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The Principle of the Rule of Law in a State of Emergency: International Standards and National Practice

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Abstract

This article examines the implementation of the rule of law under a regime of emergency legislation through the analysis of international standards and national practice. The study investigates the legal framework governing restrictions on human rights and fundamental freedoms during states of emergency, focusing on the European Convention on Human Rights, the International Covenant on Civil and Political Rights, the jurisprudence of the European Court of Human Rights, the practice of the United Nations Human Rights Committee, and the recommendations of the Venice Commission. Particular attention is devoted to the principles of legality, necessity, proportionality, non-discrimination, and temporality as conditions for the lawful application of emergency measures. The research employs systemic, comparative legal, and formal legal methods to examine mechanisms for protecting human and civil rights under emergency conditions at international and national levels. The article analyzes the implementation of martial law in Ukraine in light

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of international human rights standards. The findings demonstrate that temporary restrictions on rights and freedoms are permissible only when a genuine threat to the life of the nation exists and judicial, parliamentary, and international oversight mechanisms are ensured. The study concludes that balancing public security, national interests, and human rights protection requires strict adherence to the rule of law. Its practical significance lies in identifying legal safeguards and oversight mechanisms aimed at preventing abuses of emergency powers and preserving democratic governance during severe crises.

Keywords: rule of law; state of emergency; martial law; human rights; derogation; European Convention on Human Rights.

Introduction

In the context of modern global challenges, including military conflicts, terrorist threats, pandemics, man-made disasters and other crisis phenomena, states are increasingly resorting to introducing a state of emergency. Such circumstances require a prompt response from state bodies and may lead to temporary restrictions on certain rights and freedoms of the individual, expansion of the powers of state authorities and the use of special management mechanisms. At the same time, even in a state of emergency, the principle of the rule of law as an essential basis for the functioning of the legal system and a guarantee of the protection of human rights remains a key requirement of a democratic state based on the rule of law.

International law, such as the Convention for the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights, allows a state to derogate from certain obligations in the event of a state of emergency in the public sector that threatens the life of the nation. But such derogations should only be applied within the framework of time-tested international standards and comply with the principles of legality, necessity, proportionality, non-discrimination and effective parliamentary and judicial control. Failure to comply with these requirements carries the risks of excessive centralization of power, narrowing the scope of human rights and freedoms, and weakening democratic institutions.

The study of the principle of the rule of law in the context of a state of emergency is of significant importance not only for Ukraine, which, faced with armed aggression, must reconcile the needs of national security with ensuring an adequate level of legal protection of the individual. The practice of applying martial law and states of emergency should be carefully examined in light of international standards, decisions of international judicial bodies and domestic legislation to determine the limits within which the state can interfere in the

sphere of human rights, and such mechanisms should be ensured for the effective functioning of legal control mechanisms.

In this regard, the study of international standards for the application of the rule of law in a state of emergency, as well as the features of their transposition at the national level, is a relevant area of modern legal research and contributes to both the theoretical and practical aspects of developing mechanisms for legal regulation of crisis situations.

Literature review

The issue of ensuring the rule of law in conditions of emergency or martial law is one of the key areas of modern legal research. The increase in the number of military conflicts, terrorist threats, pandemics and other crisis phenomena has raised the question of the permissible limits of restrictions on human rights and the preservation of democratic guarantees. Ackerman (2004) substantiates the concept of an “emergency constitution”, according to which even extraordinary powers of the state must be exercised within the framework of the constitutional framework. The same point of view is held by Ferejohn and Pasquino (2004), who also emphasize the need for effective mechanisms to control emergency powers.

A particular focus in scientific research is on the content of human rights and the extraordinary powers of the state. Criddle and Fox-Decent (2012) argue that the rule of law and human rights must remain “the foundation on which the state functions even in times of crisis.” Michaelson (2005) and Binder (2025) emphasize that international law only permits temporary restrictions on individual rights if these restrictions comply with the principles of legality, necessity, and proportionality.

The study of the mechanism of derogation from international obligations under Article 15 of the ECHR and Article 4 of the ICCPR is particularly important. Greene (2011) and Mokhtar (2004) argue that derogation from international obligations is a last resort, which can only be used in cases of real threat to the life of the nation. Similar conclusions can also be found in Lebreton (2020), entitled “Restrictions on human rights due to the COVID-19 pandemic”.

A separate research front will be the impact of emergencies on democratic institutions. Lüthmann and Rooney (2021) point to the dangers of concentrating power in the hands of the executive, while Hennette-Vauchez (2023) and Mészáros (2024) illustrate the risk of transforming temporary emergency measures into ordinary legal systems.

These issues in domestic legal science are investigated by Stadnik and Buravska (2022), Irkha (2023), Markovych (2023), Shamrai and Holovko (2025), Nikolenko (2025), etc., who draw attention to the peculiarities of ensuring the rule of law and protecting human rights in wartime conditions in Ukraine.

