

Abstract

The dissertation is submitted for the degree of Doctor of Philosophy (PhD) under the educational program 8D04201 “Jurisprudence”.

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The topic of the work is **“Problems of the implementation of economic and social rights under a state of emergency (based on the example of the COVID-19 pandemic)”**.

General characteristics of the dissertation. The research provides a comprehensive analysis of the legal mechanisms for exercising economic and social rights during a state of emergency; it offers the author’s definition of the concept of a state of emergency in the state language and puts forward a classification of its types. The historical prerequisites and stages of introducing the relevant regime in Kazakhstan and abroad are identified, and the normative collisions of the COVID-19 pandemic period are revealed. Applied proposals for improving legislation and law-enforcement practice have been developed and are presented in the appendix to the dissertation.

The relevance of the research topic is due to the fact that the social and economic rights of natural and legal persons are enshrined in the Constitution as supreme values, whereas the global bio-social crises of recent years, in particular COVID-19, have demonstrated the insufficient preparedness of traditional legal mechanisms for emergency situations. Thus, in 2021, 19 % of schoolchildren lacked stable Internet access, and the volume of scheduled medical care decreased by 27 %.

The Kazakhstani experience confirms the stated trends. During the state of emergency declared in 2020, the official unemployment rate rose from 5.0 % to 5.7 %; about 450 thousand citizens lost their income; thirty per cent of small and medium-sized enterprises suspended their activities. The curfew and mobility restrictions significantly curtailed the freedoms of movement, access to information, peaceful assembly, and expression of opinions.

Law-enforcement practice revealed a number of systemic flaws. Contradictions exist between the Constitution of the Republic of Kazakhstan and the laws “On the State of Emergency” and “On Civil Protection”: in the Kazakh-language version the terms “tötenshe ahual” and “tötenshe jağday” are used as synonyms, which complicates the distinction between natural-technogenic events and the constitutional regime of a state of emergency. An emergency situation of a socio-biological nature is not singled out in the law as an independent type. The resolutions of the Chief State Sanitary Doctor, which restricted fundamental citizens’ rights, were adopted without the mandatory legal review, which called into question

the legal status of this official, weakened judicial oversight, and complicated the balanced protection of rights and freedoms.

The problem remains insufficiently developed in the scholarly literature: no dissertations on this topic have been defended in Kazakhstan, while foreign studies are mainly limited to the theory of a “mutable legal regime.”

The President’s Address “The Economic Course of a Fair Kazakhstan” and the Legal Policy Concept up to 2030 are oriented toward strengthening legal institutions capable of confronting bio-social challenges. A comprehensive analysis of the mechanisms for realizing economic and social rights under a state of emergency becomes a necessary prerequisite for the stability of the constitutional order, for increasing the competitiveness of the state, and for the balanced protection of citizens’ rights. The present study is aimed at eliminating the identified regulatory gaps and adapting national law to vital social challenges.

The aim of the study is to identify shortcomings in the mechanism for the implementation of social and economic rights after the introduction of a state of emergency and an emergency situation, and to develop effective proposals for improving the domestic legal system.

The objectives of the research are as follows:

- To analyze the Law “On the State of Emergency” and the acts associated with it, and to identify gaps and conflicts in the legal regulation of social relations under a state of emergency caused by mass morbidity of the population.

- To carry out a comprehensive analysis and synthesis of doctrinal and normative sources in order to determine the characteristics and legal nature of a state of emergency in the context of global infectious diseases.

- To draft a bill providing for amendments to the Constitution and sectoral legislation aimed at eliminating the legislative gaps revealed through the COVID-19 experience.

- To formulate proposals for the development of draft subordinate acts and for the introduction of additions to the current normative legal acts.

- To conduct a comprehensive analysis of the socio-economic consequences of the COVID-19 pandemic on the basis of institutional, statistical, and sociological data.

- To collect materials relating to the activities of enterprises and individual entrepreneurs, as well as to the practice of ensuring distance learning, and to assess the ineffective aspects of legal regulation.

- To empirically confirm, through mass-media publications, court decisions, and the results of questionnaires, the difficulties in the realization of socio-economic rights of various social groups and business entities during the state of emergency.

- To systematize the obtained results and to propose a package of practical recommendations for normative reform and managerial decisions.

The object of the research is the legal relations that arise in the course of exercising private-law rights under a state of emergency.

