

NOTAS HISTÓRICAS Y GEOGRÁFICAS

Artículos

Protection of human rights in Ukraine under martial law

Protección de los derechos humanos en Ucrania bajo la ley marcial

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Abstract

The article delves into a comprehensive theoretical and legal examination of safeguarding human rights and freedoms amidst martial law in Ukraine. Emphasis is placed on martial law serving as the primary legal framework for curtailing constitutional rights and freedoms. An in-depth scrutiny of the legislative definition of martial law is conducted, highlighting its invocation upon threats to national security or territorial integrity. The discussion extends to the rights subject to limitations during military conflicts. Additionally, mechanisms and assurances for upholding human rights under martial law are explored. The analysis underscores the complexity of safeguarding human rights during martial law, underscoring the critical need for efficacious mechanisms to ensure justice, foster democracy, and facilitate peace restoration in Ukraine.

Keywords: Human rights and freedoms, Martial law, Protection of human rights, Restriction, Mechanism for protecting human rights.

Resumen

El artículo analiza en profundidad la teoría y la legislación sobre la protección de los derechos humanos y las libertades en el marco de la ley marcial en Ucrania. Se hace hincapié en que la ley marcial es el principal marco jurídico para limitar los derechos y las libertades constitucionales. Se examina en profundidad la definición legislativa de la ley marcial, destacando su invocación en caso de amenazas a la seguridad nacional o la integridad territorial. El análisis se extiende a los derechos sujetos a limitaciones durante los conflictos militares. Además, se exploran los mecanismos y garantías para defender los derechos humanos en el marco de la ley marcial. El análisis subraya la complejidad de la protección de los derechos humanos durante la ley marcial, subrayando la necesidad crítica de mecanismos eficaces para garantizar la justicia, fomentar la democracia y facilitar el restablecimiento de la paz en Ucrania.

Palabras Clave: Derechos humanos y libertades, Ley marcial, Protección de los derechos humanos, Restricción, Mecanismo de protección de los derechos humanos.

Introduction

It's widely acknowledged that a hallmark of a state operating under the rule of law is the complete acknowledgment of human rights and the establishment of a robust protective framework. Hence, in a contemporary state, human rights are inseparable from a well-regulated and efficient protection system. The inclusion of the notion of recognizing the inseparable unity of the rule of law, human rights, and their protection in the concluding Document of the Copenhagen Meeting of the Conference on the Human Dimension of the OSCE was deliberate. It emphasizes that the rule of law entails more than just procedural legality ensuring consistency in democratic governance. Rather, it encompasses justice grounded in the acknowledgment and complete embrace of the supreme value of human dignity. This justice is upheld by institutions that facilitate the fullest expression of human potential.¹

The issue of human rights and their safeguarding under martial law holds significant relevance, particularly in contexts where a nation confronts substantial security threats or experiences internal or external aggression. In such circumstances, there emerges a crucial dilemma of maintaining national security while upholding the fundamental rights and freedoms of individuals. The conflict initiated by Russia against Ukraine on February 24, 2022, marked a pivotal moment for the Ukrainian populace, profoundly impacting all facets of society. Presently, Ukraine finds itself under martial law for the first time since its independence, with its legal framework extending across the entire territory and entailing restrictions on the rights and freedoms of its citizens. Martial law prompts shifts in priorities, introduces new situations, and poses challenges that necessitate adaptation and the formulation of effective mechanisms for protecting human rights.

Results of analysis of recent research and publications

In modern scientific discourse, the issue of protecting human rights in conditions of military conflict is quite relevant. Therefore, it is no coincidence that modern scientists actively research various aspects of the protection of human rights under martial law. For example, theoretical and legal analysis of constitutional human rights and freedoms under martial law is carried out by O. Biloskurska, M. Fedorchuk², O. Havrylenko³, S.

¹Document of the Copenhagen Meeting of the Conference on the Human Dimension of the OSCE (1990). URL:<https://www.osce.org/ru/odihr/elections/14304>

²Biloskurska, O.V., Fedorchuk, M.D. «Normatyvno-pravove rehulyuvannya obmezhenyha konstyutsiynykh prav i svobod lyudyny i hromadyanyna v umovakh voyennoho stanu v Ukrayini», *Pravova derzhava – Constitutional state*, 46 (2022): 7–18.

³ Havrylenko, O.I. Dotrymannya konstyutsiynykh prav ta svobod v umovakh voyennoho stanu (2023). URL:<https://er.dduvs.in.ua/bitstream/123456789/10301/10.pdf>

Kuznichenko⁴, H. Markovich⁵, O. Tikhomirov⁶, Yu. Figel⁷ and other scientists. In the studies of these authors, considerable attention is also paid to the theoretical and methodological foundations for the restriction of constitutional human rights under martial law, as well as other issues.

The international aspect of the protection of human rights during armed conflicts is the subject of research by K. Primakov, S. Bidniak⁸, I. Dakhova⁹, N. Nogas¹⁰, O. Rozumovsky¹¹ and other authors. Their works examine the provisions of the most famous international documents that relate to the protection of human rights during armed conflicts.

A significant number of modern studies are devoted to the mechanisms and guarantees of ensuring human rights in Ukraine under martial law. Their authors are P. Davydenko¹², V. Demchenko¹³, E. Doroshenko¹⁴, I. Tolkacheva¹⁵. The named scientists in their works focus their attention on the study of the institutional system of ensuring and protecting the rights and freedoms of citizens under the legal regime of martial law.

