

УДК 342.7:355.02(477)

Bogdana MELNYCHENKO

Lviv Polytechnic National University,
Educational and Research Institute of Law,
Psychology and Innovative Education,
Professor of the Theory of Law
and Constitutionalism Department,
Doctor of Law, Professor
bohdana.b.melnychenko@lpnu.ua
ORCID iD: <https://orcid.org/0000-0003-1514-8131>

Ivan KONDRETSKYI

Lviv Polytechnic National University,
Educational and Research Institute of Law,
Psychology and Innovative Education,
student of the first (bachelor)
level of higher education
ivan.kondretskyi.pv.2022@lpnu.ua
ORCID iD: <https://orcid.org/0009-0009-5839-9820>

FEATURES OF GUARANTEEING THE RIGHTS AND FREEDOMS OF THE CITIZENS OF UKRAINE UNDER THE CONDITIONS OF THE STATE OF MARTIAL

<http://doi.org/10.23939/law2024.42.101>

© *Melnychenko B., Kondretskyi I., 2024*

The article analyzes the problem of guaranteeing the rights and freedoms of Ukrainian citizens under the conditions of martial law. It has been established that in the period of war, legal guarantees and legal mechanisms are particularly significant in ensuring the entire complex of fundamental human rights. It is noted that human rights are concepts used both to denote a specific list of legislative provisions or international standards, and to determine the status of a specific individual in society. It was found that the guarantees of human and citizen rights should be understood as a system of socio-economic, moral, political, legal conditions, means and methods that ensure their actual implementation, protection and reliable protection. It was established that 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, its territorial integrity, and provides for the provision of appropriate state authorities, military command, military administrations and to local self-government bodies, the powers necessary to avert 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 temporary, due to the threat, restriction of the constitutional rights and freedoms of a person and a citizen and the rights and legitimate interests of legal persons with an indication of the period of validity of these restrictions. It was found that the

introduction of martial law in Ukraine makes it much more difficult for the state to ensure the rights of citizens in the conditions of the objective necessity of their partial restriction. After all, such a restriction involves a legislative narrowing of the content and scope of human rights and freedoms, as well as factors that make their realization impossible or difficult. It was emphasized that in the current difficult conditions of martial law, the priority for Ukraine is the safety of its citizens and the restoration of the territorial integrity of the state. At the same time, an important task of the state remains the improvement of activities related to the establishment and provision of human and citizen rights and freedoms.

Key words: human and citizen rights and freedoms; guarantees of human and citizen rights and freedoms; martial law.

Formulation of the problem. Today, the issue of human and citizen rights and freedoms plays an important role in the foreign and domestic policy of all states of the world community. Guaranteeing the rights and freedoms of a person and a citizen is an important task of the state and an urgent direction in the development of the legal system. There is a war going on in Ukraine, which has a serious impact on ensuring the rights and freedoms of people and citizens. For every citizen of Ukraine and a person living in our country in these tragic times, internal consolidation, reliable support from authorities, as well as national and international human rights organizations are extremely important. Especially significant are the legal guarantees and legal mechanisms in ensuring the entire complex of fundamental human rights. The study of this problem will help determine ways to improve the legal protection of the rights and freedoms of a person and a citizen in the conditions of war in Ukraine.

Analysis of the study of the problem. The theoretical aspects of guaranteeing the rights and freedoms of a person and a citizen in the conditions of war in Ukraine were studied by many Ukrainian scientists, including: D. Myruk, O. Prieshkina, L. Bogachova, M. Savenko, V. Tyhiy, L. Chubar, Z. Lun, V. Orlenko, N. Mishina, V. Kravchenko, V. Pohorilko and others.

The purpose of the article is a comprehensive analysis of the problem of guaranteeing the rights and freedoms of Ukrainian citizens under the conditions of martial law.

Presenting main material. Human rights are concepts used both to denote a specific list of legislative provisions or international standards, and to determine the status of a specific individual in society [1, p. 110]. Among the proposed definitions of human rights, we most often find the following: certain capabilities of a person, which are necessary to meet the basic needs of his existence and development in specific historical conditions, objectively determined by the achieved level of development of society, they must be common and equal for all people; goods and living conditions recognized by the world community, which a person can seek from the state and society where he lives, and the provision of which is real (non-virtual) in the conditions of progress achieved by mankind; morally justified demands for freedom and autonomy (independence), which should belong to every person; any demands of a person addressed to the state; goods necessary for life; general and equal measure of freedom (possible behavior) for all, necessary to meet the needs of existence, development and self-realization of each person; a complex of natural and inviolable freedoms and legal opportunities caused by the fact of human existence, etc. [2, p. 75].

