

Restrictions on human rights and extraordinary legal regimes

Tereziia Popovych*

PhD in Law, Associate Professor
Uzhhorod National University
88000, 3 Narodna Sq., Uzhhorod, Ukraine
<https://orcid.org/0000-0002-8333-3921>

Yana Baryska

PhD in Law, Associate Professor
Uzhhorod National University
88000, 3 Narodna Sq., Uzhhorod, Ukraine
<https://orcid.org/0000-0001-5382-7974>

Oksana Maslyuk

PhD in Law, Associate Professor
Uzhhorod National University
88000, 3 Narodna Sq., Uzhhorod, Ukraine
<https://orcid.org/0000-0003-1201-8956>

Ivan Peresh

PhD in Law, Associate Professor
Uzhhorod National University
88000, 3 Narodna Sq., Uzhhorod, Ukraine
<https://orcid.org/0000-0002-3485-7278>

Zoya Pohoryelova

PhD in Law, Associate Professor
Uzhhorod National University
88000, 3 Narodna Sq., Uzhhorod, Ukraine
<https://orcid.org/0000-0002-1386-8592>

Abstract. The war between Russia and Ukraine highlights the importance of the research. The resulting state of war has far-reaching consequences across all areas of Ukrainian society, including the basic liberties and entitlements of its people. Therefore, the aim of this scientific work is to explore how to lessen the detrimental consequences of restrictions considering different dimensions of individuals' opportunities in the conditions of an emergency situation. The methods used in this research include comparative legal analysis, legal hermeneutics, core scientific methods of analysis, synthesis, and others. The research's central outcomes involve clarifying the legal essence of extraordinary regimes and identifying their characteristic features. It is revealed that in Ukraine, extraordinary regimes manifest in two forms – martial law and a state of emergency, with significant differences between them. The research also examines the cases of their implementation, notably that a state of emergency is predominantly declared during natural disasters, while martial law is imposed during armed aggression. The study also analyses national legislation regulating the imposition of extraordinary regimes, highlighting the main grounds for their introduction and the procedure. Attention is given to international acts, including conventions and pacts, defining circumstances under which a state can deviate from its obligations in emergencies. The international experience of regulating this institution is explored, particularly in Germany, Poland, and France. The research asserts that the most widespread basis for declaring a state of emergency globally has been the

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*Corresponding author



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COVID-19 pandemic, while the full-scale armed invasion by the Russian Federation serves as a condition for imposing martial law in Ukraine. The findings of the research can be utilized for further investigations on related topics and for refining existing legislation concerning extraordinary regimes

Keywords: martial law; State of Emergency; military conflict; pandemic; democracy; international protection

Introduction

Regimes implemented during emergencies are marked by a shift in the balance between individual rights and government authority, with the latter expanding at the expense of the former. One of the current research questions on extraordinary regimes is their legality and compliance with international human rights standards. Another relevant aspect is their effectiveness in guaranteeing the physical and social security of citizens, as well as the need to develop a strategy to lower the potential harm on human rights. The complexity of the research lies in the necessity for a thorough analysis of their structure due to insufficient legal regulation, making it challenging to determine whether these provisions align with international standards.

V. Ternavska (2023) explored the theoretical aspect of legal regimes, defining them as a unique order for regulating particular dimensions of social interaction in the context of constitutional and legal policies. Legal frameworks entail the implementation of specific regulatory methods and mechanisms, considering the objectives established by the legislature, the distinctive features of the regulated area, and the legal standing of the individuals and entities impacted. The researcher highlights their advantages in efficiently addressing tasks related to ensuring citizens' safety during emergencies. Regarding the grounds for the introduction of extraordinary legal regimes, it's important to focus on the work of W. Wenger (2023). According to the author, a functioning parliament is critical for maintaining a unified legal system during martial law. The Ukrainian constitution acknowledges this by allowing martial law as a temporary legal framework to effectively address wartime difficulties (Konieczny, 2023).

The issue of the need to respect individual liberties in the context of emergency legal measures is outlined in the study by M. Kornienko (2023). Thus, the author points out that the Ukrainian state has a list of international obligations in the human rights sphere, so their observance, even under martial law, is a crucial aspect in ensuring the country's image on the world stage, as well as a positive aspect of European integration. The activities of state and local authorities and the need to control their powers are also of particular importance. For more details on international standards for the implementation of certain extraordinary regimes, it is worth revisiting the work by A. Zavydnyak (2022). Thus, the legal grounds for the introduction of emergency legal regimes are based on international treaties, in particular Article 4 of the International Covenant on Civil and Political Rights and Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms. In particular, the implementation should be based on the protection of privacy, freedom of access to government, public and independent administration of justice.

