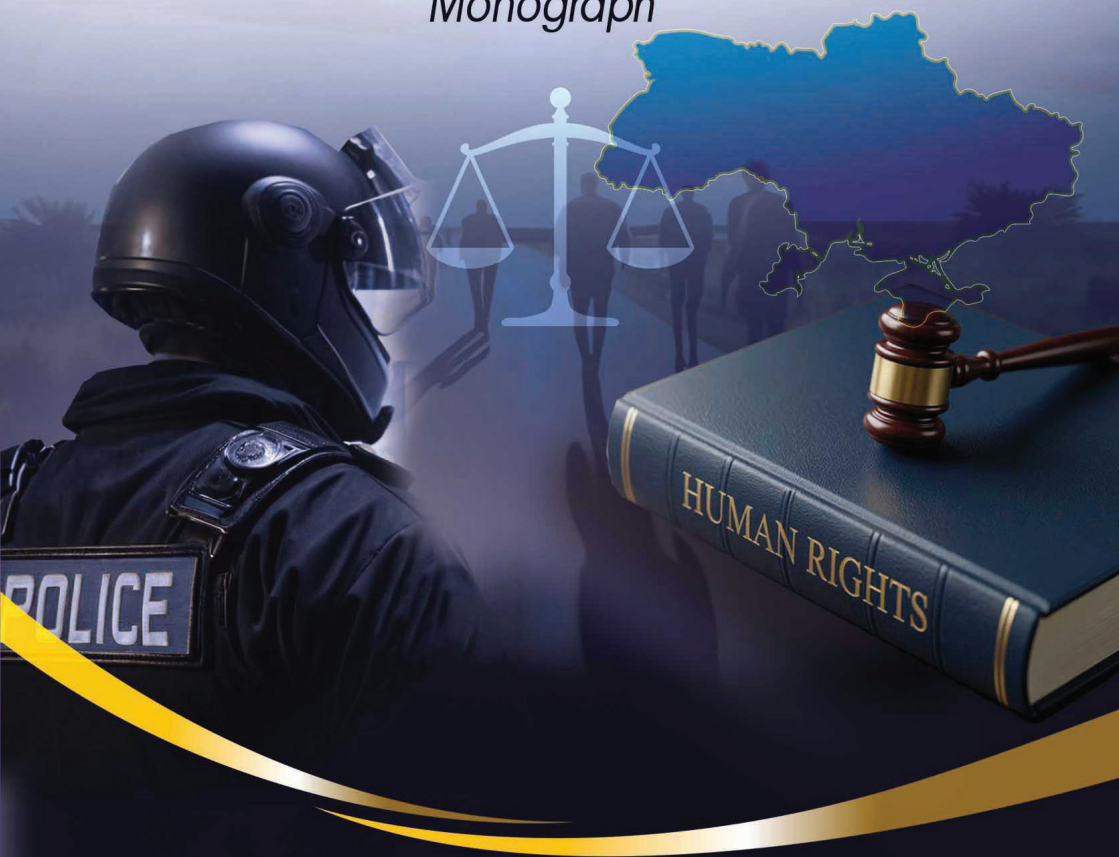


MINISTRY OF INTERNAL AFFAIRS OF UKRAINE
ODESA STATE UNIVERSITY INTERNAL AFFAIRS

Maksym KORNIENKO

**LAW ENFORCEMENT ACTIVITIES
IN THE FIELD OF HUMAN RIGHTS
PROTECTION IN THE CONTEXT
OF GLOBAL AND LOCAL CHALLENGES:
THEORY AND PRACTICE**

Monograph



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This monograph examines the activities of law enforcement agencies, particularly the police, in ensuring human rights and fundamental freedoms under states of emergency and martial law.

The work analyzes national legislation governing social relations regarding the imposition of states of emergency and martial law, as well as the restrictions on human rights and fundamental freedoms established under these extraordinary conditions.

The monograph not only highlights specific aspects of law enforcement activities but also emphasizes general legal provisions regarding the application of law under states of emergency and martial law, which gives the work methodological significance.

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INTRODUCTION

Since the second half of the 20th century, human rights have become a key global issue. The main factor behind this was World War II—or, more precisely, the negative consequences it led to, including millions of deaths, torture, and other atrocities.

To this day, this issue remains highly relevant, due to a number of factors.

First, human rights are an essential component of ethics and morality, and are intended to protect the dignity and freedom of every person, regardless of gender, origin, religion, nationality, political beliefs, or other characteristics. This applies to rights such as the right to life, freedom of thought, freedom of religion, freedom of speech, and others.

Second, human rights violations are a problem that affects every country and region in the world. These violations may include abuse of power, discrimination, violence, abuse, forced labor, torture, and other forms of criminal activity. Such violations can lead to serious consequences, such as trauma, death, migration, and others.

Third, human rights are universal, so their protection is impossible without international cooperation and dialogue. The international community includes various organizations, such as the United Nations, the European Court of Human Rights, the International Criminal Court, and others, which are dedicated to protecting human rights and taking measures to counter violations of these rights.

Consequently, human rights are today a vital component of global order and stability, and their protection is a crucial task for every state individually and for the international community as a whole.

Ukraine is no exception, and this issue is of particular importance to the country. Indeed, it should be noted that Ukraine is a democratic state that recognizes the importance and necessity of protecting human rights and is committed to adhering to international standards in this area. However, unfortunately, it must be acknowledged that human rights issues still exist in Ukraine, such as corruption, “selective justice,” and violations of the rights of women and children, the LGBT community, national minorities, and other groups.

It should not be forgotten that Ukraine is undergoing complex political and social transformations that may affect the protection of human rights. Indeed, Russia’s full-scale invasion and occupation of Crimea and other regions of Ukraine have led to serious human rights violations, particularly regarding the rights to life, health, security, freedom, national and cultural identity, access to judicial protection, and more.

It is worth noting that Ukraine has undertaken a number of international obligations regarding the protection of human rights and fundamental freedoms, particularly within the framework of the Council of Europe, the Organization for Security and Co-operation in Europe, the United Nations, and other international organizations. Therefore, ensuring human rights is a necessary prerequisite for fulfilling these obligations, establishing partnerships with the international community, and pursuing the strategic course toward European integration.

Thus, the protection of human rights is a critical issue for Ukraine, one that concerns not only the state of democratic development and the development of the state as a whole, but also determines the country’s ability to fulfill its international obligations and maintain partnerships with the international community.

Of particular importance in this regard is the role of law enforcement agencies, on whose activities the protection of human rights largely depends. That is why, in this paper, we have focused on the activities of these agencies, particularly under extraordinary circumstances (in which the nature and purpose of these institutions are most clearly revealed).

Chapter 1

THEORETICAL AND DOCTRINAL FOUNDATIONS OF THE PROTECTION OF HUMAN RIGHTS BY LAW ENFORCEMENT AGENCIES

1.1 The protection of human rights as an object of legal inquiry

For Ukrainian legal scholarship, the issue of human rights became particularly relevant in 1991 in connection with the attainment of independence and the need to establish a domestic legal system. Thus, although the Soviet state included a reference to a union of republics in its name, the legislation of the “republic” had to fully conform to all-Union legislation, precluding any manifestations of autonomy.

In the Soviet state, the issue of human rights was largely not raised, since these rights were made entirely dependent on the will of public authorities, which effectively denied the existence of natural human capabilities and emphasized the need to enshrine rights in the texts of normative legal acts, making the existence of rights contingent upon such formal enshrinement.

Under this approach, the issue of ensuring human rights could not arise. If the state cannot (or public authorities are unwilling to) ensure a particular right, they do not adopt the relevant legislation in which

that right is enshrined; consequently, that right does not exist, and therefore neither does the obligation to ensure it.

It should be noted that the approach described is characteristic of states with undemocratic political and legal regimes. The opposite approach is taken by democratic states, in which human rights are interpreted as a person's inherent capacities, and it is the state's very duty to ensure these rights, regardless of whether they are enshrined in the text of a law, even the "constitution."

"According to liberal theory, political freedom is based on rights, and rights can exist only if they are protected. It is therefore clear that the state must be limited so that it does not become a threat to the rights it is called upon to protect"¹ notes L. Svendsen.

For example, consider the well-known fact that the right to higher education is not enshrined in the text of the Constitution of the Federal Republic of Germany. "And while Article 7 at least exists regarding school education, according to which the entire school system is under state supervision², university education is not mentioned"³ as a domestic scholar quite rightly notes.

It should be emphasized that this does not prevent the German authorities from ensuring the realization of the right to higher education (rather than claiming that because this right is not mentioned in the Constitution, it does not exist).

Thus, given the above, it is quite evident that this is precisely why, starting in 1991, the subject of human rights and their protection has become a focus of research for some Ukrainian legal scholars.

¹ Svendsen, L. Fr. H. (2016). *Filosofia svobody* [A Philosophy of Freedom] (Trans. from Norwegian). Lviv : Vydavnytstvo Anetty Antonenko; Kyiv : Nika-Tsentr. [in Ukrainian]. P. 103

² Bundesrepublik Deutschland. (1949). *Grundgesetz für die Bundesrepublik Deutschland* [Basic Law for the Federal Republic of Germany]. Retrieved from <https://www.gesetze-im-internet.de/gg/BJNR000010949.html>

³ Kuchuk, A.M. (2023). *Pravo v umovakh postmodernu: pravovyi dyskurs* [Law in the Conditions of Postmodernity: Legal Discourse]. Odesa : Yurydyka Publishing House. [in Ukrainian]. P. 42.

We should add that this subject has gradually gained increasing relevance. Various academic disciplines focusing on “human rights” were introduced in higher education institutions. However, it is worth noting that the content of textbooks or study guides for such disciplines was typically based on a conception of human rights that had been shaped within the framework of Soviet jurisprudence. Unfortunately, such educational materials can still be found today.

In this context, we should mention the title of Chapter II of the Constitution of Ukraine, as well as a number of works by domestic scholars who, based on this title, still use a term that combines the legally distinct concepts of “human rights” and “citizen’s rights.” However, while such a combination was acceptable ten years ago (due to the development of legal thought and the state of the domestic legal system), today the combination of these concepts under a single term, “human and civil rights,” indicates a misunderstanding of the essential nature of human rights. This issue will be discussed in greater detail below in other sections of this work.

For this reason, we note that in this section of the work, we do not analyze the content of those scholarly works by domestic researchers that address the issue of human rights through the lens of the legal positivism paradigm, where they are interpreted as a legally enshrined opportunity for a person to act in a certain manner.

It should be noted that among Ukrainian scholars who have studied human rights and their protection, the following deserve mention: E. Bilozorov, V. Bonyak, Y. Vedernikov, S. Golovaty, V. Zavgorodniy, Y. Zavgorodnya, M. Kozubra, M. Kostytskyi, S. Kuznichenko, A. Kuchuk, V. Lemak, O. Minchenko, L. Nalyvaiko, O. Orlova, M. Patey-Bratasyuk, P. Rabinovich, O. Yarmish, and others.

The works of these authors address the aforementioned topics through the paradigm of the natural understanding of law and human rights.

It must be noted that the works of such foreign scholars as R. Alexy, A. Daisi, R. Dworkin, J. Donnelly, J. Mere, B. Tamanaga, L. Fuller, and

others have made a significant contribution to the development of the understanding of human rights in domestic legal scholarship.

Some of these authors have produced works that shed light on the essence of such a complex and, at the same time, important legal phenomenon as the rule of law, which is now perceived as inseparably linked to human rights.

In our opinion, the case of *Riggs v. Palmer*, described by R. Dworkin, has had a significant influence on the interpretation of both human rights and the law in general. This case concerned the impossibility of a person expecting lawful benefits for themselves as a result of their own unlawful activities, even if the relevant social relations are not regulated by the provisions of current legislation¹.

The case of *Riggs v. Palmer* set an important precedent in the field of inheritance law in the United States. It was heard by the New York Supreme Court in 1889 and became famous for its ruling, which established a legal precedent. The essence of the case was that Elmer Palmer murdered his grandfather in order to inherit his estate. When drafting his will, Palmer did not provide for the possibility of disinheritance (civil law did not provide for such a prohibition). Therefore, the question was whether Elmer had the right to inherit the property or whether he should be disinherited due to the criminal act he committed.

In its decision, the court denied Elmer Palmer the inheritance, reasoning that it would be morally unacceptable and would contradict common law and the principles of justice. The court concluded that Palmer's intent to kill precluded any right to inherit².

The significance of the case of *Riggs v. Palmer* lies in establishing the principle that a person who has committed a crime against the person

¹ Dworkin, R. (1986). *Law's Empire*. Belknap Press of Harvard University Press.

² Dreier, H. (2007). *Naturrecht und Rechtspositivismus. Pauschalurteile, Vorurteile, Fehltritte* [Natural Law and Legal Positivism. General Judgments, Prejudices, Misjudgments]. In W. Härle & B. Vogel (Eds.), *Vom Rechte, das mit uns geboren ist. Aktuelle Probleme des Naturrechts* [On the Law Born with Us. Current Problems of Natural Law] (Pp. 127–170).

on whom the inheritance depends cannot inherit the victim's property. This precedent has had a wide-ranging impact on inheritance law and principles in a significant number of jurisdictions.

The case of *Riggs v. Palmer* became an important basis for establishing rules regarding inheritance in similar situations where an heir knowingly committed a crime against the person from whom he was to inherit property¹.

We cannot fail to mention the legend of Rex L. Fuller, in which the scholar outlined the requirements for effective legislation that, in our view, are directly linked to human rights.

These requirements (ways to be an ineffective legislator) are cited by L. Fuller as examples of how legislation can lose its moral legitimacy. The following methods are discussed.

First, laws may be unclear, so that people cannot understand which specific actions are prohibited or permitted, which complicates the enforcement of such laws.

Second, laws can be contradictory. When laws contain contradictions or inconsistencies, they can create uncertainty.

Third, laws can be outdated. If laws are outdated or cannot adapt to dynamic social conditions, they may be unable to ensure justice.

Fourth, laws may be incompatible with morality. Such laws contradict generally accepted moral norms and values.

Fifth, laws can have negative consequences. Sometimes laws can lead to undesirable social consequences that violate justice.

Sixth, laws can be ineffective. If laws are not enforced or fail to achieve their purpose, they lose their effectiveness.

Seventh, laws may be unwritten. When laws are not communicated or made available to citizens, it is obvious that this makes compliance difficult.

¹ Kuchuk, A., & Korniyenko, M. (2014). General and Theoretical Science in Ukraine: State and Perspectives. In *Humanities and Social Sciences in Europe: Achievements and Perspectives. Proceedings of the 2nd International Symposium* (pp. 433–437). Vienna : East West Association for Advanced Studies and Higher Education. P. 433–437.

Eighth, laws may be unsystematic. If laws are not organized into a logical and coherent system, they may be incomprehensible and unable to ensure reasonableness and justice¹.

These eight criteria are the key principles of law that Fuller used to demonstrate when laws lose their moral legitimacy and effectiveness. He emphasized the importance of establishing a legal system that incorporates these principles to ensure justice and compliance with the law².

Donnelly J. provided a systematic account of the development of human rights theory. Indeed, this scholar rightly notes that “prior to World War II, human rights were rarely a topic of discussion in international politics. Most states systematically violated these rights. Racial discrimination was rampant in the United States, and the Soviet Union was a totalitarian state with a secret police. Great Britain, France, the Netherlands, Portugal, Belgium, the United States of America, and Spain maintained colonies in Africa, Asia, and the Caribbean”³.

A telling example in this regard is the work of British diplomat Roger Casement, particularly regarding investigations into human rights violations in the Congo and the Amazon. In his reports, the diplomat highlighted significant systemic human rights violations. It is worth noting that this aspect of Casement’s work was depicted in the novel “The Dream of the Celt” by Nobel laureate Mario Vargas Llosa⁴. Thus, as a result of the first report, which garnered international attention and led to the creation of an independent commission of inquiry, the Free State of Congo ceased to be the personal possession

¹ Fuller, Lon L. (1999). *Moral prava [The Morality of Law]* (N. Komarova, Trans.). Kyiv : Sfera. [in Ukrainian]. P. 38–42.

² Kuchuk, A.M. (2017). *Osnovy teorii pravovoho politsentryzmu [Foundations of the Theory of Legal Polycentrism]*. Dnipro: Dnipropetrovsk State University of Internal Affairs; Lira LTD. [in Ukrainian]. P. 92.

³ Donnelly, J. (2004). *Prava liudyny u mizhnarodnii politytsi [Human Rights in International Politics]* (T. Zavalii, Trans.). Lviv : Kalvariia. [in Ukrainian]. P. 14.

⁴ Vargas Llosa, M. (2012). *Son kelta [The Dream of the Celt]* (V.Y. Shovkun, Trans.). Kharkiv : Folio. [in Ukrainian]. 539 p.

of King Leopold II¹. It should be added that due to the ruthless exploitation of the indigenous population, the number of indigenous people in certain regions was halved.

That is precisely why we noted above that human rights took on particular significance for society after World War II, which demonstrated the consequences of disregarding human rights and freedoms (especially on an international scale).

That is why the preamble to the Universal Declaration of Human Rights, adopted in 1948, states, among other things: "Disregard and contempt for human rights have resulted in barbarous acts that have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people"².

For Western legal culture, this international document served as the catalyst that led to the development of a theory of human rights based on the recognition of the inherent, natural, and inalienable nature of rights, as well as a system of institutions to monitor compliance with human rights and freedoms.

In contrast, the Soviet state, remaining undemocratic, did not accept this theory (which was entirely obvious, given the ideology of that state and its methods of operation), as evidenced by the fact that the Soviet satellites did not support the adoption of the Universal Declaration of Human Rights. Thus, A. Kuchuk, analyzing the historical background of the adoption of this international document, quite correctly notes the following: "When the Universal Declaration of Human Rights was adopted, not all states voted in favor of its adoption. Eight states abstained from supporting it, which was due to a number of religious and political factors," adding that "this helps explain the position of the

¹ Kejsment, Rodzher [Casement, Roger]. Retrieved from <https://www.istoriya.in.ua/kejsment-rodzher-v2.html>

² United Nations. (1948). Universal Declaration of Human Rights. Retrieved from <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

Soviet Union and its satellites, which also did not vote in favor of adopting the Universal Declaration of Human Rights (they abstained)”¹.

Rabinovich P. was one of the first in independent Ukraine to examine the issue of human rights and freedoms as a subject of systematic research. It should be noted that, on this scholar’s initiative, the Human Rights Laboratory was established in Lviv in 1996, which, among other things, devoted significant attention to analyzing the case law of the European Court of Human Rights².

It should be added that through relevant sections of textbooks and study guides on general legal theory, P. Rabinovich highlighted precisely the natural approach to understanding human rights. More specifically, this involved highlighting those rights “that did not depend on the state” and which were termed “general social”³.

Special mention should also be made of the works of another Ukrainian legal scholar, retired Constitutional Court of Ukraine Justice M. Kozubra, who made a significant contribution to the development of human rights theory in Ukraine specifically through the lens of a natural understanding of human rights and freedoms. At M. Kozubra’s initiative, a series of conceptual changes to the teaching (and content) of general legal theory and constitutional law were justified, with an emphasis specifically on the inherent nature of rights and the recognition of the naturalness of human rights.

It is also important to note M. Kozubra’s repeated references, in substantiating his own position on the essence and content

¹ Kuchuk, A. (2021). Pryiniattia Zahalnoi deklaratsii prav liudyny: istorychnyi aspekt [Adoption of the Universal Declaration of Human Rights: Historical Aspect]. *Konsensus – Consensus*, 1, 106–114. [in Ukrainian].

² Rabinovych, P.M. (2016). Lvivskii laboratorii prav liudyny – 20 rokiv [Twenty Years of the Lviv Human Rights Laboratory]. *Visnyk Natsionalnoi akademii pravovykh nauk Ukrainy – Journal of the National Academy of Legal Sciences of Ukraine*, 3(86), 114–120. [in Ukrainian].

³ Rabinovych, P.M. (2015). Osnovopolozhni prava liudyny: termino-poniattieviy instrumentarii doslidzhennia ta vykladannia [Fundamental Human Rights: Terminological and Conceptual Instruments for Research and Teaching]. *Pravo Ukrainy – Law of Ukraine*, 2, 9–23. [in Ukrainian].

of human rights and law in general, to the “Radbruch formula,” well-known in Western legal thought¹. Gustav Radbruch was a German jurist who made a significant contribution to the development of legal philosophy. He is known, among other things, for his concept of the “Radbruch Formula,” which concerns the relationship between law and justice.

The “Radbruch Formula” asserts that in cases where the law and justice conflict, judges must give priority to justice. The principle of the formula can be stated as follows: “Where the law becomes unjust, justice prevails.” Radbruch justified this formula by arguing that justice is a fundamental principle of law and morality, and that the law must be based on justice. He believed that the law can be justified only within the bounds of justice, and that cases where the law conflicts with justice require correction².

This Radbruch formula is of great significance in the philosophy of law and contributes to an understanding of the relationship between law and justice within the justice system. This principle helps judges make decisions in ethically complex situations and ensures the “correction” of unjust laws through the demands of justice.

In the context of our research, we should add that according to Radbruch’s formula, which he formulated after World War II, cases where the law is so unjust that it violates fundamental principles of justice must be resolved in favor of justice, even if this means violating the law.

This formula was developed by Radbruch in the context of the Nazi regime, where laws were undemocratic and violated fundamental principles of justice, as well as human rights. The German legal

¹ Koziubra, M.I. (2021). *Doktryna pryrodnoho prava: cherez istorychni zlety y padinnia do vyznachennia osnovoiv naivazhlyvishykh dosiahnen suchasnoi pravovoi teorii ta praktyky* [The Doctrine of Natural Law: Through Historical Rise and Decline to Recognition as the Basis of the Most Important Achievements of Contemporary Legal Theory and Practice]. *Pravo Ukrainy – Law of Ukraine*, 1, 12–42. [in Ukrainian].

² Radbruch, G. (2009). *Filozofia prawa* [Philosophy of Law] (E. Nowak, Trans.). Warszawa : Wydawnictwo Naukowe PWN. 408 p.

philosopher argued that in a situation where the law is so unjust, judges must give priority to justice¹.

We must also highlight the scholarly work of Ukrainian legal scholar A. Kuchuk, who systematically examines the methodological foundations of human rights research, drawing scholars' attention to the need to definitively move away from viewing human rights and freedoms through the lens of legal positivism and instead perceive them as natural human capacities, and therefore, inalienable and indivisible. It is precisely in this light, according to the scholar, that they appear in the theory of human rights shaped by the Western legal tradition².

The author emphasizes that human rights are inherently universal, although the theory of human rights itself was developed within the Western legal tradition and was enshrined in a series of international instruments—both soft law and hard law—in the late 1940s and early 1950s.

According to the author, a domestic legal scholar, differing interpretations of human rights are driven by various factors, including religious, political, and other considerations. The scholar analyzes the content of various international documents in the field of human rights—not only the Universal Declaration of Human Rights, but also the Cairo Declaration on Human Rights in Islam, as well as the ASEAN Declaration on Human Rights (which has been criticized by Western legal scholars)³.

¹ Kuchuk, A.M. (2023). *Pravo v umovakh postmodernu: pravovyi dyskurs* [Law in the Conditions of Postmodernity: Legal Discourse]. Odesa : Yurydyka Publishing House. [in Ukrainian]. P. 34.

² Kuchuk, A.M. (2018). *Implementatsiia zakhidnykh pravnychkh kontseptiv: liudski prava* [Implementation of Western Legal Concepts: Human Rights]. *Naukovyi visnyk Dnipropetrovskoho derzhavnoho universytetu vnutrishnikh sprav* – Scientific Bulletin of Dnipropetrovsk State University of Internal Affairs, 3(96), 12–15. [in Ukrainian].

³ Kuchuk, A.M. (2017). *Osnovy teorii pravovoho politsentryzmu* [Foundations of the Theory of Legal Polycentrism]. *Dnipro : Dnipropetrovsk State University of Internal Affairs; Lira LTD.* [in Ukrainian]. P. 234–264.

At the same time, it is worth noting that one of the most systematic and comprehensive domestic studies on human rights is a work by another scholar, S. Golovaty, a retired judge of the Constitutional Court of Ukraine, in which a series of chapters exploring the relevant topics are presented based on Western legal theory. The author has titled this work “On Human Rights”¹.

We would like to emphasize that the use of the term “human rights” instead of “human rights” will be discussed in the next section of our study (in this subsection, we address a different objective—we examine the state of coverage of the topic of ensuring human rights in extraordinary circumstances, including by law enforcement agencies, and we also define the scientific basis for achieving the goal of our study).

We note that S. Golovaty’s work reflects the European understanding of human rights, provides a detailed analysis of relevant international legal instruments, and traces the origins of human rights. This work can be viewed as a kind of primer on human rights, given that its content provides the foundation for an adequate perception of human rights and promotes a fundamental understanding of them.

In general, it is worth emphasizing that the works of these domestic authors form the basis for understanding human rights (specifically within the context of the Western legal tradition), as well as the approaches to ensuring them under extraordinary circumstances.

At the same time, it should be noted that comprehensive scientific research on the protection of human rights in atypical conditions and under extraordinary circumstances is virtually nonexistent. Human rights are typically the subject of research in conditions of a stable legal order. In our view, this is due to the established development of European states (recall that the theory of human rights we are examining is a product of the Western legal tradition); and the absence,

¹ Holovaty, S. (2016). *Pro liudski prava. Lektsii* [On Human Rights. Lectures]. Kyiv : Dukh i Litera. [in Ukrainian]. 760 p.

until recently, of circumstances that significantly affected the functioning of states on a global scale.

To this, we should add that, to date, scholars have addressed only certain aspects of the specific challenges of ensuring human rights under extraordinary circumstances. A systematic understanding of this subject is a pressing task for domestic (as well as international) legal scholarship.

In this regard, one cannot fail to mention the works of the contemporary Italian philosopher Giorgio Agamben, which address the issue of the operation of law under exceptional circumstances. And although G. Agamben received a legal education, his works (in the context of our subject) are primarily philosophical rather than legal in nature. Nevertheless, they provide a general understanding of how the law functions under special, extraordinary conditions.

In this context, we should mention this Italian thinker's work "Homo Sacer: The State of Exception," which was published in 1995. In his work, Agamben explores the concept of the "state of exception" in political theory and law, as well as its impact on the status of the individual in society. The concept of the "state of exception" arises from an analysis of power and sovereignty. Agamben argues that modern political regimes, particularly liberal democracy, are based on the principle of inclusion and exclusion. He argues that in exceptional circumstances, such as during wartime or a coup d'état, power can unfold in such a way that it becomes independent of the law, and people who are outside the law may be deprived of their rights.

Agamben draws attention to the ancient Roman concept of "homo sacer," which means "the cursed man" or "a man who can be killed but cannot be the victim of a sacrifice." He analyzes this concept and its role in history and politics, emphasizing that "homo sacer" is a symbol of the condition of a person who is excluded from the political community and deprived of legal protection¹.

¹ Agamben, Giorgio. Heller-Roazen. *Homo Sacer: Sovereign Power and Bare Life*. Stanford, California : Stanford University Press, 1 April 1998.

Most of Giorgio Agamben's works, including **Homo Sacer**, explore various aspects of political theory and the philosophy of law, particularly the concepts of sovereignty, the state of exception, and the relationship between politics and life. In his subsequent works, Agamben develops his ideas and analyzes political structures and mechanisms of power. **Homo Sacer: Sovereign Power and Bare Life** received significant attention in academic circles and became an influential work in the field of political theory. It represents an important contribution to political theory and explores issues of sovereignty, exclusion, and the status of the human being in society.

It is quite evident that under extraordinary conditions, the established order of society is disrupted. In such circumstances, public authorities are obligated to maximize their efforts to overcome the circumstances that caused the state of emergency and restore the rule of law. It is clear that under extraordinary conditions, the powers of public authorities expand (the scope of their duties increases), which, in turn, necessitates additional grounds for restricting human rights and, accordingly, an expansion of the powers of public authorities. This situation enables the state to consolidate the necessary resources for the rapid fulfillment of the tasks assigned to it.

Thus, under extraordinary circumstances, public authorities often receive greater powers than during normal societal functioning, with the aim of ensuring security and an appropriate response to emerging crisis situations. In general, several factors can be identified that may explain this:

First, the safety and protection of citizens. In extraordinary circumstances, such as war, terrorist threats, natural disasters, or epidemics, government authorities must ensure the safety and protection of their citizens, which may involve taking various measures, such as restricting rights and freedoms, declaring a state of emergency, limiting freedom of movement, monitoring the population, and so on.

Second, rapid response and efficiency. In extraordinary circumstances, when time is of the essence, authorities may be granted additional

powers to respond quickly to the situation, which may include making urgent decisions without lengthy procedures and consultations, as well as mobilizing resources and redistributing powers to better manage the crisis.

Third, maintaining public order. In extraordinary circumstances, when breaches of public order threaten societal stability, public authorities may be granted additional powers to uphold the rule of law and prevent chaos, which may involve, for example, increasing police presence, imposing curfews, deploying troops, or implementing other control measures.

It is important to emphasize that during extraordinary circumstances, such expanded powers of public authorities must be temporary and time-limited, due to the need to uphold the principles of democracy, human rights, and the rule of law, even in emergency situations. It is essential to ensure effective mechanisms for oversight and checks and balances to prevent abuses and violations of human rights and freedoms.

The expansion of government powers during emergencies is a complex issue that is frequently discussed in the context of political, legal, and ethical debates. A balanced approach to granting temporary powers is essential for ensuring the safety and protection of citizens while upholding the values of democracy and human rights.

It should be noted that the implementation of quarantine measures across the global community, as well as Russia's war against Ukraine—which is, in part, a war over values (Ukraine's choice of the values of Western legal culture over Soviet ones, which Russia continues to promote to this day)—has significantly impacted the protection of human rights by disrupting the established legal order. That is why in this paper we will focus on these two aspects of extraordinary circumstances, examining each of them in turn. At the same time, we emphasize that this topic has not yet been the subject of comprehensive analysis by the domestic legal community.

The next important aspect we must consider within this section is the protection of human rights by law enforcement agencies.

In this context, it is worth noting that domestic legal scholarship presents this issue in a somewhat distorted manner, which, in our opinion, is due, first, to the understanding of human rights that was formed during earlier periods of the Ukrainian state's existence and which contradicts the theory of human rights shaped by the Western legal tradition; second, by an understanding of the nature and significance of state authorities in accordance with the paradigm of "the individual for the state," rather than "the state for the individual." This topic will be discussed in greater detail in the next section of this work. We should add that the use of the term "law enforcement agencies" serves as confirmation of the position we have outlined.

However, we cannot fail to mention the names of those scholars whose conclusions and main theses form the basis for addressing the task of examining the protection of human rights by law enforcement agencies. These include, in particular, E. Bilozorov, V. Bonyak, Y. Vedernikov, I. Grigorenko, S. Gusarev, A. Kuchuk, O. Tikhomirov, and others.

In particular, the scholarly contributions of Y. Vedernikov, I. Grygorenko, and A. Kuchuk deserve special mention. The latter conducted a dissertation study dedicated to the general theoretical understanding of law enforcement activities in Ukraine. Prior to the publication of this work, the study of law enforcement activities took place primarily within the framework of specific branches of law, mainly administrative law, and usually boiled down to the study of police activities, as the body that is "closest" to the population in the sense that it is with police officers that the population interacts most frequently (unlike, for example, from employees of the Security Service of Ukraine or the Department of the State Protection of Ukraine. We note that we have specifically identified these two state authorities based on the fact that they are designated as law enforcement agencies in the relevant laws).

A. Kuchuk, on the other hand, attempted to examine law enforcement activities not only through the lens of legal formalism but also through

a naturalistic approach to understanding law and human rights. At the same time, the Ukrainian legal scholar notes another logical “shortcoming” in the understanding of law enforcement activities: “A general trend in legal scholarship and practical activity in the field of law enforcement is the definition of law enforcement activities through the system of law enforcement agencies, with the latter being defined as state bodies. However, as noted above, legal academic literature has long advanced the view that non-state institutions should also be regarded as law enforcement entities”¹.

We should also note that a significant body of academic literature is devoted to examining the relationship between law enforcement agencies and the courts, particularly in the context of whether the latter are part of the former. In this regard, the prevailing conclusion—which is somewhat unexpected—is that the courts do not constitute law enforcement agencies. The main argument in favor of this conclusion, cited by scholars who adhere to this approach, is the title of the Law “On State Protection of Court and Law Enforcement Officials”². In this case, this illogical approach is based on the following:

1. It is illogical to refer to an activity as “law enforcement” simply because it is carried out by certain agencies, given the complete lack of clarity regarding which agencies are actually law enforcement agencies. For example, one might refer to the work of attorneys as “legal practice” and that of judges as “judicial work”; however, in the case of law enforcement activities (if one is to use this term), it is precisely the agencies themselves that should be classified as law enforcement because they carry out law enforcement activities, rather than the

¹ Kuchuk, A.M. (2007). *Teoretyko-pravovi zasady pravookhoronnoi diialnosti v Ukraini* [Theoretical and Legal Foundations of Law Enforcement Activity in Ukraine] (Candidate’s thesis). Kyiv. [in Ukrainian]. Pp. 118–119.

² *Pro derzhavnyi zakhyst pratsivnykiv sudu i pravookhoronnykh orhaniv* [On State Protection of Employees of Courts and Law Enforcement Agencies]. *Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of the Verkhovna Rada of Ukraine*, 11, Art. 50. [in Ukrainian]. Art. 50.

reverse—deriving definitions and characteristics of law enforcement through a compilatory generalization of the activities of individual agencies (especially, we emphasize, in the absence of a clear understanding of which specific agencies are law enforcement agencies).

For example, the Law “On Democratic Civilian Control over the Military Organization and Law Enforcement Agencies of the State,” adopted on June 19, 2003 (this Law is no longer in force), defined “law enforcement agencies” as “state bodies that, in accordance with the law, perform law enforcement or law-application functions”¹. However, virtually all state bodies perform law enforcement functions. In contrast, the aforementioned Law “On State Protection of Court and Law Enforcement Officials” does not list all state bodies, although it does contain a blanket provision that requires an expansive interpretation: “other bodies that perform law enforcement or law-application functions”².

2. It is the court that makes the final decision in a legal dispute and in holding the guilty parties legally accountable. Figuratively speaking, criminal justice agencies work “for the court,” in the sense that they gather “raw evidence” which is then examined in court, in accordance with the principle of disposability. Therefore, under this approach, it is the court that should be regarded as the “primary” law enforcement agency, as one of the key law enforcement bodies, rather than “internal affairs agencies” or any others.

However, in our opinion, we should nevertheless move away from using the terms “law enforcement activities,” “law enforcement

¹ Verkhovna Rada of Ukraine. (2003). Pro demokratychnyi tsyvilnyi kontrol nad Voiennoi orhanizatsiieiu i pravookhoronnymy orhanamy derzhavy [On Democratic Civilian Control over the Military Organization and Law Enforcement Agencies of the State]. Ofitsiinyi visnyk Ukrainy – Official Gazette of Ukraine, 29, Art. 1440. [in Ukrainian]. Article 1440 .

² Verkhovna Rada of Ukraine. (1993). Pro derzhavnyi zakhyst pratsivnykiv sudu i pravookhoronnykh orhaniv [On State Protection of Employees of Courts and Law Enforcement Agencies]. Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of the Verkhovna Rada of Ukraine, 11, Art. 50. [in Ukrainian]. Art. 50.

agencies” as concepts with no substantive meaning (we reiterate that in this section of the study, we are merely analyzing existing scholarly publications to establish the foundation of our epistemology and to clarify unexplored aspects of the issue we have outlined).

When considering the state of research on the protection of human rights in the context of law enforcement activities, it is worth mentioning the work by Y. Vedernikov and A. Kuchuk, dedicated to characterizing law enforcement activities in the context of domestic jurisprudence’s departure from legal normativism. The scholars note, among other things, that “research into the problems of law enforcement requires not only an analysis of its essence, content, and nature, but also pertains to issues that require rethinking in accordance with changing priorities in the development of society. ... Law is not equated with legislation; the existence of the former is no longer linked solely to the activities of the state. Under such conditions, the existing approach to understanding law enforcement activities requires rethinking”¹.

Although the authors did not conclude that it was advisable to move away from the use of the term “law enforcement,” this monographic study laid the groundwork for such a shift by focusing on the specific features of the protection of law and human rights in a democratic society based on the rule of law, and by applying a natural-law approach to the study of legal phenomena.

In our opinion, this work by domestic scholars became a catalyst for the initial changes in the domestic paradigm of activities aimed at ensuring human rights and freedoms.

It is worth noting that the monograph under review (long before the principle of the rule of law was enshrined in the laws governing the activities of specific state authorities, as well as in specific procedural codes) identifies the rule of law as a principle of law enforcement. At the

¹ Vedernikov, Yu.A., & Kuchuk, A.M. (2009). *Pravookhoronna diialnist v Ukraini: teoretyko-pravovyi aspekt* [Law Enforcement Activity in Ukraine: Theoretical and Legal Aspect]. Kyiv : Znannia Ukrainy. [in Ukrainian]. Pp. 3–4.

same time, a separate appendix provides an analysis of the enshrinement of a number of principles in the laws governing the activities of those state bodies that are typically referred to as law enforcement agencies. And in none of these laws at that time was the rule of law identified as a principle¹.

Vedernikov Y. and Kuchuk A. highlighted the connection between the rule of law and the protection of human rights and freedoms as interrelated legal phenomena. As an integral part of the national legal system, the rule of law must be regarded as a guiding principle for the activities of individual public authorities.

The connection between law enforcement and the rule of law is a vital aspect of a society founded on justice. The rule of law means that all individuals, including government bodies and law enforcement agencies, are subject to just laws and regulations, and no one is above the law.

Law enforcement is a mechanism for applying the law and maintaining order in society. Law enforcement agencies, such as the police, the prosecutor's office, and others, are tasked with enforcing laws, investigating crimes, detaining suspects, and bringing them before a court for a fair decision.

The connection between law enforcement and the rule of law lies in the fact that those who carry out these activities must act within the bounds of just laws and protect human rights and freedoms, adhering to the principles of justice and equality before the law. They are accountable to the courts and legal authorities for their actions, and their powers must be limited by established norms and procedures.

The rule of law ensures that law enforcement does not degenerate into arbitrariness or abuse of power. Law enforcement agencies must act with respect for human rights and ensure transparency, legality, and

¹ Vediernikov, Yu.A., & Kuchuk, A.M. (2009). *Pravookhoronna diialnist v Ukraini: teoretyko-pravovyi aspekt* [Law Enforcement Activity in Ukraine: Theoretical and Legal Aspect]. Kyiv : Znannia Ukrainy. [in Ukrainian]. P. 211.

accountability in their actions. They perform their functions with the aim of ensuring justice, maintaining public order, and protecting human rights.

The next work, which contributes to the development of the issue of ensuring human rights in the process of law enforcement, is a monographic study by I. Grygorenko and A. Kuchuk, dedicated to a comparative analysis of law enforcement in Ukraine and Germany.

In this paper, having conducted a comparative legal study of the legal framework governing the protection of human rights and freedoms in Ukraine and the Federal Republic of Germany, the authors concluded that there are significant differences between the perception (and the legal codification) of the phenomenon referred to in domestic legal doctrine as law enforcement activities and law enforcement agencies. As the scholars emphasize, “German national legislation (like that of many other states of the Romano-Germanic legal family) does not contain the concept of “law enforcement activities”¹.

In contrast, Ukrainian legal scholars, when examining the German legal system, analyze the concept of police activity, which is entirely justified given that the meaning Ukrainian scholars ascribe to the concept of law enforcement fully corresponds to police activity (moreover, it was precisely police activity—the work of the police—that formed the basis of the theory of law enforcement, and it was on this foundation that the theory of law enforcement was developed)².

In the Federal Republic of Germany, effective policing (at both the federal and state levels) is a key factor in maintaining public order, ensuring security, and protecting the rights and freedoms of citizens. The Federal Police (Bundespolizei) is responsible for border control, security at rail and air transport hubs, and combating terrorism and

¹ Hryhorenko, I.A., & Kuchuk, A.M. (2016). *Pravookhoronna diialnist Ukrainy ta Nimechchyny (porivnialno-pravove doslidzhennia)* [Law Enforcement Activity of Ukraine and Germany (Comparative Legal Research)]. Dnipropetrovsk : Osvita Ukrainy. [in Ukrainian]. P. 57.

² The same. P. 49–57.

organized crime. It also assists local police forces when necessary. The local police (Landespolizei) operate at the level of administrative-territorial units—states (Land) and cities (Stadt)—and are responsible for investigating crimes, patrolling, maintaining public order, ensuring road safety, and other aspects of law enforcement. Each federal state (Bundesland) has its own police organization, which reports to the respective state Ministry of the Interior.

The German police operate in accordance with the law and are obligated to uphold the principles of law and protect the rights of citizens. In their work, they are guided by the principles of professionalism, legality, objectivity, and respect for citizens.

The German police also actively cooperate with other law enforcement agencies and international partners in the fight against crime and terrorism.

It should be noted that we have focused in detail on the characterization of law enforcement entities provided by the aforementioned domestic legal scholars, based on the fact that these provisions allow for a better understanding of the essence of the concept of “law enforcement agencies,” which we have used in this study.

Moreover, it should be emphasized that it is precisely this content of police activity (as it is understood within the Federal Republic of Germany) that defines the purpose of the relevant state authorities—law enforcement agencies.

The next scholarly work worth mentioning within the scope of our subject is V. Bonyak’s monographic study devoted to the constitutional and legal aspects (in a contemporary context) of law enforcement agencies¹.

This work is one of the first in Ukrainian legal scholarship in which the author used the term “law enforcement agencies”—which was

¹ Boniak, V.O. (2015). *Orhany okhorony pravoporiadku v suchasnomu vymiri: konstytutsiino-pravovyi aspekt* [Law Enforcement Agencies in the Contemporary Dimension: Constitutional and Legal Aspect]. Dnipropetrovsk : Dnipropetrovsk State University of Internal Affairs, Lira. [in Ukrainian]. 372 p.

somewhat unusual at the time—instead of the then-established phrase “law enforcement bodies,” indicating the author’s desire to move away from the paradigm of understanding individual state authorities that had taken shape in the context of Ukrainian society’s transition (while rejecting the legacy of Soviet statehood on the path to European integration).

Although it is worth noting that the author did not fully succeed in shedding certain ideological notions regarding law enforcement agencies as purely state bodies acting in the interests of ensuring human rights and freedoms. This is indicated by V. Bonyak’s attempt to elucidate the meaning of the aforementioned concept through an examination of the concept of the “state mechanism”¹, which is a product of purely Soviet jurisprudence.

The term “state mechanism” is foreign to the Western legal tradition. It does not reflect the system of public authority organization under a democratic state-legal (political) regime.

Although, it must be acknowledged that its use is possible under an anti-democratic state-legal (political) regime. This term emphasizes the bureaucratic aspects of the state apparatus and its functioning, without taking into account the role of citizens and democratic processes. In democratic states, where the principles of the rule of law, separation of powers, and human rights are key, the more common concepts are “democratic institutions” or “state bodies.” These terms reflect a broader context that includes not only the functioning of public authorities in general and administrative bodies in particular, but also the role of citizens, the public, and civil society organizations in decision-making and oversight of government actions.

In democratic states, greater emphasis is placed on the concept of the “servant state,” according to which the activities of state authorities

¹ Boniak, V.O. (2015). *Orhany okhorony pravoporiadku v suchasnomu vymiri: konstitutsiino-pravovi aspekt* [Law Enforcement Agencies in the Contemporary Dimension: Constitutional and Legal Aspect]. Dnipropetrovsk : Dnipropetrovsk State University of Internal Affairs, Lira. [in Ukrainian]. Pp. 92–98.

are aimed at meeting the needs and interests of citizens, rather than on mechanical functioning in isolation from civil society. In this context, the emphasis is on citizen participation in decision-making, oversight of state actions, and fostering public trust in democratic institutions.

Consequently, democratic states use broader terms to describe the state apparatus and its functioning in order to account for the role of civic participation and democratic processes.

The words of the Ukrainian scholar A. Kuchuk are quite apt in this regard: “Soviet legal science is generally characterized by mechanistic views of legal phenomena; for example, it distinguishes between the ‘mechanism for ensuring human rights,’ the ‘mechanism for realizing human rights,’ and the ‘mechanism for protecting human rights’ (a whole series of mechanisms, while human rights were in fact negated and even denied, so we see the “practical significance” of introducing the term “mechanism”), the mechanism of the state, the mechanism of legal regulation, and so on. It is not characteristic of the Western legal tradition to view legal phenomena through the category of “mechanism.” European scholarship knows of no such “mechanisms”¹.

Therefore, in our view, examining law enforcement agencies through the lens of the state apparatus has not fully revealed the essence and significance of the category studied by V. Bonyak. This is also indicated by the fact that the author classifies as law enforcement agencies precisely those bodies that are commonly referred to as such. However, on the positive side, it is worth noting once again the attempt to move away from the use of the term “law enforcement agencies.” Although, the change in the ideological component of the relevant conceptual and categorical framework of domestic legal science is also important.

¹ Kuchuk, A.M. (2018). *Teoriia derzhavy i prava. Chastyna 1. Teoriia derzhavy* [Theory of State and Law. Part 1. Theory of the State]. Dnipro : Dnipropetrovsk State University of Internal Affairs. [in Ukrainian]. P. 90.

Thus, summarizing the above regarding the coverage by domestic legal science of the issue of ensuring human rights and freedoms by law enforcement agencies under extraordinary conditions, it is worth noting the lack of research in this area. Moreover, an important task for jurisprudence in this context is the final departure from the Soviet legal legacy and the reevaluation of legal phenomena through the prism of a natural-law understanding of law and human rights. In terms of the subject of our study, this point is directly relevant to all its components—law enforcement agencies, the nature of activities to ensure human rights and freedoms, and the primary purpose of declaring states of emergency (extraordinary states).

1.2 The anthropocentric orientation of law enforcement agencies' activities in the system of modern state-building

As noted above, definitions of human rights formulated within the context of legal positivism are still encountered in Ukrainian legal scholarship today. This approach was characteristic of the Soviet state and its satellite states, as it aligned with the prevailing ideology and *de facto* justified mass human rights violations, disregard for such rights, and the like, while *de jure* allowing claims of compliance with and comprehensive protection of human rights.

