

**STATE REPLY**  
**TO ALERT NO. 8/2023 "PROPOSALS TO PROVIDE WARTIME BLOCKING AND INTERESTING POWERS"**

**Article 76 of the Constitution of the Republic of Armenia** states that during state of emergency or martial law, basic rights and freedoms of the human being and the citizen (with exceptions) may be temporarily suspended or subjected to additional restrictions under the procedure prescribed by law, only to the extent required by the existing situation within the framework of international commitments undertaken with respect to derogations from obligations during state of emergency or martial law.

**According to Article 15 of the European Convention on Human Rights**, in time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law. In other words, any member state of the Council of Europe can deviate from its obligations under the Convention, but only to the extent that the seriousness of the situation requires it.

**According to the Law "On the Legal Regime of Martial Law"**, martial law is a temporary measure implemented exclusively in the event of an armed attack on the Republic of Armenia, the existence of an immediate threat thereof, or a declaration of war which is a special legal regime for the activities of state and local governing authorities, organizations, and allows the establishment of certain restrictions on the rights and freedoms of legal entities, citizens of the Republic of Armenia, foreign citizens and stateless persons and additional obligations towards them.

*The European Court of Human Rights, in some of its verdicts (i.e. CASE OF IRELAND V. THE UNITED KINGDOM 5310/71, 18.01.1978; BRANNIGAN AND MCBRIDE V. THE UNITED KINGDOM 14553/89; 14554/89, 26.05.1993; A. AND OTHERS V. THE UNITED KINGDOM 3455/05, 19.02.2009) has stated that states do not have unlimited discretion in the area in question. The court has the power to decide whether or not states have exceeded the "clear measure of the demands" of the crisis. The court examines, inter alia, whether the ordinary laws were sufficient to deal with the emergency, whether the deviation from obligations is limited in scope and what are the grounds for it, whether guarantees were provided alongside the imposed measures, whether it was practically possible to exercise judicial control over these actions, whether the measures taken were proportionate to the objective pursued and whether there was unjustified discrimination.*

Given the interpretation of the European Court of Human Rights to the matter, it should be noted that essentially the purpose of declaring martial law is to resist an armed attack on the Republic of Armenia or to prevent its immediate threat by creating the most favorable conditions for the mobilization of the armed forces and economy of the Republic of Armenia, as well as to ensure the normal operation of state and local government authorities and protection of life and safety of people under martial law.

The amendments to the Law **"On the Legal Regime of Martial Law"** /hereinafter referred to as the Draft/ are aimed at the most effective implementation of the above-mentioned goals. In particular, the Draft foresees the following subject to be passes by the National Assembly of Armenia:

a) Legal grounds for temporary suspension (blocking) of internet sites, social networks, internet applications, partial or complete restriction of internet access in the territory of the Republic of Armenia, as well as the procedure for ensuring internet access of the state administration system and local government authorities, state-protected objects those of strategic importance, and infrastructures, and also organizations in case of internet access restriction in the territory of the Republic of Armenia;

b) Features of state administration during martial law. Namely, should the Draft be passed, it will be possible to establish by the relevant decision of the Government that the Deputy Prime Minister under order of the Prime Minister defined by that decision can coordinate the implementation of rear support, financial, economic and other measures and the application of restrictions applied under the conditions of martial law. At the same time, for the implementation of the mentioned powers, the Deputy Prime Minister can adopt by-laws, as well as give obligatory instructions to the state administration authorities. In addition, it will be possible to establish a special management council of the territory declared under martial law as a consultative body attached to the Prime Minister by the decision of the Government of the Republic of Armenia for the purpose of the operative solution of certain issues that may appear during martial law;

c) In addition to the measures and temporary restrictions provided by the law "On the Legal Regime of Martial Law", the regulations proposed by the draft will enable the following measures and temporary restrictions to be implemented during the entire period of martial law, should such be declared: temporary change in the forms and methods of performing the functions of state and local government authorities and state non-commercial organizations, implementation of special state policies in the financial, credit, tax, customs, border, banking, energy, environmental and communication sectors corresponding to the legal regime of martial law, establishing a special procedure for state procurement, determination of mandatory tasks for certain types of financial and economic activities, including the provision of services, restrictions on the circulation of goods and financial resources, for organizations and persons operating in the energy and communication sectors;

d) The structures related to notification by local self-government bodies and military commissariats in order to ensure the presence of citizens during military conscription will become more clear and effective.

Moreover, from the point of view of substantiating the necessity of the regulations proposed in terms of above point "a", it is necessary to mention the following.

