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International mechanisms for the protection of human rights under martial law

Міжнародні механізми захисту прав людини в умовах воєнного стану

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Abstract


Human rights are fundamental to any just and equitable society. However, under martial law conditions, protecting them can be a challenge. However, in practice the situation of internal armed conflicts and violence is the largest threat and obstacle to their implementation. Hence, the perspective to the protection of the right to life during an armed conflict is based predominantly on the norms and regulations of international humanitarian law, which safeguard protection only to persons thereunder. The purpose of this article is to work out the priority measures for the protection of human rights in the conditions of martial law drawing on the insight into the foreign experience. To address the said goal, the present article utilized cognitive dialectical methods, the method of idealization, formalization and modeling of the response strategy in case of human rights violation. Because of the conducted study, a response strategy was elaborated in case of human rights violations under war conditions. The findings of this article are important for lawyers, public officials, and civil


Анотація


Права людини та їх захист визначають спрямованість діяльності держави, але на практиці ситуація внутрішніх збройних конфліктів і насильства є найбільшою загрозою і перешкодою для їх реалізації. Так, підхід до захисту права на життя під час збройного конфлікту ґрунтується переважно на нормах міжнародного гуманітарного права, які поширюють захист лише на осіб, які перебувають під захистом. Метою даної статті є визначення першочергових заходів із захисту прав людини в умовах військового стану на основі аналізу закордонного досвіду. Для досягнення поставленої мети в статті були застосовані когнітивні діалектичні методи, метод ідеалізації, формалізації та моделювання стратегії реагування у разі порушення прав людини. На основі проведеного дослідження розроблена стратегія реагування у разі порушення прав людини в умовах війни. Матеріали дослідження можуть бути корисними юристам та державним службовцям, які здійснюють законопроектну

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society organizations working to protect human rights under conditions of martial law, seek to administer the standards and practices of international regulation of universal human and citizen rights in individual administrative cases.

Keywords: martial law, human rights, strategy, foreign experience, restrictions on human rights.

Introduction

Following the military occupation of the Russian Federation, Ukraine officially notified international bodies that it renounced its civil and political obligations under the European Convention on Human Rights and the International Convention on Human Rights. This is due to the need for bolstered military service, restrictions on private life, freedom of religion and expression, the right to peaceful assembly, the right to effective defense, the right to property, the right to education and the right to freedom of movement. The introduction of martial law imposed certain restrictions on citizens' lives, which had nothing in common with the abolition of absolute rights.

The ground for the emergence of contemporary mechanisms of international human rights protection is the interaction of its two sources: the Geneva Convention of 1949 and the Hague Convention of 1907. The law of The Hague, or martial law, establishes the rights and obligations of the parties at war in relation to their enemies and restrict the likelihood of harm. Current Geneva legislation is based on four Conventions for the Protection of War Victims signed on August 12, 1949, namely the Convention on the Recruitment of the Wounded and Sick dated June 8, 1977, the Convention on the Improvement of Care of the Wounded and Sick at Sea, the Convention on the Treatment of Prisoners of War dated 12 August 1949. These laws comprise a set of laws designed to protect human rights during armed conflict. Notably, its application is mandatory regardless of whether the conflict is international (involving two or more states) or non-international (within one state).

The purpose of this article is to analyze and improve the national mechanisms for the protection of human rights in Ukraine under martial law based on the development and implementation of primary response measures in the event of citizens' rights violation.

Based on the purpose set, the following tasks were addressed:

діяльність, а також посадовцям і службовцям державного управління, які прагнуть застосовувати стандарти та практики міжнародного регулювання універсальних прав людини і громадянина в індивідуальних управлінських справах.

Ключові слова: військовий стан, права людини, стратегія, закордонний досвід, обмеження прав людини.

- analyze basic human rights that are ensured and protected at the national and international levels;
- distinguish the system of restrictions on human rights in the conditions of martial law;
- develop the strategic areas of response in case of human rights violation;
- select the main areas of improvement in the national system of human rights protection in the conditions of the military invasion of the Russian Federation in Ukraine.

