

# Legal Regulation of Ensuring Human Rights in Ukraine During the Introduction of Martial Law: Constitutional, Administrative and Theoretical Aspects\*

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## Abstract

The purpose of the article is to reveal the provision of human rights in Ukraine under the conditions of martial law. Human rights and freedoms are the highest value, but their characteristic feature, as a fundamentally important feature of a progressive society, consists in historical instability, variability and subordination to socio-economic processes in the state, which contradicts the established principles of humanism but remains typical in war conditions. Within the scope of the scientific study, it was determined that human rights have a characteristic of evolution together with society and the state, and therefore, taking into account the complexity of the events taking place on the territory of modern Ukraine, the study of the available range of problems has a particularly important scientific and practical role. A study of the available range of problems was carried out using the methods of comparison, abstraction, analysis and generalization. In the course of the study, the essential characteristics of the social category were determined, particularly the theoretical and methodological foundations of ensuring observance of human rights in conditions of martial law (the regulatory and legal basis). Summarizing the events taking place in Ukraine as a result of the treacherous armed aggression of the Russian Federation, it was concluded that under conditions of war, human rights are of the highest value.

**Keywords:** Human rights and freedoms; Public relations; Mechanism and principles; Martial law; Legal regulation; Legal norms; Norms; State security; Purpose

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## **A. INTRODUCTION**

Today, Ukraine is at one of the most challenging stages of its independent period of social and economic development - namely in the conditions of martial law introduced as a result of treacherous armed aggression on the part of the Russian Federation. Insufficient readiness of our state for the occurrence of such events has focused attention on the importance of conducting an in-depth analysis of specific aspects related to improving the operation of, namely, the social sphere. In particular, the issues regarding the recognition and implementation of human rights in war conditions remain open for further research.

Human rights in conditions of war are an integral value of a progressive modern society; it acts as a critical object of constitutional and legal regulation, which is an unconditional function of national legislation. During an armed conflict, the priority of observing human rights is not only evidence of a high level of democracy achieved in the state and a high degree of society development but also an indicator of recognizing citizens as the highest social value and a national priority. Taking into account the unchanging importance of individuals and the lack of effective mechanisms, tools and stable principles for the realization of human rights during war, recognized at all levels of regulation of social processes, in particular not only at the national level but also at the global, interstate level, it is advisable to continue the research of the selected range of problems.

Review of recent research and publications. Aspects of the realization of human rights in the conditions of martial law have been focused on in the works of many modern researchers. Active discussions around the available range of problems are going on as the issue has gained relevance and has become essential for Ukraine in the context of preserving human potential during armed aggression initiated by the Russian Federation. Thus, M. Kovaliv determines the importance of processes of recognition and realization of human rights in the conditions of modern progressive society. Summarizing the general practice of realizing citizens' rights, the scientist concluded that there is a direct connection between the development of the state, society and the organizational and legal mechanism for ensuring the protection of human and civil rights and freedoms; this connection "is expressed in the fact that in a totalitarian state with an unstable political and economic situation, there cannot be a perfect organizational and legal mechanism for ensuring the protection of human rights" ([Kovaliv, 2021](#)). Accordingly, the quality of citizens' lives, even in the conditions of martial law, directly depends on the perfection of the legal

regulation rights of each of the aforementioned subjects of legal relations.

V. Sverdlichenko investigates the current phenomenon of abuse of the right to honor, dignity and business reputation under conditions of martial law. It has been determined that abuse of law is one of the most popular ways of delaying court proceedings under the special/martial law regime. However, in the course of permanent studies of the investigated range of problems, the scientist proves that the abuse of the right to honor, dignity and business reputation in war conditions is made impossible; in particular, the assignment of the right is manifested through “each person’s awareness of his/her value, social significance and moral equality alongside other persons”, even in conditions of war. ([Sverdlichenko, 2017](#))

Organizational aspects of the regulation of social relations arising in connection with emergency and military situations are investigated by O. Bukhanevich, A. Mernyk, O. Petryshyn. According to scientists, martial law, being one of the manifestations of a particular legal regime introduced, involves the application of a set of specific legal means that determine human rights and provide citizens with specific permissions, prohibitions or restrictions while focusing on the regulatory functions of legal instruments or specific legal regime ([Bukhanevych et al., 2021](#)). In addition, aspects of the realization of human rights and freedoms during armed conflicts are given considerable attention in the works by V. Pylypenko, P. Pylypyshyn, and N. Radanovych. The scientists carried out a retrospective analysis of human rights within the framework of international human rights law and international humanitarian law ([Pylypenko et al., 2021](#)). They summarized the evolution of human rights in the context of the armed conflict that began in Ukraine in 2014 and also determined the prospects for further transformations in the context of current events.