Ukrainian law, as analysed by Rastorgueva, dictates the procedures for enacting an emergency legal regime (2022). The author states that the Law of Ukraine "On the Legal Regime of the State of Emergency" (1996) sets out the essence of this phenomenon, defines the legal procedure for its

introduction and termination, including a detailed examination of how public authorities operate and the extent of their authority during such a regime. Y. Hajos (2023) considers the Covid-19 pandemic to be one of the main reasons for limitations placed on fundamental liberties. The author argues that the COVID-19 pandemic has sparked debate about the validity of limitations placed on specific rights, particularly those concerning movement and public gatherings. In addition, the researcher noted that Covid-19 has also led to long-term consequences for international relations, national policies, and democratic regimes.

The legality of the restrictions imposed during the pandemic was discussed by L. Forman and J. Kohler (2023). Thus, restrictions on human rights during a pandemic are permissible under international law, but must comply with certain principles, including necessity, proportionality, non-discrimination, transparency, and accountability. Thus, response measures such as quarantine, social distancing, although they restricted freedom of movement and assembly, were crucial to controlling the spread of the infection, and thus balancing public health and welfare with the individual rights of individuals.

Reviewing current literature reveals a focus on extraordinary legal regimes in a theoretical context. However, there's limited comprehensive investigation on the practical implementation of martial law in Ukraine, particularly its effects on citizen security and democratic principles. This study seeks to address this gap by exploring strategies to lessen the adverse impact of restrictions on human rights and freedoms, safeguarding fundamental democratic values. Thus, taking into account the previously discussed aspects, the purpose of this work is to develop ways and means to mitigate the detrimental effects of limitations on fundamental rights across different facets of society, as well as on the basic principles of democracy.

Materials and methods

The research employed various scientific methodologies to gather and analyze data. Thus, the method of analysis was useful in studying the concept of extraordinary regimes, identifying its features, characteristics. This method was also useful in studying the main types of extraordinary regimes and their interrelationships with modern realities. The method of analysis was also used to identify global challenges, problems, and threats to human rights protection, in particular in Ukraine; and also allowed exploring the relationship between the Covid-19 pandemic, the military invasion of the Russian Federation and the forced restrictions on fundamental rights and freedoms of citizens.

The synthesis method was used to distinguish between approaches and concepts to lower the potential downsides of the Limitations impacting various facets of social engagement and to maintain a balance of private and public interests under martial law. This method was also useful in developing a number of recommendations for legislative and structural changes that would help increase the effectiveness

of the restrictions imposed, while maintaining a balance between public and private interests in protecting the country and the rights of individuals.

One of the main methods was also comparative law. In particular, by comparing the institutions, legal norms and practices of introducing a state of emergency and martial law, the author has identified international experience in this area in comparison with the Ukrainian experience. The method was applied to such countries as Poland, Germany, and France and the way this issue is regulated in these national legal systems. Along with the comparative legal method, the author also used the interpretative method based on the study of statistical data on the impact of human rights restrictions during martial law on freedom of speech in Ukraine. The source used to research and present the relevant statistics was the research organization *Reporters Sans Frontières* (2023).

The method of interpretation also allowed interpreting and understanding the legal aspects of the research object, as well as determining the content of legal norms and the specifics of their application within the framework of extraordinary legal regimes, including martial law and the state of emergency. Thus, the objects of research, based on this method, are: Constitution of Ukraine (1996), Law of Ukraine No. 1550-III "On the Legal Regime of a State of Emergency" (1996), Law of Ukraine No. 389-VIII "On the Legal Regime of Martial Law" (2015), Convention on the Protection of Human Rights and Fundamental Freedoms (1950), International Covenant on Civil and Political Rights (1973), Decision of the National Security and Defence Council of Ukraine "Regarding the Implementation of a Unified Information Policy under Martial Law" (2022), Law of Ukraine No. 2160-IX "On the Introduction of Amendments to the Criminal and Criminal Procedure Codes of Ukraine to Ensure Counteraction to the Unauthorized Dissemination of Information about the Sending, Transfer of Weapons, Armaments and Military Supplies to Ukraine, the Movement, Transfer, or Placement of the Armed Forces of Ukraine or other Military Formations formed in Accordance with the Laws of Ukraine, Committed under Martial Law or State of Emergency" (2022).