Literature Review

In the twenty-first century, the human rights agenda in public discourse, including the issue of raising awareness about international human rights law, has been gaining its significance and relevance. Given the current events worldwide, such as emergency situations, the urgency and demand for legislation and protection of human rights is becoming more and more critical. These events are likely to create or contribute to the conditions that are associated with the violation of human rights, above all the rights of the individual. Atadjanov (2023) claims that the concept of human rights is often perceived as social, moral, political, international and diplomatic phenomenon. However, it must be borne in mind that human rights also have a legal dimension. For instance, Perkumienė et al., (2022) argue that all rights arise in certain historical circumstances, they are personally approved by people's will, or accepted and recognized by certain traditions, institutions and bodies, or historically conditioned theories of human needs and aspirations, or human ideas about divine plan and purposes.

Human rights have two important features. On the one hand, they are indivisible – that is, they relate to human nature lifelong, from birth to death (Aliaga Guevara et al., 2022; Berman, 2019; Tomz & Weeks, 2020; Gryshchenko et al., 2021). The state does not grant rights to people

by legislating them, but only creates concepts and takes care of their protection. Therefore, the state cannot arbitrarily limit or abolish rights, this can only be implemented in accordance with the procedure established by law pursuant to the international standards for the protection of human rights (Guild et al., 2019; Reglitz, 2020; Semenishyn et al., 2020).

On the other hand, citizens of the country are entitled to identical legal rights, that is, they enjoy the same rights and are all equal before the law (Madumarov & G'ulomjonov, 2021). In fact, the concept of equality is quite close to the meaning of non-discrimination (Strand, 2019; Rodrigues, 2020). Practice has basically demonstrated that it is possible to establish a legal order that does not contain discriminatory provisions. However, it is not virtually possible to elaborate the second condition of equality - a system where everyone is equal before the law.

No right is considered absolute and unlimited (with the exception of freedom from torture, slavery and freedom of thought). A democratic society has admissible limits that arise for objective reasons or are necessary to ensure the self-preservation of society (Hofman et al., 2019; Lawson & Beckett, 2021; Orwin & Pangle, 2019).

Restrictions relate to the level of socio-economic and social development. Thus, McCamant (2019) maintains that the nature of human rights concept means that it cannot be measured or addressed in terms of societal development, although development may include the creation of institutions that can more effectively tackle human rights violations.

The rights and freedoms of one person are limited by the rights and freedoms of another person. In other words, a person can use his rights as they deem it possible, as long as they do not violate the rights of others. Such scholars as Zuiderveen Borgesius and Steenbruggen (2019) analyzed the origins of the law to assess the rationale for its protection. To this end, it was determined that this right is currently protected by the European Convention on Human Rights and the legislation of the European Union.

Thus, the relevance of the study is determined by the need to establish the degree of interaction of universal rights and freedoms of the individual in civil and international law, as well as the possibility of limiting state sovereignty in the implementation of international obligations to ensure and safeguard people's rights.

Methodology

This study is designed to assess the hypothesis that in the conditions of introducing martial law, human rights may be limited at the legislative level.

In order to systematically study human rights in the pre-war period and after the full-scale invasion of Russia into Ukraine, the article summarizes the human rights that are absolute and cannot be limited and highlights the rights that are subject to limitation. This analysis makes it possible to systematize and distinguish such human rights that may be violated in order to formulate recommendations regarding appeals in the event of the need for restoration thereof.

In the course of the current study, dialectical cognitive methods were used, predominantly the principles of systematicity, which enabled to analyze the human rights restriction degree in the conditions of martial law. With that in mind, legislative and regulatory documents were scrutinized in terms of ensuring human rights at the international and national levels.

Taking into account the specific features of the research object, the approaches to the analysis focused on an interdisciplinary approach. From this perspective, it was possible to combine the degree of human rights restriction, which are specified in international documents, predominantly those of the European Union, as well as national legislative documents. Depending on the degree of threat, the speed of response to messages is determined. According to the analyzed documents, restriction of human rights is not allowed. If a person's rights and freedoms are violated, including during the period of martial law, a person can seek help from national human rights protection bodies or international protection.

The article applies methods of idealization and formalization in terms of forming approaches to the protection of human rights in the conditions of martial law in case of their violation. In the course of the current research, an analysis of applying the norms of national and international law in the conditions of martial law was carried out, and the universal and regional components of the approaches. Besides, the response actions in case of human rights violations were identified.

