



RESTRICTIONS ON CONSTITUTIONAL HUMAN RIGHTS UNDER MARTIAL LAW IN UKRAINE

RESTRICÇÕES AOS DIREITOS HUMANOS CONSTITUCIONAIS SOB A LEI MARCIAL NA UCRÂNIA

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ABSTRACT

Objective: This article examines the legislative and practical framework surrounding the imposition of martial law in Ukraine and its impact on constitutional human rights. The focus is on analyzing the rights that can be limited during martial law, differentiating between absolute and relative rights.

Methods: The study is based on a comprehensive review of Ukrainian legislation, judicial decisions, and academic literature. It employs theoretical and legal analysis to examine the constraints imposed on human rights under martial law, emphasizing the principles of necessity and proportionality.

Results: The findings indicate that while certain human rights can be restricted during martial law, absolute rights remain inviolable. The study discusses the state's obligations to balance national security with human rights protection, highlighting the legal mechanisms that safeguard non-derogable rights even during crises.

Conclusions: The research underscores the complexity of protecting human rights in wartime and stresses the importance of developing robust legal frameworks to ensure these rights are not unduly compromised. The paper calls for ongoing reforms to align national laws with international human rights standards, ensuring justice and democratic governance persist during martial law.

Keywords: Constitutional Rights. Martial Law. Human Rights Restrictions. Ukraine. Legal Analysis. Absolute Rights. Relative Rights.





RESUMO

Objetivo: Este artigo examina o arcabouço legislativo e prático em torno da imposição da lei marcial na Ucrânia e seu impacto nos direitos humanos constitucionais. O foco é analisar os direitos que podem ser limitados durante a lei marcial, diferenciando entre direitos absolutos e relativos.

Métodos: O estudo baseia-se em uma revisão abrangente da legislação ucraniana, decisões judiciais e literatura acadêmica. Emprega análise teórica e jurídica para examinar as restrições impostas aos direitos humanos sob a lei marcial, enfatizando os princípios de necessidade e proporcionalidade.

Resultados: Os achados indicam que, embora certos direitos humanos possam ser restritos durante a lei marcial, os direitos absolutos permanecem invioláveis. O estudo discute as obrigações do estado em equilibrar a segurança nacional com a proteção dos direitos humanos, destacando os mecanismos legais que salvaguardam os direitos não derogáveis mesmo durante crises.

Conclusões: A pesquisa sublinha a complexidade de proteger os direitos humanos em tempos de guerra e enfatiza a importância de desenvolver estruturas legais robustas para garantir que esses direitos não sejam indevidamente comprometidos. O artigo apela para reformas contínuas para alinhar as leis nacionais com os padrões internacionais de direitos humanos, garantindo que justiça e governança democrática persistam durante a lei marcial.

Palavras-chave: Direitos Constitucionais. Lei Marcial. Restrições aos Direitos Humanos. Ucrânia. Análise Legal. Direitos Absolutos. Direitos Relativos.

1 INTRODUCTION

The Constitution of Ukraine resolutely defends the main human and citizen rights even in a period of war or martial law. The Declaration of Independence of Ukraine which was adopted by the Verkhovna Rada, stated that Ukraine is an independent and legal state with a perpetual right to self-determination; its name is - Ukra"ine. The act was in line with the principle of self-determination, as entrenched by various International documents including but not limited to the UN Charter. Several political and legal transformations across various reforms took place in Ukraine after it gained independence, but all their results have not shown the outcomes that were expected by many people. In 2014, the attitude of Ukraine towards the international community became established and shown.

The concept of European integration chosen by Ukraine - that of a democratic, social and legal state- requires ensuring the inviolability and protection of citizens' rights to act freely within international standards in all spheres(spheres) public life.





Ukraine is bound by positive and negative obligations under international agreements. The positive obligations leads to the establishment of an efficient system for securing human rights yet conversely, their negative counterparts constrain a state from reinforcing such rights and freedoms.

On 24 March 2021, the National Human Rights Strategy was approved to improve the protection of citizens' rights and freedoms in Ukraine. This strategy defined strategic directions, goals, current issues and tasks to achieve human rights goals. The main goal of the strategy was to introduce a systematic approach to the protection of human rights and freedoms, joint action by the authorities, local governments, NGOs and other entities, as well as to create an effective mechanism for the implementation and protection of human rights.

Nevertheless, the aggression of Russia begun a full-scale invasion on Ukraine from 24th February 2022 considerably throttled constitutional human rights and freedoms. The President of Ukraine established a special legal regime for martial law, which further entailed an even greater complication in realizing the rights and freedoms during this period. A major factor contributing to this was the ambiguity surrounding how law would be applied under martial law.

