

Human Rights Under Martial Law: Legal Limits and the Ukrainian Model of their Protection

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This article examines the legal limits and specific features of human rights protection in Ukraine under martial law through the lens of the principles of the rule of law, human dignity, and constitutional continuity. It is argued that martial law does not abolish human rights but rather transforms the conditions of their implementation, allowing only proportionate, necessary, and temporary restrictions dictated by national security needs. The Ukrainian model of derogation and its compliance with international standards of the European Convention on Human Rights and the International Covenant on Civil and Political Rights are analyzed. It is demonstrated that the combination of constitutional guarantees, special legislation, judicial oversight, and international obligations forms an integrated system of fundamental rights protection capable of functioning even under wartime crises without losing the legal identity of the state.

Keywords: human rights, martial law, derogation, rule of law, legal regulation, human dignity, control, national security, international standards.

1. Introduction

Contemporary armed conflicts radically transform the functioning of legal systems, forcing states to operate under constant threats, high uncertainty, and limited time for decision-making. In such conditions, martial law becomes not only a security instrument but also a complex legal regime under which the state must simultaneously ensure defense capabilities and uphold the fundamental principles of a rule-of-law state. Therefore, the issue of human rights protection during martial law acquires particular scholarly and practical significance, as it determines the permissible limits of state interference in individual freedoms.

War creates objective conditions for temporarily narrowing the scope of rights and freedoms; however, it does not negate the very concept of human rights as a fundamental value of the legal order. On the contrary, in existentially threatening circumstances, human rights become an indicator of whether the state maintains its legal identity or shifts to the logic of unlimited power. Thus, analyzing the theoretical and legal foundations of human rights protection during martial law is essential for understanding how law can function in extreme conditions without losing its normative essence.

The Ukrainian experience of martial law, shaped in the context of full-scale armed aggression, provides unique material for understanding the balance between security and liberty during wartime. It demonstrates that even under prolonged hostilities, the state can and should preserve legal mechanisms for individual protection, adapting them to extraordinary challenges. This requires a profound theoretical analysis that identifies the fundamental principles underlying lawful restrictions and the safeguarding of human rights.

The purpose of this study is to develop a comprehensive theoretical and legal framework for

the protection of human rights under martial law by analyzing key doctrinal approaches, the principles of the rule of law, human dignity, and constitutional continuity, as well as clarifying their relevance for the functioning of a modern rule-of-law state in conditions of armed conflict.

2. Methodology

The methodological foundation of this research combines general scientific and specialized legal methods. Primarily, the dialectical method is employed to identify internal contradictions between national security requirements and the need to preserve human rights, as well as their interconnection under martial law. The formal-legal method is used to analyze legal categories such as “restriction of rights”, “derogation,” and “non-derogable rights”, and to clarify their content in doctrinal and judicial practice.

Comparative-legal and system-structural approaches play an important role, allowing martial law to be viewed as an element of an integrated human rights protection system, while relating national approaches to international standards. Additionally, the axiological method is used to assess the role of human dignity and fundamental rights as a value-based foundation of the legal order under wartime conditions, providing depth and conceptual completeness to the study.

3. Theoretical and Legal Foundations of Human Rights Protection under Martial Law

In contemporary public law theory, martial law is not viewed as a negation of the rule of law, but rather as a special functional regime aimed at preserving the legal order itself in the face of existential threats. It is not an “extra-legal” situation, but a specifically regulated legal space where the law operates under heightened intensity, modifying the modes but not the purpose of regulation – the protection of human dignity and security [1].

A key theoretical premise of this approach is the concept of constitutional continuity, according to which even during wartime the state does not exceed the limits of its constitutional framework, but implements it in a special format. This doctrine rejects the notion of emergency regimes as legal vacuums, emphasizing that any interference with human rights must have a normative basis and remain subject to the law [2].

From the perspective of human rights theory, martial law changes not the content of rights but the conditions of their exercise. Rights do not “cease”; they enter a regime of heightened legal balance between individual interests and collective security needs. This allows us to speak of a contextual transformation of rights, where their scope and protective mechanisms are adapted to extraordinary circumstances without losing their fundamental value [3].

A central category in the theoretical understanding of human rights in wartime is human dignity, which serves as the meta-legal foundation of the entire rights system. Even when the state must restrict certain freedoms, it cannot undermine the status of the individual as an autonomous legal subject. Dignity thus serves as the criterion separating lawful state intervention from arbitrary coercion [4].

Human rights theory in emergency situations also relies on the concept of the hierarchy of rights, whereby certain rights are absolute and cannot be restricted under any circumstances. The idea of absoluteness is grounded not only in positive law but also in the natural law tradition, which regards some rights as inherent to human nature.

