

## A systematic review of constitutional regulation of martial law and its impact on citizens' rights

*Kateryna Romanenko<sup>1</sup>, Patryk Chmielarz<sup>2</sup>, Dmytro Taran<sup>3</sup>, Yurii Kuryliuk<sup>4</sup>, Iia Pelekh<sup>5</sup>*

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**Abstract.** The purpose of this study is to examine the constitutional and legal mechanisms for restricting human rights under martial law in Ukraine, with a specific focus on ensuring the proportionality, legality, and necessity of such restrictions. The research employs doctrinal legal analysis combined with comparative legal methodology to evaluate the national constitutional framework in relation to international standards for the protection of human rights during a state of emergency. The findings indicate that the mechanism for restricting human rights under martial law requires more precise legislative regulation to ensure alignment with constitutional guarantees and to prevent potential abuses. While the legislation governing martial law in Ukraine includes general provisions on permissible restrictions, it lacks detailed procedural safeguards necessary to protect the core essence of fundamental rights. The analysis further reveals that the effective exercise of the right to judicial protection is impeded by limited access to courts, shortened procedural timelines, and restrictions on court operations in areas affected by active hostilities. Moreover, the study finds that the constitutional complaint mechanism, although significant, remains underutilized. Enhancing its practical effectiveness necessitates simplification of the procedural requirements. These results are consistent with prior research underscoring the imperative of preserving the substance of constitutional rights even during wartime and ensuring effective judicial protection for citizens. Overall, the study underscores the necessity of enhancing constitutional and legislative mechanisms to maintain a proper balance between state security interests and the protection of individual rights under martial law. Strengthening these mechanisms would contribute to reinforcing constitutionalism and the rule of law in Ukraine during times of crisis.

**Keywords:** martial law, derogation, human rights restrictions, constitutionalism, judicial protection, constitutional complaint.

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<sup>1</sup> Doctor of Sciences in Public Administration, Professor, Director of the Educational and Research Institute of Management, Department of Public Administration and Law, Communal Institution of Higher Education "Dnipro Academy of Continuing Education" of the Dnipropetrovsk Regional Council, Dnipro, Ukraine, <https://orcid.org/0000-0003-3985-3791>

<sup>2</sup> Doctor (Dr), Assistant Professor, Director of the Research Center, University of the National Education Commission in Krakow (UKEN), Krakow, Poland, <https://orcid.org/0000-0003-0286-741X>

<sup>3</sup> PhD in Law, Associate Professor, Department of Public Administration and Law, Education and Research Institute of Finance, Economy, Management and Law, National University "Yuri Kondratyuk Poltava Polytechnic", Poltava, Ukraine, <https://orcid.org/0009-0003-3489-0734>

<sup>4</sup> Doctor of Legal Sciences, Professor, Merited Lawyer of Ukraine, Professor of the Department of Theory and History of State and Law, National Academy of Management, Kyiv, Ukraine, <https://orcid.org/0000-0002-4035-4431>

<sup>5</sup> PhD in Law, Associate Professor, Department of Civil Law, Zaporizhzhia National University, Zaporizhzhia, Ukraine, <https://orcid.org/0000-0002-7896-688X>

## Introduction

Martial law is a specific legal regime imposed in a country or certain regions thereof in the event of an armed attack, threat of aggression, or danger to the sovereignty and territorial integrity of Ukraine. According to the Constitution of Ukraine, the President has the authority to initiate the introduction of martial law by submitting a corresponding decree to the Verkhovna Rada of Ukraine for approval, in accordance with Article 106. Article 85 of the Constitution stipulates that the Verkhovna Rada is responsible for approving presidential decrees on the introduction of martial law. This procedure ensures parliamentary oversight of its implementation and upholds the constitutionality of any restrictions imposed on the rights and freedoms of citizens.

Simultaneously, Article 64 of the Constitution of Ukraine provides that, under conditions of martial law or a state of emergency, certain restrictions on constitutional rights and freedoms may be imposed. However, this provision explicitly excludes inalienable rights, which may not be limited under any circumstances. Some constitutional rights remain protected even during martial law, particularly the right to life and the prohibition of torture (Fokina, 2022, p. 140).

Martial law necessitates a reassessment of the guarantees for the realization of the constitutional right to work and the development of legal mechanisms for compensating losses (Sydorenko & Polkhovska, 2022, p. 50). Restrictions on freedom of speech under martial law must be applied solely in cases explicitly provided for by law, and must comply with the principles of necessity and proportionality (Kolomiets, 2022, p. 66). As of July 2025, martial law in Ukraine has been in effect for more than three years, signifying its evolution from a temporary emergency measure into a sustained framework for the functioning of the state and society. This development, in turn, calls for a comprehensive legal analysis not only in light of the current circumstances, but also in the broader context of ensuring the guarantees of a democratic constitutional state and the principle of legal certainty. At the same time, there is a global trend toward the increased use of emergency legal regimes in various countries. In recent decades, numerous states have introduced emergency or martial law in response to armed conflicts, terrorist threats, hybrid warfare, cyberattacks, and large-scale security crises, often accompanied by varying degrees of restrictions on human rights and freedoms. For instance, in France, a state of emergency remained in effect for an extended period following the 2015 terrorist attacks. In Turkey, a state of emergency was declared for two years after the 2016 coup attempt, resulting in significant limitations on several human rights.

This situation raises the critical issue of maintaining compliance with constitutional guarantees during periods of extreme threat, as the growing number of military conflicts worldwide presents new challenges to the legal systems of democratic states. The present study employs the following methods and approaches: the systemic and structural method to analyze the constitutional mechanism of martial law as a unified legal construct; the comparative legal method to examine the experience of foreign states in safeguarding constitutional guarantees of human rights during states of emergency; the formal legal method to analyze the provisions of the Constitution of Ukraine and relevant special legislation; and the logical-dogmatic method to develop theoretical conclusions.

## *Research Problem*

There are significant gaps in scholarly research on martial law in Ukraine. In particular, there is a limited number of comparative studies examining the experiences of other states in the constitutional regulation of emergency regimes. Moreover, comprehensive analyses of the impact of martial law on the exercise of citizens' constitutional rights and freedoms remain scarce. This shortfall impedes the development of a coherent legal doctrine regarding the restriction of human rights during wartime.

### ***Research Focus***

A systematic legal understanding of the institution of martial law requires an analysis of national legislation and practice, international experience in regulating emergency regimes, and an evaluation of the effectiveness of constitutional guarantees of human rights during wartime and periods of national security threats. Particular attention should be given to the constitutional limits governing the introduction and implementation of martial law, as these define the fundamental guarantees of rights and freedoms, establish the permissible scope of state intervention, and ensure a balance between state interests and individual rights. Such limits are essential to preventing excessive restrictions and the abuse of power.

### ***Research Aim and Questions***

The purpose of this article is to identify the specific features of the constitutional regulation of martial law and to examine how national constitutions ensure a balance between the protection of state security and the preservation of fundamental human rights under conditions of martial law. The primary research question concerns how constitutional mechanisms can minimize the risk of arbitrary restrictions on rights and provide adequate legal protection for citizens during military operations.

### **Literature review / Theoretical Overview**

Recently, Ukrainian legal scholars have devoted increasing attention to the constitutional regulation of martial law and its impact on the protection of human rights. Different researchers interpret martial law as a legal category, each emphasizing distinct aspects. For example, Bilanchuk and Demianiuk (2024) analyze the role of the judiciary in safeguarding human rights during martial law, emphasizing judicial oversight as a key safeguard against excessive executive power. Lotiuk (2024) examines the practical dimensions of human rights implementation under martial law, highlighting both legal and administrative barriers to their effective protection. Buha and Buha (2022) consider the institution of mediation during martial law, demonstrating its significance in resolving disputes and protecting citizens' interests under conditions of limited judicial system functionality. From a philosophical and legal perspective, Lukash and Kobets (2025) explore the conceptual foundations of human rights protection in the context of martial law, arguing for the prioritization of human dignity and the minimization of restrictions even in exceptional circumstances. Melnyk (2023) provides a broad analysis of mechanisms for human rights protection during martial law, outlining constitutional and legislative guarantees while also noting their weak implementation in practice. Iliukha and Bardin (2024) support the necessity of human rights restrictions under martial law but caution against their disproportionate application, which may result in abuse.

Pashaiev (2024) analyzes fundamental rights during martial law, highlighting the risks of undermining constitutional guarantees and the potential erosion of legal standards. Servatiuk (2023) focuses on Ukraine's compliance with international human rights standards, emphasizing that procedures for derogating from constitutional guarantees require clear legal regulation consistent with the state's international obligations.

Stepanenko and Metoshop (2025) analyze strategies for countering aggression while safeguarding fundamental rights, proposing legislative and institutional reforms to achieve a balance between security and the protection of human rights. Scientific discourse actively compares approaches to the restriction of rights in emergency situations across international law and national practices. International law, particularly Article 4 of the International Covenant on Civil and Political Rights and Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms, permits derogation from obligations by participating states in cases of extraordinary threats, but sets strict conditions for such measures. These conditions include the necessity of the restrictions, their proportionality to the objectives pursued, their temporary character, adherence to the principle of non-

discrimination, and the prohibition of derogation from non-derogable rights, such as the right to life and the prohibition of torture. International bodies, particularly the UN Human Rights Committee, in its General Comments (notably No. 29), emphasize that even during a state of emergency, the state must uphold fundamental constitutional guarantees. Any restriction of rights must be justified, necessary, and consistent with the principles of the rule of law.

National practices, particularly in Ukraine, often highlight the broad discretionary powers granted to the executive branch during emergency situations, which raises concerns among many scholars about the risk of power abuse and the potential erosion of the constitutional order. In their research, Bilanchuk and Demianiuk (2024) underscore the importance of judicial review of executive decisions during martial law, while Lotiuk (2024) points to the absence of practical mechanisms for enforcing these guarantees in crisis conditions. At the same time, international reports by Human Rights Watch (2022), Amnesty International (2023), and the Office of the UN High Commissioner for Human Rights (2023) stress the need to reinforce parliamentary and judicial oversight of human rights restrictions, even under emergency conditions, to prevent unjustified, disproportionate, or prolonged limitations.