The subject of the research comprises domestic, foreign, and international normative legal acts; the existing law-enforcement and judicial practice; scientific doctrine; and sociological studies aimed at the legal regulation of the implementation of social and economic rights in connection with the introduction of a state of emergency.

Scientific novelty. This dissertation research is the first fundamental work in Kazakhstan to have comprehensively examined the legal nature of the socio-biological state of emergency and the mechanisms for ensuring citizens' economic and social rights within its framework. The author has refined the conceptual apparatus in the state language, proposed a new classification of emergency regimes, and supplemented constitutional-legal doctrine by drafting legislative amendments and initiatives aimed at overcoming the normative-institutional gaps revealed by the pandemic. In particular:

- it has been systematically proven that a state of emergency constitutes an independent, composite legal regime intended for socio-biological crises;

- the author's definitions of the concepts "state of emergency," "emergency situation," and "socio-biological state of emergency" are formulated in the state language, and their distinguishing features and interrelationship have been identified;

- for domestic law, a three-tier classification of emergency regimes is proposed (natural-technogenic, social, and socio-biological), indicating the scope of restrictions characteristic of each category;

- a draft of amendments has been prepared to the Constitutional Law "On the State of Emergency," to the Law "On Civil Protection," as well as to the Civil, Labor, and Procedural Codes, enshrining mechanisms for proportionate restriction of rights;

- the need for legislative strengthening of the special coordinating status of the Chief State Sanitary Doctor and for the expansion of the sanitary-epidemiological powers of the State Commission has been scientifically substantiated.

The practical and scientific significance of the research lies in the fact that its results constitute a set of concrete proposals aimed at improving the mechanisms for the implementation of economic and social rights under a state of emergency. The dissertation differentiates the concepts of "emergency situation" and "state of emergency," substantiates the inclusion of a socio-biological emergency situation as a fourth independent type of emergency regime, and develops a package of amendments to the Civil, Labor, and Entrepreneurial Codes of the Republic of Kazakhstan, to the Constitutional Law "On the State of Emergency in the Republic

of Kazakhstan,” and to the Law of the Republic of Kazakhstan “On Communications.”. The study defines criteria for releasing a debtor from liability, proposes a model of “legal impossibility” for the performance of contractual obligations under quarantine restrictions, specifies the mechanism for recognizing COVID-19 as an occupational disease for medical workers, prepares amendments to the Civil Procedure Code that ensure the continuity of judicial proceedings, and provides recommendations for their practical implementation. The model provisions and normative resolutions have been submitted to the Government, the Supreme Court, and sectoral ministries and are currently being discussed in the relevant working groups, which confirms the applied relevance of the research undertaken.

The dissertation is the first fundamental study in the state language to comprehensively analyze civil, labor, and social legal relations during a state of emergency. On the basis of an international-legal comparative analysis, new scientific concepts and authorial definitions of a “socio-biological emergency situation” and “legal impossibility” are introduced, the norms regulating the state of emergency are systematized, and their doctrinal-categorical apparatus is clarified. The results obtained form a methodological foundation for assessing the readiness of the state and society for crises and contribute to the further development of the theory of civil, labor, and constitutional law. The materials of the dissertation can be widely used in courses on civil law, civil procedure, labor law, and interdisciplinary subjects, as well as in the research work of master’s and doctoral students.

Approbation of the research results. The final provisions of the dissertation have been published in the following authoritative peer-reviewed editions and presented to official bodies:

1. Problems of the Concept of “State of Emergency” // Bulletin of Institute of Legislation and Legal Information of the Republic of Kazakhstan JARSHYSY scientific and legal journal №1 (72)-2023, p. 243–249.
2. Some Problems of Adoption and Cancellation of Resolutions of the Chief State Sanitary Doctor of the Republic of Kazakhstan Issued in Case of Emergency // Bulletin of Institute of Legislation and Legal Information of the Republic of Kazakhstan JARSHYSY scientific and legal journal, №1 (72)-2023, p. 243–249.
3. The Interplay Between Human Rights and Civil Liberties: Insights from COVID-19 Practices // Bulletin of Institute of Legislation and Legal Information of the Republic of Kazakhstan JARSHYSY scientific and legal journal, № 2(77)-2024, p. 327–334.
4. The Impact of “Force Majeure” on Civil Relations During a State of Emergency: Based on the Experience of COVID-19 // Science, International scientific journal of Kostanay Academy of the Ministry of Education and Science, №4 (75)-2023, p. 232-240.