In the general literature, there is a consensus on the state of emergency as an extraordinary legal regime, the application of the principles of the rule of law during a critical state that should not be abolished. Most scholars agree that responding to crisis threats should be effective in view of the law - legality, necessity, proportionality, temporality and adverse principles that ensure a balance between security and human rights.

Methodology

The materials and methods of this study are aimed at assessing the application of the rule of law during a state of emergency or martial law and identifying international legal standards for the protection of human rights in crisis situations. The methodological basis of this article is a holistic approach that integrates the principles of public international law, constitutional law, and human rights doctrine.

The article uses systems thinking to study the interaction between the extraordinary powers of the state, the functioning of legal institutions and human rights guarantees. The formal legal method is used to analyze the provisions of the ECHR, the ICCPR, the acts of the UN Human Rights Committee, the practice of the ECHR and the recommendations of the Venice Commission. The comparative law method is used to compare treaty standards with the domestic practice of introducing martial law in Ukraine.

The methods of generalization and synthesis allowed to systematize scientific approaches to the restriction of human rights and freedoms in emergency situations and to form analytical tables. The empirical basis of the study is acts of international law, the works of domestic and foreign scientists, the practice of international institutions and the legislation of Ukraine. The above-mentioned research methods were used in such a way as to contribute to a holistic assessment of the compliance of national practice with international standards and mechanisms for ensuring the balance between public security, national interests and the protection of human rights.

Research objectives

To investigate the specifics of implementing the principle of the rule of law during a state of emergency based on international standards, to clarify the key requirements for restricting the rights and freedoms of an individual, and to evaluate the practice of its national application in the context of ensuring a balance between public safety and the protection of rights.

Results

A state of emergency is one of the most complex institutions of modern constitutional and international law, since its introduction implies both the need for an effective response by the state to extraordinary threats and the obligation to uphold the fundamental principles of the democratic rule of law. That is why the rule of law is of particular importance in times of crisis, when state bodies are endowed with expanded powers to restrict certain human rights and freedoms.

Modern international legal doctrine is based on the understanding that a state of emergency does not create a “space outside the law” but rather requires even greater adherence to the principles of legality, legal certainty, proportionality, and institutional control. Thus, law is a universal standard for assessing whether state actions are lawful, even in times of war, under the threat of terrorism, during pandemics, or other crises (Criddle & Fox-Decent, 2012; Kortukova et al., 2023).

The regulation of states of emergency in international law has been shaped by historical experience, which has revealed the risks of using states of emergency as an opportunity to concentrate power and restrict democratic guarantees under the guise of temporary measures. In modern international law, the key role is played by the provisions of Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which allows states to derogate from certain obligations under the Convention in time of war or other public emergency threatening the life of the nation, to the extent that the exigencies of the situation so require (Council of Europe, 1950). A similar mechanism is set out in Article 4 of the International Covenant on Civil and Political Rights, which provides that a State may derogate from its international obligations suspended by that article, that such suspension shall be limited to such measures as are strictly required by the urgency of the situation, that it shall not involve discrimination against nationals of other States, and that it shall inform the other States Parties to the Covenant of the measures it has taken (United Nations, 1966). This interpretation shows that international law recognizes the right to temporary restrictions, but it also sets precise substantive and procedural limits for their implementation.

The academic literature suggests that martial law should be an extraordinary legal regime that should not be transformed into a normal model of state governance. Ackerman (2004) develops the idea of an “emergency constitution”, arguing that all powers, including emergency powers, should operate within constitutional limits and under democratic control. This view is supported by Ferejohn and Pasquino (2004), who note that the legal regulation of emergency powers should include guarantees against the transformation of emergency powers into a permanent instrument of political governance. Thus, international law standards not only allow the state to respond to emergencies, but also ensure the preservation of the constitutional balance between security and freedom.

International institutions pay special attention to the principle of legality as an essential element of the rule of law. Any restriction of human rights must be provided for by law, sufficiently foreseeable and meet the requirements of legal certainty. The existence of a state of emergency does not in itself grant state authorities unlimited discretionary powers. On the contrary, the law should clearly define the competence of authorities, decision-making procedures, the duration of restrictions and review mechanisms. It is such a model that ensures predictable state policy and prevents arbitrary interference with the rights of individuals (Greene, 2011; Zayats et al., 2024). Table 1 presents key international legal standards for the implementation of the rule of law during a state of emergency.