Along with the method of scientific cognition, a systemic and structural approach was also applied, which allowed studying the range of subjects with certain powers to introduce martial law or a state of emergency on the territory of Ukraine, as well as on the territory of other states. Using the heuristic method of scientific cognition, the author examined the opinions and results of scholars, took into account the controversial aspects and formed a general conclusion.

Results

In response to exceptional circumstances, a temporary set of legal regulations – known as an extraordinary legal regime – may be implemented within a specific geographic area or sector of public life. These circumstances typically pose a significant threat to citizens' safety and well-being, public order, and state's self-governance and wholeness of its territory. (Forman & Kohler, 2023). The legal nature of extraordinary legal regimes is that they are a special type of legal regulation that applies in extraordinary circumstances. Extraordinary legal regimes are based on the principles of the rule of law, legality, humanism, justice, and necessity. The main features of extraordinary legal regimes include temporality: extraordinary legal regimes are established for

a certain period determined by law; exclusivity: they are applied only in case of extraordinary circumstances; restriction: they cannot violate the rights and freedoms guaranteed to citizens by the constitution; centralization: extraordinary legal regimes are established and implemented by public authorities. Extraordinary legal regimes, implemented in response to exceptional circumstances, encompass various frameworks, including states of emergency and martial law.

As for the state of emergency, this regime is regulated by the Law of Ukraine No. 1550-III "On the Legal Regime of a State of Emergency" (2000), which states that this is a special regime introduced in response to emergencies or natural disasters with the potential for casualties, property damage, or risks to public safety, a temporary emergency regime may be implemented nationwide or in specific areas. This regime grants authorities the necessary powers to address the situation and safeguard public well-being. While the regime may restrict citizens' rights and freedoms for their safety, such limitations have a defined duration. Among the grounds for the introduction of this regime, the legislator identifies natural disasters, fires, mass terrorist acts, inter-confessional and interethnic conflicts, seizure of extremely important facilities, attempts to seize public power (Law of Ukraine No. 1550-III, 2000). Thus, in the event of such situations, a special regime of entry or exit for Ukrainian citizens may be introduced, rights and freedoms may be restricted, and, accordingly, public order protection may be strengthened in the territory where such a regime was introduced, the right to strike, mass events may be restricted, and the right to property may be restricted.

The international experience reveals consistent approaches to state of emergency declarations. The Republic of Poland's model includes an initial 30-day timeframe, with Parliamentary approval required for extensions. This measure is strictly reserved for crisis situations like natural disasters, armed conflict, or severe disruptions to internal security and order. The Constitution of Poland (1997) also states in Section XI that during the state of emergency, the Constitution, the rules of elections to the Sejm, the Senate and local governments, the electoral process cannot be changed. The right to human dignity, citizenship, and the right to life are not subject to restrictions. During such a regime, the main restrictions include the introduction of control and censorship of the media, restrictions on freedom of movement and assembly, prohibition of strikes and demonstrations. Poland has declared a state of emergency only twice since 1989: after the 2010 plane crash that killed President Kaczynski and in 2020 due to the COVID-19 pandemic. The latter declaration was criticized for excessive restrictions on freedom of assembly and media (Kozlová, 2023).

Depending on the threat, different response mechanisms are activated in Germany. A "state of defence" is declared in response to armed attacks, while an "internal state of emergency" is implemented when facing natural disasters or significant threats to public order. Thus, in accordance with Articles 10-12 of the Constitution of the Federal Republic of Germany (1949), restrictions on the secrecy of correspondence, mail, ability to move freely may be legally enacted. Also, the Constitution provides for the involvement of women on a voluntary basis to provide services in the civilian healthcare system and military hospitals. The experience of France is somewhat different, in particular, the country has two separate states of emergency: a state of

emergency in case of threats to national security (declared by the President) and a state of emergency in case of natural disasters. In accordance with the Constitution of the French Republic (1958), restrictions in this case include freedom of movement, prohibition of mass gatherings, strikes, and the right to rest.