In turn, guarantees of human and citizen rights are understood as a system of socio-economic, moral, political, legal conditions, means and methods that ensure their actual implementation, protection and reliable protection [3].

In the current Constitution of Ukraine, the following provisions are legal guarantees for the realization of the rights and freedoms of a person and a citizen: 1) the state is obliged to protect the rights and freedoms of a person and a citizen (Part 2, Article 3 of the Constitution of Ukraine); 2) recognition of

the direct effect of the norms of the Constitution of Ukraine, including those enshrining the rights and freedoms of a person and a citizen of Ukraine (Article 8 of the Constitution of Ukraine); 3) determination of legal responsibility for violations of the rights and freedoms of people and citizens in Ukraine; 4) humane treatment of persons brought to criminal and administrative responsibility (Articles 28-29 of the Constitution of Ukraine); 5) constitutional recognition of the right of everyone to protect their rights and freedoms from violations and illegal encroachments by all means not prohibited by law (Article 55 of the Constitution of Ukraine); 6) guarantee a person's right to legal assistance (Article 59 of the Constitution of Ukraine); 7) consolidation of democratic principles of the judiciary (Articles 58-63, 129 of the Constitution of Ukraine); 8) constitutional consolidation of the system of special state bodies, whose competence includes powers to protect the constitutional rights and freedoms of a person and a citizen (Chapter 12 of the Constitution of Ukraine); 9) the impossibility of changing the Constitution of Ukraine, if the changes involve the cancellation or limitation of the rights and freedoms of a person and a citizen (Part 1 of Article 157 of the Constitution of Ukraine).

In order to further improve the state activity of Ukraine regarding the establishment and provision of human and citizen rights and freedoms, on March 24, 2021, the Decree of the President of Ukraine approved the National Strategy in the field of human rights No. 119/2021. The purpose of this strategy is to ensure the priority of human rights and freedoms as a decisive factor in the formation and implementation of state policy, the implementation of the powers of state authorities and local self-government bodies, and the development of economic activity [4].

After the full-scale armed aggression of the Russian Federation against Ukraine on February 24, 2022, legal guarantees for the protection of human rights were under threat. The invasion of Russian troops into the territory of Ukraine became the reason for the introduction of martial law by the President of Ukraine (Decree of the President of Ukraine No. 64/2022 "On the introduction of martial law in Ukraine" dated February 24, 2022) [5].

The main law regulating legal relations regarding the introduction of martial law in Ukraine is the Law of Ukraine dated May 12, 2015 No. 389-VIII "On the Legal Regime of Martial Law" [6].

Art. 1 of the said Law defines martial law as a special legal regime established in Ukraine or in some of its localities in the event of armed aggression or a threat of attack, a threat to the independence of Ukraine and its territorial integrity, and provides: for the relevant bodies of state power, military command, military administrations and local self-government bodies, the powers necessary to prevent the threat, repel armed aggression and ensure national security, eliminate the threat to the independence of Ukraine and its territorial integrity, as well as the temporary restriction of the constitutional rights and freedoms of a person and citizen and the rights and legal interests of legal entities, caused by the threat, indicating the period of validity of these restrictions.

It is obvious that the introduction of martial law in Ukraine complicates the protection of citizens' rights by the state and causes a number of restrictions. Such restrictions involve the narrowing of the content and scope of human rights and freedoms, as well as factors that make their realization impossible or difficult. At the same time, the most important thing for a legal state is to observe the rights and freedoms of a person and a citizen. This means: firstly, the restriction of human and citizen rights is temporary and minimally necessary; secondly, there is a certain list of rights that cannot be violated under any circumstances; thirdly, the final decision on the declaration of martial law is made by the highest state legislative body – the parliament [7, p. 3].