Academic debates also address the limits of state intervention in human rights during crises and the challenge of balancing national security with the observance of fundamental rights. Some scholars, such as Lukash and Kobets (2025), advocate a minimalist position, arguing that even in times of war or emergency, the state must preserve human rights to the greatest extent possible and uphold the principle of human dignity as a supreme value. Others, including Ilyukha and Bardin, acknowledge the necessity of imposing significant restrictions on certain rights and freedoms to protect public safety and the constitutional order, but stress that such restrictions must be clearly justified, grounded in law, applied only when strictly necessary, and proportionate to the objectives pursued. These issues remain the focus of active theoretical and practical debate, particularly in the context of the current security crisis, which underscores the need to further develop constitutional and international legal doctrine concerning the restriction of human rights during states of emergency. Key theoretical sources for analyzing this topic include the monograph *Constitutional and Legal Regime of Martial Law in Ukraine* by Melnyk (2023), *Human Rights under Martial Law* by Lotiuk (2024), reviews by the Supreme Court of Ukraine on constitutional guarantees in emergency situations (2023–2024), international reports by Human Rights Watch, Amnesty International, the United Nations, and the OSCE, as well as special reports by the Council of Europe on derogations from the Convention for the Protection of Human Rights in Emergency Situations (2022–2024). Despite substantial theoretical and practical contributions, gaps remain regarding the clarity of constitutional mechanisms for restricting rights, the comparative analysis of international derogation models, and empirical assessments of the impact of martial law on civil liberties in Ukraine. Addressing these issues is essential to strengthening the constitutional stability of the state and ensuring an appropriate balance between security and human rights in the context of contemporary crises.

Poland's experience with the constitutional regulation of states of emergency (1997–2025) demonstrates an exemplary model of balancing state interests with the protection of human rights. The 1997 Constitution establishes three distinct regimes: martial law, a state of emergency, and a state of natural disaster, each with clearly defined procedural requirements, including mandatory approval of the President's decree by the Sejm within 48 hours (Florczak-Wątor, 2025).

Konarski (2024) highlights the development of Polish legislation regarding the constitutional obligation to perform "public burdens" during martial law, such as mobilization work or the provision of material resources. These obligations were formed in the context of constitutional norms and shaped by the provisions of the 2002 regulations. A particularly relevant issue is the "legitimate evasion" of the formal declaration of a state of emergency,

especially during the COVID-19 pandemic. Authorities refrained from declaring an official state of emergency but implemented similar restrictions, prompting a constitutional debate over the legality and transparency of such actions (Florczak-Wątor, 2025). Poland's constitutional framework demonstrates that the effective regulation of emergency powers requires the clear classification of legal regimes, strict procedural oversight, mandatory parliamentary involvement, and firm guarantees for the protection of inalienable rights, even in times of national crisis.

### Research Methodology

**General Background.** This study employs a qualitative doctrinal methodology, focusing on the analysis of constitutional and legislative provisions regulating martial law in Ukraine, along with relevant international human rights standards. It is grounded in the examination of primary legal sources, including the Constitution of Ukraine, the Law of Ukraine "On the Legal Regime of Martial Law," and key international treaties. In addition, the study draws on secondary sources such as academic articles, monographs, and legal commentaries. This approach offers a comprehensive understanding of the legal framework governing martial law and its implications for the rights and freedoms of citizens.

**Comparative Design and Sources.** The study employs a comparative legal design, analyzing the Ukrainian legal framework against international standards and other national models, particularly Poland. The approach includes:

- Examining constitutional and legislative texts to identify procedural safeguards, limits on state interference, and guarantees of human rights.
- Assessing compliance with international treaties (e.g., ICCPR, ECHR) and the UN Human Rights Committee's General Comments.
- Comparing Poland's three-tier system of emergency regimes (martial law, state of emergency, natural disaster) with Ukraine's framework to identify best practices for balancing security and rights (Florczak-Wątor, 2025; Konarski, 2024).
- Using reports and assessments by Human Rights Watch, Amnesty International, the UN, and the OSCE to evaluate practical effectiveness and adherence to international standards.

### Data Analysis

Data were analyzed using qualitative content analysis and comparative legal methods. Constitutional provisions and statutes were examined to determine their doctrinal significance and practical implications for the protection of human rights under martial law. A comparative analysis assessed the extent to which Ukrainian regulatory instruments align with international human rights standards and identified areas of convergence and divergence. The findings were synthesized to derive evidence-based conclusions and to develop recommendations for strengthening the regulatory framework.

### Results

The legal regulation of martial law in Ukraine is governed by the Constitution and the Law of Ukraine "On the Legal Regime of Martial Law" (2015), which sets out the procedures for declaring and implementing this regime, the scope of rights restrictions, and the powers of state authorities and the military command. In addition, subordinate legislation details the functioning of government bodies during martial law, particularly in defense, security, mobilization, and support for the population. During a state of emergency or martial law, oversight of the authorities is exercised through several interrelated mechanisms that together constitute a system of checks and balances designed to minimize the risk of abuse of power (Table 1).

Table 1

## Control over the authorities in a state of emergency/martial law

Institution/ Entity	Who makes decisions	What rights are not subject to restriction (Article 64 of the Constitution of Ukraine)	Is automatic review provided for	Level of influence on policy/control
Parliament (Verkhovna Rada of Ukraine)	Approves the presidential decree on the introduction of martial law or a state of emergency; determines its duration and scope	Right to life, freedom from torture, slavery, recognition of the person, inviolability of private life, protection from discrimination, right to legal assistance, presumption of innocence, freedom of thought, conscience, and religion	Formally – no, but due to control over the continuation/changes of and the regime, periodic reviews take place	High – legislative control, political accountability, monitoring
President of Ukraine	Initiates and issues decrees on the introduction of martial law/state of emergency; coordinates the actions of law enforcement agencies	Same rights as those not subject to restriction under the Constitution	No – requires parliamentary approval; no direct automatic review mechanism	Very high – central security policy coordinator
Cabinet of Ministers, National Security and Defense Council	Adopts subordinate legislation, determines measures within the legal regime	Must comply with constitutional restrictions	No – actions can be challenged in court	High – policy implementation, operational management
Constitutional Court of Ukraine	Considers submissions regarding the constitutionality of presidential decrees, laws, and other acts	Has jurisdiction to ensure respect for inviolable rights	Partially – only on the basis of an official submission (not automatically)	Limited direct influence, but high legal significance of decisions
General courts (Administrative Courts, Civil Courts)	Consider individual cases concerning violations of rights and freedoms	Guided by Article 64 of the Constitution and the practice of the ECHR	Yes – in the form of appeal/cassation; review possible, but not automatic	Medium – protection of individual rights, creation of law enforcement practice
Ombudsman (Human Rights Commissioner of the Verkhovna Rada)	Does not make decisions, but responds to violations, monitors, and	Aimed at protecting all rights, especially inviolable rights	No – acts upon citizens' appeals or on its own initiative	Mediating – analytical and public influence, accountable to parliament

	appeals to authorities			
Media and civil society	Does not make decisions, but identifies abuses and conducts independent monitoring	Freedom of speech and information may be restricted, but not completely abolished	No – act independently, often in response to abuses	High in conditions of freedom of activity – shape public opinion and international pressure

Source: author's development

Within the system that balances security and human rights during a state of emergency or martial law, the highest level of oversight is exercised by parliament to ensure the legitimacy of executive decisions. The executive branch has the greatest operational capacity, yet its actions are constrained by parliamentary and judicial review. The judiciary safeguards the lawfulness of restrictions and the protection of individual rights. Independent institutions, including the ombudsman, together with civil society and the media, provide democratic oversight and create a mechanism of public accountability. This multilevel system of checks and balances reconciles the need for rapid response with the requirements of the rule of law and the protection of fundamental freedoms. Between 2022 and 2025, the Constitutional Court of Ukraine issued several decisions on constitutional complaints concerning restrictions on human rights, particularly under martial law. Analysis of these decisions shows the gradual consolidation of clear legal positions on the inadmissibility of curtailing constitutional guarantees even in extraordinary circumstances. In its decision of April 6, 2022 (No. 2-r(II)/2022), the Constitutional Court affirmed that the constitutional guarantees of the right to judicial protection, set out in Articles 8 and 55 of the Constitution of Ukraine, oblige the state to ensure a genuine opportunity to seek judicial redress. The Court emphasized that excessive formalization of access to justice, or a court's refusal to hear a case on procedural grounds, may violate constitutional rights. This conclusion not only defines the Court's position on the essence of the right of access to justice but also provides a basis for further improvement of legislation governing judicial protection (Decision of the Constitutional Court of Ukraine, April 6, 2022, No. 2-r(II)/2022).

Case No. 3-88/2022 was particularly significant, culminating in the adoption of Decision No. 8-r(II)/2024 on July 18, 2024. The case concerned part 6 of Article 615 of the Criminal Procedure Code of Ukraine (CPC), which provided for the automatic extension of the term of detention of suspects during martial law. The Constitutional Court held that this rule conflicted with Articles 8, 29, 55, 62, and 63 of the Constitution of Ukraine, which guarantee the right to liberty and personal inviolability, the presumption of innocence, the right to defense, and effective judicial review. The Court stressed that even under martial law the state may not entirely deprive a person of the procedural guarantees established by the Constitution. In this instance, the constitutional complaint proved to be an effective instrument for the protection of rights and freedoms, and the Court's conclusions may have a direct impact on revising the relevant provisions of the CPC (Decision of the Constitutional Court of Ukraine, July 18, 2024, No. 8-r(II)/2024).

