

Ensuring and restricting human rights and freedoms under martial law in Ukraine

Garantizar y restringir los derechos humanos y las libertades bajo la ley marcial en Ucrania

Garantia e restrição dos direitos humanos e das liberdades sob a lei marcial na Ucrânia

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Abstract

Human rights protection in every society is a fundamental tool in the preservation and conservation of a democratic society. It therefore becomes the responsibility of every state in ensuring that those constitutional values protecting its citizens should be respected without any instances of violations. This issue of protection has become more of a nightmare and frustrated as we always experience violations of fundamental human rights of people, in which the case of Ukraine is not an exception with the presence of martial law. This article articulates that it becomes the place of the state of Ukraine in ensuring that those constitutional bases of human rights freedoms should be respected without any aspect of violation and restriction. For the situation is complex and questionable when there is continuous violation of human rights and freedoms with the constitutional bases restricting violations. In answering the various worries and controversies surrounding the protection of human rights in Ukraine under the martial law system, it will be proper for us in adopting a philosophical method so as in determining the rationale and the reasons behind aspect of restricting human rights and freedoms under the martial law in Ukraine. From the above explanation, the rule remains that the present of the martial law in Ukraine is more a curse than a blessing as human rights violations continue to be on the increase defeating the original intention of the law being that of the conservation and preservation of all human rights values and dignities in the country. This is really frustrating and embarrassing as human values are rather degrading and pathetic instead of the expectations and standards stipulated by the law of the country. It is really an aspect of disappointment.

Keywords: Ensuring, human rights, martial law, restricting, Ukraine.

Resumen

La protección de los derechos humanos en toda sociedad es una herramienta fundamental para la preservación y conservación de una sociedad democrática. Por lo tanto, es responsabilidad de cada Estado garantizar el respeto de los valores constitucionales que protegen a sus ciudadanos sin que se produzcan violaciones. Esta cuestión de la protección se ha convertido en una pesadilla y una frustración, ya que siempre experimentamos violaciones de los derechos humanos fundamentales de las personas, en lo que el caso de Ucrania no es una excepción con la presencia de la ley marcial. Este artículo articula que se convierte en el lugar del estado de Ucrania en asegurar que esas bases constitucionales de la libertad de los derechos humanos deben ser respetadas sin ningún aspecto de violación y restricción. Ya que la situación es compleja y cuestionable cuando hay una continua violación de los derechos humanos y la libertad con las bases constitucionales que restringen las violaciones. Para responder a las diversas preocupaciones y controversias en torno a la protección de los derechos humanos en Ucrania bajo el sistema de la ley marcial, será apropiado que adoptemos un método filosófico para determinar el fundamento y las razones detrás del aspecto de la restricción de los derechos humanos y la libertad bajo la ley marcial en Ucrania. A partir de la explicación anterior, la regla sigue siendo que el presente de la ley marcial en Ucrania es más una maldición que una bendición, ya que las violaciones de los derechos humanos siguen en aumento derrotando la intención original de la ley que es la de la conservación y preservación de todos los valores de los derechos humanos y la dignidad en el país. Esto es realmente frustrante y vergonzoso ya que los valores humanos son más bien degradantes y patéticos en lugar de las expectativas y normas estipuladas por la ley del país. Es realmente un aspecto de decepción.

Palabras clave: garantizar, derechos humanos, ley marcial, restringir, Ucrania.

Resumo

A proteção dos direitos humanos em qualquer sociedade é uma ferramenta fundamental para a preservação e conservação de uma sociedade democrática. Portanto, é responsabilidade de cada Estado garantir que os

valores constitucionais que protegem seus cidadãos sejam respeitados e não violados. Essa questão de proteção se tornou um pesadelo e uma frustração, pois sempre sofremos violações dos direitos humanos fundamentais das pessoas, e o caso da Ucrânia não é exceção, com a presença da lei marcial. Este artigo afirma que cabe ao Estado ucraniano garantir que as bases constitucionais das liberdades dos direitos humanos sejam respeitadas sem qualquer aspecto de violação e restrição. Pois a situação é complexa e questionável quando há uma violação contínua dos direitos humanos e das liberdades com as bases constitucionais restringindo as violações. Para responder às várias preocupações e controvérsias que cercam a proteção dos direitos humanos na Ucrânia sob o sistema de lei marcial, será apropriado adotarmos um método filosófico para determinar a lógica e as razões por trás do aspecto da restrição dos direitos humanos e das liberdades sob a lei marcial na Ucrânia. Com base na explicação acima, permanece a regra de que a vigência da lei marcial na Ucrânia é mais uma maldição do que uma bênção, já que as violações dos direitos humanos continuam aumentando, o que anula a intenção original da lei de conservar e preservar todos os valores e dignidades dos direitos humanos no país. Isso é realmente frustrante e embaraçoso, pois os valores humanos são bastante degradantes e patéticos em vez das expectativas e dos padrões estipulados pela lei do país. É realmente um aspecto de decepção.

