of state of emergency is realized through the special set of legal tools, techniques, ways of exercising power, often designated as legal regimes, the contents of which can be defined through emergency regulatory concepts.

Thus, state of emergency is a legal instrument to ensure the establishment of a mechanism for implementation of incentives, guarantees, prohibitions, restrictions, as well as their competent execution, use of coercive measures against violators and to bring perpetrators to justice.

Given the above, it can be determined that state of emergency is the set of special legal tools and methods used in special conditions, that is, in the circumstances, which represent a direct threat to the life and safety of citizens, or to the constitutional order, the elimination of which is impossible without the use of emergency measures against such circumstances for the protection of the rights and freedoms of man and citizen, the constitutional order of the state.

## DISCUSSION

Almost all modern states somehow regulate in their legislation the grounds and procedures for the declaring of special conditions. At the same time the legislations of many countries in the world – Turkey, Peru, Egypt, Argentina, Colombia, Portugal, Poland, Romania, Belgium, the USA, Netherlands, Zimbabwe, France, Bulgaria, Nicaragua, Vietnam, Jordan and others – admit the possibility of declaring a state of emergency as a type of special conditions not only in the entire state, but in any particular part of it (Krasinskiy 2006). Here the question arises, as according

to clause 4 (1) of the Covenant on Civil and Political Rights of 1966, clause 15 (1) of the European Convention on Human Rights 1950 and clause 30 of the European Social Charter of 1961, the reason for declaring a state of emergency in the states participating in these international agreements may only be “a threat to the life of the nation” rather than any territory inhabited by even a significant part of the society (Council for Foreign and Defense Policy, 1992). Therefore, some experts have expressed the view that state of emergency must be nationwide. Otherwise, it will not reflect the meaning of clause 4 (1) of the Covenant on Civil and Political Rights (Daes 1983).

Kazakhstan belongs to the category of countries that legally permit the declaration of special conditions in the territory of the state as a whole and in its individual administrative units. For example, when in December 2011 there were riots in Zhanaozen, Mangystau region, the President of Kazakhstan Nursultan Nazarbayev signed a decree on state of emergency in the city since December 17, 2011 till January 5, 2012 (Protests in Mangistau Region, 2011).

Strikes of over 700 workers initially took place in the territory of Karazhanbas deposit near Aktau on May 17, 2011. On May 26, some 1.5 thousand oil sector’s workers of oil production branch “Ozenmunaigaz” in Zhanaozen district joined it. However, the Government of Kazakhstan did not respond to the demands of the striking oil workers over 7 months (Protests in Mangistau Region, 2011).

The further chronicle is as follows. On December 16, 2011, during the celebration of the 20th anniversary of Kazakhstan’s independence, angry protesters smashed a police bus, overturned a car and set it on fire. Some of them attacked with sticks and pipes the children attending a parade and the policemen. In addition, during the riots protesting groups set buildings on fire, smashed and looted shops and vehicles. According to some media reports, the riots involved some 1 to 3 thousand people (Protests in Mangistau Region, 2011).

During the press conference on December 17, 2011, the representatives of the General Prosecutor of Kazakhstan showed a video in which it was clear that the conflict was first started by people wearing “KazMunayGas” work overalls and some unknown young people who were closely in contact with the protesters (Protests in Mangistau Region, 2011).

The study of a number of laws and by-laws of different countries in the sphere of regulation of special conditions shows that, given the detailed legal regulation on the grounds and procedure for the declaration of states of emergency many of them paid very little attention to an important area of state activity, namely the prevention of their causes.

As an example, the riots on Manezhnaya Square in Moscow on December 11, 2010 may be referred to. They gathered about 50 thousand people at a meeting dedicated to the memory of the soccer fans killed in the fight between a group of

people from the North Caucasus and fans. In the course of investigations, the suspect and four accomplices detained were then released. Such actions of law enforcement agencies were publically perceived as the concealment of the suspects, which further provoked protests and street clashes of natives with immigrants from the Caucasian regions. The officials of the Ministry of internal affairs said that the organization of the meeting on Manezhnaya was attended by activists of the Movement Against Illegal Immigration (MAII) – a xenophobic ethno-nationalist association to combat illegal immigration in Russia (recognized by the court as extremist and banned in April 2011) (Rioting at Manezhnaya Square (2010)).

By analyzing these materials, we can come to a conclusion on systemic weaknesses of law enforcement for the prevention of mass riots and other protest actions creating the conditions for their emergence and subsequent declaration of special conditions, up to state of emergency.

In this sense, of great interest are the proposals contained in the doctoral thesis of a Russian scholar Ukhov, who offered a special prophylactic, intermediate administrative and legal regime – a softer “special situation” that precedes the declaration of a state of emergency (Ukhov 2007).