The following rights and freedoms of a person and a citizen cannot be restricted even during the period of martial law (Part 2 of Article 64 of the Constitution of Ukraine): equality of constitutional rights and freedoms and equality before the law (Article 24); the ban on deprivation of citizenship and the right to change citizenship (Article 25); the right to life (Article 27); the right to respect for his dignity (Article 28); the right to freedom and personal integrity (Article 29); the right to submit individual or collective complaints to state bodies, local self-government bodies and officials of these bodies (Article 40); the right to housing (Article 47); equal rights and obligations of spouses in marriage and family; equal rights of

children (Articles 51, 52); the right to judicial protection (art.55); the right to compensation at the expense of the state or local self-government bodies for material and moral damage caused by illegal decisions, actions, or inaction of state authorities, local self-government bodies, their officials and employees in the exercise of their powers (Article 56); the right to know one's rights and obligations (Article 57); irreversibility in time of laws and other normative legal acts (Article 58); the right to professional legal assistance (Article 59); the right not to carry out clearly criminal orders or orders (Article 60); the right not to be held twice liable for the same kind of legal responsibility for the same offense (Article 61); presumption of innocence (Article 62); the right not to testify or explain about oneself, family members or close relatives, whose circle is defined by law (Article 63).

This list of rights and freedoms of a person and a citizen, which cannot be limited in the conditions of war or state of emergency, is exhaustive. Therefore, all other rights and freedoms of a person and a citizen can be limited in the conditions of martial law. At the same time, only to the extent that it is necessary to ensure the defense of the country and its security. It is, in particular, about a person's right to freedom of movement, free choice of place of residence; ownership; the right to conduct strikes; freedom of thought and speech, free expression of one's views and beliefs and a number of others. Measures taken in this regard, taking into account international legal norms, should not lead to any discrimination of persons or population groups exclusively on the basis of gender, race, nationality, language, origin, property status, place of residence, religion, belonging to public associations, as well as on other grounds [7].

In general, the analysis of current legislation and international law proves that the list of rights that the Ukrainian state is obliged to guarantee in conditions of war or emergency does not violate the minimum requirements established by the European Community. For example, Art. 15 of the European Convention on Human Rights provides for the prohibition of retreat during war or other public danger that threatens the life of the nation from such obligations of the state: guaranteeing the right to life (Article 2 of the Convention), prohibition of torture or inhuman treatment (Article 3), the prohibition of slavery or servitude (Part 1, Article 4) and the prohibition of punishment without specifying it in the law (Article 7 of the Convention) [8].

In the context of this issue, it should be noted that each state is obliged to fulfill its obligations in good faith, in accordance with the generally recognized principles and norms of international law [9], and any deviation must be reported in a certain form [10]. The first global document of such importance in the history of independent Ukraine is the Statement "On the withdrawal of Ukraine from certain obligations defined by the International Covenant on Civil and Political Rights and the Convention for the Protection of Human Rights and Fundamental Freedoms", approved by Resolution of the Verkhovna Rada of Ukraine No. 462-VIII of May 21, 2015 [11]. In connection with the beginning of the armed aggression of the Russian Federation, a number of changes to the laws were adopted, in which it was necessary to withdraw from the obligations specified in Article 3. 2, Art. Art. 9, 12, 14 and 17 of the International Covenant on Civil and Political Rights and Articles 5, 6, 8 and 13 of the Convention on the Protection of Human Rights and Fundamental Freedoms [10].

Obviously, the prolonged stay of Ukraine in a state of war, caused by the armed attack of the Russian state on the territory of Ukraine, makes it difficult for the state to ensure the full protection of human rights in accordance with the international standards adopted by it, especially in those territories that are temporarily occupied or are in the war zone [12]. The introduction of the legal regime of martial law in Ukraine imposes on the state a large array of issues regarding the improvement of activities in the sphere of implementation and protection of human and citizen rights and freedoms. When making decisions, the state must adhere to the principle of the rule of law as a priority principle of a democratic state, as well as the legal balance when limiting constitutional matters and human freedoms, in order to prevent the narrowing of the rights and legitimate interests of citizens [13].

Conclusions. Therefore, the guarantees of human and citizen rights should be understood as a system of socio-economic, moral, political, legal conditions, means and methods that ensure their actual implementation, protection and reliable protection. Guaranteeing the rights and freedoms of a person and a citizen is an important task of the state and an urgent direction in the development of the legal system. The state of war in Ukraine greatly affected the guarantee of the rights and freedoms of citizens. Undoubtedly, in the current difficult conditions of martial law, the priority for Ukraine is the safety of its citizens and the restoration of the territorial integrity of the state. It is these tasks that are of primary importance and consolidate the efforts of all branches of government, and are reflected in the adopted legislative acts. At the same time, an important task of the state remains the improvement of activities related to the establishment and provision of human and citizen rights and freedoms.