⁴ Kuznichenko, S.O. «Kontsepsiya obmezheniya prav lyudyny v umovakh viys'kovoho stanu», *Pivdenno-ukrayins'kyi pravnychyi chasopys – South Ukrainian legal journal* 1-2 (2022): 32–36.

⁵ Markovich, H.M. «Prava i svobody lyudyny v umovakh viys'kovoho stanu: fokus priorytetiv», *Elektronne naukove vydannya «Analitychno-porivnyal'ne pravoznavstvo» – Electronic scientific publication «Analytical and comparative jurisprudence»* 4 (2023): 95-99. URL: <http://journalapp.uzhnu.edu.ua/article/view/287204>

⁶ Tikhomirov, O.O. «Problemy obmezheniya informatsiynykh prav lyudyny v umovakh voyennoho stanu v Ukrayini», *Juris Europeans Scientia* 6 (2022): 62-67.

⁷ Figel, Y.O. «Obmezheniya prav lyudyny v umovakh voyennoho stanu», *Visnyk LTEU. Yurydychni nauky – Bulletin of LTU. Legal sciences* 2 (2015): 222–230.

⁸ Primakov, K.Yu., Bidniak, S.S. «Mizhnarodnyy zakhyst prav lyudyny pid chas zbroynykh konfliktiv», *Elektronne naukove vydannya «Analitychno-porivnyal'ne pravoznavstvo» – Electronic scientific publication «Analytical and comparative jurisprudence»* (2013): 417-420. URL: <https://app-journal.in.ua/wpcontent/uploads/2023/05/74.pdf>

⁹ Dakhova, I. «Obmezheniya realizatsiyi prav i svobod lyudyny: konstytutsiyne rehulyuvannya ta praktyka Yevropeys'koho sudu z prav lyudyny», *Forum prava – Law forum* 4 (2018): 17–25. URL: <https://forumprava.pp.ua/files/017-025-2018-44-.pdf>

¹⁰ Nogas, N. «Mizhnarodnyy zakhyst prav lyudyny pid chas zbroynykh konfliktiv», *Aktual'ni problemy pravoznavstva – Actual problems of jurisprudence* 4 (32) (2022): 132–136.

¹¹ Razumovsky, O.S. «Zakhyst prav lyudyny, pov'yazano z porushennyam st. 2 Konventsii pro zakhyst prav lyudyny i osnovopolozhnykh svobod (1950 r.) v umovakh zbroynoho konfliktu», *Naukovyy Visnyk Uzhhorods'koho Natsional'noho Universytetu – Scientific Bulletin of the Uzhhorod National University* 70 (2022): 141–145.

¹² Davydenko, P. O. Mekanizm zabezpechennya konstytutsiynykh prav lyudyny v umovakh voyennoho stanu (Nats. yuryd. un-t im. Yaroslava Mudroho, M-vo osvity i nauky Ukrayiny, 2023): 226.

¹³ Demchenko, V.M. «Zakhyst prav lyudyny v umovakh viyny yak funktsiya publichnoho upravlinnya», *Publichne upravlinnya ta administruvannya. Visnyk KHNTU – Public management and administration. Bulletin KhNTU* 2(81) (2022): 142-148.

¹⁴ Doroshenko, E.A. «Pravovi mekhanizmy zakhystu prav lyudyny pid chas viyny», *Yurydychnyy naukovyy elektronnyy zhurnal – Legal scientific electronic journal* 2 (2023): 323-326.

¹⁵ Tolkacheva, I.A. «Problema zabezpechennya prav lyudyny v Ukrayini v umovakh viyny», *Chasopys Kyivsk'oho universytetu prava – Journal of the Kyiv University of Law* 2(4) (2022): 78-81.

Of great importance for this study are doctrinal approaches to defining the categories of "information human rights and freedoms", "information security" in the context of the information war that the Russian Federation unleashed against Ukraine, as well as the category of "social instability", which are analyzed in the works of A. Blaha, O. Martynenko, B. Moysa, R. Shutov¹⁶, O. Danilyan, O. Dzeban, Y. Kalinovsky¹⁷ and other researchers.

Simultaneously, there exists a pressing need for further theoretical and legal exploration into the protection of human rights under martial law in Ukraine, as this issue remains incompletely elucidated.

The problem of restrictions on human rights and freedoms under martial law

Human rights and freedoms under martial law represent fundamental and indispensable pillars of contemporary society. Their protection and assurance are imperative, mandated by constitutional provisions as well as normative legal regulations. Given the intricate realities shaped by Russia's armed aggression against Ukraine and its comprehensive invasion of Ukrainian territories, human rights demand exceptional safeguarding. This imperative arises from constitutional norms that acknowledge the paramount social value of every individual, encompassing their life, health, honor, dignity, inviolability, and security¹⁸. In times of armed conflict, prioritizing respect for human rights signifies not only a hallmark of advanced democracy and societal progress but also underscores the recognition of the individual as the supreme social value and a national priority.

When delving into the issue of human rights protection under martial law, it is crucial to begin by elucidating the core of this concept. Legal literature offers a plethora of definitions, yet it appears most judicious to adopt the definition provided in the law of Ukraine titled "On the Legal Regime of Military Status." According to this law, martial law is delineated as a specialized legal framework enacted in response to the threat of armed aggression or incursion onto Ukrainian territory, endangering the state's independence, territorial integrity, and the functioning of relevant state organs tasked with averting such threats, repelling armed aggression, and safeguarding national security. Martial law entails

¹⁶ Blaha, A.B. and others. *Svoboda slova v umovakh informatsiynoyi viyny ta zbroynoho konfliktu* (Ukrayins'ka Hel'sins'ka spilka z prav lyudyny. Kyiv, 2027): 85.