Table 1. Key international legal standards for implementing the rule of law during a state of emergency

International standard of rule of law	Regulatory consolidation	Content of the international standard	Practice of international institutions	Importance for States during a State of Emergency
Legality	Article 15 ECHR (Council of Europe, 1950); Article 4 ICCPR (United Nations, 1966)	Any restrictions must have a clear legal basis and be officially proclaimed.	The ECtHR emphasizes the requirements of legal certainty and foreseeability of restrictions	Excludes arbitrary exercise of power
Necessity	Article 15 ECHR; General Comment No. 29 (UN Human Rights Committee, 2001)	Derogation is allowed only if there is a real threat to the life of the nation.	UN committee demands proof of exceptional nature of situation	Prevents unjustified use of emergency powers
Proportionality	ECHR practice	Restrictions must be the minimum necessary to achieve the legitimate aim	The court assesses the relationship between the interference and a real social need	Provides a balance between security and human rights
Temporality	ECHR, ICCPR	The emergency regime should only be in effect for as long as the threat exists.	International bodies criticize unjustified extension of emergency regimes	Prevents normalization of an exceptional state
Non-discrimination	Article 4 ICCPR	Discriminatory application of restrictions is prohibited.	Monitoring by the UN Committee and the ECHR on Equality Before the Law	Provides equal protection for all individuals

Judicial review	ECHR; ECtHR practice	The individual must have access to effective legal remedies	The court reviews the validity of state measures	Guarantees protection against the arbitrariness of state authorities
Parliamentary control	Constitutional standards of democratic states; recommendations of the Venice Commission	Emergency powers should be under the control of the legislature	Council of Europe recommendations emphasize the need for institutional balance	Prevents the concentration of power in the hands of the executive branch

Source: developed by the authors based on: Council of Europe (1950), United Nations (1966), UN Human Rights Committee (2001), UN Commission on Human Rights (1984), European Court of Human Rights (2025), Venice Commission (2025).

The above-mentioned international legal standards indicate that the rule of law remains a fundamental requirement for the functioning of the state even in emergency situations. An analysis of the practice and recommendations of the ECHR, ICCPR, ECHR, UN Human Rights Committee and Venice Commission gives grounds to assert that the admissibility of temporary restrictions on certain rights and freedoms of an individual is not a departure from legal guarantees, but rather their implementation through a special legal regime. Legality, necessity, proportionality, temporality, non-discrimination and effective judicial and parliamentary control are key components of the guarantees of the rule of law. With the help of these standards, a system of legal guarantees has been formulated aimed at preventing the arbitrary expansion of state power and ensuring a balance between the needs of public security and the protection of human rights. Thus, international practice shows that the legitimacy of emergency actions depends not only on the existence of a real threat to the state, but also on the extent to which the state adheres to the principles of the rule of law in the process of implementing such measures.

Another important principle is the principle of proportionality, which has become one of the central standards in the practice of international judicial bodies. This means that even in a state of emergency, State interference with human rights must be proportionate to the actual danger and must not go beyond what is necessary to achieve a legitimate aim. Structuring the law The European Court has consistently stressed that the State's margin of appreciation in assessing a crisis situation is not absolute and that all measures must be proportionate to the strict requirements of democracy and subject to international supervision (European Court of Human Rights, 2025). Thus, judicial control is present even in emergency situations and is one of the key mechanisms for ensuring the rule of law.

Among international sources, General Comment No. 29 of the UN Human Rights Committee on Article 4 of the ICCPR is particularly relevant in this regard. The derogation should not undermine the system of international human rights protection, and certain rights are absolute and cannot be limited even in a state of emergency (UN Human Rights Committee, 2001). These include the prohibition of torture, work, punishment without law and other fundamental guarantees of human dignity. It is for this reason that international standards are based on the presumption of maximum preservation of the legal protection of the individual even in the most severe crises. Contemporary doctrine also highlights the threat of the so-called “normalization of the exception”, whereby temporary measures are slowly integrated into ordinary law. Hennette-Vauchez (2023) illustrates, using the example of France, how the prolonged use of emergency regimes can change the character of the constitutional system and lead to a gradual weakening of democratic institutions. Similar risks Lührmann and Rooney (2021), consider exceptional powers to be tantamount to processes of autocratization and concentration of executive power. From this perspective, international standards require mandatory parliamentary and judicial oversight of all emergency measures.

The COVID-19 pandemic has placed additional strain on international law. A large number of states have imposed significant restrictions on freedom of movement, the right to privacy, freedom of peaceful assembly, and business activity. Bastos and The Ruijter (2019) argue that it was only during the pandemic that the need to combine effective crisis management with the requirements of the rule of law became apparent. Ginsburg and Versteeg (2021) emphasize that despite the global threat, states must continue to adhere to the principles of accountability, transparency, and institutional oversight, otherwise the state of emergency may become a tool for the unjustified expansion of executive power. Table 2 presents the role of international institutions and instruments in shaping rule of law standards in states of emergency.