Within this paradigm, martial law cannot justify practices that undermine fundamental standards of humanity. The prohibitions against torture, arbitrary deprivation of life, collective punishment, or extrajudicial executions remain inviolable even under extreme threat. In this way, the legal system preserves its moral legitimacy.

It is also theoretically important to distinguish between restrictions and suspensions of rights. Restrictions involve narrowing the means of exercising a right, whereas suspension denotes a temporary inability to exercise it in its ordinary form. However, even in cases of suspension, the state

retains the obligation to respect the essential core of the right and provide alternative mechanisms for its protection.

From the perspective of the rule of law, martial law does not eliminate the requirement for legal certainty. On the contrary, in crisis conditions, the predictability of state actions becomes even more critical, as it curbs fear, social tension, and distrust in authority. During this period, law performs a stabilizing function.

The concept of procedural justice also occupies a central place in theoretical analysis, requiring that any interference with human rights be conducted in accordance with minimum procedural standards, including the right to be heard, the right to appeal, and access to an independent judiciary.

Martial law cannot serve as justification for undermining judicial oversight. On the contrary, in crisis conditions, the judiciary becomes a key institutional mechanism for maintaining the balance between authority and liberty. Philosophically and legally, martial law is a test of a state's legal identity: whether it remains a law-governed entity even when compelled to use force, or transforms into a regime of emergency governance – this is determined precisely by the approach to human rights.

Theoretical analysis indicates that the resilience of human rights in wartime is an indicator of the maturity of the legal system. Where rights are the first to disappear, the state effectively concedes the supremacy of force over law. Modern doctrine, therefore, regards human rights not as an obstacle to security but as an integral component of it. A rights-protected individual is less vulnerable to chaos, radicalization, and social disintegration.

In this sense, martial law is not the “antithesis” of human rights, but rather a form of stress-testing them. It demonstrates the capacity of the legal system to withstand extreme pressures without losing normative integrity.

Consequently, the theoretical and legal foundations of human rights protection under martial law are based on the combination of the principles of human dignity, constitutional continuity, the rule of law, and the hierarchy of rights. This conceptual framework allows martial law to be viewed not as a suspension of rights, but as a special form of their legal safeguarding under conditions of threat.

4. Constitutional and Legislative Mechanisms for Limiting and Protecting Human Rights under Martial Law in Ukraine

In the scholarly literature, the legal regime of martial law is defined as a special state of the constitutional order, introduced in cases of real or potential threats to national security, armed aggression, or the risk of its onset. It encompasses a set of special measures aimed at ensuring national defense, maintaining public order, and guaranteeing the functioning of critical infrastructure, while simultaneously allowing for the temporary restriction of certain rights and freedoms of citizens [5]. The core value of this regime lies not merely in limiting rights, but in providing the state with tools to prevent chaos, maintain stability, and respond effectively to crises.

Ukraine's constitutional doctrine establishes that the individual, their life, and dignity are the highest social values, retaining priority even in emergency conditions, including martial law (Art. 3 of the Constitution of Ukraine) [6]. This principle forms the foundation of the concept of “inalienable rights,” which the state cannot arbitrarily abolish or restrict. In wartime, this concept serves as a moral and legal compass for state authorities, ensuring that even extraordinary measures do not violate fundamental human rights.

One of the key principles defining the lawfulness of restrictions is the principle of proportionality. The state must interfere with human rights only to the extent necessary to achieve a legitimate objective, such as ensuring national defense and security. This principle is central to the legitimacy of restrictions, as it guarantees that human rights are not sacrificed to arbitrariness or excessive state intervention [7].

It is theoretically important to distinguish between rights that can be temporarily restricted and absolute rights that cannot be limited under any circumstances. Absolute rights include the right to life, the prohibition of torture, the right to a fair trial, and the presumption of innocence. These rights act as a moral and legal compass, signaling that even during war the state cannot abandon fundamental human rights standards.

The Law of Ukraine “On the Legal Regime of Martial Law” clearly establishes legal boundaries for the temporary restriction of citizens’ rights and freedoms. Restrictions may only occur in cases and within the limits explicitly provided by law, and only in areas necessary to protect the state and public order [8]. Such clearly defined boundaries prevent potential abuse of power during martial law and enhance the legitimacy of state decisions.

A practical challenge arises from ambiguities in interpreting which rights may be restricted and the extent of such restrictions, creating potential risks for human rights violations, especially in regions experiencing intense military activity. Judicial and scholarly review of rights restrictions in specific cases is therefore essential to ensure legality and proportionality.

International law, particularly the European Convention on Human Rights, plays an important role in protecting human rights, providing a mechanism for derogation in exceptional circumstances. This means that a state may temporarily deviate from certain international obligations, but not from fundamental rights. Derogation balances state sovereignty with international standards, allowing the protection of national interests without violating core human rights.