It should be emphasized once again that until the second half of the 20th century, human rights were viewed purely as an internal state phenomenon, one that was entirely dependent on the will of public authorities. It was hardly conceivable that an individual could file a complaint against the state and have that complaint fairly considered, with the resulting decision (especially if it went against the state) actually enforced. Today, however, such a situation is quite commonplace. The work of the European Court of Human Rights serves as confirmation of this. According to the official website of the European Court of Human Rights, a significant number of applications regarding violations of human

rights and freedoms by Ukraine have been filed over the past six years¹. These statistics are reflected in the following table:

Table 1.1 – Number of applications to the European Court of Human Rights

No. s/p	Year	Number of requests
1.	2020	10400
2.	2021	11350
3.	2022	10400
4.	2023	8737
5.	2024	7703
6.	2025	4004

That is precisely why it is incorrect today to view human rights and freedoms as phenomena that exist solely because they are enshrined in law or “guaranteed by law” (and, consequently, as dependent on the state—or, more precisely, existing only because the state bestows them upon the individual). Such an understanding reflects the state of societal development at the end of the first half of the 20th century.

Once again, we emphasize that a fundamental shift in the paradigm of understanding human rights occurred precisely during this period, after World War II. In this context, let us return to the discussion regarding the use of the term “human rights” instead of the term “rights of man.”

We note that up until that time (the end of the first half of the 20th century), the term “rights of man” was used to denote the phenomenon under study, and even today in domestic legal literature

¹ European Court of Human Rights. (2021). Analysis of Statistics 2021. Retrieved from https://www.echr.coe.int/Documents/Stats_analysis_2021_ENG.pdf; European Court of Human Rights. (2022). Statistics 1/1–30/11/2022. Retrieved from https://www.echr.coe.int/Documents/Stats_pending_month_2022_BIL.PDF; European Court of Human Rights. (2023). Annual Report 2023. Retrieved from <https://www.echr.coe.int/documents/d/echr/annual-report-2023-eng>

it is translated as “human rights.” Although its literal translation should be “rights of a man.”

It should be noted that, according to the English dictionary, the term “man” is polysemous; moreover, the primary meaning of this word is precisely the designation of a male person: “male person. An adult male human”¹.

For a long time, human rights were perceived precisely in this way—as the rights of an adult, white man. This is exactly how they are still perceived today in certain societies. To support this argument, it is worth noting that, thanks to the feminist movement, women also gained (part of) these “rights of man.” This, again, did not happen until the second half of the 20th century.

It is worth noting that the eponymous work by the famous American politician and philosopher Thomas Paine, published in 1791, was titled “Rights of Man” (not “human rights”).

It should be noted that gender issues remain a highly relevant topic in Ukraine to this day. Let us recall the resistance (in particular, from the Council of Churches, citing the need to uphold “traditional family values”) that accompanied the ratification of the Istanbul Convention (the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence).

It should be noted that the preamble to this Convention emphasizes that “the realization of *de jure* and *de facto* equality between women and men is a key element in preventing violence against women,” and that “violence against women is a manifestation of the historically unequal power relations between women and men, which have led to the domination of women and discrimination against them by men, and to the prevention of the full emancipation of women”².

¹ Longman. (2008). Dictionary of Contemporary English (p. 998). Pearson Education. P. 998.

² Council of Europe. (2011). Konventsiiia Rady Yevropy pro zapobihannia nasylstvu stosovno zhinok i domashnomu nasylstvu ta borotbu iz tsymy yavvyshchamy [Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence]. Retrieved from https://zakon.rada.gov.ua/laws/show/994_001-11#Text

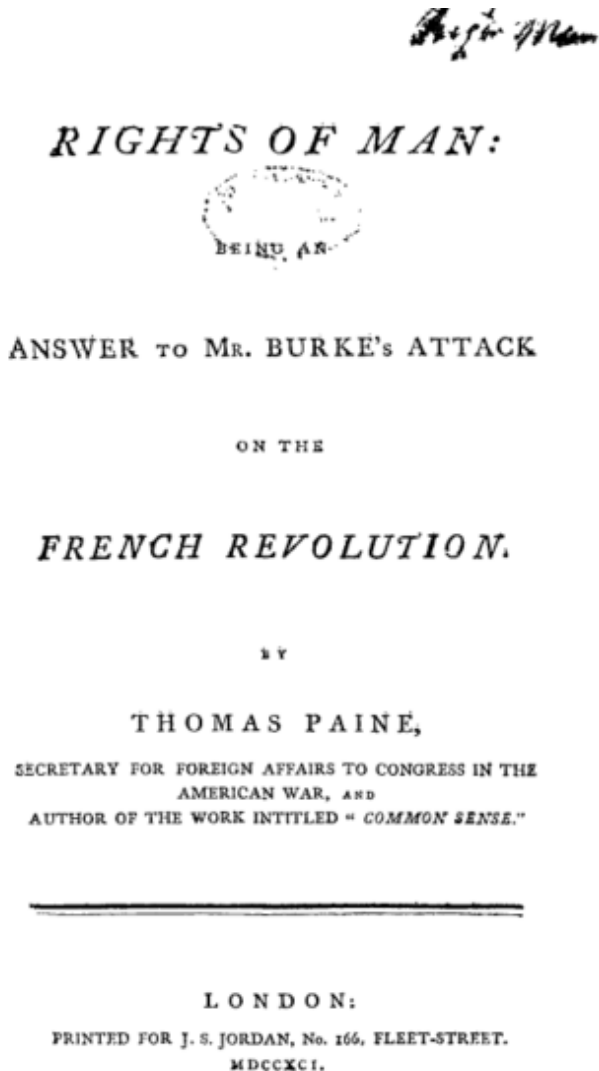


Figure 1.1 – Title page of Thomas Paine's work¹

¹ Rights of Man. (n.d.). Retrieved from https://en.wikipedia.org/wiki/Rights_of_Man

The very title of the Convention points to its objective—the prevention of violence—but the purpose of this international document is clear from the content of its preamble and the text itself: to ensure gender equality. Gender equality goes beyond “traditional family values,” according to which a woman’s role is reduced to that of a guardian of the family and a provider of comfort in the home: “Ukrainian women have always been guardians of the family, caring for warmth and comfort. The responsibility for raising children rested on their shoulders”¹.

It should be noted that, according to Ukrainian customs and traditions, women were considered the primary homemakers, responsible for maintaining a comfortable home, preparing meals, and caring for children. That is why they were seen as symbols of warmth, comfort, and harmony within the family. It was the woman who was responsible for the household activities in the family. She fulfilled the role of housewife, managing domestic affairs, growing vegetables, and engaging in weaving and embroidery.

It is evident that customs and the role of women in Ukrainian society vary depending on the region and ethnographic characteristics. However, a common feature is that it was the woman who was entrusted with household duties. Maintaining this approach under modern conditions means that women cannot fully realize their potential (one of the fundamental human rights is the right to the free development of one’s personality).

In this context, it is worth noting that the All-Ukrainian Council of Churches and Religious Organizations (according to the organization’s official website) does not include a single woman among its members (a total of 16 members)².

¹ Zhinky na prostorakh kozatskoho Zaporozhzhia. Chastyna I. Zhinky-berehyni [Women in the Cossack Zaporizhzhia Area. Part I. Women Guardians]. Retrieved from https://www.dnipro.lib.dp.ua/zhinki_kozachki_beregini

² Vseukrainska Rada Tserkov i relihiinykh orhanizatsii. (n.d.). Spysok chleniv Vseukrainskoi Rady Tserkov i relihiinykh orhanizatsii [List of Members of the All-Ukrainian Council of Churches and Religious Organizations]. Retrieved from <https://vrciro.org.ua/ua/council/members>

It is quite clear that the values described are not compatible with human rights. Rights are granted not only to men but also to women; they are equal in rights. That is precisely why it is appropriate to speak not of “rights of man” but of “human rights.”

The next important aspect, noted above, that must be taken into account when understanding human rights is the inadmissibility of discrimination based on age. Yes, we have noted that “rights of man” were predominantly perceived as the rights of an adult male. And in this context, we emphasize that an important issue that must be addressed by Ukrainian society is ensuring the rights of children and persons of retirement age.

Unfortunately, we must acknowledge that these issues pose a significant challenge for the Ukrainian state. Indeed, both groups—children and the elderly—are often the ones who are “forgotten” (albeit for different reasons). A telling example in this regard (particularly concerning pensioners) is the constant appeals by such individuals to the courts (including the European Court of Human Rights) to set pension levels high enough to ensure decent living conditions.

For example, consider the case of *Pronina v. Ukraine* (Application No. 63566/00), in which the applicant appealed to the national courts requesting a resolution of her pension dispute with the social security authority. Pronina pointed out that when her pension was granted, the relevant authorities had disregarded the requirements of Article 46 of the Constitution of Ukraine (pursuant to Part 3 of Article 46 of the Constitution, “pensions, other types of social benefits and assistance that constitute the primary means of subsistence must ensure a standard of living not lower than the subsistence minimum established by law”¹), regarding the relationship to the subsistence minimum. No national court even attempted to analyze this claim by the applicant. Under these circumstances, the European Court of Human Rights found that

¹ Verkhovna Rada of Ukraine. (1996). *Konstytutsiia Ukrainy vid 28 chervnia 1996 roku* [Constitution of Ukraine of June 28, 1996]. *Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of the Verkhovna Rada of Ukraine*, 30. [in Ukrainian].

Ukraine had violated the right to a fair trial (Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms)¹.

It is important to understand in this context that a child is also a human being who possesses inherent rights simply by virtue of belonging to the human race. Indeed, this aspect (the impossibility of imposing restrictions on rights based on age) is reflected in a number of international legal instruments; however, as we have noted, children's rights are quite often "overlooked." In our opinion, one of the reasons for this may be a lack of awareness or a misunderstanding of the nature of human rights, which leads to the disregard or underestimation of children's rights in various legal discourses.

In this context, we should also mention a specific foreign case. For instance, the case of *A. v. the United Kingdom* (Application No. 3455/05) is illustrative, as it specifically addressed the treatment of a child and the recognition or non-recognition of the child as a rights-holder. We emphasize that this concerns England, where the doctrine of the rule of law was formed. English legislation provided for the possibility of raising a child through "moderate corporal punishment," as it allowed parents to administer such punishment to a child without being held legally liable.

We would add that the existence of such a legislative provision, in our opinion, reflects an attitude toward the child who is not fully recognized as a holder of human rights and is viewed purely as an object of upbringing who must unquestioningly obey the parents' will. And since the case reached the European Court of Human Rights, it is evident that the national courts did not accept the position of the child, who complained that his beatings constituted treatment that degrades human dignity and inhuman treatment.

One cannot overlook the fact that the consulting pediatrician who examined the applicant found that he (the boy was nine years old at the

¹ European Court of Human Rights. (2006). Case of *Pronina v. Ukraine* (Application No. 63566/00, Judgment of 18 July 2006). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-76457>

time) had been beaten with a garden cane, to which significant force was applied on more than one occasion¹.

Furthermore, let us also note the judge's remarks to the jury (we are referring to the case heard by the national court): "It is a perfectly valid defense that the alleged violence was merely the child's upbringing by his father—in this case, his stepfather—provided that such upbringing was moderate in method, means, and frequency. Or, in other words, reasonable. The defendant does not have to prove that this was lawful discipline. The prosecution must prove that it was not. This case is not about whether a very 'difficult' boy should be punished. It is about whether what was done here was reasonable or not, and you must judge that..." By a majority vote, the jury found that the applicant's stepfather was not guilty of the assault that caused actual bodily injury².

It was precisely on the basis of the rule of law that the European Court of Human Rights ruled that such English legislation violated the prohibition against torture and inhuman or degrading treatment (Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms)³. Such legislation deprived the child of the ability to defend themselves, to employ any means of resistance, restraint, etc. It should be noted that this was 1998, the end of the 20th century. Fifty years after the adoption of the Universal Declaration of Human Rights, Article 1 of which states that all human beings are born equal in dignity and rights, and Article 2-on equality of rights regardless of "other status"⁴ (age is not explicitly listed, but this list is not exhaustive).

¹ European Court of Human Rights. (1998). Case of A. v. the United Kingdom (Application No. 100/1997/884/1096, Judgment of 23 September 1998). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-58232>

² The same.

³ The same.

⁴ United Nations. (1948). Universal Declaration of Human Rights. Retrieved from <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

We should also mention another case, *Tyrer v. the United Kingdom* (Application No. 5856/72), which involved the following circumstances. The applicant, Anthony M. Tyrer, a British citizen (who was fifteen years old at the time of the events in question), pleaded guilty before the local juvenile court to an unlawful assault that caused bodily harm to a senior at his school. The assault, committed by the applicant in the company of three other boys, was motivated by the fact that the victim had reported that the boys had brought beer to school. The applicant was sentenced to three strokes in accordance with the relevant legislation. The applicant appealed the sentence to the Government Division of the Supreme Court of the Isle of Man. The appeal was heard and dismissed; the court held that an unprovoked assault resulting in actual bodily harm was always very serious and that there were no grounds for interfering with the sentence. The court ordered the applicant to undergo a medical examination that same morning to obtain a doctor's opinion that the applicant was fit to serve his sentence.

Despite the authorities' observation that the corporal punishments at issue in this case do not violate the Convention, as they do not provoke public outrage on the island, and the execution of the punishment is as follows: it is carried out in private, without publication of the offender's name; a preliminary medical examination is conducted; the number of strokes and the size of the cane are strictly regulated; a doctor is present who may order the punishment to be stopped; in the case of a child or young person, parents may be present if the offender so desires; the flogging is carried out by a police constable in the presence of a senior colleague, the European Court of Human Rights found that the state had violated Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms through the application of a punishment that degrades human dignity¹.

¹ European Court of Human Rights. (1978). Case of *Tyrer v. the United Kingdom* (Application No. 5856/72, Judgment of 25 April 1978). Retrieved from <https://hudoc.echr.coe.int/fre?i=001-57587>

In addition, society's or the government's priorities may sometimes be focused on other issues, such as the economy, politics, or security. In such situations, children's rights may be viewed as secondary, unimportant, or similar.

Despite this, active efforts are underway worldwide to ensure respect for children's rights. A number of international documents have been adopted in this area. A significant number of countries (particularly those with democratic constitutional regimes) have their own laws and implement corresponding policies aimed at protecting children's rights.

In this regard, one cannot fail to mention the research by Ukrainian scholars Y. Zavgorodnia and A. Kuchuk, the very subject of which was to clarify the specific features of understanding children's rights under various state-legal regimes. Moreover, in the very title of their work, the scholars highlighted the importance of ensuring children's rights for distinguishing the methods and means of exercising public authority. It is difficult to disagree with the conclusion of these legal scholars. In their well-reasoned view, "the attitude of state authorities toward children's rights is an additional characteristic that defines the state-legal regime. In democratic states, children's rights are interpreted as opportunities that belong to the child alongside human rights; their existence is conditioned by the need for additional protection of the child due to the psychosomatic characteristics of their development. In this context, the child is viewed as a subject of social relations with interests and needs of their own"¹.

We would add that it is important to continuously take a range of measures to raise public awareness of what children's rights entail and to incorporate them into global discussions on human rights. We believe this will help build a just and equitable society in which the rights of every individual are realized and protected.

¹ Zavhorodnia, Yu.S., & Kuchuk, A.M. (2022). Prava dytyny yak kryterii derzhavno-pravovoho rezhymu [Children's Rights as a Criterion of a State-Legal Regime]. *Naukovyi visnyk publichnoho ta pryvatnoho prava – Scientific Bulletin of Public and Private Law*, 1, 3–7. [in Ukrainian]. P. 7.

In the context of our study, the principle of equality in rights cannot be overlooked. As noted above, for a long time, rights were perceived solely as opportunities, particularly for white men. For a long time, even despite the enshrinement of equality in rights, white people were viewed as the bearers of such opportunities. The history of the United States of America is illustrative in this context. Indeed, the Declaration of Independence of that nation states, among other things: “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness”¹.

It is worth noting that this document was signed in 1776, but it would take two hundred years before one could speak of actual equality (particularly in the context we are discussing). For example, we can point to David J. Chalmers’s study, which examines the activities of the Ku Klux Klan in considerable detail. “The only work that examines Ku Kluxism throughout its entire history. ... Hooded Americanism is exhaustive in its rich details and use of primary sources to paint a picture of a century of terror. The work is comprehensive, as it covers the entire period—John Hope Franklin”².

The Ku Klux Klan, which began its activities in the state of Tennessee, spread quite rapidly throughout the southern states of the United States. The main goal of this organization was to suppress the rights of Black citizens and improve the situation of white Southerners.

In its actions, the Ku Klux Klan primarily used methods such as violence, persecution, murder, and the burning of crosses to spread fear among Black citizens. The organization was opposed to civil rights, particularly the right to vote and equal status for Black people. Although the Ku Klux Klan’s activities were curtailed in the 1870s due to federal

¹ United States National Archives. (n.d.). Declaration of Independence: A Transcription. Retrieved from <https://www.archives.gov/founding-docs/declaration-transcript>

² Chalmers, D.J. (1987). *Hooded Americanism: The History of the Ku Klux Klan*. Duke University Press.

laws and public outcry, the organization resurfaced at various points in U.S. history.

According to Britannica, the Ku Klux Klan reached its peak in the 1920s, when its membership exceeded 4 million nationwide, and revenue came from the sale of memberships, regalia, costumes, publications, and rituals. The burning cross became the symbol of the new organization, and members of the Klan, dressed in white robes, participated in marches, parades, and nighttime cross burnings across the country. The Klan experienced its last surge in 1928, when Alfred E. Smith, a Catholic, ran for president as the Democratic Party's nominee¹.

Isolated cases of discrimination based on skin color exist in many democratic states. Ukraine is no exception. However, it should be emphasized that the extent and nature of such discrimination may vary depending on a number of factors, including region, social environment, and other factors.

In this context, it is worth mentioning the case of *A. v. the United Kingdom* (Application No. 35373/97), which raises similar issues. It should be noted that in this case, the infringement of the applicant's rights was committed by a member of parliament, who consequently enjoys parliamentary immunity; therefore, the applicant was deprived of the opportunity to properly exercise her right to judicial protection².

Currently, the following are among the possible examples of human rights violations based on this criterion (note that this does not apply solely to Ukraine):

First, this concerns the field of labor relations. Discrimination in hiring based on skin color can take the form of direct or indirect

¹ Encyclopaedia Britannica. (n.d.). Ku Klux Klan Hate Organization, United States. Retrieved from <https://www.britannica.com/topic/Ku-Klux-Klan/Revival-of-the-Ku-Klux-Klan>

² European Court of Human Rights. (2002). Case of *A. v. the United Kingdom* (Application No. 35373/97, Judgment of 17 December 2002). Retrieved from <https://hudoc.echr.coe.int/fre?i=001-60822>

discrimination. This type of discrimination may include refusal to hire, denial of a promotion, or negative treatment of an employee based on their skin color.

Second, this concerns housing relations. People may face discrimination in the housing market because of their skin color. This type of discrimination may involve a refusal to provide housing, restrictions on the choice of residential areas, or negative attitudes from neighbors or landlords.

Third, this is the social sphere. People may face stereotypes, beatings, insults, or negative societal perceptions, which are manifestations of social discrimination.

Fourth, this is systemic discrimination. We are referring to potential discrimination by law enforcement agencies, judicial bodies, or other state institutions. For example, consider profiling, unfair treatment by law enforcement officials, or obstacles to access to the courts.

Thus, the above confirms the earlier point that human rights were perceived in a limited manner and considered primarily from a strictly domestic perspective, which shaped the essence of the subsequent theory of human rights that emerged in the late first half to early second half of the 20th century, primarily within the Western legal tradition.

In light of the above, one must to some extent agree with S. Holovaty regarding the possibility of using the term “human rights” in legal discourse as an adequate translation of the corresponding English term.

We should add that such a substitution would make it possible to avoid a clear distinction between the phenomenon denoted by the term “human rights” and the concept of “human rights” with no substantive meaning. It was precisely this (a concept with no substantive meaning) that Soviet jurisprudence intended it to be, making rights contingent upon the will of public authorities and asserting that rights remain purely formal even if enshrined in the Constitution or laws. The key is their formalization not in these legislative acts, but in subordinate regulations that establish the “mechanisms” for realizing the relevant opportunities. A. Hoga and A. Kuchuk described this system quite clearly when analyzing

human rights guarantees through the lens of European and Ukrainian discourse. In their view (with which we fully agree), “to implement legal provisions, it is necessary to create an appropriate mechanism.” Thus, schematically, this can be represented as follows: enshrining rules of conduct (human rights) in relevant norms—defining the implementation procedure—creating relevant institutions—oversight and control. If one element of the chain is missing, it is clear that it cannot function”¹.

Since legal discourse employs concepts such as women’s rights, citizens’ rights, students’ rights, pensioners’ rights, children’s rights, and so on, the category that encompasses these concepts is human rights. However, in specific relationships, a person acts specifically as a citizen, a child, or in some other role. A person is perceived as an abstraction, and therefore human rights “take a back seat,” leaving the rights of citizens, children, and others in the foreground.

It was precisely this understanding of human rights that was part of Soviet ideology, downplaying the significance of the phenomenon, particularly as a means of limiting public authorities—which was advantageous to the Soviet regime.

Under such conditions (or within the context of post-Soviet discourse), the use of the term “human rights” would help “substantivate” a concept previously defined by a term with no specific meaning (human rights) by providing a concrete context, as it would be distinguished from women’s rights, citizens’ rights, and others.

Thus, the above allows us to draw a preliminary conclusion that within the post-Soviet space, it is possible to use two concepts: human rights and human rights, which are understood as follows:

- human rights—this concept refers to the capabilities with which all people are endowed (by nature, not by public authorities); these

¹ Hoha, A.M., & Kuchuk, A.M. (2012). *Pravovi harantii prav liudyny: Ukraina ta Yevropa: teoretyko-pravovyi dyskurs* [Legal Guarantees of Human Rights: Ukraine and Europe: Theoretical and Legal Discourse]. *Pravo i suspilstvo – Law and Society*, 2, 6–10. [in Ukrainian]. P. 9.

capabilities are fundamental in comparison to other rights—such as citizens' rights, pensioners' rights, and so on;

- human rights—a term carried over from Soviet legal discourse that is devoid of meaning. This concept is a generalization of all other rights; however, it is itself secondary, derivative, “too abstract,” and so on. This term requires further definition by selecting the appropriate type of social relationship and determining the specific role of the relevant subject. Thus, if these are educational relations, then human rights are “supplemented” by the rights of a student or a scientific and pedagogical worker; if these are citizenship relations—by the rights of a citizen and the rights of the relevant state authorities, etc.

However, in this work, we use the term “human rights” instead of “rights of the human being”; in doing so, we use it specifically to denote the phenomenon that in the Western legal tradition is referred to as “human rights.” This choice is explained as follows.

1. As the national legal system moves away from the prevalence of legal positivism and toward the implementation of a naturalistic understanding of law, virtually all legal phenomena require reassessment in terms of how their content aligns with new circumstances. Accordingly, human rights also require a substantial rethinking. Whereas previously this term denoted the rights a person received from public authorities as reflected in the text of a law or subordinate regulatory act, today this term reflects an entirely different phenomenon—those rights that are inherent to the person and define the limits of the activities of state authorities and local self-government bodies.

In this regard, it is important to note a certain consistency, specifically regarding the use of established terms (albeit with different connotations). In this context, one can to some extent argue that the specific term used is of secondary importance, provided that those using it understand its essential meaning and act accordingly.

2. The term “human rights” is used in the text of both Ukrainian legislation and the Constitution of Ukraine. Moreover, today the very concept of human rights is an integral part of domestic legal discourse.

It is this term that is used by legal professionals, including scholars, many of whom argue that there is no need to introduce a new term, “human rights,” in place of the established “human rights.”

We would add that, while generally recognizing the importance of correct terminology, one can agree with the argument that the term “human rights” may continue to be used; however, we emphasize the need for a fundamental change in the meaning of this concept.

The fundamental ideas upon which modern human rights theory is based are as follows.

First, there is the fundamental nature of human rights. Human rights are an integral part of human nature itself. Consequently, without rights, a person loses their very essence. Indeed, the history of society provides examples of this situation. We are referring to slaves. Slaves were people without rights. More precisely, those who had been deprived of their rights. A slave was not considered a subject of law or legal relations. The regime of property applied to them: a slave could be sold, given as a gift, punished, and even killed.

Slavery, as well as its various manifestations, is incompatible with human rights. In this regard, the case of *Siliadin v. France* (Application No. 73316/01) is illustrative. We have already analyzed the relevant decision of the European Court of Human Rights in this case in detail¹, so in this paper we will focus only on certain aspects of it in the context of our research. As a reminder, the case concerned the servitude of a fifteen-year-old citizen of Togo who had been illegally brought to France and worked for a French family, performing domestic work and caring for children. In turn, the family promised to resolve the issue of legalizing the applicant's stay in France. Thus, the case involved the exploitation of a minor who was in a vulnerable situation².

¹ Korniienko, M.V. (2021). *Suchasna paradyhma protydyi nasylnytskym zlochynam shchodo ditei* [Modern Paradigm of Counteracting Violent Crimes against Children]. Odesa : Odesa State University of Internal Affairs. [in Ukrainian]. P. 146–148.

² European Court of Human Rights. (2005). *Case of Siliadin v. France* (Application No. 73316/01, Judgment of 26 July 2005). Retrieved from <http://hudoc.echr.coe.int/rus?i=001-69891>

In light of our research topic and the thesis stated above, we note that the European Court of Human Rights cited specific provisions of Council of Europe legal instruments in its judgment. We refer, in particular, to Recommendation 1663 (2004) of the Parliamentary Assembly of the Council of Europe, adopted on June 22, 2004. This document states the following: “1. The Parliamentary Assembly is concerned that slavery continues to exist in Europe in the twenty-first century. Although slavery was officially abolished over 150 years ago, thousands of people are still held as slaves in Europe, treated as objects, humiliated, and abused. Modern-day slaves, just as in the past, are forced to work (through mental or physical coercion) without financial compensation or for very little pay. They are physically restrained or otherwise restricted in their freedom of movement, and are treated in a degrading and inhumane manner”¹.

We would also like to quote the following provision from these recommendations, which addresses slavery and human rights, and the impossibility of their coexistence: “The Council of Europe must have zero tolerance for slavery. As an international organization that defends human rights, the Council of Europe must lead the fight against all forms of slavery and human trafficking. The organization and its member states must promote and protect the human rights of victims and ensure that those who have committed the crime of domestic slavery are held accountable, so that slavery is finally eradicated in Europe”².

In summary, we emphasize the fundamental importance of human rights for an accurate understanding of the essential nature of humanity. In modern society, it is unacceptable to deprive a person of their rights by treating them as an object of legal relations, as was the case during the era of slavery. By depriving people of their rights, the state “destroys” the person themselves. Therefore, the state bears the responsibility

¹ Council of Europe Parliamentary Assembly. (2004). Recommendation 1663 (2004). Retrieved from <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17229&lang=en>

² The same.

to ensure these rights. This is precisely what a modern democratic state should be.

From this follows the entirely obvious conclusion that in states with undemocratic political and legal regimes, public authorities deny the fundamental nature of human rights, treating them as secondary and supplementary to a person's status—rights that may or may not exist for a person or may not be possessed by a person (which leads to the possibility of manipulating rights, placing a person in a vulnerable position where, instead of demanding from the state, they become a subject of supplication, dependent on the goodwill of public authorities).

Second, this concerns the natural character of human rights. Human rights are natural. Once again, we note that the Universal Declaration of Human Rights states that everyone is born with rights and human dignity (Art. 1)¹.

This characteristic of human rights emphasizes that rights are not granted to a person by any entity, including public authorities. A person is born with them. The existence of a person's rights is not contingent upon the will of anyone or anything.

At the same time, when considering this characteristic of human rights, we cannot fail to highlight certain problematic aspects. We are referring to the concept of the “point of origin,” that is, the moment when a person “acquires” rights. In this regard, it is worth noting the various possible interpretations of provisions such as “all human beings are born ... with rights” and “at birth, all people have equal rights,” as well as the related legal issues. Quite telling in this regard is the legal regulation of abortion, which varies from country to country, including within Europe.

Thus, some domestic scholars quite rightly emphasize that “the issue of banning abortion and ensuring the right to life for the unborn child

¹ United Nations. (1948). Universal Declaration of Human Rights. Retrieved from <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

is becoming particularly relevant in many parts of the world. For Ukraine, this issue attracts attention in the context of European integration and the need to harmonize national legislation with European Union norms, as well as given the need to implement pan-European standards in the field of human rights protection into national law”¹.

The next legal issue related to this aspect of human rights is the question of whether rights survive a person's death. Or, as some legal scholars put it: Does a deceased person have rights? In this context, we should mention the studies by O. Torbas² and S. Slipchenko³, who focused on the criminal and civil law aspects of this topic. Nor can we overlook the general legal study dedicated to examining the issue of a deceased person as a subject of law, conducted by Ukrainian lawyer D. Gudyma⁴.

However, it should be noted that the category of “human rights” traditionally applies to living individuals, as it is linked to concepts such as human dignity, freedom, and the protection of human rights. Although, of course, one can speak of certain terms that refer to the “capabilities” of a deceased person. For example, we might mention

¹ Mamalyha, V.V., & Kuchuk, A.M. (2022). Pravo liudyny na zhyttia vs. pravo na rozporiadzhennia vlasnym tilom u aspekti zaborony abortiv (yevropeiskyi kontekst) [The Human Right to Life vs. the Right to Dispose of One's Own Body in the Context of Abortion Prohibition (European Context)]. *Pivdenoukraiynskiy pravnychy chasopys – South Ukrainian Law Journal*, 4(2), 20–24. [in Ukrainian].

² Torbas, O.O. (2015). Pravove polozhennia trupa v kryminalnomu protsesi [Legal Status of a Corpse in Criminal Procedure]. In *Advokatura: mynule ta suchasnist* [Advocacy: Past and Present] (Proceedings of the V International Scientific Conference, pp. 204–205). Odesa : Yurydychna Literatura. [in Ukrainian].

³ Slipchenko, S.O. (2016). Tilo liudyny, yaka pomerla, yak ob'ekt tsyvilnoho prava [The Body of a Deceased Person as an Object of Civil Law]. In *Problemy tsyvilnoho prava ta protsesu* [Problems of Civil Law and Procedure] (Proceedings of the Scientific and Practical Conference, May 27, 2016). Kharkiv : Kharkiv National University of Internal Affairs. Retrieved from <https://univd.edu.ua/science-issue/scientist/179> [in Ukrainian].

⁴ Hudyma, D. (2010). Pomerla liudyna yak sub'ekt prava (netryvialni dumky) [A Deceased Person as a Subject of Law (Unconventional Reflections)]. *Pravo Ukrainy – Law of Ukraine*, 12, 260–265. [in Ukrainian].

the right to burial, the right to bodily integrity (particularly important in connection with the possibility of organ transplantation), and others. At the same time, generally speaking, the concept of human rights (at least at the outset of its formation and application) presupposes their application to living persons. And the issues raised are the subject of academic debate within legal (and other) discourse.

We should add that in the circumstances following a person's death, there are certain ethical, religious, and legal issues related to respect for the body, burial, inheritance, and so on. These issues may be regulated by provisions of national legislation, in particular, norms that define the rights and obligations of certain persons regarding a deceased person.

Therefore, although human rights theory usually concerns living persons, in cases of a person's death, there are certain legal and ethical norms that may influence how a deceased person should be treated.

Thus, the natural character of human rights indicates that these rights are inherent to every person purely by virtue of their existence; human rights belong to a person from birth. This characteristic of rights implies the understanding that a person possesses certain inalienable capacities that cannot be prohibited or revoked by external institutions, such as public authorities, legislation, or civil agreements.

It is worth noting in this context the distinction between absolute and relative rights, as well as the question of whether a person can renounce their rights. Contemporary rights theory generally does not provide for such a renunciation. A telling example in this regard is the right to life (which, as the European Court of Human Rights has noted, does not imply a right to death¹) and the recognition by certain states of the right to euthanasia. However, it should be noted that there is no uniform approach among European states regarding the possibility of authorizing euthanasia.

¹ European Court of Human Rights. (2002). Case of Pretty v. the United Kingdom (Application No. 2346/02, Judgment of 29 April 2002). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-60448>

The inherent nature of human rights stems from the recognition that there is something universally human, something that is naturally inherent in every person and serves as the foundation for the recognition of their rights and dignity. Human rights are considered independent of any political, social, or cultural context, and they are regarded as a prerequisite for any just and democratic organization of society.

The natural character of human rights as a defining feature may have various interpretations and philosophical foundations, but overall, the theory of human rights is based on the idea that every person has fundamental rights that stem from their human nature or existence, regardless of the specific context or legal system.

Thirdly, there is the inalienable nature of human rights. This property of human rights is closely linked to both their fundamental nature and their natural character. Thus, what is fundamental to a person—what defines their essence (and, moreover, is inherent to human nature itself)—cannot be taken away from them.

We should also note that even when vested with the authority to restrict human rights, public authorities cannot exceed the limits of such restrictions; in particular, rights cannot be restricted to the extent that they infringe upon the very essence of the right itself.

The basis for this characteristic is the idea that human rights are universal, inviolable, and independent of any circumstances, meaning that every person has the right to respect for their dignity, freedom, and equality before the law, regardless of their origin, race, gender, or any other factors.

The inalienability of human rights implies that no one may deprive a person of their rights or restrict their rights without proper grounds. This characteristic of human rights serves as a constraint on the actions of public authorities and a guarantee against any violence, torture, or inhuman treatment of a person. It should be emphasized that the inalienability of human rights means that no one may restrict these rights unless provided for by law and necessary in a democratic society to protect other rights or to achieve another legitimate objective.

In light of the above, it is worth noting that the current Criminal Code of Ukraine provides for a punishment known as “imprisonment”¹; a terminological analysis of this term suggests that the individual is deprived of a specific right, which does not fully correspond to the essence of this criminal law institution. That is why the attempt by the authors of the draft Criminal Code of Ukraine to move away from this term by providing for imprisonment (imprisonment for a specific term and life imprisonment² as a type of criminal punishment should be viewed positively.

It can be argued that the inalienability of human rights is a fundamental principle in international law, as well as in the constitutions of many states, since it guarantees the protection of human rights and fundamental freedoms from state interference and discrimination. The inalienability of human rights contributes to the functioning of a society based on justice and humanity, in which every person has the opportunity to develop, freely express their opinions, and so on.

A rather vivid demonstration of this characteristic of human rights is the guarantee of the right to life. Specifically, we refer to the general attitude (within the member states of the Council of Europe) toward the institution of the death penalty, which can be traced in the genesis of the Convention for the Protection of Human Rights and Fundamental Freedoms (through the relevant Protocols to this Convention). Thus, while the death penalty was initially considered an acceptable form of criminal punishment, today it is prohibited as a criminal punishment within the framework of this international organization (and, accordingly, among its member states).

¹ Verkhovna Rada of Ukraine. (2001). Kryminalnyi kodeks Ukrainy [Criminal Code of Ukraine]. Vidomosti Verkhovnoi Rady Ukrainy – *Bulletin of the Verkhovna Rada of Ukraine*, 25–26, Art. 131. [in Ukrainian].

² Working Group on the Development of the Criminal Code of Ukraine. (2023). Kryminalnyi kodeks Ukrainy. Kontrolnyi tekst proiektu (stanom na 22.05.2023 roku) [Criminal Code of Ukraine. Control Text of the Draft (as of 22 May 2023)]. Retrieved from <https://newcriminalcode.org.ua/upload/media/2023/05/22/kontrolnyj-tekst-proiektu-kk-22-05-2023.pdf>

We emphasize that one of the factors behind the prohibition of the death penalty in states with a democratic constitutional regime is precisely respect for human rights and, in particular, the fact that democratic states recognize that every person has inalienable, non-transferable rights and human dignity. The death penalty is considered a violation of these rights. The abolition of the death penalty is an expression of respect for fundamental human rights.

Fourth, equality is inherent to human rights. Equality is one of the fundamental characteristics of human rights and is regarded as a general legal principle that must be protected in society. Equality implies that all people are born free and equal in dignity and rights¹. This principle implies that every person has the right to equal and fair treatment, without discrimination on the basis of race, sex, religion, skin color, nationality, social status, political beliefs, or any other characteristic.

It should be noted that equality in rights also implies that all people have the right to a fair and independent court that will adjudicate violations of their rights according to the same standards and in accordance with the same rules. No person should be deprived of their rights or subjected to persecution on the basis of their personal characteristics or beliefs.

Equality entails equal opportunities and the absence of unjustified advantages. This means that all people must have equal opportunities to access education, employment, healthcare, housing, and other social benefits. The absence of discrimination allows every person to develop and reach their potential on an equal footing.

Equality, as a hallmark of human rights, is a vital component of a democratic society that strives to ensure justice and the protection of every person's rights. Protecting equality involves enacting laws and implementing policies aimed at preventing discrimination and inequality, as well as creating conditions for equal opportunities and

¹ United Nations. (1948). Universal Declaration of Human Rights. Retrieved from <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

the realization of every person's potential regardless of their personal characteristics. This means taking into account the diverse needs and interests of different population groups, ensuring access to resources and services, and developing policies aimed at reducing social inequalities and supporting vulnerable groups. Equality as a human rights principle is intended to ensure a just and equitable society where every person has the opportunity to realize their rights and potential, without restrictions or discrimination.

Fifth, human rights are inherently universal. Like the characteristics of human rights mentioned above, this feature is closely linked to the previous ones. Thus, the inherent nature and equality of human rights imply the recognition that a person possesses certain capabilities regardless of, for example, their location. We are referring to the territorial aspect: regardless of which state a person is located in, they possess all their rights (human rights). Differences may exist, for example, in the rights of a citizen (or other rights of a person as a participant in specific legal relationships); however, as we have established, human rights and the rights of a citizen are concepts of different orders, and the corresponding terms denote legal phenomena that are entirely different in nature and essence.

The universality of human rights, as a characteristic of rights, is closely linked to equality and implies that human rights are independent of nationality, race, gender, religion, and so on. This characteristic of human rights is enshrined in Articles 1 and 2 of the Universal Declaration of Human Rights, which we have already mentioned on several occasions¹.

The concept of the universality of human rights holds that the rights and fundamental freedoms of every person must be protected, regardless of the political or legal system. This, in turn, means that no state, organization, or individual may deprive a person of their rights or freedoms, which are common to all.

¹ United Nations. (1948). Universal Declaration of Human Rights. Retrieved from <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

The universality of human rights is formally enshrined in various documents of international and national significance. These include, in particular: the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights (these documents were adopted within the framework of the United Nations). In accordance with these international legal instruments, the universality of human rights is a fundamental characteristic that ensures justice, freedom, and dignity for all people worldwide.

In exploring the meaning of this characteristic of human rights, one cannot overlook the issue of the priority of human rights over customs and cultural characteristics that have developed within a particular society (within a particular state). The universality of human rights implies that certain rights are inalienable and inviolable, regardless of cultural or national characteristics.

It should be noted that a number of rights can be identified on which there is general agreement among many states and organizations regarding their status as natural human rights. For example, the right to life, the right to freedom from torture and slavery, the right to freedom of expression, the right to peaceful assembly, and others. In general, to understand the list of these rights, one should familiarize oneself with the Universal Declaration of Human Rights. We will once again emphasize the distinction between absolute rights (which cannot be restricted under any circumstances) and relative rights (which may be restricted subject to certain conditions).

At the same time, we note that situations frequently arise in which there is a contradiction between human rights and the cultural practices or customs existing in certain countries. In such cases, it is important to find a rational balance where the universality of human rights is recognized, but with due regard for the context and specific characteristics of each culture. This may require dialogue, education, and the search for ways to preserve human dignity and rights while accounting for cultural differences. However, we emphasize that

in democratic states governed by the rule of law, the priority in the event of such a conflict is unequivocally given to human rights.

It is also important to note that no culture or tradition can justify human rights violations. There are international laws and norms that oblige states to respect human rights, including the protection of vulnerable groups, women, children, minorities, persons with disabilities, and others.

However, it should be noted that, in general, striking a balance between the universality of human rights and the cultural characteristics of a particular state is a complex process. It is important to take into account the context, historical background, sociocultural conditions, and specific needs of each society. Nevertheless, the fundamental principles of human rights must remain indisputable and inviolable; therefore, states must ensure the protection of human rights, foster respect for human rights regardless of their cultural characteristics, and take measures to ensure the realization of these rights. At the same time, it is possible to seek ways to adapt and contextualize human rights while preserving their essential characteristics, so that they are relevant and acceptable to every culture.

The universality of human rights helps prevent situations in which cultural practices are used as an excuse for human rights violations, violence, or discrimination. This principle helps establish standards that can serve as a guide for assessing respect for human rights and ensuring justice and dignity for all people.

It should be noted that contradictions often arise between human rights and religious teachings. In modern societies, however, priority must be given to human rights. In this context, let us recall a series of changes in the Catholic Church's attitude toward human rights. On this subject, the Ukrainian scholar S. Rabinovich quite rightly notes the following: "The general civilizational changes of the mid-20th century and the internal contradictions of Catholicism led to a social and doctrinal crisis within the latter. The need for the Catholic Church to adapt to existence in a secularized, ideologically pluralistic world

necessitated its transition from confrontational relations with non-Christian socio-political entities to dialogue with them”¹.

Once again, we should mention the Istanbul Convention, whose ratification by Ukraine took a very long time precisely because of opposition from the All-Ukrainian Council of Churches and Religious Organizations. To a certain extent, it can be argued that the ideology of human rights makes the human person the object of its focus, treating the person as an end (and never a means), hence the necessity of ensuring a dignified existence for every person throughout their life; in contrast, Christianity places God at the center of its ideology, and serving Him is the purpose of human existence (for the sake of a dignified afterlife for the soul), while the person must endure all hardships and challenges (sent by God to test humanity) during their lifetime, which undermines human rights.

At the same time, it is worth noting that the issue of religion and human rights requires a separate comprehensive study and somewhat goes beyond the scope of our subject. Therefore, we will not engage in a discussion on this issue. We will only add that such a study must also take into account the historical aspect, in particular, the activities of the Inquisition during the Middle Ages, which took place specifically within the framework of religious activity, in accordance with the church canons of that time. Thus, in general, the Inquisition can be viewed as a system of courts established by the Church to identify and suppress those deemed heretics or apostates from the Catholic faith. During the Inquisition, numerous crimes were committed, including torture and murder. These actions are incompatible with the principles of humanity and respect for human rights.

Thus, the priority of human rights over the customs and cultural characteristics of a particular state stems from the recognition of the

¹ Rabinovych, S.P. (2003). *Prava liudyny u pryrodno-pravovii dumtsi neotomizmu* [Human Rights in the Natural Law Thought of Neo-Thomism] (Extended abstract of Candidate's thesis). Odesa. [in Ukrainian].

universality, inherent nature, and inalienability of human rights and fundamental freedoms, which must be protected in all cultures.

Sixth, human rights take precedence over positive law. This characteristic of human rights logically follows from the features mentioned above. This feature points to the idea that human rights have a higher status and are indisputable regardless of the laws and norms adopted in a particular state or society. Legislation is a set of legal norms established by the state and having binding force. It defines rules of conduct, duties, and the responsibilities of individuals toward the state. However, the idea of the primacy of human rights emphasizes that even if positive law proclaims or establishes certain restrictions or exceptions to human rights, these restrictions must be justified, fair, and consistent with generally accepted international human rights standards. Accordingly, legislation must be consistent with human rights principles and standards and may not violate or restrict them without proper justification and exceptional circumstances.

When describing this characteristic, one cannot overlook the dictatorial laws adopted in Ukraine on January 16, 2014. Yes, they were laws, but they infringed upon the very essence of human rights. That is precisely why they were subsequently declared invalid. At the same time, it is also evident that a democratic government could not have adopted such laws.

Thus, the direct link between the content of laws (in the context of human rights) and a democratic state-legal regime is evident. We would also like to emphasize that during the competition for judicial positions, the Public Integrity Council cited the support of these dictatorial laws by certain candidates as a negative factor in their evaluations. We would also add that, in accordance with constitutional and legal norms, it is human rights that define the activities of public authorities, and not the other way around. The state must take human rights into account when making decisions.

This is confirmed by the principle that human rights serve as the limits on the activities of public authorities. Accordingly, the state

cannot enact an arbitrary law, as such a law would violate human rights; therefore, priority must be given to human rights, not to legislation.

To summarize the characteristics of human rights, let us quote from the report of the Secretary-General of the United Nations: “We cannot enjoy development without security, we will not enjoy security without development, and we will not enjoy either without respect for human rights”¹.

1.3 Principles of law enforcement agencies’ activities in the context of ensuring human rights

The study of the principles governing the activities of law enforcement agencies in the context of human rights protection is one of the key tasks of contemporary legal scholarship. As fundamental guiding principles, they form the normative and axiological framework of the entire law enforcement system, defining its direction, boundaries, and internal logic. In the sphere of human rights protection, they take on particular significance, as they serve not only as a regulatory instrument but also as a value-based guide that subordinates the activities of the state, represented by its law enforcement agencies, to the interests of the individual as the highest social value.

The focus on the principles governing the activities of law enforcement agencies is driven by several factors. First, the reform of the security sector in Ukraine, taking place amid armed conflict and European integration processes, requires a rethinking of the fundamental foundations of law enforcement agencies’ operations. Second, international legal standards in the field of human rights, enshrined in numerous conventions, declarations, and

¹ Human Rights And Development. URL <https://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/human-rights-in-relation-to-other-topics/human-rights-and-development>

recommendations of international organizations, form a complex system of principles, compliance with which is a prerequisite for the legitimacy of law enforcement actions. Third, extraordinary circumstances—such as a pandemic, armed conflict, or occupation—jeopardize established principles and require the development of reliable mechanisms to protect them.

We believe it is methodologically appropriate to categorize these principles into several interrelated but distinct levels: general legal principles that apply to the entire legal system; sector-specific principles inherent to administrative, criminal procedural, and other branches of law within which law enforcement activities are carried out; and special principles that directly define the standards of conduct for law enforcement agencies in their relations with individuals. In our view, it is precisely this three-tiered structure that allows for a systematic understanding of the fundamental basis of law enforcement activities in the context of ensuring human rights.

First, we will highlight the principle of the rule of law as the foundational principle of law enforcement activities. This principle occupies a central place in the system of principles governing law enforcement activities. Its constitutional enshrinement in Article 8 of the Constitution of Ukraine is combined with a broad doctrinal understanding that encompasses both formal (legal certainty, predictability, prohibition of arbitrariness) and substantive (conformity of law to the values of justice, dignity, and freedom) aspects. For law enforcement agencies, this principle means, above all, being bound by law in all forms of their activities—from proceedings in cases of offenses to operational-investigative measures and the use of coercion.