The modeling method in the article is used to develop strategic courses of action in case of human rights violation in Ukraine and to improve

mechanisms for ensuring and protecting human rights. This strategy provides for the identification of citizens' actions algorithm in case of human rights violation. Furthermore, it enables to highlight the primary measures taken by the state regarding the introduction of priority actions to enhance mechanisms for human rights protection in the conditions of martial law. The main restrictions on the use of data are temporary unavailability for execution, for example, due to the occupation of a certain territory. In all other cases, the rights and freedoms of citizens are of primary importance and must be protected immediately.

Results

Under the conditions of martial law, one of the reform objectives is to improve the system of democratic civil control of the Security Service of Ukraine, in particular, to ensure that its work complies with the requirements of the Constitution of Ukraine and current legislation, and to prevent violations of human and citizen rights and freedoms. Frequently, the basic human right, the right to life, appears to be vulnerable during war. Moreover, health problems caused by injuries and drug shortages violate the human right to health care.

Table 1 presents human rights that are absolute and limited during martial law.

Table 1.
Absolute and limited human rights under martial law (developed by authors)

Rights that are not subject to restriction during martial law (absolute rights)	
the legally enshrined equality of constitutional human rights, the right to citizenship, the right to life, the right to housing, the right to free marriage, the right to judicial protection, the right to compensation for damages, the right to disobey explicitly unlawful orders	
The rights that can be limited	<div style="display: flex; flex-direction: row-reverse; justify-content: space-between;"> <div style="writing-mode: vertical-rl; transform: rotate(180deg);">the right to strike in order to protect economic and social interests</div> <div style="writing-mode: vertical-rl; transform: rotate(180deg);">the right to engage in any commercial activity</div> <div style="writing-mode: vertical-rl; transform: rotate(180deg);">the right to possess, utilize and dispose of one's own property</div> <div style="writing-mode: vertical-rl; transform: rotate(180deg);">the right to manage state affairs</div> <div style="writing-mode: vertical-rl; transform: rotate(180deg);">the right to freedom of thought</div> <div style="writing-mode: vertical-rl; transform: rotate(180deg);">intrusion in personal and family life</div> <div style="writing-mode: vertical-rl; transform: rotate(180deg);">confidentiality of correspondence, telephone, telefax communication</div> <div style="writing-mode: vertical-rl; transform: rotate(180deg);">the right to education</div> <div style="writing-mode: vertical-rl; transform: rotate(180deg);">the right to work</div> <div style="writing-mode: vertical-rl; transform: rotate(180deg);">housing integrity</div> </div>
Changes for able-bodied persons	use of capacities and labor resources of enterprises
Changes in the sphere of education	form of educational activity
Other restrictions	limitation of the right to collect and disseminate information
	verifying persons' documents, carrying out inspections of items, vehicles, luggage and cargo, office premises and housing
	coverage of information about the educational institution
	use of air space
	forced alienation of property for the needs of the state
	communication with the participants of the educational process
	prohibition of holding peaceful meetings, rallies, marches and demonstrations, other mass events
	consent to photo and video recording
	introduction of curfew
	presentation of public information

In a democratic society, human rights may be limited by law to meet the requirements of public order and the common wellbeing. According to the current legislation of Ukraine, illegal restriction of a person's rights and freedoms is not allowed and entails legal responsibility. As a matter of fact, in the event that the Security Service of Ukraine violates human rights and freedoms during the performance of their official duties, it is necessary to undertake measures to

restore the said rights and freedoms, compensate for the moral and material damage caused, and bring the offenders to justice. According to the Constitution of Ukraine, citizens can undertake measures to protect their rights and freedoms. Table 2 examines basic human rights and the degree of their possible restriction under martial law.

Under martial law, national or international law protects people whose rights or freedoms are violated, representatives of human rights organizations, human rights experts, as well as the researchers. During the war, international forms and methods of human rights protection were included in the regulatory documents of international humanitarian law. The ratification of the Geneva Conventions by Ukraine is an additional basis for applying the provisions of the Criminal Code of Ukraine, which foresee the responsibility for war crimes. That being said,

according to the aforementioned Geneva Conventions of 1949, which comprise an integral part of the national legislation of Ukraine, states are obliged to investigate and prosecute serious violations of international humanitarian law. In the norms of international humanitarian law, the text of the convention maintains that states are obliged to prosecute persons who committed war crimes, and European human rights laws are obliged to prosecute the most serious violations of human rights.

