

THEORETICAL AND LEGAL ANALYSIS FOR THE HUMAN RIGHTS AND FREEDOMS PROTECTION GUARANTEES ISSUE IN UKRAINE DURING THE MARTIAL LAW'S LEGAL REGIME PERIOD

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Abstract. *The research subject is the legal provision for the human rights and freedoms protection under martial law in Ukraine. The aim of the work is to study the rights and freedoms protections' legal regulations' specifics during the martial laws' legal regime application period and to establish the permissible restrictions limits on constitutional rights. The research methodology is based on the comprehensive use of legal analysis, comparative law, and systemic approaches, which makes it possible to study the constitutional principles, special regulatory regulation, and practical mechanisms for the implementation of rights and freedoms in wartime. The research relevance is due to modern challenges associated with the Russian Federation's armed aggression against Ukraine and the need to balance issues of national security and guaranteeing basic human rights and freedoms. The scientific novelty lies in the comprehensive disclosure of the relationship between military duty, mobilization measures, military service, and the military registration system, taking into account constitutional and international legal standards. The research's main conclusions indicate that the martial law regime in Ukraine ensures a balance between the state's defense capability and the citizens' rights and freedoms protection on the basis of proportionality, legality, and accountability. The defense systems' key elements are the effective organization of national defense at the political, administrative, and military levels, transparency of public procurement; public-private partnership, modern technologies, mass military training, and mobilization planning use. A significant role in this is played by the volunteer movement and the military chaplaincy institution, which provide humanitarian, material, spiritual, and psychological support to military personnel. The practical significance of the work lies in the possibility of applying the conclusions obtained to improve national mechanisms for protecting rights and freedoms during martial law, developing mobilization planning methods, improving the military accounting system, and preparing the population for defense, taking into account legal guarantees. The study confirms that the protection of rights and freedoms under such conditions is based on a combination of constitutional guarantees and the citizens' duty to protect the state, which contributes to maintaining the stability of the legal order.*

Key words: *martial law, martial laws' legal regime, restrictions on human rights and freedoms, constitutional guarantees, international legal guarantees..*

INTRODUCTION

A human rights and freedoms protection in martial law is one of the most pressing problems of modern legal regulation. Martial law is introduced as an extreme measure of the state's response to threats to national security and territorial integrity, accompanied by temporary restrictions on human rights and freedoms. Constitutional guarantees and international legal standards establish human rights and freedoms that cannot be limited and also determine the proportionality, legality, and interference justification principles with these rights.

In the Ukraine conditions, which have been suffering from large-scale armed aggression by Russia since 2022, the problem of protecting human rights and freedoms acquires particular practical significance. It consists in ensuring a balance between the effective response of the state to external threats and guaranteeing fundamental human rights and freedoms, which requires comprehensive legal regulation, effective judicial control, and mechanisms to prevent abuse of power.

The problems' scientific aspect is related to the lack of a single model for determining the limits of permissible restrictions on human rights and freedoms in wartime and the need to harmonize constitutional norms

with international legal standards. The practical significance is manifested in the rights' protection and freedoms of citizens during mobilization, military training, performance of military, duty and state control in the security and defense field.

The issue of protecting human rights and freedoms in Ukraine under martial law is the subject of attention of numerous scholars who study the relationship between constitutional human rights and freedoms and the interests of the state. In particular, the works of Y. Gradetska, D. Grynyo, Y. Kyrychenko, I. Korzh, M. Kornienko, C. Markovych, N. Savchyn, and others are devoted to the constitutional and international aspects of restricting human rights and freedoms analysis, determining the permissible state intervention limits, and the national legislation correlation with international legal standards, as well as the organization of mobilization measures and the fulfillment of military duty by citizens.

Despite extensive scientific discussion, certain issues still remain unresolved, in particular the lack of clear methodological approaches to determining the permissible restrictions limits on human rights and freedoms, as well as insufficient systematization of their protections' legal regulation under martial law.