In determining various aspects of ensuring the realization of citizens’ rights, scientists determined that in conditions of armed aggression, imperative methods are actualized, in particular, in the forms of emergency regulation of social relations, sometimes relying on means of coercion.

Highlighting previously unsolved parts of the overall problem. To date, the range of problems has been studied in detail by the above-mentioned scientists, who are knowledgeable and competent in the realization of human rights in conditions of war or martial law. However, the issue is becoming more relevant as a result of the terrible events taking place on the territory of modern Ukraine, and, accordingly, it requires new research, justifications and generalizations ([Leheza et al., 2022](#)). As it was mentioned, human rights are that very socio-legal category, which is characterized by a high degree of dependence

on changes of a legal or socio-economic nature, but remains a universal value and, therefore, preserves priority importance for any society, especially in conditions of martial law; these aspects determine the importance of conducting in-depth research on the outlined topic in the context of the current events caused by the Russian armed aggression. ([Halaburda et al., 2021](#))

The purpose is to carry out an original study of the main aspects of state functioning during martial law, in particular, the study of the characteristic features and mechanisms determining the realization of human rights and the legislative basis for their observance in conditions of armed aggression. In order to achieve the set goal, the following tasks have been formed and solved: Analyze human rights from the point of view of the category as the highest value that evolves along with society and the state; Determine the foundations of legal and constitutional regulation of human rights in Ukraine under martial law; Summarize the current practice of ensuring human rights; determine the prospects for improving the mechanisms of their implementation.

## **B. METHODS**

In order to obtain reliable scientific conclusions, general scientific and specialized methods of studying objective reality (based on a dialectical approach to the analysis of the object) were used in the dissertation research. A variety of scientific methods have been taken into account, such as dialectical one, historical-legal one, logical-semantic one, formal-logical one, systemic-structural one, systemic one, comparative-legal one, and others.

A dialectical approach was used to analyze restrictions on rights and freedoms in the context of martial law, taking into account interaction with constitutional norms, international standards of human rights and other legal factors. The advantages and disadvantages of institutional models of guaranteeing rights and freedoms were determined, as well as the validity of restrictions and their compensations were studied. Based on this, proposals were formulated to improve the regulatory control of the specified restrictions. The historical-legal method made it possible to retrospectively study the genesis of the causes and historical-legal bases of restricted human and civil rights and freedoms in connection with armed conflicts in different periods. The logical-semantic method made it possible to formulate and deepen the conceptual and categorical framework. Using the formal-logical method, a legal analysis of the current normative constructions was carried out, the degree of restrictions on a

person's constitutional rights under martial law conditions was determined, their problems were identified, and proposals were formulated.

The systemic-structural method was used to analyze the limitations of constitutional rights and freedoms in the context of martial law and the necessity of these limitations. and this method was also used when studying the internal structure and interrelationships of the elements of the martial law legal regime, as well as the grounds and procedure for the introduction of this regime. The systemic approach was used to consider individual elements of martial law and restrictions on rights and freedoms under martial law as a single system that has its own specific characteristics, which are not a simple sum of characteristics of individual elements. The method of comparative legal research was used to compare different legal regimes that provide for the limitation of constitutional rights and freedoms, as well as to analyze legislative norms in order to clarify their compliance with constitutional principles and international standards in the sphere of human rights.