¹⁷ Danilyan, O. G. and others. «Personal information rights and freedoms within themodern society», *Informatologia* 51 (1-2) (2018): 24-33; Danilyan, O.G. and others. «Features of information war in the media space in the conditions of Russian aggression against Ukraine», *Cogito* 15(3) (2023): 55-71; Danilyan, O.G. and others. «Social instability as a global trend of the modern world», *Cogito* 14(3) (2022): 141-162.

¹⁸ Konstyutsiya Ukrayiny (Kharkiv: Pravo, 2023): 8.

conferring powers upon military administration, military departments, and local governmental bodies necessary to mitigate the risk of state aggression or incursion onto Ukrainian territory.¹⁹ This definition defines martial law as the main legal basis for restricting constitutional rights and freedoms of man and citizen.

Hence, the legislation of Ukraine outlines the conditions under which martial law may be imposed, specifically in response to threats to national security or territorial integrity. Under martial law, certain rights and freedoms of citizens may be curtailed to safeguard the defense and security of the country. Article 6 of the Law of Ukraine "On the Legal Regime of Military Status" enumerates the constitutional rights and freedoms of individuals that may be temporarily restricted in conjunction with the imposition of martial law, specifying the duration of these restrictions.²⁰ The rights of individuals that may be restricted under martial law include: the right to inviolability of housing (Article 30 of the Constitution of Ukraine - hereinafter referred to as the CU); the right to privacy of correspondence, telephone conversations, telegraph and other correspondence (Article 31 of the CU); the right to non-interference in personal and family life (Article 32 of the CU); the right to freedom of thought and speech, to freely express one's views and beliefs (Article 34 of the CU); the right to participate in the management of public affairs, in all-Ukrainian and local referendums, to freely elect and be elected to government bodies and local self-government bodies (Article 38 of the CU); the right to assemble peacefully, without weapons and to hold meetings, rallies, processions and demonstrations (Article 39 of the CU); the right to own, use and dispose of one's property, the results of one's intellectual and creative activity (Article 41 of the CU); the right to entrepreneurial activity (Article 42 of the CU); right to work (Article 43 of the CU); the right to strike (Article 44 of the CU); right to education (Article 53 of the CU)²¹. Such restrictions are necessary to: prevent crime; save lives and property; safeguard the interests of national security, territorial integrity of the country, public order and economic well-being; ensure public health, protect the reputation, rights and freedoms of others; prevent disclosure of confidential information, etc.

In the contemporary world, the limitation of human rights and freedoms constitutes an essential aspect of the relationship between citizens and the state. While these restrictions may not always be viewed favorably, their implementation is driven by rational

¹⁹ Pro pravovyy rezhyim voyennoho stanu: Zakon Ukrayiny vid 12.05.2015 r. № 389-VIII: stanom na 20 ver. 2023 r. URL: <https://zakon.rada.gov.ua/laws/show/389-19#Text>

²⁰ Pro pravovyy rezhyim voyennoho stanu: Zakon Ukrayiny vid 12.05.2015 r. № 389-VIII: stanom na 20 ver. 2023 r. URL: <https://zakon.rada.gov.ua/laws/show/389-19#Text>

²¹ Konstyutsiya Ukrayiny: 14-21.

motives aimed at safeguarding human rights and freedoms from abuse and preserving public safety. Therefore, the restriction of fundamental human rights and freedoms represents a lawful, purposeful curtailment of individual potentials, characterized by their temporary and socially necessary nature. Indeed, all international legal instruments governing human rights and freedoms presuppose the possibility of their restriction. We can concur with the perspective of researcher O. Skrypniuk, who characterizes the limitation of human rights and freedoms as a regime involving the temporary suspension or narrowing of certain rights and freedoms guaranteed by the state's fundamental laws. This limitation is undertaken in the interests of protecting the rights of others and ensuring the national security and defense of Ukraine.²²

It's important to differentiate between limitations on human rights and human rights violations, as these are distinct categories. Limitations on human rights occur when the state or other actors restrict the enjoyment of certain human rights in specific situations for legitimate purposes, such as ensuring security, protecting public order, public health, safeguarding the rights and freedoms of others, or promoting the interests of society as a whole. These limitations are directly tied to specific conditions and must be proportionate to the objective goals they aim to achieve. On the other hand, as H. Markovich aptly notes, human rights violations always transgress the boundaries set by legal norms established by laws. They occur when there is a clear breach of fundamental rights and freedoms, disregarding legal safeguards and protections.²³

However, these restrictions of constitutional rights and freedoms associated with the introduction of martial law cannot apply to all rights of citizens. The Constitution of Ukraine defines a list of rights and freedoms that cannot be restricted under martial law. Such rights and freedoms include: equality of citizens before the law regardless of race, skin color, political, religious and other beliefs, sex, ethnic and social origin, property status, place of residence, language and other peculiarities (Article 24 of the CU); the right to citizenship and its change (Article 25 of the CU); right to life (Article 27 of the CU); the right to respect for personal dignity (Article 28 of the CU); the right to freedom and personal integrity (Article 29 of the CU) and other rights.²⁴ The establishment of a list of rights not subject to restriction even during martial law is a constitutional guarantee of

²² Skrypniuk, O.V. «Konstytutsiyno-pravove rehulyuvannya obmezhenyia prav i svobod lyudyny i hromadyanyna v Ukraini», *Publichne pravo – Public law* 3 (2011): 6

²³ Markovich, H.M. Prava i svobody lyudyny v umovakh viys'kovoho stanu: fokus priorytetiv, *Elektronne naukove vydannya «Analitychno-porivnyal'ne pravoznavstvo» – Electronic scientific publication «Analytical and comparative jurisprudence»* 4 (2023): 95-99. URL: <http://journalapp.uzhnu.edu.ua/article/view/287204>

²⁴ Konstytutsiya Ukrainy: 23-24.

human and civil rights. This is an important aspect for ensuring the fundamental rights and freedoms of citizens of Ukraine, including under martial law.