Table 2. The role of international institutions and documents in shaping the standards of the rule of law in a state of emergency

International institution or document	Legal regulation of the state of emergency	Key principles	Practical importance for ensuring the rule of law	Application example
European Convention on Human Rights (Council of Europe, 1950)	Article 15 provides for the possibility of derogation	Legality, necessity, proportionality	Sets limits on permissible derogation from convention rights	Derogations by Council of Europe member states in times of war or public emergency

International Covenant on Civil and Political Rights (United Nations, 1966)	Article 4 regulates derogation from international obligations	Non-discrimination, temporary, official proclamation	Forms a universal international standard of derogation	Communications from States to the UN Secretary-General
UN Human Rights Committee (UN Human Rights Committee, 2001)	General Comment No. 29 interprets Article 4 of the ICCPR	Absolute nature of individual rights, exclusivity of derogation	Defines the limits of permissible restrictions on human rights	Monitoring the implementation of international obligations by states
European Court of Human Rights	Case law on Article 15 of the ECHR	Judicial review, proportionality, margin of appreciation	Checks the compliance of emergency measures with the Convention	Cases related to terrorism, military conflicts and emergencies
Venice Commission	Rule of Law Checklist and recommendations for emergency modes	Rule of law, checks and balances, accountability	Stresses the need for parliamentary and judicial oversight	Assessment of the legislation of the Council of Europe member states
Syracuse Principles (1984)	Interpretation of the ICCPR provisions on the limitation of rights	Legality, minimal interference, proportionality	Used as an international benchmark to assess the legality of restrictions	Analysis of the legality of restrictions during pandemics, war and other crisis situations

Source: developed by the authors based on: Council of Europe (1950), United Nations (1966), UN Human Rights Committee (2001), European Court of Human Rights (2025), UN Commission on Human Rights (1984), Venice Commission (2025).

The consideration of the above-mentioned international institutions and documents gives grounds to assert that the regulation of the state of emergency in international law is comprehensive and does not boil down to the provision of formal legal permits for this. The ECHR and the ICCPR establish the basic legal conditions for derogation from certain obligations, while the UN Human Rights Committee, the European Court of Human Rights, the Venice Commission, and the Syracuse Principles detail the content of such requirements using the criteria of legality, necessity, proportionality, temporaryity, non-discrimination, and effective supervision. All this indicates that in international law, a state of emergency is

not considered as a cancellation of the legal order, but as a special legal regime, however, it must be applied under the slogan of the rule of law.

Importantly, international standards combine substantive and procedural safeguards. On the one hand, a state has the right to impose temporary restrictions on certain rights in order to protect public security, the life of the nation or the constitutional order. At the same time, such restrictions must be officially announced, legally defined, motivated by a real threat, proportionate to the aim pursued and subject to judicial, parliamentary and international control. This is the set of requirements that prevents the arbitrary use of emergency powers and the transformation of a temporary crisis regime into a permanent form of government. International organizations have now developed a common understanding of the rule of law in a state of emergency: even if there is a serious threat, the state is not relieved of its obligation to respect human rights, comply with its international obligations and provide effective means of oversight. This approach is necessary to ensure security needs while protecting human dignity.

A state of emergency is a special legal regime and may involve temporary restrictions on certain rights and freedoms of an individual in the interests of protecting national security, public order, territorial integrity of the state or the life of the population (Nekhai et al., 2024; Florczak-Wątor, 2025). At the same time, international law recognizes as a given that even during war, terrorist threats, pandemics or other crisis situations, the state cannot be exempted from the obligation to adhere to the rule of law and ensure an adequate level of legal protection for the individual (Hoang, 2024; Pavlovskiy et al., 2024). That is why the question of the permissible limits of restrictions on human rights in emergency situations lies at the heart of the modern development of international law and the practice of international bodies. It has become especially relevant in connection with the increase in the number of emergency situations associated with armed conflicts, global pandemics, terrorist threats and other crisis phenomena that require immediate action by the state.

The regulation of the limitation of human rights in times of emergency is based on international law, mainly on Article 15 of the Convention on Human Rights and Fundamental Freedoms and Article 4 of the International Covenant on Civil and Political Rights. Article 15 of the ECHR allows States to derogate from certain obligations under the Convention in times of war or other public emergency threatening the life of the nation, to the extent strictly required by the exigencies of the situation (Council of Europe, 1950). This approach is also enshrined in Article 4 of the ICCPR, which allows derogation from certain international obligations only in the event of an officially declared state of emergency and subject to the principles of necessity, proportionality and non-discrimination (United Nations, 1966). Thus, international law does not consider a state of emergency as a basis for the complete suspension of human rights, but creates extraordinary legal mechanisms to ensure a balance between the protection of public interests and the guarantee of fundamental rights.

One of the key aspects of international law is the principle of legality. This means that any restriction of human rights must have a clear legal basis, be formally established and sufficiently foreseeable for those to whom it applies. Greene (2011) notes that the European Court of Human Rights has consistently held that legal certainty must be maintained even in times of emergency. Legality implies not only the formal existence of a legal act, but also its compliance with the principles of accessibility, predictability and legal certainty (Scheppele, 2006; Alekseeva et al., 2023). In this regard, international standards seek to prevent situations where state authorities are able to determine the scope of their competences at their own discretion, without proper regulatory regulation.