### C. RESULTS AND DISCUSSION

Article 3 of the Constitution of Ukraine stipulates that "a person, his/her life and health, honor and dignity, inviolability and security are recognized as the highest social value in Ukraine" ([Constitution of Ukraine, 1996](#)). The rights of citizens and their guarantees reflect the content, functional duties and strategic direction of the state's activities. ([Kobrusieva et al., 2021](#))

As a participant in social and economic relations, the state is obliged not only to perform certain functions but also to bear responsibility to the person for its activities. ([Leheza et al., 2022](#)) Thus, the establishment and provision of human rights and freedoms is the primary duty of the state, including in the conditions of martial law. The organization of interaction between the state and citizens can transform the pressure of global socio-economic trends, external factors or internal changes, which include the processes of introducing a state of emergency or martial law. However, the Constitution (being the highest law in Ukraine and having a powerful regulatory potential) gives priority to human rights over the needs or interests of the state, which is evidence of modified relations between the specified subjects and claims to bring a mechanism of a qualitatively new level for the realization of citizens' rights in the conditions of modern society. ([Zadyraka et al., 2023](#))

The theory developed by the French lawyer of Czech origin, Karel Vařák, is an exciting practice of determining human rights as a social category. He

claimed that several generations of human rights arose during the course of their evolution. ([Malozhon, 2021](#)) Such a theoretical concept, given the context of the martial law introduced in modern Ukraine, is particularly important, as it confirms the existence of a whole range of citizens' rights, which were historically formed and cannot be taken away from a person even in the event of an armed conflict. In particular, the main three generations have the following meaning (Fig. 1).

Figure 1. Three generations of ensuring human rights in conditions of war

<i>The first generation of human rights (according to classification)</i>
Civil and political rights. The rights of the first generation are believed to be the basis of the institution of human rights, as they include the right to life, the right to freedom and personal integrity, the right to personal dignity, etc.
<i>The second generation of human rights (according to classification)</i>
Social, economic, and cultural rights (the right to work, rest, social security, medical care, maternity and childhood protection, etc.) were formed through people's struggle to improve their economic situation and raise their cultural status.
<i>The third generation of human rights (according to classification)</i>
Solidarity (collective) rights, that is, the rights of all humanity - human rights, peoples' rights, nation's rights, community rights and association rights: the right to peace, security, the right to self-determination of peoples, etc.

Taking into account the conceptual basis and the generational approach to the development of citizens' rights, modern researchers have determined that the unconditional evolution of the formed concept cannot be stopped, and therefore, the fourth generation of rights (which is formed in conditions of actualization of such concepts as human freedom, human thoughts and judgments) is connected precisely with the emphasis on the development of society and complication of social processes. ([Leheza et al., 2019](#))

It is worth noting that modern society is an environment that, on the one hand, is an association of equal citizens, but, on the other hand, it is an environment that supports the individuality of each person, his/her unique value, subjective judgment and powerful potential. Thus, the fourth generation of human rights includes rights to a person's optionality in his/her choice of lawful behaviour, rights to an individual's autonomy and uniqueness, as well as

rights to a high degree of independence in both physical and mental capabilities. ([Sinkevych et al., 2024](#))

When investigating the concept of the historical development of human rights in the context of martial law, it is the fourth generation that emphasizes the fact that a person cannot be limited only to political and civil rights, although they indeed remain basic. ([Leheza et al., 2024](#)) Interaction between the state and the citizen in conditions of war must be adequate for both sides. In turn, effectiveness depends on the independence of both the person and the state, as they are equal subjects of legal relations. The development of the fourth generation of human rights in the conditions of martial law consists of the recognition of the high status of each individual, who, regardless of external circumstances, is endowed with the highest value and achievement of modern society - freedom. Accordingly, the autonomy of a person in conditions of war consists in his/her right to persist in his/her own point to defend his/her civil position; "this is the recognition of the human right to form and preserve a personal, sovereign space, which is necessary for each person for independent expression of will, self-determination, which is based on an alternative choice of norms of morality, religion, law, and must be guaranteed to be protected against interference of other subjects, in particular, states." ([On the legal regime of martial law, 2015](#))

The theory of law testifies to the existence of a set of progressive concepts that only confirm the high importance of constitutional rights, defined by taking into account the mentality of citizens, the uniqueness of the nation and strategic priorities. ([Leheza et al., 2024](#)) Thus, Ukraine is characterized as a state that follows a socially oriented vector of development during the entire period of its independence. ([Kulinich et al., 2023](#))