REFERENCES

1. Razmietaieva, Yu. P. (2006). *Prava liudyny yak fundamentalna tsinnist hromadianskoho suspilstva: do postanovky pytannia*. [Human rights as a fundamental value of civil society: before posing the question]. *Yurydychnyi visnyk*. No. 1. P. 110–113. [In Ukrainian].
2. *Osnovy konstytutsionalizmu: istoriia, teoriia, praktyka*. [Fundamentals of constitutionalism: history, theory, practice]: navch. posib. / V. B. Kovalchuk, I. D. Sofinska, Ya. S. Bohiv, N. V. Ortynska, S. M. Bilostotskyi, O. I. Romtsiv, R. S. Martyniuk : zah. red. V. B. Kovalchuka. Lviv: Kameniar. 2022. 389 p. [In Ukrainian].
3. Mikhalov, V. O. (2021). *Klasyfikatsiia yurydychnykh harantii prav i svobod osobystosti v Ukraini*. [Classification of legal guarantees of individual rights and freedoms in Ukraine]. *Nauka ta suspilne zhyttia Ukrainy v epokhu hlobalnykh vyklykiv liudstva u tsyfrovu eru (z nahody 30-richchiaproholoshennia nezalezhnosti Ukrainy ta 25-richchia pryiniattia Konstytutsii Ukrainy): u 2 t.: materialy Mizhnar. nauk.-prakt.konf. (m. Odesa, 21 trav. 2021 r.) / za zahalnoi redaktsiieiu S. V. Kivalova*. Odesa : Vydavnychi dim “Helvetyka”. T. 1. P. 288–290. [In Ukrainian].
4. *Pro Natsionalnu stratehiu u sferi prav liudyny* [About the National Strategy in the field of human rights] : Ukaz Prezydenta Ukrainy vid 24 bereznia 2021 r. No. 119/2021. Retrieved from: <https://zakon.rada.gov.ua/laws/show/119/2021#Text> [In Ukrainian].
5. *Pro vvedennia voiennoho stanu v Ukraini* [About the introduction of martial law in Ukraine] : Ukaz Prezydenta Ukrainy vid 24 liutoho 2022 r. No. 64/2022. Retrieved from: <https://zakon.rada.gov.ua/laws/show/64/2022#Text> [In Ukrainian].
6. *Pro pravovy rezhyv voiennoho stanu* [About the legal regime of martial law]: *Zakon Ukrainy vid 12 travnia 2015 r. No. 389-VIII. Vidomosti Verkhovnoi Rady Ukrainy*. 2015. No. 28. P. 250 [In Ukrainian].
7. *Konstytutsiini prava i svobody liudyny ta hromadianyna v umovakh voiennoho stanu* [Constitutional rights and freedoms of a person and a citizen under martial law]: materialy naukovo seminaru (23 chervnia 2022 r.) / upor. M. V. Kovaliv, M. T. Havryltsiv, N. Ya. Lepish. Lviv: LvDUVS, 2022. 315 p. [In Ukrainian].
8. *Konventsiiia pro zakhyst prav liudyny i osnovopolozhnykh svobod* [Convention on the Protection of Human Rights and Fundamental Freedoms] vid 4 lystopada 1950 r. Retrieved from: https://zakon.rada.gov.ua/laws/show/995_004#Text [In Ukrainian].
9. *Teoriia mizhnarodnoho prava* [Theory of International Law] : navch.-metod. posib. / za red. O. V. Bihniaka. Kherson: Helvetyka, 2020. 224 p. [In Ukrainian].
10. Bohatyr, V. *Yak cherez viinu v Ukraini obmezhuvalysia prava liudyny (povnyi spysok)*. [How human rights were limited due to the war in Ukraine (full list)]. *Yurydychna Hazeta online*. Retrieved from: <https://yur-gazeta.com/publications/practice/mizhnarodne-pravo-investitsiyi/yak-cherez-viynu-v-ukrayini-obmezhuvalysia-prava-liudini-povnyi-spisok.html> [In Ukrainian].
11. *Pro Zaiavu Verkhovnoi Rady Ukrainy “Pro vidstup Ukrainy vid okremykh zoboviazan, vyznachenykh Mizhnarodnym paktom pro hromadianski i politychni prava ta Konventsiiieu pro zakhyst prav liudyny i osnovopolozhnykh svobod”* [About the Statement of the Verkhovna Rada of Ukraine “On the withdrawal of Ukraine from certain obligations defined by the International Covenant on Civil and Political Rights and the Convention for the Protection of Human Rights and Fundamental Freedoms”]: *Postanova Verkhovnoi Rady Ukrainy vid 21 travnia 2015 r. No. 462-VIII*. Retrieved from: <https://zakon.rada.gov.ua/laws/show/462-19#Text> [In Ukrainian].
12. Smokovych, M. I. (2022). *Mizhnarodno-pravovi zoboviazannia Ukrainy u sferi prav liudyny: vidstup vid zoboviazan*. [International legal obligations of Ukraine in the field of human rights: deviation from obligations]. *Yurydychnyi naukovyi elektronnyi zhurnal*. No. 10. P. 492–495. Retrieved from: http://lsej.org.ua/10_2022/122.pdf [In Ukrainian].