The principle of legality is particularly important in connection with the requirement to formally declare a state of emergency. The UN Human Rights Committee has emphasized that a state cannot in practice exercise emergency powers without following the procedures established by international law and without informing the international community of the nature and content of the restrictions imposed (UN Human Rights Committee, 2001). Rights Committee, 2001). This principle provides an additional level of international control and encourages greater transparency of state institutions.

An equally important prerequisite for the legality of restrictions on human rights is necessity. The state must also demonstrate the existence of a real threat to the life of the nation or the functioning of its state institutions in accordance with international standards. It is the existence of such a threat that justifies the use of special legal mechanisms. In its General Comment No. 29, the UN Human Rights Committee emphasizes that an emergency measure cannot be used to solve ordinary political or economic problems, since its use is permitted only in exceptional circumstances (UN Human Rights Committee, 2001). A similar position is also held by Mokhtar (2004), who emphasizes that derogation from obligations should be considered as a last resort and can be applied only when ordinary legal mechanisms are insufficient to overcome the existing threat.

In addition to necessity, the principle of proportionality must also be observed under international law. The content of this principle is that interference with human rights must be proportionate to the degree of danger and must not exceed what is objectively necessary to achieve a legitimate aim. The practice of the ECHR shows that even in an emergency, the state must choose the least restrictive measures with respect to human rights that at the same time allow for a timely and adequate response to the crisis (European Court of Human Rights, 2025). The principle of proportionality plays a special role in balancing public interests and individual rights, and also prevents the use of a state of emergency as a general justification for excessive state interference in the sphere of personal freedom (Szente, 2025; Lytkan, 2025).

The modern understanding of proportionality was largely influenced by the Syracuse Principles, which state that any restriction on human rights must pursue a

legitimate aim, be necessary in a democratic society and comply with the principle of the least intrusive measure (UN Commission on Human Rights, 1984). These provisions have become a guideline for the activities of international judicial and quasi-judicial bodies, as well as for the development of national legislation on derogations.

Another fundamental principle is non-discrimination. Article 4 of the ICCPR also prohibits the use of extraordinary measures on the basis of race, colour, sex, language, religion or social origin (United Nations, 1966). This means that even in emergency situations, the state must ensure the equality of all persons before the law and refrain from the discriminatory application of restrictive measures (Byrkovych et al., 2023; Popovych et al., 2024). The practice of international institutions shows that the discriminatory nature of the restriction is considered a separate violation of international human rights standards. The relevance of this issue has especially increased during the COVID-19 pandemic, when some restrictive measures (Gozdecka, 2021; Rasshyvalov et al., 2024) had a disproportionate impact on the most vulnerable groups of the population.

An important aspect of the legitimacy of emergency measures is also their temporary nature. A state of emergency, by its very nature, cannot be considered a permanent form of government. It is justified only when the threat actually exists. As Hennette-Vaucher (2023) points out, one of the greatest risks of modern constitutionalism is the gradual normalization of exceptional measures, when temporary restrictions become part of ordinary law and effectively change the relationship between the state and the citizen. This is why international standards require that emergency measures be subject to periodic review and terminated as soon as the threat has passed. Table 3 presents a classification of human rights according to the possibility and limits of their restriction under a state of emergency (Szente, 2025).

Table 3. Classification of human rights by the possibility and limits of their restriction in a state of emergency

Category of law	Normative basis	Conditions and limits of restriction	Rights and guarantees to be preserved	Practical importance in emergency situations
The right to freedom of movement	ECHR (Article 2 of Protocol No. 4), ICCPR (Article 12)	Only if there is a legitimate aim and a real threat to security, public order or public health	Judicial protection, possibility of appealing certain restrictions	Used to impose curfews, restrict access to certain areas, and evacuate

Freedom of peaceful assembly	ECHR (Art. 11), ICCPR (Art. 21)	Measures must be necessary in a democratic society and proportionate to the threat	Avoiding a complete ban without proper justification	Allows for temporary restrictions on mass events to ensure public safety
Freedom of association	ECHR (Art. 11), ICCPR (Art. 22)	Temporary restrictions on the activities of organizations may be imposed if they pose a threat to state security.	Preservation of the right to establish legal associations after the end of the state of emergency	Aimed at countering subversive activities and protecting the constitutional order
Freedom of expression	ECHR (Art. 10), ICCPR (Art. 19)	Restrictions must be lawful, necessary and proportionate	Prohibition of arbitrary censorship and persecution for criticism of the authorities	Allows you to restrict the dissemination of information that poses a threat to the defense or security of the state
Right to private and family life	ECHR (Art. 8), ICCPR (Art. 17)	Intervention is permitted only within the limits of the law and in the presence of a public need.	Judicial review of surveillance and data collection measures	Used for inspections, communications monitoring, and special security measures
Ownership	Protocol No. 1 to the ECHR (Art. 1)	Temporary restriction or compulsory alienation is permitted only in the public interest and with compensation.	The right to fair compensation for damages	Provides the ability to use property for defense and crisis response needs
The right to a fair trial	ECHR (Art. 6), ICCPR (Art. 14)	Procedural changes are possible, but not the elimination of basic guarantees of justice	Independence of the court, right to defense, access to justice	Allows for the adaptation of judicial procedures to extraordinary circumstances without losing their fairness