Even the Constitution of Ukraine refers to it in the context related to amending this very constitution (Article 157), as well as Article 64(2) above, which allows for limiting certain human rights. Article 21 of the Constitution provides that human rights guaranteed by the Ukrainian Constitution are inalienable and inviolate. Let me remind you that human rights, such as the right to life, prohibition of torture... are absolute rights. This means that about these rights may be derogated from such as by way of a state of emergency (or martial law) only in the context. Also, the right to judicial protection (p. 55 CCU) is not limited by restrictions provided for in art. 64 of the Constitution of Ukraine As previously said, some human rights are subject to restrictions (Article 64 of the Constitution of Ukraine): inviolability of domiciles, secrecy of correspondence; freedom in affairs and thoughts or speech expression; right to assemble for meetings also manifestations etc. But that proscription clearly cannot result in stripping the right of its very nature. Human Rights (and the spirit of humanity in a greater sense) centers on human dignity and freedom.

A considerable amount of research, both in Ukrainian and international legal science, has been devoted to the problem of ensuring and restricting human rights and freedoms. The main stimulus for such scientific interest is the growth of migration and the complex socio-political conditions of our time. A large number of scholars have





considered this issue from different perspectives, in particular, taking into account the challenges facing society. Some of the identified authors who have made a significant contribution to the study of human rights and their restrictions include M.F. An isimova, V.F. Pogorelko, P.M. Rabinovych, V.R. Barskyi, S.O. Horulko, O.F. Dinko, I.V. Mykhailyshyn, Y.M. Todyka, O.V. Skrypniuk, V.I. Yevtushenko, A.M. Kolodii, S.V. Maksymenko, V.L. Fedorenko, O.V. Rozgon, O.M. Polivanova, O.V. Martseliak, O.F. Skakun, and M.V. Savchyn. Despite the great contribution of these authors to the development of legal science, current realities emphasise the need to create new mechanisms for ensuring human rights and freedoms under the legal regime of martial law in Ukraine.

2 METHODS

The method of systemic and structural analysis was used to establish the legal nature and place of the category of good faith in the system of civil law principles and general principles of civil law. The structural-functional method helped to clarify the components and functional purpose of the principle of good faith. The method of specific sociological research was used to study case law and identify the law enforcement significance of the principle of good faith. Martial law restrictions on rights and freedoms with components were identified by the structural-functional method. The use of this method contributed to the analysis of changes in the functioning of legal provisions and the impact of these changes on national security and public order. The method of specific sociological research was used to study court practice and identify the law enforcement significance of restrictions on constitutional human rights. This method included the analysis of court decisions and the public reaction to the introduction of martial law, which helped to assess the real impact and implementation of legislation in this area. The results of the dogmatic (logical) analysis were used in formulating the conclusions and proposals in the article, taking into account the requirements of certainty, consistency, consistency and validity of judgements within the framework of general theoretical constructions. This method contributed to a deeper understanding of the legal implications of the application of restrictions and provided a logical basis for recommendations on their application and improvement.





3 RESULTS AND DISCUSSIONS

Human rights in times of war are an inherent and key value of modern society. They must be protected and guaranteed both at the level of constitutional norms and at the level of legal regulation. Due to the complex current realities caused by Russia's armed aggression and its full-scale invasion of Ukrainian lands, human rights require special protection.

This is due to the constitutional norm that recognises a person as the highest social value, and his or her life, health, honour, dignity, inviolability and security as the most important. In a military conflict, respect for human rights is not only a manifestation of a democratic and developed society, but also an indicator of the recognition of the individual as the highest social value and national priority.

When considering human rights under martial law, it is first necessary to clarify what exactly this concept includes. Legal literature and legislation provide various definitions of this term. According to the law, martial law is a special legal regime introduced in the event of armed aggression or a threat of attack on the state and provides for the granting of powers to the relevant state authorities necessary to protect national security. It also provides for a temporary restriction of constitutional rights and freedoms of man and citizen.

Limiting rights and freedoms of citizens at any time: in the period of peace, during the martial law - is an important element of legal machinery into all standards democratic rule-of-law state component among which also Ukraine ranks. It is the time of legislative regulation, stability and legitimacy (legal supremacy) of judicial practice, above all because confrontations are going on: a war primarily. These restrictions should be defined exclusively by legal principles and they must respect the priorities of general interest, namely national security, law enforcement and public morals as well as rights violations) taking into account individual interests.