Similar legal reasoning appeared in Decision No. 7-r(II)/2024 of June 19, 2024, in Case No. 3-111/2023, which concerned part 6 of Article 176 of the CPC. That provision precluded the application of alternative preventive measures, other than detention, during martial law. The Court held that it infringed the rights to liberty and personal inviolability and violated the principle of equality before the law. The Constitutional Court emphasized that, even in extraordinary circumstances, a balance must be maintained between state interests and individual rights, and the lack of judicial review of preventive measures is incompatible with the rule of law. Although this decision did not immediately amend the provision, the legal position it articulated laid the groundwork for necessary legislative intervention (Decision of

the Constitutional Court of Ukraine No. 7-r(II), June 19, 2024). Decision No. 1-r/2024 of October 29, 2024, concerning part 4 of Article 75 of the Family Code of Ukraine, is also significant. The constitutionality of a rule depriving an incapacitated or disabled spouse of the right to alimony when that spouse has other income was challenged. The Court found the provision unconstitutional, noting that it restricted the social rights of vulnerable groups and contravened the principle of justice (Decision of the Constitutional Court of Ukraine No. 1-r/2024, October 29, 2024). In this case, the complaint proved highly effective, as it not only led to recognition of the provision as unconstitutional, but also required the legislature to review the relevant provisions of the Family Code. Restrictions on human rights under martial law must satisfy four core criteria: a legitimate basis, a lawful procedure, proportionality of the restrictions, and necessity to achieve a legitimate aim (Korolyova & Gapesko, 2025, p. 83). Accordingly, it is useful to present a graphic depiction of the effects of martial law on distinct categories of rights, which facilitates a clearer understanding of the relationship between human rights guarantees and public security needs (Fig. 1).

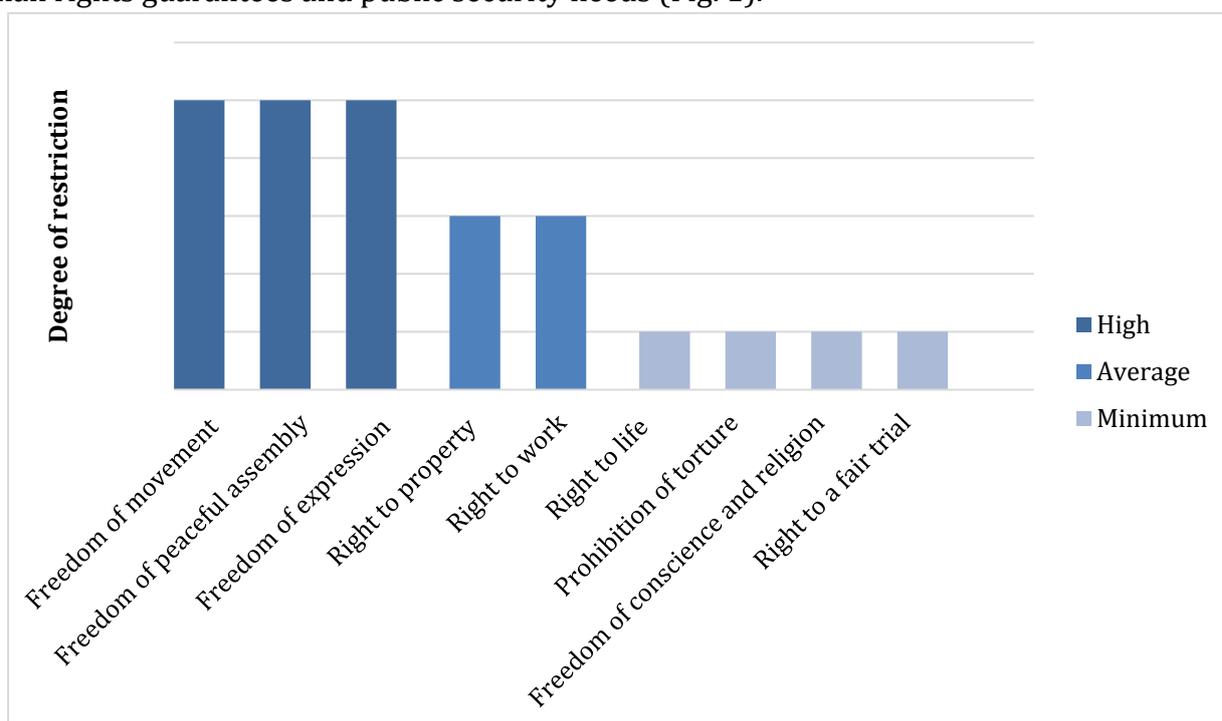


Figure 1. Impact of martial law on specific groups of rights

Source: author's development

Balancing security with human rights under martial law in Ukraine requires revising the Law “On the Legal Regime of Martial Law.” The current lack of clearly defined limits on restrictions creates a risk of abuse. Legislation should specify which rights may be restricted, ensure that any limitations are proportionate and temporary, and conform to Article 4 of the ICCPR, the ECHR, and the case law of the ECtHR. Non-derogable rights, such as the right to life and the prohibitions of torture, slavery, and punishment without trial, must be constitutionally guaranteed and explicitly detailed in legislation (Vasyliev, 2025, p. 390). At the same time, it must be clearly stated that certain personal rights, particularly the right to life and the prohibitions of torture, slavery, and punishment without trial, are not subject to any restriction, even in times of emergency, including martial law (Domin, 2024, p. 553). It is advisable to revise the procedures for introducing and extending restrictions during martial law. The President should be required to provide a public, reasoned justification for each measure, while the Verkhovna Rada must ensure effective parliamentary oversight and regular reporting on the impact of these measures. Special attention should be devoted to the

role of military administrations. Their decisions must be subject to judicial review under simplified procedures that include clearly defined deadlines and guaranteed access to legal assistance. Without such mechanisms, individuals are left without effective protection, which contradicts both the Constitution of Ukraine and international human rights standards (Didus, 2023, p. 15).

Between 2022 and 2024, courts reviewed 147 reports compiled by authorised persons of the Secretariat and representatives of the Ukrainian Parliament Commissioner for Human Rights on administrative offences under Articles 188-39 and 188-40 of the Code of Administrative Offences. In particular, 10 reports concerned violations of legislation in the field of personal data protection, and 137 concerned failure to comply with the lawful requirements of the Ukrainian Parliament Commissioner for Human Rights (Vdovenko et al., 2025).

In 2024, the Constitutional Court of Ukraine received 429 constitutional complaints, of which 401 were filed by individuals and 28 by legal entities. This indicates the active use of the constitutional complaint mechanism by citizens and organisations to challenge acts that restrict their rights and freedoms (Constitutional Court, 2025).

Special attention should be given to regulating political rights under martial law, including freedom of association, party activity, and participation in elections. Current legislation leaves these issues insufficiently defined, allowing for arbitrary restrictions. A clear procedure for the temporary suspension of political parties should be established, requiring a court decision, a fixed duration, the right to appeal, and guarantees for the resumption of party activities and electoral processes once martial law is lifted. In addition, stronger institutional oversight is needed. This should include the creation of a parliamentary commission to monitor the protection of rights, as well as expanded powers for the Ombudsman, including access to classified decisions and the authority to inspect detention facilities. Such reforms would bring Ukrainian legislation into closer alignment with international standards, help prevent violations of political rights, and strengthen public trust in democratic institutions (Nikitina, 2023, p. 42). These measures would enable the state to function effectively under military threat without compromising democratic principles. This is essential for Ukraine in its pursuit of European integration and conformity with the standards of the Council of Europe, the OSCE, and the United Nations. Updating the Law "On the Legal Regime of Martial Law" should therefore be a legislative priority. While martial law permits certain restrictions on constitutional rights, such limitations must comply with international humanitarian law and the rule of law (Netska and Chaika, 2023, p. 88).

International instruments such as the ICCPR (1973) and the ECHR (1950) emphasize the principles of proportionality and non-discrimination (Parasiuk, 2025, p. 679). In Ukraine, these principles are directly connected to Article 64 of the Constitution, which allows for the restriction of certain rights during martial law while preserving absolute rights, including the right to life and the prohibitions against torture, slavery, and punishment without trial.

The Supreme Court of Ukraine, particularly the Administrative Court of Cassation (ACC) and the Civil Chamber, has repeatedly stressed the importance of adhering to the principle of proportionality in adjudicating human rights disputes during martial law. In interpreting Article 64 of the Constitution, the Cassation Administrative Court issued a ruling on March 9, 2023, in case No. 600/2520/22, highlighting the requirement to apply the three-part test: assessment of the legitimate aim, necessity, and proportionality of the interference. The court found that the relevant law and the procedure governing border crossings lacked clear grounds for prohibiting the departure of men of conscription age. This, according to the court, resulted in a violation of constitutional rights due to the absence of an individualized approach and clarity in legal regulation (Cassation Administrative Court within the Supreme Court, case No. 600/2520/22, 2023).

Another significant case, No. 640/23835/22, adjudicated on October 12, 2023, concerned a ban on peaceful assemblies in certain areas. The court held that such restrictions must be clearly justified, limited in duration, subject to appeal, and permissible only in the presence of a real threat to public safety. Moreover, any such measures must not exceed what is necessary to regulate the rights of citizens (Cassation Administrative Court within the Supreme Court, case No. 640/23835/22, 2023).

These examples confirm that even under martial law, judicial practice applies Article 64 of the Constitution as a provision that permits certain restrictions without abolishing the principle of proportionality. Instead, it ensures that the state remains within the boundaries of the legal framework. The Supreme Court underscores that restrictions on rights may be imposed only in accordance with the law, following clear procedures, with defined time limits, and subject to reasoned appeal. This reflects the core of the rule of law during crisis situations.

To gain a deeper understanding of the scope and limitations of national regulation, a comparative legal analysis was conducted on models of constitutional regulation of martial law in various countries. The table below outlines key features of these models, including the authority responsible for declaring martial law, the existence of parliamentary oversight, the extent of human rights restrictions, and the presence of constitutional or judicial review mechanisms. This analysis enables the identification of a typology of constitutional models for martial law and provides an assessment of their compliance with international standards concerning necessity, proportionality, legality, and non-discrimination (Table 2).