Palavras-chave: Garantia, direitos humanos, lei marcial, restrição, Ucrânia.

Equal rights for all special privileges for none.

THOMAS JEFFERSON

I. INTRODUCTION

In the 21st century, in a modern legal democratic state, including Ukraine, the importance of ensuring the rights and freedoms of a person and a citizen has increased significantly. This is evidenced by the constitutional provisions, according to which: "The human being, his or her life and health, honour and dignity, inviolability and security shall be recognized in Ukraine as the highest social value. Human rights and freedoms and guarantees thereof shall determine the essence and course of activities of the State. The State shall be answerable to the individual for its activities. Affirming and ensuring human rights and freedoms shall be the main duty of the State" (Article 3, Constitution of Ukraine)¹.

The above constitutional guarantee fully corresponds to the Universal Declaration of Human Rights (December 10, 1948), Convention for the Protection of Human Rights and Fundamental Freedoms (November 4, 1950), International Covenant on Civil and Political Rights (December 16, 1966). These practices remain devastating and affect the status they represent in the society. In view of all these rights, it becomes the role

¹ Constitution of Ukraine (28 June, 1996). Verkhovna Rada of Ukraine. Available at: <https://shorturl.at/ru089>

of every state to consciously ensure the preservation, investigate and even punish all acts that are done against the human, whether committed by individuals or the state. Also, emphasis should be placed on due diligence as it ensures that the state should not lay any excuse when a perpetrator violates these fundamental norms and of protecting the status. The concept of human rights protection and recognition should be done without any speck of discrimination as to sex, status, nationality and other spheres of activities².

Almost a third of the articles of the Basic Law of the state are devoted to the rights and freedoms of man and citizen, because it is with the help of the appropriate level of guarantee that the rights and freedoms of man and citizen gain real content. Guarantees of the rights and freedoms of man and citizen are one of the indicators of the maturity of a society, its achievements, especially since the Constitution and laws of Ukraine entrust the state and its bodies with the responsibility of ensuring the rights and freedoms of man and citizen³. But we must clearly understand that human rights and freedoms cannot simply exist, because they must be consistently ensured. The state cannot exist without valid guarantees of these same rights and freedoms.

The topic of the article is particularly relevant due to the lack of awareness among citizens regarding the provision of rights and freedoms under the conditions of legal regime of martial law in Ukraine. We can observe a complete lack of legal self-defense skills among many citizens. Most people do not know that their rights and freedoms can be limited, which often leads to the increase of both distrust of government bodies and officials, and the increase of legal nihilism. The reason for the emergence of legal nihilism is also the insufficient or completely absent provision of the realization of some rights and freedoms of man and citizen, that is, the absence of a fully effective mechanism of guarantees. The presence of deformed legal awareness among the population indicates real problems in the system of guarantees of rights and freedoms. Among the negative phenomena that bring legal nihilism, one can note social unrest, an increase in crime, distrust of the state and law as effective regulators of society and a way of social compromise, and many other consequences that hinder the sustainable development of the state.

The issue of the topic raised in this article will always be relevant, because the state never stands still, the rights and freedoms of man and citizen are constantly

2 Nana Charles Nguindip. *They are Treated as Abandoned Commodities». Customary Law Practices as a terrifying Species in the Protection of Women's Rights in Cameroon*. REVUE AFRICAINE DE DROIT ET DE SCIENCE POLITIQUE, no. 27. 2022. Pag. 119-137.

3 S. Bulavina. *Genesis of the Guarantees of the Human Rights and Freedoms of Citizens in Ukraine: Historical and Legal Aspects*. HISTORY AND LAW JOURNAL, vol. 2, no. 14. 2019. Pag. 7.

expanding and covering more and more areas of public life. With the expansion of the circle of legal relations, citizens expect the ensuring of their rights and freedoms, the creation of all the necessary conditions for a dignified life. Ensuring the rights and freedoms of man and citizen are one of the separate components of the legal system of society, but at the same time they are the only one of the most problematic and imperfect spheres of life. These questions are of particular importance in the conditions of martial law.