The studies' aim is to analyze the human rights protection and freedoms legal regulations' features in Ukraine during the legal regime of martial law and to determine the permissible restrictions' limits on constitutional rights and freedoms in such conditions. To achieve the aim, the article envisages solving the following tasks:

1. To reveal the constitutional principles of protecting human rights and freedoms in martial law and assess their compliance with international legal standards;
2. To examine the Ukrainian legislation on mechanisms for ensuring human rights and freedoms during martial law;
3. To determine the proportionality and restrictions on human rights and freedoms applied in martial law principles and their practical implementation;
4. To analyze the legal principles of performing military duty and performing military service from the point of view of compliance with constitutional and international legal guarantees of human rights.

The article pays special attention to innovative approaches to combining constitutional guarantees with special legislation on martial law and mechanisms for proportional restriction of human rights and freedoms, which make it possible to ensure national security without violating Ukraine's international obligations in the human rights field.

The scientific novelty lies in the systematic coverage of the relationship between military duty and the citizens' rights and freedoms exercise, in particular in the mobilization measures context, military service, planned rotation of servicemen, military registration of the population, and military training. For the first time, the human rights dimension of these measures is defined as instruments for ensuring a balance between the state's defense capability and the human rights and freedoms guarantee.

RESEARCH METHODOLOGY

The research methodology is based on comprehensive general scientific and special legal approaches that determine the framework for the human rights and freedoms legal protection analysis in martial law, as outlined in the submitted material. For the theoretical understanding of the problem, a systematic approach was used, which allows identifying the relationships between constitutional principles, special legislation, and the exercising of rights practice in wartime; doctrinal (normative-logical) analysis of regulatory sources provides a legal norms interpretation in their internal logic and hierarchy.

Comparative legal analysis (national norms comparison with international legal standards and other states' practice) and judicial practice and administrative acts analysis, as well as content analysis of official decrees, government orders, and regulatory legal acts regulating the martial law regime, were used as empirical and applied methods. The interpretative method (constitutional legal interpretation) is used to establish the permissible restrictions on rights and freedoms limits, taking into

account the proportionality, necessity, and legality principles. The emphasis is on verifying the national decisions' compliance with Ukraine's international legal obligations.

To assess practical implementation mechanisms, qualitative research methods are used, in particular, semi-structured interviews with specialists (human rights activists, military lawyers, and representatives of government bodies), as well as analysis of cases of the individual restriction's application (mobilization measures, curfew, and restrictions on freedom of movement). The empirical part results are subjected to triangulation, that is, cross-checking of conclusions obtained from regulatory and legal sources, judicial practice, and expert assessments, which increases the reliability of the conclusions and minimizes bias.

The final stage of the study involves the data synthesis obtained with the scientifically formulated-based conclusions and practical recommendations for improving legal regulation. The methodological limitations of the study are also acknowledged, namely, the time frame, the statistical data complete sets availability, and the regulatory and legal practice dynamics during martial law.

RESULTS

The emergencies' states' declaration is a radical measure taken by the state in response to threats to national security, which requires a reassessment of the balance between human rights and the states' interests. This legal system aims to guarantee security, defense, sovereignty, and territorial integrity but provides for temporary restrictions on constitutional rights and freedoms. In connection with large-scale military conflicts, the issue of protecting human rights and freedoms becomes particularly relevant and complex, which necessitates the search for the optimal balance between security and fundamental rights and freedoms guarantees [18, p. 97]. The Constitution of Ukraine obliges the state to respect and protect fundamental rights and freedoms even in exceptional circumstances, and only temporary and proportionate restrictions are allowed (Article 64) [4].

Article 64 of the Constitution of Ukraine contains a human rights and freedoms list that are not restricted even during the legal regime of martial law. These include, in particular, the right to life, dignity, freedom, and physical integrity, legal protection; the prohibition of torture, double punishment, and laws with retroactive effect; as well as the right to legal aid, housing, marriage, and equal rights for children. The Ukrainian list of human rights and freedoms that cannot be restricted in war conditions or a state of emergency is much broader than the International Covenant on Civil and Political Rights of 1966

[11] (18 against 7), which emphasizes better guaranteeing constitutional protection [10, p. 46] and guarantees the legal stability order even in exceptional situations.