Table 2.
Human rights under martial law

Human right	Scope	Application	Limitation
The right to life	to ensure the protection of every person against intentional deprivation of life	does not apply when it is necessary to take a person's life to protect another person, to arrest or prevent escape, to prevent riot or lawlessness	These rights cannot be limited or suspended regardless of external conditions, as well as the possibility of their implementation and realization. The state and all its bodies are obliged to ensure them and, in case of violation, make maximum efforts to punish those guilty of the crime. If the state does not fulfill its obligations, the person can appeal to the European Court of Human Rights.
The right to freedom and personal integrity	no one can be deprived of liberty, except under special circumstances and in accordance with the law	may be limited if serious negative consequences are prevented, such as the further escape of the detainee or the spread of infectious diseases	
The right to a fair trial	access to justice, the right to confront witnesses, test court decisions, free interpreter assistance	this right is not limited, it must be exercised at all levels and in accordance with all persons, both residents of the country and foreign citizens	
The right to respect for private and family life	no one may be subjected to intrusion into personal or family life, family integrity and correspondence, social, national and public security relations	aimed at preventing civil disorders or criminal offenses, protecting the legal and democratic or general economic welfare indispensable for health or morals, or safeguarding other rights and freedoms	
The right to marriage and the equality of spouses	every man and woman of marriageable age has the right to marry and divorce	this right extends to the equal right of spouses to joint custody of their children, limited to the purpose of protecting the spouses' interests	
The right to freedom of thought, conscience and religion	the right of every person to practice his religion publicly or privately, independently or collectively	may be subject to legal restrictions to protect public safety, public order, health, morals	
The right to freedom of expression	includes the freedom to express opinions, receive and disseminate information, ideas without interference from state authorities	to ensure national security, territorial integrity or safety in society, prevention of civil unrest and mass crimes, protection of health or morals	
The right to freedom of assembly and association	the right to peaceful assembly and association, and the right to start and join trade unions for the protection of individual interests	is limited to the necessity of national security, public order, crime prevention, health, morals, as well as for the protection of individuals in a democratic society, rights and freedoms of others	



The right to property protection	every natural or legal person has the right to peacefully dispose of their property	is allowed only in the interests of society and in accordance with the law and general principles of international law	state restrictions regarding the use of property
The right to education	no one can be deprived of the right to education	the state protects the right of parents to obtain education in accordance with religious and other beliefs	is limited to forms of provision
Freedom of movement	every person has the right to move freely and choose their place of residence	when it is not required to ensure national security, maintain public order, prevent crimes	anyone can leave the country, including with their people

(developed by authors)

In accordance with Articles 2 and 3 of the Convention on the Protection of Human Rights and Fundamental Freedoms, the state must ensure the observance of rights and freedoms, as well as provide criminal procedural guarantees for the protection and realization of these rights and freedoms. That being said, an effective judicial system in these cases requires the application of punitive measures. The European Court of Human Rights has not restricted the application of international humanitarian law to

armed conflicts. In its verdict, it had to answer whether the country violated the Convention for the Protection of Human Rights and Fundamental Freedoms.

Drawing on the considered mechanisms for ensuring human rights in the conditions of martial law, it is possible to put forth the action plan as far as the observance and protection of human rights during war is concerned (Figure 1).



