

## LEGAL GROUNDS FOR LIMITATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS UNDER THE CONDITIONS OF MARITAL STATE

<sup>a</sup>NATALIIA STEPANENKO, <sup>b</sup>VIKTOR SAVCHENKO,  
<sup>c</sup>YULIIA KAMARDINA, <sup>d</sup>MARIIA BABIUK, <sup>e</sup>IRYNA  
KUDERSKA

<sup>a</sup>KROK University, 30-32 Tabirna St., Kyiv, Ukraine, 03113.

<sup>b</sup>V.N. Karazin Kharkiv National University, 6 Svobody Sq.,  
Kharkiv, Ukraine, 61022.

<sup>c</sup>Mariupol State University, 6 Preobrazhenska St., Kyiv, Ukraine,  
03037.

<sup>d</sup>Halytsky Applied College named after Vyacheslav Chornovil,  
15 B. Khmelnytskyi St., Ternopil, Ukraine, 46001.

<sup>e</sup>National Technical University of Ukraine "Igor Sikorsky Kyiv  
Polytechnic Institute, 37 Peremogi Av., Kyiv, Ukraine, 03056.

email: <sup>a</sup>stepanenko@ukr.net, <sup>b</sup>savchenko.v@gmail.com,

<sup>c</sup>yuliia.kamardina@gmail.com, <sup>d</sup>babiuk.mariia@gmail.com,

<sup>e</sup>kuderska.iryina@gmail.com.

**Abstract:** The article examines the legal institution of the restriction of human rights as a necessary and unconditional tool for the functioning of a democratic society. The article deals with the issue of the restriction of human rights under martial law. It was found that the restrictions on rights and freedoms during martial law, as a rule, do not apply to the basic rights of citizens; are limited in scope and time of effect, are applied only on the basis of relevant normative legal acts. It has been studied that martial law means the possibility of legal restriction of the rights and freedoms of citizens and a temporary deviation from the provisions of the Convention on Human Rights and Fundamental Freedoms and the Constitution of Ukraine

**Keywords:** restriction of human rights, rights and freedoms, martial law, freedom, principles, grounds for restricting rights.

### 1 Introduction

The rights and freedoms of a person and a citizen are a fundamental asset of humanity, an important element in the process of formation and socialization of each individual, because they allow him to satisfy his needs and realize his potential in various spheres of social life. The degree of their guarantee determines the degree of democratic development of any society.

A special place in the system of rights and freedoms of a person and a citizen is occupied by constitutional rights and freedoms, which, together with the corresponding obligations, are established mainly laws of each state.

Most of the constitutions of the countries of the world contain norms that establish the legal status of a person and a citizen, the system-forming core of which is the rights and freedoms of both of these subjects. The need to protect natural, inalienable human rights and freedoms, including by the state, is emphasized not only in national constitutions and international legal acts, but also in program documents of various political parties, public movements, and human rights organizations. The state, assuming the duty to protect the rights and freedoms of a person and citizen enshrined in the constitution, at the same time, on the basis of the law and international law, in the interests of national security and protection of public order, resorts to their restriction and even alienation.

Generally recognized and most important civil (personal), political, economic, social, cultural and other rights and freedoms are concentrated in constitutions. In this way, the constitution-giver determines the legal status of a person and a citizen and regulates the activities of all legal entities. Ukrainian legislation at the constitutional level enshrines a set of rights, freedoms and responsibilities of a person and a citizen, the implementation of which ensures the functioning of the state on democratic, social and legal bases. Although constitutional rights and freedoms are endowed with the highest legal force, most of them are not absolute, because their implementation may be limited by law. Such a restriction is allowed in the interests of protecting the health and morals of the population, national security, the territorial integrity of the state, the rights and

freedoms of citizens, as well as to protect public order, prevent crime, and find out the truth during the investigation of a criminal case, if information can be obtained by other means impossible, prevention of disclosure of information obtained confidentially, or to maintain the authority and impartiality of justice.

The relevance of the topic of restriction of the rights and freedoms of a person and a citizen is emphasized by a large number of scientific works of lawyers of the theoretical field of activity. In particular, this problem was studied by O. Osynska, L. Letnyanchyn, I. Savenkova, M. Savchyn, B. Sydorets, O. Skrypnyuk, V. Sorokun, T. Slinko, E. Tkachenko, S. Shevchuk and many other scientists who made a great contribution to the development and solution of this topic.