The global health crisis caused by the SARS-CoV-2 virus in Ukraine can be an instance of implementing a state of emergency, in particular, in these circumstances, law enforcement agencies were involved in monitoring compliance with the restrictive measures imposed by the population. Such measures included social distancing, a ban on mass gatherings, and thus restrictions on civil and social rights (Rubenstein & Decamp, 2020). Such restrictions are considered legitimate in view of the provisions of Article 64, Part 1 of the Constitution of Ukraine (1996). Domestic legislation on human rights must align with international standards, such as those outlined in the Convention for the Protection of Human Rights and Fundamental Freedoms (1950). This convention sets specific criteria for lawful restrictions on rights and freedoms. These include clear legal basis, serving a legitimate democratic purpose (i.e., upholding public safety, health, morals, preventing crime, or protecting others' rights), and demonstrating necessity within a democratic society. The case law of the European Court of Human Rights on compulsory vaccination is also useful in this regard. Thus, in the Case of Solomakhin v. Ukraine (2012), the ECtHR ruled that mandatory vaccinations provided for by law meet the requirements of interference with a particular right of a person and pursue a legitimate aim; at the same time, these measures aim to achieve a harmonious relationship between individual rights and societal well-being.

In the Case of Thevenon v. France (2022), which concerns vaccination against COVID-19 infection, the ECtHR rejected a collective application by firefighters from France to impose a ban on compulsory vaccination and restrictions on the national vaccination legislation. Thus, the court noted that the requirements of the application went beyond Article 39 of the ECHR Rules. In summary, it is worth noting that in some matters the court gives preference to national sovereignty in the relevant issues, in particular, in ensuring the normal functioning of the state during emergencies, as well as in ensuring public health and safety. At the same time, the ECtHR requires compliance with the basic requirements for the introduction of certain restrictions on the rights and freedoms of individuals, which are their legitimacy, predictability, and necessity.

In addition to states of emergency, martial law is another extraordinary legal regime. Ukraine's Law No. 389-VIII "On the Legal Regime of Martial Law" (2015) outlines its implementation in response to armed aggression, threats of aggression, and risks to the nation's territorial integrity. The enactment of martial law significantly alters the balance between individual rights and freedoms and the authority of the state, curtailing certain liberties while expanding governmental powers. Specifically, the protection of critical infrastructure objects is intensified, a special regime for their operation is introduced, labour duty is imposed on individuals not engaged in defence-related work or employed by reserved enterprises, resources of institutions of all ownership forms can be utilized, and compulsory alienation of property for the needs of the state sector is envisaged. However, in accordance with the legislation, certain restrictions are

imposed. These include limitations on freedom of movement, especially through the implementation of curfews and specific entry and exit procedures. Under martial law, parallels exist with state of emergency conditions regarding limitations on public assembly. Demonstrations and strikes may be prohibited, and freedom of movement in designated regions can become restricted. Individuals enlisted in the military may face additional restrictions on changing their residence without prior approval.

Given these restrictions, the question of their legality, in particular those restrictions relating to the right to travel outside the country, is particularly acute. Thus, a number of international acts, as well as national legislation, guarantee the right of individuals to move freely and choose their country of residence. Article 15 of the European Convention on Human Rights acknowledges the possibility of restricting the right to life in extraordinary circumstances. It outlines that during times of war, a country may take measures that temporarily deviate from its obligations under the Convention for the Protection of Human Rights and Fundamental Freedoms (1950). Thus, the restriction of freedom of movement for men of military age introduced by Ukraine was based on the conditions of an acute situation, namely military aggression by the Russian Federation, and this restriction is legitimate, i.e., legal acts provide it. It is also advisable to pay attention to another international act that regulates curtailment of fundamental rights during crises – the International Covenant on Civil and Political Rights (1973). Article 4 of the International Covenant on Civil and Political Rights establishes that a state facing a severe public emergency may grant a temporary reprieve from certain duties under the Covenant under specific conditions. These conditions include actions that are strictly proportionate to the severity of the crisis and avoid any form of discrimination. Furthermore, Article 12 claims that limitations on the right to travel freely may be imposed under specific circumstances, such as safeguarding national security, maintaining public order, protecting public health, or upholding societal morals.