Human rights protection in wartime cannot be limited to legal norms alone; it must include social and administrative mechanisms that meet basic human needs, such as access to justice, medical care, education, information, and communication. Without these guarantees, restrictions risk becoming systemic violations, undermining public trust in state institutions [9].

The rule of law remains relevant even under martial law. State authorities are required to act strictly within the law, and courts continue to exercise oversight over the legality of government decisions. The rule of law is crucial not only for legal stability but also for the practical protection of human rights.

Alongside legislative mechanisms, the practice of clearly defining the temporal and territorial scope of restrictions is essential. This prevents excessive interference and potential abuse of power. Restrictions without specified duration or scope undermine the legitimacy of the entire legal regime of martial law.

One key socio-legal guarantee is ensuring rights to humanitarian aid, safe living conditions, education, and access to information. These rights gain particular importance during wartime, as their protection contributes to societal stability and the maintenance of legal culture [10].

The modern Ukrainian model of human rights protection faces the challenge of simultaneously complying with domestic legislation and international standards. Violations of derogation procedures or disproportionate restrictions may result in international legal consequences, emphasizing the need for careful legal analysis of each limitation.

Conceptually, martial law should not be seen as an “exception” to the principles of a rule-of-law state. On the contrary, it is an opportunity to demonstrate the state’s capacity to uphold human rights even in crisis moments. The effective combination of legislation, constitutional guarantees, and judicial oversight enables this model.

It is important to emphasize that martial law does not release the state from the obligation to respect fundamental human rights. Any restrictions must be balanced, justified, transparent, and aimed solely at ensuring the state’s defense and protecting its citizens.

In summary, the theoretical and legal foundations of human rights protection under martial law are based on a combination of constitutional guarantees, legislative norms, and international standards. This comprehensive approach allows the Ukrainian model to maintain human rights as real and effective even during serious threats to national security, demonstrating the state’s ability to reconcile security with the rule of law.

5. Features of the Ukrainian Model of Human Rights Protection and Its Compliance with International Standards

The Ukrainian model of human rights protection during martial law is characterized by a combination of constitutional guarantees, special legislation, and the implementation of international standards. This multi-level structure ensures that human rights remain real and effective even under crisis conditions.

The Constitution of Ukraine and the Law “On the Legal Regime of Martial Law” establish clear boundaries for state actions, allowing restrictions on rights only to the extent necessary to ensure national security. This ensures a balance between state security and the protection of citizens [8]. One of the distinctive features of the Ukrainian model is the integration of administrative, social, and legal mechanisms, which not only formally restrict rights but also provide real guarantees of their protection through judicial oversight and public monitoring.

Ukrainian legislation allows temporary restrictions on certain rights, such as freedom of movement, access to mass events, or use of resources. Proper definition of the duration and scope of these restrictions is crucial to prevent legal arbitrariness.

Judicial oversight during wartime is a critical element of the model. The rule of law remains intact, and courts continue to supervise the legality of government actions, serving as guarantors that rights restrictions are applied within the law.

A significant feature of the Ukrainian model is the incorporation of international standards into national legislation. Article 15 of the European Convention on Human Rights, for example, permits temporary restrictions in exceptional circumstances but requires strict proportionality and necessity. This integration provides additional legitimacy to Ukrainian law.

Ukraine maintains the principle of the inviolability of fundamental rights, such as the right to life, prohibition of torture, and the right to a fair trial. Adherence to these standards ensures compliance with international obligations and strengthens citizens’ trust in the state.

Administrative mechanisms, such as movement control or regulation of access to resources, are accompanied by social guarantees: humanitarian aid, legal assistance, and access to information. These measures minimize the negative effects of restrictions on the population [11].

A key element of the Ukrainian model is a system of mutual control: while the state restricts certain rights, it simultaneously provides protection mechanisms through courts, the Ombudsman, and civil society organizations. This creates a comprehensive system combining state oversight and social guarantees [12].

The Supreme Court and the Constitutional Court of Ukraine play a significant role by reviewing the constitutionality of restrictions and their compliance with the principles of proportionality and necessity. Their involvement increases trust in the mechanism and reduces the risk of abuse of power.

The Ukrainian model also demonstrates high flexibility and adaptability, which is critical during active hostilities and changing war conditions. The state’s ability to promptly adjust measures without losing legal guarantees for citizens reflects the maturity of the legal system and its capacity to function effectively in emergencies. This flexibility allows balancing the protection of national security with the preservation of fundamental human rights.