The Venice Commission of the Council of Europe consistently emphasizes in its reports that the rule of law is not limited to formal compliance with the law: it requires that laws be of high quality—accessible, understandable, consistent, and such that they limit the powers of the authorities to protect individual rights. It should be noted that the same approach is characteristic of the European Court of Human

Rights¹. This provision is directly relevant to law enforcement agencies: their activities must be based on powers clearly defined by law, carried out in accordance with the procedure prescribed by law, and subject to independent judicial oversight.

The practical implementation of the principle of the rule of law in the activities of law enforcement agencies involves several essential components. The first is the legality of the grounds for any interference with an individual's rights (arrest, search, wiretapping, etc.). The second is the proportionality of the measures taken to the circumstances of the specific situation. The third is procedural fairness: adherence to legally established safeguards when restricting human rights. The fourth is judicial review of the legality of law enforcement actions. The absence or insufficiency of any of these components constitutes a violation of the principle of the rule of law and, consequently, a violation of human rights.

Second, we will highlight the principle of legality. This principle is traditionally regarded as one of the fundamental principles of law and the state, requiring strict observance and enforcement of laws by all subjects of legal relations, especially by public authorities². With regard to law enforcement agencies, this principle takes on particular significance, as they are vested with broad powers, including coercive ones, that directly affect human rights and freedoms.

From a doctrinal perspective, two aspects of legality in the activities of law enforcement agencies should be distinguished. The first—the

¹ Kuchuk, A., & Hlioza, V. (2025). Mistse pravovladdia v systemi pryntsyviv publichnoho upravlinnia: kontseptualnyi vymir [The Place of the Rule of Law in the System of Public Administration Principles: A Conceptual Dimension]. *Teoretychni ta prykladni pytannia derzhavotvorennia – Theoretical and Applied Issues of State-Building*, 34, 496–505. [in Ukrainian].

² Kuchuk, A.M. (2024). Reformuvannia publichnoho upravlinnia v umovakh voiennoho chasu: aksiolohichniy aspekt [Reforming Public Administration in Wartime: An Axiological Aspect]. *Problemy suchasnykh transformatsii. Seriya: pravo, publichne upravlinnia ta administruvannia – Problems of Modern Transformations. Series: Law, Public Administration and Management*, 12. <https://doi.org/10.54929/2786-5746-2024-12-02-09> [in Ukrainian].

positive (active) aspect—obliges law enforcement agencies to actively work to enforce laws, prevent offenses, and protect citizens' rights. The second—the negative (restrictive) aspect—prohibits them from exceeding the limits established by law or taking actions not provided for or prohibited by regulatory acts. The interaction of both aspects ensures a balance between the effectiveness of law enforcement activities and the protection of human rights.

It should be noted that the principle of legality in law enforcement encompasses several interrelated requirements: the statutory establishment of the grounds and procedures for law enforcement actions; the mandatory adherence to established procedures; the prohibition of analogical application when imposing coercive measures; the obligation to respond to reported offenses; and liability for unlawful actions or inaction. These requirements correspond to international legal standards, in particular the principle of *nullum crimen, nulla poena sine lege*¹, which is one of the cornerstones of international human rights law.

In our view, the issue of gaps and conflicts in the legislation governing the activities of law enforcement agencies deserves special attention. In extraordinary situations—such as a pandemic or armed conflict—the legal framework often fails to keep pace with rapidly changing realities, creating the risk of decisions being made in the absence of a clear legislative basis. Resolving this problem requires, on the one hand, the prompt improvement of legislation, and on the other, the formation of a robust culture of law enforcement in which any doubt regarding the legality of actions is interpreted in favor of human rights.

Third, we note the principle of respect for human dignity as the absolute foundation of law enforcement activities. Human dignity is a fundamental value of modern human rights law and is recognized

¹ Kuchuk, A.M., Minchenko, O.V., & Orlova, O.O. (2021). *Praktyka Yevropeiskoho sudu z prav liudyny. Chastyna 1* [Case-Law of the European Court of Human Rights. Part 1]. Dnipro : Seredniak T.K. [in Ukrainian].

as an inviolable and inalienable attribute of every person regardless of any circumstances. Article 3 of the Constitution of Ukraine proclaims the human person to be the highest social value, while Article 28 guarantees everyone the right to respect for their dignity¹. At the international level, respect for human dignity is a fundamental principle enshrined in the Universal Declaration of Human Rights, the 1966 International Covenants, the UN Convention Against Torture, and numerous regional treaties.

It should be emphasized that for law enforcement agencies, the principle of respect for human dignity is absolute: it is not subject to any restrictions or derogations, even under a state of emergency or martial law. This fundamentally distinguishes it from most other rights and freedoms, which may be restricted under extraordinary circumstances under certain conditions. The prohibition of torture, cruel, inhuman, or degrading treatment or punishment is absolute and allows for no exceptions.

In practice, this principle applies to law enforcement activities in the following ways: the prohibition of torture and violence during investigative proceedings; the obligation to ensure decent conditions of detention; the requirement to treat detainees with respect regardless of the severity of the alleged crime; the prohibition of public humiliation or stigmatization of persons subject to law enforcement measures; and the obligation to provide necessary medical care. Violation of any of these requirements cannot be justified by any considerations of operational efficiency or public safety.

An important aspect is the connection between respect for human dignity and psychological interrogation practices. Numerous studies, including materials from the UN Committee Against Torture, convincingly demonstrate that methods that degrade human dignity

¹ Verkhovna Rada of Ukraine. (1996). Konstytutsiia Ukrainy vid 28 chervnia 1996 roku [Constitution of Ukraine of June 28, 1996]. Vidomosti Verkhovnoi Rady Ukrainy – *Bulletin of the Verkhovna Rada of Ukraine*, 30. [in Ukrainian].

are not only unlawful but also counterproductive in terms of obtaining reliable information. In contrast, interrogation based on respect for the individual demonstrates greater effectiveness while simultaneously meeting legal and moral requirements.

Fourth, let us consider the principle of proportionality, which is one of the cornerstones of public law, establishing the requirement for a correspondence between the means chosen to achieve a goal and the goal itself, between the extent of restrictions on an individual's rights and the socially significant goals for which such restrictions are imposed. In public law doctrine, this principle is usually broken down into three sub-principles: suitability (the chosen measure must be suitable for achieving the legitimate objective), necessity (the least restrictive of the available means should be chosen), and proportionality in the strict sense (the benefits of the measure must outweigh the associated restrictions on individual rights)¹.

In the context of law enforcement, the principle of proportionality governs, first and foremost, the use of coercive measures. The measured, limited, and appropriate nature of such measures is a prerequisite for their lawfulness. The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the UN in 1990, establish the requirement to minimize harm when using force, the duty to warn before using firearms (except in special circumstances), and the priority of non-violent methods².

The practical application of the principle of proportionality requires law enforcement agencies to conduct a so-called proportionality test

¹ Kuchuk, A.M. (2025). Natsionalna politsiia yak subiekt zastosuvannia dyskretsii: vyznachennia mezh [National Police as a Subject of Exercising Discretion: Defining the Limits]. *Problemy suchasnykh transformatsii. Serii: pravo, publichne upravlinnia ta administruvannia – Problems of Modern Transformations. Series: Law, Public Administration and Management*, 15. <https://doi.org/10.54929/2786-5746-2025-15-01-11> [in Ukrainian].

² United Nations. (1990). Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Retrieved from <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-use-force-and-firearms-law-enforcement>

when making decisions regarding the use of coercive measures. This test involves a sequential assessment of: the lawfulness of the objective; the suitability of the measure for achieving that objective; the availability of less restrictive alternative means; and the balance between the harm caused to an individual's rights and the public benefit of the measure. The absence of any of these elements constitutes a violation of the principle of proportionality and, consequently, renders law enforcement actions unlawful.

The issue of proportionality becomes particularly complex in extraordinary situations, when traditional law enforcement measures prove insufficient or inappropriate for responding to exceptional threats. Martial law, terrorist threats, and mass unrest—all these situations may justify the use of more severe coercive measures than under normal circumstances. However, even in such cases, the principle of proportionality remains in force: it merely allows for a broader range of permissible measures but does not abolish the requirements of justification and minimization of harm.

Fifth, we note the principle of non-discrimination and equal protection as the foundation of law enforcement in a multi-ethnic society. This principle is one of the fundamental principles of international human rights law, prohibiting any distinction, exclusion, restriction, or preference based on race, skin color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status, which nullifies or impairs the recognition, enjoyment, or exercise of human rights and fundamental freedoms. As applied to law enforcement agencies, this principle requires ensuring equal protection for all persons under their jurisdiction without any discrimination.

It should be noted that, in theory, a distinction should be made between direct discrimination (when a person is treated less favorably directly because of one or more protected characteristics) and indirect discrimination (when a formally neutral rule, criterion, or practice places individuals with certain protected characteristics at a disadvantage). Both forms of discrimination are impermissible in law enforcement

activities. A particular threat is posed by so-called racial or ethnic profiling—a practice in which law enforcement agencies search or detain individuals primarily on the basis of their racial or ethnic origin, rather than specific suspicions of having committed an offense.

The case law of the European Court of Human Rights has established a comprehensive system of standards regarding non-discrimination in law enforcement activities. In particular, in the case of *Timishev v. Russia*, the Court found a violation of Article 14 of the Convention in conjunction with Article 2 of Protocol No. 4 in connection with the police's refusal to allow the applicant to cross an administrative border on the basis of his Chechen origin¹. The Court emphasized that treating individuals differently in similar situations without objective and reasonable justification constitutes discrimination. Discrimination based on actual or perceived ethnic origin is a form of racial discrimination. Racial discrimination is a particularly egregious form of discrimination and, given its dangerous consequences, requires special vigilance and a vigorous response from the authorities. It is for this very reason that the authorities must use all available means to combat racism, thereby strengthening the democratic vision of a society in which diversity is perceived not as a threat, but as a source of enrichment².

Implementing the principle of non-discrimination requires law enforcement agencies not only to passively refrain from discriminatory actions but also to take active measures to ensure equal protection, including: training staff on non-discrimination and cultural sensitivity; developing and implementing protocols aimed at preventing profiling; maintaining statistical records to identify potential discriminatory practices; responding to complaints regarding discrimination through independent mechanisms; and engaging representatives of vulnerable groups in dialogue regarding law enforcement practices.

¹ European Court of Human Rights. (2005). Case of *Timishev v. Russia* (Applications Nos. 55762/00 and 55974/00, Judgment of 13 December 2005). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-71627>

² The same.

Sixth, we note the principle of transparency and accountability of law enforcement agencies as a prerequisite for effective human rights protection. This principle derives from the broader principle of openness of public authorities, which takes on particular significance in the field of law enforcement, where the risks of abuse are especially acute. Transparency means the availability of information about the activities of law enforcement agencies—their organizational structure, powers, rules and standards of conduct, statistics on the use of coercive measures, results of internal investigations, and so on. Accountability entails the existence of effective mechanisms for assessing the legality and effectiveness of law enforcement actions and holding those responsible for violations accountable.

It should be noted that legal doctrine distinguishes several levels of accountability for law enforcement agencies. Internal accountability is implemented through departmental oversight: internal audits, internal investigations, and disciplinary proceedings. External accountability encompasses parliamentary oversight, prosecutorial supervision, judicial review of law enforcement decisions and actions, as well as oversight by independent oversight bodies, including the ombudsman and specialized civilian oversight bodies for the police. Public accountability is ensured through mechanisms for civil society participation in evaluating the work of law enforcement agencies, access to public information, and media freedom.

The UN Standards on Responsible Policing, as summarized in the Rule of Law Guide for Police Management and Reform, emphasize that transparency and accountability are complementary: transparency without accountability becomes illusory openness, while accountability without transparency loses its substantive foundation. Therefore, both components are essential for the legitimacy of the law enforcement system.

In extraordinary situations, the principles of transparency and accountability face particular pressure: law enforcement agencies often receive additional powers while mechanisms for external

oversight are simultaneously weakened. The practice of martial law in Ukraine, as well as the experience of pandemic restrictions, demonstrate that ensuring accountability under such conditions requires special regulatory frameworks that provide for adapted forms of parliamentary and judicial oversight, as well as the continued functioning of independent oversight bodies even during a crisis.

Seventh, this is the principle of effectiveness, which entails a duty to take positive measures in the field of human rights protection. The modern concept of human rights is not limited solely to the state's negative obligations to refrain from human rights violations. It also includes positive obligations—the duty to take active measures to ensure real, rather than merely formal, respect for human rights. This concept has been elaborated in detail in the practice of the UN Human Rights Committee and the European Court of Human Rights, particularly in high-profile cases involving insufficient protection of individuals from violence by private actors or the failure to take measures to prevent foreseeable human rights violations.

With regard to law enforcement agencies, the principle of effectiveness and positive obligations means that they are required not only to refrain from violating human rights themselves, but also to protect individuals from violations by third parties. Law enforcement agencies are liable for failing to take measures to protect those under real and foreseeable threat (ECHR judgment in *Osman v. the United Kingdom*¹). Furthermore, the state is obligated to conduct an effective investigation in cases where serious human rights violations have occurred—even if they were committed by private individuals.

The principle of effectiveness requires law enforcement agencies to be effective in performing their functions: insufficient or merely

¹ European Court of Human Rights. (1998). Case of *Osman v. the United Kingdom* (Application No. 87/1997/871/1083, Judgment of 28 October 1998). Retrieved from <https://hudoc.echr.coe.int/fre?i=001-58257>

formal law enforcement activities that do not provide real protection of human rights may be equated with a violation of the state's positive obligations. At the same time, effectiveness cannot serve as a justification for rights violations: the maxim "the end justifies the means" is incompatible with the concept of human rights, which requires law enforcement agencies to strike a balance between effectiveness and respect for human rights that ensures both dimensions simultaneously.

Eighth, this is the principle of the inevitability of accountability for human rights violations, which is a necessary condition for the effectiveness of the entire human rights protection system. Impunity for human rights violations committed by law enforcement agencies not only harms victims but also undermines public trust in law enforcement institutions, destabilizes the rule of law, and erodes the authority of the law as a whole. The UN Committee Against Torture and the UN Human Rights Committee have repeatedly noted that impunity is one of the most serious obstacles to the effective protection of human rights in practice.

In the context of law enforcement, impunity can take various forms: formal (the absence of legal accountability), *de facto* (nominal accountability that does not correspond to the severity of the offense), and cultural (corporate solidarity within law enforcement agencies that prevents the reporting of violations by colleagues). All these forms of impunity are unacceptable and require systemic measures to address them.

Overcoming impunity requires a comprehensive approach: effective mechanisms for investigating complaints against law enforcement agencies (independent of those agencies themselves); criminal prosecution of officials who have committed human rights violations; compensation for victims; structural reforms aimed at eliminating the systemic causes of violations; and cultural changes within law enforcement agencies themselves that promote integrity and accountability. It is precisely this comprehensive approach that meets the requirements of international standards in the fight against impunity.

Ninth, we note the principle of partnership with the community, which is gaining increasing importance in contemporary concepts of law enforcement organization. It is based on the understanding that effective maintenance of law and order is impossible without the active involvement and support of the community. Law enforcement agencies cannot function as an isolated state apparatus—they are part of society and must reflect its values, needs, and priorities.

From the perspective of human rights protection, partnership with the community is important for several reasons:

- it promotes greater accountability of law enforcement agencies through direct feedback from the community;
- involving the community in law enforcement planning processes allows for better consideration of the needs of vulnerable groups and helps prevent systemic discrimination;
- law enforcement agencies that enjoy the trust and support of the community demonstrate significantly higher effectiveness, which indirectly contributes to better protection of human rights.

Police reform in Ukraine, which began in 2014, incorporated this principle as one of the key elements of the new model of policing. The Law of Ukraine “On the National Police” establishes the principles of partnership between the police and the public and stipulates that police activities are carried out in close cooperation and collaboration with the public, local communities, and civil society organizations. The practical implementation of this principle, however, is largely determined by the level of legal culture in society and the degree of public trust in law enforcement agencies.

It should be emphasized that the principles discussed do not exist in isolation from one another—they form a coherent system characterized by internal unity and interdependence. A violation of one principle typically leads to the distortion or erosion of the others: impunity undermines the rule of law; discrimination contradicts the principle of equality and human dignity; and lack of transparency makes effective accountability impossible. At the same time, adherence

to one principle reinforces the implementation of others: respect for human dignity fosters public trust, trust enhances effectiveness, and effectiveness strengthens the authority of the rule of law.

The systemic nature of law enforcement principles in the context of human rights protection means that their implementation must be ensured comprehensively—through coordinated regulatory, institutional, procedural, and cultural measures. The regulatory level entails the clear legislative enshrinement of principles and the establishment of legal mechanisms for their implementation. The institutional level requires the appropriate organization of law enforcement agencies, including internal oversight structures and units responsible for human rights compliance. The procedural level involves the development of detailed protocols and standards for operational activities. The cultural level entails fostering appropriate values and attitudes among law enforcement personnel through training programs and corporate culture.

In the context of law enforcement practice, it is important to note that these principles not only regulate specific law enforcement actions but also serve as criteria for their evaluation—both within administrative or disciplinary proceedings and in the context of judicial review. The principles of law enforcement in the field of human rights serve simultaneously as normative regulators, value-based guidelines, and criteria of legitimacy. Their systematic implementation is not merely a legal requirement but a condition for the moral authority and public recognition of law enforcement agencies as institutions that serve the individual and society.

In summary, it should be noted that the principles governing the activities of law enforcement agencies in the context of human rights protection are not abstract declarations, but practical guidelines that define the content, direction, and limits of law enforcement activities. They form a unified normative and axiological system in which each principle complements and reinforces the others. This system reflects an anthropocentric approach to public administration, according

to which law enforcement agencies operate not for the sake of law enforcement itself, but to serve people—to protect their rights, dignity, and freedom. The implementation of these principles in the face of various challenges—from a pandemic to armed conflict—will be the subject of further analysis in the following chapters of this monograph.

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Chapter 2

THE ACTIVITIES OF LAW ENFORCEMENT AGENCIES IN THE CONTEXT OF A PANDEMIC: LEGAL NATURE, DISCRETION, AND GUARANTEES OF HUMAN RIGHTS

2.1 The legal nature of restrictions on human rights in emergency situations

We noted above that legal norms are primarily designed for “normal” conditions of social functioning. Indeed, the law exists and serves as an effective regulator of social relations precisely because of its ability to ensure stability in the functioning of society.

Let us outline the factors that, in our view, enable the law to fulfill its regulatory role and serve as an instrument for maintaining order in society.

First, through legal norms (rules of conduct), the law establishes standards that regulate human behavior. Legal norms define the rights and obligations of individuals (natural and legal persons) and establish rules that limit the possibility of engaging in undesirable or harmful activities, thereby helping to avoid chaos and conflict in society. L. Lvova’s words are entirely apt: it is the law, “with its unique properties—such as universality, the possibility of strict definiteness in content, and a high degree of certainty—best meets the needs

of society in the presence of objective normative foundations designed to ensure an adequate level of organization and order in social relations, the real-life realization of the human aspiration for personal perfection and the fulfillment of individuality inherent in society”¹. A. Mokhonko expressed the same view as L. Lvova².

Second, the law ensures order and security in society. Legal norms establish rules concerning public order and safety. They protect individual rights, safeguard property, regulate the performance of legal transactions and the resolution of legal disputes, which helps reduce violence, conflicts, and criminal activity, thereby ensuring stability in society.

In discussing this point, we must also acknowledge that rules do not exist (or are adopted) merely for the sake of existing. The purpose of their existence is to ensure order through the enforcement of these rules. At the same time, in our view, the primary goal is not to intimidate individuals regarding the consequences of certain behaviors. Indeed, the findings of an analysis of the application of criminal penalties for crimes punishable by the death penalty (during the years when it was in force) and imprisonment (during periods when the death penalty was abolished) are illustrative in this regard (this refers to the Soviet state). These findings indicate that the existence of a punishment such as the death penalty did not lead to a reduction in the number of such crimes. Intimidation (even with death) did not deter those who subsequently committed serious crimes (crimes of particular gravity).

It should be noted that this aspect of the functional purpose of law highlights the importance of applying adequate measures to achieve

¹ Lvova, O.L. (2011). Pravo ta moral v systemi sotsialno-normatyvnoho rehuliuvannia [Law and Morality in the System of Social-Normative Regulation]. In *Pravove rehuliuvannia suspilnykh vidnosyn v umovakh demokratyzatsii Ukrainskoi derzhavy* [Legal Regulation of Social Relations under the Democratization of the Ukrainian State] (pp. 35–38). Kyiv : Vydavnytstvo “Politekhnik+”. [in Ukrainian]. P. 35–38.

² Mokhonko, A.V. (2011). Pravo yak sotsialno-normatyvnyi rehuliator [Law as a Social and Normative Regulator]. *Derzhava i pravo – State and Law*, 51/ [in Ukrainian]. P. 89.

the goals of legal regulation, which is particularly important under extraordinary circumstances (as will be discussed below).

Third, there is legitimacy and trust. By this we mean that the existence of stable legal norms contributes to the establishment of legitimacy and trust in the legal system. People have greater confidence that their rights will be protected and that violators of the established order will be held legally accountable in an appropriate manner. This approach strengthens citizens' trust in the government and the justice system and contributes to the stability of society and its political system.

Rules of conduct established by law allow people to anticipate the consequences of both their own actions and those of others, thereby regulating relations among members of society. The actual enforcement of legal norms allows a person to feel confident, knowing that any infringement upon them or their lawful conduct will be stopped by law enforcement agencies if necessary, and that the violator will face negative consequences—a measure intended to serve a preventive purpose (we mean both individual and general prevention).

It is precisely in the law that people in modern society seek solutions to the problems that may arise in the process of communicating with other members of society, seeing in it (the law) an effective means of regulating social relations and resolving legal conflicts.

We emphasize that we are referring to a society with a democratic system. This is because in states with a non-democratic state-legal regime, a state of legal nihilism prevails among the population, and public authorities attempt to impose the view that the commands of these authorities constitute the law. In such states, public participation in political activities is restricted, as are the rights to free elections, the formation of political parties, or participation in public discussions, etc., which undermines trust in the government and creates the impression that citizens' voices do not matter. In undemocratic regimes, the government often acts in a non-transparent manner. Decisions by public authorities are made “behind closed doors,” without informing or consulting the public. This situation leads to a sense of lack

of information and control on the part of the population. In addition, such societies are characterized by high levels of corruption and, as a result, systematic human rights violations. Corrupt public officials use their positions for personal gain, abusing their power and undermining the foundation of the society's economic development. The consequences of such behavior include a sense of hopelessness among the population and disillusionment with the justice system and the effective functioning of law enforcement agencies. Human rights violations are becoming widespread; freedom of speech, freedom of assembly, freedom to express political views, and other fundamental freedoms and rights are subject to numerous restrictions or are banned altogether. Such violations demonstrate that public authorities do not adhere to the principles of justice and equality, which fuels public distrust.

Fourth, it is equality and justice. Legal norms contribute to the creation of a just social order in which the rights and freedoms of every individual are protected and respected, thereby preventing a sense of powerlessness and inequality that could lead to social tensions and conflicts.

In our view, it is precisely this characteristic that largely accounts for the significance of legal norms in a modern democratic society. For example, social regulators such as customary norms or religious norms quite often do not meet this requirement and do not provide for the possibility of evaluating the norms themselves for fairness (especially when considering the latter of these norms). To a certain extent, these norms preclude the possibility of a rational assessment of them, which undoubtedly affects their legitimacy and the trust placed in them, thereby determining their place in the system of social regulatory norms.

We should add that legal norms, by establishing procedures for resolving disputes and conflicts, provide people with the opportunity to achieve a fair and peaceful settlement of their claims, which helps maintain social stability and prevent violence.

Consequently, legal norms play a vital role in ensuring stability in society by creating the legal framework for society's functioning, regulating relations among members of society, and protecting human

rights and freedoms. They contribute to the creation of a stable and predictable environment that fosters economic and cultural development and serves as a driver of social progress.

Thus, the above indicates that in modern society, law is an effective means of regulating social relations; at the same time, legal provisions are the means that allow for the normalization of relations within society, bringing it out of a state of chaos and disorder. Consequently, the law is designed to ensure the stable functioning of society. It is evident that under such conditions, the law itself remains an effective instrument for ensuring social harmony.

However, another question arises that we must address within the scope of our study: Can the law be applied (and if so, to what extent) under extraordinary circumstances?

Yes, legal norms are generally understood as rules of conduct for individuals (natural or legal persons). At the same time, the very term “rule” indicates the systematic nature of the relevant behavior, its repeatability, predictability, and expectability. A norm is a model of behavior. A model is likewise designed for uniformity of behavior and cannot fully account for the diversity of possible behavioral variations that may arise when typical conditions change.

However, the history of human development provides a significant number of examples where society has found itself in extraordinary circumstances. For example, crises, wars, natural disasters, and other exceptional events. In such emergency situations, the law and its ability to regulate social relations may be called into question.

One argument against the law’s ability to regulate social relations under extraordinary conditions is its limited effectiveness in ensuring the necessary order and stability. In times of crisis or chaos, legal norms may be violated or ignored. For example, during armed conflicts, international rules and treaties may be violated without proper criminal prosecution of the violators. This undermines the authority of the law and reduces its ability to influence society. We note that this issue will be examined in greater detail in the next chapter of our study.

In addition, extraordinary circumstances may require immediate decisions and actions that go beyond the procedures established by law. For example, in an emergency situation where the lives and safety of citizens are at risk, law enforcement agencies may take immediate action, even if this entails temporarily restricting people's rights and freedoms. Such restrictions may conflict with the principles and guarantees enshrined in the law.

The specific nature of extraordinary conditions can create difficulties for the law in regulating social relations. In such conditions, challenges may arise that are difficult to resolve through traditional legal approaches. Due to its formalized nature, the law may be limited in its ability to adequately respond to emergencies and meet the needs of society.

Extraordinary conditions reveal the differences between the rules of conduct enshrined in law and actual reality, as legal norms are typically established based on stable conditions and presuppose a specific context. However, under extraordinary conditions, this context may change, which can lead to a mismatch between legal norms and societal practices and demands.

We should also note, in the context of our research, that in extraordinary situations, a conflict may arise between human rights and the interests of society as a whole. For example, during a state of emergency or war, restrictions may be imposed on freedom of speech, peaceful assembly, movement, and so on, with the aim of ensuring security and restoring stability. Such restrictions may contradict the principles and standards enshrined in legal acts and international conventions.

In exceptional situations, when the law cannot function effectively or address the challenges at hand, the state may resort to extraordinary measures that may go beyond the legal framework. For example, the imposition of martial law can lead to human rights violations and abuse of power.

In general, as we can see, extraordinary circumstances call into question the law's ability to effectively regulate social relations. Although the law plays an important role in establishing order and protecting

rights, its capacity to adapt to emergency situations—where immediate decisions and actions are required—may be limited. The conflict between individual rights and collective interests, as well as the incompatibility of legal norms with reality, can undermine trust in the legal system and lead to human rights violations. Therefore, it is important to ensure the flexibility and adaptability of legal mechanisms in exceptional situations, balancing the protection of citizens' rights and freedoms with the need to maintain order and stability in society.

In this regard, it is worth examining in greater detail the concept of the application of law under a state of emergency as proposed by the aforementioned Italian thinker Giorgio Agamben, as reflected in *"Homo Sacer"*. According to this author, one of the patterns of how individual states function is the use of a state of emergency by public authorities to strengthen authoritarianism¹.

We would like to emphasize that in this section of the study, we use the terms "state of emergency" and "emergency conditions" as having the same meaning, while acknowledging that a distinction can be drawn between them. For example, in an article by Ukrainian scholars devoted to the issue of various legal regimes that may be introduced under crisis conditions, the authors conclude that current national legislation provides for the following special administrative-legal regimes that may be implemented under exceptional (crisis) conditions: 1) martial law; 2) a state of emergency; 3) a zone of an environmental emergency. Although domestic legal scholars also point to another new type of such regime—an anti-terrorist operation².

However, for the purposes of this stage of the study, such a distinction is not particularly significant, especially in the context of public

¹ Agamben, G. (1998). *Homo Sacer: Sovereign Power and Bare Life*. Stanford, CA : Stanford University Press. 228 p.

² Chystokletov, L., Khytra, O., Ostapenko, L., & Skrynkovskyi, R. (2018). Poniatia, oznaky ta zmist pravovykh rezhymiv, shcho zaprovadzhuitsia pid chas vynyknennia kryzovykh sytuatsii [Concept, Features and Content of Legal Regimes Introduced During Crisis Situations]. *Traektoriia Nauki – Path of Science*, 4(3), 6001–6006. [in Ukrainian]. P. 6001–6006.

authorities exercising special powers aimed at restricting human rights. To avoid repeating the same term within a sentence or paragraph, we may also use terms such as “extraordinary circumstances,” “extraordinary conditions,” etc. (given that a state of emergency is one type of extraordinary circumstance).

According to J. Agamben, when a state of emergency is declared, existing legislation ceases to apply (and such suspension is provided for by constitutions) and is replaced by acts of the executive branch. The author refers to the Roman Empire, where the dictator held unlimited powers during wartime (or under similar conditions). The author also notes that under such circumstances (a state of emergency), the principle of the rule of law and the procedures provided for by law are applied only to a limited extent. The Italian thinker points out that parliamentary democracy, like the constitution, serves as a kind of “facade” for the absolute sovereign, for whom the application of exceptional rules gradually becomes the norm. The author analyzes states of emergency in countries such as Britain, Germany, and France, as well as the *de facto* state of emergency in the United States following September 11, 2001.

The imposition of states of emergency was accompanied by significant restrictions on human rights; procedures for arrests, interrogations, and detentions, among others, underwent changes.

It is also worth noting the author’s argument that a state of emergency can have not only a temporal but also a territorial dimension, citing Abu Ghraib prison as an example (in this regard, recall the interview given by a Washington Post journalist to the public organization of journalists Hromadske regarding the results of a journalistic investigation into the torture of Iraqi prisoners by U.S. military personnel prisoners at the prison of the same name¹) and Guantanamo (we recall the words of a representative of the international organization Amnesty

¹ “Pentahon molyv nas ne opryliudniuvaty dani pro tortury TsRU” – zhurnalist The Washington Post [“The Pentagon Asked Us Not to Publish Information about CIA Torture” – Washington Post Journalist]. Retrieved from <https://hromadske.ua/posts/zhurnalist-the-washington-post>

International stating that “Guantanamo has become a symbol of abuse that simply mocks international law. Such a climate pushes soldiers of the occupying army to commit crimes”¹).

In summary, it is worth acknowledging that authoritarian regimes can use a state of emergency to consolidate their power by imposing various restrictions and controls on citizens, suppressing the opposition, limiting the activities of political parties, and so on.

We emphasize that a state of emergency grants an authoritarian regime broad powers and the ability to respond promptly not only to threats to the normal functioning of society or any part thereof (the positive aspect), but also to any threats to public authority (the negative aspect). It is precisely this negative aspect of declaring a state of emergency that poses a particular threat to human rights. In our view, the following aspects (methods) of potential misuse of authority during a state of emergency can be identified.

1. *Restrictions on civil liberties.* During a state of emergency, laws may be enacted that restrict freedom of speech, assembly, the press, and other civil liberties. Authoritarian regimes may ban the activities of independent media, block access to social media and the internet, or conduct mass surveillance of citizens.

Indeed, some states apply such measures even without declaring a state of emergency. Quite rightly, T. Popovich notes in this regard that “the problematic nature of the situation regarding Internet access is currently observed in China. Restrictions on access in this country have developed gradually”².

It is also worth noting that in 2014, China announced the creation of a “untrustworthy citizen” rating system, which involved a series

¹ Amnesty International: “Era Guantanamo” v Iraku [Amnesty International: The “Guantanamo Era” in Iraq]. Retrieved from <https://www.dw.com/uk/amnesty-international-epa-ryantanamo-v-ipaky/a-2477152>

² Popovych, T. (2021). Pravo na dostup do internetu: zarubizhnyi dosvid pravovoho rehuliuвання [The Right of Access to the Internet: Foreign Experience of Legal Regulation]. *Naukovyi visnyk Uzhhorodskoho natsionalnoho universytetu – Scientific Bulletin of Uzhhorod National University*, 64, [in Ukrainian]. P. 379.

of comprehensive measures to monitor individuals' behavior and impose numerous restrictions on them due to their low level of trustworthiness. This was reported by the media¹.

The Social Credit System is designed to assess and monitor the behavior of individuals and legal entities in China. This system is based on the collection and analysis of large amounts of data on citizens and their activities in order to assign them a credit score. A low social credit score may result in certain sanctions, such as restrictions on traveling abroad or outside a specific administrative unit within the People's Republic of China, a ban on obtaining loans, ineligibility for employment, and more.

The rating consists of a social rating (which takes into account citizens' compliance with laws, adherence to public order rules, attitude toward work, social connections, etc.), as well as an administrative rating (which includes an assessment of an individual's relations with state authorities, tax obligations, timely registration, and other aspects of interaction with government bodies, compliance with party requirements, etc.).

We should also mention a number of cases before the European Court of Human Rights against Turkey. These include, in particular, Ahmet Yildirim v. Turkey (Application No. 3111/10)² and Cengiz and Others v. Turkey (Applications Nos. 48226/10 and 14027/11)³.

2. *Arrests and political persecution.* Under a state of emergency, the regime can legally detain opposition leaders, journalists, activists,

¹ GPS-braslety, reitynh doviry – yak u kytaiskykh mistakh kontroliuiut svoikh zhyteliv [GPS Bracelets and Social Credit Ratings: How Residents Are Controlled in Chinese Cities]. Retrieved from <https://hmarochos.kiev.ua/2019/04/24/obruchi-dlya-shkolyariv-rejtyng-doviry-yak-u-kytayskyh-mistah-kontrolyuyut-svoyih-zhyteliv>

² European Court of Human Rights. (2012). Case of Ahmet Yildirim v. Turkey (Application No. 3111/10, Judgment of 18 December 2012). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-115705>

³ European Court of Human Rights. (2015). Case of Cengiz and Others v. Turkey (Applications Nos. 48226/10 and 14027/11, Judgment of 1 December 2015). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-159188>

and anyone it considers a threat to its power. Those detained may be subjected to torture, unjustified imprisonment, or unlawful detention.

A particularly telling example in this context is the case of a Belarusian blogger who was detained by the Belarusian authorities under the following circumstances. Roman Protasevich was on a Ryanair flight from Athens to Vilnius. Due to an alleged bomb threat on the plane, the flight was forced to make an emergency landing in Minsk, where the opposition figure was detained¹.

“The regime (of Alexander Lukashenko—Ed.) has jeopardized the safety of passengers on board and of the entire civil aviation sector in order to crack down on a man who was the editor of Belarus’s largest independent Telegram channels. For this alone, he was labeled a terrorist, and for this alone, Roman now faces the death penalty in Belarus,” said S. Tikhanovskaya, the leader of the Belarusian opposition².

3. *Military Repression.* During states of emergency, authoritarian regimes may use military force to suppress protests, demonstrations, or armed uprisings, which can lead to widespread human rights violations, violence, and the deaths of innocent civilians. Indeed, the history of the Soviet state provides numerous examples that confirm this conclusion. Let us recall just one of them, which, in our opinion, is quite illustrative and points to the authoritarian regime’s general perception of human rights, as well as its use of emergency conditions to achieve its own goals.

We are referring to the Soviet authorities’ reaction to the workers’ strike on June 1–2, 1962, which took place in Novocherkassk. Armored personnel carriers and tanks had already been sent to the city by evening. Moreover, an order was issued to use tanks against the demonstrators. And although the lieutenant general refused to carry

¹ U Minsku zatrymaly zasnovnyka telehram-kanalu NEXTA [Founder of the NEXTA Telegram Channel Detained in Minsk]. Retrieved from https://lb.ua/world/2021/05/23/485332_minsku_zatrimali_zasnovnika.html

² The same.

out this order, weapons were nonetheless used (and the military officer faced reprisals for refusing to use tanks against people).

As noted by Ukrainian scholar V. Len, describing the consequences of the Novocherkassk massacre, “regular troops were deployed, resulting in the killing of 26 and the wounding of 87 citizens by the military and law enforcement. The organizers of the mass riots were sentenced to death, while other participants received long prison terms”¹.

It is also worth noting the use of internal troops by the Yanukovich regime to suppress participants in the Revolution of Dignity in January 2014². It should be added that the fact of the use of internal troops has been indirectly acknowledged by state authorities, specifically the Verkhovna Rada of Ukraine. “The unlawful activities of certain members of the ‘Berkut’ special police units, police officers, internal troops personnel, court bailiffs, prosecutors, judges, and other officials and public servants during the Revolution of Dignity are condemned as having caused irreparable harm to the state and society”³ – as stated in a resolution of the Ukrainian Parliament adopted in February 2021. It is worth noting that it was precisely the political assessment of the illegality of the actions of certain state institutions that the authors of the draft resolution cited as the justification for the need to adopt this legal act⁴.

¹ Len, V.V. (2021). Masovi zavorushennia za chasiv SRSR: determinanty ta tendentsii sohodennia [Mass Riots in the USSR: Determinants and Contemporary Trends]. *Pravo i suspilstvo – Law and Society*, 5. [in Ukrainian]. P. 29.

² Revoliutsiia Hidnosti [Revolution of Dignity]. Retrieved from https://uk.wikipedia.org/wiki/Револуція_гідності

³ Verkhovna Rada of Ukraine. (2021). Zaiava Verkhovnoi Rady Ukrainy u zviazku z somoiu richnytseiu pochatku Yevromaidanu ta podii Revoliutsii Hidnosti [Statement of the Verkhovna Rada of Ukraine on the Seventh Anniversary of the Beginning of Euromaidan and the Events of the Revolution of Dignity]. Retrieved from <https://zakon.rada.gov.ua/laws/show/1240-IX#Text>

⁴ Explan Verkhovna Rada of Ukraine. (2020). Poiasniuvalna zapyska do projektu Postanovy Verkhovnoi Rady Ukrainy “Pro Zaiavu Verkhovnoi Rady Ukrainy u zviazku z shostoju richnytseiu pochatku Yevromaidanu ta podii Revoliutsii Hidnosti” [Explanatory Note to the Draft Resolution of the Verkhovna Rada of Ukraine

4. *Strengthening of the repressive apparatus.* A state of emergency could provide an authoritarian regime with a pretext to strengthen its repressive apparatus, which could manifest itself, in particular, through an increase in police numbers, the creation of special security forces, or the adoption of legislation granting broad powers to law enforcement agencies to combat internal threats.

At the outset of police reform and the creation of the National Police in Ukraine, experts noted that Ukraine could be characterized as a police state. In this state, the number of employees of the Ministry of Internal Affairs is nearly three times higher than the number of corresponding employees in other countries. According to United Nations recommendations, this ratio should be 222 police officers per 100,000 population. In Ukraine at that time, this figure reached 800 police officers per 100,000 people (and the total number was twice that of the military). For comparison: in the Soviet Union, this figure was 300 police officers (in Russia—1,000 police officers, in Belarus—1,400 police officers)¹. It should be added that between 2010 and 2013, funding for the police nearly doubled every two years. Undoubtedly, both the number of law enforcement agencies and the state budget funds spent on their maintenance can serve as a factor in defining the state-legal regime operating in the country; defining the state as a police state.

It is precisely the security forces—institutions empowered to use state coercion—that form the foundation of authoritarian and totalitarian regimes, which seek to keep these institutions under constant control, including their ideological aspects. Thus, we once again recall individual police officers who, while carrying out the criminal orders

“On the Statement of the Verkhovna Rada of Ukraine on the Sixth Anniversary of the Beginning of Euromaidan and the Events of the Revolution of Dignity”]. Retrieved from http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?id=&pf3516=2739&skl=10

¹ Sylovi struktury yak opora avtoritarnoho rezhymu Yanukovycha [Security Agencies as a Pillar of Yanukovych's Authoritarian Regime]. Retrieved from <https://www.radiosvoboda.org/a/25197821.html>

of an undemocratic regime, justified their behavior with the typical phrase that “it was an order.”

In this context, the following words of a German legal philosopher come to mind: “An order is an order,’ they tell the soldiers. ‘The law is the law,’ the lawyers emphasize. However, a soldier’s duty to obey ceases when he learns that the purpose of the order is a crime or other offense”¹. It is evident that this thesis fully applies to lawyers as well, who in a democratic society (and not only there; although in a non-democratic society legal positivism prevails and the commands of the authorities are perceived as law) must be guided by the principle of the rule of law.

It is worth noting that, in accordance with constitutional and legal provisions, a person is not obligated to carry out an order or directive that is clearly criminal² (Art. 60 of the Constitution of Ukraine). However, in a non-democratic state, an order from a superior to a subordinate carries greater weight than the Constitution or the law.

5. Manipulation of information. Undemocratic regimes may use a state of emergency to control information and the media. They may spread propaganda and disinformation and manipulate public opinion to alter perceptions of events and consolidate their power.

A striking example of this is the Soviet government’s response immediately following the Chernobyl nuclear power plant accident on April 26, 1986. People were not informed about what had happened or the potential negative consequences for their lives and health. Moreover, the Soviet authorities brought people out onto the streets for the traditional May Day celebrations.

It should be added that only under external pressure from other states was the Soviet Union forced to acknowledge both the disaster itself and

¹ Radbruch, G. (2009). *Filozofia prawa* [Philosophy of Law] (E. Nowak, Trans.). Warszawa: Wydawnictwo Naukowe PWN. P. 240.

² Verkhovna Rada of Ukraine. (1996). *Konstytutsiia Ukrainy vid 28 chervnia 1996 roku* [Constitution of Ukraine of June 28, 1996]. *Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of the Verkhovna Rada of Ukraine*, 30. [in Ukrainian].

the radioactive contamination of the environment (although medical workers, following the instructions of the Soviet authorities, continued to refuse to recognize radiation sickness in exposed individuals; other illnesses related to radiation exposure, etc.; it is evident that the Soviet authorities concealed both the actual number of deaths linked to this disaster and the consequences of radiation exposure on people).

Furthermore, the Soviet authorities' claim—which can still be heard in some quarters today—that the government was unprepared for such an event and did not know what to do does not stand up to scrutiny. To refute such claims, let us recall another tragedy that the Soviet authorities carefully concealed and which occurred nearly twenty years before the accident at the Chernobyl Nuclear Power Plant. I am referring to the Kyshtym accident—the first major man-made disaster resulting in radioactive contamination, which occurred on September 29, 1957. As a result of this accident, the Soviet authorities had to evacuate the residents of twenty-three settlements and destroy the affected property. It is evident that those involved in the cleanup efforts suffered health problems.

It is also worth noting that the regional media, in an attempt to mislead residents who had witnessed the cloud and other phenomena caused by the explosion, claimed that it was the aurora borealis.

Thus, as we can see, the Soviet authorities had already dealt with man-made accidents involving radioactive contamination; therefore, they could not have been unaware of the possible consequences, nor of the need to take appropriate measures to mitigate them.

6. *Control over society.* During states of emergency, an undemocratic regime may tighten its control over society through censorship, mass surveillance, and the use of special services and intelligence agencies, which can lead to the destruction of opposition groups, the banning of political parties and civic associations, and the intensification of authoritarianism.

It is quite evident that, in general, all of the measures listed are, in one way or another, aimed at achieving control over society in order

to establish and maintain authoritarian power. And in this context, one cannot help but recall once again the Soviet state, which sought to bring every person's life under complete control, attempting to destroy any manifestations of privacy, freedom, and difference.

It is precisely to control society that the security apparatus is expanding, a significant portion of unlawful acts are being criminalized, and the number of camps is increasing (recall the rather extensive Gulag system, through which, according to various estimates, between 18 and 28 million people passed¹).

Given the above, Giorgio Agamben's conclusion that the camp is evidence of the meaninglessness of natural human rights becomes clear.

Thus, as we have seen, researchers of the operation of law and its functioning under extraordinary conditions generally note that law is typically examined in circumstances that can be described as arising in the ordinary, repetitive, normal state of society. It is precisely under such conditions that the rule of law and human rights are predominantly studied.

As András Karácsony and Szabolcs Nádpal note, over the past half-century, and especially following the formation and subsequent expansion of the European Union, the demand for the rule of law has become a key issue. The test of the rule of law is as follows: it is necessary to examine, in an unusual situation or, so to speak, in an emergency, how political decisions of fundamental importance to society can be made while ensuring that these decisions always remain within the framework of the rule of law².

This statement by foreign authors articulates the main issue we aim to address in this section of our study. As we have established, human rights are closely linked to the principle of the rule of law; there can

¹ HULAH zroblat vizytnoiu kartkoiu Rosii [The Gulag Will Become Russia's Hallmark]. Retrieved from <https://www.istpravda.com.ua/short/53330fb697267/>

² Karácsony, A., & Nagypál, S. (2021). The Rule of Law and the Extraordinary Situation. *Public Governance, Administration and Finances Law Review*, 6(1), 65–72. P. 65.

be no rule of law in a state where human rights are unlawfully restricted, where they are not recognized, and where they are violated. Likewise, a state that has proclaimed the principle of the rule of law as an integral part of its legal system cannot fail to recognize and ensure human rights and fundamental freedoms.

As we can see, the above points to a close connection between extraordinary circumstances and human rights. Therefore, for a more detailed understanding of this relationship, we believe it is necessary to focus on the characteristics of a state of emergency as a type of extraordinary circumstance (condition).

At the same time, it should be emphasized that we do not aim to provide a detailed examination of all the characteristics of the concept under study or to offer a precise definition of it. Moreover, we will not follow the approach chosen by some domestic scholars in addressing this issue; specifically, we will not rely on the definitions of the term “state of emergency” found in various dictionaries and encyclopedias. The results of such research can be found, for example, in N. Voronina’s publications on this topic¹. Indeed, the author presents the results of this analysis in considerable detail.

Our task is to clarify the general understanding of a state of emergency as a situation that allows public authorities to restrict human rights.

We should also note that current domestic legislation provides a rather comprehensive definition of the term “state of emergency.” Thus, according to Article 1 of the Law of Ukraine “On the Legal Regime of a State of Emergency,” “a state of emergency is a special legal regime that may be temporarily introduced in Ukraine or in certain regions thereof in the event of man-made or natural emergencies of at least national significance that have resulted in or may result in human and material losses, pose a threat to the life and health

¹ Voronina, N.V. (2015). Shchodo pytannia zabezpechennia prav liudyny v umovakh nadzvychainoho stanu [On the Issue of Ensuring Human Rights under a State of Emergency]. Chasopys tsyvilistyky – Civilistics Journal, 18, 95–98. [in Ukrainian].

of citizens, or in the event of an attempt to seize state power or change the constitutional order of Ukraine through violence, and provides for the granting to the relevant state authorities, military command, and local self-government bodies, in accordance with this Law, of the powers necessary to avert the threat and ensure the safety and health of citizens, the normal functioning of the national economy, state authorities, and local self-government bodies, and the protection of the constitutional order; and permits temporary, threat-based restrictions on the exercise of the constitutional rights and freedoms of individuals and citizens, as well as the rights and legitimate interests of legal entities, specifying the duration of such restrictions”¹.

