



## Section 4. Legal studies

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### SOME FEATURES OF THE IMPLEMENTATION OF THE DUTIES OF THE INTERNAL AFFAIRS AND NATIONAL GUARD BODIES TO RESTRICT HUMAN RIGHTS AND FREEDOMS UNDER THE STATE OF EMERGENCY

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#### Abstract

This manuscript is dedicated to discussing some features of implementing the duties of internal affairs and the National Guard bodies to restrict human rights and freedom. In particular, the manuscript articulates existing legal norms regarding the restriction of human rights during the state of emergency situations, opinions and comments of legal scholars in this regard, ensuring the safe life of people in society and public safety, and the basic rights and freedoms. The nature of the special legal regime and the norms of national legislation, proposals, and recommendations for eliminating existing deficiencies in them are described.

**Keywords:** *state of emergency, internal affairs bodies, national guard, human rights and freedoms, national legislation*

#### Introduction

The legislation of the Republic of Uzbekistan includes the concepts containing extreme, dangerous elements such as state of emergency, security threat, martial law, accident, state of war, terrorist activities and anti-terrorist operations, sabotage, etc. Often, such situations and actions are called “dangerous (hot) places”.

The concept of a special regime is considered in various aspects in the legal disciplines. It would be relevant to look at the most com-

mon approaches that the legal regime means a special procedure for regulating social relations (Bakhrakh et al., 2004). This procedure is established in accordance with legislation and represents a set of legal, organizational and special methods and tools. Its use allows to ensure the correct socio-legal status of the targeted objects and the stable functioning of the state apparatus, including law enforcement agencies and elements of local authorities. Individuals and societies are considered to be a unique form of state administration,

which allows limiting the rights of individuals and legal entities introduced in various circumstances as a temporary measure aimed at ensuring the integrity and security.

In the current legislation of Uzbekistan, a number of characteristic features reflect to the specificity of the legal regime. In particular, it indicates the special powers of the state to establish the regime and ensure it (Malko 2003). In addition, one of its signs is “temporary and within a certain period of time it is intended to emphasize the powers of certain subjects or objects of law. Besides, the existence of the purpose of regulating certain areas of social relations in a unique way”, an important feature of the legal regime is that its purpose is convenient to satisfy the interests of all subjects they express the opinion that it is to ensure the conditions.

The characteristics of individual legal regimes align the nature and essence of the existing regimes. In order to create a mechanism of control and balances and to prevent abuse of power, the legislature authorized the President of the Republic of Uzbekistan to introduce a state of war or emergency in the Republic of Uzbekistan or some of its regions in accordance with legislation. It should be noted that the Decree of the President of the Republic of Uzbekistan on the introduction of a state of emergency is in accordance with the Constitutional Law of the Republic of Uzbekistan (Law of the Republic of Uzbekistan, 2021).

The legislature of the Republic of Uzbekistan No. 790 of August 17, 2022 on “Protecting the population and territories from natural and man-made features” comes into force in accordance with the Laws on Protection from Emergency Situations (The legislature of the Republic of Uzbekistan, 2022). According to the above law, the National Guard, internal affairs bodies, the State Security Service, the Ministry of Emergency Situations and other law enforcement bodies are designated as the executive authorities with the special authority to ensure the state of emergency. The tasks are assigned to them: participation in the provision of state of emergency, martial law and legal regime, implementation of operational measures against terrorism, and on the basis of the legal documents regulating their activities are entrusted to these bodies. The institution of

the state of emergency is sufficiently formed in foreign and domestic legislation, which declares a state of emergency when there is a real threat to the citizen, territorial integrity or other threats each country defines its own goals for the introduction of emergency measures (Yangol, 2000).