The Constitution of Ukraine [4] proclaims the laws' rules' principle. This principle is fundamental, guaranteeing the stability of the legal system and defining the limits of restrictions on human rights and freedoms in wartime. All regulatory and legal acts must comply with the provisions of the Constitution, and judicial control ensures such restrictions' legality and proportionality. The most important specific regulatory act in this area is the Law of Ukraine "On the Legal Regime of Martial Law" of 2015 [27], which specifies constitutional norms and lists possible restrictions on human rights and freedoms. These restrictions include, in particular, temporary restrictions on freedom of movement, prohibitions or restrictions on peaceful assemblies, demonstrations, parades, and protests, special procedures for entry, exit, and vehicle movement introduction, temporary restrictions on the right to do business, forced seizure of property for state needs with the right to compensation, etc. The law also confirms the restrictions' proportionality and the abuse prohibition principle and emphasizes that the aim of introducing martial law is not only to protect the state but also to protect human rights and freedoms.

Restrictions on human rights and freedoms during the martial law's legal regime are discretionary and are established by the authorized bodies, taking into account the threats' seriousness and the hostilities' intensity. This approach complies with the proportionality and necessity principles established in international legal acts and is aimed at ensuring a balance between the states' protection and the individual rights and freedoms guarantee, in particular in Art. 4 of the International Covenant on Civil and Political Rights of 1966 [11] and Art. 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 [5].

The Law of Ukraine "On the Legal Regime of Martial Law" of 2015 [27] is consistent with the requirements of Article 64 of the Constitution of Ukraine [4], which allows only temporary restrictions without changing the rights essence. Even during active hostilities, the state must preserve fundamental human rights and freedoms, limiting only the methods or their implementation conditions [15, p. 30].

The martial law regulation system is supplemented by presidential decrees (Decree of the President of Ukraine "On the Introduction of Martial Law in Ukraine" of 2022 [26], Decree of the President of Ukraine "On the Extension of the Term of Martial Law in Ukraine" of 2025 [25], etc.), acts of the Cabinet of Ministers (Order of the Cabinet of Ministers of Ukraine "Issues of Introduction and Ensuring the Implementation of Measures of the Legal Regime of Martial Law in Ukraine" of 2022 [14], Resolution of the Cabinet of Ministers of Ukraine "On the Termination of State Supervision (Control) Measures under Martial Law" of 2022 [29], etc.), and other subordinate legislation. They define specific measures, such as curfew, movement and transport control, information space regulation, and counteraction to disinformation.

A characteristic feature of ensuring human rights and freedoms during the martial law's legal regime is the constitutional guarantees combined with the civil duty to participate in the state's defense. According to Article 65 of the Constitution of Ukraine [4], the Fatherland defense is not only the citizens' right but also their unconditional duty, which is valid even during a state of emergency or emergency situation. A similar provision is contained in the constitutional norms of most European countries, which emphasize their role in ensuring national security [17, p. 85; 1, p. 29–31]. This duty fulfillment involves military service, which becomes mandatory in the event of mobilization [8, p. 83].

In the martial law's legal regime context, the obligation fulfillment to serve in the armed forces has not only legal but also social and moral significance. This requires mobilization measures and the territorial defense system development. The regulatory framework for military service is the Law of Ukraine "On Military Duty and Military Service" of 1992 [24], which defines the procedure for military service, from conscription to discharge, and provides for a social guarantees system. This law stipulates those military personnel retain all the rights and freedoms of citizens, except for those that can be limited only by law.

Military service involves a specific number of restrictions, including irregular working hours, restrictions on freedom of movement, increased risk to life, and related social difficulties. At the same time, the state guarantees material and social security, medical care, and support for family members of military personnel, as well as judicial and administrative mechanisms for protection against illegal decisions. The military personnel's rights exercise is based on the proportionality principle: any restriction must be established by law, serve a legitimate purpose, and be applied only to the extent necessary to ensure the state's defense capability [16, p. 196].