In Ukraine, the law stipulates in The Constitution of Ukraine (in Art. In total, 18 articles of the Constitution describe what rights and freedoms must not be restricted (see art.64) 'under martial law or a state of emergency'. Furthermore, the principle of free development of self in Article 23 shall be guaranteed for everyone while respecting equality before the law and no one should violate or abrogate others rights.

This means that it leads to the constitutional determination of on what, why and how can limit citizens rights, as well their implementation boundaries. These provisions, however, require clarification and more in-depth analysis long since





researchers have not been able to reach any common ground regarding the meaning of their contents after the adoption of Constitution.

There is not even agreement about which rights and freedoms are absolute (entailing that they cannot ever be restricted). So, for instance the below-mentioned list of rights and freedoms free from limitation under martial law or a state of emergency is yet different to one which takes place art 2 of Article 64 of the Constitution of Ukraine, differs from the list contained in Article 4, paragraphs 1 and 2, of the International Covenant on Civil and Political Rights. The Ukrainian list includes a much larger number of rights (18 vs. 7) and additionally includes such items as the right to housing and the right to marriage as absolute rights.

The relevant measures stipulated by the legal regime of martial law under Article 8 Law of Ukraine "On the Legal Regime for Martial Law" are carried out through a temporary limitation on constitutional rights and freedoms including, among others, rights and legitimate interests. An order of the President of Ukraine on enacting martial law contains such requirements and is processed by military command jointly with army administrations or executive bodies and local government codexes.

The Martial Law Legal Regime law stipulates that martial governed by Article 1 of the Law of Ukraine 'On the Legal Regime of Martial Law' on legal regime in general, means; therefore also applies to the limitations "...of human rights and fundamental freedoms under martial administrates is no comprehensive definition of "restriction control: As a result, public authorities have been able to give this concept an expansive interpretation and take decisions curtailing human rights or freedoms.

Some human rights and freedoms were curtailed at the beginning of this full-scale invasion as a result, in part (the Commission concluded), by lack of regulation on powers given to public authorities under martial law. A separate reservation in the Cabinet of Ministers Act, local state administrations and local government contributed to similar problems - few public bodies had clear powers during its enforcement.

The Law of Ukraine "On the Legal Regime of Martial Law" provides for enforcement, in particular cases and to a certain extent, by subordinate regulatory acts issued by the Cabinet of Ministers of Ukraine on behalf 9-fifth part one Art.

The fundamental human right of life becomes almost but powerless in situations of armed conflict. This is because armed hostilities result in different forms of violent acts such as murder, physical harm to a person's body, abduction and torture which are clearly absolute denials on the right to life or enjoyment with dignity or personal integrity. It is a problem because it has been insidiously creeping in and becoming





rampant at the moment. There can be no justification in any circumstances for such acts, which constitutes an absolute violation of international humanitarian law and human rights. Therefore, it is under the responsibility of each state to take care of life as being the main tenet in every society. Customary international law regards the right to life as a man's basic human right. Well then clearly the Convention must hold this right to be one of its basic provisions. The right to existence is one of the rights from which no derogation can be made even in emergency situations, similar principles are enshrined both in the Convention and outside it under International Covenant on Civil and Political Rights. Article 15 of the Convention states: '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 extent strictly required by exigencies situation provided that such measures are not inconsistent with his other obligations international law.

The state is answerable to its citizens regarding the constitution of economic and social relations since it too stakes a role in them. It should, therefore, safeguard their rights and freedoms. It must create conditions for their development and be accountable to the people on its actions. The state always guarantees human rights and freedoms, even under martial law. Thus, it can be stated that the state is responsible for ensuring human rights comp Article 3 of the Constitution of Ukraine. Informed by this conception is the understanding that when martial law was imposed, state had not absolved of its responsibility overall for human rights.

Lack of the detailed regulations in Ukraine legislation on a prohibition system concerning separate range domestic human rights and freedoms can lead to infringement for interests civil population. Talking about guarantees and limitations of the right to freedom of thought, free speech and view - from Article 10(2) European Convention for the Protection of Human Rights And Fundamental Freedoms which is enshrined in national legislation Art.9 Basic Law.

The Constitutional Court of Ukraine fully quoted the legal positions by the European Court of Human Rights, as regards to the requirements for legitimacy on restrictions against constitutional rights and freedoms exercise, which has become one subsequent key means (according to Professor P. Rabinovich) in this regard — an instrument aimed at verification / guarantee a fair balance between human interests and society demands (RABINOVYCH P.M., 1999).