It's crucial to highlight that the duration of restrictions cannot exceed the period of the state of emergency or martial law. This signifies that upon the conclusion of such regimes, the full constitutional effect of rights and freedoms must be reinstated. Furthermore, any limitations on human rights imposed during martial law must adhere to the principles of reasonableness, proportionality, and necessity to achieve the legitimate objectives of state security and defense. Additionally, Ukrainian legislation incorporates specific mechanisms and guarantees for the protection of human rights, including provisions applicable under martial law. These mechanisms are designed to ensure that fundamental rights and freedoms are upheld even in exceptional circumstances, safeguarding individuals against arbitrary or unjust infringements.

Ways to safeguard human rights in contemporary society

It is known that human rights are not realized automatically even under favorable conditions. This requires certain efforts, and even a person's struggle for his or her rights and freedoms, which must be organically included in the system of measures that constitute the unified mechanism for the protection of human rights. Therefore, it is not accidental that in the legal literature of recent years devoted to the problems of human rights, there has been a certain interest in analyzing the mechanism for the protection of human rights. As one of the leading experts in the field of human rights, P. Rabinovych, rightly notes, "human rights are exercised through certain mechanisms for their implementation and enforcement."²⁵

The authors of the article propose a nuanced exploration of the concept of human rights protection mechanisms, delineating between broad and narrow interpretations. In its expansive scope, this mechanism encompasses an intricate network of social institutions, legal frameworks, and protective measures (including judicial, administrative, civil, criminal, etc.). Its overarching goal is to ensure the comprehensive and efficacious safeguarding of human and civil rights and freedoms.

Conversely, in a more focused interpretation, the mechanism for human rights protection entails a specific set of applicable guarantees aimed at defending violated human and civil rights and freedoms. Within the realm of human rights guarantees lies a complex interplay of components, comprising actors engaged in human rights protection endeavors, as well as diverse forms and methodologies of protection. Here, forms denote the legal prerequisites necessary for safeguarding infringed rights, while methodologies encompass

²⁵ Rabinovych, P.M. *Prava lyudyny i hromadyanyna v Konstytutsiyi Ukrayiny (dointerpretatsiyi vykhidnykh konstytutsiynykh polozhen)*(Kharkiv: Pravo, 1997), 29.

the diverse means and approaches through which any participant in human rights protection activities can champion fundamental human rights and freedoms.²⁶

The direct action of the mechanism of protection of rights consists in the following: the subject of human rights activity, being in certain legal conditions (form of protection), uses certain established means or methods of protection.

An important component of this concept is the identification of four levels of human rights protection, and, consequently, four types of guarantees, where the classification criterion is the scope of their application. These include: international guarantees; domestic guarantees; regional guarantees of human and civil rights, ensuring the realization of rights on the territory of a particular region; and local guarantees applied at the municipal level. Each type of guarantee corresponds to a specific mechanism for protecting rights, namely: international, national, regional and local.²⁷

In further elaborating on this approach, several key points merit attention. Firstly, it's essential to recognize that the establishment of legal norms delineating human and civil rights and freedoms within a given society does not occur spontaneously. Their integration into the legal framework necessitates the political will of the ruling elite, the perseverance of political parties, and civil society organizations. This underscores the subjective element inherent in this process. Secondly, the functioning of the mechanism for protecting human rights is heavily reliant on various social institutions. These institutions play pivotal roles in ensuring the efficacy of the protection mechanism. Thirdly, a significant challenge in safeguarding human rights in developing nations such as Ukraine is the effectiveness of these mechanisms. The effectiveness of the social system, particularly in the realm of human rights protection, hinges on the establishment of institutions adhering to the rule of law and the presence of feedback channels, including social oversight by civil society organizations.

Now, let's delve into some specific elements of the mechanism for protecting human rights in Ukraine amidst wartime conditions.

International level of human rights protection in Ukraine

²⁶ Danilyan, O.G. Mekhanizm zakhystu prav lyudyny v suchasnomu suspil'stvi: teoretyko-pravovyy diskurs, *Visnyk Natsional'noho universytetu «Yurydychna akademiya Ukrayiny imeni Yaroslava Mudroho»*. Seriya: *Filosofiya, filosofiya prava, politolohiya, sotsiolohiya – Bulletin of the National Law Academy of Ukraine named after Yaroslav Mudryi. Series: Philosophy, Philosophy of law, Political science, Sociology* 4 (18) (2013): 54-55.

²⁷ Yeremeyeva, E.A. Mekhanizm zakhystu prav i svobody lyudyny ta hromadyanyna: ponyattya, struktura, bezposerednya diya, *Konstytutsiyne ta munitsypal'ne pravo – Constitutional and municipal law* 2 (2011): 2-4.