It provides for the application of a number of measures in the state of emergency or martial law during the implementation of the legal regime in the entire country or in its separate territory in the specified legislative documents. In the norms of the constitutional law, the role of the internal affairs and the National Guard agencies as entities that ensure the state of emergency is not specifically indicated. However, some of the entities responsible for ensuring the implementation of measures of the legal regime of martial law participate in the application of some restrictions of human rights and freedoms, some directly as the powers of internal affairs bodies, and others indirectly, or as an auxiliary (security) function.

This manuscript analyses the situations that lead to the state of emergency and identifies problems existing in the research field for ensuring human rights and the security of the state.

### **Results and discussion**

The main measures of the legal regime of the state of emergency (military) include the participation of internal affairs and the National Guard in ensuring the introduction of curfew. What is meant by this is as a law enforcement body of internal affairs bodies, its main task is to maintain public order in public places as one of the forms of ensuring public safety and order. In the practice of internal affairs and National Guard agencies to ensure public safety and order, there is a question about the legality of checking citizens' documents under the state of emergency. In this case (for example, checking documents when passing through a checkpoint), the employees of these bodies do not have sufficient legal grounds for mandatory checking of documents. Of course, Article 13 of the Law “On State of Emergency” envisages “conducting a personal inspection of citizens of the Republic of Uzbekistan, foreign citizens, stateless persons, checking their

identity documents, inspecting objects, housing and vehicles.” However, this law does not specify which state body will carry out such inspections. It is common knowledge that such inspections are usually carried out by internal affairs or national guard officers in peacetime, but in emergency situations, the body carrying out such inspections should be clearly defined.

In our view, it is necessary to include specific provisions on the implementation of such inspections by the internal affairs or national guard authorities in emergency situations in the current “On Internal Affairs” or “National Guard” laws.

Accordingly, in emergency situations, internal affairs and national guard officers must rely on greater citizen awareness and legal awareness to avoid citizen protest and exit the situation, and to voluntarily comply with requests for identification documents or legal requirements. Therefore, this provision requires improvement by making some appropriate amendments and additions to the legislation. Primarily, in our opinion, the inspection process should be divided into separate sections, it is permissible to separate the superficial inspection of a person and the superficial inspection of objects, from the inspection of vehicles, baggage and luggage. Secondly, it is necessary to expand the list of grounds for checking them.

The Code of Administrative Responsibility of the Republic of Uzbekistan contains certain norms defining administrative responsibility in the field of security in emergency situations. These include Article 29 of The Code of Administrative Responsibility. According to the provision of this article, administrative detention is used for a period of three to fifteen days, and in the case of an emergency order, for violation of public order – for a period of up to thirty days. Administrative detention is used by the district (city) court in criminal cases, and in the case of a state of emergency, as well as by the military commandant or the head of the internal affairs body. The main goal of administrative responsibility in this area is to ensure safety in the conditions associated with the occurrence of various types of emergency situations, as well as to eliminate emergency situations. The main goal of administrative responsibility in this area is to introduce a state

of emergency, which includes the introduction of a set of administrative and legal measures to ensure safety in the conditions associated with the occurrence of various types of emergency situations, as well as to create a mechanism for eliminating emergency situations and minimizing their negative consequences. The Law of the Republic of Uzbekistan dated January 9, 2017 State Law of Uzbekistan No.420 “On the Procedure for Administrative Detention” in the context of emergency situations of internal affairs in order to regulate the introduction of a special situation in detention receptions of the authorities, we support the proposal to supplement it with a new article 10 “Introduction of a special situation in special receptions”. According to it, in cases of emergency situations, when a state of emergency or martial law is introduced in the area where the special reception is located, during the war period, in the case of group disobedience by administrative detainees, as well as mass riots, a special state of emergency can be introduced in special receptions.