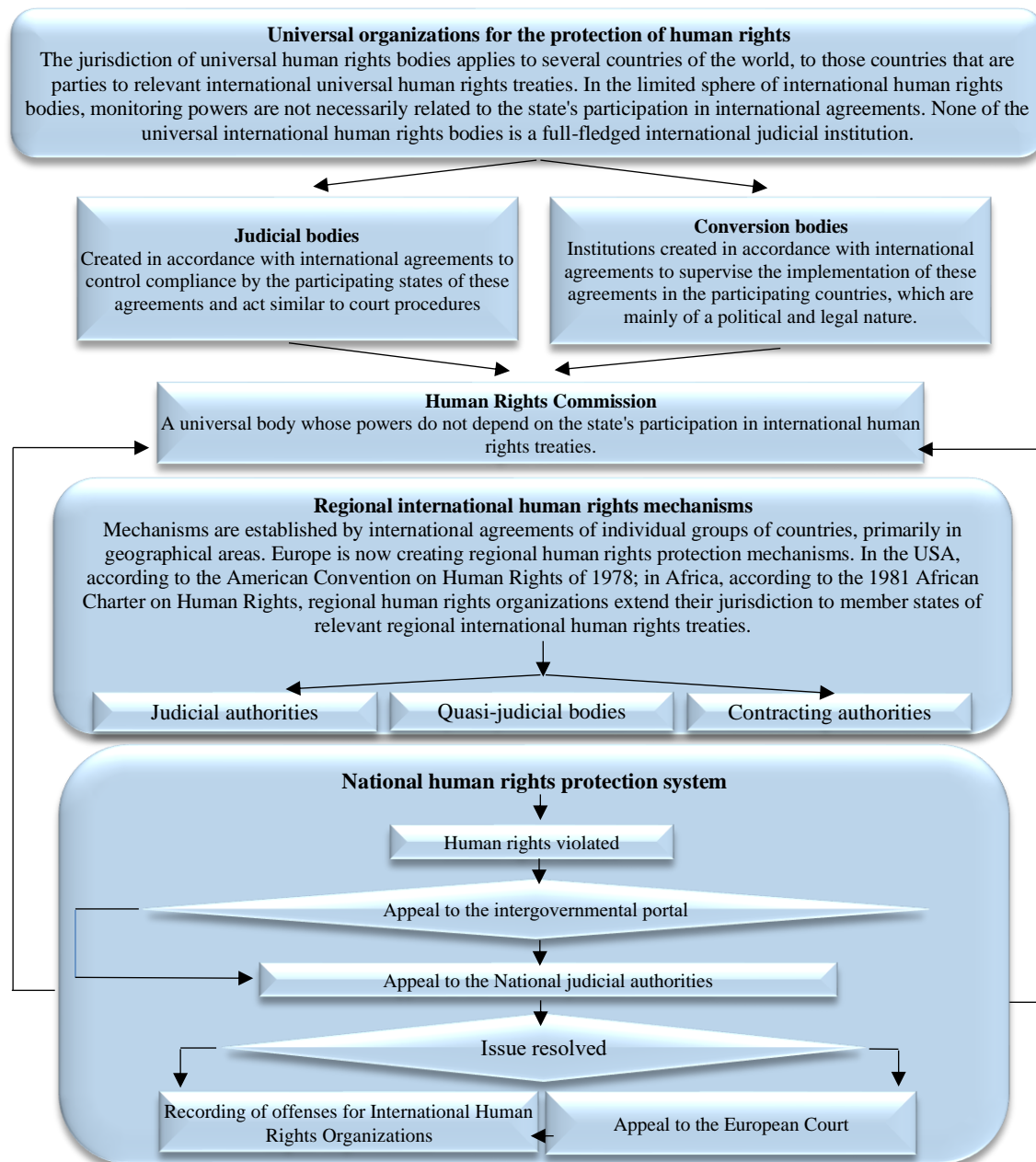


Figure 1. Mechanism of action in case of violation of human rights under martial law (build by authors)

In compliance with European requirements for the protection of human rights, Ukraine has approved feasible measures to protect the rights of its citizens.

First, submission of a proposal to the Verkhovna Rada of Ukraine. The proposal establishes the need to renew the Rome Statute of the International Criminal Court. Such restoration of legislation will allow national legislative bodies to respond to the challenges of armed conflicts. However, there is no concept of "crimes against humanity". The criminal legislation of Ukraine provides that they were committed by the Armed

Forces of the Russian Federation on the territory of Ukraine. Furthermore, the concept of a war crime should also be specified.

Second, the state should verify students' qualifications in the occupied territories according to the Ukrainian model and give them the opportunity to receive diplomas. In addition, it is necessary to simplify the process of issuing documents for working Ukrainians. Importantly, this procedure should be administrative in nature. Third, there is a need to provide comprehensive medical, social and psychological assistance to Ukrainian soldiers, citizens and their families.