Along with the development of computer technologies and the Internet, the issues of ensuring information security have gained importance both in peacetime and in the conditions of declared martial law. Therefore, measures should be taken by the state to ensure proper information security, which will neutralize the emergence of such conditions and factors that create a potential or real danger for the state and the public. The digital domain is often used for criminal and terrorist purposes, as well as for the purpose of spreading fake news, the danger of which is emphasized especially in crisis situations.

The problems related to the lack of mechanisms aimed at ensuring information security in the Republic of Armenia were particularly expressed both during the 44-day war and during the aggression unleashed by Azerbaijan on the sovereign territory of the Republic of Armenia on September 13, 2022, when problems related to the RA legislation regulating the information security sphere appeared, which caused difficulties in terms of systematic application of information publication control mechanisms. In addition, it is worth noting that the problems related to information security from the point of view of security and protection led to the uncontrolled circulation of sensitive information flows, which was expressed by citizens spreading materials that have a negative impact on the public in social networks, publishing banned videos from the front line by servicemen, violations of combat secrecy, by the lack of control over fake and negative influence materials spread by the adversary on online platforms.

Taking into account the above, as a necessary step towards the solution of these problems, it becomes important to introduce Internet restriction mechanisms in the RA territory under martial law, to develop legal regulations aimed at the mentioned, to maintain and ensure Internet access for public administration authorities, objects of strategic significance and state protection, as well as for individual organizations.

Article 42 of the RA Constitution states that everyone shall have the right to freely express his or her opinion. This right shall include freedom to hold own opinion, as well as to seek, receive and disseminate information and ideas through any media, without the interference of state or local government authorities and regardless of state frontiers. Freedom of expression of opinion may be restricted only by law, for the purpose of state security, protecting public order, health and morals or the honour and good reputation of others and other basic rights and freedoms thereof.

In this case, the mechanisms proposed by the law aimed at certain restrictions are aimed at the protection of state security, basic rights and freedoms, and the condition of restriction in this case is maintained, it will be provided by law. Therefore, it becomes necessary to regulate the provision of restrictions on media activity and dissemination of information, activities of Internet social platforms during martial law in the law "On the Legal Regime of Martial Law".

The National Security Service proposed to clearly define the legal grounds and scope of blocking (restriction) of Internet resources during martial law. Similar proposals were also presented by the Security Council.

It is also necessary to draw attention to the fact that in the event of martial law being declared by force of the proposed regulations, during the period of martial law there may be restrictions on the content broadcasted on television and distributed via the Internet, temporary suspension (blocking) of the operation of websites, social networks, internet applications, as well as partial or complete restriction of internet access, that is, the mentioned depends on the specific situation and does not assume a mandatory nature. Moreover, the Draft also stipulates that the complete restriction of Internet access can be applied exclusively in the event that other measures and (or) restrictions (or some of them) provided by law do not serve their purpose or are less effective.

It should also be noted that before the drafting of the law, the Ministry of Justice sent letters to the relevant bodies (Ministry of Defense, Ministry of Finance, Ministry of Territorial Administration and Infrastructure, Ministry of Emergency Situations, National Security Service and Police) asking them to group all the issues that arose during martial law in 2020 and submit them to the Ministry of Justice. The Ministry of Defense, the National Security Service, and the Security Council raised the issue of the need to limit the dissemination of information and Internet resources.

It is also necessary to draw attention to the fact that by virtue of the proposed regulations, during martial law, the content broadcast on television and distributed via the Internet **may be** limited, internet access **may be** limited, which means that application of any of these measures will depend on the specific situation and will not be mandatory.

At the same time, as a result of public discussion, discussions with interested bodies, as well as experts in the field, the project underwent many changes. For example, the provisions according to which ' ' the showing of TV films and programs with exclusively military-patriotic content and the dissemination of information will be ensured ' ' , and ' ' the operation of Internet sites, social networks, and Internet applications may be temporarily suspended in the territory of the Republic of Armenia ' ' have been removed from the draft law. In addition, the draft law is still under discussion; therefore it is not clear whether the provisions on the restriction of Internet access will be kept in the draft.

Should the Draft be passed, among others, the legal grounds for temporary suspension (blocking) of internet sites, social networks, internet applications, partial or complete restriction of internet access in the territory of the Republic of Armenia, features of state administration during martial law will be clearly defined, in addition to the measures and temporary restrictions provided by the current law "On the Legal Regime of Martial Law", new measures and temporary restrictions will be established during the entire period of martial law in case of its declaration, the structures related to notification by local government authorities and military commissariats in order to ensure the presence of citizens during military conscription will become clear and effective.