II. PURPOSE AND OBJECTIVES

The purpose of this scientific work is a theoretical study of the ensuring of human rights and freedoms and their limitations under the conditions of martial law in Ukraine. In order to achieve the set purpose, the following tasks are expected to be solved in the work: 1) to consider strengthening guarantees of human rights and freedoms; and 2) to identify cases of restriction of the rights and freedoms of man and citizen.

An outlined purpose and objectives are due to the fact that, despite the presence of a certain base of developments in the field under study, a number of aspects of the theoretical and legal foundations for guaranteeing the rights and freedoms of man and citizen require further study and analysis. In particular, this concerns the problems of the current mechanism for ensuring rights and freedoms and their restriction. The problem here is really sarcastic and pathetic, as the presence of martial law in Ukraine has been seen by many as a means of restriction rather than ensuring the proposed recognition of human rights and freedoms stipulated by constitutional standards in the country. This situation becomes complex as question continues to be posed when there are increase in the human rights values in the country. The rule and tendency remains that whether with martial law or not, human rights standards and protection should continue to be uphold and protected, and under no circumstances should there be violations of restriction of fundamental human rights if it is not for the interest of state security and sovereignty.

III. METHODOLOGY

Methodology consists in the use of various methods of scientific knowledge, among which one can list the general philosophical method, which made it possible to determine the essence, nature of the problem, and the concept of guarantees of the

rights and freedoms of man and citizen; the formal legal method made it possible to partly outline the national and international regulatory framework of the research; the method of critical analysis made it possible to identify shortcomings, problems in the current mechanism for ensuring the rights and freedoms of man and citizen; the system-structural method was used in determining the role and place of guarantees of human rights and freedoms in the legal system.

Truly, it's really pathetic and frustrating when the present of the martial law in the country has come beyond repairs as there are rampant frustration of human rights values and standards. We do know that the intention of the martial law was to ensure state security, but the means in which it is being done really affects the essence of rendering protection to the human rights and freedoms of the population. One thing is in putting in place good mechanisms in ensuring protection, another is in ensuring that these mechanisms put in place really satisfied the basis of human rights protection.

IV. FINDINGS AND DISCUSSIONS

As historical events testify, the Second World War radically changed views on guarantees of world peace, because humanity understood the true value of human rights and freedoms, which led to a fundamental update of the legal mechanism for their protection. Starting from this time, the protection of human rights is not a purely internal competence of states and has gained international significance, embodied in the idea of creating a new international law and order, the basis of which is the respect for fundamental rights and freedoms⁴. Today, individuals and humans have become more central to the entire human rights discourse and are being regarded as subjects of international law. Moreover, national boundaries are losing their connotation. Consequently, a new world human order is being emplaced⁵.

As history shows, the process of formation of human rights and freedoms has a rather long history, as a result of which today we can say that it is a complex institution that has changed under the influence of various life factors, in particular political, social, legal, etc. Thus, the idea of human rights and freedoms cannot be considered in isolation from history. The origins of the modern attitude to these phenomena are

4 S. Ablamskyi, H. Hlobenko, R. Chycha, O. Martovytska, I. Burlaka, *Ensuring Protection of the Rights of the Aggrieved Person in Criminal Proceedings through the Prism of Requirements of International Law Acts*. JOURNAL OF LEGAL, ETHICAL AND REGULATORY ISSUES, vol. 25, Special Issue. 2020. Pag. 1-7.

5 Nana Charles Nguindip. *Searching the Arguments Surrounding the Responsibility of States in the Protection of Refugee Status under International Law*. JOURNAL OF LEGAL STUDIES AND RESEARCH, vol. 8, no. 6. 2022. Pag. 155-171.

philosophical, religious and theoretical ideas about man, the state, morality and law, the role of the individual in this social and legal system and the ideas of real justice.

Initially, individual rights and freedoms of man and citizen were the basis, only later the question of protection and guarantees arose. People's knowledge of these institutions gradually moved away from inaccurate religious and ideological ideas to real fundamental axioms on the guarantees of the rights and freedoms of man and citizen. Over time, they have become an integral part of the legal system, and at the present stage there is already a clear mechanism for the implementation and protection of rights and freedoms⁶. Protection of the rights and basic freedoms of man and citizen is one of the main factors that ensure the stability of civil society and testify to the democracy of the state legal system⁷.