Right to liberty and security of person	ECHR (Art. 5), ICCPR (Art. 9)	Additional detention measures are possible only under conditions of legality and control.	The right to be informed of the reasons for detention and the right to appeal	Helps neutralize threats to public safety
The right to participate in the management of public affairs	ICCPR (Art. 25)	Possible postponement of certain election procedures due to the crisis	Preservation of democratic mechanisms after the end of the state of emergency	Ensures the stability of the functioning of state institutions
The right to life	ECHR (Art. 2), ICCPR (Art. 6)	The state is obliged to protect human life to the maximum extent possible.	The absolute value of human life	Is the fundamental basis of the entire human rights system
Prohibition of torture, inhuman or degrading treatment	ECHR (Art. 3), ICCPR (Art. 7)	Does not allow any exceptions or deviations	The absolute nature of the protection of human dignity	It is one of the fundamental norms of international law
Prohibition of slavery and servitude	ECHR (Art. 4), ICCPR (Art. 8)	Not subject to restriction even in wartime	Full protection against forced servitude	Belongs to the category of inalienable rights
Prohibition of punishment without law (nulla penalty sine law)	ECHR (Art. 7), ICCPR (Art. 15)	Retroactive criminal prosecution is not allowed.	The principle of legal certainty and legal security	Protects a person from arbitrary criminal prosecution
Recognition of the legal personality of a person	ICCPR (Art. 16)	The state cannot deprive a person of their legal status	Preservation of the legal connection of an individual with the state	It is the basic guarantee for the realization of all other rights.
Freedom of thought, conscience and religion (internal aspect)	ICCPR (Art. 18)	Inner freedom of belief is absolute	Inviolability of a person's worldview	Protects the spiritual autonomy of man

The source: developed by the authors based on: Council of Europe (1950), United Nations (1966), UN Human Rights Committee (2001), European Court of Human Rights (2025), UN Commission on Human Rights (1984).

The above information shows that the admissibility of restrictions on human rights during a state of emergency depends not only on the nature of the specific right, but also on whether clear international legal criteria for the restriction of this right can be identified. Even for rights that are subject to temporal restrictions, the state is obliged to ensure that such measures are legally defined, justified and subject to review. At the same time, the existence of inalienable rights sets absolute limits on state intervention and excludes deviation from basic standards of protection of human dignity. Accordingly, international norms create a system of legal restrictions on the government aimed at preventing the abuse of emergency powers and ensuring the continuity of the rule of law even in times of crisis. Table 4 presents the limits of permissible restrictions on human rights and freedoms during a state of emergency.

Table 4. Limits of permissible restrictions on human rights and freedoms in a state of emergency

Human rights sphere	Permissible restrictions	International legal limits of intervention	Unacceptable actions of the state
Freedom of movement	Curfew, restrictions on access to certain areas	Legality, necessity and proportionality of measures	Indefinite or unjustified travel ban
Freedom of peaceful assembly	Temporary restriction of mass events	The presence of a real threat to public safety	Complete ban without proper justification
Freedom of expression	Restriction of the dissemination of information that threatens state security	Prohibition of arbitrary censorship	Persecution for criticizing the authorities
Right to privacy	Enhanced control of communications, inspections, monitoring	Judicial review and legal certainty	Mass uncontrolled surveillance
Ownership	Requisition or temporary use of property for public needs	Legality and compensation for damages	Gratuitous and unjustified seizure of property
Right to liberty and security of person	Temporary detention under security conditions	Judicial review and right to appeal	Arbitrary arrest or detention

The right to life	Not subject to derogation	Maximum protection of human life	Extrajudicial executions and arbitrary deprivation of life
Prohibition of torture	Not subject to restriction	Absolute nature of protection	Any form of torture or inhuman treatment

Source: developed by the authors based on: Council of Europe (1950), United Nations (1966), UN Human Rights Committee (2001), European Court of Human Rights (2025).

The analysis shows that international law allows restrictions on certain human rights only to the extent necessary to address an extraordinary threat. At the same time, there are a number of fundamental rights that remain inviolable regardless of the nature of the crisis, guaranteeing the preservation of a minimum standard of protection of human dignity and the rule of law.

The practice of introducing martial law and emergency measures is of crucial importance for the actual level of compliance with the rule of law in the country. In this sense, although international legal standards provide for general conditions and limits of permissible restrictions on human rights, national practice shows how these standards are implemented in the context of real emergencies. In this regard, special importance is attached to the experience of Ukraine, which, after the full-scale armed aggression of the Russian Federation in 2022, was forced to ensure national security and defense of the state, while preserving democratic institutions and human rights guarantees.