With regard to the conditions of the mass rioting analyzed, most frequently being the grounds for subsequent declaration of a state of emergency, it is possible to outline the scope of such “soft” limits of the rights and freedoms of citizens. For example, given the fact that the main preparatory actions by their organizers are carried out through social networks and groups, it will be legally appropriate to block them by relevant law enforcement agencies for a short or long term. An additional deterrent effect will be ensured by simultaneous wiretaps of the main organizers and coordinators of the protests.

Certain preventive role would be played by the administrative and legal method of early official warning of the leaders of public organizations, suspected of cultivating protest mood. Such a warning could be imposed by public prosecutors.

It is possible that if during the riots on Manezhnaya Square in Moscow the institution of official warning of the above MAII leaders on the inadmissibility of inflammatory action was applied, the scale of the protests would have been much less.

One of the conditions of efficient prevention of mass rioting is a comprehensive approach to solving this problem implying the integrity of general social, criminological, protective and criminal legal warnings, *i.e.*, the effect of all the warning systems. The implementation of this approach in practice is hampered by the fact that it is difficult to define the boundaries of these types of prophylactics. The complex social and legal nature of mass riots completely eliminates the possibility of a clear division of their prevention into isolated areas of activity.

In the system of methods and means to fight mass riots, an important place is occupied by the use of appropriate criminal and administrative and legal institutions. Their timely use can reduce the number of potential parties of those incidents by keeping away from participating the persons, capable because of their criminal attitudes of violating the criminal law prohibitions. Ultimately, this leads to a decrease in the severity of the consequences of mass rioting, in some cases preventing them (The Criminal Code of the Republic of Kazakhstan No. 226-V).

One of the objectives of the current criminal law is to prevent criminal offenses (warning function) (Part 1, clause 2 of the Criminal Code of the RK) (Aripov 2008). It seeks to prevent the commission of further criminal offenses by the perpetrators of such offenses, by subjecting them to penalties and other enforcement measures (private prevention) and to prevent the commission of criminal offenses by citizens under the influence of criminal prohibitions and threats of punishment (general prevention). In this regard, the main content of the prevention of criminal offenses with the use of the criminal law, according to some authors, is deterrence with punishment. Moreover, they rightly believe that the criminal law functions are elimination or deprivation of physical abilities to commit a criminal offense; correction via punishment; preventing more serious crimes by establishing liability for acts that create the conditions for their committing; eliminating some of the negative factors (mainly on juveniles); development of public participation in the fight against crime; encouraging persons with antisocial attitudes to voluntary renunciation of crime committing and active repentance; facilitating the implementation of the principle of inevitability of punishment (Ustinov 1983).

Preventive opportunities of the mentioned functions are implemented either via legislative definition of the system of criminal and administrative and legal tools, or via the law enforcement practice. The results of the legal prevention here are elimination, neutralization, localization of relevant criminogenic factors contributing to the commission of criminal offenses.

If an opportunity of preventing mass rioting is missed, uncontrolled developments may be avoided using special methods of restraint. As it is known, everywhere in the world the forceful methods prevail – police actions, special forces, and in some cases – army. This has the effect, but is almost always accompanied by a large number of victims, sometimes dead. Such an outcome often leads to an increase in the scale of mass rioting by involving a growing number of local people dissatisfied by force methods of the authorities. In turn, this requires groups of law enforcers to grow causing the confrontation to aggravate.

So, during the above-mentioned events in France in autumn 2005, the force methods to fight the riot provoked their expansion into many areas of the country, more than 5.5 thousand cars were burned, police detained about 1,300 people suspected of involvement in rioting. The scale of rioting forced the French

government to apply the law of 1955 on state of emergency, which allows local authorities to impose curfews (this law was passed during the suppression of the riot in Algeria – a former French colony) (Mass Rioting in France (2005)).

Meanwhile, along with the use of force methods (and sometimes instead of them), a gentler tactics of distraction of protest groups to other purposes may be applied. The experience shows that in many cases the riots spontaneously engage passers-by, onlookers and people like them. Then, getting into the thick of things, obeying the herd instinct, they join the active participants and become a tool in their hands.

An example is the riots that took place in New York in July 1977, when there was a large-scale failure in the power system of the city. Spontaneously arising from random persons, the crowd attacked the shops and houses of rich residents. To divert the attention of the police, looters set fire to buildings – 1,077 arsons were registered that injured more than a hundred firefighters. More than 1,500 stores were plundered; the total damage caused by the riots was estimated up to 1 billion US dollars' worth. The mayor declared a state of emergency; all policemen were ordered to return from holidays. At night, some 3,800 people were arrested by the police, but it was a drop in the ocean: looting involved more than 100 thousand people. In addition, detainees had to be released: the courts could not cope with the work, and the prisons were overfilled (Night of Terror, 1977).