Thus, it can be noted that in different historical periods human rights and freedoms changed under the influence of political ideology – sometimes they expanded, then they were reduced in content. Humanity has been moving towards modern democracy for a long time, gradually limiting the influence of the state, changing its essence and introducing positive changes. Gradually, the state became a way of social compromise, the most powerful regulator of society turned into an assistant and defender of the rights and freedoms of citizens.

Ensuring the observance of human rights and freedoms in modern states is currently a necessary component of the policy of every state that positions itself as democratic. Undoubtedly, the constitutional and legal regulation of human rights and freedoms is of primary importance in the modern conditions of the formation of a democratic state. However, crisis periods in the economic and political life of Ukraine, unfortunately, give rise to certain problems that complicate the real possibility of realizing, observing and protecting human rights and freedoms. This is evidenced by the fairly low life standards of the population, the high level of unemployment, and massive violations of human rights and freedoms recorded in the annual reports of the Office of the United Nations High Commissioner for Human Rights (OHCHR) on the human rights situation in Ukraine.

It is important to understand that the rights and freedoms of man and citizen enshrined in the Constitution of Ukraine⁸ are inexhaustible, as they are guaranteed

6 I. Y. Magnovsky. *The Guarantees for Rights and Freedoms of a Person and Citizen in the Ukrainian Law (Theoretical and Legal Aspects)* [thesis dissertation, National Academy of Internal Affairs of Ukraine]. 2003.

7 V. Ya. Tatsii. *Affirmation and Provision of Human Rights and Freedoms is the Main Constitutional Duty of a Democratic, Legal, and Social State*. BULLETIN OF THE ACADEMY OF LEGAL SCIENCES OF UKRAINE, no. 4. 2000. Pag. 24-33.

8 Constitution of Ukraine (28 June, 1996). Verkhovna Rada of Ukraine. Available at: <https://shorturl.at/ru089>

and cannot be revoked under any circumstances (only limited for some time). And as O. F. Skakun noted, the enshrined norms of the Constitution on guarantees of the rights and freedoms of man and citizen can be applied both to any situation (direct action of the norms), and find their interpretation and further use in other branches of law. Guarantees enshrined in the Constitution of any state are fundamental, ideological norms-principles⁹.

In modern scientific research, the guarantees of ensuring the rights and freedoms of man and citizen are usually divided into: 1) legal – normatively fixed, state-sanctioned means of protecting subjective rights and freedoms of a person; 2) general social – the corresponding social systems that have developed and function in society, for example, political, economic, cultural and others. All guarantees are closely related and create a broad system in the current legislation.

Legal rights and obligations are an integral part of the mechanism of guarantees and the legal system of society. Legal norms have an imperative structure, *i.e.* they provide for the imposition of duties on the subject of law and granting him subjective rights. A person has not only rights and freedoms, but also legal obligations, which are a necessary component of the interaction of the state, the law and the individual. They are a condition for the normal functioning of the state and society, law and order, and the fulfillment of contractual obligations. The unity of the rights and duties of man and citizen is considered as one of the fundamental principles of the legal status of man and citizen. Legal obligations encourage a person to do something or not to do something, that is, to act in a certain way to ensure the interests of the entire society of the country. Another important classification of ensuring the rights and freedoms of man and citizen is their distribution depending on the level of guarantee; in particular, the national and international levels are distinguished.

International legal guarantees of the rights and freedoms of man and citizen are a system of international norms, principles, legal and organizational means, conditions and requirements, provided for by international treaties, conventions, declarations and other international documents, through which the observance, provision, protection of rights, freedoms and legitimate interests of a person is carried out¹⁰. This type of guarantee establishes the standards of the rights and freedoms of the individual, establishes the obligations of states for their implementation and provides for ways to implement them.

9 O. F. Skakun. *THEORY OF STATE AND LAW*. University of Internal Affairs. (2000).

10 H. H. Shmelova. *International Legal Guarantees of Human Rights: General Theoretical Aspect*. LEGAL NOVELS, no. 1. 2016. Pag. 111-115.

The primary international legal guarantee of human rights is the right of a person or institution to apply to the relevant international organizations or international judicial institutions to protect their personal rights after using all possible national domestic methods. Such supranational structures include the European Court of Human Rights, the United Nations Human Rights Committee, etc.

L. V. Tereshchenko noted that the international community began to fulfill its impressive obligations regarding human rights through the implementation of the Universal Declaration of Human Rights in 1948. Since then, the significant concepts of the Universal Declaration of Human Rights have been implemented in many international, regional and domestic legal instruments. The Declaration was not intended to be legally binding, but the establishment of these norms in a multitude of subsequent restrictive agreements (otherwise known as “treaty” or “agreement”) makes the legal status of these norms indisputable today. According to these principles: human rights are inalienable, human rights are indivisible, interdependent and interconnected, and human rights are universal¹¹.