Table 2

Typology of models of constitutional regulation of martial law

Model	Representative countries	Centralized regulation	Parliamentary control	Degree of restriction of rights	Features of the model
Presidential-centralized	Ukraine, Turkey	High level of centralization in the hands of the president	Formal parliamentary control (approval)	Wide scope for restricting rights	Risk of strengthening executive power, requires strong judicial control
Parliamentary control	Germany, Italy	Regulation is carried out by parliament or with its approval	Permanent and effective parliamentary control	Restrictions on rights strictly defined by the Constitution	Minimization of the risk of abuse, emphasis on the rule of law
Presidential-flexible with constitutional safeguards	France	High level of presidential powers during crises	The Constitutional Council exercises control and limits the duration of measures	Moderate restrictions on rights, with safeguards against abuse	The model delegates significant powers but maintains institutional checks and balances
Polish model (post-1997 Constitution)	Poland	Shared (President introduces, Government implements, Sejm exercises control)	Strong (Sejm can revoke measures; Senate involved in prolongation)	Moderate (derogations allowed but under constitutional limits, ECtHR standards applied)	Distinctive three-type regime system (martial law, state of emergency, natural disaster emergency); strong role of Constitutional Tribunal and Ombudsman; rooted in historical lessons of authoritarian rule

Judicially balanced (Anglo-Saxon)	United States	Centralized executive regulation with parliamentary approval	Congress and courts exercise simultaneous control	Restrictions on rights are mainly enforced by laws and court decisions	The judiciary is the main guarantor of rights protection
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Source: created by the author based on legislative acts Constitution of Ukraine (1996), Law of Ukraine "On the Legal Regime of Martial Law" (2015), Grundgesetz für die Bundesrepublik Deutschland (1949), Constitution de la République française du 4 octobre 1958. (1958), Loi n° 55-385 du 3 avril 1955 relative à l'état d'urgence (1955), National Emergencies Act (1976), Stafford Disaster Relief and Emergency Assistance Act (1988), Costituzione della Repubblica Italiana. (1947), (Konstytucja Rzeczypospolitej Polskiej, 1997).

A comparative legal analysis of martial law regulation reveals four primary models that differ in terms of centralization, parliamentary oversight, and limitations on rights. The presidential-centralized model, found in countries such as Ukraine and Turkey, concentrates power in the presidency, with parliaments limited to approving declarations (Constitution of Ukraine, 1996; Human Rights Watch, 2022; Amnesty International, 2023). These regimes permit broad restrictions on rights including freedom of movement, assembly, expression, and property. However, absolute rights such as the right to life, human dignity, and freedom from torture remain non-derogable.

The parliamentary-controlled model, exemplified by Germany and Italy, prioritizes legislative supremacy. In these systems, only the parliament is authorized to declare a state of emergency, thereby minimizing potential abuse through strict constitutional safeguards (Grundgesetz, 1949). Restrictions imposed under this model are temporary and proportionate, with the rights to life and dignity deemed inviolable. In Germany, the Federal Constitutional Court affirmed these principles in several landmark rulings during the COVID-19 pandemic. For example, in April 2020, it upheld the proportionality of restrictions on large gatherings but simultaneously required authorities to permit demonstrations under safe conditions, emphasizing that the freedom of assembly under Article 8 of the Basic Law could not be entirely suspended during a pandemic (BVerfG, 1 BvR 828/20, 15 April 2020). In a subsequent ruling in May 2020, the Court invalidated a blanket ban on religious services, holding that the prohibition infringed upon the guarantee of freedom of religion under Article 4 of the Basic Law (BVerfG, 1 BvQ 44/20, 29 April 2020). Similarly, in Italy, the Constitutional Court highlighted the essential role of parliamentary legislation in emergency governance, ruling that certain ministerial decrees restricting mobility and economic activity required explicit statutory authority and parliamentary oversight (Corte Costituzionale, Decision No. 37/2021). These decisions illustrate that, within the parliamentary-controlled model, judicial enforcement of constitutional boundaries operates in concert with parliamentary primacy, ensuring that emergency measures remain both legally justified and democratically accountable.

The presidential-flexible model, exemplified by France, reflects a constitutional tradition that grants the president broad emergency powers under Article 16 of the 1958 Constitution, while incorporating judicial and parliamentary checks. During the COVID-19 pandemic, these mechanisms were critically tested. The French Conseil d'État played a pivotal role in ensuring that restrictions remained proportionate and constitutionally grounded. For instance, in May 2020, the Conseil d'État suspended a government decree that imposed a blanket ban on religious gatherings, ruling that the measure disproportionately infringed upon freedom of religion and required replacement with a framework permitting limited worship under public health safeguards (Conseil d'État [France], 2020). Similarly, in November 2020, the court ordered the government to revise a rule that restricted attendance at religious services to thirty persons regardless of church size, emphasizing the principles of proportionality and

equal treatment. In another decision, the court examined curfews and restrictions on public demonstrations, reaffirming that even in the context of a public health emergency, the executive must substantiate any limitations on freedoms of assembly and expression with clear evidence and proportionate justification. These rulings underscore that, although emergency powers in France are concentrated within the executive, judicial oversight provides a substantive counterbalance, safeguarding constitutional rights from erosion under the pretext of health protection.

Finally, the judicial-balance model, as implemented in the United States, integrates executive emergency powers with congressional oversight and rigorous judicial review. Although certain rights, such as freedom of movement, assembly, and speech, may be restricted under the National Emergencies Act (1976) or the Stafford Act (1988), the suspension of habeas corpus is permitted only in cases of invasion or insurrection. The COVID-19 pandemic underscored the dynamic role of the judiciary in calibrating the boundaries of emergency authority. For instance, in *Roman Catholic Diocese of Brooklyn v. Cuomo* (2020), the U.S. Supreme Court enjoined New York State from enforcing strict attendance limits on religious services, ruling that the restrictions were not neutral and violated the Free Exercise Clause of the First Amendment. Similarly, in *South Bay United Pentecostal Church v. Newsom* (2021), the Court struck down California's blanket ban on indoor worship, allowing limited religious gatherings while upholding certain health measures such as mask requirements. At the appellate level, in *County of Butler v. Wolf* (2020), a federal district court in Pennsylvania declared portions of the governor's stay-at-home order unconstitutional, particularly the blanket prohibitions on gatherings, emphasizing that even in a public health emergency, executive discretion must be constrained by constitutional principles. These decisions illustrate that, within the U.S. model, courts function as a critical counterbalance, ensuring that emergency measures serve legitimate public health objectives while safeguarding fundamental constitutional rights.

Overall, centralized presidential models carry a higher risk of rights violations. In contrast, parliamentary and judicially balanced systems offer stronger guarantees of proportionality and better compliance with international standards, including Article 4 of the ICCPR and Article 15 of the ECHR. Poland's experience with the constitutional regulation of states of emergency from 1997 to 2025 demonstrates an institutionally sound approach to ensuring national security without compromising fundamental rights. The 1997 Constitution establishes three distinct modes of emergency: martial law, a state of emergency, and a state of natural disaster. Each is clearly regulated in terms of its introduction, forms, and oversight mechanisms, including the requirement that a presidential decree must be submitted to the Sejm within 48 hours for mandatory approval or repeal by an absolute majority of votes (*Konstytucja Rzeczypospolitej Polskiej*, 1997).

Constitutional provisions clearly define the rights that may not be restricted even during a state of emergency. These include the right to life, human dignity, the prohibition of torture, access to justice, freedom of conscience, and the right to privacy (*Konstytucja Rzeczypospolitej Polskiej*, 1997).

In 2002, additional regulations were adopted to elaborate the procedures for applying derogations, administering compensation, and restricting the powers of state authorities during a crisis. This framework was revised during the COVID-19 pandemic, when a special law was enacted to limit the spread of the virus without officially declaring a state of emergency (Cambridge University Press & Assessment, 2021). This approach sparked debate over the legitimacy of such measures and their compliance with constitutional procedures for derogation, particularly concerning the duration and scope of government authority. The Constitutional Tribunal upheld the constitutionality of certain measures, including those related to electoral processes. However, administrative courts and legal scholars raised

concerns about the potential for these actions to undermine democratic governance (Verfassungsblog, 2020).

In the Polish constitutional system, the judiciary plays a key role in upholding the rule of law during extraordinary circumstances, such as martial law, a state of emergency, or a pandemic. The Constitutional Tribunal of Poland has repeatedly reviewed cases concerning legal sanctions imposed during crisis conditions, consistently emphasizing the need to adhere to the principles of proportionality and minimal interference with fundamental freedoms.

The practice of administrative courts during the COVID-19 pandemic is particularly significant. For instance, on 4 January 2021, the Opole Voivodship Administrative Court overturned a fine imposed on a hairdresser who worked during the lockdown, citing the absence of a formally declared state of emergency and the disproportionate nature of the restriction. Similarly, the Supreme Court of Poland annulled fines for violations of movement and assembly restrictions, finding that such sanctions lacked a sufficient legal basis in the absence of a declared state of emergency (Voivodship Administrative Court in Opole decision, 2021).

In his article, Jaraczewski (2021) provides a detailed analysis of the legal and political dimensions of Poland's response to the second wave of the COVID-19 pandemic, emphasizing that the authorities opted to impose restrictions through subordinate legislation under the declared "state of epidemic," thereby avoiding the formal declaration of a constitutionally mandated state of emergency. According to the author, this approach is in direct contradiction to the Polish Constitution, which prohibits the restriction of fundamental rights and freedoms by means of secondary legislation. Jaraczewski demonstrates that this legal framework has resulted in significant challenges regarding the transparency and predictability of public policy. Specifically, the criteria for defining quarantine zones and levels of restriction have changed repeatedly, government-announced strategies for lifting pandemic measures were not implemented, and citizens were left in a state of legal uncertainty. A key component of the analysis is judicial practice: in January 2021, the Provincial Administrative Court in Opole ruled that the imposition of a fine on a business owner based on a general ban affecting an entire sector, issued through subordinate regulation, was unlawful. In March of the same year, the Supreme Court questioned the legitimacy of fines imposed for restricting movement. In a broader context, Jaraczewski highlights a trend toward the erosion of the rule of law, arguing that the actions of the Constitutional Tribunal may serve to shield the government from accountability for violations of rights and freedoms committed during the pandemic.