Fourth, submission of proposals to the Ministry of Internal Affairs to change the method of providing housing benefits in order to avoid inspections. It is expedient to carry out systematic coordination of local authorities and public and international organizations in order to improve procedures for the evacuation of citizens from combat zones.

Discussion

Human rights and the European Convention on Human Rights do not lose their relevance during war. The literature review supports the principle that states are obliged not to violate human rights during war and armed conflicts. As in current article, the authors emphasize that when the state violates its obligations, everyone has the right to demand compliance with their rights as well as to appeal to the European Court of Human Rights. From this perspective, Wise et al., (2021) maintain that the nature of armed conflict worldwide is extremely dynamic. In consequence, protection must constantly adapt to this ever-changing conflict environment. However, unlike in the current article, the authors consider new health threats, such as the COVID-19 pandemic, and new opportunities, such as modern trauma care, also created new challenges and opportunities for humanitarian assistance. In fact, the present research findings can be useful in the event of harm to human health during military conflicts.

The extensive bulk of literature on the topic under study puts forward a thesis to the point that one of the important issues that arise in current circumstances is the prevention of human rights violations. In the conditions of war, up to date there are no developed mechanisms for responding to of the citizens' rights violations (Bürgin et al., 2022; Carey & González, 2021; Pereira Ortega & Peñaloza Nuñez, 2022). The predominant bulk of scholarly inquiry is focused on research into the preservation of human rights in the post-covid period. To that end, Haggart and Keller (2021) concluded that only by considering legitimacy as a multifaceted phenomenon based on democratic accountability will it be possible to develop governance platform models that will not only stand the test of time, but will also be accepted by the people whose lives they affect. This research will be beneficial in the area of coordination of regulatory regulation in case of violation of human rights. For instance, Greitens (2020) argues that international relations will need to separate the pandemic's impact on democracy from its impact on liberalism. Thus, the research

conducted in the post-war period can be adjusted to the issues of restoring human rights in war and post-war times.

Also, the limitations of this study are that international mechanisms for the protection of human rights, especially those created within the framework of the UN, are only part of the international legal system of protection. Such scholars as Mejía Azuero, González Serrano, & Castro Londoño, (2022), McGregor et al., (2019) and Coynash and Charron (2019) maintain that transparency, which is emphasized in the current article, is fundamental to ensuring human rights, but is not sufficient to address the harm to human rights caused by the use of algorithms in decision-making. On the other hand, Toussaint and Martínez Blanco (2020) elaborated a human rights-based approach as a strategic tool for policymakers to strengthen international responses to loss and damage. In contrast to the strategy proposed in the current article, this approach is based on the parties' existing obligations under international and regional human rights treaties and provides a method of systematic integration of human rights that goes beyond the simple inclusion of human rights in the main field of activity. Costello and Mann (2020), in contrast to the object of this study, identified strategic limitations of human rights, probed into the role of both international criminal law and national tort law in ensuring responsibility. That being said, the scholars determined that citizens can be both victims and violators and pose threats to other citizens. Undoubtedly, this factor must be taken into account in further research on this topic.

At the same time, there are unresolved issues regarding the concept of international legal documents regarding the provision and protection of basic human rights. Ginsburg (2020) examined international law and found that, although formally neutral among regime types, it was largely a product of post-World War II liberal democracies. In the conducted studies, there are no international standards that directly define rights and obligations and international monitoring and law enforcement bodies, basic human rights and protection of citizens' rights. Among such studies, we can mention the scholars as follows: Rabinovych and Gawrich (2023), who distinguish between global funds, that is, funds created and used by the UN and the international community, as well as regional funds. This study will be beneficial in determining the mechanisms of restoration of human rights in the post-war period.

Furthermore, Scoble and Wiseberg (2019) noted that comparative study into international human rights is an extremely complex undertaking; it is also politically charged because human rights are a political symbol of high positive influence, to use Harold Lasswell's terminology (Espaliú Berdud, 2019). Thus, agreeing with this author, it is necessary to develop measures to protect economic, social and cultural rights.