We would like to emphasize that, in our opinion, the definition of a state of emergency set forth in the previous law was, in many respects, more effective² (and, moreover, less verbose and easier to understand). In this context, we note that the requirements of legal drafting are aimed, in particular, at ensuring that legal provisions are accessible and clearly understood. Thus, on the one hand, there is a requirement for legal certainty (however, we note that this pertains primarily to the procedures and powers of public authorities, the consequences of applying relevant legal provisions to citizens, etc.), and on the other—legal norms are general in nature and are addressed not only to public authorities but also to citizens, which determines the necessity of their comprehension and understanding.

The starting point for our understanding of this issue is that the concept of a “state of emergency” or “emergency situation” refers to a state in which a threat arises or the normal functioning of society

¹ Verkhovna Rada of Ukraine. (2000). Pro pravovyi rezhym nadzvychainoho stanu [On the Legal Regime of the State of Emergency]. Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of the Verkhovna Rada of Ukraine, 23, Art. 176. [in Ukrainian].

² Verkhovna Rada of Ukraine. (1992). Pro nadzvychainyi stan [On the State of Emergency]. Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of the Verkhovna Rada of Ukraine, 37, Art. 538. [in Ukrainian].

as a whole or a part thereof is disrupted. The characteristics of a state of emergency may vary depending on the context, but the main features, in our opinion, can be summarized as follows.

1. A state of emergency can only be invoked if a danger exists. A state of emergency indicates the presence or potential presence of a danger that may cause harm to human life, health, or property. The causes of this may include natural disasters, man-made accidents, epidemics, epizootics, terrorist acts, etc.

For example, consider Polish legislation, which provides for three possible legal regimes in response to specific types of threats. These are:

- 1) martial law (*stan wojenny*);
- 2) state of natural disaster (*stan klęski żywiołowej*);
- 3) state of emergency (*stan wyjątkowy*).

It is worth noting that *stan wyjątkowy*, like the two previously mentioned states, is considered a type of phenomenon referred to by the term “*stan nadzwyczajny*”.

Thus, Section XI of the Constitution of the Republic of Poland is devoted specifically to states of emergency (*stany nadzwyczajne*) and addresses the state of emergency, which may be declared on the territory of the state in exceptional circumstances.

According to Article 228 of this Constitution, “in situations of particular threat, if ordinary constitutional measures are insufficient, a corresponding state of emergency may be declared¹”.

As we can see, the constitutional provision cited above specifically refers to a threat or danger as the basis for declaring a state of emergency. It should also be noted that, under current Ukrainian law, the purpose of declaring such a state is to eliminate the threat².

¹ Poland. (1997). Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. [Constitution of the Republic of Poland of 2 April 1997]. Retrieved from <https://www.sejm.gov.pl/prawo/konst/polski/kon1.htm>

² Verkhovna Rada of Ukraine. (2000). Pro pravovyi rehym nadzvychainoho stanu [On the Legal Regime of the State of Emergency]. Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of the Verkhovna Rada of Ukraine, 23, Art. 176. [in Ukrainian].

For example, consider the situation on the Polish-Belarusian border in 2021, which led the President of Poland to decide in September of that year to declare a state of emergency in the area bordering Belarus¹.

In Ukraine, a state of emergency was declared on February 24, 2022, pursuant to Presidential Decree No. 63/2022 of February 23, 2022², approved by Law of Ukraine No. 2101-IX of February 23, 2022³. The Presidential Decree of Ukraine cites the following rationale for declaring a state of emergency: “With the aim of normalizing the situation in the country, ensuring the protection and security of the state border, combating crime, maintaining public safety and order, creating conditions for the proper functioning of state authorities, local self-government bodies, and other civil society institutions, and preventing attempts to seize state power or change the constitutional order of Ukraine through violence”⁴.

2. *Exceptional circumstances.* A state of emergency is declared under exceptional circumstances when the normal system of governance and response cannot function effectively; the threat that has arisen cannot be eliminated through the normal operations of public authorities

¹ Stan wyjątkowy – jakie ograniczenia, kiedy można wprowadzić i z czym to się wiąże? [State of Emergency – What Restrictions It Entails, When It Can Be Introduced, and Its Consequences]. Retrieved from <https://www.profinfo.pl/blog/stan-wyjat>

² President of Ukraine. (2022). Pro vvedennia nadzvychainoho stanu v okremykh rehionakh Ukrainy. Ukaz Prezydenta Ukrainy vid 23 liutoho 2022 roku № 63/2022 [On the Introduction of a State of Emergency in Certain Regions of Ukraine. Presidential Decree No. 63/2022 of 23 February 2022]. Retrieved from <https://zakon.rada.gov.ua/laws/show/63/2022#n2>

³ Verkhovna Rada of Ukraine. (2022). Pro zatverdzhennia Ukazu Prezydenta Ukrainy “Pro vvedennia nadzvychainoho stanu v okremykh rehionakh Ukrainy” vid 23 liutoho 2022 roku [On Approval of the Decree of the President of Ukraine “On the Introduction of a State of Emergency in Certain Regions of Ukraine” of 23 February 2022]. Retrieved from <https://zakon.rada.gov.ua/laws/show/2101-20#Text>

⁴ President of Ukraine. (2022). Pro vvedennia nadzvychainoho stanu v okremykh rehionakh Ukrainy. Ukaz Prezydenta Ukrainy vid 23 liutoho 2022 roku № 63/2022 [On the Introduction of a State of Emergency in Certain Regions of Ukraine. Presidential Decree No. 63/2022 of 23 February 2022]. Retrieved from <https://zakon.rada.gov.ua/laws/show/63/2022#n2>

and the normal functioning of society. A state of emergency refers to a situation requiring additional resources, coordination among various government agencies, or the implementation of extraordinary measures to ensure the safety of society as a whole or a specific segment thereof.

The correctness of this conclusion is also supported by an analysis of Article 4 of the Law “On the Legal Regime of a State of Emergency,” which defines the conditions for declaring the legal regime in question. In doing so, the legislature quite correctly also pointed out the impossibility of eliminating the threat (which is real) by other means.

A state of emergency is an exception (the opposite) to the normal (ordinary) state. Under such circumstances, the overall situation is significantly different from what society is accustomed to; it is an “exception to normality.” For example, the grounds for declaring a state of emergency may include a terrorist attack, an attempted political coup, or a natural disaster. In any case, it is an event that requires swift and effective action by the authorities.

It is worth noting that, for example, the Constitution of the Federal Republic of Germany (Grundgesetz für die Bundesrepublik Deutschland¹) contains no provisions regarding a state of emergency. At the same time, the state has adopted laws on emergency situations that define the procedures for public authorities under extraordinary conditions².

It should be noted that in some countries, government authorities use states of emergency to suppress peaceful assemblies in order to resist civil society. For example, according to media reports, the President of Sri Lanka declared a state of emergency once again in May. Prior to this, police used tear gas against demonstrators (the protests were against mismanagement and corruption). Police used tear gas against

¹ Bundesrepublik Deutschland. (1949). Grundgesetz für die Bundesrepublik Deutschland [Basic Law for the Federal Republic of Germany]. Retrieved from <https://www.gesetze-im-internet.de/gg/BJNR000010949.html>

² Ausnahmezustand [State of Emergency]. Retrieved from <https://www.bpb.de/kurz-knapp/lexika/das-junge-politik-lexikon/319884/ausnahmezustand>

students who were protesting against the president and the government in front of parliament. The authorities declared a state of emergency at midnight. “This is the 27th day of the Sri Lankan people’s nonviolent struggle against the dictatorial tyranny of the Rajapaksa regime. When they abuse their power to restrict freedom of speech, freedom of assembly, and violate human rights, we say to the whole world: We will defend ourselves”¹.

In this regard, it should be noted that peaceful assemblies are, in a sense, an extraordinary event—but only in the sense that the public authorities themselves created the conditions for them to take place and provoked the public to use this exceptional means of countering abuses of public power.

The freedom of peaceful assembly is an essential component of a democratic constitutional system; it is the means by which society’s views on a given issue can be conveyed to public authorities. Indeed, the peaceful assemblies of Ukrainians that went down in our nation’s history as the Orange Revolution (2004) and the Revolution of Dignity (2013–2014) are illustrative in this regard. The terms used in the names of these events do indeed indicate their exceptional nature; however, it would hardly be legitimate to declare a state of emergency to stop such assemblies.

3. *Temporary nature.* A state of emergency is a temporary state declared for a specific period to respond immediately to a danger or crisis situation. Its duration may be limited by law or determined by government authorities. However, in any case, a state of emergency cannot be a permanent state.

To properly understand this characteristic, consider the following hypothetical example. If, due to climatic conditions, the territory of Ukraine experiences conditions (climatic) in January similar to those

¹ Präsident verhängt erneut Notstand [President Declares State of Emergency Again]. Retrieved from <https://www.tagesschau.de/ausland/asien/sri-lanka-ausnahmestand-101.html>

in which scientists work at the “Academician Vernadsky” Antarctic station, then one could speak of the existence of emergency conditions for the territory of Ukraine. However, in the context of the Antarctic station, where these climatic conditions are permanent, it is hardly appropriate to speak of the need to declare a state of emergency.

It should be noted that the duration of a state of emergency may vary from country to country. Moreover, the temporary nature of a state of emergency does not preclude the possibility of extending it; however, such an extension must also have time limits. Otherwise, questions arise regarding the appropriateness of maintaining a state of emergency and the need to introduce other special legal regimes within which the threat to the normal functioning of society as a whole or a specific part of it can be eliminated.

We emphasize that the analyzed characteristics of a state of emergency serve as a kind of guarantee for the observance of human rights and fundamental freedoms, since their restrictions are temporary in nature; the lifting of the state of emergency serves as the basis for the repeal of the restrictions established during such a state.

4. *Restrictions on rights and freedoms.* It can be argued that the necessity of declaring a state of emergency stems from the need to restrict human rights. Thus, hypothetically, one could argue that, for example, a fire constitutes an emergency for the residents of the relevant apartment building (not to mention those living in the specific apartment), yet declaring a state of emergency under such circumstances is hardly appropriate. Thus, the purpose of declaring a state of emergency is to eliminate the relevant danger (in principle, the purpose of a state of emergency, which may be imposed either in specific territories or throughout the entire state, is to restore conditions for the normal functioning of society), but taking measures appropriate to the circumstances will, one way or another, entail interference in the sphere of human rights. However, such interference (in a democratic society) must meet a number of requirements, one

of which is legality. The grounds for restricting human rights and freedoms must be clearly enshrined in national legislation (we should also recall the requirement of legal certainty).

Thus, the principles governing the activities of public authorities and the limits on the restriction of human rights and freedoms during a special legal regime—a state of emergency—are determined by law. Legislation may specify the grounds, scope, and procedure for compensating for property damage caused by restrictions on human rights and freedoms during a state of emergency.

For example, pursuant to a special law of the Republic of Poland, in areas where a state of emergency has been declared, all individuals residing or staying there, even temporarily, are subject to restrictions on their human and civil rights and freedoms. These restrictions apply accordingly to legal entities and organizational units without legal personality that have a registered address or operate in the territory covered by the state of emergency. The types of restrictions on human rights and freedoms specified in regulatory acts... must correspond to the nature and intensity of the threats that serve as the basis for declaring a state of emergency, as well as ensure the effective restoration of the normal functioning of the state¹.

It should also be noted that, due to the primacy of human rights, most states explicitly stipulate in their national legislation that fundamental laws and regulations cannot be amended during a state of emergency. For example, during a state of emergency, it is prohibited to amend the Constitution, election laws, or the legislation governing the state of emergency itself.

Consequently, a state of emergency entails interference with human rights and freedoms. The restrictions imposed may include limitations on movement, assembly, freedom of speech, or other constitutional

¹ Poland. (2002). Ustawa z dnia 21 czerwca 2002 r. o stanie wyjątkowym [Act of 21 June 2002 on the State of Emergency]. Retrieved from <https://lexlege.pl/ustawa-o-stanie-wyjatkowym/>

rights. These restrictions are necessary to ensure security and manage the emergency situation.

5. *Resource Mobilization.* A state of emergency may require the mobilization of additional resources, such as human, material, and financial resources. A state of emergency may involve the mobilization of the military, police, medical resources, logistical support, and others. The purpose of such mobilization is to enhance readiness and ensure the availability of necessary resources to address the emergency.

Within this context, it is also worth noting that a state of emergency involves coordinating actions among various authorities, local and central government agencies, as well as other stakeholders. Such coordination is necessary for effectively managing the crisis and maximizing public safety.

It is also worth noting that during a state of emergency, it is crucial to provide information support and communicate with the public to deliver important information, advice, and safety instructions. The public must be properly informed about the situation and the measures being taken.

At the same time, it should be emphasized that, in any case, the actions taken as a result of the declaration of a state of emergency must be proportionate to the level of threat and aimed at restoring the normal functioning of the state as quickly as possible.

Thus, a state of emergency is a special legal regime introduced to eliminate threats to society, under which restrictions on human rights and freedoms are imposed. Such restrictions are one of the means of addressing societal threats. At the same time, interference with human rights must be proportionate to the danger so as not to constitute a violation of those rights. This requires coordinated action by law enforcement agencies, which must be based on the requirements of the rule of law.

2.2 The exercise of discretionary powers by law enforcement agencies during the pandemic and its impact on the protection of human rights

In the previous section, we established that a key component of a state of emergency is the restriction of human rights and freedoms. The institutions responsible for restricting these rights and freedoms are government authorities in general and law enforcement agencies in particular. In addition, the importance of mobilizing resources to eliminate (overcome) the conditions and circumstances that necessitate the declaration of a state of emergency was emphasized. Typically, the participation of those agencies that ensure law and order in society, identify individuals who commit offenses, and hold the guilty parties legally accountable is crucial in measures to eliminate danger. This is especially true given that a state of emergency is associated with the restriction of human rights and fundamental freedoms.

A telling example in this context is the involvement of law enforcement agencies in monitoring the public's compliance with the restrictive measures implemented during the fight against COVID-19.

It should be noted that COVID-19 has had a significant impact on people's social lives. Public authorities have introduced a significant number of various restrictive measures, such as quarantine, restrictions on entry and exit, bans on mass gatherings, and so on. It should be noted that these measures have had a substantial impact both on economic relations in various countries around the world and at the international level (this was particularly felt in sectors such as air transport, the hotel industry, tourism, retail, etc.), as well as on social life, leading to changes in people's daily routines and the closure of schools, restaurants, stores, and other establishments.

So, let's first mention the following measures that have been implemented by a significant number of countries:

- *social distancing*. One of the key measures recommended to reduce the spread of COVID-19 was social distancing. This requirement

involved maintaining a safe distance (typically 1.5–2 meters) between people, especially during meetings, public events, work, and shopping. Social distancing has reduced personal contact and altered how people interact;

- *a ban on mass gatherings*. It is quite evident that to reduce social contact (with the aim of avoiding large crowds), many countries imposed bans on mass gatherings, such as concerts, festivals, sporting events, conferences, and other events where large numbers of people might gather. This restriction was intended to lower the risk of the virus spreading and to protect public health;

- *Closure of schools and other educational institutions*. In many countries, schools, universities, and other educational institutions were closed. Many students switched to online distance learning to avoid the potential risk of infection in classrooms and lecture halls;

- *Working from home*. Many companies, institutions, and organizations implemented work-from-home policies for their employees. People are working from home using communication technologies such as video conferencing and online collaboration tools, which has led to changes in the work environment and the way colleagues communicate, including a reduction in face-to-face meetings and an increase in the use of virtual platforms for communication and collaboration.

It should be noted that a state of emergency has been declared in a number of countries as part of efforts to combat the spread of COVID-19. For example, on April 14, 2020, while signing a decree extending the state of emergency, Romanian President Klaus Iohannis noted that there were no clear signs indicating a slowdown in the spread of COVID-19, despite the unprecedented restrictions adopted by countries around the world¹.

¹ Romania's President Extends State of Emergency Due to COVID-19: The Danger Hasn't Passed! Retrieved from <https://www.romania-insider.com/covid-19-romania-president-state-emergency-extended>

We would like to emphasize that we have examined in detail the specific restrictions imposed by various countries and provided examples of how government authorities in different nations assessed the situation in order to adequately grasp the extraordinary nature of the crisis that arose during the spread of COVID-19, the scale of the restrictive measures taken by individual countries, and so on.

We would also like to add that, according to information from the Center for Public Health of the Ministry of Health of Ukraine, “this virus was first identified during an investigation of an outbreak in Wuhan, China, in December 2019,” and “following the 15th meeting of the WHO Committee on the International Health Regulations (2005) on May 4, 2023, the COVID-19 pandemic is no longer a public health emergency of international concern”¹.

At the same time, the prolonged application of restrictive measures on an international scale constitutes an important subject of study in the context of addressing human rights issues under exceptional circumstances, as well as for clarifying the role played by law enforcement agencies.

“Since January 2020, scientific knowledge about SARS-CoV-2 (the virus that causes COVID-19), how it spreads, and the health, economic, and social impacts of the COVID-19 pandemic has continued to evolve. Many countries continue to demonstrate that the transmission of SARS-CoV-2 can be controlled”² – as noted in the World Health Organization’s guidelines. Law enforcement agencies played an important role (though, of course, this does not directly pertain to the health sector) in ensuring compliance with measures to prevent the spread of SARS-CoV-2. That is why, in this section of the paper,

¹ Coronavirus infection Covid-19. URL <https://phc.org.ua/kontrol-zakhvoryuvan/inshi-infekciyni-zakhvoryuvannya/koronavirusna-infekciya-covid-19>

² World Health Organization. (2021). Critical Preparedness, Readiness and Response Actions for COVID-19: Interim Guidance, 27 May 2021. Retrieved from <https://www.who.int/publications/i/item/critical-preparedness-readiness-and-response-actions-for-covid-19>

we will examine the activities of law enforcement agencies under these conditions.

It should be noted that, in accordance with the provisions of the Constitution of Ukraine, human rights may not be restricted (Part 1 of Article 64 of the Constitution)¹. However, this provision must be interpreted in conjunction with Part 2 of Article 64, as that part provides for two exceptions to the general rule prohibiting the restriction of human rights. These circumstances are:

- 1) martial law;
- 2) a state of emergency.

At the same time, it should be noted that the conditions listed above constitute grounds for such a restriction of human rights, which is of a large-scale nature (both in territorial and quantitative terms).

However, human rights may also be restricted in other cases defined by national legislation, provided that such legislation meets the requirement of “due process of law.” Thus, according to the judgment of the European Court of Human Rights in the case of *Shchokin v. Ukraine* (applications Nos. 23759/03 and 37943/06), “when referring to ‘law,’ Article 1 of Protocol No. 1 refers to the same concept found in other parts of the Convention... This concept requires, first, that measures be grounded in domestic law. It also refers to the quality of the relevant law, requiring that it be accessible to those concerned, precise, and foreseeable in its application...”².

The Constitutional Court of Ukraine has expressed itself quite clearly on this matter, stating the following in the reasoning section of one of its decisions: “One of the elements of the rule of law is the principle of legal certainty, which asserts that restrictions on the fundamental

¹ Verkhovna Rada of Ukraine. (1996). *Konstytutsiia Ukrainy vid 28 chervnia 1996 roku* [Constitution of Ukraine of June 28, 1996]. *Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of the Verkhovna Rada of Ukraine*, 30. [in Ukrainian].

² European Court of Human Rights. (2010). *Case of Shchokin v. Ukraine* (Applications Nos. 23759/03 and 37943/06, Judgment of 14 October 2010). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-100944>.

rights of individuals and citizens, and the implementation of such restrictions in practice, are permissible only if the application of the legal norms established by such restrictions is predictable. That is, any restriction of a right must be based on criteria that enable a person to distinguish lawful conduct from unlawful conduct and to foresee the legal consequences of their conduct”¹.

At the same time, law enforcement agencies apply such restrictions on human rights in specific cases provided for by legislation governing a particular right, based on a number of requirements.

It is precisely in this context that we should examine the matter in greater detail, given that this approach is relatively new to domestic jurisprudence. Ukraine’s long history as part of the Soviet state inevitably influenced the perception of legal phenomena within the national legal system following the country’s independence. Thus, one of the “legacies” of the Soviet era is the establishment of a single basis for restricting human rights: the enshrinement of such a basis in the text of a normative legal act (although in many cases this was not even necessary if there was “political will,” “the will of the party,” or an instruction from the superior of the relevant law enforcement officer).

It is worth noting that until recently, courts also relied on this single basis when determining the legality or illegality of law enforcement agencies’ actions. To justify a decision (and the legality of a public authority’s actions), it was sufficient to cite the name of the relevant legislative act and the number of its article in the decision.

It is evident that such an approach clearly does not comply with the principles of human rights and fundamental freedoms established within

¹ Constitutional Court of Ukraine. (2010). *Rishennia Konstytutsiinoho Sudu Ukrainy u spravi za konstytutsiinym podanniam Upovnovazhenoho Verkhovnoi Rady Ukrainy z prav liudyny shchodo vidpovidnosti Konstytutsii Ukrainy polozhen Zakonu Ukrainy “Pro militsiiu”* [Decision of the Constitutional Court of Ukraine on the Constitutional Petition of the Ukrainian Parliament Commissioner for Human Rights Concerning the Constitutionality of Certain Provisions of the Law of Ukraine “On Militia”]. Retrieved from <https://zakon.rada.gov.ua/laws/show/v017p710-10#Text>.

the Western legal tradition. Indeed, the European Court of Human Rights has repeatedly pointed out this inconsistency. In the Court's case law, a three-part test has been established to assess the lawfulness of restrictions on human rights imposed by public authorities.

According to the case law of the European Court of Human Rights, for a restriction on human rights and fundamental freedoms to be lawful, three requirements must be met:

First, the restriction must be provided for by law. We have previously highlighted the importance of this condition and noted that it is not merely a matter of an abstract provision in the text of a legislative act regarding the possibility of restriction; what matters is the “quality of the law.”

We quote the following from the judgment of the European Court of Human Rights in the case of *Novik v. Ukraine* (Application No. 48068/06): “It should be recalled that, where deprivation of liberty is concerned, it is particularly important that the general principle of legal certainty be observed. The requirement of “quality of the law” under Article 5 § 1 means that if national law permits deprivation of liberty, it must be sufficiently accessible, precise, and predictable in its application to avoid any risk of arbitrariness”¹.

It should be emphasized that although the above quotation highlights the particular importance of adhering to the requirement of legal certainty when restricting the right to liberty specifically, this requirement is fully applicable to the restriction of other human rights and fundamental freedoms as well.

It is also worth noting that the requirement in question is not new to the domestic legal system, as it is also contained in Part Article 19, Part 2 of the Constitution of Ukraine, which obliges state bodies (including law enforcement agencies) and local self-government bodies

¹ European Court of Human Rights. (2008). Case of *Novik v. Ukraine* (Application No. 48068/06, Judgment of 18 December 2008). Retrieved from <https://hudoc.echr.coe.int/ukr?i=001-90332>

to act only within the limits of those powers (and in the manner) established both by the Constitution itself and by the laws of Ukraine (it is worth noting that this refers specifically to laws, not legislation).

The requirement under analysis regarding the activities of law enforcement agencies that restrict human rights is quite important and characterizes a democratic state-legal regime. The existence of a clear law that allows for the behavior of law enforcement agencies to be predicted with a sufficient degree of certainty is an integral requirement of democratic governance.

Thus, we emphasize that, in accordance with the Code of Conduct for Law Enforcement Officials (Part 1 of Article 8): “Law enforcement officials must respect the law and this Code. They must also, to the best of their ability, prevent any violations thereof and resolutely oppose them”¹.

Second, we are referring to a restriction that is applied for a legitimate purpose. We emphasize that we are referring specifically to a legitimate purpose, not one defined by law. Indeed, national legislation (as, for example, the Convention for the Protection of Human Rights and Fundamental Freedoms) typically specifies the purpose for which a particular human right may be restricted. However, the issue is not a formal reference to such a purpose, but the actual necessity of achieving that purpose. The purpose must be genuine, not “fictitious.”

In this context, it is worth recalling the Yanukovych regime’s attempt to ban peaceful assemblies, citing the need to protect public health and prevent the spread of an epidemic of acute infectious respiratory diseases. However, at the same time, entertainment events were not banned at the “Ukraine” Palace, located a few kilometers from Independence Square. It is evident that the goal of preventing the spread of the epidemic should have included banning the concert at the

¹ United Nations. (1979). Code of Conduct for Law Enforcement Officials. Retrieved from <https://www.ohchr.org/en/instruments-mechanisms/instruments/code-conduct-law-enforcement-officials>

National Palace of Arts, which is Ukraine's largest concert venue, with a main hall seating approximately 4,000 people.

It is worth noting that the subject of our study is also linked to the very goal of protecting public health; however, we are not currently examining the extent to which such a goal was realistic.

In this regard, it is worth recalling the European Court of Human Rights' reasoning set forth in the aforementioned case of *Novik v. Ukraine* (Application No. 48068/06), which pertains to both the purpose of restricting human rights and the proportionality of the interference with the relevant right. "The Court reiterates that any deprivation of liberty is justified under Article 5 § 1 (f) only for as long as the deportation or extradition proceedings are ongoing. If the proceedings are not conducted with due diligence, detention will cease to be permissible under this provision"¹ – emphasized the Strasbourg Court.

Therefore, within this framework, what is important is the actual necessity (rather than mere pretext) of the restriction of a specific human right to achieve a legitimate aim. The restriction must be implemented precisely for this purpose, and not for any other (for example, as is often noted in legal scholarship, albeit in a different context—the "interests of the service" or "compliance with an order"; while regarding the latter—the execution of an order—we noted above the constitutional provision that criminal orders need not be obeyed, regarding the interests of the service, we note the following. Even criminal law contains such a term, specifically in the article containing a prohibitive provision regarding the abuse of power or official position². The point is that it is not entirely correct to use this term, since public

¹ European Court of Human Rights. (2008). Case of *Novik v. Ukraine* (Application No. 48068/06, Judgment of 18 December 2008). Retrieved from <https://hudoc.echr.coe.int/ukr?i=001-90332>

² Verkhovna Rada of Ukraine. (2001). Kryminalnyi kodeks Ukrainy vid 5 kvitnia 2001 roku [Criminal Code of Ukraine of April 5, 2001]. *Vidomosti Verkhovnoi Rady Ukrainy* – Bulletin of the Verkhovna Rada of Ukraine, 25–26, Art. 131. [in Ukrainian].

authorities have a primary mission, which is to ensure human rights. It is precisely for the exercise of this authority that they are vested with the relevant powers. It is difficult to imagine what other “interests of the service” could exist under a democratic regime—therefore, under such a regime, this term is virtually never used, especially in legislation; the situation is entirely different under a non-democratic regime, where an official must unconditionally carry out an order from a superior—even if it is criminal.

Third, the issue concerns the necessity of precisely such a restriction of rights in a democratic society. In other words, it concerns the proportionality of the measures taken to impose restrictions. Restrictions on human rights and freedoms must be proportionate.

For example, in the reasoning section of its decision in the case regarding *the court’s imposition of a more lenient sentence, the Constitutional Court of Ukraine stated that* “Restrictions on the constitutional rights of the accused must comply with the principle of proportionality: the interests of ensuring the protection of human and civil rights and freedoms, property, public order, and security, etc., may justify legal restrictions on rights and freedoms only if they are adequate to socially determined objectives”¹.

We would add that, in our view, the principle of proportionality entails the need to strike a balance between the interests of the individual and those of society. This provision is of considerable importance in the context of our research. For example, by restricting an individual’s right to freedom of movement and stating that such a restriction is applied for the purpose of protecting the health of others, the individual may be placed in a closed clinic or on a separate island, or prohibited from leaving their residence, etc.

¹ Constitutional Court of Ukraine. (2004). Rishennia Konstytutsiinoho Sudu Ukrainy u spravi pro pryznachennia sudom bilsh miakoho pokarannia vid 2 lystopada 2004 roku № 15-rp/2004 [Decision of the Constitutional Court of Ukraine in the Case on the Imposition of a More Lenient Sentence by a Court of 2 November 2004 No. 15-rp/2004]. Retrieved from <https://zakon.rada.gov.ua/laws/show/v015p710-04#Text>

The principle of proportionality requires the use of measures that are the least burdensome for the individual (and adequate to the situation) among those measures that public authorities are authorized to take. A similar idea was set forth in a decision by the Constitutional Court of Ukraine, albeit in a case concerning the restriction of property rights. “When restricting property rights in the public interest, measures that are less burdensome on the rights and freedoms of private individuals among all available measures may be considered proportionate”¹ – stated the national constitutional court.

In this regard, given the subject of our study, the following should be noted. On April 2, 2020, the Cabinet of Ministers of Ukraine introduced a number of amendments to its Resolution No. 211 of March 11, 2020, specifically regarding the imposition of a quarantine throughout Ukraine from March 12, 2020, to April 24, 2020, and the establishment of the following restrictions.

1. It was prohibited to “visit parks, squares, recreational areas, forest parks, and coastal areas...”², however, an exception to this prohibition was established—walking pets was permitted. In other words, a situation was created in which daily walks for a person who, for example, a number of chronic illnesses and for whom medical professionals themselves recommend spending time outdoors and taking walks, were prohibited (which negatively affected the physical condition of such people), while walking a pet was permitted (we emphasize that the right to access

¹ Constitutional Court of Ukraine. (2019). Rishennia Pershoho senatu Konstytutsiinoho Sudu Ukrainy u spravi za konstytutsiinoui skarhoiu TOV “METRO KESH END KERI UKRAINA” vid 5 chervnia 2019 roku № 3-r(I)/2019 [Decision of the First Senate of the Constitutional Court of Ukraine on the Constitutional Complaint of METRO CASH & CARRY UKRAINE LLC of 5 June 2019 No. 3-r(I)/2019].

² Cabinet of Ministers of Ukraine. (2020). Pro vnesennia zmin do postanovy Kabinetu Ministriv Ukrainy vid 11 bereznia 2020 r. № 211. Postanova Kabinetu Ministriv Ukrainy vid 2 kvitnia 2020 r. № 255 [On Amendments to the Resolution of the Cabinet of Ministers of Ukraine No. 211 of 11 March 2020. Resolution No. 255 of 2 April 2020]. Retrieved from <https://www.kmu.gov.ua/npas/pro-vnesennya-zmin-do-postanovi-kabinetu-ministriv-ukrm020420ayini-vid-11-bereznia-2020-r-211>

medical care was also restricted). Consequently, a question arises that demands an answer regarding the limitation of such a ban's infringement on human dignity.

We should add that the ban on visiting public places was entirely logical (which is why such a ban did not provoke rejection by the Ukrainian population), however, the purpose of the ban on visiting forest park areas, as well as coastal areas, remained unclear for some time, which led to a series of criticisms by the public regarding the activities of state authorities in the context of whether such actions complied with human rights requirements.

As the media noted, such a ban was in place only in certain countries. For the most part, the authorities did not impose such a restriction¹(especially for the purpose of a psychological effect).

It should be noted that Ukraine's Chief State Sanitary Doctor later stated in an interview with the media that "from an epidemiological standpoint, there was no need to close parks and public squares during the quarantine period to prevent the spread of the novel coronavirus COVID-19"²; the purpose of such bans was to psychologically intimidate citizens: "Thanks to this psychological effect, people developed a sense of danger and the need to comply with the quarantine measures implemented by the government"³.

To this should also be added the ban on using public transportation (use was permitted only with a special pass). "Why can't we restart

¹ Z ponedilka ukrainsiam ne mozna v parky. A yak v inshykh krainakh? [From Monday Ukrainians Are Not Allowed in Parks. What about Other Countries?]. Retrieved from <https://www.radiosvoboda.org/a/30530538.html>

² Derzhavnyi "feik": Liashko ziznavsia, dlia choho kraina zakryvala parky na karantyn [State "Fake": Liashko Admitted Why the Country Closed Parks during Quarantine]. Retrieved from <https://wz.lviv.ua/news/412306-derzhavnyi-feik-liashko-ziznavsia-dlia-choho-kraina-zakryla-parky-na-karantyn>.

³ Khotily naliakaty: v MOZ zrobyly nespodivanu zaiavu pro karantyn [They Wanted to Frighten People: The Ministry of Health Made an Unexpected Statement about Quarantine]. Retrieved from <https://www.rbc.ua/ukr/styler/sovsem-covid-19-lyashko-rasskazal-zachem-1589111524.html>

public transportation right away? I'm not so much concerned about the risk of infection on public transportation as I am about the fact that accessibility is being restored and internal population migration is beginning. Instead of isolating themselves, people with access to transportation will visit certain places even without an urgent need,"¹ noted Ukraine's Chief State Sanitary Doctor.

It should be noted that we are not citing academic sources, as this topic is only now becoming the subject of systematic study. However, the official's remarks were clearly stated in an interview, which, in the age of the information society, anyone can access and verify for themselves².

The foregoing clearly demonstrates the lack of proportionality in the restrictions imposed, particularly due to the absence of a legitimate aim. While citing public health as the justification, the actual intent was to instill fear through psychological intimidation. Consequently, there is no need to consider the proportionality of the restrictions in place at that time, although, given the above, the answer to this question is obvious.

2. It has been established that people aged sixty and older are required to self-isolate and are therefore prohibited from leaving their place of self-isolation³.

Such a ban appears discriminatory given that a legitimate aim (in this case) must take into account a person's state of health and the

¹ MOZ ziznavsia, shcho zaboroniav parky zadlia zbudzhennia tryvohy [The Ministry of Health Admitted That Parks Were Banned to Increase Public Anxiety]. Retrieved from <https://zbruc.eu/node/97571>

² Liashko: Peredchasnyi vykhid z karantynu zvede nanivets vsi zakhody, zaprovadzheni ranishe [Liashko: Premature Exit from Quarantine Will Nullify All Previously Introduced Measures]. Retrieved from <https://www.youtube.com/watch?v=zhEhYivTbd8>

³ Cabinet of Ministers of Ukraine. (2020). Pro vnesennia zmin do postanovy Kabinetu Ministriv Ukrainy vid 11 bereznia 2020 r. № 211. Postanova Kabinetu Ministriv Ukrainy vid 2 kvitnia 2020 r. № 255 [On Amendments to the Resolution of the Cabinet of Ministers of Ukraine No. 211 of 11 March 2020. Resolution No. 255 of 2 April 2020]. Retrieved from <https://www.kmu.gov.ua/npas/pro-vnesennya-zmin-do-postanovi-kabinetu-ministriv-ukrm020420ayini-vid-11-bereznia-2020-r-211>

presence or absence of an infectious disease, rather than the calendar date of their birthday.

It cannot be overlooked that in early summer 2020, the Constitutional Court of Ukraine received a submission from the Supreme Court regarding the constitutionality of the restrictions imposed during the quarantine period. In this appeal to the constitutional court, the Supreme Court states that an analysis of the resolution of the Cabinet of Ministers of Ukraine regarding the imposition of quarantine and the resulting restrictions on human rights leads to the conclusion that certain provisions are unconstitutional¹. It is worth noting that in the first paragraph of its submission, the Supreme Court specifically pointed out the inconsistency with the Constitution of Ukraine of the restriction on the right to freedom of movement (the two aspects we mentioned above), arguing that such restrictions must be established not by a subordinate regulatory act, but by law. However, the Supreme Court also pointed to the illegitimate purpose of certain human rights

¹ On the appeal to the Constitutional Court of Ukraine with a constitutional submission to verify the compliance with the Constitution of Ukraine (constitutionality) of subparagraphs 5, 6, 7, 14 of paragraph 3, paragraph six of paragraph 6 of the Resolution of the Cabinet of Ministers of Ukraine dated May 20, 2020 No. 392 “On the establishment of quarantine in order to prevent the spread of acute respiratory disease COVID-19, caused by the SARS-CoV-2 coronavirus, in the territory of Ukraine, and the stages of weakening anti-epidemic measures”; paragraphs 10, 17 of the Procedure for implementing anti-epidemic measures related to self-isolation, approved by the Resolution of the Cabinet of Ministers of Ukraine dated May 20, 2020 No. 392; parts one and three of Article 29 of the Law of Ukraine dated November 14, 2019 No. 294-IX “On the State Budget of Ukraine for 2020”; paragraph nine, paragraph 2, section II “Final Provisions” of the Law of Ukraine dated April 13, 2020 No. 553-IX “On Amendments to the Law of Ukraine “On the State Budget of Ukraine for 2020”; Supreme Court. (2020). Pro zvernennia do Konstytutsiinoho Sudu Ukrainy z konstytutsiinym podanniam shchodo perevirky vidpovidnosti Konstytutsii Ukrainy (konstytutsiinosti) okremykh polozhen zakonodavstva, poviazanykh iz karantynnymy obmezheniamy. Postanova Plenumu Verkhovnoho Sudu vid 29 travnia 2020 roku № 7 [On Applying to the Constitutional Court of Ukraine Regarding the Constitutionality of Certain Provisions Related to Quarantine Restrictions. Resolution of the Plenum of the Supreme Court No. 7 of 29 May 2020]. Retrieved from https://ccu.gov.ua/sites/default/files/4_230_2020.pdf

restrictions established by the resolution, citing the words of the Chief State Sanitary Doctor of Ukraine.

It should be noted that we have provided such a detailed description of the grounds for restricting human rights and fundamental freedoms, as well as an analysis of specific provisions of subordinate legislation, given that, in accordance with the aforementioned resolution on the imposition of quarantine, enforcement of the restrictions on human rights established by this subordinate legislative act was entrusted, in particular, to the National Police. “Monitoring of compliance with the self-isolation regime is carried out by officers of the National Police and the National Guard...”¹. The National Police were to escort the vehicles transporting individuals to observation facilities (isolation wards), and, in accordance with paragraph 9 of this act, the Ministry of Internal Affairs and the National Police were specifically tasked with “ensuring public safety and order in the vicinity of facilities for the hospitalization of COVID-19 patients, and observation (isolation); ensure, within the limits of their competence, compliance with the observation (isolation) and self-isolation regimes; and intensify patrols of public places”².

We emphasize that in the following discussion we will focus specifically on the activities of the National Police; however, the general provisions we have outlined fully apply to other law enforcement agencies (albeit with certain caveats; for instance, we analyze specific provisions of the Law of Ukraine “On the National Police,” while for other agencies, the relevant provisions are enshrined in other regulatory acts).

¹ Cabinet of Ministers of Ukraine. (2020). Pro vnesennia zmin do postanovy Kabinetu Ministriv Ukrainy vid 11 bereznia 2020 r. № 211. Postanova Kabinetu Ministriv Ukrainy vid 2 kvitnia 2020 r. № 255 [On Amendments to the Resolution of the Cabinet of Ministers of Ukraine No. 211 of 11 March 2020. Resolution No. 255 of 2 April 2020]. Retrieved from <https://www.kmu.gov.ua/npas/pro-vnesennya-zmin-do-postanovi-kabinetu-ministriv-ukrm020420ayini-vid-11-bereznia-2020-r-211>

² The same.

Given the above, there is a clear need for a detailed examination of the activities of law enforcement agencies regarding the restriction of human rights during the quarantine.

Thus, it should once again be noted that, in accordance with the Constitution of Ukraine, state authorities (and, accordingly, law enforcement agencies, which are state authorities) must act only within the limits defined either by the Constitution or by law (but not by a subordinate regulatory act; a subordinate act cannot establish the powers of a public authority; such regulation can only be implemented through the adoption of a law). The legislative act defining the powers of the National Police is the law of the same name, which, among other things, defines the rights and duties of a police officer.

It should be noted that the Law “On the Militia” did not provide for the principle of the rule of law as a guiding principle for the activities of this public authority. During the reform of the system of state bodies, when establishing the police, the legislature included this principle among the guiding principles of police activity. Thus, pursuant to Article 6 of the Law “On the National Police,” the police must implement the requirements of the principle of the rule of law in their activities; at the same time, the legislature specified that this principle is based on the provision regarding the human person and their rights as the highest value, as well as on human rights as a factor determining the direction of state activity¹.

In light of this (and given the disregard for human rights during the Soviet era), the next article of the Law under review is titled “Respect for Human Rights and Freedoms” and, accordingly, elaborates on the substance of this principle in the National Police’s activities, emphasizing the need to respect human rights and freedoms. It is also worth noting that this article clearly specifies the procedure for restricting

¹ Verkhovna Rada of Ukraine. (2015). Pro Natsionalnu politsiuu [On the National Police]. Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of the Verkhovna Rada of Ukraine, 40–41, Art. 379. [in Ukrainian].

human rights—such restrictions must be imposed “exclusively on the grounds and in the manner prescribed by the Constitution and laws of Ukraine, in cases of urgent necessity and to the extent necessary for the performance of police duties¹ (Part 2 of Article 7 of the Law of Ukraine “On the National Police”). We note the use of the term “exclusively” in the cited legislative provision, which clearly indicates to police officers the exceptional nature of such activities, as well as the basis (the type of normative legal acts) by which they must be guided when making decisions regarding the restriction of human rights and freedoms. Such regulatory legal acts are only:

- 1) the Constitution of Ukraine;
- 2) the laws of Ukraine.

Given the above, it is evident that a National Police officer cannot restrict human rights if such restrictions are established by a subordinate regulatory legal act, for example, a resolution of the Cabinet of Ministers of Ukraine or an order of the Ministry of Internal Affairs of Ukraine. These legal acts may define only certain aspects (organizational, informational, etc.) of the restriction of human rights and freedoms.

Moreover, it is also worth emphasizing that the Law on the National Police stipulates that restrictions on human rights and freedoms must be implemented to the extent necessary for the police to carry out their tasks; at the same time, the main tasks of the National Police are also defined by law.

This provision indicates that the police may not be involved in performing tasks that are not inherent to this state authority or that exceed the police’s powers, and that any restrictions on human rights imposed by the police are carried out in accordance with the Constitution and laws of Ukraine.

¹ Verkhovna Rada of Ukraine. (2015). Pro Natsionalnu politsiyu [On the National Police]. Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of the Verkhovna Rada of Ukraine, 40–41, Art. 379. [in Ukrainian].

Above, we have described the grounds for restricting human rights (which—the grounds—are specified in the individual articles of the Constitution of Ukraine that enshrine the relevant right; we should also note that it does not matter whether a right is enshrined in the text of the Constitution or not, since rights are not exhaustive, as stated in Article 22 of the Constitution of Ukraine¹), specifically, we are referring to specific human rights and specific instances of such actions by law enforcement agencies.

If, however, it is necessary to restrict the human rights of a significant number of people for a prolonged (but time-limited) period, then we must speak of a state of emergency or martial law (depending on the specific circumstances). It is precisely this approach to the restriction of human rights and freedoms that is established by the Constitution of Ukraine. We would add that, in our opinion, this approach is also enshrined in the Law of Ukraine “On the National Police.” To support this argument, we note that pursuant to paragraph 24 of Part 1 of Article 23 of this Law, the National Police “participates, in accordance with its powers, in ensuring and implementing measures under the legal regime of martial law or a state of emergency, or in a zone of an environmental emergency, in the event of their introduction throughout the territory of Ukraine or in a specific locality”². At the same time, Article 24 of the Law under review, titled “Additional Powers of the Police,” is devoted specifically to the powers of the police under martial law (this aspect will be discussed in the next section).

During the quarantine period in Ukraine, a state of emergency was never declared, indicating that government authorities hoped to address the challenges of combating the pandemic through conventional means.

¹ Verkhovna Rada of Ukraine. (1996). *Konstytutsiia Ukrainy vid 28 chervnia 1996 roku* [Constitution of Ukraine of June 28, 1996]. *Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of the Verkhovna Rada of Ukraine*, 30. [in Ukrainian].

² Verkhovna Rada of Ukraine. (2015). *Pro Natsionalnu politsiuu* [On the National Police]. *Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of the Verkhovna Rada of Ukraine*, 40–41, Art. 379. [in Ukrainian].

It should be noted that when imposing the quarantine, the Cabinet of Ministers of Ukraine cited Article 29 of the Law of Ukraine “On the Protection of the Population from Infectious Diseases,” which establishes the institution of quarantine and defines the procedure for its imposition. At the same time, this article specifies that the initiator of the quarantine is the central executive authority in the field of public health; however, the entity responsible for submitting a proposal to impose quarantine is the Chief State Sanitary Doctor of Ukraine¹.

However, the provisions of this Law (as well as Article 29 under consideration) must be interpreted in conjunction with the provisions of the Law of Ukraine “On Ensuring the Sanitary and Epidemic Well-being of the Population,” Article 40 of which defines the powers of the Chief State Sanitary Doctor of Ukraine. Thus, pursuant to paragraph 1 of Article 40 of the Law “On Ensuring the Sanitary and Epidemic Well-being of the Population,” the powers of the Chief State Sanitary Doctor of Ukraine include “in the event of the introduction of a state of emergency in Ukraine or in certain regions thereof, submitting to the central executive authority responsible for formulating state policy in the field of public health a substantiated proposal for a decision to appeal to the Cabinet of Ministers of Ukraine with a proposal to establish a quarantine”².

This provision clearly and unambiguously establishes the grounds for preparing a proposal to impose a quarantine—namely, the declaration of a state of emergency. This conclusion is fully consistent with the provisions of the Constitution of Ukraine, which allow for “massive” restrictions on human rights only under a state of emergency or martial law, as we noted above.

¹ Verkhovna Rada of Ukraine. (2000). Pro zakhyst naselennia vid infektsiinykh khvorob [On Protection of the Population from Infectious Diseases]. Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of the Verkhovna Rada of Ukraine, 29, Art. 228. [in Ukrainian].

² Verkhovna Rada of Ukraine. (1994). Pro zabezpechennia sanitarnoho ta epidemichnoho blahopoluchchia naselennia [On Ensuring the Sanitary and Epidemiological Welfare of the Population]. Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of the Verkhovna Rada of Ukraine, 27, Art. 218. [in Ukrainian].