It is also necessary to intensify the activities of authorised persons to control the content of information disseminated through all media and the Internet in order to avoid





the dissemination of false information that may lead to negative consequences for human life and health, as well as the national security of Ukraine (PROTS I. M., 2020).

Access to public information is an important tool for preventing threats to human life and health under martial law.

The right of access to public information is guaranteed by national and international norms, in particular Articles 34 and 50 of the Constitution of Ukraine, the Law of Ukraine 'On Access to Public Information' and the Council of Europe Convention on Access to Official Documents.

According to Article 34(3) of the Constitution of Ukraine, the exercise of the rights provided for therein may be restricted by law in the interests of national security, territorial integrity or public order, in order to prevent riots or crimes, to protect public health, to protect the reputation or rights of others, to prevent the disclosure of information received in confidence, or to maintain the authority and impartiality of justice. A similar provision is stipulated by part 2 of Article 6 of the Law of Ukraine 'On Information' dated 02.10.1992 No. 2657-XII, paragraph 1 of part 2 of Article 6 of the Law of Ukraine 'On Access to Public Information'.

The term 'right to information' is widely used in national legislation. L.V. Kuzenko, analysing the system of constitutional rights, argues that this right is independent and basic for a person and citizen. It is closely connected with other constitutional rights and obligations, functioning as a guarantor of their implementation (KUZENKO L.V., 2003).

Article 302 of the Civil Code of Ukraine 'The Right to Information' states that an individual has the right to freely collect, store, use and disseminate information. Significantly, this law duplicates the provisions of Article 34 of the Constitution of Ukraine, indicating four main forms of information processing: collection, storage, use and dissemination.

Pursuant to Article 5(1) of the Law on Information, every person has the right to information, which means the ability to freely receive, use, disseminate, store and protect information necessary for the exercise of their rights, freedoms and legitimate interests.

This information may include information about the threat of attack, occupation, prevention of crimes against humanity, genocide and other similar situations (DAKHOVA I. I., 2018). Due to the threat to the national security of Ukraine and the restrictions imposed by the introduction of martial law, some information services have currently ceased to operate or operate within the established restrictions provided for





by the conditions of martial law in the territory of the state (PEREIRA , L. DE M.; GEWEHR , M. A.; ALVES , M. F., 2020).

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Compared to peacetime, martial law creates new challenges in providing or restricting access to information, significantly increasing the level of responsibility of information management officials (LIMONGI, R., 2024). Since the life and health of people, as well as the sovereignty of the state, may depend on the disclosure or restriction of access to certain information, this puts a great deal of pressure on information management. The Law does not provide for direct powers to impose any prohibitions or restrictions on the performance of duties of information managers in relation to processing requests or disclosing public information (BILOUS O. V., 2019). Therefore, when considering whether to restrict or grant access to certain information under martial law, it is important to adhere to the general principle applicable to all restrictions on access to information under Article 6(2) of the Law of Ukraine 'On Access to Public Information' - the so-called 'three-part test'.

This implies that restriction of access to this or that information is possible only if the management as for such, meets all requirements specified in clauses 1-3 part 2 Article 6, hence absence of an affirmative answer on at least one ground among them means unjustifiability against accessibility limiting with regard to public information.

It is in the Resolution of the Plenum of the Supreme Administrative Court of Ukraine No. 10 "On Practice for Application by administrative courts legislation on public information" dated September, 29th December, 2016 that describes how to do this 'test'. Moreover, according to international and European standards on access of information the right to receive public informations can be limited. These norms include the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters; Council of Europe Recommendation No. R(81)19 on access to information held by public authorities; Council of Europe Convention on Access to Official Documents; Johannesburg Principles on National Security, Freedom of Expression and Access to Information; Principles on Freedom of Information Legislation, etc.





Over the time when martial law was applied in Ukraine, responsible authorities announced partial limitations on publication of some types of information. One of them is the Law of Ukraine “On Amendments to Certain Laws of Ukraine on Civil Service and Local Self-Government Activities under Martial Law” No. 1914-IX dated May 12, which provides that during martial law local governments’ acts, military-civilian administrations and garrisons, as well as their officials are exempt from access to public information laws (even for ones provisions tortious) in accordance with anti-corruption legislative changes or economic legislation system policy state regulation applied terrain rights based principles activity animals i territorialism aid subject area subjected be organized warfare However, the duty of publication drafts remains unchanged, in accordance with paragraph 2 of part one of Article 15.

The Resolution of the Cabinet of Ministers of Ukraine dated 12 March 2022 grants executive authorities, state and municipal enterprises, institutions, organisations under their jurisdiction the right to suspend or restrict the operation of information, information and communication and electronic communication systems, as well as public electronic registers owned by them.