Higher court judges consistently required the government to justify restrictive measures, especially those affecting economic freedom or freedom of movement. They noted that the lack of a proper legal foundation or delays in legislative responses undermined the legitimacy of state actions. In conclusion, the Polish experience demonstrates that, even in times of crisis, courts serve as guardians of constitutional rights. They protect citizens from excessive restrictions and reaffirm that democratic principles must remain intact even under extraordinary conditions.

The procedure for introducing and terminating martial law in Ukraine is clearly regulated by the Constitution and relevant legislation, and it ensures consistent coordination among key state authorities. The accompanying flowchart clearly illustrates all stages of the process, from the emergence of a national security threat to the complete lifting of martial law. Understanding each stage is crucial for legal professionals, political scientists, and citizens alike, as it promotes awareness of the legal mechanisms governing special regimes and helps safeguard the balance between national security and constitutional human rights in emergency situations (Fig. 2).

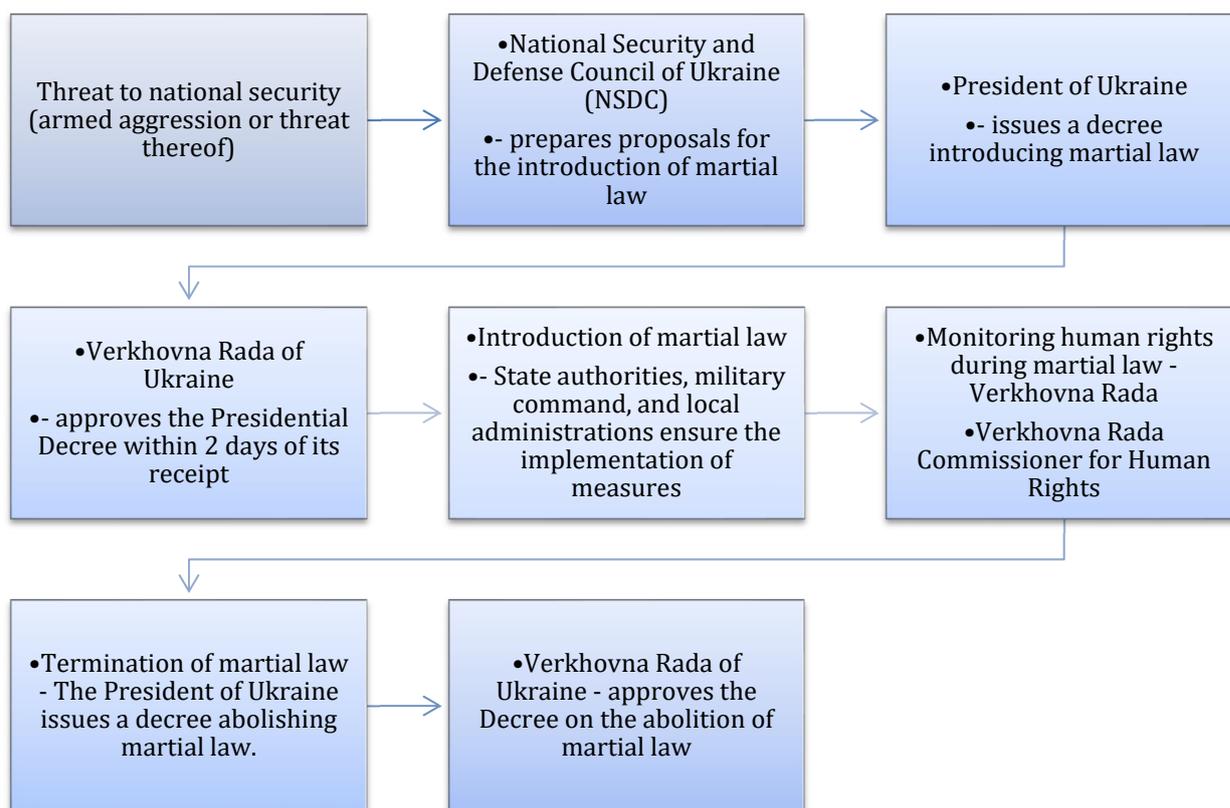


Figure 2. Introduction and termination of martial law

Source: author's development

The introduction of martial law in Ukraine begins with a real or imminent threat of armed aggression. The National Security and Defense Council (NSDC) submits proposals to the President, including a justification, the scope and duration of the regime, and possible restrictions of rights. The President issues a decree outlining these elements, which must be approved by the Verkhovna Rada within two days. If not approved, the decree loses legal force. Once approved, martial law is implemented by state bodies, the military command, and local authorities. Oversight of human rights during this period is carried out by the Verkhovna Rada, the Ombudsman, and the courts. Termination occurs when the President issues a decree lifting martial law due to the elimination of the threat, which also requires parliamentary approval. This procedure ensures legality, institutional control, and protection against unjustified restrictions of rights.

In the context of the contemporary security challenges facing Ukraine, constitutional regulation of martial law plays a crucial role in safeguarding national defense and maintaining state stability. However, the implementation of such a regime presents a range of problems and challenges related to balancing the protection of the state with the respect for citizens' rights and freedoms. The table below summarizes the main problematic aspects of the current legislation and the practice of applying martial law and outlines potential strategies for addressing these issues (Table 3).

An analysis of the constitutional regulation of martial law highlights the need to improve legislation, strengthen rights protection, and align national norms with international standards. Martial law concentrates power in the executive branch, creating risks of abuse such as political manipulation, suppression of opposition, and restrictions on fundamental freedoms, particularly in states with weak democratic institutions. Such abuse can erode public trust, foster authoritarian tendencies, and hinder progress toward European integration.

Table 3

## Problems and challenges of constitutional regulation of martial law in Ukraine

Problems	Description	Possible solutions
Ambiguity of norms	Lack of clear and detailed provisions on restrictions of rights during martial law	Clarification of legislation, adoption of additional subordinate legislation
Balance between security and rights	It is difficult to ensure effective protection of national security without excessive restrictions on rights and freedoms	Introduction of mechanisms to control and supervise the application of restrictions
Insufficient control by the Verkhovna Rada	The Verkhovna Rada does not always have sufficient capacity to exercise effective control over the introduction and extension of restrictions	Reform of parliamentary control procedures during martial law
Compliance with international standards	There is a risk of violating international law in terms of restricting human rights	Harmonization of national legislation with international obligations
Public information	Insufficient transparency in the introduction of restrictions, causing public mistrust	Increased transparency, regular public information
Abuse of power	Possibility of using martial law for political or other illicit purposes	Introduction of strict sanctions for abuse, independent audit

Source: author's development

Key safeguards include an independent judiciary capable of reviewing presidential decrees, restrictions on rights, and their proportionality; effective parliamentary oversight through specialized committees, hearings, and investigations; and active human rights institutions, such as the Ombudsman, tasked with monitoring and addressing violations. Collectively, these mechanisms help to balance national security requirements with democratic principles.

In Ukraine, martial law is essential for ensuring national defense and public safety. However, it imposes restrictions on freedoms such as assembly, speech, and political activity, which raises ongoing debates about elections, opposition rights, and media independence. These restrictions must remain proportionate, legally justified, and temporary in order to preserve Ukraine's democratic trajectory and international credibility.

Revising Ukraine's martial law legislation is essential for aligning it with international standards, including the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR). Legal amendments should clearly define the procedures for introducing and terminating martial law, establish time limits, specify non-derogable rights, and ensure robust parliamentary, judicial, and civil oversight. These reforms will enhance legal certainty, prevent arbitrary restrictions, foster public trust, and support Ukraine's democratic and European integration while safeguarding national security and fundamental rights.

### Discussion

The results of the study indicate that several provisions of the Law of Ukraine "On the Legal Regime of Martial Law" require revision to reflect the principles of derogation theory, proportionality, and the foundations of constitutional liberalism. Based on theoretical analysis, it has been established that restrictions on human rights during martial law are

permissible only in cases of extreme necessity and must meet clearly defined criteria of legality, proportionality, and non-discrimination.

First, the legal regulation of human rights restrictions under martial law requires further elaboration. The current legislation does not establish transparent or sufficiently specific mechanisms for justifying decisions related to restrictions, which creates risks of arbitrariness and inconsistent application in practice. In particular, it is advisable to clarify the scope of rights that may be restricted, while explicitly prohibiting interference with rights that are absolute in nature, in accordance with Article 64 of the Constitution of Ukraine. Furthermore, the law should impose an obligation on state bodies, particularly military administrations, to publicly justify the necessity of each restriction. This justification should include an assessment of the necessity in a democratic society and an evaluation of the restriction's compliance with the principle of proportionality.

The works of Matvieiev and Romanova (2023) and Nalyvaiko (2024) address key aspects of maintaining a balance between national security and the protection of human rights during emergency legal regimes. Matvieiev and Romanova (2023) emphasize that the legal framework governing the scope and procedures for restricting rights must be clear and unambiguous in order to prevent abuse by state authorities. They also argue that the imposition of martial law must not serve as a basis for discriminatory practices against particular segments of the population. The findings of this study support these claims, confirming the urgent need to detail procedural aspects of applying restrictions in order to minimize the risk of violations of fundamental rights.

Nalyvaiko (2024), in turn, underscores the importance of preserving core constitutional rights and freedoms even during martial law or other states of emergency. This position is fully consistent with the study's conclusion that the complete suspension of such rights is inadmissible, except in cases explicitly permitted by the Constitution of Ukraine and international law.