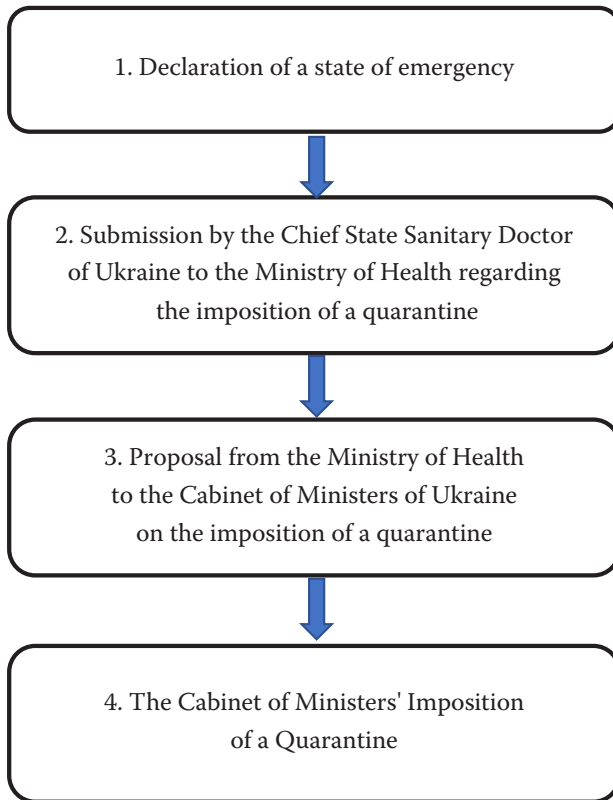


Figure 2.1 – The procedure for imposing a quarantine as established by current legislation

A violation of the established procedure for imposing a quarantine indicates that the relevant state authorities have exceeded their powers and, consequently, that the imposition of the quarantine and the subsequent restrictions on human rights and freedoms are unlawful (we refer once again to Article 19 of the Constitution of Ukraine, and add that, pursuant to Part 2 of Article 8 of the Constitution of Ukraine, “The Constitution of Ukraine has the highest legal force. Laws and

other normative legal acts are adopted on the basis of the Constitution of Ukraine and must comply with it”¹).

We should also note that legislation governing states of emergency explicitly provides for the possibility of compensating for damages incurred during the imposition of a state of emergency (Article 25 of the Law “On the Legal Regime of a State of Emergency”)², therefore, when imposing a state of emergency, public authorities must recognize the need to address the issue of compensating for damages caused to individuals and legal entities.

In the context of the issue at hand, we note the provisions of Resolution No. 9 of the Plenum of the Supreme Court of Ukraine dated November 1, 1996, which states that in the event of a conflict between any normative legal act (law or subordinate act) and the Constitution, it is the provisions of the Constitution that must be applied in the administration of justice³. We also cite the following provision of this Resolution, which reflects the superior legal force of the provisions of the Constitution of Ukraine: “When considering specific cases, courts must evaluate the content of any law or other normative legal act from the perspective of its conformity with the Constitution and, in all necessary cases, apply the Constitution as an act of direct application”⁴. We note that we will not consider the procedure for a judge’s actions in the event of a conflict between the provisions of a law and the

¹ Verkhovna Rada of Ukraine. (1996). Konstytutsiia Ukrainy vid 28 chervnia 1996 roku [Constitution of Ukraine of June 28, 1996]. Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of the Verkhovna Rada of Ukraine, 30. [in Ukrainian].

² Verkhovna Rada of Ukraine. (2000). Pro pravovyi rezhym nadzvychainoho stanu [On the Legal Regime of the State of Emergency]. Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of the Verkhovna Rada of Ukraine, 23, Art. 176. [in Ukrainian].

³ Supreme Court of Ukraine. (1996). Pro zastosuvannia Konstytutsii Ukrainy pry zdiisnenni pravosuddia. Postanova Plenumu Verkhovnoho Sudu Ukrainy vid 1 lystopada 1996 roku № 9 [On the Application of the Constitution of Ukraine in the Administration of Justice. Resolution of the Plenum of the Supreme Court of Ukraine No. 9 of 1 November 1996]. Retrieved from <https://zakon.rada.gov.ua/laws/show/v0009700-96#Text>

⁴ The same.

Constitution of Ukraine; however, we emphasize that, in accordance with the provisions enshrined in Part 2 of Article 48 of the Law of Ukraine “On the Judicial System and the Status of Judges,” judges must administer justice based precisely on the Constitution and laws of Ukraine, guided by the principle of the rule of law (which requires respect for human rights and fundamental freedoms)¹.

It should also be noted that, pursuant to Parts 2 and 4 of Article 41 of the Criminal Code of Ukraine, “an order or directive is lawful if it is issued by the appropriate person in the proper manner and within the scope of their authority, and if its content does not conflict with applicable law and is not associated with a violation of the constitutional rights and freedoms of a person and a citizen,” and “a person who has carried out a clearly criminally unlawful order or directive is subject to criminal liability on general grounds for acts committed with the aim of carrying out such an order or directive”².

Given the above, it seems somewhat surprising that judges have differing interpretations of the provisions of regulatory acts that clearly define the procedure for imposing quarantine under a state of emergency. For example, on December 20, 2021, the Illichivsk City Court of the Odesa Region, in its decision in Case No. 501/4438/21, stated, among other things, the following: “An act cannot be considered lawful, even if correct in substance, if it is issued in violation of procedure, since in such a case the norms of the rule of law would be undermined and the legal order would be violated. ... it must be affirmed that, within the legal framework of Ukraine’s current legislation, quarantine has not been imposed”³.

¹ Verkhovna Rada of Ukraine. (2016). Pro sudoustrii i status soddv [On the Judiciary and the Status of Judges]. Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of the Verkhovna Rada of Ukraine, 31, Art. 545. [in Ukrainian].

² Verkhovna Rada of Ukraine. (2001). Kryminalnyi kodeks Ukrainy vid 5 kvitnia 2001 roku [Criminal Code of Ukraine of April 5, 2001]. Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of the Verkhovna Rada of Ukraine, 25–26, Art. 131. [in Ukrainian].

³ Illichivsk City Court of Odesa Region. (2021). Rishennia Illichivskoho miskoho sudu Odeskoi oblasti vid 20 hrudnia 2021 roku u spravi № 501/4438/21 [Decision of the Illichivsk City Court of Odesa Region of 20 December 2021 in Case No. 501/4438/21]. Retrieved from <https://reyestr.court.gov.ua/Review/102274193>

Some judges completely disregarded the plaintiffs' arguments regarding the illegality of the restrictions, without providing any justification for rejecting such arguments, and issued decisions that were diametrically opposed. For example, one should mention the decision of the Eighth Administrative Court of Appeal dated December 9, 2021, in Case No. 345/4501/21¹. However, in this case, it is worth noting the Supreme Court's appeal to the Constitutional Court of Ukraine regarding the declaration of certain restrictions on human rights and freedoms, established during the quarantine, as unconstitutional.

In the context of our study, we should also note that on March 17, 2020, amendments were made to the Code of Ukraine on Administrative Offenses regarding the establishment of liability for violations of quarantine rules², and on November 6, 2020, a law was adopted amending the Code of Ukraine on Administrative Offenses, specifically regarding the establishment of administrative liability for violations of certain quarantine restrictions³. Thus, in accordance with the amendments, Article 44-3 was added to the Code of Ukraine on Administrative Offenses, which consists of two parts: the first contains a blanket provision referring to quarantine rules; the second

¹ Eighth Administrative Court of Appeal. (2021). Postanova Vostmoho apeliatiiinoho administratyvnoho sudu vid 9 hrudnia 2021 roku u spravi № 345/4501/21 [Decision of the Eighth Administrative Court of Appeal of 9 December 2021 in Case No. 345/4501/21]. Retrieved from <https://reyestr.court.gov.ua/Review/101773884>

² Verkhovna Rada of Ukraine. (2020). Pro vnesennia zmin do deiakyykh zakonodavchykh aktiv Ukrainy, spriamovanykh na zapobihannia vynykenniu i poshyrenniu koronavirusnoi khvoroby (COVID-19) [On Amendments to Certain Legislative Acts of Ukraine Aimed at Preventing the Occurrence and Spread of Coronavirus Disease (COVID-19)]. Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of the Verkhovna Rada of Ukraine, 16, Art. 100. [in Ukrainian].

³ Verkhovna Rada of Ukraine. (2020). Pro vnesennia zmin do Kodeksu Ukrainy pro administratyvni pravoporushennia shchodo zapobihannia poshyrenniu koronavirusnoi khvoroby (COVID-19) [On Amendments to the Code of Ukraine on Administrative Offences Concerning the Prevention of the Spread of Coronavirus Disease (COVID-19)]. Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of the Verkhovna Rada of Ukraine, 4, Art. 28. [in Ukrainian].

establishes liability for failure to use respirators or protective masks in public places¹.

In this regard, the National Police is responsible for hearing cases involving administrative offenses under Part 2 of Article 44-3 of the Code of Ukraine on Administrative Offenses.

Pursuant to paragraph 8 of Part 1 of Article 23 of the Law of Ukraine “On the National Police,” the police are vested with the authority to conduct proceedings in cases of administrative offenses, issue relevant decisions, and ensure the enforcement of such decisions.

That is why, in the context of our study, it is important to examine the issue of how the National Police exercise their authority to hold individuals accountable for violating quarantine restrictions.

Throughout 2020, there were numerous media reports about the National Police’s enforcement of the requirements established by the Resolution of the Cabinet of Ministers of Ukraine regarding the imposition of quarantine; about the significant number of reports filed, which created the impression that combating quarantine violators was the state’s primary task².

For example, on November 9, 2021, the website of the Main Directorate of the National Police in Sumy Oblast published information stating that over a two-week period, police had issued nearly 5,000 citations for violations of quarantine rules³. According

¹ Verkhovna Rada of Ukraine. (1984). Kodeks Ukrainy pro administratyvni pravoporushennia [Code of Ukraine on Administrative Offences]. Retrieved from <https://zakon.rada.gov.ua/laws/show/80731-10#Text>

² Smaliuk, R. Administratyvna vidpovidalnist za porushennia pravyl karantynu: yak sudy karaiut porushnykiv? [Administrative Liability for Violation of Quarantine Rules: How Do Courts Punish Offenders?]. Retrieved from <https://pravo.org.ua/blogs/administratyvna-vidpovidalnist-za-porushennya-pravyl-karantynu-yak-sudy-karayut-porushnykiv/>

³ Za dva tyzhni politseiski sklaly ponad 4800 protokoliv za porushennia karantynnykh obmezhen – hlava Natspolitsii [Police Issued More than 4,800 Reports for Violations of Quarantine Restrictions in Two Weeks – Head of the National Police]. Retrieved from <https://su.npu.gov.ua/news/za-dva-tizhni-politseyski-sklali-ponad-4800-protokoliv-za-porushennya-karantinnikh-obmezhen-glava-natspolitsii>

to data from this official website, the National Police have established approximately 1,400 mobile units tasked with enforcing quarantine restrictions. “A total of 14,500 officers report for duty every day,” the head of the National Police stated. ... “Over these two weeks, about 4,800 reports were filed and nearly 27,000 rulings issued regarding mask compliance. And in just two weeks, 210 criminal cases were opened for forging COVID documents,” he noted¹.

We must also mention the official figures released by the National Police. Specifically, the report states that the following actions were taken over a three-day period in January:

- 848 reports were filed under Part 1 of Article 44-3 of the Code of Ukraine on Administrative Offenses,
- 3,658 rulings were issued under Part 2 of Article 44-3 of the Code of Ukraine on Administrative Offenses,
- 1 criminal proceeding was initiated under Article 325 of the Criminal Code of Ukraine².

According to the National Police, 154,200 complaints were received by its agencies during the period of restrictions. Police officers drew up 68,035 administrative reports, of which 66,642 were referred to court. In addition, police officers issued 69,696 rulings on the commission of offenses (under Part 2 of Article 44-3 of the Code of Ukraine on Administrative Offenses)³.

It should be noted that, in our view, such data may indicate that the public was not adequately informed about the potential consequences

¹ Za dva tyzhni politseiski sklaly ponad 4800 protokoliv za porushennia karantynnykh obmezhen – hlava Natspolitsii [Police Issued More than 4,800 Reports for Violations of Quarantine Restrictions in Two Weeks – Head of the National Police]. Retrieved from <https://su.npu.gov.ua/news/za-dva-tizhni-politseyski-sklali-ponad-4800-protokoliv-za-porushennya-karantinnikh-obmezhen-glava-natspolitsii>

² Z 8 sichnia pravookhorontsi vyavily porushennia karantynnykh obmezhen u roboti ponad 1,5 tysiachi zakladiv [Since January 8, Law Enforcement Officers Have Detected Violations of Quarantine Restrictions in More than 1,500 Establishments]. Retrieved from <https://www.npu.gov.ua/news/z-8-sichnya-pravookhorontsi-viyavili-porushennya-karantinnikh-obmezhen-u-roboti-ponad-15-tisyachi-zakladiv-dodano-video>

³ The same.

of failing to comply with quarantine requirements, or that the public did not accept the information conveyed through official media regarding the severity of the pandemic's consequences. In this regard, it is already possible today to critically assess the actions of public authorities at that time. For instance, while the quarantine was not lifted in Ukraine until July 1, 2023, the media had "sidelined" the topics of quarantine, the necessity of adhering to quarantine requirements, and vaccination since the start of Russia's full-scale invasion of Ukraine; The requirement to suspend unvaccinated employees from work, as well as issues such as overcrowded hospitals, became "irrelevant."

In this context, it is worth citing some additional statistics. As reported by certain media outlets, "since the start of the quarantine, courts of first instance have issued 112,617 rulings, of which only 2,427 were reviewed on appeal—a little over 2 %." An analysis of the Unified Register of Court Decisions suggests that the courts are largely on the side of businesses and the public, as approximately 72 % of cases were dismissed by courts of first instance without imposing liability"¹.

In addition, according to data from civil society organizations, out of 66,401 reports that were submitted to the courts (it should be noted that this figure differs from the National Police's data by 241 reports). Of these reports (as of December 15, 2020), only 35,506 had been reviewed by the court; of these, only 2,779 resulted in penalties, accounting for just 8 % of the cases reviewed.

These figures point to problems in the activities of law enforcement agencies regarding the restriction of human rights during the quarantine. After all, administrative penalties were imposed by the court in less than 10 % of cases. The reasons for this were either errors made during the drafting of the reports or the closure of proceedings on other grounds.

¹ Porushennia pravyl karantynu: top-10 sudovykh rishen [Violation of Quarantine Rules: Top 10 Court Decisions]. Retrieved from https://jurliga.ligazakon.net/news/207566_porushennya-pravil-karantynu-top-10-sudovikh-rshen

It should be noted that, according to data from the Center for Political and Legal Reforms, the grounds for closing proceedings included the following:

- 1) drafting reports against a person who was not the subject of the offense (these are cases Nos. 641/8439/20, 641/8631/20, 529/698/20);
- 2) incorrect citation of the regulatory act establishing quarantine restrictions (these are cases Nos. 274/2686/20, 755/5549/20, 144/817/20, 766/7844/20);
- 3) the police failed to provide sufficient evidence indicating the commission of an offense (these are cases Nos. 766/12916/20, 766/17715/20);
- 4) the regulations establishing quarantine restrictions do not contain the restrictions specified in the reports (these are cases Nos. 760/7768/20, 766/5088/20)¹.

When examining these statistics, as well as the decisions of national courts, one cannot fail to mention the decision of the Zinkiv District Court of Poltava Oblast dated April 12, 2021, in Case No. 530/75/21, which specifically concerned a failure to comply with the mask-wearing requirement: an individual entered a store and refused to put on a mask.

After a detailed analysis of the case circumstances and national legislation, including the case law of the European Court of Human Rights, the national court concluded that the Constitution of Ukraine is the supreme law, which establishes restrictions on freedom of movement only under conditions of a state of emergency or martial law; however, a state of emergency had not been declared in Ukraine. The Zinkiv District Court of Poltava Oblast also noted that “the current orders of the Ministry of Health (approving the COVID-19 treatment

¹ Smaliuk, R. Administratyvna vidpovidalnist za porushennia pravyl karantynu: yak sudy karaiut porushnykiv? [Administrative Liability for Violation of Quarantine Rules: How Do Courts Punish Offenders?]. Retrieved from <https://pravo.org.ua/blogs/administratyvna-vidpovidalnist-za-porushennya-pravyl-karantynu-yak-sudy-karayut-porushnykiv/>

protocol) stipulate that healthy people are not required to wear masks in public places”¹.

It is worth noting that the court also analyzed the World Health Organization’s Interim Guidance of April 5, 2020, titled “Use of Masks in the Context of COVID-19,” which states that “there is currently no direct evidence (based on studies of COVID-19 as well as the general population) regarding the effectiveness of the general and widespread use of masks by healthy people for the prevention of respiratory viral infections, including COVID-19,” “Currently, there is no compelling scientific evidence or data directly indicating the need for widespread and general use of masks by healthy people; in addition, existing risks and benefits must be taken into account,” “the likely drawbacks of widespread mask use by healthy people include: the likelihood of a higher risk of self-infection due to touching the mask and subsequently touching the eyes with contaminated hands ...; the possibility of self-infection if a damp or contaminated non-medical mask is not replaced...”².

It is also worth noting the court’s conclusion that “the requirement to wear a protective mask is unlawful. Anyone is obligated to refuse to comply with this requirement. Those who demand that a protective mask be worn are subject to criminal prosecution, and a report of the crime must be filed with the police”³.

Thus, taking into account all of the above, the following conclusions should be drawn.

¹ Zinkiv District Court of Poltava Region. (2021). Rishennia Zinkivskoho raionnoho sudu Poltavskoi oblasti vid 12 kvitnia 2021 roku u spravi № 530/75/21 [Decision of the Zinkiv District Court of Poltava Region of 12 April 2021 in Case No. 530/75/21]. Retrieved from <https://reyestr.court.gov.ua/Review/96391117>

² World Health Organization. (2020). Advice on the Use of Masks in the Context of COVID-19: Interim Guidance, 5 June 2020. Retrieved from https://apps.who.int/iris/bitstream/handle/10665/332293/WHO-2019-nCov-IPC_Masks-2020.4-eng.pdf

³ Zinkiv District Court of Poltava Region. (2021). Rishennia Zinkivskoho raionnoho sudu Poltavskoi oblasti vid 12 kvitnia 2021 roku u spravi № 530/75/21 [Decision of the Zinkiv District Court of Poltava Region of 12 April 2021 in Case No. 530/75/21]. Retrieved from <https://reyestr.court.gov.ua/Review/96391117>

Significant restrictions (in terms of the number of individuals affected and the rights restricted) on human rights and freedoms in a democratic society are possible only under a state of emergency or martial law. In other cases, restrictions on the individual human rights of a specific person are permitted only if there are a number of grounds specified by law. In any case, the restriction must be lawful, serve a legitimate purpose, and the measures taken by public authorities must be the least burdensome for individuals and sufficient to achieve the legitimate purpose (proportionate).

Under current Ukrainian law, a state of emergency is the primary (but not the only) basis for imposing a quarantine and establishing corresponding restrictions on human rights, which are implemented to ensure public health. Only after a state of emergency is declared, upon the recommendation of the relevant authorities, may a quarantine and restrictions on human rights and freedoms be imposed. Violation of this procedure renders the imposed restrictions unlawful. At the same time, it should be emphasized that in the realm of law, the end does not justify the means. Even in circumstances threatening the life of the nation, pursuant to Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms, a number of rights cannot be restricted. Let us recall that it is human rights (we emphasize that we are talking about the rights of the individual) that define the state's actions.

That is precisely why law enforcement agencies, including when carrying out duties to monitor compliance with quarantine restrictions, must be guided by the principle of the rule of law, which requires respect for human rights; ensuring human rights must be a priority in the activities of these agencies. At the same time, what matters is the genuine observance of human rights and fundamental freedoms, not the blind execution of orders from any individuals, including higher public authorities.

It is precisely the law enforcement agencies that bear a significant portion of the responsibility for enforcing quarantine restrictions,

particularly those related to their authority—maintaining public order, combating offenses, and holding those responsible legally accountable.

When enforcing compliance with quarantine restrictions, law enforcement agencies must adhere to the principle of equality and refrain from imposing discriminatory restrictions. In this context, we should note the established requirement for proof of vaccination, where the decision to grant access to a premises was based not on the individual's health status but on the presence or absence of a certificate that has no bearing on whether the person is a carrier of the virus.

Consequently, human rights are the guiding principle that should determine the procedures for law enforcement agencies during the implementation of quarantine restrictions. Otherwise, one might conclude that public authorities are prone to expanding authoritarian practices and intensifying control over civil society. A state of emergency does not suspend human rights and freedoms, and during this special legal regime, human rights remain a priority for public authorities in general and law enforcement agencies in particular (which is precisely why the law provides for such a state as a means of restoring the normal functioning of society).

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Chapter 3

THE PROTECTION OF HUMAN RIGHTS BY LAW ENFORCEMENT AGENCIES UNDER MARTIAL LAW

3.1 The legal regime of martial law: balancing national security and individual liberty

Earlier, when describing the specifics of safeguarding human rights under a state of emergency, we noted that current legislation—in particular, the Constitution of Ukraine as the country’s Basic Law—provides for two circumstances under which a substantial (in quantitative terms) (albeit temporary) restriction of human rights and fundamental freedoms is permissible. These cases are a state of emergency and martial law. At the same time, constitutional provisions do not distinguish between the rights and freedoms that may be restricted under one of these legal regimes and those that may be restricted under the other. Thus, Part 2 of Article 64 of the Constitution of Ukraine “combines” these conditions and establishes exceptions by listing the articles of the Constitution that enshrine the rights which cannot be restricted even under these extraordinary circumstances.

At the same time, it is worth noting that these conditions—a state of emergency and martial law—may entail different measures restricting human rights, which is why it is necessary to address the subject matter indicated in the title of this section (and subsection).

We emphasize that, given the similar organizational and legal characteristics of these two regimes, we will focus specifically on those aspects that distinguish martial law from other special legal regimes.

It should also be noted that under quarantine restrictions, public authorities acted primarily on a case-by-case basis (one factor being an unclear understanding of the “source of danger,” its characteristics, the mechanism of transmission, mutations, as well as the lack of effective countermeasures, etc.), whereas regarding martial law (or more precisely, those conditions of societal functioning under which the imposition of martial law is both possible and necessary), state authorities have the opportunity to take a more measured approach to planning the measures intended to bring society out of such dangerous conditions. Indeed, it is difficult to deny the fact that the Ukrainian armed forces in early 2014 and early 2022 have different characteristics, particularly in terms of improving operational effectiveness and ensuring the sustainability of those operations.

It should be noted that in the history of the Ukrainian state, martial law was imposed from November 26, 2018, to December 26, 2018¹ (The President proposed imposing martial law for a period of 60 days; however, the Verkhovna Rada of Ukraine decided on a one-month term for martial law). At the same time, in accordance with the Law of Ukraine on the Approval of the relevant Decree of the President of Ukraine, restrictions have been established regarding the territory on which martial law is imposed—namely “in the Vinnytsia, Luhansk, Mykolaiv, Odesa, Sumy, Kharkiv, and Chernihiv regions, as well as in the Donetsk, Zaporizhzhia, and Kherson regions and the internal waters of Ukraine in the Azov-Kerch water area”².

¹ Verkhovna Rada of Ukraine. (2018). Pro vvedennia voiennoho stanu v Ukraini. Ukaz Prezydenta Ukrainy, zatverdzhnyi Zakonom Ukrainy vid 26 lystopada 2018 roku [On the Introduction of Martial Law in Ukraine. Decree of the President of Ukraine Approved by the Law of Ukraine of 26 November 2018]. Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of the Verkhovna Rada of Ukraine, 48, Art. 381. [in Ukrainian]. Retrieved from <https://zakon.rada.gov.ua/laws/show/393/2018#Text>

² The same.

As a reminder, martial law was imposed in response to Russia's escalating military aggression against Ukraine; specifically, on November 25, 2018, Russian Federation vessels attacked Ukrainian ships, rammed a tugboat, fired upon escort boats, and captured Ukrainian sailors in the Sea of Azov¹.

Although the Presidential Decree on the imposition of martial law referred to the possibility of restricting certain human rights ("the constitutional rights and freedoms of individuals and citizens provided for in Articles 30–34, 38, 39, 41–44, and 45 of the Constitution of Ukraine may be restricted"²), it primarily concerned the possibility of conducting a partial mobilization in the event of a further escalation of Russia's armed aggression against Ukraine (this is stated in the Law on the Implementation of this Presidential Decree).

Consequently, the imposition of martial law in November–December 2018 did not result in significant (in quantitative terms) restrictions on human rights and fundamental freedoms in Ukraine. At the same time, the institution of martial law as a phenomenon aroused interest both among the civilian population (in terms of understanding possible restrictions on human rights and freedoms) and within the academic legal community (regarding the nature of this legal institution and the peculiarities of society's functioning under martial law).

However, it should also be noted that the need to impose martial law in Ukraine was already being discussed in society as early as 2014—from the outset of Russia's armed aggression against Ukraine.

¹ V Ukraini vvely voiennyi stan po vsii terytorii: yak vin vplyne na zhyttia [Martial Law Introduced Throughout Ukraine: How It Will Affect Everyday Life]. Retrieved from <https://suspilne.media/209525-voennij-stan-za-akih-umov-zaprovadat-ta-ak-vin-vplyne-na-zitta/>

² Verkhovna Rada of Ukraine. (2018). Pro vvedennia voiennoho stanu v Ukraini. Ukaz Prezydenta Ukrainy, zatverdzhnyi Zakonom Ukrainy vid 26 lystopada 2018 roku [On the Introduction of Martial Law in Ukraine. Decree of the President of Ukraine Approved by the Law of Ukraine of 26 November 2018]. Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of the Verkhovna Rada of Ukraine, 48, Art. 381. [in Ukrainian]. Retrieved from <https://zakon.rada.gov.ua/laws/show/393/2018#Text>

As reported by the media, the Ukrainian president spoke of introducing such a state as early as December 2014, citing as grounds for raising the issue “in the event that Russia launches an offensive operation in eastern Ukraine”¹. And although such an offensive did take place—with parts of the Luhansk and Donetsk regions and the Autonomous Republic of Crimea being occupied—the legal regime of martial law itself was not introduced until late 2018.

We should also note a certain degree of disorganization within the Ukrainian state apparatus at the outset of martial law. “On December 3, the eighth day of martial law, the Ministry of Defense convened to discuss the plan for implementing martial law. And only on December 12, that is, on the 17th day of martial law, did the government adopt this Plan for the Implementation and Enforcement of Martial Law Measures in Certain Regions of Ukraine”².

We cite this passage to illustrate that, although by 2018—four years after Russia’s act of aggression and the occupation of part of Ukrainian territory—legislation on martial law was already in place, the specific mechanisms of that state of martial law remained unknown to the Ukrainian public. Consequently, by February 2022, when martial law was introduced in Ukraine following Russia’s full-scale invasion, public authorities should have been prepared to some extent to apply the mechanisms provided for under the legal regime of martial law.

We must also mention O. Brygynets’ statement that the reason for the failure to introduce the legal regime of martial law in 2014 was the lack of the necessary number of votes in the Verkhovna Rada of Ukraine³.

¹ Ulianovska, M., & Rieutskyi, K. Chy krashche pizno, nizh nikoly? Pidsumky 30 dniv voiennoho stanu [Better Late Than Never? Results of 30 Days of Martial Law]. Retrieved from <https://hromadske.ua/posts/voyennij-stan-zavershivsyia>

² The same.

³ U Radi poiasnyly, chomu u 2014 rotsi ne zaprovadyly voiennyi stan [Parliament Explained Why Martial Law Was Not Introduced in 2014]. Retrieved from <https://www.unian.ua/politics/10391661-u-radi-poyasnili-chomu-u-2014-roci-ne-zaprovadili-voyenniy-stan.html>

This explanation seems plausible, given the significant number of deputies from the pro-Russian political party “Party of Regions,” which was later reorganized into the political party “Opposition Platform – For Life,” which was subsequently banned pursuant to a decision by the Eighth Administrative Court of Appeal on June 8, 2022¹.

While testifying in the criminal proceedings against Viktor Yanukovych for high treason, Oleksandr Turchynov, who served as acting President of Ukraine in 2014, stated that he had planned to declare martial law in 2014, but his proposal was not supported due to fears that it would concentrate excessive power in his hands. “So, at the meeting of the National Security and Defense Council, I was the only one who voted in favor”².

This special legal regime in Ukraine is governed by the Constitution of Ukraine and the Law of Ukraine “On the Legal Regime of Martial Law,” which was adopted in 2015.

In the Constitution of Ukraine, the term “martial law” is used in the following contexts.

1. Martial law as a basis for restricting certain human rights:
 - in Article 41: this legal regime permits the compulsory expropriation of private property, but with subsequent compensation for the full value of such property;
 - in Art. 43: labor performed in accordance with the Law on Martial Law is not considered forced labor (accordingly, martial law provides for the possibility of introducing compulsory labor).
2. Martial law as a basis for the temporary restriction of human rights and freedoms – Art. 64.

¹ Rishennia Vosmoho apeliatsiinoho administratyvnoho sudu vid 8 chervnia 2022 roku u spravi № P/857/8/22 [Decision of the Eighth Administrative Court of Appeal of 8 June 2022 in Case No. P/857/8/22]. Retrieved from <https://verdictum.ligazakon.net/document/104837755>

² Turchynov: “Za voiennyi stan u 2014-mu proholosuvav odyń ya” [Turchynov: “I Was the Only One Who Voted for Martial Law in 2014”]. Retrieved from https://lb.ua/news/2018/02/15/390243_turchinov_zh_voennoe_polozhennie.html

3. Guarantees of respect for human rights and freedoms under martial law:

- in Art. 92: exclusive regulation by LAW of the legal regime of martial law;
- in Art. 157: the impossibility of amending the Constitution of Ukraine during martial law.

4. Martial law as a basis for additional powers of public authorities:

- in Art. 83: the procedure for sessions of the Verkhovna Rada of Ukraine and the term of the parliament's powers;
- in Art. 85: the powers of the Ukrainian parliament to approve the Decree of the President of Ukraine on the imposition of martial law;
- in Art. 106: the powers of the President of Ukraine regarding the imposition of martial law¹.

An analysis of the provisions of the Constitution of Ukraine allows us to identify the following procedure for implementing the legal regime under consideration (Figure 3.1):

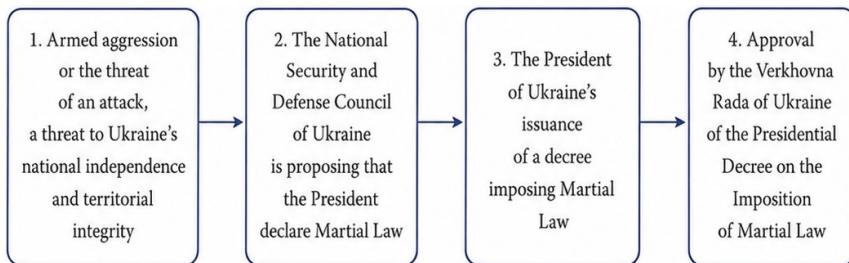


Figure 3.1 – Procedure for Declaring Martial Law

As required by Article 92 of the Constitution of Ukraine, cited above, the Verkhovna Rada of Ukraine adopted the Law of Ukraine “On the

¹ Verkhovna Rada of Ukraine. (1996). Konstytutsiia Ukrainy vid 28 chervnia 1996 roku [Constitution of Ukraine of June 28, 1996]. Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of the Verkhovna Rada of Ukraine, 30. [in Ukrainian].

Legal Regime of Martial Law” in 2015, which defines the scope of the legal regime of the same name.

Pursuant to Article 1 of this Law, martial law is defined as a special legal regime that may be imposed throughout the territory of Ukraine or in specific regions thereof, in the event of armed aggression or a threat of attack, or a danger to Ukraine’s state independence and territorial integrity. This legal regime provides for the granting to certain public authorities of the powers necessary to eliminate the threat, repel armed aggression, and ensure national security, as well as to eliminate the threat to Ukraine’s state independence and territorial integrity. Martial law entails temporary restrictions on human rights and fundamental freedoms, based on the nature of the threat¹.

It is worth noting that Article 19 of the Law under review establishes safeguards for the observance of the rule of law in the context of the introduction of a special legal regime, which is the subject of our analysis. Thus, in accordance with the provisions of this article, the following actions are prohibited:

- amending the Basic Law of Ukraine and the Constitution of the Autonomous Republic of Crimea;
- holding elections for the head of state and deputies, including deputies to local self-government bodies;
- holding referendums (all-Ukrainian and local);
- holding peaceful assemblies, including strikes².

In addition, a separate article of the Law “On the Legal Regime of Martial Law” is devoted to regulating the legal status of citizens,

¹ Verkhovna Rada of Ukraine. (2015). Pro pravovyi rezhym voiennoho stanu. Zakon Ukrainy vid 12 travnia 2015 roku [On the Legal Regime of Martial Law. Law of Ukraine of 12 May 2015]. Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of the Verkhovna Rada of Ukraine, 28, Art. 250. [in Ukrainian].

² Verkhovna Rada of Ukraine. (2015). Pro pravovyi rezhym voiennoho stanu. Zakon Ukrainy vid 12 travnia 2015 roku [On the Legal Regime of Martial Law. Law of Ukraine of 12 May 2015]. Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of the Verkhovna Rada of Ukraine, 28, Art. 250. [in Ukrainian].

including the restriction of their rights and freedoms, as well as those of legal entities. Thus, pursuant to Article 20 of this Law, it is the Constitution and the Law (On the Legal Regime of Martial Law) that constitute the legal acts under which human rights (as well as the rights and legitimate interests of legal entities) are restricted. This same article also establishes the limits of labor service (however, we do not focus on this issue, given that it falls outside the scope of our study).

The Law under review also contains a provision on compensation for losses caused by the compulsory expropriation of property, providing for the possibility of restitution or compensation (these provisions are enshrined in Article 23 of the Law “On the Legal Regime of Martial Law”).

We would add that the following words by Ukrainian author K. Nekit are quite apt in this regard: “Despite the recognition of the possibility and necessity, in certain cases, of restricting the right to private property in the public interest, such cases of restriction of property rights are recognized as exceptional. Such restrictions must be based on a balance of the interests of the individual, society, and the state. Thus, the compulsory expropriation of private property under martial law can be classified as a case where such a balancing of the interests of the individual, society, and the state is necessary”¹

It is worth noting that in 2012, the Verkhovna Rada of Ukraine adopted a special law governing the compulsory seizure of property belonging to individuals and legal entities for state needs under extraordinary circumstances—the Law of Ukraine “On the Transfer, Compulsory Alienation, or Seizure of Property Under a Legal Regime of Martial Law or a State of Emergency”².

¹ Nekit, K. (2023). The Right to Private Property Under Martial Law in Ukraine. *The Age of Human Rights Journal*, 20. Retrieved from <https://revistaselectronicas.ujaen.es/index.php/TAHRJ/article/view/7579/7674>

² Verkhovna Rada of Ukraine. (2012). Pro peredachu, prymusove vidchuzhennia abo vyluchennia maina v umovakh pravovoho rezhymu voiennoho chy nadzvychainoho stanu. Zakon Ukrainy vid 17 travnia 2012 roku [On Transfer, Compulsory Alienation

Pursuant to Articles 1 and 3 of this Law, if, under martial law, state property is seized from state-owned enterprises or associations for state needs, such seizure may take place without compensation for the value of said property (which is entirely evident, given the form of ownership of both the property in question and the entity under whose operational management or economic control such property is held), the compulsory alienation of private property may take place only upon prior compensation for the value of such property (if this is impossible, then with subsequent compensation for the full value of the alienated property)¹.

Earlier, when describing extraordinary circumstances, we noted that authoritarian regimes quite often use states of emergency (and, during 2020–2022, quarantine restrictions) to consolidate their power and expand undemocratic practices. This statement fully applies to a legal regime such as martial law. That is precisely why the legislature acted entirely correctly by enshrining in the analyzed Law provisions prohibiting public authorities from exploiting martial law to consolidate their position by excessively restricting human rights and freedoms.

In this regard, we note that a number of domestic authors quite rightly point out that “the introduction of the special legal regime of martial law poses a potential threat to the guarantee and realization of constitutional human rights”². At the same time, scholars emphasize that “all of the above measures must be implemented in accordance with current legislation and may not substantially restrict fundamental human rights. Furthermore, when imposing restrictions, attention

or Seizure of Property under Martial Law or State of Emergency. Law of Ukraine of 17 May 2012]. Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of the Verkhovna Rada of Ukraine, 15, Art. 99. [in Ukrainian].

¹ The same.

² Panasiuk, V., Poliuk, Y., But, I., Zhyvotovska, I., & Synytsyn, P. (2022). Constitutional Human Rights under Martial Law: Legal Realities. Amazonia Investiga, 11(54), P. 76–83. P. 77.

must be paid to their proportionality to the objectives for which they are introduced”¹

Pursuant to Article 22 of the Law “On the Legal Regime of Martial Law,” “the imposition of martial law may not serve as a basis for the use of torture, cruel or degrading treatment, or punishment. Any attempts to use the imposition of martial law to seize power shall entail liability under the law”².

This legal provision is quite important for understanding the issue of safeguarding human rights and fundamental freedoms under martial law. This provision establishes the primacy of human rights and the impermissibility of disregarding human rights and freedoms, even under martial law.

Thus, it is worth noting that rights are divided into two groups based on whether they can be restricted: absolute and relative. While the latter group includes rights that may be restricted if there are grounds for doing so (for example, to ensure national security), absolute rights cannot be violated under any circumstances³.

We emphasize that we are referring specifically to human rights and fundamental freedoms. In this context, we cannot agree with the approach taken by A. Mernik, V. Kuzmina, and B. Burlakov, who, while pointing out the importance of classifying rights as absolute and relative, use the term “human and civil rights and freedoms”⁴. In the first chapter,

¹ Panasiuk, V., Poliuk, Y., But, I., Zhyvotovska, I., & Synytsyn, P. (2022). Constitutional Human Rights under Martial Law: Legal Realities. *Amazonia Investiga*, 11(54), P. 76–83. P. 78.

² Verkhovna Rada of Ukraine. (2015). Pro pravovyi rezhym voiennoho stanu. Zakon Ukrainy vid 12 travnia 2015 roku [On the Legal Regime of Martial Law. Law of Ukraine of 12 May 2015]. *Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of the Verkhovna Rada of Ukraine*, 28, Art. 250. [in Ukrainian].

³ Kuchuk, A.M., Minchenko, O.V., & Orlova, O.O. (2021). *Praktyka Yevropeiskoho sudu z prav liudyny. Chastyna 1* [Case-Law of the European Court of Human Rights. Part 1]. Dnipro : Seredniak T.K. [in Ukrainian]. P. 19.

⁴ Mernyk, A.M., Kuzmina, V.O., & Burlakov, B.M. (2020). *Obmezhennia prav i svobod liudyny v suchasnykh umovakh: teoretychnyi i praktychnyi aspekty* [Restrictions on Human Rights and Freedoms in Contemporary Conditions: Theoretical

we noted the inaccuracy of this approach, as it distorts the understanding of human rights theory that has developed within the Western legal tradition and corresponds more closely to the understanding of rights in Soviet jurisprudence. Regarding the use of the term “human and civil rights” in the text of the Constitution of Ukraine, one must take into account the circumstances under which Ukraine’s Basic Law was adopted. The provisions of the second chapter of the Constitution of Ukraine can be structured within the framework of legal doctrine. Science is (and should be) the foundation for improving legal regulation, rather than being limited to the interpretation of those norms adopted by the legislative branch.

Regarding the restriction of human rights under martial law, the opinion of Ukrainian scholar M. Mikhaïlov is noteworthy: “The defense of the state consists not only in upholding national sovereignty but also popular sovereignty. Therefore, given that citizens’ need to express their will and to have it take the form of governmental decisions is permanent, popular sovereignty cannot be restricted regardless of the specific legal regime”¹.

Therefore, taking into account the above provisions on a state of emergency and considering the characteristics of martial law described above, the following distinctions can be made to highlight the specific features of safeguarding human rights and fundamental freedoms.

Martial law, like a state of emergency, is a special legal regime used by public authorities to ensure security and maintain order in crisis situations. They share some common features but also differ in their objectives, organizational structure, and other aspects.

Martial law is considered a more stringent and decisive measure applied during war or an imminent threat of war. It should be noted that current legislation defines the grounds for imposing such a state

and Practical Aspects]. *Yurydychnyi naukovyi elektronnyi zhurnal – Juridical Scientific and Electronic Journal*, 2, 42–46. [in Ukrainian].

¹ Mykhailov, M. (2022). Bezposerednia demokratiia v umovakh voiennoho stanu: shliakhy realizatsii prava narodu na vladu [Direct Democracy under Martial Law: Ways of Realizing the People’s Right to Power]. *Aktualni problemy pravoznnavstva – Current Issues of Jurisprudence*, 2(30), 13–18. [in Ukrainian].

as “armed aggression or the threat of an attack, a danger to Ukraine’s state independence, and its territorial integrity”¹. And, for example, as noted in some online publications, “In the U.S., for instance, martial law is prohibited by Article 1 of the Constitution, which forbids the military from interfering in civil affairs. However, this excludes insurrections or situations that substantially threaten public safety. Therefore, martial law can only be declared when all traditional methods of maintaining order have proven insufficient”².

Martial law is typically declared through a legislative act that authorizes the government to grant additional powers to the military and law enforcement agencies. Under this regime, civil liberties and rights, such as freedom of speech, assembly, and privacy, may be restricted. Under such a regime, exceptional security measures may be introduced, such as censorship, restrictions on the movement of people, the imposition of a curfew, and other restrictions.

Accordingly, a state of emergency is considered less severe and may be declared in cases of a threat to national security, the economy, or public order. The declaration of a state of emergency varies by country and may be carried out by the president or another authority through a legislative act or a special decree. A state of emergency grants government authorities additional powers, but these cannot exceed constitutional limits. Under this regime, certain rights and freedoms may be restricted, but this is typically done within narrower limits compared to martial law.

Given the above, it can be concluded that martial law and a state of emergency are legal regimes used to ensure security and order,

¹ Verkhovna Rada of Ukraine. (2015). Pro pravovyi rezhym voiennoho stanu. Zakon Ukrainy vid 12 travnia 2015 roku [On the Legal Regime of Martial Law. Law of Ukraine of 12 May 2015]. Vidomosti Verkhovnoi Rady Ukrainy – *Bulletin of the Verkhovna Rada of Ukraine*, 28, Art. 250. [in Ukrainian].

² Voiennyi stan: yak tse vidbuvalosia v inshykh krainakh [Martial Law: How It Has Been Implemented in Other Countries]. Retrieved from <https://www.radiosvoboda.org/a/martial-law-around-globe/29621742.html>

but martial law is a more severe measure applied in the event of war or an imminent threat of war, whereas a state of emergency is applied in less critical situations, and under the latter, the powers of state authorities are more limited.

It should be noted that since World War II, the martial law declared in Ukraine—which has been in effect since the start of Russia's full-scale invasion—is the longest-lasting in the European region and, moreover, is linked not to a potential threat of armed aggression or domestic strikes, etc., but specifically with military actions by another state aimed at eliminating the sovereignty of the Ukrainian state and committing genocide against the Ukrainian people.

The massive bombing of virtually the entire territory of Ukraine, the *de facto* destruction of individual cities, villages, and towns, and the occupation of a significant part of Ukraine's territory over an extended period—these are the circumstances in which Ukrainian society is attempting to resist a terrorist state that, according to rankings (prior to the full-scale invasion of Ukraine), possessed the world's second-strongest army.

Under such conditions, it is quite evident that the martial law imposed in Ukraine must entail significant restrictions on human rights to enable public authorities to effectively exercise their powers to restore territorial integrity, preserve the Ukrainian nation, and further develop the Ukrainian state. Without restricting human rights and freedoms, achieving this goal is hardly possible. Separately, it is worth mentioning socio-economic rights, which cannot be guaranteed in the context of countering the aggressor and significant expenditures on military needs; nor can the fulfillment of international legal obligations.

In the context of the subject we are examining and the aforementioned international legal obligations, we cannot fail to note the provisions of international humanitarian law. We would like to emphasize that while one may debate the relationship between international humanitarian law and human rights, and whether or not they can be applied

simultaneously, we will refrain from entering into such a debate and instead point out the following.

International humanitarian law and human rights and freedoms are interrelated but have their own distinct characteristics. International humanitarian law is a branch of international law that regulates the conduct of states and other parties to a conflict during armed conflicts. Its primary goal is to protect civilians, those wounded in war, vulnerable persons, and prisoners of war. International humanitarian law includes norms that restrict the conduct of war, establishes rules regarding the use of force, and protects persons not participating in hostilities. It imposes restrictions on the use of prohibited weapons, such as chemical and biological weapons, and prohibits crimes against humanity and war crimes.

Human rights, on the other hand, are an integral part of international law and apply regardless of whether a state of war or peace exists. They guarantee universal rights and freedoms to all people, such as the right to life, freedom of expression, religious freedom, the right to a fair trial, and freedom from violence and discrimination. Human rights are enshrined in various international legal instruments, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Convention for the Protection of Human Rights and Fundamental Freedoms.

The conditions of war, which pose a threat to human rights, are reflected in the interrelationship between these two branches of law. International humanitarian law aims to protect human rights during armed conflicts, particularly by establishing rules to protect civilians, medical personnel, humanitarian workers, and other vulnerable individuals. At the same time, human rights provide a universal standard of protection regardless of the war situation, ensuring fundamental guarantees and freedoms that cannot be violated even under the most extreme conditions.

Therefore, it can be argued that international humanitarian law and human rights are interrelated and complementary, establishing

an obligation to ensure human rights and fundamental freedoms in both peacetime and wartime.

In this context, it is also worth noting that war cannot be viewed as anything other than a phenomenon that effectively negates human rights. At the same time, it is difficult to identify any human right whose very essence is not affected by war—ranging from the right to life to the right to privacy and the right to an effective remedy.

War profoundly affects the very essence of human rights, creating an environment conducive to numerous violations of rights and freedoms that can have extremely serious consequences for people, undermining the foundation of rights—human dignity.

One of the primary human rights violations during war is the killing of civilians. This can result from direct attacks on civilian settlements, the use of heavy weapons, or indiscriminate bombing. Such acts have horrific consequences, including the loss of innocent lives, injuries, destruction of property, and more.



Figure 3.2 – The Drama Theater in Mariupol, on which the occupiers dropped two bombs

Source: <https://mrpl.city/news/view/na-dramteatr-v-mariupole-okkupanty-sbrosili-2-bomby-po-500-kgrassledovanie-ai>



Figure 3.3 – The main street of Bucha

Source: <https://www.ruhrbarone.de/warum-der-ukraine-krieg-auch-unser-krieg-ist/212756/>

War also often leads to widespread human rights violations, including the denial of free access to essential resources. Blockades, sieges, and other restrictions can result in shortages of food, water, medicine, and medical services. This puts many people's lives at risk and leads to a serious deterioration in their health and life-threatening conditions.