Accordingly, the constitutional rights of citizens are defined in compliance with the principles of building a progressive, free, democratic and humane society. Conditions of martial law cause specific restrictions on the life activities of citizens, but they in no way concern the cancellation of such unconditional rights as Equality of citizens with regard to constitutional rights and freedoms and equality before the law (Art. 24); prohibition of deprivation of citizenship, the right to change citizenship (Article 25); inalienable right to life (Art. 27); the right to respect person's dignity (Art. 28); the right to freedom and personal inviolability (Art. 29); the right to send individual/collective written appeals or to personally address state authorities, local self-government bodies and officials of these bodies (Art. 40); the right to housing (Art. 47); equal rights and obligations of spouses in marriage and family; equal rights of children (Art. 51, 52); the right to judicial protection (Art. 55); the right to compensation at the

expense of the state or local self-government bodies for material and moral damage caused by illegal decisions, actions or inaction of state authorities, local self-government bodies, their officials and employees in the exercise of their powers (Art. 56); the right to know one's rights and duties (Art. 57); irreversibility of the time effect of laws, and normative legal acts (Art. 58); the right to professional legal assistance (Art. 59); the right not to carry out clearly criminal instructions or orders (Art. 60); the right not to be twice brought to the legal responsibility of the same type for the same offence (Art. 61); presumption of innocence (Art. 62); the right not to give testimony or explanations about oneself, family members or close relatives, whose circle is determined by law (Art. 63). ([Leheza et al., 2023](#))

The following question arises: what circumstances can cause restriction of citizen's rights, and why do human rights appear to be restricted precisely in the conditions of war, when the stability of social relationships is already losing its strength, and the level of nationwide demoralization is gaining unprecedented indicators? Such restrictions are connected with the need to reduce the subjective influence on the strategy of settling the armed conflict. In particular, according to Art.1 of the Law of Ukraine "On the Legal Regime of Martial Law", martial law is "a special legal regime introduced in the state or in some of its localities in the event of armed aggression or threat of attack, danger to state independence, its territorial integrity and it provides for granting the relevant state authorities, military command, military administrations and local self-government bodies the powers necessary to avert the threat, repulse armed aggression and ensure national security, eliminate the threat of danger to state independence, territorial integrity of the country." It is indisputable that the majority of civilians do not even have the basic skills to implement the measures necessary to counter an aggressor, and their judgments are based mainly on subjective views, individual interests, or their own observations, which may contradict the strategy and tactics of military operations. This leads to the need to limit the rights of citizens in certain aspects, but it makes it completely impossible to violate the fundamental rights and freedoms defined by the Constitution. ([Leheza et al., 2023](#))

International humanitarian law, or the law of armed conflicts, is an important source of human rights in the context of interstate conflicts, particularly in the current conditions of severe manifestations of armed aggression initiated by the Russian Federation in Ukraine. This is precisely the branch of international law that defines the essential norms and principles of human rights protection, contains restrictions on the use of violence during armed conflicts, putting forward the following requirements: first, spare those



who do not take or have stopped taking direct part in hostilities; secondly, limit violence to the extent necessary to achieve the goal of the conflict, which may consist (regardless of the reasons for which the conflict began) only in weakening the military potential of the opposing side. ([Zhukova et al., 2023](#))

The specifics of human rights protection are laid down in the critical provisions of IHL, one of which is known as the “Martens Declaration (Reservation).” This reservation was first included in the preamble of the Hague Convention on the Laws and Customs of War on Land in 1899 at the suggestion of international lawyer and diplomat F. F. Martens and later became an independent norm, which, with editorial changes, was included in subsequent conventions of international humanitarian law. It was included in the articles devoted to the legal consequences of the denunciation of Geneva Conventions I-IV (Art. 63/62/142/158), as well as to par. 2 of Art. 1 of the Additional Protocol to the Geneva Convention I, where the Martens declaration is set out in the following wording: “In cases not covered by this Protocol or by other international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience.” ([Hnatkovskyi, 2017](#))