The international legal system of human rights protection is constantly developing, which is confirmed by the creation of new institutions in the system. To that end, Caldeira (2019) and Hathaway et al., (2019) conducted a study of the democratic political systems and procedures that developed dynamically in Latin American countries such as Brazil, Argentina, Chile and Uruguay, where dictatorships prevailed until the 1980s. The current study is beneficial in further inquiries with the aim of forming a human rights protection system.

Donnelly (2021) argued that the integration of human rights into international peace and security became part and parcel of the actual UN activity. This study is limited to the statement that international human rights policy adheres to the mainstream of human rights, human rights monitoring, humanitarian activities and peace support.

Conclusions

In the conditions of martial law, the need to protect human rights has considerably increased, especially in relation to the right to life. Due to the fact that Ukraine is a subject of international relations and, in particular, of the international human rights protection system, it must adhere to the norms and principles of international law enshrined in the Charter of the United Nations, the International Bill of Human Rights and the Convention on the protection of human rights and fundamental freedoms, the Helsinki Final Document, the Paris Charter for a New Europe and other documents of the United Nations, the OSCE and the Council of Europe. As a matter of fact, Ukraine recognizes that universal human values are higher than class values, and the recognized norms of international law are higher than domestic ones, and thus Ukraine recognizes basic values such as human rights, democracy and the rule of law, global peace and security, economic freedom and national responsibility, unity and solidarity, global integrity. However, in modern conditions, Ukraine cannot effectuate these obligations in full. Therefore, it is forced to record violations, consolidate them and transfer

them to international organizations for the safeguarding of human rights.

At the same time, the protection of human rights and freedoms does not negate the need to improve systems and mechanisms for the realization of these rights and freedoms. These questions remain important for legal research, lawmaking, and police practice.

It should not be forgotten that the participants of the current political process also demand constitutional reforms. It is clear that the success of their implementation directly depends on whether the legislative power will be able to include the ideas of democracy and the rule of law, the ideas of democracy and the rule of law, and the ideas of respect for man and society in the draft constitution.

To that end, the European Court of Human Rights undoubtedly plays an important role, as it can receive appeals from people who suffered from armed conflicts and whose rights cannot be restored, or whose rights they believe cannot be restored under national law. That being said, it goes without saying that there are certain restrictions on the types and types of cases that the court hears. Therefore, there is a need to create appropriate legal protection at the state level. However, if states fail to realize their obligations under the European Convention on Human Rights, the role of the European Court of Human Rights is to assist in tackling the problem.

The European Court of Human Rights underwent significant changes after the Russian invasion of Ukraine, as well as changes in the Council of Europe, other international organizations and Europe on the whole. Currently, the court is faced with the issue what to do with 18,000 pending cases against Russia and choose an appropriate strategy. Nevertheless, there is every reason to believe that the European Court of Human Rights will eliminate the backlog and lay down the law in due time.

The European Convention on Human Rights is a model for other mechanisms. The European Court of Human Rights, the largest and most comprehensive in the field of protection of the right to life, does not directly apply the norms of international humanitarian law, referring only to its individual articles, which is its most substantial achievement. The general test presupposes a double review: the obligation to evaluate the use of deadly force on a case-by-case basis, rather than on a general basis, as well as the establishment of strict standards of

proportionality and absolute necessity to kill in times of armed conflict, the Court wishes to safeguard the right to life as a fundamental human right.

There are certain difficulties with the implementation of international human rights standards into Ukrainian legislation. This is due to the fact that the national legislation of Ukraine does not clearly regulate the conditions for the implementation of international agreements. Some standards conflict with international legal norms, and some are outdated. Let's not forget about the shortcomings of our laws.

For example, according to Article 9 of the Constitution of Ukraine, ratified international treaties are part of national laws and, therefore, do not have priority over national laws. In addition, the second part of Article 9 of the Constitution of Ukraine stipulates that in case of contradictions between the provisions of the Constitution of Ukraine and international treaties, these contradictions are resolved by making appropriate amendments to the Constitution of Ukraine before adoption by the Constitution of Ukraine. As for the procedure for the implementation of international treaties, separate procedures for the implementation of international treaty rights should be regulated by the laws of special national norms since the standards do not directly affect the provisions of international treaties, which creates a problematic situation.

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