Internal Affairs of the Republic of Kazakhstan named after Shyrakbek Kabylbaev. – ISSN 2306-451X, № 3(82)-2024, p. 160–166.

5. Experience in Regulating Public Relations during a Pandemic // *Rivista di Studi sulla Sostenibilità*, 2023, 13(1), p. 83–99 (Scopus).
6. COVID-19 infeksiyasyn käsiptik auru dep tanu mäselesi // Constitutional and legal foundations for the modernization of society and the state in the Republic of Uzbekistan: COLLECTION of the international scientific and theoretical conference (December 10th, 2024). – Tashkent, TIU, 2024, p. 286–292.
7. Tötenşe jağday kezindegi quqyqtyq kepildikterdi jüzege asyru // Science and Youth: New Challenges and Solutions. Materials of the International Scientific and Practical Conference of Young Scientists (April 3rd, 2025). – Almaty, NARXOZ University, 2025. – 485 (ISBN 978-601-222-165-7), p. 233-237.
8. Ministry for Emergency Situations of the Republic of Kazakhstan (March – April 2025): the principal theses of the dissertation were presented, and, by Letter No. 10-1/1085 of 3 April 2025, the author’s proposals for amendments to the Laws “On the State of Emergency” and “On Civil Protection” were endorsed.
9. Committee for Sanitary and Epidemiological Control of the Ministry of Health of the Republic of Kazakhstan (April 2025): the findings of the dissertation research were presented; by Letter No. 24-23-1-2/657-I of 19 March 2025, support was given for introducing amendments to the Law “On the State of Emergency” with regard to ensuring the sanitary-epidemiological well-being of the population.

The structure of the dissertation comprises an introduction, three chapters,

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In Chapter One the theoretical-historical and normative foundations of the institution of the state of emergency are systematically analyzed. The work traces the evolution of emergency powers from the Roman Senate’s *senatus consultum ultimum*, through the French model of *état de siège*, to twentieth-century acts in the United Kingdom (1920), the United States (1934), and the USSR (1968), showing that the principal aim of an emergency regime is the protection of the constitutional order, whereas the scope of rights restrictions is shaped differently in each country. This historical continuity makes it possible to confirm the effectiveness of parliamentary oversight in international practice and to reveal that the corresponding link in Kazakhstan remains weak. The study then uncovers terminological heterogeneity in domestic law: the 2003 Law “On the State of Emergency” employs the concept *chrezvychaynoe polozhenie* (“state of emergency”), while the 2014 Law “On Civil Protection” uses *chrezvychaynaya situatsiya* (“emergency situation”), yet

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both are rendered identically in Kazakh as “төтенше жағдай.” Linguistic, juridical-technical, and comparative-legal arguments indicate that this unvarying translated designation contradicts the authentic text of the Constitution; the author therefore proposes to establish in legislation the terms “төтенше ахуал” for “state of emergency” and “төтенше жағдай” for “emergency situation.”

Next, the material and procedural prerequisites for declaring a state of emergency are examined. A comparative analysis of Article 44 of the Constitution, Article 4 of the Law “On the State of Emergency,” and sectoral codes systematizes the distinctions among social, natural-technogenic, and biological threats; the necessity of recognizing socio-biological risks such as a pandemic as an independent class is substantiated, and a new definition with eight criteria—including mutation of biological agents and the risk of bioterrorism—is proposed. To measure the levels of emergency situations (facility, local, regional, global), indicators for the number of fatalities, the amount of material damage, and the disruption of vital activity are refined; a legislative vacuum at the global boundary is demonstrated, and a mechanism for international-legal coordination is proposed. It is shown that interpreting a social emergency situation solely as a natural phenomenon is insufficient, because its consequences restrict rights such as labor, education, family life, and freedom of information.

The analysis concludes by identifying contradictions in the management structure during the COVID-19 period in 2020 the resolutions of the State Commission under the President were adopted in parallel with the acts of the Chief State Sanitary Doctor, the mechanism of the commandant’s office was excluded from use, and the absence of registration of sanitary resolutions with the justice authorities undermined legal certainty. The author concludes that restoring terminological consistency in the sphere of the state of emergency, incorporating socio-biological threats into the legal regime, and strengthening parliamentary control over restrictive measures constitute the principal scholarly results of the chapter.