Separate components of control over violations of human rights are summarized not only in the sources of international humanitarian law but also in European human rights law, which is based on the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter - the Convention). It is this document that enshrines a complex of basic human rights and freedoms and criminal procedural guarantees of their observance and implementation. In order to protect these rights and freedoms, the European Court of Human Rights (hereinafter referred to as the ECtHR) was established; the jurisdiction of this court extends to all cases, and its decisions are binding for all States parties to the Convention. In the practice of European human rights law, the aspects of prosecution of persons guilty of the most severe violations of human rights are defined ([Darahan et al., 2022](#)). This aspect of legal relations is formulated in the practice of the ECtHR as a so-called “procedural obligation” in accordance with Art.2 and Art.3 of the Convention. It defines the obligation “to conduct an effective investigation of violations of the material aspects of these norms.” The criminal component of this procedural obligation is also directly mentioned by the Court: “The Court has repeatedly stated that the effective judicial system required by Article 2 must, in certain circumstances, include recourse to the criminal law.” ([Matviichuk et al., 2022](#))

Other international documents enshrining human rights include the European Social Charter (1961) and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987). The activities of the Organization for Security and Cooperation in Europe (hereinafter OSCE) are an essential channel for asserting the rights and freedoms of a person and a citizen in the European region, in particular, on the territory of the post-Soviet space. ([Leheza et al., 2022](#))

The introduction of martial law on the entire territory of Ukraine is an unprecedented measure during the years of independence, which causes difficulties in the organization of human rights protection, in particular, taking into account the need to oppose the enemy in conditions of severe mass battles and the complete disregard on the part of the aggressor-state (the Russian Federation) of all international customs and procedures for implementation of the strategy and tactics of warfare. Under the pressure of these circumstances, it is expedient to increase the role and improve the practice of protecting the rights of Ukrainian citizens. In particular, in our opinion, the need to strengthen the protection of individual rights is evident, especially in spheres where legality control alone is not sufficient. Accordingly, the concept of improving the mechanism should be based primarily on:

- a. Consolidation of a high degree of independence of law-making processes and bodies implementing law-making activities and human rights protection activities in the system of state authorities of Ukraine;
- b. Reducing the formality of procedures for consideration of complaints submitted by citizens regarding violation of their rights and freedoms, which must not be restricted even under martial law because this contradicts provisions of the Constitution of Ukraine;
- c. Providing free-of-charge assistance, in particular information and explanatory services, continuous legal support or accompaniment, and meeting other needs of citizens in the context of law-making and human rights protection activities. ([Horbalinskiy et al., 2023](#))

In addition, certain aspects of improving the practice of protecting the rights of citizens under the conditions of martial law in Ukraine should refer to the following points: Firstly, comprehensive Ukraine's fulfillment of its obligations regarding fighting impunity for the most severe crimes against human rights committed in the context of armed aggression by the Russian Federation, in particular, fulfillment of these obligations by means of bringing the Criminal Code of Ukraine (first of all, Chapter XX of the Special Part, but as well as a number of provisions of the General Part) in accordance with the current state

of development of international criminal law; secondly, comprehensive Ukraine's fulfillment of its obligations regarding fighting impunity for the most severe crimes against international law consists in deepening the knowledge of judges, prosecutors and lawyers on international law, in particular international humanitarian law, human rights and international criminal law.

#### D. CONCLUSIONS

In the course of the study, it was determined that human rights under martial law are the highest value, historically inalienable rights of citizens, which simultaneously emphasise the following:

On the one hand, the unconditional value of a person, as well as on the need to support him/her under challenging circumstances; on the other hand, on limiting the influence of citizens on the strategy and tactics of resolving an armed conflict, in particular, by means of making it impossible to make subjective decisions or perform ineffective actions by citizens.

The entire set of rights can be structured and divided into conditional groups. In particular, in the theory of law, there is a scientific concept that asserts the existence of three generations of human rights: the first generation includes political and civil rights; the second generation includes social, economic, and cultural rights; and the third generation includes solidarity (collective) rights. They arose in a historical sequence and continue to evolve together with the state and society.

In Ukraine, constitutional rights, which are political, economic, and solidarity rights, form the legal framework. Their cancellation is impossible regardless of the legal regime introduced in the state. International humanitarian law is an equally important source of law in times of war.

The key set of human rights is reflected in the Constitution of Ukraine and determined in scientific works. However, the daily life of citizens under martial law is a particularly difficult period for Ukraine, and therefore, the concepts and practice of implementing human rights require improvement. This determines the prospects of the range of problems and forms vectors for further research.

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