13. Slavna, O. V. (2022). *Zabezpechennia prav i svobod liudyny v umovakh pravovoho rezhymu voiennoho stanu v Ukraini v konteksti Natsionalnoi straterii u sferi prav liudyny*. [Ensuring human rights and freedoms under the conditions of the legal regime of martial law in Ukraine in the context of the National Strategy in the field of human rights]. *Elektronne naukove vydannia "Analitychno-porivnialne pravoznavstvo"*. No. 3. P. 45–49. URL: <http://journal-app.uzhnu.edu.ua/article/view/264465/260635> [In Ukrainian].

Дата надходження статті: 15.03.2024 р.

Богдана МЕЛЬНИЧЕНКО

Національний університет “Львівська політехніка”,
Навчально-науковий інститут права,
психології та інноваційної освіти,
професор кафедри теорії права
та конституціоналізму,
доктор юридичних наук, професор
bohdana.b.melnychenko@lpnu.ua
ORCID iD: <https://orcid.org/0000-0003-1514-8131>

Іван КОНДРЕЦЬКИЙ

Національний університет “Львівська політехніка”,
Навчально-науковий інститут права,
психології та інноваційної освіти,
студент першого (бакалаврського)
рівня вищої освіти
ivan.kondretskyi.pv.2022@lpnu.ua
ORCID iD: <https://orcid.org/0009-0009-5839-9820>

**ОСОБЛИВОСТІ ГАРАНТУВАННЯ ПРАВ І СВОБОД ГРОМАДЯН УКРАЇНИ
В УМОВАХ ВОЄННОГО СТАНУ**

У статті здійснено аналіз проблеми гарантування прав і свобод громадян України в умовах воєнного стану. Констатовано, що в період війни особливо значущими є саме юридичні гарантії та правові механізми у забезпеченні всього комплексу основоположних прав людини. Зазначено, що права людини – поняття, що використовують як для позначення конкретного переліку законодавчих положень або міжнародних стандартів, так і для визначення статусу конкретного індивіда в суспільстві. З'ясовано, що під гарантіями прав людини та громадянина варто розуміти систему соціально-економічних, моральних, політичних, юридичних умов, засобів і способів, які забезпечують їх фактичну реалізацію, охорону та надійний захист. Встановлено, що воєнний стан – це особливий правовий режим, що вводиться в Україні або в окремих її місцевостях у разі збройної агресії чи загрози нападу, небезпеки державній незалежності України, її територіальній цілісності та передбачає надання відповідним органам державної влади, військовому командуванню, військовим адміністраціям та органам місцевого самоврядування повноважень, потрібних для відвернення загрози, відсічі збройної агресії та забезпечення національної безпеки, усунення загрози небезпеки державній незалежності України, її територіальній цілісності, а також тимчасове, зумовлене загрозою, обмеження конституційних прав і свобод людини й громадянина та прав і законних інтересів юридичних осіб із зазначенням строку дії цих обмежень. З'ясовано, що запровадження воєнного стану в Україні значно ускладнює забезпечення державою прав громадян в умовах об'єктивної неодмінності їх часткового обмеження. Адже таке обмеження передбачає законодавче звуження змісту та обсягу прав і свобод людини, а також чинники, що унеможливають або ускладнюють їх реалізацію. Підкреслено, що у нинішніх складних умовах воєнного стану пріоритетом для України є безпека її громадян та відновлення територіальної цілісності держави. Водночас важливим завданням держави залишається удосконалення діяльності щодо утвердження та забезпечення прав і свобод людини і громадянина.

Ключові слова: права і свободи людини і громадянина; гарантії прав і свобод людини і громадянина; воєнний стан.