


The role of administrative court in ensuring human rights protection under martial law

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Abstract

The article explores the peculiarities of administrative jurisdiction during martial law and its role in safeguarding human rights through judicial protection. It delves into the specific legal regulations governing court activities in such circumstances, highlighting the challenges in protecting human rights. The collaborative mechanisms between courts and judicial self-government bodies are revealed, focusing on ensuring access to justice during martial law. The administrative court's pivotal role in human rights protection is emphasized, along with the disclosed mechanisms for facilitating administrative justice accessibility in martial law situations. The article also addresses the standards of access to justice, examining their implementation in administrative proceedings and analysing measures introduced to support court functionality. Importantly, it underscores that even in the most challenging conditions, the administrative court must leverage its powers to uphold constitutional rights and human freedoms. Beyond the immediate martial law context, the research subtly highlights the broader implications of digitalization in legal processes. The seamless integration of video conferencing not only ensures unimpeded access to justice but also showcases the transformative influence of technology on legal frameworks. The authors' insightful analysis makes a valuable contribution to the ongoing discourse on the benefits of digitalization in legal practices.

Keywords: judicial protection of human rights, administrative proceedings, martial law, access to the administrative court

Introduction

Martial law is a special legal regime established in a country in case of a threat to national security or in emergency. The issue of ensuring the country's security becomes of paramount importance. In such conditions, human rights are usually restricted, and the military authorities may apply strict security measures to ensure national security. The introduction of this legal regime is accompanied by restrictions on people's rights and freedoms and therefore, one of the key issues is maintaining balance between the need to ensure national security and preventing

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arbitrary violations of human rights. The peculiarities of the legal regime of martial law and the problem of human rights protection that arises in connection with its establishment should not serve as a justification for human rights violations. Despite the difficult situation, the state must ensure the protection of human rights and freedoms, or at least try to preserve them as much as possible.

In case of violation of human rights during martial law, individuals can apply to the court for the protection of their rights. In particular, the protection of the rights to life, inviolability, property rights, the right to a fair trial, the right to access to court, etc., require special attention. In such circumstances, the judicial protection of human rights becomes particularly significant. Although the functioning of courts under the legal regime of martial law has its peculiarities, the court must remain independent, objective, and impartial, with decisions based on law and complying with international human rights standards. It is important that the judicial system be effective and benefit from adequate resources to guarantee people's rights and freedoms under martial law.

1. Features and challenges of the legal regime of martial law

The military aggression of the Russian Federation against Ukraine was the reason for the introduction of the legal regime of martial law throughout the country. At the proposal of the National Security and Defense Council of Ukraine, martial law was introduced by the Decree of the President of Ukraine dated February 24, 2022, "On the introduction of martial law in Ukraine" for a period of 30 days (President of Ukraine, 2022). This decree was urgently approved by the Verkhovna Rada of Ukraine by a special law (Verkhovna Rada of Ukraine, 2022), which was immediately announced through the mass media and entered into force on the same day. Subsequently, the martial law regime was extended three times and continues at the time of this publication.

The Law of Ukraine "On the Legal Regime of Martial Law" establishes that martial law is a special legal regime under which state authorities, military command, military administrations and local self-government bodies are granted the necessary powers to ensure the national security and territorial integrity of Ukraine. *Additionally, the constitutional rights and freedoms of individuals and citizens,¹ as well as the rights and legitimate interests of legal entities, are subject to temporary restrictions (Verkhovna Rada of Ukraine, 2015).* According to the International Covenant on Civil and Political Rights, any restriction of *citizens'* constitutional rights *constitutes* a deviation from the *state's* obligations. *Therefore*, the Ministry of

¹ Can be limited constitutional rights and freedoms provided for in Articles 30 – 34, 38, 39, 41 – 44, 53 of the Constitution of Ukraine (freedom of movement, freedom of thought and speech, the right to elect and be elected, the right to peaceful assembly, the right to property, some labor rights, and etc.).