An important role in ensuring and protecting rights and freedoms is played by civil society structures, such as political parties, public organizations, non-governmental analytical centers, human rights organizations, public expert councils under authorities, mass media, etc. Thus, the presence of international bodies and ratified legal documents is mandatory in the real condition of a democratic legal state. This eliminates arbitrariness and lawlessness on the part of the authorities and protects the inalienable rights and freedoms of the individual. Through international guarantees, the provision, protection and observance of the rights, freedoms, legitimate interests of man and citizen are carried out.

1. Legislative Cases of Restriction of the Rights and Freedoms of Man and Citizen

As the analysis of recent studies shows, now a significant number of rights and freedoms do not have real provision and protection from the state, despite the relatively perfect constitutional and legal regulation. Thus, during the study of the situation by the United Nations Human Rights Monitoring Mission in Ukraine, which was conducted from August 1, 2020 to January 31, 2021, violations in the field of human rights and freedoms in the territory controlled by Ukraine were recorded.

11 L. V. Tereshchenko. *Rights and Freedoms of Man and Citizen*. Eds. S. S. Cherniavskiy, K. B. Levchenko, B. V. Kalynovskiy. *HANDBOOK OF A CITIZEN*. Folio. (2019). Pag. 17-18.

The 29th report of the OHCHR on the situation in Ukraine refers to a number of violations of the constitutional rights and freedoms of citizens and other categories of persons, including the right to freedom and personal integrity (Article 29), to judicial protection (Article 55), freedom of peaceful assembly and freedom of association (Article 39), freedom of thought and expression (Article 34), as well as a number of other socio-economic rights directly guaranteed by the Basic Law of Ukraine.

There are objective reasons for this. Thus, the armed aggression of the Russian Federation added special urgency to the protection of the right to life, liberty and personal integrity, to freedom from torture, to freedom of movement, etc. As a result of armed aggression against Ukraine for the entire period of the conflict, from April 14, 2014 to February 15, 2020, the OHCHR recorded 3,052 deaths among the civilian population (1,812 men, 1,056 women, 98 boys, 49 girls and 37 adults whose gender is unknown). The total number of civilian deaths in connection with the conflict is at least 3,350. The number of wounded civilians, according to estimates, exceeds 7,000¹². These figures include, in particular, 298 passengers of flight MH-17, including 80 children, who were victims of the terrorist attack on July 17, 2014, when the Malaysia Airlines plane was shot down by the Russian military from the Buk anti-aircraft missile system, taken to the occupied territory of Donbass from the territory of the Russian Federation.

The military conflict had a very negative impact on the economic development of both the region and the state as a whole. According to the State Statistics Service of Ukraine, until 2014 Donetsk and Lugansk regions provided about a quarter of the country's exports and more than 15% of capital investments. Donbas was a supplier of raw materials, such as coal, as well as steel and other industrial goods that were in demand by foreign manufacturers.

We consider it necessary to also pay attention to the state of observance, provision, implementation and protection of the rights of certain categories of persons. The annual reports of the Commissioner for Human Rights of the Verkhovna Rada of Ukraine (2019) on the observance and protection of the rights and freedoms of man and citizen testify to existing violations and the absence of effective mechanisms to protect the rights and freedoms of some vulnerable segments of the population¹³. This population group includes national minorities, people without permanent residence, people with disabilities, the elderly, as well as those in specialized institutions. We

12 Office of the United Nations High Commissioner for Human Rights. *Report on the human rights situation in Ukraine. November 16, 2019 - February 15, 2020*. Available at: <https://shorturl.at/qCJW1>

13 Annual report of the Verkhovna Rada Commissioner for Human Rights on the State of Observance and Protection of Human and Citizen Rights and Freedoms in Ukraine for 2019.

consider the growth of social inequality, discrimination, limitations in the ability to exercise the rights to health care, work, education, social protection and a sufficient life standards to be one of the factors of the emergence of such a situation in the state. In addition, these factors contribute to the strengthening of social alienation (marginalization) of a fairly significant number of the state's population.