It is the category of casual passers-by and onlookers which the main effort in stopping the riots should focus on. The essence of the gentle technique is switching attention of the crowd to a totally different thing to break it up into small groups to disperse it and thereby reduce its damaging effect. For example, during the formation of the acute phase of the conflict some people in different parts of the crowd begin to speak loudly that in the next street or block there is an extraordinary thing occurring (someone attacked the protesters, free distribution of alcoholic drinks or food, etc.).

Accordingly, the use of these techniques requires specially psychologically trained people who need to quickly get into the center of events and consistently work to disperse the crowd of protesters.

Thus, even a brief analysis of the circumstances which contribute to the formation and development of special conditions causing a state of emergency to be declared, shows a variety of ways to prevent or repress them. Law enforcement bodies should take them into service, and more use them in practice.

## **CONCLUSION**

The studies covered within this paper show that the prophylactic measures to avoid or prevent riots as one of the manifestations of special conditions, involving the institution of state of emergency are unfairly neglected. Largely because of that, law enforcement agencies focus on strong-arm methods, although there are alternative ways to save much of the potential of criminal repression.

This study allows developing a series of recommendations for law enforcement agencies to prevent and combat the circumstances, which may cause the need for a state of emergency:

1. The legislative activity of the state to establish criminal and administrative liability for organization and active participation in mass riots. Law as a regulator of social behavior today should be one of the main sources of stability, order and peace in society. In order to improve the efficiency of riots and related crimes it is important not only to eliminate gaps in legislation, but also to find ways for better use of its existing rules.
2. Wide propaganda and explanation to the population of legal provisions on the liability for organizing and participating in mass rioting and the law enforcement practice. Meantime, both punitive aspects of law and its opportunities to stimulate socially useful behavior should be highlighted.
3. Identifying and bringing to criminal and administrative liability the organizers, instigators, accomplices of riots.
4. Open court criminal proceedings on crimes committed during the riots. Court verdicts of guilt (or innocence) and the entire legal practice in general are one of the most effective means to form in citizens the idea of the inevitability of legal responsibility for committed offense.
5. Preventive work among young people, appropriate applying liability standards for adults for the involvement of minors in criminal activity.

### *References*

- Aripov, E.A. (2008). Preduprezhdenie massovykh besporyadkov [Prevention of Mass Rioting]. Russian investigator, 8, 21 p.
- Besporyadki na Manezhnoi ploshchadi (2010) [Rioting at Manezhnaya Square (2010)]. (n.d.). Retrieved February 6, 2017, from [www.ru.wikipedia.org/wiki/%D0%91%D0%B5%D1%81%D0%BF%D0%BE%D1%80%D1%8F%D0%B4%D0%BA%D0%B8\\_%D0%BD%D0%B0\\_%D0%9C%D0%B0%D0%BD%D0%B5%D0%B6%D0%BD%D0%BE%D0%B9\\_%D0%BF%D0%BB%D0%BE%D1%89%D0%B0%D0%B4%D0%B8\\_\(2010\)](http://www.ru.wikipedia.org/wiki/%D0%91%D0%B5%D1%81%D0%BF%D0%BE%D1%80%D1%8F%D0%B4%D0%BA%D0%B8_%D0%BD%D0%B0_%D0%9C%D0%B0%D0%BD%D0%B5%D0%B6%D0%BD%D0%BE%D0%B9_%D0%BF%D0%BB%D0%BE%D1%89%D0%B0%D0%B4%D0%B8_(2010))
- Council for Foreign and Defense Policy. (1992). Rezhim chrezvychainogo polozheniya: opyt pravovogo regulirovaniya i praktika primeneniya v zarubezhnykh stranakh [State of Emergency Regime: Experience of Legal Regulation and Foreign Practice]. Retrieved February 6, 2017, from [www.svop.ru/public/docs\\_1992\\_6\\_10\\_1351677414.pdf](http://www.svop.ru/public/docs_1992_6_10_1351677414.pdf).
- Daes, E.-I.A. (1983). The Individual's Duties to the Community and the Limitations on Human Rights and Freedoms under Art. 29 of the Universal Declaration of Human Rights (p. 37). New York: United Nations.
- Domrin, A.N. (1992). Gosudarstvenno-pravovoi institut chrezvychainogo polozheniya. Postanovka problemy [State Legal Institution of State of Emergency. Problem Statement]. Constitutional Gazette, 13, 33-36.