The majority of these studies concerned only the theoretical aspect of the restriction of human rights. The theoretical and practical analysis of this topic was carried out only in relation to the basic rights of a person and a citizen, which does not allow to take into account the criteria of limiting human rights and freedoms in the conditions of martial law.

### 2 The initial presuppositions

Russia's armed aggression has negatively affected most aspects of the peaceful life of Ukrainians until February 24. Now there are urgent issues of research on the relationship between the interests of the individual and the state, which was considered in many scientific-legal and philosophical-methodological studies. However, the legal nature of special issues regarding the restriction of the rights and freedoms of a person and a citizen in the conditions of martial law remained unexamined, or was not sufficiently researched. Today, the issue of the restriction of human rights and freedoms by the institutions of state power has gained special significance in the context of the idea and practice of legal statehood.

### 3 Methods

The methodology of the chosen problem is a systematic approach, as well as dialectical, formal-logical and structural-functional methods and other general scientific research methods, as well as special legal methods: comparative law and formal law. The methodological basis of the study is theory cognition, its general method of materialist dialectics. The following were used as general scientific research methods: formal-logical and systematic methods.

### 4 Results and discussion

The real and effective implementation of basic human rights and freedoms seems impossible without a clear and optimal (under specific historical conditions) setting the limits of their implementation. As Academician P. M. Rabinovych rightly observes, "the modern, recent history of humanity is the history of the struggle precisely for the limits of human rights (and more specifically, for the legal consolidation and legal interpretation of such limits)" Rabinovych P. M. (1996).

Under the restriction of human rights and freedoms M.V. Savchyn understands the intervention of public authorities in the sphere of private autonomy of an individual solely on the basis of the law, which introduces certain measures aimed at ensuring the balance of private and public interests in order to protect national security, public order, the life and health of other people, and the authority of justice Savchyn M. V (2018).

Thus, M. Savchyna, the following are the main criteria that restrictions on constitutional rights and freedoms must meet:

1. Restrictions based on law. Limitation of fundamental rights is allowed only on the basis of the law, since the people delegate such authority exclusively to the parliament as the highest representative authority. Delegation by the legislator of powers to the government regarding the limitation of fundamental human rights in an unspecified form, without specifying its addressee, terms and means of control is illegal.

2. Compliance with a legitimate purpose. The legal basis for the restriction of human rights is the general recognition of its social necessity, the existence of an urgent need to define the limits of the exercise of subjective rights, taking into account the interests of other persons Savchyn M.V (2019).

Understands the restriction of human rights as the activity of powerful subjects, primarily competent state bodies, to establish limits (restrictions) on the exercise of human rights Rymarenko Yu. (2020).

Taking into account the above, it is worth agreeing with O.V. Skrypnyuk, that the restriction of human rights and freedoms is a regime of temporary general or specific individual suspension or narrowing of the rights and freedoms defined and guaranteed by the Basic Law in the interests of ensuring the rights of other people, as well as ensuring the national security and defense of Ukraine, provided for by the Constitution and laws of Ukraine Skrypnyuk O. V (2011).

Representatives of the constitutional and legal science, researching in detail the issue of limitation of rights, propose to classify them according to various criteria. In particular, by volume they are divided into:

- 1) general, which may apply to all rights and freedoms (for example, from Article 23 of the Constitution of Ukraine such a general restriction follows, such as the requirement not to violate the rights and freedoms of other people);
- 2) special, that is, those that are used in relation to some rights and freedoms (restrictions that are established in conditions of war or emergency, as well as in the interests of national security, and some others);
- 3) separate, in relation to certain rights and freedoms (for example, the presence of a criminal record can be considered a limitation of the right to be elected a people's deputy) Rabinovych P. M. And Havronyuk M. I. (2004).

The armed aggression of the Russian Federation and its full-scale invasion of the territory of Ukraine forced the entire state apparatus and society as a whole to switch to operational functioning under the legal regime of martial law Iasechko S., Ivanovska A., Gudz T., et al (2021).

In general, martial law is a special legal regime that is introduced in Ukraine or in some of its localities in the event of armed aggression, as well as in other cases provided for by law, and provides for the granting of the relevant authorities the powers necessary to repel armed aggression and ensure national security. In this regard, it is also possible to temporarily limit the constitutional rights and freedoms of a person and a citizen due to a threat, with an indication of the period of validity of these restrictions Iasechko S., Kuryliuk Y., Nikiforenko V., et al (2021).