In today's world, the application of restrictions on human rights and freedoms is one of the fundamental elements of human relations with the state. This is done in order to find a compromise between society and the state, which is manifested in the protection of the person, the rights and freedoms of other people from arbitrariness. Therefore, the limitation of the basic rights and freedoms of a person is a legitimate, purposeful quantitative and (or) qualitative reduction in the process of legal implementation of those possible models of behavior (powers), which constitute the basic rights (freedoms) of a person, by other persons. It has an exclusively legal, temporary, targeted, non-discriminatory, socially useful character and consists in narrowing the scope and content of a person's fundamental potential abilities. The possibility of restricting fundamental human rights and freedoms by the state is provided for in virtually all international legal acts regulating human rights and freedoms. Each treaty defines the limits of possible restrictions and an exhaustive list of grounds for them, and also establishes a number of rights that cannot be limited under any circumstances¹⁴.

Citizens should be aware of the fact that Article 3 of the Constitution of Ukraine states the following: "Under the conditions of martial law or a state of emergency, specific restrictions on rights and freedoms may be established with the indication of the period of effect for such restrictions. The rights and freedoms envisaged in Articles 24, 25, 27, 28, 29, 40, 47, 51, 52, 55, 56, 57, 58, 59, 60, 61, 62 and 63 of this Constitution shall not be restricted"¹⁵. M. V. Korniienko notes that this constitutional norm is blanket, it contains a list of articles of the Constitution, which enshrine those human rights and freedoms that cannot be restricted even under martial law. It is quite obvious that this list does not consist of a few rights, but contains a whole series, since human rights have a fundamental character: rights represent such human possibilities that provide the basic needs of a person, without which a person "loses" his/her essence. It is this position that should be immanent in a democratic state¹⁶.

14 V. V. Lazarev, T. M. Malynovska. PECULIARITIES OF GUARANTEEING HUMAN RIGHTS AND FREEDOMS IN THE CONDITIONS OF MARTIAL LAW IN UKRAINE. Kharkiv National University of Internal Affairs. (2022).

15 Constitution of Ukraine (28 June, 1996). Verkhovna Rada of Ukraine. Available at: <https://shorturl.at/ru089>

16 M. V. Korniienko. *Human Rights in Martial Law Terms: General and Legal Discourse*. SOUTH UKRAINIAN LAW JOURNAL, no. 1-2. 2022. Pag. 30.

The Constitutional Court of Ukraine believes that the concept of “restriction of the constitutional rights and freedoms of man and citizen”, in the context of the first part of Article 64 of the Constitution of Ukraine, should be understood as a narrowing of the scope of rights and freedoms not provided for by the constitutional norms, the establishment of additional norms that eliminate the freedom of association in political parties in the manner determined by the relevant law, and which actually prevent the creation of associations of citizens. Therefore, it is necessary to distinguish the concept of “restriction of fundamental rights and freedoms” from the concept of “fixing the boundaries of the very essence of rights and freedoms” adopted in legislative practice by applying legal methods (techniques), recognizing such practice as acceptable if additional regulation of the process of creating political parties by special legislation aims not to narrow the scope of rights and freedoms, but to clarify the content and regulation of procedural issues and determine the general boundaries of fundamental rights (Paragraph 2 of item 10 of the motivational part of the Decision of the Constitutional Court of Ukraine on June 12, 2007 No. 2-рп/2007)¹⁷.

In accordance with the principle of legal certainty, the restriction of fundamental human and civil rights and the implementation of these restrictions in practice is permissible only if the predictability of the application of the legal norms established by such restrictions is ensured. That is, the restriction of any right should be based on criteria that allow a person to separate lawful behavior from illegal, to provide for the legal consequences of his/her behavior.

In another decision of the Constitutional Court of Ukraine, it was noted that the narrowing of the content and scope of rights and freedoms is their restriction. In the traditional understanding of activity, the defining concepts of the content of human rights are the conditions and means that constitute the abilities of a person necessary to meet the needs of his/her existence and development. The scope of human rights is their essential property, expressed by quantitative indicators of human abilities, which are reflected by the corresponding rights, not homogeneous and common. It is a generally accepted rule that the essence of the content of a fundamental right may in no case be violated (Paragraph 4 of subsection 5.2 of item 5 of the motivational part of the Decision of the Constitutional Court of Ukraine on September 22, 2005 No. 5-рп/2005)¹⁸.