Integration of national and international human rights standards is a key aspect of the model. Ukraine actively adheres to the European Convention on Human Rights, the International Covenant on Civil and Political Rights, and other key international instruments. This ensures the legal compatibility of Ukrainian legislation with international obligations and provides additional guarantees for citizens, making the system both nationally relevant and internationally recognized, thereby increasing its legitimacy.

Special attention is given to vulnerable groups, including children, the elderly, internally displaced persons, and persons with disabilities. The Ukrainian model provides specific legal, social, and administrative mechanisms to protect these groups, ensuring universality of human rights even in crises.

The model combines legislative and social mechanisms of human rights protection. Legal oversight and judicial review are complemented by access to healthcare, legal assistance, humanitarian support, and information. This integrated approach ensures that human rights are effectively realized in practice, not just formally codified.

Public and media monitoring ensures transparency of government actions and accountability during martial law. Independent media, civil society organizations, and the Ombudsman serve as key socio-legal tools that enhance the effectiveness of state measures and prevent abuse of power.

All restrictions on rights are clearly defined, controlled, and documented, ensuring legal predictability and reducing the risk of arbitrariness. Formal recording and public disclosure of restrictions allow citizens and courts to monitor compliance with the law in any crisis.

The Ukrainian model demonstrates compliance with international standards through derogation mechanisms submitted to the Council of Europe during martial law. Adherence to reporting procedures, formal transparency, and justification of restrictions reflect respect for international law and human rights standards, serving as a practical instrument for implementing national measures without violating international obligations.

Even during crises, citizens retain access to justice and the ability to appeal decisions of state authorities. Courts continue functioning, and restrictions are temporary and targeted [11]. This emphasizes the rule of law as the foundation of the Ukrainian model and guarantees that human rights remain protected even during wartime.

Flexibility and adaptability also manifest in the state's ability to adjust measures according to the region and threat level. In areas of active combat, restrictions may be stricter, while in relatively safe regions, they are relaxed, maintaining a balance between security and civil liberties.

Legal education is also prioritized, enabling citizens to understand their rights and protection mechanisms during martial law. Effective communication strengthens trust in state institutions and prevents conflicts between citizens and authorities.

The Ukrainian model integrates social and humanitarian needs into legal mechanisms. For example, providing housing, medical care, and education for internally displaced persons complements legal guarantees and increases effectiveness.

A key feature is that the model does not rely solely on formal codification of rights. It combines legislative norms, judicial practice, social guarantees, and monitoring, ensuring the real realization of human rights in crisis conditions. Monitoring and control occur at both national and international levels, providing additional legitimacy and preventing rights from being undermined by arbitrary decisions.

The model balances legality and effectiveness: the state can respond promptly to security threats while maintaining human rights guarantees. Coordination between central and local authorities ensures rights protection at all levels, preventing gaps and ensuring consistent law enforcement. Transparency of measures, through public access to information and judicial decisions, ensures predictability and enables citizens to defend their rights in case of violations.

In conclusion, the Ukrainian model demonstrates that human rights are not secondary even during war. Rights are integrated into the entire state governance system, allowing effective protection of the population while ensuring national security [13].

Overall, the Ukrainian model of human rights protection during martial law is multi-level, comprehensive, and flexible. It combines constitutional guarantees, legislative and social mechanisms, administrative safeguards, and international standards. This combination allows the state to respond effectively to threats while simultaneously protecting citizens' rights and freedoms, demonstrating the maturity and stability of the legal system.

6. Conclusions

The conducted theoretical and legal analysis indicates that martial law does not negate the rule of law but represents a special functional regime in which law operates under heightened tension and risk. Human rights protection during this period does not disappear but transforms into adaptive forms

aimed at preserving human dignity, security, and constitutional continuity. This allows the state to maintain normative legitimacy even in the context of armed conflict.

Theoretical foundations based on the principles of the rule of law, the hierarchy of rights, and procedural fairness establish conceptual limits for any interference with human rights. Even in emergencies, the state cannot disregard absolute rights and must ensure judicial oversight and legal certainty. This demonstrates that security and freedom are not antagonistic but mutually reinforcing elements of a stable legal order.

The Ukrainian model of human rights protection during martial law demonstrates that it is possible to combine strict security measures with the preservation of fundamental legal guarantees. Its multi-level character – through constitutional norms, special legislation, judicial oversight, and implementation of international standards – creates a resilient system for individual protection even under crisis conditions. This allows the state to remain within the legal paradigm, preventing martial law from becoming a regime of legal arbitrariness.

In summary, the effectiveness of the martial law legal regime is determined not by the extent of restrictions but by the quality of legal mechanisms for their application and oversight. Preservation of human dignity, access to justice, and transparency of state decisions are the criteria that indicate the maturity of the legal system and its ability to function during war without losing its democratic and legal character.

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