The study demonstrates that exercising the right to a fair trial during martial law is significantly hindered by limited access to courts, shortened procedural deadlines, and operational restrictions on courts located in combat zones. These findings are consistent with the conclusions of Pivnenko (2023), who emphasizes that martial law substantially impedes procedural access to justice, thereby limiting citizens' ability to exercise their guaranteed rights. Paskar (2024) also explores the role of administrative courts as a safeguard for human rights under martial law restrictions. The author highlights the necessity of adapting administrative justice to emergency conditions by introducing simplified and remote procedures. This is supported by research data indicating that administrative courts play a crucial role in maintaining a balance between the public interests of the state and the private rights of individuals.

The results confirm the need to improve the constitutional mechanism for protecting human rights and freedoms during martial law, particularly by enhancing the accessibility and effectiveness of constitutional complaints as a legal remedy. A similar perspective is presented in Kovalchuk's study (2023), which argues that constitutionalism in wartime must be reconsidered in light of evolving social values, the reinforcement of national identity, and the imperative to protect fundamental rights. In Shevchenko's work (2025), constitutional complaints are described as an effective mechanism for restoring violated rights, which aligns with the study's conclusion regarding their significant potential as a safeguard of constitutional protection in Ukraine.

At the same time, the research findings indicate the need to simplify the procedure for submitting constitutional complaints and to accelerate their consideration. Such improvements would enhance the responsiveness of this mechanism in crisis situations and allow for more timely protection of constitutional rights.

The research results show that martial law restricts the right to a fair trial due to changes in court jurisdiction, the evacuation of judges, and the temporary suspension of certain categories of cases. The work of Prytyka et al. (2022) also identifies numerous challenges in ensuring citizens' rights under martial law, particularly regarding the protection of civil, property, and labor rights, as well as the right to a fair trial. The article by Prakhovnik et al. (2022) examines the specific features of implementing the right to protect civil rights under such conditions. This aligns with the findings, as it highlights the need to strengthen institutional mechanisms for rights protection while accounting for the realities of wartime.

The study also indicates that the key task for national legislators and law enforcement agencies is to strike a balance between the demands of state security and the protection of human rights. This position is supported by the work of Bielai et al. (2021), which analyzes the legal regulation of Ukraine's security and defense sector in crisis conditions and emphasizes the importance of preserving human rights during the execution of security functions. Polovchenko (2021) further underscores the significance of constitutional principles in shaping the security system of a modern state. This conclusion is consistent with the data obtained, which points to the need for clear regulatory provisions that uphold the primacy of human rights in conjunction with national security needs.

At the same time, the results obtained partially contradict the principles of constitutional liberalism, as martial law in practice tends to result in an excessive concentration of power within the executive branch. In contrast, constitutional liberalism emphasizes the maximum protection of inalienable rights and the existence of effective checks and balances. In this context, the observations of Gross and Ní Aoláin are especially relevant, as they argue that emergency regimes are often used by governments to extend their powers beyond what is reasonably necessary. An analysis of Ukrainian practice confirms the risks associated with the excessive centralization of executive power and the lack of sufficient parliamentary oversight, which may undermine the constitutional balance of powers.

The study also supports Brems's (2021) assertion that derogation regimes must remain as limited as possible in both scope and duration, and that their oversight mechanisms should be clearly defined and effective. In particular, the findings highlight the need to strengthen the institutional framework for constitutional complaints. This aligns with the positions of Shevchenko (2025) and Kovalchuk (2023), who identify such complaints as a crucial tool for restoring violated human rights during wartime. At the same time, the data underscore the need to simplify the procedure for filing these complaints and to expedite their review, thereby enabling more timely access to constitutional remedies in crisis conditions.

Also significant are the anomalous or unexpected differences observed in the model of martial law in some of the countries analyzed. For example, in countries following the Anglo-Saxon legal tradition, such as the United States, there is strict parliamentary oversight and a well-developed culture of legislative hearings concerning each instance of rights restriction. By contrast, in the post-Soviet space and Latin America, there is often an excessive concentration of presidential power without sufficient parliamentary checks and balances. These divergent approaches are shaped by distinct political cultures, the historical evolution of statehood, and the legacy of military conflicts that have influenced the development of legal traditions.

In terms of effectiveness in protecting citizens' rights, the most robust systems are those that combine clearly defined legislative limits on derogation, the presence of independent and effective judicial and parliamentary oversight mechanisms, and strong civic control through the media and civil society. This supports Brems's (2021) view of the multi-component nature of effective human rights protection in emergency contexts.

At the same time, certain methodological limitations must be acknowledged. These include the difficulty of conducting a comprehensive comparison due to variations in

constitutional systems, differing levels of democratic development, and the absence of reliable information or official translations for several countries in Asia, Africa, and Latin America. These challenges point to the need for further research.

The question of the effectiveness of judicial oversight during martial law, along with the role of the media and civil society in monitoring rights violations under emergency legal regimes, remains unresolved. Future research would benefit from methods such as qualitative interviews with subject-matter experts, empirical studies of actual judicial and law enforcement practices during wartime, and comparative analyses that address not only formal legal provisions but also the realities of their implementation.

### **Conclusions and Implications**

The study found that the regulatory framework governing derogations from human rights during martial law in Ukraine is based on general constitutional and legislative provisions that establish the grounds, limits, and procedures for applying restrictions. However, the effectiveness of this mechanism largely depends on the level of regulatory detail concerning these procedures. The core principles determining the admissibility of restrictions remain legality, necessity, and proportionality, in line with the case law of the European Court of Human Rights and the provisions of Article 64 of the Constitution of Ukraine.

The study also confirmed the need to unify and further specify the legal mechanism for derogation. In particular, it was found that the current legislation lacks clearly formulated procedural safeguards to ensure proper review of the validity of restrictions and the restoration of violated rights after the termination of martial law. Moreover, the issue of exercising the right to judicial protection in combat zones remains unresolved, highlighting the need for additional legal guarantees to ensure access to justice.

The current legislation has several strengths, including its alignment with international legal standards, the existence of a list of inalienable rights, the establishment of the constitutional complaint mechanism, and a defined procedure for introducing martial law along with a clear division of powers among authorities. However, the system also has notable weaknesses, such as legal uncertainty regarding procedures for applying restrictions, the absence of guarantees for restoring rights after the special regime ends, and persistent limitations on access to justice.

A number of measures should be taken to address these shortcomings. First, it is necessary to amend the Law of Ukraine "On the Legal Regime of Martial Law" and related regulatory acts, particularly with respect to procedural rules for applying restrictions, criteria for assessing their necessity and proportionality, and the establishment of a clear procedure for restoring rights after the termination of martial law. It is important to introduce effective judicial oversight, specifically by providing for the review of acts issued by military administrations and decisions of executive authorities through simplified procedural mechanisms.

In addition, a mechanism for parliamentary monitoring of law enforcement practices during martial law should be established, including mandatory reporting by the relevant authorities to the Verkhovna Rada of Ukraine. To ensure consistency in practice, it is advisable to develop subordinate legislation, methodological recommendations, and standards for public authorities concerning the application of derogations in accordance with Ukraine's international obligations.

### **Suggestions for Future Research**

Future research on the constitutional regulation of martial law in Ukraine should concentrate on several key areas. First, an in-depth comparative analysis of leading international practices related to the proportionality of restrictions imposed during martial law, particularly in European Union countries and NATO member states, is needed to identify optimal models for Ukraine's legal system. Second, additional research should examine the

effectiveness of parliamentary and judicial oversight mechanisms over executive decisions in emergency situations, with the aim of developing practical recommendations for strengthening institutional checks and balances.

Third, interdisciplinary studies that integrate constitutional law, human rights law, and security studies are necessary to evaluate the impact of martial law measures on the resilience of civil society, levels of public trust, and social cohesion. Another critical area for future investigation is the harmonization of national procedures for derogations from international obligations under the International Covenant on Civil and Political Rights and the European Convention on Human Rights. Finally, empirical legal research assessing the real-world implementation of martial law restrictions in Ukraine during the current conflict, including qualitative interviews with affected citizens and practicing lawyers, will generate valuable data for improving the legislative framework. Such research will contribute not only to the continued development of Ukrainian constitutionalism, but also to the broader body of global scholarship on the exercise of emergency powers in democratic societies that face security threats.

### References

1. Amnesty International. (2023). *The state of the world's human rights: Amnesty International report 2022/23*. Amnesty International. <https://www.amnesty.org/en/documents/pol10/5670/2023/en/>
2. Bielai, S. V., Kobzar, O. F., Yevtushenko, I. V., Korniienko, V., & Koba, O. V. (2021). The legal regulation of service and combat activities of the security and defense sector of Ukraine in crisis situations. *Journal of the National Academy of Legal Sciences of Ukraine*, 28(2), 76–85. [https://doi.org/10.37635/jnalsu.28\(2\).2021.76-85](https://doi.org/10.37635/jnalsu.28(2).2021.76-85)
3. Bilanchuk, A. V., & Demianiuk, O. M. (2024). Rol sudu u zabezpechenni zakhystu prav liudyny v umovakh voiennoho stanu v Ukraini [The role of the court in ensuring the protection of human rights under martial law in Ukraine]. In *Koruptsiini ryzyky v Ukraini: aktualni shliakhy yikh nedopushchennia ta podolannia – Corruption risks in Ukraine: current ways of their prevention and overcoming* (pp. 14–16). Liha-Pres. <https://doi.org/10.36059/978-966-397-425-5-3> [in Ukrainian].
4. Brems, E. (2021). *Human rights: Universality and diversity* (Vol. 66). Brill.
5. Buha, H. S., & Buha, V. V. (2022). Instytutu mediatsii v umovakh voiennoho stanu v Ukraini [Institute of mediation in the conditions of martial law in Ukraine]. *Politseiska mediatsiia yak instrument zakhystu prav ta interesiv hromadian – Police mediation as a tool for the protection of citizens' rights and interests*, Liha-Pres. <https://doi.org/10.36059/978-966-397-257-2-2> [in Ukrainian].
6. Bundesverfassungsgericht. (2020, April 15). Order of the First Senate on the right of assembly during the COVID-19 pandemic (1 BvR 828/20). [https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2020/04/rs20200415\\_1bvr082820en.html](https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2020/04/rs20200415_1bvr082820en.html)
7. Bundesverfassungsgericht. (2020, April 29). Order of the First Senate on the freedom of religion and the ban on religious services during the COVID-19 pandemic (1 BvQ 44/20). [https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2020/04/qk20200429\\_1bvq004420en.html](https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2020/04/qk20200429_1bvq004420en.html)
8. Cassation Administrative Court within the Supreme Court of Ukraine. (2023, March 9). *Ruling on case No. 600/2520/22-a*. <https://ips.ligazakon.net/document/C024759> [in Ukrainian].
9. Cassation Administrative Court within the Supreme Court of Ukraine. (2023, October 12). *Ruling on case No. 640/23835/22*.