In this context, one cannot fail to mention the occupiers' destruction of the Kakhovka Dam, which resulted in the flooding of areas near the Kakhovka Reservoir, the destruction of a significant number of homes, the flooding of fields, and the loss of a large number of animals, fish, and more.

Human rights violations during the war also include violence, particularly sexual violence, rape, beatings, and torture. Women and children are typically particularly vulnerable and fall prey to these horrific crimes. Such acts of violence not only cause physical and emotional harm to the victims but also violate their dignity.



**Figure 3.4 – The Kakhovka Hydroelectric Power Plant,
blown up by the occupiers**

Source: <https://fakty.com.ua/ua/proisshestvija/20230606-kahovsku-ges-povnistyuzrujnovano-vidnovlennyyu-ne-pidlyagaye-ukrenergo/>

We cannot fail to mention reports that the occupiers used Temporary Detention Facility No. 1 of the Main Directorate of the National Police in the Kherson region as a torture chamber for civilians living in territories seized by Russian troops. In the same facility, “women’s” cells were also set up for torture, in which, according to human rights organizations, approximately thirty women were held during the occupation period¹.

According to an analytical report prepared by the human rights organization ZMINA Human Rights Center (based on a survey of people who had been held in this detention center), women were generally held there for periods ranging from one hour to several months, with

¹ Rosiia stvoryla v Khersonskomu izoliatori “zhinochi kamery”, de try mala shchonaimenshe trydtsiat zhinok – pravozakhysnyky [Russia Created “Women’s Cells” in the Kherson Detention Facility Where at Least Thirty Women Were Held – Human Rights Defenders]. Retrieved from <https://zmina.ua/event/rosiya-stvoryla-v-hersonskomu-izolyatori-zhinochi-kamery-de-try-mala-shhonajmenshe-trydczyat-zhinok-pravozahysnyky/>



Figure 3.5 – The bottom of the Kakhovka Reservoir is the result of the occupiers blowing up the dam

Source: <https://nikopol.nikopolnews.net/ukraina/dno-kakhovskoho-2/>

the ages of the detainees ranging from 32 to 58 years old (the youngest woman who spent a long time in the temporary detention center was 21 years old; and according to the testimonies of female detainees who were brought to the center for short periods, there were minors among them¹.

“There were no beds in this place of unlawful detention—only a wooden platform, foam, and three jackets from Ukrainian police uniforms to lie on. Instead of access to a toilet, Russian officials gave the women a bucket that remained in the cell at all times; they were allowed to take it out once a day. In addition, in the absence of a water supply, Russian officials poured water into the washbasin using the

¹ Syniuk, O., Sokurenko, Ye., & Okhotnikova, N. (2023). Zhinochi kamery khersonskoi kativni: analitychnyi zvit za svidchenniamy utrymuvanykh [Women's Cells of the Kherson Torture Facility: Analytical Report Based on Testimonies of Detainees]. Kyiv : ZMINA Human Rights Centre. [in Ukrainian].

same bucket that was used as a toilet. For the first 24 hours, the detained women were given neither food nor water”¹.

There were also reports of threats of rape, including gang rape. Threats of sexual violence were not uncommon².

In addition, the war is causing the forced displacement of people. Millions of people are forced to leave their homes and seek refuge and safety in other countries or through internal displacement. This creates acute humanitarian crises in which people face shortages of housing, food, medical care, and basic necessities.

One year after the full-scale invasion, we have the following statistics³:

- civilian deaths – 8,006 people (including 487 children);
- military deaths – 10,000–13,000 people;
- fled to Europe – 8.087 million people;
- granted temporary protection in the European Union – 8,863 people;
- ended up in Belarus and Russia – 2,872 people.

It should be noted that the data provided here—particularly regarding the number of fatalities and those who have left—is somewhat approximate, as it does not account for the significant number of people who live (or lived) in the occupied territory.

All these factors together create a situation in which human rights become “victims” of war. War causes serious harm to society and undermines the foundations of dignity, freedom, and equality, which are the fundamental principles of human rights.

¹ Syniuk, O., Sokurenko, Ye., & Okhotnikova, N. (2023). Zhinochi kamery khersonskoi kativni: analitychnyi zvit za svidchenniamy utrymuvanykh [Women's Cells of the Kherson Torture Facility: Analytical Report Based on Testimonies of Detainees]. Kyiv : ZMINA Human Rights Centre. [in Ukrainian].

² The same.

³ Rik velykoi viiny Rosii proty Ukrainy u 10 tsyfrakh [One Year of Russia's Great War Against Ukraine in 10 Figures]. Retrieved from <https://www.bbc.com/ukrainian/articles/ck5ylk3rj0zo>

This is precisely why international humanitarian law was adopted as a means of minimizing the negative impact of hostilities on society and as a factor in ensuring human rights (at least at the level of minimum standards). In this regard, we should note the provisions of certain Geneva Conventions.

In accordance with Article 3 of the Convention relative to the Protection of Civilian Persons in Time of War of August 12, 1949, “persons who do not take an active part in hostilities, including members of the armed forces who have laid down their arms, as well as those who are *hors de combat*..., shall be treated humanely, without any hostile discrimination...

To this end, the following acts are and shall remain prohibited at any time and in any place in respect of the persons mentioned above:

- a) violence to life and person, in particular all forms of murder, mutilation, cruel treatment, and torture;
- b) outrages upon human dignity, in particular humiliating and degrading treatment;
- c) sentencing and the imposition of punishment without a prior judicial decision rendered by a court duly constituted and offering judicial guarantees recognized by civilized nations as indispensable”¹.

Similar provisions are also set forth in the Geneva Convention relative to the Treatment of Prisoners of War².

We should also mention the provisions of the Fourth Convention on the Laws and Customs of War on Land and its Additional Protocol: the Regulations on the Laws and Customs of War on Land, which, although adopted more than a century ago, are nevertheless aimed at preserving human dignity during armed conflicts³.

¹ Zhenevska konventsiiia pro povodzhennia z viiskovopolonenymy vid 12 serpnia 1949 roku [Geneva Convention Relative to the Treatment of Prisoners of War of 12 August 1949]. Retrieved from https://zakon.rada.gov.ua/laws/show/995_153#Text

² The same.

³ IV Konventsiiia pro zakony i zvychai viiny na sukhodoli ta dodatok do nei: Polozhennia pro zakony i zvychai viiny na sukhodoli vid 18 zhovtnia 1907 roku

This leads to the conclusion that civilized nations, even in times of war, respect human rights and their foundation—human dignity.

Even in times of war, civilized nations strive to respect human rights and protect their foundation—human dignity. Although war inevitably creates complex challenges and conflicts between security and rights, these nations recognize the importance of preserving the fundamental values and principles that govern relations between people.

Civilized nations adhere to international humanitarian law, which contains norms aimed at protecting the civilian population during conflict. This means they do everything possible to avoid the disproportionate use of force and to uphold the principles of necessity, proportionality, and the separation of civilians from hostilities, all aimed at ensuring the maximum safety and dignity of people affected by conflict.

Furthermore, civilized nations prioritize humanitarian considerations over force and establish oversight and accountability mechanisms to ensure respect for human rights. They strive for transparent investigations into potential rights violations and hold perpetrators accountable, which helps foster a culture of accountability and prevent impunity.

Furthermore, civilized nations actively promote the protection and promotion of human rights within global international frameworks, such as the United Nations and the European Union. They collaborate with international humanitarian organizations and non-governmental organizations to ensure the protection of human rights, provide humanitarian aid, and foster the development of peaceful and stable societies.

Thus, even in times of war, civilized nations strive to uphold the principles of humanitarian law and protect human rights, recognizing the importance of human dignity. They acknowledge that the protection

[Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land of 18 October 1907]. Retrieved from https://zakon.rada.gov.ua/laws/show/995_222#Text

of the rights and dignity of every individual is a necessary prerequisite for achieving peace, stability, and the development of nations.

Let us also recall the preamble to the Universal Declaration of Human Rights, specifically the passage stating that “disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind¹”. This provision from the Universal Declaration of Human Rights reflects deep concern regarding the consequences of the disregard and denial of human rights, which can lead to outcomes that outrage the conscience of mankind.

In our view, the essence of this provision lies in the fact that the disregard and violation of human rights can have extremely serious consequences. It asserts that acts of violence, cruelty, and violations of humanitarian principles, which drive humanity to barbaric acts, cannot be tolerated or justified.

This provision reflects the universal conviction that all people have the right to a dignified life, respect for their person, and physical integrity. Disregard and violation of these rights lead to abuses that undermine the most fundamental values and principles of human dignity. We should add that this provision of the Universal Declaration of Human Rights also reflects the importance of international cooperation and joint efforts to combat these barbaric acts and hold the responsible parties accountable for their actions. It calls for the global community to unite to ensure the protection of human rights and prevent the recurrence of such barbaric acts in the future.

Overall, this provision of the Universal Declaration of Human Rights underscores the inseparable link between respect for human rights, humanitarian values, and the conscience of humanity. It calls for intensified efforts to combat the disregard and violation of human rights, which can lead to barbaric acts that outrage the conscience and threaten the fundamental principles of human dignity.

¹ United Nations. (1948). Universal Declaration of Human Rights. Retrieved from <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

Therefore, summarizing the above, the following conclusions can be drawn. Even under martial law or during an armed conflict, respect for human rights and fundamental freedoms is a crucial aspect of civilization in general and international law in particular. This allows us to identify a number of factors that determine the inadmissibility of disregarding human rights and freedoms.

First, this is a fundamental principle of humanism. Regardless of the circumstances, all people have the right to be treated with dignity and to be protected from violence. This includes fundamental rights such as the right to life, liberty, personal integrity, protection from slavery or the slave trade, adequate food, and medical care. The task of public authorities during armed conflicts should be to minimize violations of these rights.

Respect for human rights reflects respect for human dignity. Even during war, when the situation may be extremely difficult, it is important to remember that every person has dignity. Respect for human rights helps preserve that dignity.

Second, it is the maintenance of the international legal order. International humanitarian law sets boundaries for regulating the conduct of parties to an armed conflict. These norms, such as the Geneva Conventions, establish obligations regarding the treatment of prisoners of war, the civilian population, and the inviolability of humanitarian facilities. Compliance with these norms helps preserve international order and improve the humanitarian situation during conflict.

Third, there are long-term consequences: Human rights violations during war can have serious, long-lasting consequences. They can lead to violence, hatred, and alienation, which complicate the process of peaceful settlement and post-conflict recovery. Respect for human rights helps reduce the risk of such consequences and contributes to achieving a peaceful and sustainable settlement.

Although war creates extremely difficult circumstances in which it is sometimes challenging to ensure respect for human rights, the principles of humanitarian law and respect for human rights remain important even in the most difficult circumstances.

3.2 The functional role of the law enforcement system in upholding the rule of law during wartime

As we have established above, martial law entails exceptional conditions for the functioning of the state, arising when the very existence of the state and its foundations (territory, sovereignty, and people) are threatened. It is evident that under such conditions, heightened demands are placed on all state authorities, including law enforcement agencies, regarding their operations; this, in turn, necessitates granting them additional powers to address issues arising under martial law.

It is quite clear that the primary role in averting the danger that leads to the declaration of martial law (or its de facto existence) belongs to the armed forces of the respective state. Domestic scholar D. Bobrov quite rightly points out that “an important task of any state (from the moment this form of social organization emerged) is to ensure the defense of its own territory, the effective fulfillment of which is the basis for the proper functioning of society, the exercise of sovereignty, and the protection of human rights. Today, only a small number of states have not established their own standing army. In such states, the fulfillment of defense functions relies primarily on other states with which relevant agreements have been concluded”¹.

However, under martial law, effective coordination and seamless cooperation among various public authorities are more important than ever. In this context, law enforcement agencies, which communicate directly with the public, play a particularly important role.

It should be noted that, as we have established, even under martial law, the principle of legality remains a fundamental principle governing the activities of law enforcement agencies. This principle requires these agencies, while safeguarding human rights and freedoms, to act strictly

¹ Bobrov, D.V. (2023). *Materialna vidpovidalnist viiskovosluzhbovtiv yak instytut administratyvnoho prava* [Material Liability of Military Personnel as an Institution of Administrative Law]. Odesa : Yurydyka Publishing House. [in Ukrainian].

within the limits of the powers granted to them by law (we emphasize once again that this refers specifically to the normative legal act that has the highest legal force). That is why, in addressing the subject matter of this part of the study, we will devote significant attention to analyzing the legal framework governing the activities of law enforcement agencies under martial law; in doing so, the focus will be specifically on the National Police. The reasons for this choice are as follows.



Figure 3.6 – Photos from drills simulating a nuclear threat

Source: <https://mvs.gov.ua/uk/photo/navcannia-zaes>

The conditions of martial law require intensified activity by the National Police to ensure public order, the safety of citizens, and the protection of society's interests. The important role of the police under these conditions lies in the following aspects:

1. *Ensuring public safety:* The National Police carries out measures to suppress and prevent crime and ensure the safety of citizens. It must protect people's rights, lives, and property, and maintain order on the streets and in other public places.

2. *Maintaining law and order.* National Police officers ensure compliance with laws and regulations even under martial law. They conduct patrols, regulate traffic, and investigate violations of the Criminal Code of Ukraine. Effective performance of these duties helps build (and strengthen) public trust in the state and uphold public order.

3. *Humanitarian aid.* The National Police may participate in humanitarian operations and provide assistance to those affected by military actions. They are involved in the evacuation of the civilian population, provide medical assistance, and help restore infrastructure.

4. *Infrastructure protection.* The police provide security for strategic facilities, such as power plants, water intake facilities, transportation hubs, and so on. They control access to these facilities and prevent potential acts of sabotage or terrorist attacks.

5. *Restoring law and order after a military conflict:* After martial law ends, the police play a vital role in restoring law and order and public trust. The National Police are tasked with disarming individuals and ensuring security during the peace restoration process.

These provisions highlight just how crucial the role of the police is under martial law. The police ensure the safety of citizens, maintain public order, and contribute to the restoration of stability and peace in a post-conflict society.

One cannot but agree with the words of a Ukrainian scholar regarding the fact that “by ensuring public safety and order, protecting human rights and freedoms, as well as the interests of society and the state, combating criminal offenses, and providing, within the limits defined by law, assistance to persons in need of such help, the police thereby implement state policy on the protection of human and civil rights and freedoms”¹.

¹ Bandurka, O.M. Derzhavna polityka u sferi zakhystu prav i svobod liudyny v umovakh voiennoho stanu [State Policy in the Field of Protection of Human Rights and Freedoms under Martial Law]. Retrieved from <https://dspace.univd.edu.ua/server/api/core/bitstreams/58c32e20-e994-4328-b936-16ea2b194321/content>

Therefore, to understand the role of the National Police during martial law, it is important to analyze the provisions of the relevant laws and regulations, specifically the Law “On the National Police” and the Law “On the Legal Regime of Martial Law.” The first of these laws defines the powers of the National Police, the scope of its activities, its tasks and principles of operation, and more. We would like to emphasize once again the importance for law enforcement agencies, as well as for government bodies in general, of complying with the requirements of the laws that govern their activities. The second law—as its title indicates—defines the specific features of the legal regime of martial law.

It should be noted that on March 15, 2022 (less than a month after the start of Russia’s full-scale invasion), a number of amendments were made to the Law of Ukraine “On the National Police” specifically related to the powers of the National Police under martial law.

We emphasize that some of these legislative changes are temporary in nature, and the legislature has somewhat vaguely defined the temporal limits of their application, as after specifying the circumstance of martial law, it added the following circumstances: “the implementation of measures to ensure national security and defense, to repel and deter armed aggression by the Russian Federation and/or other states against Ukraine, as well as 60 days thereafter”¹.

The uncertainty regarding the time limits of this provision stems precisely from this additional reference to repelling and deterring Russian aggression, etc. Indeed, this line of action by public authorities has objectively been a component of state policy since 2014, when Russia violated the territorial integrity of the Ukrainian state by occupying part of Ukrainian territory. Since then, Ukraine has taken active

¹ Verkhovna Rada of Ukraine. (2022). Pro vnesennia zmin do zakoniv Ukrainy “Pro Natsionalnu politsiu” ta “Pro Dystsyplinarnyi statut Natsionalnoi politsii Ukrainy” z metoiu optymizatsii diialnosti politsii, u tomu chysli pid chas dii voiennoho stanu. Zakon Ukrainy vid 15 bereznia 2022 roku [On Amendments to the Laws of Ukraine “On the National Police” and “On the Disciplinary Statute of the National Police of Ukraine” Aimed at Optimizing Police Activities, Including During Martial Law. Law of Ukraine of 15 March 2022]. Ofitsiinyi visnyk Ukrainy – Official Gazette of Ukraine, 37, Art. 1977. [in Ukrainian].

measures to counter Russian aggression; however, martial law has not been declared. Accordingly, if a similar situation arises after the end of martial law, the provisions of this Law (certain amendments to the Law “On the National Police”) will remain in effect.

It is unlikely that this version of the aforementioned law meets the requirements of legal certainty and the principles of the rule of law. Therefore, in our opinion, it is advisable to exclude the reference to circumstances other than martial law and the 60 days following its termination. As we noted above, the Presidential Decree on the imposition of martial law must specify a specific duration for the imposition of martial law.

We would add that such uncertainty is unacceptable even under martial law, especially given that these amendments provide, in particular, for an exception to the police officer’s obligation to carry a special badge allowing for their identification (although the relevant provision refers exclusively to the “period of martial law”).

Another somewhat controversial aspect is the addition of Article 90-1 to the Law of Ukraine “On the National Police,” which stipulates that, during martial law, public oversight of police activities does not apply¹. Such a provision does not help to increase trust in the National Police, which is supposed to operate exclusively within the legal framework. In the case of law enforcement agencies, this does not involve daily direct resistance to Russia’s armed aggression on the battlefield (excluding the direct involvement of special police units in combat operations). Rather, it concerns public participation in reviewing complaints regarding police actions (or inaction) and verifying that police officers are properly exercising their authority.

¹ Verkhovna Rada of Ukraine. (2022). Pro vnesennia zmin do zakoniv Ukrainy “Pro Natsionalnu polit siiu” ta “Pro Dystsyplinarnyi statut Natsionalnoi polit sii Ukrainy” z metoiu optymizatsii diialnosti polit sii, u tomu chysli pid chas dii voiennoho stanu. Zakon Ukrainy vid 15 bereznia 2022 roku [On Amendments to the Laws of Ukraine “On the National Police” and “On the Disciplinary Statute of the National Police of Ukraine” Aimed at Optimizing Police Activities, Including During Martial Law. Law of Ukraine of 15 March 2022]. Ofitsiinyi visnyk Ukrainy – Official Gazette of Ukraine, 37, Art. 1977. [in Ukrainian].

In this regard, the ban on performance evaluations should also be noted. Although the Law under review expands the grounds for conducting performance evaluations, it is prohibited to conduct such evaluations while martial law is in effect. While generally viewing the restrictions on performance evaluations during wartime positively, we note that conducting performance evaluations of police officers on the grounds specified in subparagraphs 3 and 4 of Part 2 of Article 57 of the Law of Ukraine “On the National Police” (dismissal due to professional unsuitability and determination of suitability for the position held by the individual) is appropriate, especially given the conditions of service during wartime. Thus, the additional workload and constant psychological challenges can have a rather negative impact on a police officer (and others), and considering the presence of firearms and the police officer’s work with the public (rather than directly on the battlefield), the existence of the provision in question in its current wording requires additional justification and clarification, particularly for the public.

In accordance with amendments to the legislation governing the activities of the National Police, as is the case during a state of emergency, the police may be called upon to perform tasks that fall within the scope of their mandate as a law enforcement agency (Part 4 of Article 8 of the Law of Ukraine “On the National Police”).

In accordance with the Law of Ukraine “On the National Police,” the police are vested with the following powers (in the context of the specific nature of their activities during martial law):

- collection of biological material for the establishment of genomic data (clause 15, part 1 of Article 23 of the Law of Ukraine “On the National Police”);
- performing the functions of the licensing system (subparagraphs 21 and 22 of Part 1 of Article 23 of the Law of Ukraine “On the National Police”);
- performing control functions regarding compliance with radiation safety regulations in a radiation-contaminated zone (clause 23, part 1, Article 23 of the Law of Ukraine “On the National Police”);

- ensuring and directly implementing measures provided for by legislation on the legal regime of martial law (subparagraph 24 of Part 1 of Article 23 of the Law of Ukraine “On the National Police”);
- countering criminal attacks on critical infrastructure and protecting such infrastructure facilities (clause 24-1, part 1, Article 23 of the Law of Ukraine “On the National Police”);
- combating the aggressor’s sabotage and reconnaissance units (“in cooperation with the Armed Forces of Ukraine, the National Guard of Ukraine, the State Border Guard Service of Ukraine, the State Special Transport Service, and the Security Service of Ukraine”¹) (para. 34, part 1, Art. 23 of the Law of Ukraine “On the National Police”);
- preventing the illegal crossing of the state border, as well as identifying and neutralizing channels used for the illegal transport of explosives and ammunition across the state border (clause 35, part 1, Article 23 of the Law of Ukraine “On the National Police”);
- conducting demining operations (para. 39, part 1, Art. 23 of the Law of Ukraine “On the National Police”), as well as inspecting the scene of an incident (using forensic and technical means) in cases of fires, explosions, etc. (para. 44, part 1, Art. 23 of the Law of Ukraine “On the National Police”²).

We have repeatedly pointed out that the powers of public authorities must be defined by law itself, as a normative legal act possessing the highest legal force. This requirement also applies to the powers of these authorities under extraordinary circumstances. Thus, pursuant to Part 1 of Article 24 of the Law on the National Police, additional powers may be assigned to the police exclusively by law.

We also emphasize that, in the context of our study, the provisions of Article 24 of the Law under review, which directly concern the

¹ Verkhovna Rada of Ukraine. (2015). Pro Natsionalnu politsiu. Zakon Ukrainy vid 2 lipnia 2015 roku [On the National Police. Law of Ukraine of 2 July 2015]. Vidomosti Verkhovnoi Rady Ukrainy – *Bulletin of the Verkhovna Rada of Ukraine*, 40–41, Art. 379. [in Ukrainian].

² The same.

additional powers of the National Police, deserve special attention. Thus, pursuant to Part 2 of the aforementioned article, police units “participate in the defense of Ukraine, in the performance of territorial defense tasks, and in ensuring and implementing measures under the legal regime of martial law”¹.

Furthermore, Section 24(4) of the Law “On the National Police” provides for the possibility of deploying special-purpose police units to engage directly in combat operations. This provision must be interpreted in conjunction with the provisions set forth in Section 46-1 of the aforementioned Law. According to the latter, the provisions on the use of weapons and military equipment by the armed forces of Ukraine apply to the aforementioned police units (note that this refers to martial law and the repulsion of armed aggression against the Ukrainian state).

It is worth noting that the above confirms our conclusion regarding the differences in the activities of armed formations and the police as a law enforcement agency, particularly under martial law. Typically, police agencies are not the primary institution tasked with countering an aggressor. This task can only be carried out by specific units of the National Police. However, this in no way diminishes the role of the police in measures to ensure national security.

It is worth noting that the Law “On the National Police” provides for specific rules regarding the use of force by police officers under martial law against persons committing armed aggression against the Ukrainian state. Thus, the law permits the disregard of “the requirements and prohibitions provided for in Article 43, Parts 4 and 5 of Article 45, and Part 9 of Article 46 of this Law”².

“Police combat units carry out various tasks on the front lines, but they are united by one thing—the fight for our country’s independence

¹ Verkhovna Rada of Ukraine. (2015). Pro Natsionalnu politsiiu. Zakon Ukrainy vid 2 lypnia 2015 roku [On the National Police. Law of Ukraine of 2 July 2015]. Vidomosti Verkhovnoi Rady Ukrainy – *Bulletin of the Verkhovna Rada of Ukraine*, 40–41, Art. 379. [in Ukrainian].

² Ibid.

and the defeat of the enemy. They are a well-oiled machine, trained in endurance, discipline, and determination. Each of them is a specialist who has undergone hundreds of hours of training, honed their tactics, psychological resilience, and ability to make decisions in extreme conditions”¹—as noted on the National Police’s social media page.

Separately, it is necessary to analyze the provisions of the Law of Ukraine “On the Legal Regime of Martial Law,” which define the specific features of the functioning of state authorities in the context of ensuring national security, countering armed aggression, and other related matters.

In accordance with the provisions set forth in Article 10 of this Law, the activities of state bodies, in particular those carrying out pre-trial investigation and operational-investigative functions, cannot be suspended². This provision is of fundamental importance, as it determines the validity of so-called status laws that define the procedure for the functioning of the relevant state authorities.

It should be emphasized that during martial law, the activities of law enforcement agencies, including the police, are not typically suspended; on the contrary, they may be intensified and refocused on carrying out special tasks related to the exceptional circumstances arising from an armed conflict. This is done to ensure the security of citizens and the state in the face of a threat of external or internal aggression. In the context of Ukraine, this refers to external aggression and, moreover, to full-scale military operations against Ukraine by a neighboring state—Russia.

Particular emphasis should be placed on the importance of the activities of law enforcement agencies, specifically units of the National

¹ Boiovi pidrozdily politsii vykonuiut rizni zavdannya na fronti... [Police Combat Units Perform Various Tasks on the Front Line...]. Retrieved from <https://www.facebook.com/UA.National.Police/posts/1190907529845942/>

² Verkhovna Rada of Ukraine. (2015). Pro pravovyi rezhym voiennoho stanu. Zakon Ukrainy vid 12 travnia 2015 roku [On the Legal Regime of Martial Law. Law of Ukraine of 12 May 2015]. Vidomosti Verkhovnoi Rady Ukrainy – *Bulletin of the Verkhovna Rada of Ukraine*, 28, Art. 250. [in Ukrainian].

Police, under martial law, based, in particular, on the tasks these agencies perform and the powers they are vested with. Police activities remain essential for ensuring public safety and maintaining law and order.

It should be added that martial law poses a unique challenge for government agencies, revealing weaknesses in the operational organization of the relevant institutions (although, of course, the activities of government agencies under martial law differ significantly from those in peacetime).

Martial law is one of the most difficult tests for government authorities. It arises under extraordinary circumstances when the state faces an internal or external threat to its security and very existence. At such times, public authorities are forced to make difficult decisions to ensure stability, order, and the protection of their citizens. Martial law presents government authorities with a series of challenges that require prudence, responsibility, and the ability to act in the public interest.

Martial law is a factor in the government's decision-making process. Authorities must respond promptly to the emergency and take effective measures to ensure the nation's security. Working groups, crisis committees, and headquarters are formed to coordinate actions, gather information, and make strategic decisions. At the same time, it is also important to emphasize such a crucial aspect of democratic governance under martial law as engagement with the public. Communication with the public is also a key factor in ensuring transparency and public confidence in the government's actions. "War can become a pretext for the illicit enrichment of fraudsters and corrupt officials and for obstructing the transparency of government agencies' work"¹ – as noted on the official Diya portal.

The example of our country shows that martial law entails restrictions on citizens' rights and freedoms, the imposition of a curfew, and the implementation of other measures. Government authorities must strike

¹ Yak vidkryti dani dopomahaiut ukrainsiam pid chas viiny [How Open Data Help Ukrainians During the War]. Retrieved from <https://diia.data.gov.ua/info-center/yak-vidkriti-dani-dopomagayut-ukrayincyam-pid-chas-vijni>

a balance between the need to ensure public safety and the protection of civil rights. At the same time, it is important to prevent the abuse of power and to ensure that restrictions are temporary and do not become the norm.

Under martial law, the functioning of the economy and the provision of social welfare are at risk. The mobilization of resources for military needs can lead to a reduction in budget allocations for social programs and development. Government authorities must manage resources effectively to meet the necessary requirements for the defense of the state while simultaneously ensuring the basic needs of citizens are met.

Thus, martial law is indeed an extremely challenging period for government authorities. It tests their ability to act prudently, responsibly, and in the interests of citizens. Effective leadership, transparency, and sound decision-making are key factors in successfully overcoming the challenges that arise during martial law.

The analyzed Law stipulates that the issue of involving law enforcement agencies in ensuring measures within the framework of martial law falls under the jurisdiction of the President of Ukraine (upon the proposal of the National Security and Defense Council of Ukraine). At the same time, as stated in Article 16 of the Law “On the Legal Regime of Martial Law,” law enforcement agencies are involved in performing tasks related to ensuring compliance with the requirements of the specified legal regime; however, this is strictly within the scope of the specific activities of the relevant agencies, depending on their purpose¹. That is why we have analyzed in detail above those provisions of the Law on the National Police that define the powers of this state authority.

It should be emphasized that, under a democratic constitutional system, a key requirement for the activities of public authorities is that they be limited to the powers defined by law. Public authorities’

¹ Verkhovna Rada of Ukraine. (2015). Pro pravovyi rezhym voiennoho stanu. Zakon Ukrainy vid 12 travnia 2015 roku [On the Legal Regime of Martial Law. Law of Ukraine of 12 May 2015]. Vidomosti Verkhovnoi Rady Ukrainy – *Bulletin of the Verkhovna Rada of Ukraine*, 28, Art. 250. [in Ukrainian].

adherence to the limits of their powers is a fundamental principle of the rule of law and a guarantor of the preservation of democratic values, freedoms, and citizens' rights, which is particularly important under extraordinary circumstances in general and during martial law in particular. Limiting the activities of public authorities to powers defined by law serves as a factor in preventing the abuse of power and allows public authorities to function within the framework of the separation of powers, preventing the concentration of power in the hands of a single person or group of persons. It should also be noted that limiting powers helps ensure that the actions of state bodies are not directed at violating human rights and fundamental freedoms. Legal norms defining the powers of public authorities serve as a tool to protect people from abuses by state bodies.

When public authorities act within the limits of their powers, a more stable and predictable system of governance is created; it becomes possible to counter threats to national security more effectively. Citizens, businesses, and other entities can count on the state to act in accordance with the law, which helps maintain the functioning of the economic system—a factor of particular importance given the need to allocate significant state budget funds to support the activities of military units.

Accordingly, the adherence of state authorities to the limits of their powers, as defined by law, is an important prerequisite for the rule of law, democracy, and the protection of human rights (especially under martial law).

Having highlighted the general legal aspects of the activities of law enforcement agencies (the National Police) and analyzed specific provisions of current legislation regarding the legal regime of martial law, we will now turn to describing specific aspects of the activities of National Police units since February 2022, when Russia's full-scale invasion began.

We should note right away that, just as in peacetime, the National Police continues to carry out its tasks as defined by law and reflecting

its role in society. Let us briefly outline these areas of the National Police's activities.

First, we should highlight the maintenance of public safety and order. It is this area that has largely defined the use of the term “law enforcement agencies.” Within this scope, National Police units protect people from violence, crimes, and other offenses. The police are also responsible for preventing such violations and responding to them when they occur.

During the period of martial law, one of the key areas of police activity was combating looting, particularly in territories liberated from Russian occupation. In this regard, it is worth noting that in the first months following the full-scale invasion, when members of the public apprehended individuals committing theft, the latter were often subjected to a form of punishment that had become part of Cossack customary law—being tied to a post (the police were also required to respond to such incidents).



Figure 3.7 – Three groups of looters apprehended in Donetsk Oblast

Source: <https://www.npu.gov.ua/news/na-donechchini-politsiya-zatrimala-tri-grupi-maroderiv>

It should be noted that over the course of about three months (from late February to mid-May 2022), police detained nearly 300 looters in the Kyiv region alone¹.

Another key task in this area is patrolling public spaces, ensuring road safety, and conducting a range of activities—including educational initiatives—specifically aimed at preventing offenses.



Figure 3.8 – The nationwide campaign “Don’t Get Lost in the Dark”

Source: <https://www.npu.gov.ua/news/start-vseukrainskoi-kampanii-ne-rozghubys-u-temriavi-pershyi-urok-proishov-u-stolychnomu-litsei>

It should be noted that following Russia’s massive missile strikes on infrastructure facilities, Ukrainians faced new challenges related to power outages. Educational efforts regarding how the public should behave under these conditions have become crucial. Children have been

¹ Politsiia zatrymala na Kyivshchyni vzhe maizhe 300 maroderiv [Police Have Already Detained Almost 300 Looters in the Kyiv Region]. Retrieved from <https://www.ukrinform.ua/rubric-regions/3480223-policia-zatrimala-na-kiivsini-vze-majze-300-maroderiv.html>

the most vulnerable in this situation. Therefore, the National Police, in collaboration with the State Emergency Service, conducted a series of initiatives to explain basic safety rules during power outages caused by shelling by the Russian army¹.

Second, combating crime should be identified as a separate priority. According to data from the National Police (as of July 22, 2023), investigators from the National Police of Ukraine have opened 87,011 criminal cases since the start of Russia's full-scale invasion regarding crimes committed by Russian military personnel and their accomplices on Ukrainian territory. Of these:

- 74,439 involve violations of the laws and customs of war (Article 438 of the Criminal Code of Ukraine);
- 9,208 involve encroachment upon the territorial integrity and inviolability of Ukraine (Article 110 of the Criminal Code of Ukraine);
- 3,090 involve collaboration (Article 111-1 of the Criminal Code of Ukraine);
- 171 involve high treason (Article 111 of the Criminal Code of Ukraine);
- 38 involve sabotage (Article 113 of the Criminal Code of Ukraine), among others².

In addition, 79 locations where Russians tortured prisoners were identified in the de-occupied territories. Seventy-one criminal cases were opened regarding sexual violence committed by Russian military personnel³.

¹ Start vseukrainskoi kampanii “Ne rozhubys u temriavi”: pershyi urok proishov u stolychnomu litsei [Launch of the Nationwide Campaign “Don’t Get Lost in the Dark”: The First Lesson Took Place at a Kyiv Lyceum]. Retrieved from <https://www.npu.gov.ua/news/start-vseukrainskoi-kampanii-ne-rozghubys-u-temriavi-pershyi-urok-proishov-u-stolychnomu-litsej>

² Crimes committed by the Russian military during the full-scale invasion of Ukraine (as of 07/22/2023). URL <https://www.npu.gov.ua/news/zlochyny-vchyneni-viiskovyry-rf-pid-chas-povnomasshtabnoho-vtorhnennia-v-ukrainu-stanom-na-22072023>

³ The same.

As of June 2, 2026, “since the start of Russia’s full-scale invasion of Ukraine, investigators with the National Police of Ukraine have opened 209,948 criminal cases regarding crimes committed on Ukrainian territory by servicemen of the Armed Forces of the Russian Federation and their accomplices.

Of these:

192,863 – under Article 438 of the Criminal Code of Ukraine (War Crimes);

9,394 – under Article 110 of the Criminal Code of Ukraine (Encroachment on the territorial integrity and inviolability of Ukraine);



Figure 3.9 – Police are documenting the aftermath of an enemy attack in the Odesa region

Source: <https://www.npu.gov.ua/news/cherhova-vorozha-ataka-odeshchyny-politseiski-dokumentuiut-naslidky>

4,710 – under Article 111-1 of the Criminal Code of Ukraine (Collaboration);

440 – under Article 111 of the Criminal Code of Ukraine (High Treason) and others¹.

At the same time, it is worth noting that during martial law, the police perform tasks that are, to a certain extent, not typical of their duties in peacetime (it should be emphasized that this does not mean the police do not perform these tasks in peacetime, but rather that the scope of the National Police's activities in this area increases significantly during wartime).



Figure 3.10 – Police officers deliver humanitarian aid to de-occupied vil lages in the Luhansk region

Source: <https://www.npu.gov.ua/news/politseiski-dostavyly-u-deokupovani-sela-luhanshchyny-humanitarnyi-vantazh>

¹ Crimes committed by the Russian military during the full-scale invasion of Ukraine (as of 02.05.2026). URL: <https://npu.gov.ua/news/zlochyny-vchyneni-viiskovymy-rf-pid-chas-povnomasshtabnoho-vtorhnennia-v-ukrainu-stanom-na-02052026>: <https://npu.gov.ua/news/zlochyny-vchyneni-viiskovymy-rf-pid-chas-povnomasshtabnoho-vtorhnennia-v-ukrainu-stanom-na-02052026>

One such area is providing *assistance to people (humanitarian activities)*. At first glance, this area of activity may seem somewhat out of character for the police. However, it is important to note that we are talking about a democratic state operating under martial law. The experience of Ukrainian police officers is particularly illustrative in this context.

As the head of the National Police noted, “it is important that every police officer understands—in wartime, our work is primarily focused on helping people”¹.

It is also important to note the ongoing involvement of National Police officers in evacuating people to safer areas².

We must also not overlook the role of police officers in evacuating people and securing the affected areas following the Russians’ destruction of the dam at the Kakhovka Hydroelectric Power Plant³.

In general, it should be noted that police operations in wartime take on a unique character and become a crucial element in maintaining security and order on multiple levels. They face extraordinary challenges that require a high degree of professionalism, the ability to operate in extreme conditions, flexibility, and efficiency.

One of the police’s primary missions during wartime is to protect the civilian population. Police officers come into direct contact with

¹ V umovakh viiny robota politseiskyykh zoseredzhena na dopomozi liudiam – Ivan Vyhivskiy [During the War, Police Work Is Focused on Helping People – Ivan Vyhivskiy]. Retrieved from <https://www.npu.gov.ua/news/v-umovakh-viiny-robota-politseiskyykh-zoseredzhena-na-dopomozi-liudiam-ivan-vyhivskiy>

² Zaporizki politseiski evakuivaly dvokh ditei zi Stepnohirska [Zaporizhzhia Police Evacuated Two Children from Stepnohirska]. Retrieved from <https://www.npu.gov.ua/news/zaporizki-politseiski-evakuivaly-dvokh-ditei-zi-stepnohirska>

³ Khersoni yuvenalni politseiski orhanizuvaly dozvillia dlia ditei, yaki postrazhdaly vnaslidok pidryvu rosiianamy Kakhovskoi HES [In Kherson, Juvenile Police Organized Leisure Activities for Children Affected by the Destruction of the Kakhovka Hydroelectric Power Plant]. Retrieved from <https://www.npu.gov.ua/news/v-khersoni-yuvenalni-politseiski-orhanizuvaly-dozvillia-dlia-ditei-iaki-postrazhdaly-vnaslidok-pidryvu-rosiianamy-kakhovskoi-hes>

danger to assist citizens, evacuate the injured, and ensure their safety during clashes or shelling.

War conditions can give rise to unpredictable levels of violence and crime. The police are tasked with maintaining public order, preventing panic, and so on.

In wartime, the police monitor critical infrastructure and screen suspicious individuals for the presence of enemy agents or terrorists.

In some cases, the police (certain units) may participate in combat operations as well as carry out military tasks, such as patrolling in combat zones, guarding military facilities, and ensuring the security of garrisons. “Law enforcement officers are working in an enhanced mode—maintaining checkpoints, checking documents and vehicles, evacuating the population, conducting search and investigative operations against saboteurs, and countering looting”¹.

The police must investigate crimes committed during the war and apprehend perpetrators, even if these crimes are committed by enemy intelligence services or separatists.

The police may participate in humanitarian operations, provide assistance to vulnerable groups, and ensure humanitarian access to necessary resources.

The police must cooperate effectively with the military and other civil-military structures to ensure coordination and effectiveness of operations during wartime.

In de-occupied territories, the police must actively work to restore law and order and ensure public safety.

¹ Turbal, A.Ye., & Shpytalenko, H.A. (2022). Osoblyvosti roboty Natsionalnoi politsii Ukrainy v umovakh voiennoho stanu [Peculiarities of the National Police of Ukraine Activities under Martial Law]. In S.V. Kivalov (Ed.), *Yevropeyskyi vybir Ukrainy, rozvytok nauky ta natsionalna bezpeka v realiiakh masshtabnoi viiskovoi ahresii ta hlobalnykh vyklykiv XXI stolittia* [Ukraine’s European Choice, Development of Science and National Security in the Realities of Large-Scale Military Aggression and Global Challenges of the Twenty-First Century] (Vol. 2, pp. 211–213). Odesa : Helvetyka Publishing House. [in Ukrainian].

The conditions of armed conflict pose significant challenges for the police and require high mobility, readiness for extreme situations, and the ability to act swiftly to ensure security and protect human rights and freedoms under martial law. “One of the main tasks must be to prevent excessive restrictions on the constitutional rights and freedoms of individuals and citizens, the abuse of authority by police officers in the course of carrying out police duties under the legal regime of martial law, and to improve mechanisms for cooperation and the delineation of police powers with state authorities and local self-government bodies under martial law”¹.

3.3 Ensuring human rights in the activities of law enforcement agencies in temporarily occupied territories and frontline zones

The armed conflict launched by the Russian state against Ukraine has created a legal situation of unprecedented scale and complexity in the field of human rights protection. The temporary occupation of part of Ukraine’s territory—the Autonomous Republic of Crimea and the city of Sevastopol—since 2014, and subsequently of certain districts of the Donetsk and Luhansk regions, as well as significant territories of the Zaporizhzhia, Kherson, Kharkiv, and Mykolaiv regions following the full-scale invasion in February 2022—has presented law enforcement agencies with fundamentally new challenges that have no direct parallels in the domestic legal tradition. Frontline zones, in turn, create a unique legal and security context that requires specific regulation of law enforcement activities.

¹ Kovbasa, V.M., Kusko, R.V., & Drozd, T.V. (2022). Diiialnist Natsionalnoi politsii v umovakh voiennoho stanu: okremi problemni pytannia [Activities of the National Police under Martial Law: Selected Problematic Issues]. *Yurydychnyi naukovi elektronnyi zhurnal – Juridical Scientific and Electronic Journal*, 6, 245–248. [in Ukrainian]. P. 247.

The legal nature of the occupation, the status of persons under the control of the occupying forces, the state's obligation to protect its citizens in the occupied territories, the legal status and powers of law enforcement agencies in conditions where the performance of their functions is effectively impossible or significantly impeded,—all these issues require thorough theoretical analysis and systematic practical solutions. The relevance of the topic is heightened by the fact that Ukraine is the first country in Europe since World War II to face a large-scale occupation of a significant portion of its national territory amid an ongoing armed conflict.

Methodologically, the research in this section is based on an analysis of the norms of international humanitarian law (IHL) and international human rights law (IHRL), their interrelationship in the context of armed conflict and occupation, domestic legislation on the legal regime of martial law and the principles governing the operation of law enforcement agencies under special conditions, as well as on data from human rights monitoring, in particular materials from the UN Human Rights Monitoring Mission in Ukraine, reports by the Ukrainian Parliament Commissioner for Human Rights, and materials from domestic and international human rights organizations.

The legal regime of occupied territories is governed primarily by the norms of international humanitarian law, in particular the Hague Regulations of 1907, the Fourth Geneva Convention of 1949, and, in the relevant part, Additional Protocol I of 1977. According to Article 42 of the Hague Regulations, a territory is considered occupied if it is actually under the control of an enemy army; this criterion is relevant for distinguishing the legal regimes applicable in the relevant territory¹.

Article 43 of the Hague Regulations imposes on the occupying power the duty to take all measures within its power to restore and

¹ Occupation and International Humanitarian Law: Questions and Answers. Retrieved from <https://www.legal-tools.org/doc/aac441/pdf/>

maintain, as far as possible, public order and safety, while respecting, unless there are absolute obstacles, the laws in force in the country¹. The Fourth Geneva Convention significantly expanded these obligations, in particular by establishing prohibitions on: the transfer of the civilian population from or to the occupied territory (Article 49); the unlawful transfer of persons detained in occupied territory (Article 76); the imposition of collective punishments (Article 33); forced labor (Article 51); and by establishing guarantees regarding the humane treatment of protected persons².

Alongside the IHL, the ICCPR continues to apply in situations of occupation, although the question of their relationship remains a matter of debate. The Advisory Opinion of the International Court of Justice “On the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory” (2004) confirmed that international human rights treaties apply even in situations of armed conflict, and that IHL is *lex specialis* with respect to IHRL, but does not replace it entirely³. This position was reaffirmed in subsequent decisions of the International Court of Justice and in the practice of UN treaty bodies.

It is important to emphasize that the International Court of Justice, in its judgment in the case of **Democratic Republic of the Congo v. Uganda** (2005), held that an occupying power is responsible for violations of both international humanitarian law and international

¹ International Committee of the Red Cross. (1907). International Humanitarian Law Databases. Regulations: Article 43. Retrieved from <https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-iv-1907/regulations-art-43>

² United Nations. (1949). Geneva Convention Relative to the Protection of Civilian Persons in Time of War. Retrieved from <https://www.ohchr.org/en/instruments-mechanisms/instruments/geneva-convention-relative-protection-civilian-persons-time-war>

³ International Court of Justice. (2004). Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory. Retrieved from <https://www.un.org/unispal/document/auto-insert-178825/>

human rights law in the territories it occupies¹. This principle is of great significance for characterizing the actions of the Russian Federation in the temporarily occupied territories of Ukraine and determining its responsibility before the international community and, in particular, before the International Criminal Court, whose mandate extends to crimes committed in the context of the armed conflict in Ukraine.

From the perspective of Ukraine's constitutional and administrative law, law enforcement agencies retain their legal status and jurisdiction throughout the entire national territory, including the temporarily occupied territories. Ukraine's sovereignty over these territories has neither ceased nor been interrupted: in accordance with Article 2 of the Constitution of Ukraine, Ukraine's sovereignty extends to its entire territory. The Law of Ukraine "On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine"² and the Law of Ukraine "On the Specifics of State Policy to Ensure the State Sovereignty of Ukraine in the Temporarily Occupied Territories in Donetsk and Luhansk Regions"³ (this Law was repealed pursuant to the Law of Ukraine "On Amendments to Certain Laws of Ukraine Regarding the Regulation of the Legal Regime in the Temporarily Occupied Territory

¹ International Court of Justice. (2005). Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda). Retrieved from <https://reliefweb.int/report/democratic-republic-congo/armed-activities-territory-congo-democratic-republic-congo-v-uganda>

² On ensuring the rights and freedoms of citizens and the legal regime in the temporarily occupied territory of Ukraine . Law of Ukraine of April 15, 2014. URL: <https://zakon.rada.gov.ua/laws/show/1207-18#Text>

³ Verkhovna Rada of Ukraine. (2018). Pro osoblyvosti derzhavnoi polityky iz zabezpechennia derzhavnogo suverenitetu Ukrainy na tymchasovo okupovanykh terytoriakh u Donetskii ta Luhanskii oblastiakh. Zakon Ukrainy vid 18 sichnia 2018 roku [On the Peculiarities of State Policy on Ensuring the State Sovereignty of Ukraine in the Temporarily Occupied Territories of Donetsk and Luhansk Regions. Law of Ukraine of 18 January 2018]. Retrieved from <https://zakon.rada.gov.ua/laws/show/2268-19#Text>

of Ukraine”¹) confirmed this position and laid the legislative foundations for regulating the relevant relations.