Given the enhanced powers of public authorities under martial law, a pressing question arises: how can the negative impact of restrictions on citizens' rights and freedoms be mitigated, while preventing abuses of power. Thus, it is currently reasonable to talk about significant limitations placed on the right to free speech, in particular due to the need to protect the information sphere in Ukraine. A ban on the dissemination of Russian symbols, support for Russia's armed aggression against Ukraine, and also the act of revealing details on military equipment transportation is now punishable by law (Law of Ukraine No. 2160-IX, 2022; Law of Ukraine No. 2265-IX, 2022). Media activities are significantly restricted due to the introduction of the "United News" format (Decision of the National Security..., 2022). In such circumstances, outlining the specific justifications for any potential limitations on free speech during martial law is crucial for clear understanding to provide for the type of prohibited media content that will be subject to legal liability for its dissemination. Given that media activities are regulated by several state authorities, it is necessary to delineate and specify the limits of their powers and interference in media activities. Create a single resource that would contain a list of current curtailment of personal rights and liberties, not only in the media but also in other public spheres. Additionally, it's crucial to develop well-defined guidelines for

media activities and broadcasting in the occupied territories, which include a simplified process of licensing renewal after

de-occupation. In light of this, particular attention should be paid to some statistical data (Fig. 1).

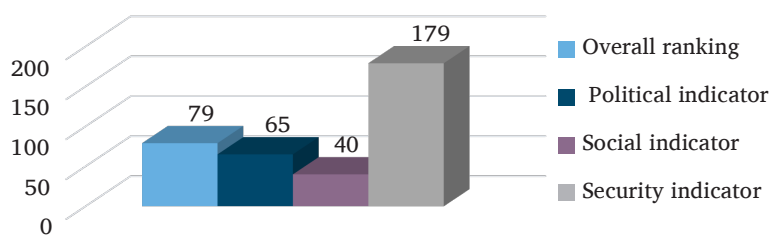


Figure 1. Index of freedom of speech in Ukraine, 2023

Source: Reporters Sans Frontières (2023)

In 2023, Ukraine ranked 79th overall out of 180 countries, and 179th in terms of security out of 180 countries. These results are mainly due to martial law and the need to impose restrictions on the media, as in 2020 the security score was 18.84, which corresponded to 165th place. Thus, the security indicator indicates a real threat and an urgent need for information protection of freedom of expression, and assesses the ability to design, collect and disseminate journalistic information without excessive risk of physical, moral, or professional harm. Looking at countries that are not at war as of 2023, in particular, France and Germany, France ranks 24th overall and Germany 21st. However, when analysing a country that is in a state of extraordinary legal regime – a state of war, such as Israel, this country ranks 97th in terms of overall indicators as of 2023; in 2020, for example, this indicator was 88th (Reporters Sans Frontières, 2023). In other words, it is reasonable to talk about the significant negative impact of exceptional legal measures such as martial law and states of emergency on the development and opportunities for free expression and freedom of speech in countries that are forced to impose legitimate restrictions on these rights.

The protection of privacy rights, even in wartime, deserves attention. In this context, privacy is restricted due to the adopted amendments to the Criminal Code of Ukraine, which provide for expanded access of law enforcement agencies to communication devices, correspondence, other documents (Law of Ukraine No. 2265-IX, 2022). Open communication and discussion of certain government decisions and legislative initiatives to restrict rights and freedoms is also important to provide feedback and highlight issues that need to be investigated and improved (Law of Ukraine No. 2110-IX, 2022). In the context of martial law as an extraordinary legal regime, it is necessary to ensure access to justice for individuals, free legal aid resources, as well as to clearly define the restrictions imposed and their impact on individuals (Fernando, 2022). Thus, it is advisable to create a separate special law that would contain a list of existing restrictions on individual rights and liberties currently in force in Ukraine, as the Law of Ukraine “On the Legal Regime of Martial Law” (2015) contains several restrictions that have not been enacted, i.e., uncertainties and ambiguities plague the current regulatory framework (Ortiz, 2020). It would also be advisable to specify the provisions of Article 8(5) of this legislative act regarding the curfew, namely to add certain exceptions that would exclude liability for violation of these restrictions, in particular in cases of emergency. By implementing these measures, a balanced consideration of

individual rights and state security can be achieved, particularly when safeguarding territorial integrity and responding to external threats to national sovereignty.