- <https://iplex.com.ua/doc.php?regnum=114137800&red=100003bf1ae2d8445f21c75cdc6d574cd85851&d=5> [in Ukrainian].
10. Constitution de la République française du 4 octobre 1958. (n.d.). *Conseil constitutionnel*. <https://www.conseil-constitutionnel.fr/la-constitution>
  11. Costituzione della Repubblica Italiana. (1947, 22 dicembre). *Senato della Repubblica*. <https://www.senato.it/istituzione/la-costituzione>
  12. Council of Europe. (1950, November 4). *Convention for the Protection of Human Rights and Fundamental Freedoms*. [https://zakon.rada.gov.ua/laws/show/995\\_004#Text](https://zakon.rada.gov.ua/laws/show/995_004#Text) [in English].
  13. Conseil d'État (France). (May 19, 2020). <https://conseil-etat.fr/fr/arianeweb/CE/decision/2020-10-23/445430>
  14. Corte Costituzionale. (2021, March 12). Decision No. 37/2021 on the constitutional legitimacy of emergency measures during the COVID-19 pandemic. <https://www.cortecostituzionale.it/actionSchedaPronuncia.do?anno=2021&numero=37>
  15. County of Butler v. Wolf, 486 F. Supp. 3d 883 (W.D. Pa. 2020). United States District Court for the Western District of Pennsylvania. <https://law.justia.com/cases/federal/district-courts/pennsylvania/pawdce/2:2020cv00677/266479/79/>
  16. Constitutional Court of Ukraine (2025). <https://ccu.gov.ua/storinka/informaciya-shchodo-kilkosti-konstytuciynyh>
  17. Didus, D. O. (2023). *Konstytutsiino-pravove obmezhenia svobody peresuvannia pid chas vvedennia voiennoho stanu* [Constitutional and legal restriction of freedom of movement during the introduction of martial law]. In *Aktualni problemy protydii koruptsii v Ukraini v umovakh voiennoho stanu – Current issues of combating corruption in Ukraine under martial law: Proceedings of the International Scientific and Practical Conference* (Rivne, March 14, 2023), (pp. 12–15). Liha-Pres. <https://doi.org/10.36059/978-966-397-293-0-3> [in Ukrainian].
  18. Diharjo, N. N., Muhtar, M. H., Rahim, E. I., Rachman, S. N., Saija, V. J. E., & Lubis, A. F. (2024). Human rights and constitutional sovereignty in the context of the struggle for legal justice. *Bacarita Law Journal*, 4(2), 174–184. <https://doi.org/10.30598/bacarita.v4i2.12985>
  19. Domin, R. V. (2024). *Problemy realizatsii prava hromadian na okhoronu zdorovia v aspekti dotrymannia mizhnarodnykh standartiv v umovakh voiennoho stanu: dosvid Ukrainy* [The problems of implementing the right of citizens to health protection in the aspect of compliance with international standards under the conditions of martial law: The experience of Ukraine]. *Naukovi innovatsii ta peredovi tekhnolohii – Scientific innovations and advanced technologies*, 8(36), 552–563. [https://doi.org/10.52058/2786-5274-2024-8\(36\)-552-563](https://doi.org/10.52058/2786-5274-2024-8(36)-552-563) [in Ukrainian].
  20. Jaraczewski, J. (2020). An emergency by any other name? Measures against the COVID-19 pandemic in Poland. *Verfassungsblog: On Matters Constitutional*. <https://doi.org/10.17176/20200424-165029-0>
  21. Florczak-Wątor, M. (2025). *Constitutional challenges in emergency governance: An analysis of Poland's reluctance and regulatory ambiguities in states of emergency*. *European Journal of Risk Regulation*, 16(2), 433–445. <https://doi.org/10.1017/err.2024.104>
  22. Florczak-Wątor, M. (2025). Constitutional Challenges in Emergency Governance: An Analysis of Poland's Reluctance and Regulatory Ambiguities in States of

- Emergency. *European Journal of Risk Regulation*, 1–13. <https://doi.org/10.1017/err.2024.104>
23. Fokina, A. O. (2022). Osoblyvosti pravovoho rehuliuвання obmezhenia deiakykh konstytutsiinykh prav i svobod v umovakh voiennoho stanu v Ukraini [Peculiarities of legal regulation of restriction of certain constitutional rights and freedoms under martial law in Ukraine]. *Rozvytok hromadianskoho suspilstva yak neobkhdna skladova yevropeiskoi intehratsii Ukrainy – Development of civil society as a necessary component of Ukraine's European integration*. Liha-Pres. <https://doi.org/10.36059/978-966-397-271-8-84> [in Ukrainian].
24. Germany (West). (1980). *Grundgesetz für die Bundesrepublik Deutschland*. Bonn: Bundeszentrale für Politische Bildung.
25. Human Rights Watch. (2022). *World report 2022: Human Rights Watch's 32nd annual review of human rights trends around the globe*. Human Rights Watch. <https://www.hrw.org/world-report/2022>
26. Iliukha, R., & Bardin, Y. (2024). Obgruntuvannya potreb v obmezhennyakh prav liudyny v umovakh voiennoho stanu [Justification of the need for restrictions on human rights under martial law]. *Naukovyi visnyk Dniprovskoho derzhavnogo universytetu vnutrishnikh sprav – Scientific Bulletin of Dnipro State University of Internal Affairs*, (2), 119–125. <https://doi.org/10.31733/2078-3566-2024-2-119-125> [in Ukrainian].
27. Kolomiiets, I. S. (2022). Obmezhenia prava na svobodu slova ta vyrazhennia pohliadiv v umovakh voiennoho stanu: pravovi aspekty [Restrictions on the right to freedom of speech and expression under martial law: legal aspects]. *Scientific Papers of the Legislation Institute of the Verkhovna Rada of Ukraine*, (3), 62–73. <https://shorturl.at/6is6v> [in Ukrainian].
28. Konarski, M. J. (2024). The Evolution of Polish Legislation on Public Burdens in the Event of Martial Law. *Przegląd Prawa Administracyjnego*, 6, 101–120. <https://doi.org/10.17951/ppa.2023.6.101-120>
29. Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. (1997). *Dziennik Ustaw*, 1997, Nr 78, poz. 483. <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdu19970780483>
30. Kovalchuk, V. (2023). Konstytutsionalizm v umovakh viiny: pytannia tsinnosti, prav ta identychnosti [Constitutionalism in wartime: Issues of values, rights and identity]. *Pravo Ukrainy – Law of Ukraine*, (2023/07), 115. <https://doi.org/10.33498/louu-2023-07-115> [in Ukrainian].
31. Loi n° 55-385 du 3 avril 1955 relative à l'état d'urgence. (1955). *Légifrance*. <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000695350> [in French].
32. Lotiuk, O. S. (2024). Osoblyvosti realizatsii prav liudyny v umovakh voiennoho stanu v Ukraini [Features of the realization of human rights under martial law in Ukraine]. *Nashe pravo – Our Law*, (1), 29–33. [in Ukrainian].
33. Lukash, S. S., & Kobets, N. V. (2025). Filosofskyi aspekt zakhystu prav liudyny v Ukraini v umovakh voiennoho stanu [The philosophical aspect of protecting human rights in Ukraine under martial law]. *Visnyk Kryminolohichnoi asotsiatsii Ukrainy – Bulletin of the Criminological Association of Ukraine*, 34(1), 543–550. <https://doi.org/10.32631/vca.2025.1.41> [in Ukrainian].
34. Matvieiev, S., & Romanova, O. (2023). Yurydychnyi mekhanizm obmezhenia prav liudyny v umovakh voiennoho stanu v Ukraini [Legal mechanism for restricting human rights under martial law in Ukraine]. *Law Review of Kyiv University of Law*, (2), 76–80. <https://doi.org/10.36695/2219-5521.2.2023.16> [in Ukrainian].