Foreign Affairs of Ukraine *has* ensured that the Secretary General of the *United Nations and other official representatives of foreign states* are informed about the introduction of martial law in Ukraine and the restrictions on *individual rights and freedoms associated with it*.

The legal regime of martial law led to radical changes in all spheres of state and social life, including activities of courts, bodies and institutions of the justice system. This has happened even though the legislation stipulates that the powers of courts, bodies and institutions of the justice system, as provided for by the Constitution of Ukraine, cannot be restricted under the legal regime of martial law (Verkhovna Rada of Ukraine, 2015). Courts and the entire judicial system must operate within their legislative powers. However, the functioning of courts and other judicial authorities has been affected by the war and its consequences, which made adjustments to the system of judicial protection of the rights of individuals and the processes of administration of justice. The changes that the judicial system, as a whole, and administrative justice, in particular, have undergone are because, in many courts located in the territories where active hostilities are taking place or in areas not controlled by the Armed Forces of Ukraine, the courts either do not function at all or operate in a limited mode. The situation is also affected by the fact that many judges have been forced to evacuate due to personal safety concerns and a real threat to their lives. In such conditions, individuals are effectively deprived of the possibility to appeal to the courts and access to justice. At the same time, there are territories where the life and activities of state authorities have hardly changed. In these circumstances, the judicial administration faces extremely difficult tasks - to monitor the situation, identify problems, and adequately, quickly and effectively respond to them.

2. Administrative proceedings under martial law

The introduction of martial law on the territory of Ukraine has caused radical changes in various spheres of public and governmental life, including administrative justice. The realities of administrative justice today are changing due to legislative provisions regarding the peculiarities and procedures for administering justice in emergency and unstable conditions of martial law. The provisions of Article 5 of the Code of Administrative Proceedings of Ukraine indicate that every person is granted the right to appeal to an administrative court in case of violation of his rights, freedoms or legitimate interests by the decision, action or inaction of a subject of state authority (Verkhovna Rada of Ukraine, 2005). The state must not only guarantee but also implement effective mechanisms for the realization of this right, as enshrined in the Constitution of Ukraine. Thus, Article 55 of the Constitution of Ukraine establishes that the rights and freedoms of the individual are protected by the court. Furthermore, the state guarantees everyone the right to appeal in court decisions, actions of state authorities, local self-government bodies, officials and

civil servants (Verkhovna Rada of Ukraine, 1996). The right to unrestricted access to the court is detailed in the procedural codes and is guaranteed regardless of the type of court proceedings.

The situation with ensuring the normal functioning of the judiciary and the administration of justice is further complicated by the fact that, on the eve of the war, on February 22, 2022, the High Council of Justice of Ukraine terminated its powers due to the decision to voluntarily terminate the powers of 10 of its members. The role of the High Council of Justice in ensuring the stable functioning of the judiciary is primarily related to its powers in the field of forming the judicial corps. Among them, it is worth noting such powers as submitting proposals for the appointment of judges, adopting decisions on transferring judges from one court to another, deciding on the secondment of a judge to another court of the same level and specialization, determining the number of judges in a court, etc. (Verkhovna Rada of Ukraine, 2016). The most urgent problem is the fact that the lack of a competent composition of the High Council of Justice makes it impossible to form the High Qualification Commission of Judges of Ukraine, which is engaged in staffing the courts. It should be noted that the personnel crisis in Ukrainian courts existed even before the war. As of the end of 2021, 2,068 judge positions were vacant (Mamchenko, 2022), with a maximum number of 7,304.² To date, this indicator is constantly increasing.

To ensure the sustainable functioning of the judiciary and therefore, the accessibility of the administrative court in the conditions of martial law, several urgent legislative and administrative measures have been taken. In particular, amendments to the Law of Ukraine “On the Judiciary and the Status of Judges” were adopted; according to these, during the period of the state of emergency or martial law and within 30 days after its cancellation (termination) and in the absence of a competent composition of the High Council of Justice, the State Judicial Administration is empowered to determine the number of judges in the court by taking into account the judicial workload (Verkhovna Rada of Ukraine, 2022). Thanks to this, it is possible to ensure the uninterrupted functioning of courts, including of administrative ones, in cases where there is a shortage of judges or excessive workload due to changes in the territorial jurisdiction of certain courts.