One of the main directions of interstate cooperation in international and regional military conflicts is the protection of human rights, which is determined by the provisions of the "Convention for the Protection of Human Rights and Fundamental Freedoms", as well as the "European Convention on Human Rights" (ECHR) (1950).²⁸ The international community, the UN, the EU and other international organizations condemn armed conflicts, wars and other acts of aggression against countries under international law, and wars of aggression are generally prohibited. Unfortunately, it must be noted that interstate, regional and interethnic armed conflicts are an objective reality of the modern stage of human development.

Thus, Russia's full-scale invasion of Ukraine has led to systematic violations of human rights. Thousands of Ukrainian citizens have been killed or wounded, numerous cases of kidnapping, torture, ill-treatment, attacks on personal dignity, sexual violence were recorded and this is not a complete list of violations of the rights of the Ukrainian people. The Memorandum of the Council of Europe Commissioner for Human Rights notes that Russia's attack on Ukraine entailed serious and massive violations of human rights and international humanitarian law, which had disastrous consequences for the enjoyment of almost all human rights by the Ukrainian people. The pattern of violations of international humanitarian law, including the use by Russian forces of long-range explosive weapons, cluster munitions and unguided rockets in densely populated areas, point to the possible qualification of many such violations as war crimes or crimes against humanity.²⁹

The UN Human Rights Monitoring Mission in Ukraine regularly publishes reports on the killings of civilians in our country. From 24 February to 4 December 2022 alone, the Office of the UN High Commissioner for Human Rights recorded 17,181 confirmed civilian casualties in Ukraine: 6,702 dead and 10,479 injured.³⁰ The real number of dead and wounded residents of Ukraine exceeds these figures many times.

Ukraine is provided with billions of dollars in military assistance from both the above and many other countries. It should be emphasized that Russia's large-scale invasion of

²⁸ Convention on the Protection of Human Rights and Fundamental Freedoms.

URL: https://zakon.rada.gov.ua/laws/show/995_004

²⁹ Memorandum on the human rights consequences of the war in Ukraine. Council of Europe. Strasbourg, 8 July 2022. URL:

<https://rm.coe.int/commdh-2022-18-memorandum-on-the-human-rights-consequences-of-the-war-/1680a7beb>

³⁰ Ukraine: civilian casualty update. UN human rights monitoring mission in Ukraine. URL: <https://ukraine.un.org/sites/default/file/2022-12/Ukraine%20civilian%20casualty%20update%20as%20of%2011%20December%202022%20RUS.pdf>

Ukraine has been widely condemned in most countries of the world - the United States, Great Britain, Japan, the European Union, etc., as well as in intergovernmental organizations. Ukraine is receiving many billions of dollars in military aid from the above-mentioned countries and many others.

In addition to military assistance, Ukraine receives serious humanitarian assistance from such international organizations as UNHCR, UNICEF, IOM, WFP, OCHA, the International Committee of the Red Cross, the Red Cross Society and others. In only year of 2022, about 13 million Ukrainians received humanitarian assistance from these organizations.

The military aggression of the Russian Federation against Ukraine had a strong impact on the Council of Europe, which mobilized all available instruments to hold the Russian Federation accountable for violations of human rights and international law, as well as to provide compensation to those affected by Russian aggression.

On April 27 and 28, 2022, the Parliamentary Assembly of the Council of Europe passed two resolutions and recommendations titled "Consequences of the Continued Aggression of the Russian Federation against Ukraine: The Role and Response of the Council of Europe" and "Aggression of the Russian Federation against Ukraine: Ensuring Accountability for Serious Violations of International Humanitarian Law and Other International Crimes."³¹ The pivotal points outlined in these resolutions and recommendations, pertinent to our research focus, encompass several significant actions: extending support to individuals compelled to flee Ukraine due to the ongoing aggression by the Russian Federation; proposing the establishment of a specialized International Criminal Tribunal headquartered in Strasbourg, tasked with investigating and penalizing acts of aggression perpetrated by the political and military leadership of the Russian Federation; advocating for the appointment of a Special Representative of the Committee of Ministers of the Council of Europe to address the repercussions of Russian aggression against Ukraine. Suggesting the utilization of assets belonging to Russian citizens subjected to sanctions due to their involvement in Russian aggression against Ukraine, to provide compensation for damages incurred by Ukraine and its citizens as a result of the aggression.

Additionally, at the Council of Europe summit in Reykjavik, Iceland, held in May 2023, a Register was established to document the damages inflicted as a consequence of the

³¹ Consequences of the Russian Federation's aggression against Ukraine.

URL: <https://pace.coe.int/en/files/29885/html>; The Russian Federation's aggression against Ukraine: ensuring accountability for serious violations of international humanitarian law and other international crimes.

URL: <https://pace.coe.int/en/files/30024>

Russian Federation's aggression against Ukraine.³² This Register is the first step towards an international mechanism for compensation for damage to Ukraine and its citizens as a result of aggression. To date, 42 countries and the European Union have joined the Register as a participant or associate member.

The European Court of Human Rights (hereinafter referred to as the European Court) holds a crucial position within the international framework for safeguarding human rights. As an international judicial entity operating within the system of international oversight over the implementation of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the European Court plays a central role. Decisions rendered by the European Court are legally binding, conclusive, and not subject to appeal. The jurisprudence established by the European Court significantly impacts the judicial practices of member states and fosters a culture of respect for fundamental human rights and freedoms.

Ukraine, immediately after the Russian army invaded its territory, filed a complaint against Russia to the European Court on the grounds of "massive violations of human rights committed by Russian troops during military aggression against the sovereign territory of Ukraine." In June 2022, Ukraine also filed a lawsuit against Russia in the European Court accusing it of military invasion in violation of international law.