35. Melnyk, V. I. (2023). Zakhyst prav liudyny v umovakh voiennoho stanu [Protection of human rights under martial law]. In *Prava liudyny ta publichne vriaduvannia v suchasnykh umovakh – Human rights and public governance in modern conditions: Proceedings of the VI International Law Forum* (Chernivtsi, June 9, 2023) (pp. 69–72). Liha-Pres. <https://doi.org/10.36059/978-966-397-314-2-17>
36. Nalyvaiko, L. R. (2024). Konstytutsiini prava i svobody liudyny ta hromadianyna v umovakh voiennoho stanu [Constitutional rights and freedoms of individuals and citizens under the conditions of martial law]. *Naukovi innovatsii ta peredovi tekhnologii – Scientific Innovations and Advanced Technologies*, (3(31)), 622–635. [https://doi.org/10.52058/2786-5274-2024-3\(31\)-622-635](https://doi.org/10.52058/2786-5274-2024-3(31)-622-635) [in Ukrainian].
37. Netska, L., & Chaika, K. (2023). Peculiarities of restriction of human and civil rights under martial law. *Scientific Works of Kyiv Aviation Institute. Series Law Journal “Air and Space Law”*, 4(69), 85–93. <https://doi.org/10.18372/2307-9061.69.18321>
38. Nikitina, L. O. (2023). *Deiaki aspekty vplyvu voiennoho stanu v Ukraini na suchasnyi ukrainskyi konstytutsionalizm* [Some aspects of the impact of martial law in Ukraine on modern Ukrainian constitutionalism]. In *Vosmi Tavriiski yurydychni naukovi chytannia – The eighth Tavriya legal scientific readings: Proceedings of the International Scientific and Practical Conference* (Kyiv, June 16–17, 2023), (pp. 30–33). Liha-Pres. <https://doi.org/10.36059/978-966-397-318-0-7> [in Ukrainian].
39. Office of the United Nations High Commissioner for Human Rights. (2024). *UN human rights report 2023*. United Nations. <https://www.ohchr.org/en/publications/annual-report/ohchr-report-2023>
40. Parasiuk, M. V. (2025). *Obmezhenia prav i svobod liudyny v umovakh voiennoho stanu: pravovyi vymir ta mizhnarodni standarty* [Protection of human and civil rights and freedoms under martial law]. *Aktualni pytannia u suchasni nauki – Current issues in modern science*, 6(36), 675–684. [https://doi.org/10.52058/2786-6300-2025-6\(36\)-675-684](https://doi.org/10.52058/2786-6300-2025-6(36)-675-684) [in Ukrainian].
41. Pashaiev, B. (2024). Do pytannia pro fundamentalni prava liudyny v umovakh voiennoho stanu [On the issue of fundamental human rights under martial law]. *Naukovi innovatsii ta peredovi tekhnologii – Scientific Innovations and Advanced Technologies*, (7(35)). [https://doi.org/10.52058/2786-5274-2024-7\(35\)-477-484](https://doi.org/10.52058/2786-5274-2024-7(35)-477-484) [in Ukrainian].
42. Paskar, A. (2024). The role of administrative court in ensuring human rights protection under martial law. *Eastern Journal of European Studies*, 14(2), 162–177. <https://doi.org/10.47743/ejes-2023-0207>
43. Pivnenko, L. V. (2023). Problemni aspekty realizatsii prava na sudovyi zakhyst v umovakh voiennoho stanu [Problematic aspects of exercising the right to judicial protection under martial law]. *New Ukrainian Law*, (1), 137–143. <https://doi.org/10.51989/nul.2023.1.17> [in Ukrainian].
44. Polovchenko, K. A. (2021). Constitutional foundations of the security system in a modern state. *International Journal of Electronic Security and Digital Forensics*, 13(1), 1. <https://doi.org/10.1504/ijesdf.2021.10034985>
45. Prakhovnik, N., Kachynska, N., Zemlyanska, O., Ilchuk, O., Kovtun, A., & Husiev, A. (2022). Implementation of the right to protection of civil rights under martial law. *Social Legal Studios*, 5(3), 66–75. <https://doi.org/10.32518/2617-4162-2022-5-3-66-75>
46. Prytyka, Y., Izarova, I., Maliarchuk, L., & Terekh, O. (2022). Legal Challenges for Ukraine under Martial Law: Protection of Civil, Property and Labour Rights, Right to a Fair

- Trial, and Enforcement of Decisions. *Access to Justice in Eastern Europe*, 5(3), 1–20. <https://doi.org/10.33327/ajee-18-5.2-n000329>
47. Roman Catholic Diocese of Brooklyn v. Cuomo, 592 U.S. \_\_\_ (2020). Supreme Court of the United States. [https://www.supremecourt.gov/opinions/20pdf/20a87\\_4g15.pdf](https://www.supremecourt.gov/opinions/20pdf/20a87_4g15.pdf)
48. South Bay United Pentecostal Church v. Newsom, 592 U.S. \_\_\_ (2021). Supreme Court of the United States. [https://www.supremecourt.gov/opinions/20pdf/20a136\\_bq7c.pdf](https://www.supremecourt.gov/opinions/20pdf/20a136_bq7c.pdf)
49. Servatiuk, L. V. (2023). *Do pytannia zabezpechennia mizhnarodnykh standartiv prav liudyny v umovakh voiennoho stanu* [On the issue of ensuring international standards of human rights under martial law]. In *Iurydychni nauky: problemy ta perspektyvy – Legal sciences: problems and prospects* (pp. 284–288). Liha-Pres. <https://doi.org/10.36059/978-966-397-292-3-78>
50. Shevchenko, V. O. (2025). Konstytutsiina skarha v mekhanizmi zakhystu prav, svobod ta interesiv hromadian [Constitutional complaint in the mechanism of protection of citizens' rights, freedoms and interests]. In *Vidnovlennia Ukrainy: mizhhaluzevyi teoretyko-prykladnyi analiz ta potentsialy rozvytku* [Restoration of Ukraine: Intersectoral theoretical and applied analysis and development potentials], Part I (pp. 113–116). Liha-Pres. <https://doi.org/10.36059/978-966-397-490-3-32> [in Ukrainian].
51. Stepanenko, N. V., & Metoshop, O. V. (2025). *Suchasna stratehiia protydii ahresii ta zakhystu osnovopolozhnykh prav liudyny v umovakh voiennoho stanu: pytannia teorii i praktyky* [Modern strategy for countering aggression and protecting fundamental human rights in conditions of martial law: Issues of theory and practice]. *Legal Bulletin*, 10–19. <https://doi.org/10.31732/2708-339X-2025-15-A1> [in Ukrainian].
52. Sydorenko, A., & Polkhovska, I. (2022). Realizatsiia konstytutsiinoho prava na pratsiu v umovakh voiennoho stanu [Implementation of the constitutional right to work under martial law]. *Scientific Foundations of State and Law*, 46–56. International Science Group. <https://doi.org/10.46299/isg.2022.mono.legal.2.3.1> [in Ukrainian].
53. United Nations. (1966). *International Covenant on Civil and Political Rights*. [https://treaties.un.org/doc/treaties/1976/03/19760323%2006-17%20am/ch\\_iv\\_04.pdf](https://treaties.un.org/doc/treaties/1976/03/19760323%2006-17%20am/ch_iv_04.pdf)
54. United States. (1976). *National Emergencies Act* (Pub. L. No. 94-412, 90 Stat. 1255; codified at 50 U.S.C. ch. 34). <https://www.govinfo.gov/content/pkg/STATUTE-90/pdf/STATUTE-90-Pg1255.pdf>
55. United States. (1988). *Robert T. Stafford Disaster Relief and Emergency Assistance Act* (Pub. L. No. 100-707, 102 Stat. 4689; codified at 42 U.S.C. § 5121 et seq.). <https://www.govinfo.gov/link/uscode/42/5121>
56. Vasyliiev, O. S. (2025). *Pravovi mekhanizmy obmezhenia prav i svobod liudyny v umovakh voiennoho stanu v Ukraini: teoretychnyi ta praktychnyi analiz* [Legal mechanisms for the limitation of human rights and freedoms in conditions of martial law in Ukraine: Theoretical and practical analysis]. *Naukovi innovatsii ta peredovi tekhnologii – Scientific innovations and advanced technologies*, 1(41). [https://doi.org/10.52058/2786-5274-2025-1\(41\)-388-397](https://doi.org/10.52058/2786-5274-2025-1(41)-388-397) [in Ukrainian].
57. Vdovenko, O., Vorobyov, E., Vasylnyak, R., & Hrynyishak, M. (2025). Analysis of court practice in considering cases of administrative offences under Articles 188-39, 188-40, 212-3 of the Code of Ukraine on Administrative Offences regarding protocols drawn up by authorised persons of the Secretariat of the Ukrainian Parliament Commissioner for Human Rights and representatives of the Ukrainian Parliament Commissioner for Human Rights in 2022-2024. Kyiv: Human Rights Platform NGO. <https://ppl.org.ua/wp-content/uploads/2025/02/analiz-sudovoyi-praktyky-188-39-188-40-212-3-v-2022-24.pdf>[in Ukrainian].

58. Verfassungsblog. (2020). The new normal: Emergency measures in response to the second COVID-19 wave in Poland. *Verfassungsblog – On Matters Constitutional*. <https://verfassungsblog.de/the-new-normal-emergency-measures-in-response-to-the-second-covid-19-wave-in-poland>
59. Verkhovna Rada of Ukraine. (1996, June 28). *Constitution of Ukraine* (1996, No. 30, art. 141). <https://zakon.rada.gov.ua/laws/show/254k/96-вр#Text> [in Ukrainian].
60. Verkhovna Rada of Ukraine. (2000, April 6). *Zakon Ukrainy No. 1647-III, Pro pravovyi rezhym voiennoho stanu* [Law of Ukraine No. 1647-III, On the legal regime of martial law]. <https://zakon.rada.gov.ua/laws/show/1647-14#Text> [in Ukrainian].
61. Verkhovna Rada of Ukraine. (2015, May 12). *Law of Ukraine No. 389-VIII “On the legal regime of martial law”* (No. 28, art. 250). <https://zakon.rada.gov.ua/laws/show/389-19#Text> [in Ukrainian].
62. Verkhovna Rada of Ukraine. (2018, November 26). *Ukaz Prezydenta Ukrainy No. 393/2018, Pro vvedennia voiennoho stanu v Ukraini* [Decree of the President of Ukraine No. 393/2018, On the introduction of martial law in Ukraine]. <https://zakon.rada.gov.ua/laws/show/393/2018#Text> [in Ukrainian].
63. Voivodship Administrative Court in Opole. (2021, January 4). *Voivodship Administrative Court in Opole decision*. <https://verfassungsblog.de/the-new-normal-emergency-measures-in-response-to-the-second-covid-19-wave-in-poland/>