

власників авто. До 2024 року уряд поставив за мету перевести в онлайн 100% державних послуг[3].

Отже, розробники додатку "Дія" ставлять собі за мету досягти 10 млн активних користувачів до кінця 2022 року. В цьому році всі мобільні оператори мають відмовитися від тарифікації даних для додатку "Дія".

ЛІТЕРАТУРА:

1. Буличева Н. А. Електронне урядування у сфері надання адміністративних послуг органами державної влади. Юридичний часопис Національної академії внутрішніх справ . 2011. № 2(2). С. 28-37.

2. Репецька М. О. Зарубіжний досвід функціонування системи електронних адміністративних послуг та його впровадження в Україні. Наше право. 2014. № 9. С. 175-181.

3. Держава в смартфоні стартувала: як працюватиме додаток "Дія" і чи варто переживати за безпеку. URL: <https://www.epravda.com.ua/publications/2020/02/7/656775/>

Anastasios Fountis, Head of Undergraduate Studies, Berlin School of Business and Innovation
Yuliya Sagaydak, Associate Professor, Law Institute, Kyiv National Economic University

THE ACTUAL STATE OF EXEMPTION IN UKRAINE UNDER A SCHMITTIAN PERSPECTIVE

The State of Exemption is a notion widely used in cases of sovereign states which are undergoing a severe crisis like wars and territorial emergency situations. Taking the perspective of Carl Schmitt's works, we are examining the challenges faced by the executive power actually in Ukraine, which will also continue after the termination of the current confrontation.

Following the invasion of Russia in Ukraine on the 24th of February 2022, the notion of the state of exception has become immediately in the center of politics after the special circumstances and the martial law and general mobilization declared by President Volodymyr Zelensky. There were previous cases on the activation of the law "On the Legal Status of martial law" (No. 389-VIII) accompanied by presidential decrees back in 2015, but never up to now to such extent.

In this study some aspects on the subsequent state of exemption, which is getting generated within the context of the function of the State under war conditions, are getting examined as well as challenges the policymakers will have for a transition to normality. In this pathway the executive power will have to move towards the pitfalls of decisionism, an idea which is eminent in the works of Carl Schmitt, who is an ambiguous personality due to his affiliation with the NS-Regime but his theories come again and again at the international stage when is to examine situations across various political fields and ideologies as well as the practice of jurisprudence.

Decisionism (Dezisionismus in German) is a legal theory domain which focus on who is taking the decision and this should be a proper authority and following a proper process and this determines subsequently its validity. This fact bridges partially the gap between legitimacy and legality. The content of the decision is not important under the perspective of Decisionism and therefore it can derail the notion of the Rule of Law as expressed in the liberal, secular democracies. Practically, the two ideas of decisionism and the rule of law are the two extremes of a continuum.

In 1922 in his work 'Political Theology', Carl Schmitt starts with the phrase : "Sovereign is he who decides on the state of exception" (Schmitt et al., 1985). Under this concept, the juridical order is suspended fully or partially due to an emergency situation . The observations historically on the State of Exemption at a theoretical and realistic political level go back to the French Revolution of 1789 (Agamben, 2005). Under the state of exemption, the sovereign (in the actual case the executive power of Ukraine) prevails over all other powers and basic law and norms can be violated as long as the state is facing a crisis. However, the crucial point is that, depending on the length and the severity of the crisis the state of exemption is becoming the fundament of law and it will subsequently influence the formation of the state and a return to the previous normality is never the case.

Carl Schmitt, in his book 'The Concept of the Political' (Schmitt et al., 1996). introduced the idea of 'Friend and Enemy'. He is using a dipole for defining the ground between different groups with different interests and beliefs in a social context. According to his rational, the human political action is only possible when we define an enemy and the enemy is also doing the same to our direction. Friends are the ones belonging in the same group and Enemies are all others. He is considering this idea as the axiom of the political action itself: 'The specific political distinction to which political actions and motives can be reduced is that between friend and enemy'. In the current situation for the executive power of the Ukrainian State this distinction is getting followed as it also getting claimed by the Russian Federation. As Friends are defined only the ones who comply with the decisions of the executive power under the State of Exception.

Having presented his ideas of the Friend and Enemy and by taking the categories of the different types of enemy (conventional, real and absolute) usually seen under the angle of conflicts at inner levels (civil wars) or with exterior enemies for sovereign states , Carl Schmitt extended in 1963 the concept of enmity with the 'Theory of the Partisan' (Slomp, 2005). He recognized that there is another category of friends and enemies which act with unconventional methods, agendas and warfare tactics and which we could name as non-state actors nowadays. Practically he recognized the impact of guerilla warfare and has foreseen somehow what we call lately hybrid warfare in terms of variety of methods of action. In this work he is giving 4 criteria to these group of friends or enemies: 1) irregularity, 2)increased mobility, 3) intensity of political commitment, and 4) the tellurian character (meaning their connection with the earth, which in this case is the control of the territory they are fighting for). The contribution of this extension of his theory in the case of Ukraine is that in the current war situation all of them are getting fully

deployed and they define the enemy and friend in a dynamic way and they influence daily the state of exemption itself.

The actual war situation and the state of exemption which is existing in Ukraine have been examined under the perspective of 3 main concepts of Carl Schmitt: 1) the Sovereign and the State of Exception 2) the distinction between Friend and Enemy and 3) the Theory of Partisan. The 3 concepts coexist in the political field, and they should be examined in a greater extent.

Concerning the possibilities of termination of the state of exemption they depend on the course that the Russian invasion will take. However, after its end, for the executive power of Ukraine the current state of exemption has already casted the prerequisites for the new situation hopefully towards the rebuilding of Ukraine and the move back to a liberal democratic state. The transition to this new normality will not be an immediate one and the state of exemption will continue to exist in several areas of the political life.

One of the scholars that examined in depth Carl Schmitt's work is the German, federal court judge Ernst-Wolfgang Boeckenfoerde and he expressed the following thesis (Boeckenfoerde, 1976), which is also known as the Boeckenfoerde Dilemma: 'The liberal, secularized state lives by imperatives which it cannot guarantee itself'. Briefly explained the state for the freedom's sake must impose internally rules to its citizens for moral or other reasons and the homogeneity of the society at large. However, due to its nature and liberal character cannot strongly impose these interior forces for regulation because then it will surrender its own liberal character.

BIBLIOGRAPHY:

1. Agamben G., (2005), *State of Exception*, translated by Kevin Attell, Chicago, The University of Chicago Press.
2. Boeckenfoerde E.W., (1976). *Die Entstehung des Staates als Vorgang der Säkularisation*. In: *Staat, Gesellschaft, Freiheit. Studien zur Staatstheorie und zum Verfassungsrecht*. Frankfurt am Main, Suhrkamp
3. Schmitt, C., & Schwab, G., (1996). *The Concept of the Political*, Chicago, The University of Chicago Press- *Original publication: 1st edn., Duncker & Humblot (Munich), 1932; 2nd edn., Duncker & Humblot (Berlin), 1963*.
4. Schmitt, C., & Schwab, G. (1985). *Political Theology: Four chapters on the concept of sovereignty*. Cambridge, Mass: MIT Press
5. Slomp, G. (2005). *The theory of the partisan, Carl Schmitt's neglected legacy*. *History of Political Thought*, 26(3), 502–519.