The legal regulation of the protection of human and citizen rights during martial law is regulated by the following normative acts:

1. The Constitution of Ukraine dated June 28, 1996.
2. Decree of the President of Ukraine No. 64/2022 "On the introduction of martial law in Ukraine" dated February 24, 2022 (hereinafter - Decree No. 64/2022).
3. Law of Ukraine "On the Legal Regime of Martial Law" dated May 12, 2015 No. 389-VIII (hereinafter - Law of Ukraine No. 389-VIII).
4. Decree of the Cabinet of Ministers of Ukraine No. 753 "On

approval of the procedure for the involvement of able-bodied persons in socially useful works under martial law" dated July 13, 2011 (hereinafter - Decree No. 753).

5. Law of Ukraine "On Transfer, Compulsory Alienation or Expropriation of Property under the Legal Regime of Martial Law or State of Emergency" dated 05/17/2012 No. 4765-VI.

Protection of legal rights and freedoms of citizens is one of the key duties of the state. However, there are situations when their limitation is unavoidable and is carried out exclusively in the manner and by the means provided by the current legislation.

Article 64 of the Constitution of Ukraine establishes exceptions under which individual restrictions on human rights and freedoms may be established. The introduction of martial law directly acts as such a reason. At the same time, some articles relating to certain rights contain conditions limiting their exercise. For example, Part 3 of Art. 34 (the right to freedom of thought and speech, to the free expression of one's views and beliefs, the right to freely collect, store, use and disseminate information) provides that the exercise of these rights may be limited by law in the interests of national security, territorial integrity or public order, so that to prevent riots or crimes, to protect public health, to protect the reputation or rights of others, to prevent the disclosure of information obtained in confidence, or to maintain the authority and impartiality of justice. In Part 2 of Art. 35 (the right to freedom of worldview and religion) it is determined that the exercise of this right can be limited by law only in the interests of protecting public order, health and morals of the population or protecting the rights and freedoms of other people. Part 2 of Art. has a slightly different wording. 39 (the right to assemble peacefully, without arms and to hold meetings, rallies, marches and demonstrations), which states that restrictions on the exercise of this right may be imposed by the court in accordance with the law and only in the interests of national security and public order, to prevent riots or crimes, to protect public health or protect the rights and freedoms of other people. It seems that the wording of the mentioned restrictions as restrictions on the exercise (or realization) of rights is more accurate in terms of content, since even in the conditions of war or state of emergency, citizens are not temporarily deprived of certain rights, but their full use is temporarily impossible.

As stated in Clause 5, Part 1, Art. 5 of the Law of Ukraine "On the Legal Regime of Martial Law", in the decree of the President of Ukraine on the introduction of martial law, an exhaustive list of the constitutional rights and freedoms of a person and a citizen, which are temporarily limited in connection with the introduction of martial law, with an indication of the period of validity of these restrictions, must be specified, and as well as temporary restrictions on the rights and legal interests of legal entities with an indication of the period of validity of these restrictions. Thus, referring to the Decree of the President of Ukraine No. 64/2022 dated 24.02.2022 "On the introduction of martial law in Ukraine" allows you to determine that "the constitutional rights and freedoms of a person and a citizen, provided for in Articles 30 - 34, 38, 39, 41 - 44, 53 of the Constitution of Ukraine, as well as to introduce temporary restrictions on the rights and legal interests of legal entities within the limits and to the extent necessary to ensure the possibility of introducing and implementing measures of the legal regime of martial law...".

There are the following criteria for classifying the rights and freedoms of a person and a citizen: by subject, by origin, by time of origin, by nature of formation, by type of subject, etc.

However, most of the listed criteria have theoretical significance. Instead, the following classifications of human rights acquire theoretical and practical significance: according to their content and the possibility of their limitation. In particular, according to the possibility of restricting rights and freedoms, absolute rights of a person and citizen are distinguished (those that cannot be restricted in any way under any circumstances) and relative (those that are subject to lawful restriction, as this is allowed by

a democratic society and is necessary in it).