Martial law in Ukraine was introduced according to the Constitution of Ukraine and the Law of Ukraine "On the Legal Regime of Martial Law", the Presidential Decree on Martial Law was approved by the Verkhovna Rada of Ukraine. Such a procedure is generally corresponds international requirements of official advertisement a state of emergency, like this provided article 15 ECHR and Article 4 ICCPR (Council of Europe, 1950; United Nations, 1966). At the same time, she also reports international organizations about the retreat from certain international obligations that also corresponds procedural requirements international law regarding indentation from human rights.

An analysis of practice in Ukraine shows that most of the restrictions introduced were directly related to ensuring the state's defense capability and protecting the population from the consequences of armed aggression. These include curfews, special entry and exit regimes, restrictions on freedom of movement, labor conscription for certain segments of the population, the possibility of forced alienation of property for defense needs, as well as special rules for the functioning of the information space. The compliance of these measures with international standards largely depends on their necessity and proportionality to specific security threats (Greene, 2011; Mokhtar, 2004).

An important standard for assessing Ukrainian practice is the principle of necessity. According to international standards, the state must demonstrate that there is a real threat to the life of the nation and that ordinary legal means are unable to counter this threat (UN Human Rights Committee, 2001). Given the full-scale war, the threat there is not even in doubt, as evidenced by the full-scale war, the occupation of certain territories, massive human rights violations and constant attacks on civilian infrastructure. That is why most of the measures introduced can be considered as meeting the criteria of necessity.

At the same time, international practice shows that the state is not exempt from constant review of proportionality used events even in wartime. European Court of Human Rights repeatedly stated that in an emergency condition there is no legal vacuum, and that any interference with human rights has to continue subject to the rule of law and independent judicial control (European Court of Human Rights, 2025). In this context, assessment is particularly important compatibility individual measures with real security needs and impact on citizens' rights. Table 5 presents an assessment of the national practice of applying martial law in Ukraine through the prism of international standards.

Table 5. Assessment of the national practice of applying martial law in Ukraine through the prism of international standards

Direction of assessment	National practice of Ukraine	International standard	Balance mechanism
Introduction of martial law	Martial law was introduced by Presidential Decree No. 64/2022 and approved by Parliament	Official proclamation of a special regime	Constitutional procedure and parliamentary approval
Derogation from obligations	Ukraine notified the Council of Europe and the UN of its departure from certain obligations	Transparency of derogations under Article 15 of the ECHR and Article 4 of the ICCPR	International information and external control
Restrictions on freedom of movement	Curfew, special entry and exit regime	Legality, necessity, proportionality	Clear deadlines, territorial boundaries, possibility of appeal
Restrictions on mass events	Prohibition or restriction of gatherings for security purposes	Protection of public order and safety	Individual risk assessment, avoiding a complete indefinite ban

Interference with property rights	Forced alienation of property for defense needs	Social necessity and compensation	Documentation, property valuation, right to compensation
Information security	Restricting the dissemination of information that could harm defense	The balance between freedom of expression and national security	Prohibition of arbitrary censorship, proportionality of restrictions
Access to justice	The judicial system continues to function in times of war	The right to an effective remedy	Judicial control over the actions of government bodies
Protection of inalienable rights	The prohibition of torture, arbitrary deprivation of life, and slavery cannot be repealed.	Absolute nature of basic rights	Criminal liability, judicial and international control
Parliamentary control	The Verkhovna Rada participates in the extension of martial law	Containing the concentration of power	Legislative oversight of the executive branch
Temporality of restrictions	Martial law is extended indefinitely depending on the security situation	Prohibition of normalization of the exceptional regime	Regular review of the need for restrictions

Source: developed by the authors based on: Council of Europe (1950), United Nations (1966), UN Human Rights Committee (2001), European Court of Human Rights (2025), Venice Commission (2025), Irkha (2023), Markovych (2023), Shamrai and Holovko (2025), Nikolenko (2025).

Ukraine's national practice meets the main international requirements regarding the legality, formality and security justification of martial law. At the same time, the main criterion for its legality remains constant control over the proportionality, temporary nature and non-discriminatory nature of the restrictions. Only a combination of parliamentary, judicial and international oversight can ensure a balance between national interests, public security and the protection of human rights. Table 6 presents the mechanisms for ensuring the balance between public security, national interests and the protection of human rights during martial law.