However, the actual exercise of law enforcement functions in the occupied territories is impossible or extremely limited due to the Ukrainian authorities’ lack of effective control. This situation gives rise to a specific legal phenomenon: the retention of jurisdiction despite the inability to exercise it directly. There are several practical consequences of this situation. First, law enforcement agencies that have been evacuated from the occupied territories continue to exercise their powers outside these territories: accepting reports, registering crimes, conducting available investigative actions, and documenting violations. Second, they are responsible for documenting crimes committed by the occupying authorities for the purpose of subsequently holding the perpetrators accountable. Third, they provide legal support to individuals who have been forced to leave the occupied territories.

In accordance with departmental orders and instructions from the Ministry of Internal Affairs of Ukraine and the Office of the Prosecutor General, criminal proceedings regarding crimes committed in temporarily occupied territories or against persons who reside or resided there are organized and recorded under special rules, and the jurisdiction and procedural progress of such cases are determined taking into account territorial specifics. The procedural specifics of such proceedings are linked to difficulties in gathering evidence, inaccessibility of the crime scene, the inability to question most witnesses and victims, and the lack of physical access to the locations where crimes were committed. Resolving these issues requires the use of remote methods

¹ Verkhovna Rada of Ukraine. (2022). Pro vnesennia zmin do deiakykh zakoniv Ukrainy shchodo rehuliuвання pravovoho rezhymu na tymchasovo okupovanii terytorii Ukrainy. Zakon Ukrainy vid 21 kvitnia 2022 roku [On Amendments to Certain Laws of Ukraine Concerning Regulation of the Legal Regime in the Temporarily Occupied Territory of Ukraine. Law of Ukraine of 21 April 2022]. Retrieved from <https://zakon.rada.gov.ua/laws/show/2217-20#n173>

for collecting testimony (in particular, video conferencing), the use of open-source intelligence (OSINT), and cooperation with international organizations and partner law enforcement agencies.

The issue of criminal liability for representatives of the occupying “authorities” performing pseudo-law enforcement functions in Russian-controlled territories deserves special attention. According to Article 111-1 of the Criminal Code of Ukraine, cooperation with the occupying administrative bodies constitutes collaboration. This provision necessitates a clear distinction between individuals who voluntarily participated in the formation of the occupying “law enforcement” structures and those who were compelled to take certain actions under duress or for the purpose of survival and protecting the population.

The UN Human Rights Monitoring Mission in Ukraine, the Office of the UN High Commissioner for Human Rights, the OSCE Monitoring Mission, and numerous international and domestic human rights organizations have documented a wide range of systematic human rights violations in the temporarily occupied territories of Ukraine. These violations concern both civil and political rights (the right to life, freedom from torture, freedom of thought and speech, freedom of movement, the right to a fair trial) and economic, social, and cultural rights (the right to education in one’s native language, the right to property, the right to health care).

Among the most serious systematic violations documented in the occupied territories of Ukraine, the following stand out: unlawful deprivation of liberty (arbitrary detention, abduction, enforced disappearance); torture and cruel treatment of detainees; extrajudicial executions; forced displacement of the civilian population, including children (deportation); destruction of civilian infrastructure; persecution of individuals for pro-Ukrainian views or participation in peaceful protests; elimination of Ukrainian-language education and cultural institutions; forced “passportization” (imposition of the occupying state’s citizenship).

From the perspective of criminal law classification, most of the acts mentioned constitute crimes against humanity and war crimes as defined by the Rome Statute of the International Criminal Court. In particular, the deportation of the civilian population may be classified as a crime against humanity (Art. 7(1)(d)), and the forcible transfer of children as genocide (Art. 6(e)). The arrest warrants issued by the International Criminal Court on March 17, 2023, against Russian President Putin and Children's Rights Commissioner Lvova-Belova¹ specifically in connection with the illegal deportation of Ukrainian children constitute an important precedent in international criminal justice.

For Ukrainian law enforcement agencies, documenting these violations is one of the key tasks in preparing to hold the perpetrators accountable. This work is carried out within the framework of a special documentation mechanism established by the Office of the Prosecutor General in collaboration with international partners. Of particular importance is the standard for collecting evidence adapted to the conditions of conflict: the evidence must meet the requirements of both national criminal proceedings and the standards of international criminal law for its potential use in cases before the International Criminal Court or future special tribunals. That is why law enforcement officers involved in documentation undergo special training on evidence collection standards in situations of armed conflict.

The occupation significantly distorts the established system of human rights protection mechanisms. Most traditional human rights instruments—such as filing a lawsuit, filing a complaint with the ombudsman, or initiating a parliamentary inquiry—have become virtually inaccessible to residents of the occupied territories or expose them to a significant risk of persecution by the occupying authorities,

¹ Romaniuk, P. Ordery na aresht Putina i Lvovoi-Bielovoi: yakyi yikh vplyv ta shcho zminylosia za rik? [Arrest Warrants for Putin and Lvova-Belova: What Impact Have They Had and What Has Changed in a Year?]. Retrieved from <https://oporaua.org/viyna/orderi-na-aresht-putina-i-l-vovoyi-byelovoyi-yakiy-yih-vplyv-ta-shho-zminilosya-za-rik-25139>

necessitating the search for and development of alternative forms and mechanisms that take into account the specific conditions of the occupied territories.

At the international level, the UN Human Rights Monitoring Mission in Ukraine, which has been operating since 2014¹, plays a key role in protecting human rights in the occupied territories. The Mission continuously monitors the human rights situation, prepares regular reports for the UN High Commissioner for Human Rights and the UN Human Rights Council, and engages with authorities to address documented violations. A limitation of this mechanism is the mission's lack of actual access to the occupied territories and the inability to communicate directly with individuals there due to the risk of persecution.

The International Committee of the Red Cross (ICRC), as the leading international organization responsible for ensuring compliance with international humanitarian law, carries out humanitarian activities and seeks access to places of detention in the occupied territories. However, in practice, Russia significantly restricts or completely obstructs the ICRC's activities, which constitutes a gross violation of its obligations under the Geneva Conventions. The ICRC's lack of access to places of detention prevents verification of the conditions of detention and is one of the factors contributing to impunity.

At the national level, the Ukrainian Parliament Commissioner for Human Rights monitors human rights compliance in the occupied territories, particularly through work with displaced persons and information received from the occupied territories. The Coordination Headquarters for the Treatment of Prisoners of War is the authorized body for matters related to the status and protection of persons captured during hostilities. Numerous civil society organizations also play

¹ United Nations Human Rights Monitoring Mission in Ukraine. (n.d.). *Monitorynhova misiia OON z prav liudyny v Ukraini* [United Nations Human Rights Monitoring Mission in Ukraine]. Retrieved from <https://ukraine.ohchr.org/uk>

an important role in documenting violations, providing legal assistance, and searching for missing persons.

An extremely important form of human rights protection is the documentation of violations using open-source intelligence (OSINT). Ukrainian law enforcement agencies, in particular the Cyber Police and specialized units of the Prosecutor's Office, actively use data from social media, video recordings, satellite imagery, and other open sources to establish the facts of crimes and identify those involved. This approach is also used by the Office of the Prosecutor of the International Criminal Court and international investigative mechanisms. The standardization of OSINT documentation methods in the context of armed conflict is a relatively new but rapidly developing area of human rights and law enforcement methodology.

Frontline zones present a legal and security context distinct from that of occupied territories, yet they also constitute a high-risk area for human rights. Unlike occupied territories, Ukrainian law enforcement agencies retain jurisdiction and *de facto* control in frontline zones; however, their operations take place amid active hostilities, constant danger to personnel and the civilian population, large-scale population displacement, destruction of civilian infrastructure, and disruptions to communications.

From a legal perspective, the activities of law enforcement agencies in frontline zones are governed by regulations on the legal regime of martial law, the Law of Ukraine "On the National Police," departmental regulations adapted to wartime conditions, as well as the norms of international humanitarian law (IHL) regarding the rules of engagement and the protection of the civilian population. Issues of coordination between law enforcement agencies and the armed forces take on particular importance: a clear division of powers is a necessary condition for the effective protection of the civilian population and the prevention of jurisdictional conflicts during the active phase of hostilities.

Among the most pressing human rights issues characteristic of frontline areas, the following are of particular importance: ensuring

the safe evacuation of the civilian population; maintaining access to humanitarian aid; protecting individuals who, for various reasons, cannot or do not wish to leave the combat zone (the elderly, persons with disabilities, and those with chronic illnesses); countering looting and other crimes that proliferate amid a breakdown of law and order; and documenting damages and violations for the purposes of compensation and justice.

The practices of law enforcement agencies in frontline areas during the full-scale invasion demonstrated the need for a fundamental adaptation of organizational structures and operational methods. In particular, police units operating in active combat zones were forced to shift to mobile operational models, abandoning stationary duty stations; the list of documents required for crime reporting was significantly reduced to facilitate access to justice amid the destruction of civilian records; simplified procedures for identifying missing persons were implemented; and special psychological support programs were implemented for personnel working under conditions of constant stress and trauma.

The protection of journalists and representatives of international organizations conducting monitoring activities in frontline zones is a separate area of law enforcement work. IHL establishes a special status for journalists in zones of armed conflict, obligating the parties to the conflict to ensure their protection as civilians. Law enforcement agencies, accordingly, are obligated not to obstruct lawful journalistic activities and, where possible, to facilitate them, while simultaneously implementing necessary security measures to protect journalists from the dangers of armed conflict.

It should be noted that mass internal displacement of the population is one of the most significant humanitarian consequences of armed conflict and occupation. According to the Office of the United Nations High Commissioner for Refugees, as of early 2024, over 3.7 million internally displaced persons (IDPs) were registered in Ukraine, though the actual number is significantly higher given those who have not

registered. This group is particularly vulnerable from a human rights perspective: they have lost their homes, property, social ties, and often their documents, and find themselves in a situation of social vulnerability and heightened risk of discrimination, exploitation, and human trafficking¹.

The international legal framework for the protection of internally displaced persons is established in the UN Guiding Principles on Internal Displacement², which, although not a legally binding document, reflect the norms of international human rights law and international humanitarian law and are widely applied as an authoritative standard. According to these principles, national authorities bear primary responsibility for the protection of IDPs within their territory, including ensuring that they have equal access to justice and law enforcement mechanisms alongside other citizens.

Law enforcement agencies perform several interrelated functions regarding IDPs. First—direct protection: responding to crimes committed against IDPs, investigating such crimes, and protecting against discriminatory actions and persecution. Second—facilitating the exercise of rights: assisting with the restoration of identity documents, registration of residence, and formalization of IDP status. The third is crime prevention: combating human trafficking and other forms of exploitation of IDPs, which pose a particular threat in conditions of instability. The fourth is documentation: recording incidents of crimes committed against IDPs, including crimes by occupying forces that were the direct cause of displacement.

¹ United Nations in Ukraine. (2022–2024). Systema OON v Ukraini. Perekhidna ramkova struktura. Veresen 2022 – hruden 2024 rr. [UN System in Ukraine. Transitional Framework. September 2022 – December 2024]. Retrieved from https://ukraine.un.org/sites/default/files/2024-04/UNUkraine_2022_2024_TransitionalFramework_Updated_UKR.pdf

² United Nations. Kerivni pryntsypy OON z pytan vnutrishnoho peremishchennia vseredyni krainy [UN Guiding Principles on Internal Displacement]. Retrieved from <https://www.ombudsman.gov.ua/uk/kerivni-principi-oon-z-pitan-vnutrishnogo-peremishchennya-vseredini-krayini>

Special attention must be given to the protection of IDP children and children separated from their parents as a result of the conflict. In addition to the general risks faced by adult IDPs, children are particularly vulnerable to human trafficking, sexual violence, recruitment into armed groups (in occupied territories), and psychological trauma. Law enforcement agencies collaborate with child welfare services, international organizations, and civil society to develop and implement comprehensive mechanisms to protect children affected by the conflict.

It should be emphasized that documenting violations of international humanitarian law and crimes committed in the context of armed conflict is one of the most important functions of law enforcement agencies in the context of ensuring human rights. From the very first days of the full-scale invasion, Ukraine launched a large-scale effort to document crimes, coordinating the efforts of national law enforcement agencies with the International Criminal Court, joint investigation teams involving Eurojust, and partner agencies of foreign states.

The Office of the Prosecutor General of Ukraine is handling an unprecedentedly large number of criminal cases involving crimes committed in the context of armed conflict; according to official reports from 2024, the number stood at tens of thousands and continued to grow¹. This volume reflects both the scale of the violations and the systematic organization of the documentation process. Specialized databases have been created to store, process, and analyze this volume of data, operating on the basis of interoperability with the systems of the International Criminal Court and partner states.

The methodology for documenting war crimes used by Ukrainian law enforcement agencies is based on the Berkeley Protocol

¹ Rezultaty roboty z protydii zlochynam, vchynenym v umovakh zbroinoho konfliktu, za 9 misiatsiv 2024 roku [Results of Counteracting Crimes Committed in the Context of Armed Conflict for the First Nine Months of 2024]. Retrieved from <https://gp.gov.ua/ua/posts/rezultati-roboti-z-protidiiyi-zlocinam-vcinenim-v-umovax-zbroinogo-konfliktu>

on Digital Investigation of Violations of International Humanitarian Law and Crimes Against Humanity in Open Sources, the standards of the Office of the UN High Commissioner for Human Rights, and the methodological recommendations of Eurojust. Maintaining the chain of custody plays a special role, as it is a necessary condition for the admissibility of evidence in international judicial bodies.

Cooperation between Ukrainian law enforcement agencies and the International Criminal Court is a key element of the strategy to restore justice. Following Ukraine's recognition of the Court's jurisdiction and the Court Prosecutor's opening of an investigation into the situation in Ukraine in 2022, relations between the parties have taken on the character of operational cooperation: Ukrainian law enforcement agencies transfer evidence and case materials to the Court Prosecutor, ensure access for the Court's investigators to victims and witnesses, and coordinate procedural actions. This cooperation is an example of the effective application of the principle of complementarity enshrined in the Rome Statute.

In general, armed conflict gives rise to specific categories of persons deprived of their liberty who are subject to special legal protection. First and foremost, these are prisoners of war, whose status is governed by the Third Geneva Convention of 1949. Prisoners of war have the right to humane treatment, protection from physical and psychological pressure, access to the ICRC, and the right to correspond. In this context, law enforcement agencies play a role primarily related to transferring prisoners of war to specialized facilities and preventing their unlawful interrogation or cruel treatment.

Civilians detained in the context of an armed conflict are protected under the Fourth Geneva Convention. Their detention is permitted only on compelling security grounds, subject to procedural safeguards (appeals, regular review of the grounds for detention). The abuse of administrative detention of civilians—both by occupying forces against Ukrainian citizens and potentially by any belligerent party—constitutes a serious violation of IHL and the ICCPR.

Hostages constitute a separate category of protected persons: the practice of taking hostages is an absolute prohibition under *jus cogens*, which allows for no exceptions. Article 34 of the Fourth Geneva Convention explicitly prohibits the taking of hostages, and this prohibition is one of the few absolute prohibitions under IHL. Law enforcement agencies play a key role in documenting incidents of hostage-taking, identifying those responsible for such crimes, and coordinating with authorized bodies during negotiations for release.

The issue of illegal detention facilities operating in the occupied territories is particularly acute. According to human rights organizations and reports by the UN Monitoring Mission, the occupying forces systematically use basements, schools, enterprises, and specially equipped facilities to illegally detain civilians under conditions that constitute torture. Documenting such facilities and identifying those responsible is a top priority for law enforcement agencies and international investigative bodies.

The presence of the occupying administration in the territories under its control creates a complex situation of parallel, competing claims to legal jurisdiction. On the one hand, Ukraine retains sovereign jurisdiction over its entire territory. On the other hand, the occupying authorities effectively exercise control and impose their own legal systems. Residents of the occupied territories find themselves in a situation of legal uncertainty, where compliance with the laws of one side automatically means disregarding them from the perspective of the other.

Ukrainian legislation on collaboration (Article 111-1 of the Criminal Code of Ukraine) is aimed at preventing citizens from cooperating with the occupying authorities. However, its application requires an extremely measured approach on the part of law enforcement agencies, as in practice the distinction between voluntary collaboration and forced interaction with occupying authorities to ensure one's own survival or the protection of others is extremely difficult to draw. The human rights community has expressed concern about the risks

of overly broad application of this article, which could lead to violations of the rights of individuals who found themselves under occupation with no real alternatives.

When conducting proceedings in cases involving collaboration, law enforcement agencies are required to take into account the principle of proportionality, the circumstances of the case, the nature and extent of cooperation with the occupying authorities, the presence of coercion or threats, as well as whether the actions were intended to cause harm or, conversely, to protect the population. The application of the doctrine of *crimen necessitatis* and circumstances precluding illegality (state of extreme necessity, execution of an order under duress) in cases of this category requires careful doctrinal analysis and a balanced approach to law enforcement.

The liberation of temporarily occupied territories from occupation control presents law enforcement agencies with the task of urgently restoring the rule of law. This process is extremely complex and multifaceted, as it concerns not only organizational and administrative aspects but also issues of restoring public trust in the state, the legal reintegration of individuals who were under occupation, and the initiation of processes of justice and reconciliation.

The experience of the liberation of Kherson (November 2022), the Kharkiv region (September–October 2022), and parts of the Zaporizhzhia and Mykolaiv regions allows us to identify several key challenges faced by law enforcement agencies in the post-occupation period. The first is the need to immediately document crimes committed under occupation while witnesses and physical evidence are still available. The second is the restoration of basic law enforcement functions (maintaining public order, responding to emergencies) in the absence of or with significant damage to infrastructure. The third is vetting individuals seeking to continue in law enforcement for possible collaboration with the occupying authorities.

Vetting personnel (so-called lustration in the law enforcement sector) is a particularly sensitive issue. On the one hand, it is necessary

to restore institutional integrity and public trust in law enforcement agencies. On the other hand, conducting it requires adherence to the principles of individual responsibility, the presumption of innocence, and the right to defense. Suspending all employees who remained in the occupied territory would be unfair and counterproductive; instead, an individual assessment of each person's specific actions under occupation is necessary.

The restoration of law enforcement mechanisms in the liberated territories is inextricably linked to broader issues of transitional justice. This concept encompasses criminal justice (holding perpetrators accountable), restorative justice (compensation for victims), institutional reform (transforming legal and law enforcement institutions implicated in violations), and social reconciliation (overcoming the social divisions created by the conflict and occupation). Law enforcement agencies are central actors in at least the first two components of this process.

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Chapter 4

GUARANTEES AND ACCOUNTABILITY IN THE FIELD OF HUMAN RIGHTS PROTECTION BY LAW ENFORCEMENT AGENCIES IN EXTRAORDINARY CIRCUMSTANCES

4.1 Mechanisms for oversight of law enforcement activities

An effective system for overseeing the activities of law enforcement agencies is one of the fundamental prerequisites for the functioning of a state governed by the rule of law and for the protection of human rights. Without proper oversight and accountability mechanisms, law enforcement agencies—endowed with significant powers, including the right to use coercion—inevitably tend toward abuse, arbitrariness, and institutional insularity. This pattern is well known in public law theory and practice: power, deprived of effective oversight, degenerates regardless of the initial intentions and declared values of those who exercise it. Therefore, the establishment of a comprehensive, multi-level, and mutually reinforcing system of control mechanisms is not an optional supplement to law enforcement activities, but a constitutive condition thereof.

In the academic literature, mechanisms for controlling law enforcement agencies are typically classified by the entity exercising control and by the nature of the control powers. Based on the subject,

a distinction is made between internal (departmental) and external oversight, and within external oversight—parliamentary, judicial, prosecutorial, ombudsman, and public oversight¹.

Based on the nature of its powers, oversight is divided into preventive (*ex ante*), ongoing (operational), and subsequent (*ex post*)². Each of these types performs distinct functions, and only their combination ensures a comprehensive outcome in the form of discipline, legality, and accountability within the law enforcement system.

The study of control mechanisms in the context of this monograph is particularly relevant for several reasons. First, in extraordinary situations—such as a pandemic or martial law—traditional control mechanisms are distorted or practically suspended, while the risks of abuse by law enforcement agencies increase. Second, Ukraine's European integration commitments require bringing the oversight system into compliance with the standards of the Council of Europe and the European Union. Third, the ongoing systemic reforms of the security sector in Ukraine make the issue of effective oversight not a theoretical abstraction but a practical task of state-building.

Internal oversight is the primary and most operationally relevant form of supervision over the activities of law enforcement agencies. It is carried out within the law enforcement system itself through hierarchical subordination, internal audits, disciplinary proceedings, and specialized internal security units. The advantage of this type of control is the speed of response, knowledge of the sector's specifics, and the ability to take immediate action in response to identified violations.

¹ Sokolenko, O.L. (2012). Poniattia ta oznaky pravookhoronnoi funktsii derzhavy yak osnovy pravookhoronnoi diialnosti [The Concept and Features of the Law Enforcement Function of the State as the Basis of Law Enforcement Activity]. *Forum prava – Law Forum*, 4, 847–852. [in Ukrainian].

² Hryhorenko, O.V. (2020). Klasyfikatsiia subiektiv kontroliu diialnosti orhaniv Natsionalnoi politsii v systemi publichnoi administratsii [Classification of Subjects Controlling the Activities of National Police Bodies in the System of Public Administration]. *Yurydychnyi naukovi elektronnyi zhurnal – Juridical Scientific and Electronic Journal*, 3, 485–487. [in Ukrainian].

At the same time, internal control has certain structural limitations stemming from corporate solidarity, a lack of external independence, and potential conflicts of interest when investigating serious offenses committed by colleagues.

Within the Ukrainian National Police system, internal control is primarily carried out through the Department of Internal Security (DIS), a specialized unit authorized to investigate cases of corruption, abuse of power, and other serious violations by police officers. A key problem is the DIB's actual independence from police leadership: this unit's departmental subordination undermines its ability to effectively investigate cases involving senior leadership or systemic issues. International experience shows that effective internal oversight requires the greatest possible operational autonomy for internal security units, protection of their staff from departmental reprisals, and transparent reporting to external bodies.

Particular attention should be paid to the practice of identifying and protecting individuals who report violations within the law enforcement system. The corporate culture of law enforcement agencies, traditionally based on a "code of silence," is one of the most serious obstacles to effective internal oversight. The legislative enshrinement of safeguards for whistleblowers, including in the Law of Ukraine "On Preventing Corruption"¹, is an important step; however, its practical effectiveness depends on a genuine change in organizational culture, which is a lengthy and complex process. The lack of real protection for individuals who report misconduct by colleagues turns formal internal control mechanisms into tools for token accountability without any real substance.

¹ Verkhovna Rada of Ukraine. (2021). Pro vnesennia zmin do Zakonu Ukrainy "Pro zapobihannia koruptsii" shchodo uporiadkuvannia okremykh pytan zakhystu vykryvachiv. Zakon Ukrainy vid 1 chervnia 2021 roku [On Amendments to the Law of Ukraine "On Prevention of Corruption" Regarding the Regulation of Certain Issues of Whistleblower Protection. Law of Ukraine of 1 June 2021]. Retrieved from <https://zakon.rada.gov.ua/laws/show/1502-20#top>

Hierarchical control through the chain of command is another tool of internal oversight. However, within the context of a decentralized law enforcement structure—and especially under martial law, when chains of command are weakened and units gain greater operational autonomy—this form of control becomes significantly more difficult. The pattern of violations documented in situations of armed conflict consistently indicates that the weakening of command control is one of the key factors contributing to abuses.

Parliamentary oversight of law enforcement agencies is an important element of the system of checks and balances in a democratic state. The Verkhovna Rada of Ukraine exercises this oversight through several mechanisms: legislative regulation of law enforcement agencies' activities; approval of the state budget and, accordingly, funding for law enforcement agencies; parliamentary inquiries and deputies' appeals; hearings in relevant committees; temporary investigative commissions; as well as through the appointment of officials, such as the Verkhovna Rada of Ukraine Commissioner for Human Rights. The significance of parliamentary oversight lies primarily in its democratic legitimacy: parliament represents the people as the sole source of power and acts as the voice of the public interest in overseeing the executive branch.

The key instrument of parliamentary oversight is the work of the Verkhovna Rada Committee on Law Enforcement¹ and related committees. However, the effectiveness of this oversight depends largely on whether deputies possess the necessary expertise to assess complex issues of law enforcement practice, have access to classified information regarding operational activities, and on the political independence of the committees from the executive branch. Under martial law, parliamentary oversight is significantly restricted due to the imposition of a classified information regime and the transfer of certain powers

¹ Verkhovna Rada Committee on Law Enforcement Activities. URL: <https://komzakonpr.rada.gov.ua/>

to executive bodies, which constitutes one of the systemic threats to the accountability of law enforcement agencies during a crisis.

The Verkhovna Rada's temporary investigative commissions (Article 89 of the Constitution of Ukraine)¹ are a potentially powerful tool of parliamentary oversight in the event of serious suspicions regarding illegal activities by law enforcement agencies. However, the practice of their activities in Ukraine demonstrates inconsistency and, not infrequently, the use of this mechanism for party-political rather than public-legal purposes. Improving the institution of temporary investigative commissions, including through a clearer regulatory definition of the procedure for their formation and their powers, is one of the pressing tasks of constitutional reform.

Parliamentary oversight takes on particular significance in the area of legislative regulation: by enacting laws that define the powers, procedures, and standards governing the activities of law enforcement agencies, parliament establishes the regulatory framework for their operations. The quality of this legislation—the degree of its clarity, consistency, and compliance with international human rights standards—is a prerequisite for all other oversight mechanisms. Provisions that grant law enforcement agencies excessively broad or vague discretionary powers undermine oversight regardless of the existence of formal oversight institutions.

The next type of oversight we will examine is judicial oversight, which is one of the most important external mechanisms for verifying the legality of law enforcement agencies' activities and protecting human rights from unlawful law enforcement actions. It is implemented through several procedural forms that constitute a comprehensive system of judicial oversight. Constitutional oversight is exercised by the Constitutional Court of Ukraine in terms of verifying the compliance

¹ Verkhovna Rada of Ukraine. (1996). Konstytutsiia Ukrainy vid 28 chervnia 1996 roku [Constitution of Ukraine of June 28, 1996]. Vidomosti Verkhovnoi Rady Ukrainy – *Bulletin of the Verkhovna Rada of Ukraine*, 30. [in Ukrainian].

of legislation governing the activities of law enforcement agencies with the Constitution of Ukraine and international human rights standards. Administrative judicial oversight is provided by a system of administrative courts, to which individuals may file claims regarding the illegality of actions or decisions by law enforcement agencies. Criminal procedural oversight is exercised by investigating judges in terms of authorizing and assessing the legality of restrictive measures in criminal proceedings.

The institution of the investigating judge, introduced by the 2012 Criminal Procedure Code of Ukraine, is one of the key elements of judicial oversight in the criminal procedure sphere. The investigating judge is authorized to grant permission for investigative actions that restrict an individual's constitutional rights (searches, arrests, wiretapping). The effectiveness of this institution directly depends on the judges' genuine independence from the prosecution and pre-trial investigation authorities, a sufficient material and procedural basis for making well-founded decisions, as well as the level of the judges' legal culture regarding human rights issues.

The case law of the European Court of Human Rights in cases against Ukraine concerning the activities of law enforcement agencies indicates certain systemic problems in the area of judicial oversight. In particular, a significant number of the Court's decisions concern unlawful detention, violations of the right to a fair trial in criminal cases, and ineffective investigations into torture and ill-treatment. Noting these structural problems, the Court has repeatedly issued "pilot judgments" obligating Ukraine to take systemic measures to remedy the identified violations. Compliance with these judgments is monitored by the Committee of Ministers of the Council of Europe and serves as an important incentive for reforming the judicial oversight system.

Administrative justice, as a mechanism for protecting human rights against unlawful actions by law enforcement agencies, has functioned in Ukraine since the introduction of the administrative court system

in the early 2000s. The shortcomings of this system, which limit its effectiveness as a control mechanism, include: excessive length of proceedings; the difficulty of obtaining adequate compensation; the difficulty of proving a case in administrative proceedings against authorities that have access to departmental resources; and the insufficient specialization of judges in matters of law enforcement. Reforming administrative justice to address these issues is one of the priorities of judicial reform in Ukraine.

Prosecutorial oversight has traditionally played a central role in the system of external oversight of law enforcement agencies in countries with a civil law tradition, to which Ukraine belongs. The Constitution of Ukraine (Article 131-1) and the Law of Ukraine “On the Prosecutor’s Office”¹ define oversight of compliance with the law by agencies conducting operational-investigative activities, preliminary inquiries, and pre-trial investigations as one of the functions of the prosecutor’s office. Within the scope of this function, the prosecutor is authorized to issue binding instructions to investigators, overturn their decisions, close proceedings, and approve or deny investigative actions requiring the prosecutor’s authorization.

The dual nature of the prosecutor’s procedural role—simultaneously as a supervisory body and the procedural leader of the pre-trial investigation—gives rise to a conceptual contradiction: the prosecutor, having a stake in the outcome of the investigation, cannot be an objective and independent monitor of the investigators’ actions. This contradiction is one of the key systemic problems of prosecutorial oversight of law enforcement agencies in the criminal procedural context. International standards, in particular Council of Europe Recommendation Rec(2000)19 on the role of the prosecution service in the criminal justice system, emphasize the need to ensure the independence of prosecutors

¹ Verkhovna Rada of Ukraine. (2014). Pro prokuraturu. Zakon Ukrainy vid 14 zhovtnia 2014 roku [On the Prosecutor’s Office. Law of Ukraine of 14 October 2014]. Retrieved from <https://zakon.rada.gov.ua/laws/show/1697-18#Text>

from the executive branch, which is a necessary condition for the effectiveness of their oversight¹.

The reform of the prosecutor's office carried out in Ukraine as part of the European integration process entailed a significant narrowing of the supervisory functions of the prosecutor's office compared to the Soviet model of "general supervision." The Constitution of Ukraine, and particularly the 2016 amendment (to the relevant articles), abolished the function of general prosecutorial oversight, in line with Council of Europe standards. At the same time, maintaining supervisory and procedural control over operational-investigative activities and pre-trial investigations is an important guarantee of human rights protection in criminal proceedings, provided it is effectively implemented.

The role of prosecutorial oversight regarding the observance of the rights of persons deprived of liberty is particularly important. The prosecutor's right to visit places of detention without prior notice, enshrined in the Law of Ukraine "On the Prosecutor's Office," is a significant safeguard against torture and ill-treatment. However, the actual effectiveness of this oversight depends on the regularity and independence of such inspections, as well as on the willingness of prosecutors to take firm action in response to identified violations, without succumbing to institutional solidarity with law enforcement agencies.

The institution of the Ombudsman (Parliamentary Commissioner for Human Rights) is a vital component of the system for protecting human rights against violations by law enforcement agencies. The Ukrainian Parliament's Commissioner for Human Rights exercises parliamentary oversight over the observance of constitutional human and civil rights

¹ Council of Europe. (2000). Rekomendatsiia Rady Yevropy Rec(2000)19 shchodo roli prokuratury v systemi kryminalnoho pravosuddia [Recommendation Rec(2000)19 of the Committee of Ministers to Member States on the Role of Public Prosecution in the Criminal Justice System]. Retrieved from https://supreme.court.gov.ua/userfiles/Rec_2000_19_2000_10_6.pdf

in Ukraine, including in the activities of law enforcement agencies. This function is carried out through the review of individual complaints regarding human rights violations by law enforcement agencies; independent investigations initiated by the Commissioner; systematic monitoring of human rights compliance in places of detention; the preparation of annual and special reports; and appeals to the Constitutional Court and the prosecutor's office¹.

Implementing the National Preventive Mechanism (NPM) in accordance with the Optional Protocol to the UN Convention against Torture is one of the Ombudsman's most important tasks. The NPM² provides for systematic independent monitoring of all places of detention under the broad jurisdiction of state authorities, including temporary detention facilities, pretrial detention centers, Ministry of Internal Affairs detention facilities, and others. The involvement of civil society representatives in monitoring visits under the NPM is a crucial element of this mechanism's transparency and independence.

The systemic weakness of the Ombudsman institution as a control mechanism in Ukraine is determined by several factors. First, the Commissioner lacks the authority to directly overturn unlawful decisions by law enforcement agencies or hold their employees accountable—he can only make recommendations and appeal to the relevant authorities. Second, the volume of complaints received by the Ombudsman significantly exceeds the capacity of the office to review them. Third, under martial law, the Ombudsman's access to certain places of detention and specific operational information held by law enforcement agencies is significantly restricted. Despite these limitations, the Ombudsman institution remains an important channel of feedback between society and the law enforcement system.

¹ Ombudsman Ukrainy [Ukrainian Ombudsman]. Retrieved from <https://ombudsman.gov.ua/>

² Natsionalnyi preventyvnyi mekhanizm [National Preventive Mechanism]. Retrieved from <https://www.ombudsman.gov.ua/uk/voyennij-stan/nacionalnij-preventivnij-mekhanizm>

Alongside the traditional Ombudsman institution, specialized human rights bodies and mechanisms operate in Ukraine. Among them, the State Bureau of Investigations (SBI) holds a special place—a body authorized to investigate crimes committed by officials of law enforcement agencies, including the police, the prosecutor’s office, and the State Penitentiary Service. The establishment of the SBI in 2017 was an important step in addressing the problem of “investigating oneself”—a situation where an agency investigates crimes committed by its own employees. The SBI’s independence from the law enforcement agencies that are the subject of its investigations is a key condition for its effectiveness.

Public oversight of law enforcement agencies is a necessary complement to state oversight mechanisms and performs independent functions in ensuring the accountability of the law enforcement system. It is important that public oversight is based on a different foundation of legitimacy than state oversight: it reflects the direct participation of civil society in oversight processes, rather than the state’s authority. This combination of state and public accountability forms a comprehensive oversight network in which the shortcomings of one mechanism can be offset by another.

The institutional forms of public oversight of law enforcement agencies include: public councils attached to law enforcement agencies; public groups for the protection of public order; self-organization bodies of the population; and specialized human rights organizations that conduct independent monitoring of law enforcement activities. However, the effectiveness of most of these forms is significantly limited by the lack of real authority to influence the activities of law enforcement agencies, insufficiently transparent procedures for forming public councils, and limited access to classified departmental information.

The media and investigative journalism are powerful tools for public oversight of law enforcement agencies. The public exposure of abuses and corruption within the law enforcement system through independent media serves a dual purpose: it directly holds those

responsible to account and generates public pressure on oversight bodies. Protecting journalists who investigate law enforcement agencies from persecution and intimidation is a state obligation under Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms¹ and Article 19 of the International Covenant on Civil and Political Rights². The practice of persecuting investigative journalists for reporting on abuses within law enforcement agencies—as evidenced by numerous examples in Ukraine—is one of the key indicators of insufficient protection of freedom of speech in the law enforcement context.

Digital technologies have significantly expanded the possibilities for public oversight of law enforcement agencies. The video recording of police actions by ordinary citizens, the posting of materials on social media, the use of platforms to collect and analyze data on police actions, and the operation of public platforms for reporting abuses—all of this forms a new ecosystem of public oversight that is fundamentally different from traditional forms. Law enforcement agencies, in turn, face the need to adapt to conditions of “radical transparency” arising from the widespread use of digital documentation tools.

At the same time, it should be emphasized that the imposition of martial law and other emergency regimes inevitably distorts the system of oversight over law enforcement agencies. This distortion is a natural phenomenon: in conditions of acute crisis, the priority of operational efficiency often takes precedence over the requirements of procedural accuracy and accountability. Law enforcement agencies are granted expanded powers, while traditional oversight mechanisms—judicial,

¹ Council of Europe. (1950). *Konventsiiia pro zakhyst prav liudyny i osnovopolozhnykh svobod (z protokolamy)* (Yevropeiska konventsiiia z prav liudyny) [Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights)]. Retrieved from https://zakon.rada.gov.ua/laws/show/995_004#Text

² United Nations. (1966). *Mizhnarodnyi pakt pro hromadianski i politychni prava* [International Covenant on Civil and Political Rights]. Retrieved from https://zakon.rada.gov.ua/laws/show/995_043#Text

parliamentary, and prosecutorial—face restrictions or shift to simplified modes of operation. However, this “logic of crisis” is not a justification for abandoning oversight: on the contrary, the expansion of law enforcement powers in emergency situations requires an adequate strengthening, not a weakening, of oversight.

In the context of international law, the principle of the non-derogability of key oversight mechanisms, even in times of crisis, is reflected in the standards of the UN, the Council of Europe, and the OSCE. In particular, the Syracuse Principles on the Interpretation of Limitations and Derogations from the International Covenant on Civil and Political Rights¹ and the Paris Minimum Standards on Human Rights in a State of Emergency² establish that even when a state of emergency is declared, the state is obligated to maintain effective mechanisms for independent judicial review and parliamentary oversight of measures that restrict human rights.

The practice of martial law in Ukraine, introduced on February 24, 2022, revealed a number of adaptive responses by the oversight system. The Verkhovna Rada of Ukraine continues to function, performing legislative and, to some extent, oversight functions. The Verkhovna Rada Committee on Law Enforcement retained its powers, although the amount of public information regarding the activities of law enforcement agencies has significantly decreased due to military secrecy. Judicial oversight continued to function, albeit with obvious difficulties in frontline areas. These adaptations serve as an important example of how oversight institutions are attempting to maintain their functionality under unprecedented pressure.

¹ International Commission of Jurists. (1985). *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*. Retrieved from <https://www.icj.org/wp-content/uploads/1984/07/Siracusa-principles-ICCPR-legal-submission-1985-eng.pdf>

² Horetskyi, O. *Mizhnarodni standarty viiskovykh sudiv. Dosvid Yevropy* [International Standards of Military Courts: European Experience]. Retrieved from <https://yur-gazeta.com/publications/sferi-praktiki/viyskove-pravo/mizhnarodni-standarti-viyskovih-sudiv-dosvid-evropi.html>

One of the key issues is ensuring oversight of law enforcement activities regarding individuals detained under martial law. Practice has demonstrated the need for adapted mechanisms for judicial review of the legality of detentions, ensuring access to a defense attorney, and preserving basic procedural safeguards even in situations where traditional procedures prove difficult to implement. The Parliamentary Commissioner retained his mandate and sought to carry out his NPM functions even under conditions of limited access to certain places of detention. Maintaining the effectiveness of these mechanisms is a key task requiring systematic attention from the legislature and government institutions.

An analysis of oversight mechanisms for law enforcement agencies in Ukraine reveals a number of systemic challenges that significantly limit their effectiveness. The first is the problem of a fragmented oversight system: the multiplicity of oversight bodies, combined with insufficient coordination among them, creates gaps in oversight and duplication of efforts. The second is the lack of genuine independence of oversight bodies from the executive branch and law enforcement agencies, which are the subject of oversight: formal institutional separation is not always accompanied by functional independence. The third is the problem of the actual implementation of recommendations by oversight bodies: the ombudsman's findings, reports by parliamentary committees, and recommendations by international bodies often go unaddressed.

The fourth systemic challenge is the lack of access to oversight mechanisms for the most vulnerable segments of the population, whose rights are most frequently violated: persons in detention, low-income citizens, members of minority groups, and IDPs. The mere existence of oversight tools does not guarantee their accessibility to those who need protection the most. The fifth challenge is the accountability of the oversight institutions themselves: oversight mechanisms prove ineffective largely due to their own lack of accountability to society.

The sixth challenge is the technological lag of oversight bodies, which do not always have the tools to analyze large datasets and identify systemic violations.

In our view, the prospects for improving the system of oversight over law enforcement agencies in Ukraine are linked to several areas. At the regulatory level—the adoption of a comprehensive law on democratic civilian oversight of law enforcement agencies, which would systematize existing regulations and fill current gaps. At the institutional level—the establishment of a specialized independent police oversight body modeled on best international practices. At the procedural level—ensuring real guarantees of the SBI's independence, improving NPM mechanisms, and strengthening criminal and disciplinary liability for obstructing oversight activities. At the cultural level—fostering among law enforcement personnel a perception of external oversight not as a threat, but as an element that enhances public trust and thereby strengthens the effectiveness of law enforcement agencies themselves.

4.2 Limits on the discretionary powers of law enforcement agencies in extraordinary circumstances

The discretionary powers of law enforcement agencies—that is, powers that allow for a choice between several legally permissible courses of action depending on the circumstances of a particular situation—are an integral and functionally necessary element of any developed law enforcement system. The nature of law enforcement activities, carried out under conditions of uncertainty, time constraints, and constantly changing circumstances, makes it impossible to fully formalize every decision and action. A certain degree of discretion serves as a tool for adapting general legal norms to specific, often unpredictable situations, and therein lies its constructive function within the law enforcement system. At the same time, discretion is potentially the most dangerous

source of arbitrariness, especially when it lacks clear boundaries, effective oversight, and real accountability mechanisms¹.

The issue of the limits of discretionary authority takes on a whole new level of urgency in extraordinary situations. A pandemic, armed conflict, martial law, occupation—each of these situations is characterized by heightened unpredictability, dynamic threats, and social tension, which objectively necessitates expanding the discretion of law enforcement agencies. At the same time, it is precisely under these conditions that the risks of abuse are most acute: the weakening of external oversight, the creation of a climate of insecurity, and the narrowing of public space for criticism—all of this creates fertile ground for the transformation of legitimate discretionary powers into an instrument of arbitrariness. Thus, the question of the limits of law enforcement agencies' discretion in extraordinary circumstances is central to the system of human rights protections.

Methodologically, the study of this issue draws on the doctrine of legal discretion developed in general legal theory and public law, standards for the limitation of human rights formulated in the practice of the European Court of Human Rights and UN treaty bodies, as well as a comparative analysis of legislation and law enforcement practices in states that have faced similar challenges. A separate subject of consideration is the domestic experience of regulating the discretion of law enforcement agencies in the context of the COVID-19 pandemic and the full-scale armed conflict that began in February 2022.

In public law doctrine, discretionary powers (administrative discretion) are defined as the right granted to a competent authority or official to choose between two or more legally permissible options for a decision or action, none of which is unlawful in and of itself. A key characteristic of discretion is that it is a legally delegated

¹ Bilykh, I.V. (2023). *Dyskretsiia v diialnosti Natsionalnoi politsii Ukrainy* [Discretion in the Activities of the National Police of Ukraine]. *Aktualni problemy vitchyznianoï yurysprudentsii – Actual Problems of Domestic Jurisprudence*, 4, 92–97. [in Ukrainian].

ability to make decisions based on the authority's own judgment: the legislature deliberately leaves room for discretion, recognizing the impossibility or impracticality of fully regulating the relevant sphere of activity through legislation. Discretion is fundamentally different from arbitrariness: the former is legally delegated and exercised within legal boundaries, while the latter goes beyond those boundaries.

With regard to law enforcement agencies, discretionary powers manifest themselves at several levels. At the normative level, discretion is embedded in the very structure of legal norms through evaluative concepts ("reasonable suspicion," "reasonable necessity," "proportionate measure"), alternative sanctions, and procedural options. At the law enforcement level, it is exercised when deciding on the detention of a person, the application of coercive measures, the collection of evidence, the closure or continuation of proceedings, and so on. At the managerial level, it manifests itself in the determination of priorities for law enforcement activities, the allocation of resources, and the selection of operational strategies. Each of these levels has its own specific characteristics regarding the establishment of limits and control mechanisms.

In legal theory, a distinction is made between "strong" and "weak" discretion. Strong discretion implies that the authority holder is not bound by any standards established by higher-level authorities. Weak discretion means that while the authority is required to exercise its own judgment, it is nevertheless bound by certain substantive or procedural standards¹. In the sphere of law enforcement, only weak discretion is justified: no authority or official may have unlimited powers in relations with individuals. The task of legal regulation lies in defining the standards to which law enforcement officers' discretion is bound and ensuring the actual adherence to these standards.

¹ Pevko, S.H. (2019). *Formy dyskretsii v pravozastosovchii diialnosti* [Forms of Discretion in Law Enforcement Activity]. *Yurydychna nauka – Legal Science*, 5(95), 245–256. [in Ukrainian].

The legal nature of discretionary powers in law enforcement dictates specific requirements for their structure. First, they must be provided for by law—the principle of legality precludes discretion that is not enshrined in law. Second, they must pursue a legitimate purpose—not every exercise of discretion, even if formally justified, is lawful if it serves purposes inconsistent with the functions of law enforcement agencies. Third, they must be exercised within the limits defined by the principle of proportionality. Fourth, they are subject to judicial and external oversight: the right to challenge discretionary decisions serves as a safeguard against arbitrariness.

Public law doctrine and practice have developed several key criteria that define the lawful limits of law enforcement agencies' discretionary powers. The first and most fundamental is the criterion of legality: a discretionary decision must be based on a clear legislative foundation that provides for the very possibility of such a decision and establishes its permissible parameters. The absence of a legislative basis renders a “discretionary” decision unlawful, even if it is situationally appropriate. The criterion of legality is particularly important in the sphere of criminal procedure, where the principle of *nullum crimen, nulla poena sine lege* extends to the procedural actions of law enforcement agencies.

The second criterion is proportionality. Discretionary authority is granted to a law enforcement agency to achieve a specific law enforcement objective, and its exercise for other purposes constitutes “abuse of discretion” (*détournement de pouvoir*)—a form of misuse of discretion that is deemed unlawful even if it formally complies with the law. Examples include the use of powers to gather intelligence for the purpose of prosecuting individuals for reasons unrelated to law enforcement activities, or the use of administrative detention as a means of suppressing lawful civic engagement.

The third criterion is proportionality, a doctrine that has been extensively developed in the practice of the Constitutional Court of the Federal Republic of Germany, the Court of Justice of the European Union, and the ECHR. As we noted above, proportionality

in both its narrow and broad senses encompasses the requirements of suitability, necessity, and commensurability of the measure. With regard to discretionary decisions by law enforcement agencies, the principle of proportionality requires that, where several equally lawful courses of action are available, the one that least restricts human rights and is nevertheless sufficient to achieve the law enforcement objective be chosen. This provision obliges law enforcement officials to conduct a realistic assessment of alternatives rather than automatically applying the most severe measures available.