The Court urged the Russian government to abstain from military assaults targeting civilians and civilian infrastructure, including residential buildings, emergency vehicles, and other specially designated civilian sites such as schools and hospitals. Furthermore, it called for immediate measures to guarantee the safety of medical facilities, personnel, and emergency vehicles within areas subjected to attacks or blockades by Russian troops.³³ As expected, Russia ignored the calls of the European Court of Human Rights.

Ukraine has also been actively pursuing its own strategy to address human rights violations on the international stage. In February 2022, Ukraine formally initiated legal proceedings against Russia at the International Court of Justice, seeking to hold Russia accountable for acts of genocide.

³² Register of Damage Caused by the Aggression of the Russian Federation Against Ukraine. URL: <https://netherlands.mfa.gov.ua/en/partnership/cooperation-international-organisations/register-damage-caused-aggression-russian-federation-against>

³³ Crawford, J. Ukraine – Russia: what the European Court of Human Rights can (and cannot) do. URL: <https://www.justiceinfo.net/ru/106434-ukrayna-rossyya-chto-mozhet-y-ne-mozhet-sde.html>

The primary objective of international legal mechanisms is to oversee and enforce adherence to international human rights norms. This is particularly critical for safeguarding fundamental individual rights, which must be upheld and protected by states.

Domestic (national) level of human rights protection in Ukraine under martial law

As a rule, the mechanism of human rights protection in a state governed by the rule of law includes: constitutional and judicial mechanism (constitutional court); judicial protection (courts of general jurisdiction); ombudsman (commissioner for human rights); administrative actions of executive authorities; activities of non-governmental human rights organizations; legitimate self-protection by a person of his or her rights, etc.³⁴

Under martial law, the domestic mechanism for the protection of human rights is transformed and divided into types, depending on their functions and capabilities. One of these types is the military power, responsible for controlling the army and ensuring the security of the state and citizens.

Another type of public authority in Ukraine, which is part of the named mechanism, includes bodies ensuring the functioning and protection of human rights under martial law. These may be government bodies responsible for guaranteeing human rights and monitoring the activities of the authorities, in particular, judicial authorities. Public self-government bodies play an important role in Ukraine, one of whose functions is to protect the rights and interests of people during a military conflict.³⁵

The introduction of the legal regime of martial law implies a change in the order of functioning of public authorities by expanding their competence. It is important to note that these changes should not affect the balance of powers between the legislative, executive and judicial powers, preserving the checks and balances principle. There is also an expansion of the powers of the President of Ukraine, the Cabinet of Ministers of Ukraine, the Verkhovna Rada of Ukraine, local government bodies, military command and law enforcement agencies.

Despite the fact that the military leadership of a country under martial law can make key decisions and take on a leadership role in these difficult conditions, this does not mean that the mechanism for protecting and ensuring human rights is limited or becomes unnecessary. On the contrary, it remains a necessary and important component of the social

³⁴ Danilyan, O.G. coordinator. *Suspil'stvo, lyudyna, pravo: suchasni doslidzhennya aktual'nykh problem* (Nats. yuryd. un-t im. Yaroslava Mudroho, Kharkiv: Pravo, 2014), 192.

³⁵ Davydenko, P. O. *Mekhanizm zabezpechennya konstytutsiynykh prav lyudyny v umovakh voyennoho stanu* (Nats. yuryd. un-t im. Yaroslava Mudroho, M-vo osvity i nauky Ukrayiny, 2023), 113.

system, the purpose of which is to guarantee respect for the rights and freedoms of citizens, regardless of the situation or context.

Judicial mechanism for the protection of human rights

The most reliable and effective, but often time-consuming way to protect human rights is through the courts. Here the protection of rights is carried out in the established order: a person whose rights are violated does not complain, but, on the contrary, enters into a dispute with any person or official, with any state body, as an equal party. . violated rights. Formally, everyone is equal before the court: both individuals and public authorities.

According to the Constitution of Ukraine, the responsibility for judicially safeguarding rights and freedoms lies with the system of courts of general jurisdiction and the Constitutional Court of Ukraine. The Constitutional Court holds a unique position as the sole body of constitutional jurisdiction within the state. It adjudicates on matters regarding the conformity of laws and other normative legal acts with the Constitution of Ukraine and provides authoritative interpretations of both the Constitution and laws of Ukraine.

The Constitutional Court of Ukraine exercises its competence to protect human rights and freedoms, including during periods of martial law, across its various procedures. This includes determining the constitutionality of laws and other legal acts, including those regulating human rights, as well as issuing official interpretations of the Constitution and laws of Ukraine. Additionally, the court assesses the alignment of the Constitution of Ukraine with existing international treaties, and scrutinizes bills proposing amendments to the Constitution for compliance with relevant constitutional provisions.³⁶

The President of Ukraine as a guarantor of human rights and freedoms

Article 3 of the Constitution of Ukraine establishes that the state is responsible to the individual for its activities, and ensuring human rights and freedoms is the main responsibility of the state. In this context, the position of the President of Ukraine is of particular importance, who, according to Article 102 of the Constitution of Ukraine, is the guarantor of the observance of the Constitution, human rights and freedoms. The activities of the President of Ukraine, defined in Article 106 of the Constitution, constitute an independent group of constitutional guarantees. The President of Ukraine, upon taking office, takes an oath in which he swears to "take care of the good of the Fatherland and the well-being of the Ukrainian people, to defend the rights and freedoms of citizens."³⁷ Thus, the President of Ukraine, as the most important component of public authorities, plays the role of a guarantor of human rights and freedoms under martial law.