The second chapter provides a comprehensive examination of the impact of the state-of-emergency regime on the social rights of the individual. First, the author refines the broad content of the concept of “social rights” in the context of the dissertation and justifies it as a system of legal opportunities that guarantee the individual full development within society. This approach made it possible to assess the nature of restrictive measures under a state of emergency and to establish their compliance with the principles of necessity, proportionality, and temporariness.

Although the limits of rights restrictions are enshrined in the Constitution of Kazakhstan and in the Law “On the State of Emergency,” the study showed that during the COVID-19 pandemic the powers to suspend rights were at times expanded beyond the prescribed norm. In spite of the existence of a list of inalienable

rights, the actual scope of constitutional restrictions proved to be broader. The author links this to insufficient legal certainty and the weakness of parliamentary oversight and proposes to specify the mechanisms for exercising emergency powers.

The right to education is examined as one of the areas most affected during the pandemic. The complete abandonment of traditional face-to-face instruction adversely affected both the quality of school education and the demand for higher education, the online format exposed problems of infrastructure, methodology, and digital inequality. The author demonstrates the need to introduce a unified procedure for licensing educational platforms and to enshrine rules on subsidizing devices and data traffic for socially vulnerable families. In the family sphere it is proposed to introduce a mechanism for the remote issuance of restraining orders, a measure corroborated by domestic-violence statistics.

In the labor-law analysis the emphasis is placed on the reciprocal obligations of employee and employer during the extreme period. Despite the fact that the Labor Code provided for paid leave, remote work, and reduced working hours, the practice of their application was uneven, and the unemployment rate rose. In response the author develops proposals to systemically enshrine the concept of “remote work” in employment contracts, to recalculate the minimum wage above the subsistence minimum, and to establish a procedure for recognizing COVID-19 as an occupational disease for certain categories of specialists.

In the study of the right to health protection reductions in the polyclinic network, shortages of medicines, and problems with the registration of the Chief Sanitary Doctor’s resolutions were identified. The author proposes to enhance legal certainty by making the registration of these acts with the justice authorities obligatory and by augmenting the vaccination passport with biometric verification.

On the basis of the chapter’s findings a conceptual model for the protection of social rights is proposed along four lines—normative precision, institutional responsibility, digital accessibility, and judicial oversight—which attests to the full attainment of the chapter’s objectives.

In the third chapter the impact of the state-of-emergency regime on economic rights is analyzed in a comprehensive manner. First, the consequences of the temporary restrictions introduced by the State from the beginning of the pandemic for small and medium-sized business, financial flows, and employment are assessed. The COVID-19 situation generated unprecedented legal uncertainty and exposed weaknesses in the existing economic norms; by comparing the effectiveness of support packages, tax-and-credit incentives, and market-entry barriers, the author correlates the anti-crisis measures with the principle of proportionality, which precludes excessive restriction of economic rights.

The second logical line of the chapter is devoted to contractual relations. During the pandemic entrepreneurs classified the impossibility or delay of

contractual performance as “legal impossibility,” and it was established that this phenomenon is not fully regulated in the Civil Code. The author refines the traditional understanding of force majeure and proposes to insert into Article 359 a new fourth paragraph that releases the debtor from liability in a socio-biological state of emergency, and into Article 374 a wording that directly links impossibility of performance to a pandemic. These amendments are intended to place the interests of creditor and debtor in legal balance while preserving the equilibrium of obligations.

The empirical part of the section relied on a sociological survey of entrepreneurs. The study showed that 74 % of small-business entities experienced an income decline of more than half, 62 % were unable to pay rent and wages on time, 85 % of respondents considered the restrictions disproportionate to the income lost, whereas 58 % acknowledged the sanitary measures as lawful. The data obtained lead to the conclusion that normative acts under a state of emergency must take the economic situation into account in order to maintain public trust.

At the close of the chapter the question of revising the norms that limit communications infrastructure in the interests of sustaining economic exchange is raised. The author proposes to supplement Article 14-1 of the Law “On the State of Emergency” with a requirement for the priority assurance of uninterrupted operation of communications networks instead of their complete shutdown and demonstrates that the viability of the digital economy depends directly on the availability of telecommunication services. Chapter Three concludes by forming the legal, doctrinal, and practical basis for the protection of economic rights and by presenting a draft of specific amendments to be introduced into the Civil Code and sectoral acts.

In the conclusion the results of the study are summarized and a conceptual model for the legal support of socio-economic rights under a state of emergency is developed; the implementation of the proposed measures will strengthen normative certainty and social stability.