The fourth criterion is the reasonableness and justification of the decision. The requirement to document the grounds for a discretionary decision serves both as a guarantee of its deliberateness and as a necessary condition for effective external oversight. ECHR case law has repeatedly found violations of the Convention due to the lack of proper justification for law enforcement decisions regarding detention, search, and the use of force. The fifth criterion is good faith: discretionary authority must be exercised without hidden motives other than those declared. A violation of the principle of good faith is grounds for declaring a decision unlawful, regardless of its formal compliance with the other criteria.

The COVID-19 pandemic served as a sort of “stress test” for law enforcement discretion in most countries around the world. In Ukraine, law enforcement agencies were granted broad powers to ensure compliance with quarantine restrictions established in accordance with legislation on the protection of the population against infectious diseases and decisions of the Cabinet of Ministers of Ukraine. These powers included monitoring compliance with restrictions on movement, self-isolation requirements, rules on wearing protective equipment, restrictions on the operation of retail and service establishments, as well as drafting reports on administrative offenses and imposing administrative liability.

An analysis of how law enforcement agencies exercised their discretionary powers during the pandemic revealed a number

of systemic issues. The first is the problem of regulatory uncertainty: some quarantine measures were introduced by subordinate legislation containing vague or contradictory wording, leaving law enforcement officers with excessively broad scope for interpretation, which led to significant regional and even interpersonal differences in law enforcement: the same actions were classified differently depending on the subjective judgment of a particular police officer. The principle of legal certainty, which is a component of the rule of law, suffered significantly under these conditions¹.

A second problem was the lack of clear procedural standards for the exercise of quarantine powers. Unlike powers in the criminal justice system, which are regulated in detail by the Criminal Procedure Code of Ukraine, police powers regarding the enforcement of quarantine measures were regulated in far less detail, creating risks of inconsistent and arbitrary law enforcement. Human rights organizations documented cases where quarantine powers were used disproportionately.

A third problem concerns judicial review of discretionary decisions² made during the pandemic. Some of the administrative penalties imposed for violations of quarantine requirements were challenged in court and overturned as unfounded or unlawful, indicating that judicial review of law enforcement agencies' discretion in this area generally functioned, albeit with limitations: access to judicial review remained limited for a significant portion of the population, and the length of proceedings undermined judicial protection in terms of restoring violated rights.

¹ Ivanchenko, Ya.M. Pryntsyp pravovoi vyznachenosti u ploshchyni pravozaostovnoi dyskretsii [The Principle of Legal Certainty in the Context of Law-Enforcement Discretion]. Retrieved from <https://jpchdnu.donnu.edu.ua/article/download/16158/16052/32158>

² Mahda, S.O. (2017). Do pytannia zakhystu administratyvnykh sudom prav, svobod ta interesiv osoby v aspekti dyskretsiiynykh povnovazhen [On the Protection of Rights, Freedoms and Interests of a Person by Administrative Courts in the Context of Discretionary Powers]. *Visnyk Kharkivskoho natsionalnoho universytetu im. V.N. Karazina. Seriiia "Pravo" – Bulletin of V.N. Karazin Kharkiv National University. Law Series*, 23, 97–101. [in Ukrainian].

The experience of the pandemic has also demonstrated the need for a differentiated approach to the exercise of discretion depending on the category of individuals subject to law enforcement measures. Elderly people, people with disabilities, young children, and people without a permanent place of residence were objectively in a more vulnerable position regarding quarantine requirements, and law enforcement practice should have taken this into account. The principle of proportionality, combined with the principle of non-discrimination, required an adapted approach to such individuals; however, relevant regulatory or methodological guidelines for law enforcement officers were largely not formulated.

Martial law, as we have repeatedly noted, is the most radical of the regimes provided for by national and international law, allowing for the broadest expansion of law enforcement agencies' discretionary powers. The Law of Ukraine "On the Legal Regime of Martial Law" grants law enforcement agencies powers that significantly exceed their usual scope: checking documents, imposing a curfew, restricting freedom of movement, detaining individuals who pose a security threat—and these are just some of them. Each of these powers is discretionary in nature: it involves assessing the circumstances and making a decision based on the law enforcement officer's own judgment.

The legal basis for expanding discretion under martial law is established both at the constitutional level (Article 64 of the Constitution of Ukraine, which permits restrictions on human rights during martial law or a state of emergency) and through special legislation. At the same time, it is quite important to note that martial law expands the permissible range of discretionary decisions but does not abolish the requirement for their legality. Every decision by a law enforcement agency, even one made under martial law, must meet the criteria of legality, purpose, proportionality, and good faith—only the parameters of these criteria may be somewhat adapted to the specific circumstances of the emergency.

Discretionary powers regarding restrictions on freedom of movement and the imposition of curfews deserve special attention. Checking documents, turning people around at checkpoints, and detaining suspicious individuals—all these actions are manifestations of discretion, the limits of which are significantly expanded during wartime. At the same time, the practice of checkpoints during a full-scale invasion has revealed risks of abuse: documented cases of illegal extortion, unjustified detention, and in some cases—more serious human rights violations—indicate that expanding discretion without corresponding increases in oversight and accountability is potentially dangerous.

Discretionary powers regarding the screening of persons moving from combat zones or temporarily occupied territories are a particularly sensitive area from a human rights perspective. “Screening” procedures, in their lawful form, are a legitimate tool for establishing identity and checking for security risks. However, the lines between lawful screening and unlawful detention, between data verification and torture, and between selecting individuals based on security criteria and discriminatory profiling—require extremely clear regulatory criteria and robust external oversight. Documented violations in this area are among the most serious human rights issues of wartime.

The use of force is the very essence of law enforcement agencies’ discretionary powers and, at the same time, the riskiest area of their exercise from a human rights perspective. Decisions regarding the use of force—ranging from physical restraint to the use of firearms—are typically made under conditions of extreme time pressure and with incomplete information. This is precisely why international standards in this area are particularly detailed. The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the UN in 1990, establish a key standard: force may be used only when strictly necessary, and to the minimum extent necessary to achieve a legitimate objective.

Discretion in the use of force under extraordinary circumstances is subject to a particularly distorting influence. Under martial law,

the line between the lawful use of force by law enforcement and combat operations can become blurred; the psychological strain on law enforcement officers in a combat zone differs significantly from peacetime conditions; and the risk of overestimating the threat in the context of an actual armed conflict is higher. All of this requires adapted training standards, clear protocols for the use of force, and an independent investigation of every instance of its use resulting in death or serious injury.

The practice of the European Court of Human Rights (ECHR) in cases involving the use of force by law enforcement agencies has established a series of standards directly related to the limits of discretion. Article 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms (the right to life) permits the deprivation of a person's life only when it is "absolutely necessary" to achieve one of the three legitimate aims listed in Article 2(2). The Court interprets this standard more strictly than the principle of proportionality in the broad sense: "absolute necessity" requires not merely a reasonable balance of interests, but the highest level of necessity, that is, the complete absence of less lethal alternatives. This standard remains in force even under martial law and during armed conflict—to the extent that such situations are governed by the European Convention on Human Rights and not exclusively by international humanitarian law.

An important aspect of discretion in the use of force is the issue of planning and organizing operations. The ECHR, in the case of "McCan and Others v. the United Kingdom," held that Article 2 of the ECHR imposes a duty on the state to plan law enforcement operations in such a way as to minimize the need for the use of lethal force¹. Accordingly, discretion in the use of force begins not at the moment of the direct use of weapons, but at the stage of planning the operation: strategic errors

¹ Case of McCann and Others v. the United Kingdom. Application No. 18984/91. European Court of Human Rights, 27 September 1995. Retrieved from <https://hudoc.echr.coe.int/ukr?i=001-57943>

that make the use of lethal force inevitable are also subject to legal assessment. For law enforcement agencies in extraordinary situations, this standard requires particular diligence when planning operations in high-risk environments.

Deprivation of liberty is one of the most significant manifestations of law enforcement agencies' discretionary powers in terms of its consequences and, at the same time, an area where the risks of abuse are particularly acute. Under normal circumstances, Article 5 of the European Convention on Human Rights and Articles 29–31 of the Constitution of Ukraine establish strict procedural safeguards—an exhaustive list of grounds for detention, the obligation to immediately explain the reasons, judicial review within the shortest possible time, and the right to legal counsel. These guarantees limit discretion in the deprivation of liberty and fundamentally narrow the scope for arbitrary decisions.

Under martial law, the grounds for restricting freedom of movement are expanded. At the same time, Article 15 of the European Convention on Human Rights permits derogation from obligations under the Convention in a state of emergency threatening the very existence of the nation, but only to the extent required by the situation and provided that the measures are consistent with other obligations under international law. Ukraine has notified the Council of Europe of a derogation from a number of provisions of the European Convention on Human Rights in connection with martial law, which is a legally correct step. However, even within the scope of such a derogation, a number of absolute guarantees remain (the prohibition of torture, the right to judicial protection to a certain minimum extent), from which derogation is impermissible.

A practical manifestation of the problems with the limits of discretion regarding deprivation of liberty under martial law is the issue of detaining individuals suspected of ties to the enemy, espionage, or other hostile activities. The vagueness of the criteria for “suspicion of aiding the enemy,” combined with the atmosphere of wartime, creates a risk of excessively broad application of discretionary powers

regarding detention. An effective mechanism for limiting this discretion is mandatory judicial review of the grounds for detention within the shortest possible time, even under martial law, the presence of a defense attorney from the moment of detention, and independent monitoring of places of detention.

The legal regulation of law enforcement agencies' discretionary powers is carried out at several normative levels, each of which performs an independent function in structuring the exercise of discretion. The law establishes the general grounds, limits, and objectives of discretionary powers, as well as enshrines procedural safeguards for the individuals to whom they apply. Subordinate regulations specify the procedure for exercising discretionary powers, establishing more detailed criteria and standards. Departmental instructions, orders, and methodological guidelines supplement the regulatory framework, adapting general rules to the specifics of particular types of operational activities.

Police standards of operational procedures (Standard Operating Procedures), which are widely used in the law enforcement systems of common law countries and are gradually being introduced in Ukraine, play a special role in structuring the discretion of law enforcement agencies. Police Standard Operating Procedures are detailed operational algorithms for typical situations requiring discretionary decisions: the arrest of a suspect, conducting a search, the use of force, interaction with vulnerable individuals, and so on. By establishing clear algorithms, such standards limit the scope for subjective discretion and thereby reduce the risks of inconsistency, discrimination, and abuse.

In extraordinary situations, the regulatory structuring of discretion takes on particular importance, but also presents special challenges. On the one hand, the rapid pace of changing circumstances and the unpredictability of new situations complicate the development of detailed regulatory standards. On the other hand, it is precisely in times of crisis that clear regulatory guidelines are most needed, as law enforcement officials find themselves in situations of extreme stress and time constraints. Therefore, the issuance of operational

departmental clarifications and methodological recommendations regarding the exercise of discretionary powers in specific crisis conditions is an important task of departmental management, even if these documents are temporary and adaptive in nature.

At the same time, no system of regulatory structuring of discretion can be sufficiently effective without a corresponding legal culture among law enforcement officers. Discretionary decisions, by definition, are made in a space where the norm does not dictate a clear-cut solution, and therefore the value orientation of the decision-maker is decisive. A law enforcement officer who has internalized the principles of respect for human rights, legality, and proportionality will exercise discretionary powers differently than one for whom these principles remain external constraints perceived as obstacles to “effective” work.

Fostering a human rights-oriented mindset among law enforcement officers is a systemic task encompassing initial training, professional development, and an ongoing organizational culture. Incorporating issues of human rights, discretion, and its limits into police training curricula is necessary, but insufficient: what matters most is how these issues are presented and embedded in the institutional culture—whether human rights are perceived as a genuine value to be guided by in daily work, or as a formality that complicates “real” law enforcement activities. Police education reform in Ukraine, carried out with the support of international partners, pays significant attention to this aspect, although the transformation of the agency’s culture is a long-term process measured not in years but in decades.

In the context of armed conflict, the issue of a human rights-oriented approach becomes particularly acute. The atmosphere of wartime, real threats to physical safety, and the depersonalization of the “enemy”—all these are psychological factors that increase the risk of discretionary decisions devolving into arbitrariness and brutality. Preventing these risks requires actively upholding human rights standards within the agency culture even during conflict, ensuring genuine accountability and punishment for abuses, as well as providing psychological support

to law enforcement personnel operating under chronic stress. Such measures are not only a humanitarian obligation but also a prerequisite for the effectiveness of law enforcement agencies: units that maintain discipline and human rights standards generally enjoy greater public trust and, consequently, are more effective.

4.3 Legal liability for human rights violations in extraordinary circumstances

Legal liability for human rights violations committed by law enforcement agencies under extraordinary conditions is the logical and necessary culmination of the system of safeguards examined in the preceding sections of this chapter. While oversight mechanisms are designed to prevent and detect violations, and limits on discretion are intended to structure the permissible scope of law enforcement actions, legal liability ensures the restoration of the rule of law, the protection of victims, and the deterrence of future violations. Without real and inevitable liability, all other elements of the system of safeguards risk becoming a fiction devoid of practical significance. Impunity is not only an injustice to specific victims but also a systemic factor that reproduces and deepens a culture of abuse within the law enforcement environment.

Extraordinary circumstances—such as a pandemic, armed conflict, martial law, or occupation—pose specific challenges for the system of legal accountability. On the one hand, these conditions often provide a crucial context for assessing the legality of law enforcement actions: what would be unquestionably unlawful in peacetime may prove permissible under conditions of a real threat. On the other hand, it is precisely under extraordinary conditions that accountability mechanisms face the greatest pressure: judicial institutions operate under difficult conditions, access to justice for victims is restricted, and invoking “necessity” is often used as a shield against prosecution.

Therefore, the study of legal accountability in this context requires both doctrinal clarity and practical realism.

A systematic analysis of legal liability for human rights violations by law enforcement agencies involves examining several interrelated aspects: the types of liability and their specific features regarding law enforcement personnel; the grounds for liability under ordinary and extraordinary conditions; circumstances precluding liability and the limits of their application; as well as the effectiveness of accountability mechanisms in practice. It is these issues that define the structure and content of this section.

It should be emphasized that the legal liability of law enforcement officers for human rights violations is a multi-faceted phenomenon encompassing several distinct but interrelated types of liability. Criminal liability entails the criminal prosecution and punishment of individuals who have committed socially dangerous acts prohibited by the Criminal Code of Ukraine. Disciplinary liability is enforced through a system of disciplinary sanctions, up to and including dismissal from service, and constitutes an internal agency response to violations of official discipline and legal requirements. Civil liability entails compensation for damages caused by unlawful actions of law enforcement officials—both directly by the individuals who committed the violations and by the state as a subject of public law relations. Administrative liability is less common in this context, but may be applied in cases of violations that do not reach the level of criminal offenses. The state's liability under international law is a separate category, enforced through the mechanisms of international courts and treaty bodies.

Each of these types of liability performs distinct functions within the system of law enforcement agencies' response to human rights violations. Criminal liability is the most severe form of response and serves primarily the purposes of punishment, deterrence, and public condemnation of the most serious violations. Disciplinary liability is a more expedient mechanism for internal response and serves to uphold professional discipline and institutional integrity. Civil liability

focuses on restoring rights and compensating victims for harm, thereby fulfilling a restorative function. Only the combination of all three main types of liability ensures a comprehensive response: imposing only one type in the absence of the others leaves the system incomplete.

It is quite important to note that criminal, disciplinary, and civil liability do not exclude but rather complement one another. The imposition of disciplinary sanctions for actions that constitute a criminal offense does not exempt the perpetrator from criminal prosecution. The payment of compensation to the victim is not grounds for closing criminal proceedings. This provision is of great importance in the context of combating impunity: law enforcement agencies often attempt to limit themselves to disciplinary “liability” in cases that objectively require a criminal response, using it as a pretext for a “sufficient” measure of response.

The Criminal Code of Ukraine contains a number of criminal offenses directly related to human rights violations by law enforcement officials. Among these, the following occupy a central place: abuse of power or official authority, combined with the use of violence or actions causing pain and suffering (Article 365 of the Criminal Code); torture (Article 127 of the Criminal Code); unlawful deprivation of liberty or kidnapping (Article 146 of the Criminal Code); violence against participants in court proceedings and their relatives (Article 377 of the Criminal Code); knowingly unlawful detention, arrest, or holding in custody (Article 371 of the Criminal Code); coercion to give testimony (Article 373 of the Criminal Code); abuse of power or official position (Article 364 of the Criminal Code). Each of these offenses covers a wide range of human rights violations and, taken together, forms the criminal law framework for the liability of law enforcement officials.

In the context of armed conflict and martial law, this list is supplemented by war crimes set forth in Section XX of the Criminal Code of Ukraine, “Crimes against Peace, the Security of Humanity, and the International Legal Order.” Following the full-scale invasion in 2022, the Verkhovna Rada of Ukraine introduced a number of amendments

to the Criminal Code that expanded the list of war crimes and brought it into line with the standards of the Rome Statute. In particular, penalties for crimes against the civilian population were increased, liability was introduced for certain forms of unlawful treatment of prisoners of war, and the elements of crimes related to the use of prohibited methods and means of warfare were clarified.

The specifics of the criminal classification of human rights violations by law enforcement officials are linked to several doctrinal issues. The first is the issue of the subjective element: most offenses in this area are intentional, requiring proof of intent on the part of the law enforcement officer, which is one of the practical difficulties in holding them accountable: law enforcement officers may invoke good-faith error, exceeding the limits of necessary defense, or liability for following orders. The second is the issue of the perpetrator: liability for abuse of power or official authority applies to public officials, which excludes rank-and-file law enforcement officers who do not have the status of a public official from the circle of potential perpetrators. The third is the issue of multiple offenses: it is not uncommon for a single unlawful act by a law enforcement officer to contain elements of several offenses simultaneously.

The principle of command responsibility is one of the key instruments of criminal law in combating human rights violations by law enforcement agencies. Under this principle, commanders and superiors bear criminal responsibility for the crimes of their subordinates if they knew or had reason to know about these crimes and failed to take measures to prevent or stop them. In international criminal law, this principle is enshrined in Article 28 of the Rome Statute and confirmed by the practice of international tribunals¹. In Ukraine's national criminal law, its equivalent is liability for condoning the crimes of subordinates (Article 426 of the Criminal Code—negligent attitude toward military service) and general grounds for complicity.

¹ Rymyskyi Statut Mizhnarodnoho Kryminalnoho Sudu [Rome Statute of the International Criminal Court]. Retrieved from https://zakon.rada.gov.ua/laws/show/995_588#Text

Disciplinary liability is the most expedient and practically widespread form of legal liability for law enforcement officers for human rights violations. It is enforced within the framework of official relations and involves the application of disciplinary measures—ranging from a reprimand to dismissal from service—for violations of legal requirements and official discipline. The legal basis for disciplinary liability within the National Police is the Law of Ukraine “On the National Police,” the Disciplinary Statute of the National Police of Ukraine¹, and relevant departmental regulations. The disciplinary liability of prosecutors, investigators of the State Bureau of Investigation (SBI), and other law enforcement personnel is regulated separately.

A matter of fundamental importance is the extent to which disciplinary liability can ensure effective protection of human rights. Disciplinary procedures have a number of advantages: they are more expeditious than criminal prosecution; they can be applied to a broader range of violations that do not meet the threshold of a criminal offense; they directly influence the personnel composition of law enforcement agencies by removing individuals who systematically violate human rights. At the same time, disciplinary accountability has fundamental limitations as a protective mechanism: it is internal, meaning it is carried out by the agency itself against its own employee, which creates obvious risks of institutional cover-ups; it does not provide compensation for victims; and it fails to meet the public’s demand for justice in cases of serious violations.

In extraordinary situations, disciplinary procedures often prove even less effective. Under martial law, internal investigations may be stalled due to lack of access to witnesses and evidence, the redeployment of units, and the prioritization of operational tasks over administrative ones. Documented cases of human rights violations in armed conflict often “get stuck” in the disciplinary review stage for a long time, effectively

¹ Verkhovna Rada of Ukraine. (2018). *Dystsyplynnyi statut Natsionalnoi politsii Ukrainy. Zatverdzhnyi Zakonom Ukrainy vid 15 bereznia 2018 roku* [Disciplinary Statute of the National Police of Ukraine. Approved by the Law of Ukraine of 15 March 2018]. Retrieved from <https://zakon.rada.gov.ua/laws/show/2337-19#Text>

turning an internal investigation into a means of blocking actual prosecution. Overcoming these problems requires clear timeframes for disciplinary investigations, independent oversight of their conduct, and higher standards for the soundness of decisions based on their results.

It should be noted that the Disciplinary Statute of the National Police introduced a number of progressive innovations, including specific provisions for conducting internal investigations during martial law and the powers of the authorized member of the disciplinary commission conducting the internal investigation. These changes are important, but their implementation remains subject to further monitoring, as the discrepancy between regulatory standards and actual practice within law enforcement agencies is a persistent issue in the domestic law enforcement system.

Civil liability for harm caused by unlawful actions of law enforcement agencies is one of the key elements of the system of legal protection for victims. Pursuant to Article 1174 of the Civil Code of Ukraine, damage caused to a natural or legal person by unlawful decisions, actions, or inaction of a public authority is compensated by the state regardless of the fault of that authority. This provision establishes the principle of strict liability of the state for unlawful actions by law enforcement agencies, which complies with international standards and serves as a strong guarantee of victims' rights. We would also like to mention the Law "On the Procedure for Compensating Damage Caused to a Citizen by Unlawful Actions of Bodies Carrying Out Operational-Investigative Activities, Pre-trial Investigation Bodies, the Prosecutor's Office, and the Court"¹.

¹ Verkhovna Rada of Ukraine. (1994). Pro poriadok vidshkoduvannia shkody, zavdanoi hromadianynovi nezakonnymy diiamy orhaniv, shcho zdiisnuiut operativno-rozshukovu diialnist, orhaniv dosudovoho rozsliduvannia, prokuratury i sudu. Zakon Ukrainy vid 1 hrudnia 1994 roku [On the Procedure for Compensation for Damage Caused to a Citizen by Unlawful Actions of Bodies Carrying Out Operational and Investigative Activities, Pre-Trial Investigation Bodies, Prosecutor's Offices and Courts. Law of Ukraine of 1 December 1994]. Retrieved from <https://zakon.rada.gov.ua/laws/show/266/94-%D0%B2%D1%80#top>

The right to compensation is an integral part of the right to an effective remedy, enshrined in Article 13 of the European Convention on Human Rights and Article 2(3) of the International Covenant on Civil and Political Rights. The ECtHR's case law in cases against Ukraine consistently requires not only a finding of a violation of the Convention but also the award of "just satisfaction" to the victims in accordance with Article 41 of the European Convention on Human Rights. At the same time, the Court emphasizes that an effective remedy at the national level is a prerequisite for the victim not to have to turn to Strasbourg at all: the existence of an effective compensation mechanism under national law is a state obligation, not an optional supplement.

In extraordinary situations, the practice of compensating for harm caused by law enforcement agencies faces specific difficulties. The mass scale of violations in the context of armed conflict makes individual civil litigation potentially impossible to carry out in full. The destruction of infrastructure and the displacement of the population complicate the collection of evidence to substantiate claims. The state's financial situation during wartime may hinder the actual enforcement of compensation rulings. These difficulties necessitate the development of systemic mechanisms for mass compensation that go beyond the scope of individual civil litigation—in particular, specialized compensation funds or administrative compensation programs, which are elements of a broader transitional justice system.

The recourse liability of a law enforcement officer to the state is an important mechanism that allows for combining compensation to the victim with holding the direct perpetrator of the harm personally liable. Under the law, the state, having paid compensation to the victim for the unlawful actions of a law enforcement officer, acquires a right of recourse against that person. The practical effectiveness of this mechanism depends on whether it is actually applied: if recourse claims remain merely declaratory and are not actually brought, the deterrent effect of personal civil liability is negated.

Extraordinary circumstances give rise to specific questions regarding conditions that may exclude or mitigate the liability of law enforcement officers for actions that would otherwise be unlawful. The most common of these circumstances are: compliance with a lawful order or directive, extreme necessity, necessary defense, and good-faith error regarding the factual circumstances. Each of these circumstances has clearly defined legal boundaries beyond which it ceases to exclude liability, and understanding these boundaries is of fundamental importance for the correct classification of law enforcement officers' actions in crisis conditions.

The execution of an order as a basis for excluding liability is the most controversial circumstance, especially in the context of wartime. The “Nuremberg” principle, affirmed by the Statute of the International Criminal Court and established practice in international criminal law¹, establishes that the execution of an unlawful order does not exclude criminal liability for international crimes—crimes against humanity, war crimes, and genocide. At the same time, the fact of carrying out an order may be considered only as a mitigating circumstance, but does not exclude liability. Under national law, Article 41 of the Criminal Code of Ukraine establishes that the execution of a manifestly criminal order or directive does not exclude the criminal liability of the executor. Thus, the line between “execution of an order” and a crime is determined by the “manifest” criminal nature of the order—a criterion that requires a balanced interpretation².

Extreme necessity as a circumstance excluding liability (Article 39 of the Criminal Code of Ukraine) requires special analysis in the context of law enforcement activities under extraordinary circumstances. Action under

¹ Burdin, V. Kryminalno-pravove znachennia vykonannia nakazu abo rozporiadzhennia [Criminal Law Significance of Executing an Order or Instruction]. Retrieved from <http://radnuk.info/statti/229-kruminal-pravo/15314-2011-01-23-01-10-30.html>

² Diachuk, S.I. (2001). *Vykonannia nakazu chy rozporiadzhennia u kryminalnomu pravi (osnovni poniattia, problemy kvalifikatsii, udoskonalennia zakonodavstva)* [Execution of an Order or Instruction in Criminal Law (Basic Concepts, Qualification Problems, Improvement of Legislation)]. Kyiv : Atika. [in Ukrainian].

extreme necessity involves causing lesser harm to avert a greater danger, provided that this danger could not have been eliminated by other means. In a law enforcement context, this doctrine is applied when assessing the actions of law enforcement officers in situations of acute conflict, where a choice must be made between two evils. The problem here is that in wartime, invoking extreme necessity can become a convenient excuse for systematic violations rather than an exceptional response to truly desperate situations. Therefore, the doctrinal and judicial interpretation of this doctrine in the context of armed conflict must be particularly measured and limited.

A bona fide mistake of fact¹ is another circumstance that frequently arises in cases involving human rights violations by law enforcement officials. If a law enforcement officer, acting in good faith but mistaken about the factual circumstances, takes actions that turn out to be unlawful (for example, using force while believing a person to be an armed criminal when they are not), the assessment of their liability will depend on whether they had grounds for such a mistake, that is, whether it is “justified” from the perspective of a reasonable standard. It is important to note that a good-faith mistake may exclude intent but does not eliminate the issue of negligence; and even in the absence of criminal liability, the victim retains the right to compensation for damages from the state.

Impunity for human rights violations committed by law enforcement agencies is one of the most destructive systemic problems in law enforcement. It undermines public trust in law enforcement institutions, legitimizes further violations as “acceptable practice,” deprives victims of justice, and perpetuates a cycle of abuse. In its concluding observations on Ukraine, the UN Committee Against Torture has repeatedly pointed to institutional (systemic) impunity as a central problem in the area of protection against torture and ill-treatment by law enforcement

¹ What is the Mistake of Fact Defense in a Criminal Case? URL: <https://manshoorylaw.com/blog/mistake-of-fact/>

officials, emphasizing the insufficient effectiveness of investigations, the low level of actual punishments, and the formal initiation of criminal proceedings without subsequent judicial follow-through¹.

The causes of impunity are both structural and cultural. At the structural level, they include: insufficient independence of investigative bodies from the law enforcement agencies under investigation; excessive difficulty in proving the subjective element of crimes committed by law enforcement officers; procedural obstacles for victims when filing complaints; corporate solidarity within the law enforcement community, which hinders the collection of evidence and witness testimony. At the cultural level, impunity is a consequence of an established “culture of impunity”—an institutionalized belief that law enforcement officers are shielded from the consequences of their actions by the very fact of their belonging to the system.

In extraordinary situations, impunity can take on additional systemic dimensions. First, a crisis atmosphere often reinforces the “logic of exclusion,” whereby certain groups of people or situations are removed from the scope of standard human rights protections. Second, the overload of the judicial and law enforcement systems during a crisis leads to the de facto postponement of cases involving violations by law enforcement officers as “lower priority.” Third, in the context of armed conflict, the argument “we are at war” can be used as a pretext to halt investigations and prevent the prosecution of law enforcement officials for their actions. Documented cases of proceedings being closed

¹ United Nations Committee against Torture. (2025). UN Committee against Torture Publishes Findings on Armenia, France, Mauritius, Monaco, Turkmenistan and Ukraine. Retrieved from <https://www.ohchr.org/en/press-releases/2025/05/un-committee-against-torture-publishes-findings-armenia-france-mauritius>

Alternatyvnyi zvit do Komitetu OON proty katuvan shhodo vykonannia Ukrainoiu svoikh mizhnarodnykh zobov'язan za Konventsiiu proty katuvan [Alternative Report to the UN Committee against Torture on Ukraine's Compliance with Its International Obligations under the Convention against Torture]. Retrieved from <https://zmina.ua/publication/alternatyvnyj-zvit-do-komitetu-onn-proty-katuvan-shhodo-vykonannya-ukrayinoyu-svoyih-mizhnarodnyh-zobov'язan-za-konvenziiyu-proty-katuvan/>

or investigations being delayed in cases of torture of detainees under martial law attest to the reality of these risks.

Overcoming impunity requires a comprehensive approach that addresses multiple levels simultaneously. The institutional level involves ensuring the genuine independence of investigative bodies (primarily the State Bureau of Investigation), strengthening the prosecution's response to instances of abuse by law enforcement officials, and reforming disciplinary accountability mechanisms. The procedural level requires simplifying complaint procedures for victims, ensuring real guarantees for their safety and witness protection, and establishing clear deadlines for reviewing complaints. The cultural level involves systematic work on the institutional culture of law enforcement agencies, the effective enforcement of accountability for "covering up" colleagues' crimes, and public condemnation of impunity at the highest institutional level.

We should also mention transitional justice. The concept of transitional justice is one of the most developed responses in contemporary public law scholarship and the practice of international organizations to the problem of systematic human rights violations in the context of conflicts and authoritarian regimes. It encompasses several complementary mechanisms: criminal justice (prosecution of those bearing the greatest responsibility for serious violations); reparations for victims (both material and symbolic); truth-seeking (truth and reconciliation commissions or similar mechanisms); institutional reforms (vetting, reform of law enforcement agencies, judicial reforms); and guarantees of non-recurrence¹.

¹ Kuchuk, A.M. (2026). Transformatsiia kontseptsii perekhidnoho pravosuddia v Ukraini: vid vidnovlennia prav zhertv do pobudovy systemy spravedlyvoho myru [Transformation of the Concept of Transitional Justice in Ukraine: From Restoring Victims' Rights to Building a System of Just Peace]. *Nauka i tekhnika sohodni – Science and Technology Today*, 1(55), 175–187. [in Ukrainian].

Kuchuk, A.M. (2026). Restytutsiia yak forma vidnovlennia spravedlyvosti v umovakh perekhidnoho pravosuddia: filosofsko-pravovyi vymir [Restitution as a Form of Restoring Justice in the Context of Transitional Justice: A Philosophical and Legal Dimension]. *Analitychno-porivnialne pravoznavstvo – Analytical and Comparative Jurisprudence*, 1(3), 303–307. [in Ukrainian].

For Ukraine, which faces the task not only of overcoming the consequences of armed conflict but also of reintegrating liberated and potentially future de-occupied territories, the concept of transitional justice takes on particular relevance. The legal system faces new questions: how to ensure individualized justice given the mass nature of the violations; how to balance prosecution with the demands of social reconciliation in the de-occupied territories; how to establish a compensation system that takes into account the actual scale of harm and the state's financial capacity; how to reform those sectors of law enforcement that were involved in violations or exhibited serious institutional shortcomings.

The following issue requires special attention: vetting of the law enforcement sector as one of the most contentious elements of transitional justice. On the one hand, the systematic removal from law enforcement agencies of individuals who participated in serious violations or in the functioning of occupation structures is a necessary condition for institutional renewal and the restoration of public trust. On the other hand, vetting must be carried out in full compliance with the principles of individual responsibility, the presumption of innocence, and the right to defense: sweeping and unmotivated vetting constitutes a violation of the rights of law enforcement personnel themselves and may lead to the destruction of institutional memory and the human resources necessary for restoring the rule of law.

Establishing the truth through special mechanisms of documentation and public acknowledgment is an important component of transitional justice, which goes beyond purely law enforcement functions but is closely linked to them. Law enforcement agencies are key actors in collecting and preserving the evidence necessary for the work of future truth commissions. That is why the systematic work on documenting violations in conflict situations, which law enforcement agencies are already carrying out today, contributes not only to current criminal justice but also to the long-term processes of truth-seeking, restoration, and reconciliation.

We believe that legal liability for human rights violations serves not only retrospective (punishment, compensation) but also prospective (deterrence, prevention) functions. Guarantees of non-repetition are the ultimate goal of the accountability system: the ideal outcome is not the accumulation of convictions and compensation payments, but the creation of conditions under which violations become less likely. Articles on the international responsibility of states (in particular, Articles 30 and 31 of the Draft Articles on State Responsibility, 2001¹) together with the UN Principles and Guidelines on Reparation² provide that, in addition to compensating for harm, a state must provide “guarantees and assurances of non-repetition” in cases of systematic or serious violations, which includes reforming law enforcement agencies, the justice system, and other institutions.

In the practice of the European Court of Human Rights (ECHR), guarantees of non-repetition are implemented through the mechanism of structural measures in pilot judgments, where the Court, having established a systemic violation, obliges the state to implement specific systemic changes. Cases against Ukraine related to the activities of law enforcement agencies often give rise to such obligations: reforming legislation, improving complaint investigation mechanisms, and changing detention practices. The fulfillment of these obligations is subject to oversight by the Committee of Ministers of the Council of Europe and serves as a catalyst for systemic change.

The specific content of guarantees against repetition in the field of law enforcement includes: the legislative establishment of clear grounds and limits on the powers of law enforcement agencies, which precludes divergent interpretations; systematic training of law

¹ International Law Commission. (2001). Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries. Retrieved from https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf

² Informatsiina dovidka pro reparatsii [Information Note on Reparations]. Retrieved from https://ukraine.iom.int/sites/g/files/tmzbd11861/files/documents/2025-02/finalnyi-maket_informaciyna-dovidka-pro-reparacii.pdf

enforcement officers on human rights and the limits of discretion; the development of effective and independent mechanisms for internal and external oversight; real and inevitable accountability for violations, which creates a deterrent effect; and open and transparent engagement with the public, which supports accountability and social control. Each of these elements is both a guarantee against the recurrence of violations and a component of the rule of law.

In conclusion, it should be emphasized that guarantees against recurrence are not merely a supplement to retrospective accountability mechanisms—they constitute the strategic horizon of the entire system for protecting human rights in the activities of law enforcement agencies. All the instruments examined in this monograph—operating principles, limits on discretion, oversight mechanisms, and criminal and civil liability—find their ultimate justification precisely in their ability to deter, not merely to react. A law enforcement system in which human rights are a genuine value, rather than an external constraint, is one where violations become less frequent not out of fear of punishment, but through institutionalized standards and a culture of respect for the individual. Achieving this state is a long-term strategic goal, inextricably linked to the broader processes of building the rule of law in Ukraine.

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CONCLUSIONS

1. The focus of domestic legal scholarship has been on specific aspects of the issue of ensuring human rights and freedoms by law enforcement agencies under extraordinary circumstances. However, to date, there are no comprehensive, systematic studies of this subject, particularly given the temporary nature of the conditions that characterize the legal order under emergency conditions and martial law.

An additional factor influencing the relevance of this issue is:

- the need to rethink the issue of human rights and freedoms through the lens of a theory developed within the Western legal tradition, according to which rights are immanent, natural, and inalienable, drawing on the works of renowned foreign legal scholars;
- the rejection of the terms “law enforcement agencies” and “law enforcement activities” and the use of the term “law and order agencies” as one that better reflects the nature of the activities of the relevant state authorities.

2. An important task in the process of further reforming the national legal system in the context of harmonization with the *acquis communautaire* is the reassessment of the essence and content of legal phenomena, one of the factors of which is the transition from the prevalence of legal normativism to the implementation of provisions based on a natural understanding of law. This, in turn, necessitates a change in the conceptual and categorical framework of domestic jurisprudence (specifically regarding law enforcement agencies), which allows for a proper definition of the role of law enforcement agencies in ensuring human rights.

The perception of human rights, which took shape under Soviet statehood and continues to prevail to a significant extent today, does not correspond to the principles of the Western legal tradition and leads to the inadequate protection of human rights and fundamental freedoms.

Contemporary human rights theory is based on the inherent nature of human rights, which include such characteristics as: fundamental nature, naturalness, inalienability, equality, universality, and priority over positive law.

These characteristics allow for the formation of a holistic view of human rights as human capabilities that define the limits of public authorities' activities and direct their operations toward the protection of human rights.

3. An analysis of the principles governing the activities of law enforcement agencies in the context of ensuring human rights reveals that these principles form a coherent, internally interdependent normative and axiological system in which each element complements and reinforces the others. The rule of law, legality, respect for human dignity, proportionality, non-discrimination, transparency and accountability, effectiveness, the inevitability of accountability, and partnership with the community—all these principles are not autonomous requirements mechanically combined in a list, but rather constitute an organic unity that reflects the anthropocentric orientation of modern law enforcement. A violation of any of these principles inevitably leads to the distortion of the entire system: arbitrariness undermines legality, impunity destroys the rule of law, and discrimination devalues the principle of equal protection. Conversely, the consistent implementation of these principles in their entirety forms the normative foundation upon which the legitimate, socially recognized, and human rights-oriented activities of law enforcement agencies are possible.

The system of principles discussed here remains binding regardless of the conditions under which law enforcement agencies operate. Extraordinary situations—such as a pandemic, armed conflict, occupation, or mass unrest—may necessitate an expansion

of discretionary powers and a temporary restriction of certain rights, but they do not abolish the principles as such: the principles merely adapt to new conditions, defining the permissible limits of restrictions and ensuring the preservation of the inalienable core of human rights.

4. A state of emergency is a special legal regime introduced to eliminate threats to society as a whole or to a specific part of it and aimed at restoring the normal functioning of society.

A state of emergency is characterized by the following features: the presence of danger, exceptional circumstances, temporary nature, restrictions on rights and freedoms, and the mobilization of resources.

To a significant extent, the imposition of a state of emergency entails interference with human rights and fundamental freedoms (otherwise, there would be no need to impose this legal regime). It is precisely this characteristic of a state of emergency that makes it a tool used by undemocratic regimes to further tighten control over society and consolidate their power.

Therefore, compliance with the rule of law is crucial when declaring a state of emergency, which places heightened demands on the activities of law enforcement agencies. At the same time, one of the guarantees of human rights protection is the inherent temporary nature of a state of emergency—it is, by definition, temporary.

5. Law enforcement agencies are engaged to ensure that individuals and legal entities comply with established quarantine restrictions. These agencies play a significant role in ensuring the necessary conditions to combat the pandemic (in the context of maintaining public order and preventing the spread of the pandemic due to non-compliance with established restrictions).

In Ukraine, due to amendments to administrative legislation, law enforcement agencies have been granted the authority to hold individuals accountable for violating mask mandates.

Law enforcement agencies, performing a supporting role (it is clear that health authorities should be the key bodies in combating the pandemic), may act exclusively within the limits of the powers defined

by the Constitution of Ukraine and the laws of Ukraine; employees of these agencies may not carry out criminal orders or directives, regardless of the purpose of such an order or directive.

Law enforcement officers cannot assume the functions of a constitutional court in assessing specific provisions of legislation as unconstitutional; however, it is within their authority to determine the absence of, for example, grounds for imposing restrictions on human rights and freedoms or a legitimate purpose for restricting human rights, and even more so the proportionality of the measures applied.

Even under extraordinary conditions, such as those involving efforts to combat the spread of a pandemic, public authorities, including law enforcement agencies, must respect human rights and freedoms; the principle of the primacy of human rights retains its guiding significance.

In extraordinary circumstances, just as in the normal functioning of society, law enforcement agencies must maintain neutrality, guided solely by the rule of law, legality, and other principles, and uphold respect for human rights.

6. A more “restrictive” legal regime, compared to a state of emergency, is martial law, which may be imposed in the event of a threat of armed aggression, an attack, or an encroachment on the territorial integrity and independence of the Ukrainian state.

Given the nature of the legal regime of martial law, the elimination of the danger—which is the factor leading to its imposition—necessarily entails significant restrictions on human rights and fundamental freedoms. However, as in other extraordinary circumstances, the priority of human rights and freedoms does not lose its guiding significance (even under martial law, a number of human rights cannot be restricted). Martial law itself may be declared only in accordance with the procedure established not by any regulatory act, but solely by law, which is one of the guarantees of respect for human rights and fundamental freedoms.

The development of international humanitarian law has become a means aimed at preserving human dignity in the context of armed

conflicts, even though war is a phenomenon that negates the very essence of human rights and freedoms. International cooperation in the field of human rights aims, among other things, to prevent armed aggression, condemn behavior that incites international hostility, and prevent such socially harmful (and dangerous) behavior.

7. Police activities during martial law have a number of distinctive features that set them apart from police activities in peacetime. Under these extraordinary circumstances, the police have broader powers than in peacetime. This is because, in wartime, the police are tasked with ensuring the safety of citizens as well as protecting the state from external aggression.

During martial law, the police face a much more complex task. This is due to the fact that crime rates rise during wartime, as well as the fact that the police must operate under conditions of constant danger.

Under these extraordinary circumstances, higher demands must be placed on police officers, as in wartime they must not only be well-armed and trained, but also must be able to make quick decisions in complex situations and be psychologically prepared to work under constant stress (in this regard, it is worth reviewing the provisions of the legislation on the certification of police officers).

The main tasks of the National Police under martial law should include ensuring the safety of citizens and maintaining public order; combating crime; assisting war victims; and organizing the evacuation of the population from combat zones.

During martial law, the police play a vital role in protecting the state and its citizens. At the same time, the National Police must operate strictly within the limits of the powers defined by law and with due regard for human rights and fundamental freedoms.

8. An analysis of law enforcement agencies' activities regarding the protection of human rights in temporarily occupied territories and frontline zones indicates a profound transformation of traditional law enforcement functions in the context of armed conflict. This transformation encompasses both a normative dimension—adaptation

to the complex system of international humanitarian law and international human rights law, which apply in parallel—and an organizational and practical dimension, linked to a fundamental change in working conditions, methods of evidence collection, forms of interaction with international partners, and mechanisms for protecting vulnerable groups.

The key conclusions are as follows. First, law enforcement agencies retain legal jurisdiction in the occupied territories but are unable to exercise it directly, which requires the development of extraterritorial forms of law enforcement. Second, documenting crimes committed under conditions of occupation and conflict is a strategic priority that requires systematic organization, technological support, and international cooperation. Third, the protection of vulnerable groups—IDPs, children, and civilian detainees—is not only a humanitarian duty but also a legal obligation of the state under international law. Fourth, restoring the rule of law in liberated territories requires a comprehensive approach within the framework of transitional justice, combining criminal prosecution, victim rehabilitation, institutional reform, and social reconciliation.

These issues have not only theoretical but also significant practical importance for the development of effective state policy regarding the restoration of Ukraine's sovereignty over temporarily occupied territories and the protection of human rights in the post-conflict period. The legal doctrine developing in this context has significant potential to enrich both domestic law and international human rights law regarding the protection of individuals in situations of armed conflict and occupation.

9. Research into mechanisms for monitoring the activities of law enforcement agencies demonstrates that effective accountability within the law enforcement system is the result of the complementary functioning of a variety of oversight tools of different levels and nature. No single mechanism—whether departmental oversight, prosecutorial control, judicial review, or public monitoring—is self-sufficient. Only their systematic interaction, encompassing all stages

of law enforcement activities and all its actors, can ensure real—rather than merely declarative—accountability of law enforcement agencies to society and the law.

The specific nature of the Ukrainian context—a protracted armed conflict, large-scale temporary occupation, and European integration—gives this issue particular urgency and practical significance. Preserving and adapting oversight mechanisms in times of crisis is both a legal obligation of the state and a strategic task in building the rule of law.

10. The analysis conducted indicates that the discretionary powers of law enforcement agencies in extraordinary circumstances are not unlimited, although their permissible scope is broader than under stable conditions. The legality of a discretionary decision under any circumstances is determined by compliance with five criteria: legality of grounds, conformity with the objective, proportionality, reasonableness, and good faith. These criteria are neither abolished nor suspended in times of crisis, although the specific content of each may be adapted to the particularities of the extraordinary situation. The mechanisms for limiting and controlling discretion in extraordinary conditions are: a clear normative structuring of powers at all levels of legal regulation; independent and effective judicial oversight adapted to crisis conditions; the preservation of the functionality of external oversight institutions; and the formation and maintenance of a culture of respect for the rule of law within law enforcement agencies.

Particular attention should be paid to the conclusion regarding the interdependence between the scope of discretionary powers and the intensity of control mechanisms: expanding the former without a corresponding strengthening of the latter poses a systemic threat to human rights and, more broadly, to the rule of law. This conclusion has direct practical significance for legislators regulating emergency regimes, for the leadership of law enforcement agencies adapting organizational standards to crisis conditions, and for judicial and oversight bodies exercising control over the legality of law enforcement actions.

11. Research on legal liability for human rights violations under extraordinary conditions convincingly demonstrates that an effective system of accountability is an integral component of the rule of law and a necessary condition for the effective protection of human rights in law enforcement activities. This system is multi-faceted: it encompasses criminal, disciplinary, and civil liability, supplemented by international legal mechanisms, and only in their entirety do they ensure a comprehensive response to violations. Extraordinary circumstances complicate the functioning of accountability mechanisms, but do not negate their mandatory nature: the expansion of law enforcement agencies' powers during a crisis requires a corresponding strengthening, not a weakening, of the accountability system.

Impunity is a central problem whose resolution requires simultaneous efforts at the institutional, procedural, and cultural levels. Engagement with international judicial mechanisms serves as an important complement to national accountability systems and an effective tool for combating impunity at the highest levels. Transitional justice provides a comprehensive conceptual framework for addressing accountability, reparations, and guarantees of non-recurrence in the context of post-conflict recovery.

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Наукове видання

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ПРАВ ЛЮДИНИ В УМОВАХ ГЛОБАЛЬНИХ ТА ЛОКАЛЬНИХ
ВИКЛИКІВ: ТЕОРІЯ І ПРАКТИКА**

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