³⁶ Konstytutsiya Ukrayiny, 61-65.

³⁷ Konstytutsiya Ukrayiny, 40.

Since the onset of the full-scale invasion by the Russian Federation, Ukraine has been confronted with a critical imperative: the protection of fundamental human rights. To expediently pursue these objectives, martial law was instituted by Decree No. 64/2022 issued by the President of Ukraine, effective from 05:30 on February 24, 2022. The implementation of martial law has entailed certain restrictions on human rights aimed at averting their infringement. These include limitations on freedom of movement, the unfettered choice of place of residence, and the right to depart from the territory of Ukraine, subject to restrictions prescribed by law, among others.

The Verkhovna Rada of Ukraine and its role in consolidating human rights and freedoms

The Verkhovna Rada of Ukraine plays a pivotal role in the mechanism for safeguarding human rights and freedoms, especially under martial law. As the sole legislative body in the country, the Verkhovna Rada holds exclusive authority to establish the rights and freedoms of individuals, as well as the guarantees for their protection, solely through the enactment of laws of Ukraine. This authority is conferred upon the Verkhovna Rada in accordance with its constitutional powers, as outlined in Article 92 of the Constitution of Ukraine.³⁸

The initial strides toward establishing an effective mechanism for safeguarding human rights in wartime conditions were marked by the adoption of key laws in Ukraine. Specifically, the Law of Ukraine "On Ensuring the Rights and Freedoms of Citizens and the Legal Regime of the Temporarily Occupied Territory of Ukraine" No. 1207-VII, dated April 15, 2014, laid down foundational principles. Additionally, the Law of Ukraine "On Ensuring the Rights and Freedoms of Internally Displaced Persons" No. 1706-VII, dated October 20, 2014, further contributed to this framework. Another significant milestone in the development of mechanisms for the protection and realization of human rights occurred with the establishment of the Ministry for the Reintegration of Temporarily Occupied Territories of Ukraine on April 20, 2016.³⁹

In June 2022, the Ministry of Reintegration of Temporarily Occupied Territories of Ukraine introduced the position of Commissioner for Internally Displaced Persons, who became the key official in the state protecting the rights of displaced citizens.

An important element of the mechanism for protecting human rights and freedoms and assistance in obtaining the status of an internally displaced person has become the

³⁸ Konstitutsiya Ukrainy, 35.

³⁹ Some issues of the Ministry on reintegration of temporarily occupied territories: Resolution of the Cabinet of Ministers of Ukraine dated 06/08/2016 No. 376 (as of February 18, 2023). URL: <https://zakon.rada.gov.ua/laws/show/376-2016-p#>

decentralization of these issues. Previously, these issues were resolved by central executive authorities or local state administrations.

Currently, the process of issuing many documents related to the legal status of citizens takes place through local authorities. This greatly simplifies the work of governmental bodies and facilitates the speedy obtaining of the necessary assistance and other human rights guarantees.

In June 2022, the Verkhovna Rada further bolstered Ukraine's mechanisms for safeguarding civilians and territories amidst the ongoing military aggression by the Russian Federation with the adoption of Law No. 7255. This legislation clarifies the responsibilities of civil protection entities and incorporates norms from international humanitarian law concerning civil protection.

Law No. 7255 enhances existing mechanisms aimed at protecting civilian populations and territories during the defense against Russian aggression. Additionally, it delineates the authority of local governments in civil protection matters, particularly within the framework of martial law.⁴⁰

The Verkhovna Rada Commissioner for Human Rights

An essential component of the mechanism for safeguarding human rights and freedoms under martial law is the Commissioner of the Verkhovna Rada of Ukraine for Human Rights. This position is tasked with independently monitoring and protecting human rights, ensuring adherence to legislation and international standards in this domain. The Commissioner plays a pivotal role in fortifying the principles of the rule of law and advancing the realization of equality, justice, and the protection of individuals' rights.

In his monitoring activities, the Commissioner for Human Rights conducts an independent and objective assessment of human rights violations occurring in the zone of military conflict. He cooperates with military forces, law enforcement agencies and public organizations, including international ones, to ensure appropriate responses to violations of human rights and freedoms and investigations of war crimes. The main purpose of this position is to ensure that all persons, regardless of their nationality, religion or political opinion, are able to freely enjoy their fundamental rights and freedoms.⁴¹

Other institutions of the human rights protection mechanism, including at the regional and local levels

⁴⁰ Proekt Zakonu pro vnesennya zmin do deyakykh zakonodavchykh aktiv Ukrayiny shchodo utochnennya povnovazhen' sub'yektiv zabezpechennya tsyvil'noho zakhystu ta realizatsiyi norm mizhnarodnoho humanitarnoho prava u sferi tsyvil'noho zakhystu. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/39363>

⁴¹ Pro Upovnovazhenoho Verkhovnoyi Rady Ukrayiny z prav lyudyny : Zakon Ukrayiny vid 23.12.1997 r. № 776/97-VR (stanom na 7 trav. 2022 r.). URL: <https://zakon.rada.gov.ua/laws/show/776/97-vr#Text>

Also, the mechanism for protecting human rights and freedoms under martial law includes: the prosecutor's office, whose activities are aimed at fully establishing the rule of law, strengthening law and order and has as its task the protection of socio-economic, political, personal rights and freedoms of man and citizen (Article 131-1 of the CU)⁴²; political parties and public organizations that exercise and protect the rights and freedoms of the citizens united in them (Article 36 of the CU)⁴³; local state administrations, which ensure respect for the rights and freedoms of citizens in the relevant territory (Article 119 of the CU)⁴⁴; local government bodies (Article 143 of the CU)⁴⁵, as well as military administrations of settlements formed of military personnel of military formations, persons of rank and file of law enforcement bodies, civil protection service, etc. (Article 4 of the Law of Ukraine "On the Legal Regime of Martial Law").⁴⁶

The Armed Forces of Ukraine, the National Guard of Ukraine, the National Police of Ukraine, the Security Service of Ukraine, and the State Bureau of Investigation, which received significantly more competencies after the introduction of martial law, can be considered as a separate category of guarantors of human rights in the conditions of a military conflict.