The Amendments to the Law of Ukraine “On the Judiciary and the Status of Judges” introduced in 2021 at the legislative level enshrined the provision prohibiting the restriction of the right to judicial protection, even under martial law. In particular, it is stated that “the powers of courts, bodies and institutions of the justice system, provided for by the Constitution of Ukraine, cannot be limited under the legal regime of martial law” (Verkhovna Rada of Ukraine, 2016). Moreover,

² The number of judges is determined by the State Judicial Administration of Ukraine in agreement with the High Council of Justice, excluding courts located on the territory of the Autonomous Republic of Crimea, the city of Sevastopol, Donetsk and Luhansk regions (which have ceased their work).

according to the provisions of Part 2 of Article 26 of the Law of Ukraine “On the Legal Regime of Martial Law”, it is prohibited to shorten or accelerate any form of judicial proceedings (Verkhovna Rada of Ukraine, 2015). The legislation provides that, in case of impossibility to administer justice by the courts operating in the territory where martial law has been imposed, the territorial jurisdiction of the court cases being considered in those courts can be changed by the laws of Ukraine or the location of the courts may be changed in accordance with the procedure established by law (Verkhovna Rada of Ukraine, 2015). To implement these provisions, the Verkhovna Rada of Ukraine has made amendments to the Law of Ukraine “On the Judiciary and the Status of Judges” as to determine the jurisdiction of court cases. Thus, to ensure the proper functioning of the judiciary during a state of martial law or in emergency situations, natural disasters, military actions, measures to combat terrorism, or other extraordinary circumstances, a change in the territorial jurisdiction of court cases being considered in courts that are objectively unable to administer justice is allowed (Verkhovna Rada of Ukraine, 2022). Such a decision is adopted by a decision of the High Council of Justice, upon the submission of the Chairman of the Supreme Court. In the specified situations, the case is transferred to the territorially nearest or other designated court. The change of territorial jurisdiction of court cases is also allowed by the order of the Chairman of the Supreme Court if the High Council of Justice is unable to exercise such authority. The decision to change the territorial jurisdiction of court cases that were under consideration by a particular court is also the basis for transferring all cases pending in this court.

In scientific literature, it is noted that the principle of territoriality characterizes the construction of the system of courts of general jurisdiction in the context of the network distribution of judicial jurisdiction over the entire territory of the state (Serdiuk, 2015). With this approach, the principle of territoriality ensures the delimitation of the competence of courts of general jurisdiction according to a certain territory, taking into account the administrative-territorial system of Ukraine and is designed to ensure the accessibility of justice throughout the country.

Deviation from this rule and the introduction of the principle of extraterritoriality is aimed to eliminate objective obstacles to access to justice and to ensure the continuation of proceedings in court cases. The concept of “extraterritoriality” (*ex* (lat.) – from, outside; *territoralis* (lat.) – referring to a given territory) is defined as the status of natural or legal persons, institutions or objects excluded from the scope of local legislation and which are subject (partially or fully) to the legislation of the state whose citizenship they hold (Yurydychna entsyklopediia, 1998). Regarding the extraterritorial jurisdiction of court cases, the meaning of this principle should be considered as a change in their general territorial jurisdiction by transferring the competence for their consideration to the nearest territorial court or another court determined by the decision of the High Council of Justice or the order of the Chairman of the Supreme Court.

As a general rule, the territorial jurisdiction of administrative cases determines the competence to consider and resolve cases of administrative jurisdiction between homogeneous courts, depending on the territory over which their powers extend.