Table 6. Mechanisms for ensuring the balance between public security, national interests and human rights protection during martial law

Balance mechanism	Mechanism content	Importance for public safety	Significance for the protection of human rights
Judicial review	Verification of the legality of decisions of government bodies	Prevents chaotic application of restrictions	Guarantees the possibility of appealing violations
Parliamentary control	Participation of the Verkhovna Rada in the introduction, continuation and regulation of martial law	Ensures legitimacy of security solutions	Prevents excessive concentration of power
International control	Council of Europe and UN Statement on Derogations	Confirms the transparency of state actions	Allows for external assessment of constraints
Principle of proportionality	Correlation of restrictions with the real threat	Allows for effective security measures	Does not allow excessive interference with rights
The principle of temporality	Restrictions only apply while the threat exists	Allows you to respond to current danger	Prevents the transformation of martial law into permanent
Transparency of public policy	Informing society about the grounds and limits of restrictions	Increases trust in government decisions	Ensures predictability of the legal regime
Protection of inalienable rights	Prohibition of restriction of absolute rights	Preserves the legitimacy of state actions	Guarantees a minimum core of human rights

Source: developed by the authors based on: Council of Europe (1950), United Nations (1966), UN Human Rights Committee (2001), UN Commission on Human Rights (1984), European Court of Human Rights (2025), Venice Commission (2025), Irkha (2023), Markovych (2023), Shamrai and Holovko (2025), Nikolenko (2025).

Balancing public security, national interests and human rights is not achieved through a single mechanism, but through a series of interrelated safeguards. The most important ones are various forms of judicial, parliamentary and international control, as well as adherence to the principles of proportionality, temporality and non-derogable rights protection.

Discussion

The study confirms that the rule of law remains a crucial factor in assessing whether a state's actions comply with its obligations under the act, even in times of emergency or war.

An analysis of international law, the practice of international institutions, and the experience of Ukraine has shown that modern international law does not consider a state of emergency as a basis for suspending the regulatory system; on the contrary, it requires compliance with the rule of law, accountability, and control over the activities of state bodies. Such conclusions are consistent with Criddle's position. and Fox-Decent (2012), who argue that human rights guarantees should be maintained even in crisis situations.

The results obtained showed that the provisions of Article 15 of the ECHR and Article 4 of the ICCPR create a system of guarantees against the arbitrary use of emergency powers (Council of Europe, 1950; United Nations, 1966). This is consistent with the findings of Greene (2011) and Mokhtar (2004), who consider derogation from obligations as an exceptional instrument for responding to extraordinary threats, while adhering to the principles of legality, necessity and proportionality. A comparison of the results obtained with contemporary research seems to reveal a common thread regarding the need for effective parliamentary and judicial control over the activities of the executive branch. Ackerman (2004) and Ferejohn and Pasquino (2004) emphasize that emergency powers should only be exercised within the constitutional order. This study reached similar conclusions.

Particular attention is paid to the problem of the "normalization of the exception", where temporary emergency measures are increasingly embedded in the ordinary legal regime. The results confirm the relevance of the concerns expressed by Hennette-Vauchez (2023), Lührmann and Rooney (2021), and Mészáros (2024) regarding the vulnerabilities of the concentration of power and the erosion of democratic institutions. In this sense, the principle of temporality acts as a significant barrier against the transformation of the state of emergency into the ordinary mode of governance.

An assessment of Ukraine's national practice has shown that it generally complies with international requirements for the introduction of martial law, notification of derogations, and the determination of restrictive measures. This is consistent with the findings of Irkha (2023), Markovych (2023), Shamrai (2023), and Holovko (2025), Nikolenko (2025). At the same time, the study confirmed the need for constant monitoring of the proportionality of individual restrictions and their compliance with real security needs.

Overall, the results show that striking a balance – between security, national interests and human rights – is only possible if judicial, parliamentary and international oversight are combined, while respecting the principles of the rule

of law. The rule of law in a state of emergency or martial law remains a prerequisite for the legitimacy of state acts and a guarantee of maintaining democratic standards even in the most difficult conditions of crisis.

Conclusions

The analysis concludes that a state of emergency or martial law does not suspend the principle of the rule of law, but changes the conditions for its application. According to international standards, restrictions on certain human rights and freedoms may be imposed temporarily, but only in the context of legality, necessity, proportionality, non-discrimination and temporary nature. These criteria set the limits of permissible state interference in the sphere of human rights and prevent the transformation of the emergency regime into a means of arbitrary expansion of power. An analysis of the norms of the ECHR, the ICCPR, the practice of the ECHR, the UN Human Rights Committee, the Syracuse Principles and the recommendations of the Venice Commission shows that international law treats a state of emergency as a regime, but not an extra-legal one. The state remains obliged to ensure legal certainty, effective judicial and parliamentary oversight, as well as the protection of inalienable rights that cannot be limited even in war or other serious threat.

Ukraine's national practice in the context of martial law meets the basic requirements of international law, in particular regarding the official declaration of a special regime, derogation from certain international obligations and justification of restrictive measures by national security needs. However, the legality of such measures depends on their further assessment taking into account the principles of proportionality, temporary nature and non-discrimination.

An effective balance between public security, national interests and human rights protection can only be achieved through a combination of legal, institutional and international control mechanisms. It is this model that allows the state to respond to threats in times of crisis without abandoning democratic standards, respect for human dignity and the rule of law.

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