Violations during military service entail various types of legal liability: administrative, criminal, disciplinary, civil, and material. Criminal offenses include, in particular, refusal to perform military service (Articles 335-336f of the Criminal Code of Ukraine), disobedience to an order, and voluntary abandonment of service (Articles 403 and 407 of the Criminal Code of Ukraine) [7]. Despite the martial law's legal regime, the state is obliged to guarantee military personnel their fundamental rights: the right to defense, to a fair trial, to access to information, and to the opportunity to appeal decisions. This contributes to maintaining the necessary balance between the military discipline requirements and respect for human rights and freedoms.

The military service implementation under martial law requires a modernized population registration system that combines the defense tasks performance with the human rights and freedoms guarantee. This system must ensure proper interaction between government bodies, territorial recruitment centers, and local self-government bodies, as well as adhere to the proportionality principles, legal certainty, non-discrimination, privacy protection, personal integrity, and conscience freedom [9]. The digital technologies used in this area allow you to reduce bureaucratic procedures, minimize the corruption risks,

simplify access to information sources, and, at the same time, increase public trust in the state [22].

An important aspect in the prolonged military operations context is the personnel' planned rotation. This not only increases the combat readiness and units' operational effectiveness but also guarantees the servicemen the right to adequate working and rest conditions, as stipulated in Articles 43 and 45 of the Constitution of Ukraine [4]. Systematic rotation prevents physical and psychological exhaustion of personnel, which is in line with international standards on the right to just working and rest conditions (Article 7 of the International Covenant on Economic, Social and Cultural Rights of 1966 [12], Article 24 of the Universal Declaration of Human Rights of 1948 [35]).

Mass training of the population in threat conditions should be carried out in accordance with constitutional principles and international human rights standards. First of all, this concerns equal access to military training, prevention of discrimination, and compliance with constitutional obligations. The administrative centers' and other institutions' integration into a single system of electronic military registration should take into account the requirements for the personal data set protection outlined in Article 32 of the Constitution of Ukraine [4] and Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 [5]. A well-organized military registry and systematic mobilization planning contribute to strengthening the state's defense potential, ensure a mobilization's fair distribution burden among citizens, reduce social tension, and strengthen public trust in state institutions [32, 33].

The organization by the systematic military training and tactical medicine training state is of direct importance for ensuring and guaranteeing human rights [9, p. 16–17]. These measures are aimed at ensuring the fundamental rights to life and personal security, guaranteed by Article 27 of the Constitution of Ukraine [4] and Article 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 [6]. At the same time, the accessibility and equality in education principles correspond to the non-discrimination principles enshrined in Article 24 of the Constitution of Ukraine [4], Article 26 of the International Covenant on Civil and Political Rights of 1966 [11], and Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women of 1979 [6]. The women's voluntary participation in the full military training system, defined as optional, is an important confirmation of compliance with the gender equality and personal autonomy principles [19, p. 56; 20, p. 217; 34].

Learning tactical medicine and combat orientation helps reduce casualties among military and civilian personnel and improves health and working conditions. At the same time, adhering to the humanity-enshrined principle in international humanitarian law reduces the danger to those who have not received appropriate training.

During the martial law's legal regime, the state is obliged to provide the civilian population with appropriate

equipment and effective resource management, which is a necessary condition for the protection of human rights and freedoms [9, p. 18]. Insufficient or ineffective provision of such equipment can lead to excessive human losses and become the basis for the constitutional rights violation to life, security, dignity, and health.

The financial resources allocation for defense purposes should be based on the transparency, justice, and legality principles and should meet the need to ensure the populations' economic and social rights. This allows achieving a balance between national security priorities and the human rights and freedoms protection [13, pp. 455]. A new technologies introduction, in particular artificial intelligence, unmanned aerial vehicles, and robotic systems, plays a special role in strengthening the defense potential. Their use contributes to increasing the military operations' effectiveness, reduces risks to the military personnel and civilians' lives, and complies with international norms and proportionality and humanity principles [23].