Restriction of human rights and freedoms is a legal institution that consists of a large number of interrelated, mutually agreed norms of constitutional, criminal, civil, administrative, environmental and other branches of law, which establish the order, grounds, conditions, legality, mechanisms for narrowing the content and scope of human rights. In addition, all these legal norms are supplemented by the judicial practice of national courts, as well as the practice of the European Court of Human Rights, which corresponds to the Euro-Atlantic direction of Ukraine's development and part 1 of Article 17 of the Law of Ukraine "On the Implementation of Decisions and Application of the Practice of the European Court of Human Rights", which states that courts must apply the Convention and the Court's practice as a source of law when considering cases.

In the conditions of martial law, some constitutional rights of citizens may be limited in order to more effectively mobilize state resources to counter military aggression. However, the basic constitutional rights of citizens, which are provided for in Art. 24, 25, 27, 28, 29, 40, 47, 61, 52, 55, 56, 57, 58, 59, 60, 61, 62, 63 cannot be limited under any circumstances.

The decision to limit the rights and freedoms of the population is taken by the military command together with other authorities.

Thus, during the legal regime of martial law, the rights provided for by Articles 30-34, 38, 39, 41-44, 53 of the Constitution of Ukraine may be limited or partially limited. The military command may establish restrictions and prohibitions related to the free movement and stay of citizens in a certain area, introduce mandatory verification of documents and inspection of personal belongings, vehicles, cargo, residential and non-residential premises. During martial law, a curfew may be introduced, which restricts citizens from being on the streets at certain times of the day. Citizens who are on military registration may be prohibited from changing their place of residence or stay without the permission of the military commissar or the head of the relevant body of the Security Service of Ukraine or the Foreign Intelligence Service. In the conditions of martial law, property necessary for the needs of the state may be forcibly expropriated from citizens, such as vehicles, agricultural machinery, hunting weapons, etc. The value of alienated property is compensated on the basis of a document containing a conclusion on the value of the property. Compensation can be made immediately or after the end of the legal regime of martial law. Also, in the territory where martial law has been introduced, labor obligation may be introduced, which consists in the performance of work related to the organization of defense and liquidation of the consequences of emergency situations. It is forbidden to involve minors and children aged 14-15 years old, women who have children under 3 years of age, as well as pregnant women, in the event that the performance of such work may negatively affect their health.

In no case can citizens be deprived or restricted from:

- the right to have constitutional rights and freedom equal to others and to be equal before the law;
- the right of a citizen of Ukraine not to be deprived of citizenship and the right to change citizenship, the right not to be expelled from the borders of Ukraine, the right to care and protection from the state during a stay abroad;
- the right to life and the right to protect one's life and health, the life and health of other people from illegal encroachments (necessary defense), the right of every person to appeal to the state to protect their life and health;
- the right of everyone to respect for his dignity and the right not to be subjected to torture, cruel, inhuman or degrading treatment or punishment, the right not to be subjected to medical, scientific or other experiments without his consent;
- the right to freedom and personal integrity, the right not to be arrested or detained other than by reasoned court

decision and only on the grounds and in the manner established by law;

- the right of every arrested or detained person to immediately know the reasons for the arrest or detention, to have the right to defense and to use the legal assistance of a defender from the moment of detention;
- the right to demand immediate notification of relatives about arrest or detention;
- rights of appeal;
- the right to housing and the right not to be forcibly deprived of housing other than on the basis of the law by a court decision;
- the rights to marriage, the rights of minor children to be supported by their parents, the rights of disabled parents to be cared for by their children, the protection of the rights of the family, childhood, motherhood and parentage by the state;
- special rights of children;
- the right to judicial protection of human rights and freedoms, the right to apply for the protection of one's rights to the Human Rights Commissioner of the Verkhovna Rada of Ukraine and, in accordance with the procedure established by law, to relevant international organizations, the right to protect one's rights and freedoms in the event of violations and illegal encroachments in other ways not prohibited by law;
- 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;
- the right to know one's rights and obligations;
- the right not to be held responsible for acts which, at the time of their commission, were not recognized by law as an offense;
- the right to legal assistance and the right to be free to choose a defender of one's rights, the right to defense against prosecution with the help of a lawyer;
- the right not to comply with clearly criminal instructions or orders;
- the right not to be held twice liable for the same kind of legal responsibility for the same offense;
- the right of a person to be considered innocent of committing a crime and not to be subject to criminal punishment until his guilt is proven in a legal manner and established by a court verdict; the right not to prove one's innocence in committing a crime; the right to the fact that the prosecution will not be based on evidence obtained illegally, as well as on assumptions and that all doubts about the proven guilt of a person will be interpreted in his favor;
- the right not to testify or explain about oneself, family members or close relatives, whose circle is defined by law, and not to bear responsibility for this, the right of a suspect, accused or defendant to defense, the right of a convicted person to enjoy all the rights of a person and a citizen, with the exception of restrictions that are defined by law and established by a court verdict.