The Code of Administrative Proceedings of Ukraine provides for several types of territorial jurisdiction of administrative cases, depending on the location of the parties and the nature of the public legal dispute. The general territorial jurisdiction (jurisdiction of cases based on the defendant's place of residence or location) establishes the basic rule, according to which claims against a natural person are submitted to the court at the place of residence or stay registered in accordance with the law (Part 1 of Article 26). The rules of alternative territorial jurisdiction (jurisdiction at the plaintiff's choice) establish that an administrative claim is decided at the choice of the plaintiff by an administrative court at the place of residence (stay, location) of this plaintiff or by the administrative court at the location of the defendant (Part 1 Article 25). The exclusive territorial jurisdiction of administrative cases is regulated by Article 27 of the Code of Administrative Proceedings of Ukraine. By its rules, the consideration and resolution of certain categories of administrative cases are assigned to the competence of specifically designated administrative courts. The imperative rules of exclusive territorial jurisdiction prohibit the plaintiff's choice of another court to file administrative claims in cases provided for by administrative procedural legislation. Article 28 of the Code of Administrative Proceedings of Ukraine establishes the specifics of determining the jurisdiction of administrative cases in which a court or judge is one of the parties. In particular, the jurisdiction of a case in which one of the parties is a court or a judge of the court, to the jurisdiction of which this case is assigned according to the general rules, is determined by the decision of the court of higher instance.

According to official information, during the state of martial law, the judicial system operates in a semi-emergency mode. In several settlements that were shelled by Russian troops, the courts are unable to administer justice. As of March 2022, 137 appellate and local courts, or 21% of the total number, did not administer justice in Ukraine (Rzheutska, 2022). In one year, the situation stabilized and somewhat improved. As of February 2023, 88 (13%) local and appellate courts have not administered justice. There are 138 courts located in the territories temporarily not under the control of Ukrainian authorities (Chairman of the High Council of Justice, 2023).

Given the impossibility of administering justice during martial law by separate courts, the territorial jurisdiction of cases pending in courts located mainly in areas of active hostilities or under the control of the occupying military forces has been changed by several orders of the Chairman of the Supreme Court. Legislatively enshrining the possibility to apply the principle of extraterritoriality regarding the jurisdiction of court cases is an effective legal tool to ensure the constitutional right to judicial protection and to prevent its limitation even under martial law. During martial law, due to the impossibility to administer justice, the territorial jurisdiction

of court cases was changed in 171 courts. As of March 1, 2023, the territorial jurisdiction of 54 courts has been restored, while 117 courts have been unable to restore their territorial jurisdiction (Zubova, 2023).

Guided by the provisions of Article 3 of the Constitution of Ukraine, where it is established that a person, his life and health, honour and dignity, inviolability and security are recognized as the highest social values in Ukraine, the Council of Judges of Ukraine has developed a series of recommendations on organizational issues of judges' work under martial law, including measures to temporarily suspend the activity of courts. Special attention has been paid to the fact that, even under martial law, the work of the courts cannot be suspended and the constitutional right of a person to judicial protection cannot be limited. At the same time, the safety of judges and court visitors should not be neglected. Therefore, the judges' assemblies, heads of courts, and judges of courts are recommended in case of a threat to the life, health and safety of court visitors, court staff, and judges to promptly decide on the temporary suspension of judicial proceedings by a certain court until the circumstances that caused the suspension are eliminated (Council of Judges Ukraine, 2022).

Evaluating the recommended measures from the perspective of their admissibility, it should be noted that the safety of citizens, judges and other court staff is of paramount importance. It is recommended to carry out legal proceedings based on the conditions and current situation of the region where the court is located. It is allowed to postpone consideration of court cases, considering them through video conferencing and, in the case of active hostilities, it is recommended to suspend the court's work. It is recommended to carry out court proceedings based on the conditions and current situation of the region where the court is located.

Courts located in areas with special risk, including administrative jurisdiction courts, have received recommendations regarding evacuation measures and transfer of court cases. Administration of justice and access to the court is carried out exclusively by considering the current situation in a particular region. If hostilities are in progress, the work of the courts may be suspended altogether. In such a case, the territorially closest court to which individuals can apply is determined.