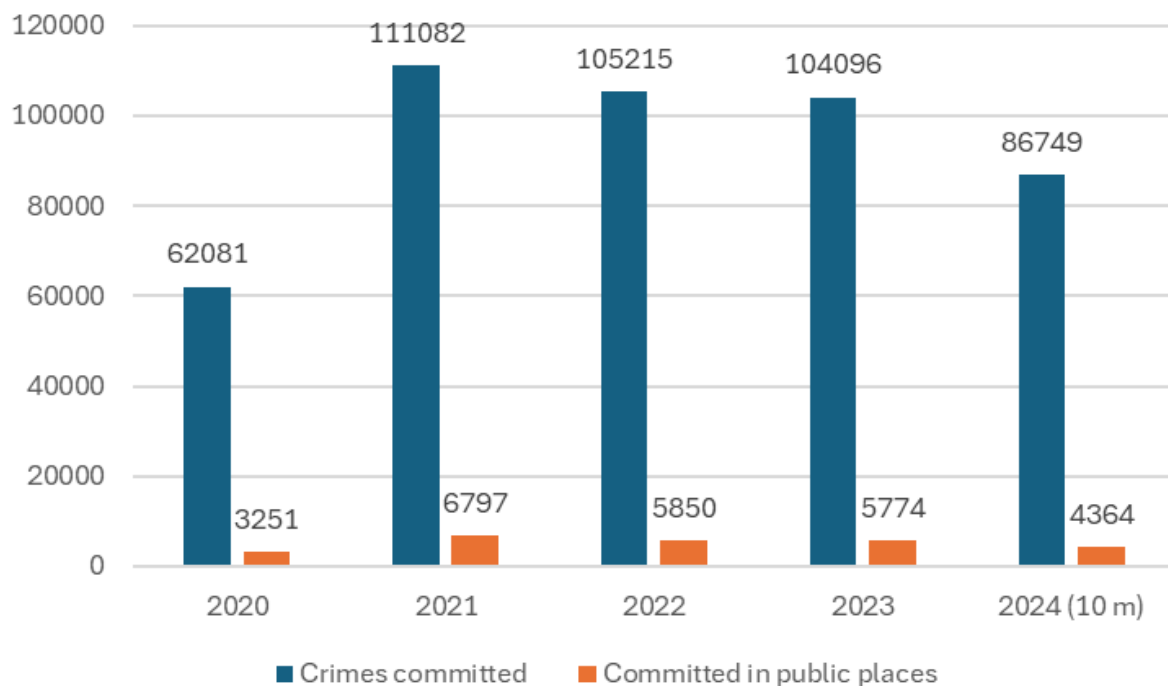
An emergency situation is resolved by the Minister of Internal Affairs of the Republic of Uzbekistan, the Minister of Internal Affairs of the Republic of Karakalpakstan, the heads of the internal affairs departments of the city of Tashkent and the Tashkent region and regions, in agreement with the Prosecutor General of the Republic of Uzbekistan, the prosecutors of the Republic of Karakalpakstan, Tashkent city and regions will be introduced until the threat ends”. In the provisions of Article 29 of the Code of Administrative Responsibility of the Republic of Uzbekistan, a provision is included that in the case of an emergency, the order shall be determined by the military commandant or the head of the internal affairs body (Bulletin of the Supreme Council of the Republic of Uzbekistan, 1995). In this regard, it would be appropriate if the military command was added to the new Article 10 (1) and Article 20 of the Law of the Republic of Uzbekistan “On State of Emergency” (Commandant of the Territory) in accordance with the requirements of the disposition of Article 29 of the Criminal Code among the bodies authorized to impose administrative imprisonment ( Collection of legal documents of the Republic of Uzbekistan, 2017).

During the legal regime of emergency, the auxiliary powers of internal affairs and the National Guard in the field of public safety and order include: strengthening the activities of infrastructure facilities and special protection regime that ensure the vital activity of the population. Representatives of these agencies, along with other law enforcement

agencies, are authorized to require citizens to leave a certain place and restrict access to a certain area.