These restrictions resulted in the suspension of the unified state open data web portal, the register of corrupt officials, and the unified state register containing information on all business entities.

Taking into account the court practice in cases of appealing against actions of public authorities in refusing to satisfy requests for public information, it can be concluded that it is not enough to make a general reference to the law in a decision to deny access to certain public information, as such a response will be considered unreasonable. In this context, the following conclusions in court decisions should be noted:

1) a delay in satisfying a request for information may be applied only under the following conditions:

- in case of force majeure circumstances - obstacles that prevent the administrator from physically providing the requested information within the time limit provided by law;

- the delay is applied only until these circumstances are removed (and not until the end of martial law, since martial law is not a force majeure circumstance in the context of the Law of Ukraine ‘On Access to Public Information’)

2) the mere introduction of martial law and the issuance of decisions by public authorities is not a sufficient ground for restricting access to information.





In this manner, the introduction of a state martial law regime does not deprive access to public information for individuals — on its part accessibility limitation should enforce only in national security, territorial integrity or public order and be clearly grounded under Article 6 of Law of Ukraine On Access to Public Information.

The study concluded that while examining the issue of introducing human rights restrictions during martial law, along with domestic legal acts of Ukraine such as the Basics Law and Law Of Ukraine 'On Legal Regime Of Martial Law', provisions of Conventions for The Protection Human Rights And Fundamental Freedoms as well European Court on Human right serves a major part. The fundamental principles of international law apply to the relations between a state and individuals. The development of these standards is also active monitoring over the fulfillment of guarantees by the parties to the Convention — and consequently, on everything that are in lined with “three pillars” of democracy protection, human rights defense and rule-of-law framework established for European citizens. This control mechanism ensures that any such restriction is compatible with the principle of proportionality, which requires that limitations on rights guaranteed under the Convention must be based in law and pursue one or more legitimate aims and be necessary to a democratic society. Against the backdrop of Ukraine's strategic course towards European integration and obtaining candidate status in joining the EU, there are new tasks before constitutional science - given that martial law is an exceptional regime related to his human rights restrictions (first of all), it will be argued from a scheme regulated approach by comparing European legal standards regarding restriction on humans right during partial or state emergency such aforementioned time with similar approaches provided for in those regions between ECtHR case-law and constitution. In addition - it is needed to search for other scientific sources given that the case law of the European Court of Human Rights related usage or impact on restrictions about rights and freedoms mutually evolves.

4 CONCLUSIONS

Concluding the analysis of the issue of criminal law crimes in Ukraine, especially in the context of the use of weapons of mass destruction, several key conclusions can be drawn that reflect the current state of this problem and outline ways to address it. The study highlights the key aspects that determine the criminal law nature of war crimes, including their classification, objects and subjects, as well as the specifics of





their qualification and prosecution.

The establishment of the legal regime of martial law within the territory of Ukraine poses a significant set of tasks for the state to improve the National Human Rights Strategy. In order to address these issues, it is important for the rights of the population by state to be assured through effective mechanisms. The state should follow the rule of law and a priority for democratic government is characteristic legal regulation in making decisions, which will create liberation balances during restricting constitutional rights and freedoms not to warp the exercise by citizens their rights or legitimate concern. If there is a threat to human life and health, martial law must not be an unconstrained supply for the government, which saves its interests.

The procedure for restricting the implementation of some rights of citizens is stipulated by the Constitution of Ukraine and other legal acts. However, such restrictions must meet the criteria of validity and duration, proper legal basis as well as legitimate purpose in application while maintaining the values from democratic principles where it should only be utilized for protecting societal interests (which is limited to dogma adherence), guaranteed public order and security without any harm caused on equality with others Article 86/7 Other human rights must necessarily have an appropriate role too so that they do not infringe anyone'. That is the compliance of these restrictions with international norms and human rights, which are essential to protect them.

Thus, in the context of martial law, the restriction of the right to access public information actually means that citizens have the opportunity to obtain information from open sources. For this reason, it is recommended that information holders actively update and fill in information on official websites and social media.

Depending on the situation under martial law, access to information may be restricted in order to protect national security, territorial integrity or public order, as well as to prevent crime or protect public health. In case of restriction of access to information, the information manager is obliged to justify this decision, explaining its necessity and showing the real harm that may arise.

If information access is restricted, a reason must be given - why it was decided to do so and what real damage can occur. It is always important to bear in mind that the right of access to information has limits and may be curtailed by laws.





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