Discussion

Within exceptional legal frameworks, striking a balance between state interests and societal needs is essential. Simultaneously, these situations demand a commitment to upholding fundamental rights and freedoms for citizens, even during states of emergency or martial law. Scholar D. Gatmaytan (2020) points out that the consequences of the introduction of such regimes may include: abuse of executive or legislative power, lack of effective judicial oversight and control over the activities of public authorities, systematic violation or restriction of human rights that is not legitimate under extraordinary regimes, non-compliance with democratic principles. The author proposes to develop clear regulatory standards for responding to certain states of emergency, as well as to promote transparency and discussion of decisions against the background of the relevant states among the public to maintain public trust and legitimacy of the restrictions imposed. The researcher's findings lend support to the conclusions drawn in this paper. Indeed, the activation of extraordinary legal frameworks, encompassing states of emergency and martial law leads to the deployment of irreversible processes designed to curtail the scope of fundamental rights and liberties of the public in a certain way for the sake of security, but in order to minimize the risks of misconduct by public authorities in such circumstances, it is necessary to develop a clear legislative framework, hold public consultations, rely on the provisions of international acts (Biloshytskyi, 2023).

It is important to take into account the considerations contained in the work of A. Ullah and M. Uzair (2011), who studied the Indian and Pakistani experience regarding the main conditions for the introduction of a state of emergency, since the countries are signatories to the International Covenant on Civil and Political Rights (ICCPR), which generally prohibits derogation from certain rights, such as the right to life, but allows derogation from the obligation to guarantee the right to movement and assembly in cases of emergency. The authors note that, for example, in India, the Supreme Court plays a greater role in this process, acting as a controlling body over other branches of government. On the contrary, the Pakistani legal framework provides for wider scope and powers of the executive during emergencies, which raises concerns about possible abuse of power. The researchers, in their conclusion, also emphasize the

importance of transparent mechanisms for the exercise of powers during emergencies, as well as a fair balance of interests. While the present study's findings diverge from those of the authors, their work offers valuable insights by drawing on international experiences with emergency regulations and the expanded authorities granted to public entities in various countries. This comparative perspective enriches the understanding of this complex topic.

The COVID-19 pandemic as an emergency has caused an unprecedented global crisis, prompting many countries to take exceptional measures to protect public health (Çera, 2022). C. Corradetti and O. Pollicino (2021) studied the Italian experience of dealing with this challenge; the authors argue that the Italian government has mainly relied on (constitutional) emergency powers, as defined in Article 77 of the Italian Constitution. This article allows the government to adopt temporary measures "in case of war and public danger". It is argued that, although the situation was serious, the use of the term "war" to describe the pandemic is misleading and potentially dangerous, as it could justify a wider range of abuses and restrictions of rights than necessary. The authors' work only partially confirms the results of this paper, but it should be added that in order to legitimately introduce any government-imposed limits on personal rights and freedoms, a clear and understandable regulatory framework is needed as the basis and grounds for such implementation. This is in line with the provisions of the European Convention on Human Rights and allows for proportionality and relevance of the measures taken to the existing problem to be solved.

In general, both crises and emergencies, as G. Delle-donne (2020) points out that both crises and emergencies are catalysts for legislative and structural changes. These events can expose weaknesses in the existing constitutional order and create pressure for reform. In particular, the nature of the crisis or emergency can affect the type of changes that take place. For example, a war could prompt modifications in the composition of the executive branch, while a natural disaster or pandemic may lead to changes in environmental regulations, public health principles. The researcher also points to the need to control the powers of the authorities, which, under extraordinary legal regimes, may go beyond the limits established by law. There's a degree of convergence between the author's findings and those presented in this paper. Crucially, both conclude that public and judicial mechanisms are essential for overseeing executive and legislative authorities during states of emergency or martial law, as they help protect against further curtailment of citizen rights and freedoms (Vilks *et al.*, 2022).

In times of war, the right to choose one's employment may be restricted, and labour conscription may be introduced, but, as A. Demycheva (2022) points out, such restrictions must be consistent with the conditions in which they are imposed, be appropriate, reasonable, and predictable, i.e., defined by legislative norms. The author also emphasizes the importance of reviewing restrictions on certain rights in proportion to changes in the intensity of hostilities. The author's research aligns with the findings of this paper, particularly regarding the justifications deemed essential for legitimate limitations imposed under martial law. Thus, in view of the provisions of some international conventions, derogation from obligations cannot be considered by states as an opportunity for arbitrary restriction of civil liberties.