Non-governmental public organizations and their role in protecting human rights

Non-governmental public organizations (hereinafter referred to as NGOs) play an important role in protecting human rights during martial law. For example, they provide humanitarian help to the population, including to the internally displaced persons. They also support the military and record cases of human rights violations, drawing attention to the unlawful oppression of citizens and violence against them.

Humanitarian assistance is the most common and effective activity of NGOs under martial law. This form of assistance is aimed at meeting the most critical needs of the population affected by the conflict. NGOs provide vital resources including food, water, medical care and shelter to those who find themselves in vulnerable situations.

It is also important to note that NGOs can play a significant role in the formation and implementation of democratic processes in society. For example, they can monitor compliance with human rights, provide access to information, carry out expert activities,

⁴² Konstitutsiya Ukrainy, 53.

⁴³ Konstitutsiya Ukrainy, 6.

⁴⁴ Konstitutsiya Ukrainy, 48-49.

⁴⁵ Konstitutsiya Ukrainy, 60.

⁴⁶ Pro pravovyy rezhym voyennoho stanu: Zakon Ukrainy vid 12.05.2015 r. № 389-VIII: stanom na 20 ver. 2023 r. URL: <https://zakon.rada.gov.ua/laws/show/389-19#Text>

organize public discussions and consultations. In addition, NGOs can be important partners of the state and other organizations in the implementation of various social and humanitarian projects.

These NGOs also carry out significant work to improve the legislation of Ukraine on human rights and freedoms and bring it into line with generally accepted principles and norms of international law, develop international cooperation in the field of human rights, legal education of the population on issues of human rights and freedoms, forms and methods of their protection.⁴⁷ Currently, according to various estimates, there are more than 2 thousand non-governmental public organizations in Ukraine. These are some elements of the mechanism for protecting human rights in Ukraine in wartime conditions.

Reasons for the lack of effectiveness of the mechanism for the protection of human rights under martial law

Regrettably, the mechanism for safeguarding human rights and freedoms in Ukraine under martial law falls short of fulfilling its designated responsibilities. The insufficient efficacy of this mechanism in times of military conflict predominantly stems from the pervasive instability induced by aggression and the occupation of substantial territorial regions. Authors contend that social instability, or public unrest, manifests as disparities across key societal domains, including economic, political, legal, and spiritual spheres. Such imbalances or conflicts within these realms can be profound, posing a tangible risk of societal disintegration.⁴⁸

Further, there are almost completely no mechanisms for the protection of human rights on the territory of Ukraine, which is occupied by Russian aggressors. There are also significant shortcomings in the mechanisms of compensation to citizens for housing, other immovable and movable property destroyed or damaged as a result of shelling.

Other problems of implementation and protection of human rights in Ukraine under martial law include: low level of legal culture and legal awareness of a significant part of Ukrainian society; changes affecting the efficiency of state authorities; lack of clear structuring of civil society and public control over the work of all state bodies; high level of corruption at all levels and stages of state and public life and lack of political will to minimize it, etc.

Conclusions

⁴⁷ Demydenko, A.L. Neuryadovi pravozakhysni orhanizatsiyi i zakhyst prav u Yevropeys'komu sudi z prav lyudyny, *Analitychno-porivnyal'ne pravoznavstvo – Analytical and comparative jurisprudence* 5 (2023): 586-590. URL: <http://journal-app.uzhnu.edu.ua/issue/view/17238>

⁴⁸ Danilyan, O.G. and others. Social instability as a global trend of the modern world, *Cogito* 14(3) (2022): 143.

In summary, it is imperative to recognize that human rights and freedoms are fundamental values of society, even under martial law. They must be safeguarded and guaranteed both through constitutional provisions and normative-legal regulation. While the Constitution of Ukraine and other legal instruments allow for certain restrictions on citizen rights, such limitations must be justified, time-bound, and employed in accordance with democratic principles and the rule of law. Such measures aim to protect societal interests, maintain public order and security, and uphold the rights and freedoms of all citizens.

The mechanism for protecting human rights and freedoms is best understood as a comprehensive system comprising social institutions, legal norms, and various protection mechanisms (judicial, administrative, civil, criminal, etc.). Under martial law, this mechanism undergoes transformation and diversification, with military authority assuming responsibility for controlling the armed forces and ensuring state and citizen security.

However, the mechanism for protecting human rights in times of military conflict often proves insufficiently effective due to the pervasive instability resulting from aggression and territorial occupation. Consequently, it becomes imperative for the state to establish new, robust mechanisms for safeguarding human rights under martial law. These mechanisms should include provisions for compensation for property damage incurred due to conflict-related shelling, mandatory documentation of human rights violations, and accountability measures for perpetrators, including for crimes such as genocide, war crimes, and crimes against humanity. Such measures are essential for upholding human rights principles, promoting justice, and fostering societal resilience in times of crisis.

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