Speaking about the restriction of human rights and freedoms, first of all, it should be noted that it is not the right itself that is subject to restriction, but its implementation. This is also indicated in the Convention on the Protection of Human Rights and Fundamental Freedoms, which in Articles 8, 10, 11 enshrines provisions according to which the exercise of individual rights is not subject to any restrictions, except those provided by law and necessary in a democratic society in the interests of national security and public peace, in order to prevent crimes, protect health and morals, or protect the rights and freedoms of other persons. Legality, legitimate purpose and necessity in a democratic society as conditions for the legality of restrictions on the exercise of human rights and freedoms.

## 5 Conclusion

The key issue in the theory and practice of ensuring fundamental rights is not so much the question of what rights are guaranteed to a person or citizen, but what are the permissible limitations of these fundamental rights. The issue of restrictions on the rights and freedoms of a person and a citizen and the limits of such restrictions is undoubtedly one of the complex and debatable issues of legal science and the legal system.

Therefore, the relevance of the mentioned scientific question is revealed in the dynamic development of states at the current stage of functioning: their states, regimes, that is, certain structural changes and modifications, as well as the prospective constitutional design of the reform of the main principles and types of legal regimes, which arouses increased interest in the context of the analysis of state-legal reality. Yes, it is necessary to emphasize that today for Ukraine, taking into account the armed conflict on its territory, it is necessary to consider the specifics of the territorial organization of society. This gives rise to significant interest in the legally correct definition of the concept and types of legal regimes as a complex phenomenon and features of the interaction of higher state authorities at the central and local levels in the specified conditions.

The above requires the implementation of further comparative studies based on such features that characterize the legal basis and practice of implementing restrictions on the constitutional rights and freedoms of a person and a citizen under martial law.

## Literature:

1. Decree of the President of Ukraine No. 64/2022 dated February 24, 2022 "On the introduction of martial law in Ukraine." URL: <https://www.president.gov.ua/documents/642022-41397>
2. Iasechko S., Ivanovska A., Gudz T., et al (2021). *Information as An Object of Legal Regulation in Ukraine/ IJCSNS International Journal of Computer Science and Network Security*, VOL.21 No.5, pp. 237-242 <https://doi.org/10.22937/IJCSNS.2021.21.5.33>
3. Iasechko S., Kuryliuk Y., Nikiforenko V., et al (2021). *Features of Administrative Liability for Offenses in the Informational Sphere/ IJCSNS International Journal of Computer Science and Network Security*, Vol. 21 No. 8 pp. 51-54 <https://doi.org/10.22937/IJCSNS.2021.21.8.7>
4. On the implementation of decisions and application of the practice of the European Court of Human Rights: Law of Ukraine dated 02.12.2012 No. 3477-IV / Verkhovna Rada of Ukraine. URL: <https://zakon.rada.gov.ua/laws/show/3477-15> (date of application: 03/09/2022).
5. Rabinovych P. M. The limits of the exercise of human rights (general theoretical aspect) / P. M. Rabinovych // *Visn. Acad. rights of Sciences of Ukraine*. – 1996. – No. 6. – P. 5–13
6. Rabinovych P. M., Havronyuk M. I. *Human and citizen rights: academic. manual*. Kyiv: Atika, 2004. P. 90.
7. Rymarenko Yu. Private life and the police. URL: <https://westudents.com.ua/glavy/68495-52-klasifikatsya-ta-mej-zdysnennya-prav-lyudini.htm>
8. Savchyn M. V. Modern trends of constitutionalism in the context of globalization and legal pluralism: monograph. Uzhhorod: RIK-U, 2018. 440 p.
9. Savchyn M.V. *Comparative constitutional law: education. manual*. Kyiv: Yurinkom Inter, 2019. 328 p.
10. Skrypnyuk O. V. Constitutional and legal regulation of restriction of human and citizen rights and freedoms in Ukraine [Electronic resource] / O. V. Skrypnyuk. – Access mode: <http://www.yourfuture.org.ua/ua/pb/2011/3/Skrupniuk.pdf>

**Primary Paper Section: A**

**Secondary Paper Section: AG**