17 Decision of the Constitutional Court of Ukraine on June 12, 2007 No. 2-рп/2007 (The case on the formation of political parties in Ukraine). Available at: <https://shorturl.at/kxKUX>

18 Decision of the Constitutional Court of Ukraine on September 22, 2005 No. 5-рп/2005 (The case of permanent use of land plots). Available at: <https://shorturl.at/AH016>

Among scientists, there are different approaches to defining the concept of restriction of human rights and freedoms. For example, Yu. O. Fihel believes that restrictions on the rights and freedoms of a person and a citizen are certain prohibitions aimed to change a person's behavior by limiting subjective rights¹⁹.

In our opinion, a more correct interpretation of the concept of "restriction of human rights" was provided by L. Vasechko, who by this term understands the narrowing of the scope of human rights, as well as factors that make it impossible or difficult for a person to exercise rights and freedoms. We agree with the researcher that the given understanding of the restriction of human rights can distinguish it from the violation of human rights, *i.e.* the illegal task of harming the rights, freedoms and legitimate interests of a person. That is why the relevant grounds and cases of restriction of human rights and freedoms have been established at the legislative level, which in no way can take place in violation of human rights and freedoms. As you can see, exceptions to the rights and freedoms of man and citizen are established by the Constitution of Ukraine itself, and not by laws or other normative acts²⁰.

Restrictions on the realization of constitutional rights and freedoms cannot be arbitrary and unfair, they must be established exclusively by the Constitution and laws of Ukraine, pursue a legitimate goal, be conditioned by the social necessity of achieving this goal, proportionate and justified. In the event of a restriction of a constitutional right or freedom, the legislator is obliged to introduce such legal regulation that will make it possible to optimally achieve a legitimate goal with minimal interference in the realization of this right or freedom, and not to violate the essential content of this right (Paragraph 3 of subparagraph 2.1 of item 2 of the motivational part Decision of the Constitutional Court of Ukraine on June 1, 2016 No. 2-рп/2016).

One of the reasons for legitimate restriction of human rights is the introduction of martial law in the state or in some of its localities. On February 24, 2022, the lives of all Ukrainian men and women were divided into "before the war" and "during the war". In connection with this, the president of Ukraine V. O. Zelensky introduced martial law in the entire controlled territory of Ukraine. After that, martial law was extended several times in accordance with current legislation. The aggressor country began to call the special military operation against Ukraine, which *de facto* is a conventional war.

The specificity of hybrid wars is that the ordinary person does not understand the essence of everything that is happening: where and from whom the threat comes,

19 Yu. O. Fihel. *Restrictions on Human Rights in Conditions of Martime*. HERALD OF LVIV UNIVERSITY OF TRADE AND ECONOMICS: LAW SCIENCES, no. 2. 2015. Pag. 223.

20 Lyudmila Vasechko. *Limitation of Human Rights in the Globalization: Problems of Theory and Practice*. LEGAL UKRAINE, no. 1. 2016. Pag. 5.

how it appears, what and how to counter it²¹. According to Article 1 of the Law of Ukraine “On the Legal Regime of Martial Law”, martial law is a special legal regime introduced in Ukraine or in some of its localities in the event of armed aggression or threat of attack, danger to the state independence of Ukraine, and its territorial integrity. It provides for the provision of appropriate to state authorities, military command, military administrations and local self-government bodies, the powers necessary to prevent the threat, repulse armed aggression and ensure national security, eliminate the threat of danger to the state independence of Ukraine, its territorial integrity, as well as the temporary, threat-induced, restriction of the constitutional rights and freedoms of man and citizen, and the rights and legitimate interests of legal entities with the indication period of validity of these restrictions²².

The establishment of martial law as a reaction of the state to certain negative factors of the environment, both natural (epidemics, natural disasters, man-made disasters) and social (armed aggression, rebellion, mass riots, terrorist acts) is typical for most countries of the world. The introduction of martial law usually involves the possibility of involving the armed forces as the most organized part of the state in order to promptly respond to the challenges faced by such a state, as well as the establishment of a number of measures that limit the scope of the rights and freedoms guaranteed to citizens by the state²³.

During the introduction of martial law, a person’s physical right to freedom of movement, free choice of place of residence and the right to freely leave the territory of Ukraine, provided for in Article 33 of the Constitution of Ukraine²⁴, can be restricted.

Restrictions on freedom of movement and free choice of place of residence may be introduced in accordance with Article 15 of the Law of Ukraine “On the Legal Regime of Martial Law”²⁵, which contains provisions on the content of measures of the legal regime of martial law. In particular, the military administrations of settlements in the relevant territory have the right to introduce and carry out the following measures of the legal regime of martial law: to introduce a curfew (prohibition of being on the

21 S. O. Tkachenko, A. S. Diadin. *Public Safety in the Conditions of Martial Law and Mental Warfare*. LAW AND SAFET, vol. 3, no. 86. 2022. Pag. 128.