V. Doroshenko (2023), for example, identified the main measures and mechanisms according to which human rights are protected in times of war, including protection by public authorities, public non-governmental organizations, as well as self-defence, which provides for the possibility of court appeals, including constitutional appeals, appeals to the prosecutor's office. Though a partial alignment exists between the author's findings and this work, it's crucial to emphasize the real-world obstacles to judicial protection faced during wartime. The realities of intense conflict and occupation can significantly undermine its availability.

The issue of derogations from obligations under international conventions is covered by S. Wallace (2020). The author expresses concern about the potential abuse of the possibility of derogations from obligations by States, which may go beyond the normatively defined cases, as well as the lack of proper oversight of the State's activities during the relevant period. Thus, the researcher suggests narrowing the list of circumstances under which states may derogate, limiting them to truly exceptional situations, improving control mechanisms with systematic reporting on the rights whose restriction was necessary, clarifying and explaining the exact list of rights and freedoms that may be restricted and the scope of such restrictions, promoting transparency and accountability through public reporting. Studies of the possibility of democratic decline as a consequence of the state of emergency were conducted by A. Lührmann and B. Rooney (2021). Thus, a state of emergency is an exceptional situation in which governments receive temporary additional powers to address urgent threats. A state of emergency can provoke abuse of power, which in turn leads to unjustified limitations placed on individual rights, centralization of governance, and censorship (Rasheva *et al.*, 2019).

Similar considerations are made in the work by T. Drinóczi and A. Bień-Kacała (2020). The authors point out that Hungary and Poland have demonstrated trends towards illiberal constitutionalism during the COVID-19 pandemic. Thus, the exceptional circumstances caused by the disease have led to the concentration of powers in the executive branch of government, constraints imposed upon fundamental rights and liberties, and a weakening of the independence of the judiciary. While the specific findings of the authors don't fully align with this work, it's important to acknowledge that limitations on individual rights and protections during states of emergency might be perceived as a crucial action to ensure a minimum level of security within society. At the same time, such restrictions must be legitimate, foreseen and proportionate to the danger, the consequences of which must be minimized. Risks to the decline of democracy can be mitigated through public oversight, judicial control and an effective system of checks and balances for public authorities (Spytska, 2023).

A general analysis of human rights in times of crisis was conducted by J. Fitzpatrick (1994). The author points out that a state of emergency allows governments to temporarily suspend some normal legal procedures and expand powers to address urgent threats. However, these exceptional situations can also lead to abuse and potential infringements upon fundamental rights. J. Fitzpatrick also argues that there are certain gaps in the global framework for safeguarding human rights, which are manifested in the current absence of a clear and universally accepted definition for the term "state of emergency". This ambiguity allows for subjective

interpretation and potential abuse of emergency powers; uneven application of international human rights standards; and limited ability of international monitoring bodies to intervene effectively.

The author's work offers valuable insights within the topic but it is important to add that to improve the mechanisms of international protection of human rights, it is necessary to initiate the development of additional protocols to the conventions that would clearly and exhaustively define the concept and types of emergency regimes, which rights may be restricted in such conditions, how these restrictions should be imposed, and the system of intervention and control by the supervisory bodies of international organizations to prevent abuse of power by public authorities.

Conclusions

Through this research, a deeper understanding of the features and hallmarks of extraordinary legal regimes has been achieved. Specifically, the concept of this legal phenomenon has been examined, and its main types, namely martial law, and a state of emergency, have been elucidated. Differences between these states are highlighted in terms of declaration conditions, reasons, procedures, and potential limits placed on certain rights.

In Ukraine, these states are regulated by separate legislative acts, categorizing the extraordinary legal regime into two distinct forms: martial law and a state of emergency. The research also explores the experiences of other countries in this matter. For instance, in Poland, according to the Constitution, a state of emergency can be declared by the president, during which constitutional provisions and electoral norms cannot be altered. In Germany, grounds for declaring a state of emergency or defence may include armed conflict, natural disasters, and so on. During wartime, women can be voluntarily enlisted in the medical field. French legislation, under extraordinary regimes, envisages restrictions on freedom of movement and expression of views. It is noted that in recent years, most countries declared a state of emergency due to the COVID-19 pandemic, leading to restrictions on movement, the right to private life, and the right to

peaceful assembly. Therefore, the analysis of international experience identifies similar grounds for imposing extraordinary regimes but underscores certain differences in the methods of implementation and the restrictions prescribed by these states. It also emphasizes the significant role of the European Court of Human Rights in matters of these limitations, particularly in the field of mandatory vaccination. In the case No. 24429/03, the Court ruled that such interference corresponds to societal danger, aimed at prevention, and is legitimate. Additionally, in the case No. 24429/03, the Court underscores the role of national sovereignty in decisions regarding the imposition of restrictions.