Below figure 1 show crimes committed in public places during the state of emergency introduced in the republic due to the COVID-19 coronavirus infection:

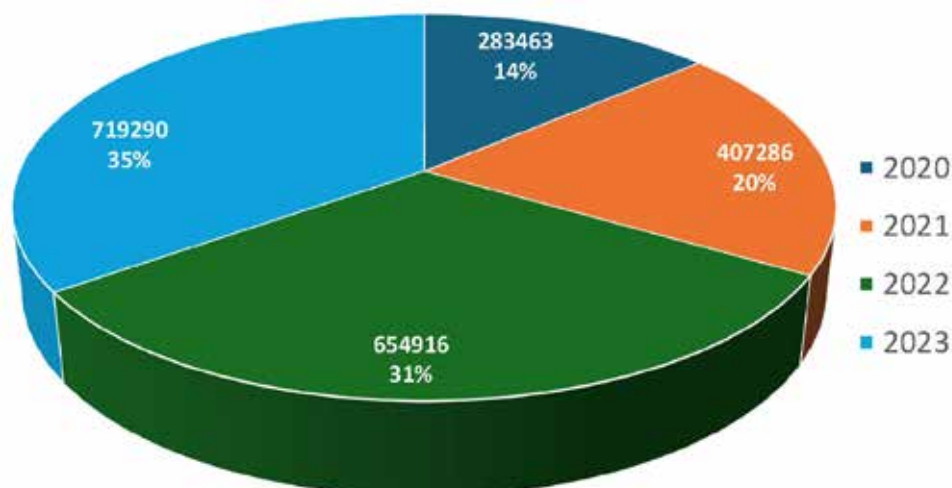
**Figure 1.** *Crimes committed in Uzbekistan (2020–2024)*



The second figure shows that in 2020, when the state of emergency was in effect, the number of crimes and offenses committed in public places decreased significantly compared to other periods. This indicator was, to a certain

extent, influenced by the circumstances related to the restriction of human rights. At the same time, we are far from the idea that it is necessary to restrict human rights in order to reduce the number of crimes and offenses.

**Figure 2.** *Effect of state emergency on number crimes*



The application of this type of administrative and legal restrictions to human and civil rights and freedoms leads to the indirect restriction of the right of freedom of movement of citizens provided for in the Constitution of the Republic of Uzbekistan. Additional measures may include compulsory alienation of property for the needs of the state under the state of emergency. Based on information from existing accounts and departmental databases, on the basis of appropriate orders from military administrations or local authorities Departments of Internal Affairs and the National Guard may provide the following: information from citizens and legal entities about the existence of relevant property in a certain period, their search, finding and arrest, and things of this nature. In this case, the representatives of the law enforcement agency apply administrative and legal restrictions, such as restricting the movement of the vehicle or limiting the actual ownership of the property.

Researcher A. V. Basov (2023) states that the application of the norms of the constitutional institution by the internal affairs bodies “restricting the exercise of the constitutional rights and freedoms of citizens” is based on the following legal factors: “pursuit of a legitimate purpose”, “public necessity”, “to achieve

an important purpose”, “proportionality”, “reasonableness”, “minimal interference with the exercise of rights or freedoms”. Restrictions on human rights and freedoms of a citizen are allowed to the internal affairs bodies only under the condition that such restrictions are measured (proportionately) in accordance with the gravity of the act.

### Conclusion

Therefore, it is necessary to conclude that the basic rights and freedoms of a person and a citizen cannot be violated, despite the fact that it is necessary to disregard the basic constitutional principles, the existence of a democratic, legal state, political, military and other purposes. In the norms of direct action, the legislator distinguishes two legal regimes – the state of emergency and the state of emergency, which affects the activities of law enforcement agencies of our country, including internal affairs and the National Guard. The use of administrative and legal restrictions by employees of these agencies in the performance of their duties depends on the tasks they are given and the difficulties they face during their service activities. In this case, both the legality of their use and the choice of a certain type have equal importance.

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