- Fawcett, J.E.S. (1967). Human Rights and Domestic Jurisdiction. In E. Luard (Ed.), *The International Protection of Human Rights* (p. 38). New York, Washington: Frederick A. Praeger Publ.
- Krasinskiy, V.V. (2006). Konstitutsionno-pravovoe regulirovanie gosudarstvennogo suvereniteta v zarubezhnykh stranakh [Constitutional and Legal Regulation of State Sovereignty in Foreign Countries]. *Sovremennoe pravo*, 3, 124 p. Retrieved February 6, 2017, from [krasinskiy.ru/FOREIGN.docx](http://krasinskiy.ru/FOREIGN.docx).
- Kuntuev, D.B. (2014). K ponyatiyu chrezvychainogo pravovogo regulirovaniya [On the Notion of Emergency Legal Regulation]. *Yurist*, 2, 37-38.
- Martyshov, Yu.N. (1972). O ponyatii osobykh uslovii [On Special Conditions Concept]. In *Aktual'nye voprosy sovetskogo administrativnogo prava [Current Issues of the Soviet Administrative Law]* (pp. 77-83). Moscow: MGU.
- Massovye besporyadki vo Frantsii (2005) [Mass Rioting in France (2005)]. (n.d.). Retrieved February 6, 2017, from [ru.wikipedia.org/wiki/%D0%9C%D0%B0%D1%81%D1%81%D0%BE%D0%B2%D1%8B%D0%B5\\_%D0%B1%D0%B5%D1%81%D0%BF%D0%BE%D1%80%D1%8F%D0%B4%D0%BA%D0%B8\\_%D0%B2%D0%BE\\_%D0%A4%D1%80%D0%B0%D0%BD%D1%86%D0%B8%D0%B8\\_\(2005\)](http://ru.wikipedia.org/wiki/%D0%9C%D0%B0%D1%81%D1%81%D0%BE%D0%B2%D1%8B%D0%B5_%D0%B1%D0%B5%D1%81%D0%BF%D0%BE%D1%80%D1%8F%D0%B4%D0%BA%D0%B8_%D0%B2%D0%BE_%D0%A4%D1%80%D0%B0%D0%BD%D1%86%D0%B8%D0%B8_(2005)).
- Night of Terror. (1977, July 25). *Time*, p. 3.
- Protesty v Mangistauskoj oblasti (2011) [Protests in Mangistau Region (2011)]. (n.d.). Retrieved February 6, 2017, from [ru.wikipedia.org/wiki/%D0%9F%D1%80%D0%BE%D1%82%D0%B5%D1%81%D1%82%D1%8B\\_%D0%B2\\_%D0%9C%D0%B0%D0%BD%D0%B3%D0%B8%D1%81%D1%82%D0%B0%D1%83%D1%81%D0%BA%D0%BE%D0%B9\\_%D0%BE%D0%B1%D0%BB%D0%B0%D1%81%D1%82%D0%B8\\_\(2011\)](http://ru.wikipedia.org/wiki/%D0%9F%D1%80%D0%BE%D1%82%D0%B5%D1%81%D1%82%D1%8B_%D0%B2_%D0%9C%D0%B0%D0%BD%D0%B3%D0%B8%D1%81%D1%82%D0%B0%D1%83%D1%81%D0%BA%D0%BE%D0%B9_%D0%BE%D0%B1%D0%BB%D0%B0%D1%81%D1%82%D0%B8_(2011))
- Solovyov, A.I. (2001). Konstitutsionno-pravovoe regulirovanie rezhima chrezvychainogo polozheniya v Rossiiskoi Federatsii: Dis. ... kand. jurid. nauk [Constitutional and Legal Regulation of State of Emergency in the Russian Federation (PhD Thesis Abstract)]. Moscow, 67 p.
- Ukhov, V.Yu. (2007). Institut chrezvychainogo polozheniya v sisteme obespecheniya natsional'noi bezopasnosti Rossiiskoi Federatsii: Avtoreferat diss... dokt. jurid. nauk [Institution of State of Emergency in the System of National Security of the Russian Federation (Doctoral Thesis Abstract)] (pp. 9-10). Moscow.
- Ugolovnyi kodeks Respubliki Kazakhstan No. 226-V (s izmeneniyami i dopolneniyami po sostoyaniyu na 22.12.2016) [The Criminal Code of the Republic of Kazakhstan No. 226-V (as amended on December 22, 2016)]. (2014, June 3). Retrieved February 6, 2017, from [http://online.zakon.kz/Document/?doc\\_id=31575252](http://online.zakon.kz/Document/?doc_id=31575252).
- Ustinov, V.S. (1983). Sistema predupreditel'nogo vozdeistviya na prestupnost' i ugolovno-pravovaya profilaktika: Uchebnoe posobie [System of Preventive Response to Crime and Criminal Law Prophylactics: Workbook] (p. 45). Moscow: Publishing house Acad. Ministry of Internal Affairs of the USSR
- Van Hoof, F. (1991). The Protection of Human Rights and the Impact of Emergency Situations under International Law with Special Reference to the Present Situation in Chile. In *International Protection of Human Rights. Second Summer Session*. University of Iowa College of Law, Iowa City, IA (p. 23).