The research also includes a review of requirements from international conventions for imposing restrictions or prohibitions on certain rights and freedoms. The analysis concludes that the limitations imposed in Ukraine during martial law meet the requirements of necessity, proportionality, predictability, and are legitimate. The study proposes a range of approaches to minimize the negative impact of restrictions on human rights on democratic principles, as well as to prevent abuse of powers by state authorities. These include a clear and understandable legislative framework with a precise meaning of the list of rights subject to restrictions, a coordinated mechanism for judicial oversight and control over such restrictions, and the participation of intergovernmental organizations for monitoring the state of human rights in wartime conditions.

To expand on this work, potential areas of future research include investigating the international framework for safeguarding human rights during wartime, along with strategies for strengthening these protections. Additionally, examining the ways in which restrictions on free speech and expression can jeopardize democratic systems deserves further attention.

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Conflict of interest

None.

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Обмеження прав людини та екстраординарні юридичні режими

Терезія Петрівна Попович

Кандидат юридичних наук, доцент
Ужгородський національний університет
88000, пл. Народна, 3, м. Ужгород, Україна
<https://orcid.org/0000-0002-8333-3921>

Яна Олександрівна Бариська

Кандидат юридичних наук, доцент
Ужгородський національний університет
88000, пл. Народна, 3, м. Ужгород, Україна
<https://orcid.org/0000-0001-5382-7974>

Оксана Василівна Маслюк

Кандидат юридичних наук, доцент
Ужгородський національний університет
88000, пл. Народна, 3, м. Ужгород, Україна
<https://orcid.org/0000-0003-1201-8956>

Іван Євгенійович Переш

Кандидат юридичних наук, доцент
Ужгородський національний університет
88000, пл. Народна, 3, м. Ужгород, Україна
<https://orcid.org/0000-0002-3485-7278>

Зоя Олександрівна Погорєлова

Кандидат юридичних наук, доцент
Ужгородський національний університет
88000, пл. Народна, 3, м. Ужгород, Україна
<https://orcid.org/0000-0002-1386-8592>

Анотація. Актуальність дослідження зумовлена повномасштабним вторгненням Російської Федерації на територію України як підставою для введення воєнного стану, що впливає на усі сфери суспільного життя, права та свободи осіб. Таким чином, метою даної наукової роботи постає з'ясування того, яким чином можливо мінімізувати негативний вплив обмежень на ті чи інші можливості осіб в умовах надзвичайної ситуації. Методами, котрі були використані в даному дослідженні, постали наступні: порівняльно-правовий, метод юридичної герменевтики, загальнонаукові методи аналізу, синтезу тощо. Основні результати роботи полягають у з'ясуванні правової сутності екстраординарних режимів, виокремлення їхніх характерних особливостей. Досліджено, що на території України екстраординарні режими виявляються у двох видах – воєнний та надзвичайний стан; вказано на основні відмінності між вищезазначеними режимами, а також випадки їх введення, зокрема надзвичайний стан переважно вводиться у період стихійних лих, а воєнний у період збройної агресії. Також в межах дослідження аналізувалося національне законодавство, котре регламентує введення екстраординарних режимів; було виокремлено основні підстави їх введення та порядок. Увага була приділена й міжнародним

актам, зокрема конвенціям та пактам, що визначають випадки відступу від зобов'язань для держави в умовах надзвичайних ситуацій. Зазначалося і про міжнародний досвід регулювання вказаного інституту, зокрема на прикладі Німеччини, Польщі та Франції; у роботі стверджується, що найбільш поширеною підставою введення надзвичайного стану у світі стала пандемія коронавірусу COVID-19; умовою для введення воєнного стану на території України постало повномасштабне збройне вторгнення Російської Федерації. Результати дослідження можуть бути використані для подальших досліджень на дотичну тематику, а також для вдосконалення існуючого законодавства щодо екстраординарних режимів

Ключові слова: воєнний стан; надзвичайний стан; військовий конфлікт; пандемія; демократія; міжнародний захист