Under the martial law's legal regime, the national defense system in Ukraine is the most important factor in ensuring human rights and freedoms [9, pp. 16–17]. At the political level, its effectiveness is determined by a balanced distribution of powers between the President and the Verkhovna Rada of Ukraine regarding decisions on the martial laws' introduction, declaration of war, or sending troops abroad (Article 85, paragraphs 9, 23, 31; Article 106, paragraphs 1, 17, 19, 20 of the Constitution of Ukraine [4]). This mechanism guarantees legitimacy, legal certainty and responsibility for the measures taken.

At the administrative level, measures related to military registration, organization of reservist training, and development of defense infrastructure are particularly important, since they are directly aimed at protecting the life and populations' security. At the same time, the effectiveness of defense policy is enhanced through cooperation with civil society organizations, the public-private partnership mechanisms used in the military-industrial complex [21, pp. 350–353], ensuring transparent public procurement procedures and proper civilian control over the armed forces' activities. This allows not only to optimize the resources and reduce the corruption risk, but also to guarantee citizens the right to security, life, dignity, and access to public information. Support for innovative technologies and attraction of foreign investments allow adapting defense production to modern needs, increasing public confidence in the national security system and laying the laws' rule on constitutional foundations [9, p. 19].

An important part of adapting the defense sector to the war challenges is the digital management tool's introduction, in particular electronic services for conscripts, military personnel, and reservists [2, pp. 49–51]. These technologies use improves the military accounting quality, makes procedures more personalized and transparent, and also provides guarantees for these persons' categories of rights protection. This ensures free access to information about their legal status and obligations and minimizes the abuse possibility or unjustified restrictions on their rights.

The volunteer movement occupies an important

place in the human rights and freedoms protection structure and plays the role of an additional resource of support for the Armed Forces of Ukraine [3]. Its activities are based on the principles of voluntariness, independence, and freedom of civil society (Articles 34-36 of the Constitution of Ukraine [4]; Article 1 of the Law of Ukraine “On Volunteer Activities” of 2011 [30]) in accordance with international standards of citizen participation in public life. The volunteer movement not only contributes to the material and technical support of the armed forces but also plays a role in consolidating society and strengthening mutual trust between the state and citizens, thereby reducing the abuses associated with the coercive mechanisms’ use [31, p. 305].

An important tool for the implementation of human rights and freedoms during the state of emergency in Ukraine, in particular the right to freedom of religion (Article 35 of the Constitution of Ukraine [4]), is the military chaplaincy institution. Its representatives provide spiritual and religious support, as well as moral and psychological assistance to military personnel, which contributes to maintaining their psychological stability and resilience in conditions of intense combat operations.

The law “On Military Chaplaincy Service” in 2021 [28] adoption regulated the clergies’ legal status in the military command structure while confirming the church and state separation principle and guaranteeing the servicemen the right to choose their own spiritual orientation. The military chaplains’ activities are aimed at preventing psychological exhaustion, reducing post-traumatic risks, and contributing to ensuring the dignity, life, and health of the state’s defenders.

CONCLUSION

The study provides us with an understanding that the legal regime of martial law in Ukraine combines a number of measures in the national security and defense field with compliance with constitutional and international standards in the human rights and freedoms field. Temporary restrictions on rights are applied in accordance with the proportionality, legality, and responsibility principles, which allow maintaining a balance between the states’ general interests and the citizens’ individual rights.

The main elements of the rights protection system are effective organization of defense policy at the political, administrative, and military levels; transparency and accountability in the public procurement field; public-private partnership development in the military-industrial sector; and the use of the latest technologies to minimize risks to the military personnel and civilian personnel life and health.

Volunteer organizations and military chaplains, which provide material, spiritual, and psychological support to the state’s defense capabilities, contribute to social cohesion and strengthen trust in state institutions. Modern mechanisms for military registration, mobilization planning, and population defense organization ensure the right to life, security, dignity, and health realization, as well as compliance with the equality, non-discrimination, and proportionality principles.

Thus, the system of guaranteeing human rights and freedoms during martial law functions as a legal regime on the basis of the combination of constitutional guarantees and the citizens’ duty to defend the state, which is the basis for the stability of the rule of law even in extraordinary challenging times.

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