22 Law of Ukraine on May 12, 2015 No. 389-VIII. On the legal regime of martial law. Available at: <https://shorturl.at/fuEKS>

23 Anna Slavko. *Limitation of Rights and Freedoms of Citizens by Martial Law: Comparative Aspects*. UZHGOROD NATIONAL UNIVERSITY HERALD. SERIES: LAW, vol. 2, no. 41. 2016. Pag. 72.

24 Constitution of Ukraine (28 June, 1996). Verkhovna Rada of Ukraine. Available at: <https://shorturl.at/ru089>

25 Law of Ukraine on May 12, 2015 No. 389-VIII. On the legal regime of martial law. Available at: <https://shorturl.at/fuEKS>

streets and other public places during a certain period of the day without specially issued passes and certificates), as well as to establish a special light masking mode; to establish a special entry and exit regime, limit the freedom of movement of citizens, foreigners and stateless individuals, as well as the movement of vehicles; to prohibit conscripts and military men to change their place of residence without the knowledge of the military command.

According to Article 19 of the Law of Ukraine “On the Legal Regime of Martial Law”, in the conditions of martial law the following are prohibited: changes to the Constitution of Ukraine and the Constitution of the Autonomous Republic of Crimea; conducting elections of the president of Ukraine, as well as elections to the Verkhovna Rada of Ukraine, the Verkhovna Rada of the Autonomous Republic of Crimea and local self-government bodies; conducting all-Ukrainian and local referenda; conducting strikes, mass meetings and actions. Such legislative restrictions are fully justified, as they are aimed at ensuring the prevention of threats to Ukraine’s national security and the inadmissibility of violations of territorial integrity, state sovereignty, protection of economic and social interests, etc.

In our opinion, restrictions on mass media are fully justified in the conditions of martial law. As stated in Article 34 of the Constitution of Ukraine²⁶, freedom of speech may be limited in the interests of national security, territorial integrity or public order. According to Article 8 of the Law of Ukraine “On the Legal Regime of Martial Law”, the military command together with military administrations (in case of their formation) may implement measures of the legal regime of martial law.

Such measures include regulating, in accordance with the procedure determined by the Cabinet of Ministers of Ukraine, the work of suppliers of electronic communication networks and/or services, printing enterprises, publishing houses, television and radio organizations, television and radio centers and other enterprises, institutions, organizations and institutions of culture and mass media, as well as using local radio stations, television centers and printing houses for military needs and conducting explanatory work among the troops and the population. They also include to prohibit the operation of receiving and transmitting radio stations for personal and collective use and the transmission of information through computer networks.

Journalists are prohibited from filming in a war zone. Filming should be done in such a way that it is not possible to identify the location of the military and determine the number of equipment. It is also forbidden to provide accurate information about the nature of hostilities, the number of military formations and their weapons, etc.

26 Constitution of Ukraine (28 June, 1996). Verkhovna Rada of Ukraine. Available at: <https://shorturl.at/ru089>

V. CONCLUSIONS

As a democratic, legal state, Ukraine clearly recognized at the constitutional level that even under the conditions of the legal regime of martial law, restrictions on rights and freedoms in no way extend to the fundamental rights of citizens (to life, equality and non-discrimination, the right to respect for dignity; the right to freedom and personal integrity, the right to housing, the right to legal aid, to judicial protection of rights and freedoms). At the same time, restrictions on rights and freedoms are applied only on the basis of the Constitution of Ukraine and only in the appropriate scope and for a certain time.

Guarantees of the rights and freedoms of man and citizen are a mechanism for ensuring and protecting existing human rights, which involves the creation of the most favorable conditions for the full realization of rights and freedoms. Guarantees do not exist separately from each other, they are formed into a complex system, a kind of mechanism in the legal space, which from different sides affects the process of exercising by the subject of his/her rights and freedoms.

A promising direction of the development is the sanctioning and recognition by democratic states of human rights of the fourth generation, as well as the creation of an effective mechanism for ensuring these rights. Many states have already recognized such rights and made changes in the legal system, legalizing such rights as the right to euthanasia, sex reassignment, cloning, artificial insemination, same-sex marriage and other modern, emerging rights. In the current era of humanism, the circle of rights and freedoms is constantly expanding and approaching full democracy. The sanctioning of new state rights is closely related to their guarantee; these are inseparable processes.

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