3. Standards of access to the administrative court

The European integration processes of Ukraine involve the implementation of European standards in all areas of life, including in the standards of justice, which is further supported by active legislative reform, including in the field of administrative procedural law. Access to justice and the right to a fair trial are fundamental features of a democratic society and the rule of law, as provided and guaranteed by Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – Convention). In particular, it is stipulated that everyone is entitled to the right to a fair and public hearing within a reasonable time by an independent and impartial court established by law, which will decide on civil rights and obligations

or establish the merits of any criminal charge against him (ECHR, 1950). The principle of access to justice and judicial protection of violated individual rights is one of the components of the right to a fair trial. At the international level, the right of a person to defend violated rights in court is provided for in many international legal documents.

Based on these provisions, participating states must take all necessary measures to ensure access to courts and create appropriate conditions for the administration of justice at the national level. The effectiveness of judicial protection of individual rights depends directly on the proper administration of justice.

The right to access court and judicial protection is one of the fundamental rights of a person and citizen. Being a component of the right to a fair trial, the right of access to a court loses its effectiveness if economic, social and cultural rights do not have equal protection. This is particularly emphasized in Recommendation No. R (93) of the Committee of Ministers of the Council of Europe to member states on effective access to the law and justice for the very poor (Council of Europe, 1993). The implementation of the European standards into the national system of the judiciary and justice is also provided for by the Concept of improving the judiciary to establish a fair trial in Ukraine in accordance with European standards. It is emphasized that the further development of national justice should be aimed at establishing the rule of law by ensuring access to justice (Verkhovna Rada of Ukraine, 2006). Unimpeded access to court and justice is a constitutional right of a person and the basis of fair and effective justice.

The concept of improving the judiciary to establish a fair court in Ukraine in accordance with European standards emphasizes the need to implement European standards of justice in the domestic judicial system. This normative legal act, which serves as a benchmark in the reform of procedural legislation, provides for further development of the domestic justice system through the establishment of the principles of the rule of law by ensuring access to justice (Verkhovna Rada of Ukraine, 2006).

The guiding principles of access to justice and fair trial were developed by the case law of the European Court of Human Rights (hereinafter – ECHR). Overall, they are aimed at ensuring, improving and raising the standards of human rights protection in the modern world. At the same time, the European standards of justice should be considered not only in the context of the national legislation of a particular state but comprehensively, by taking into account many factors: compliance with conventional guarantees of fair trial, the case law of the ECHR, various international agreements and regulatory legal acts relevant to the issue under consideration. The special importance of these standards emphasizes their role in a democratic society and their significance for the domestic mechanism of protecting individual rights. Justice is the sphere of the state's activity that should acquire a basic, real meaning and level, rather than a formal, declared one. The outcome of justice is particularly significant for individuals who go to court because there is a relationship and direct

dependence between the general level of justice and the state of protecting individual rights in the state.

European standards of justice provide, first of all, the establishment and the national-level guarantee of the right and possibility of a person to appeal to a judicial authority for the protection of his rights. It should be noted that Article 55 of the Constitution of Ukraine guarantees the right to appeal to a court against decisions, actions or omissions of state authorities, local self-government bodies, officials, and civil servants. The Constitutional Court of Ukraine emphasized the role of the protection of rights and freedoms in the judicial process by prohibiting denial of justice in the case of a person's appeal to the court regarding the violation of his rights and freedoms, the creation of obstacles to their implementation, or the existence of other restrictions on rights and freedoms. Refusal by a court to accept lawsuits and other applications or complaints, filed in accordance with current legislation, constitutes a violation of the right to judicial protection, which, according to the constitutional provisions, cannot be limited (Constitutional Court of Ukraine, 1997).

In its decisions, The ECHR emphasizes the necessity of ensuring the proper protection, at the national level, of an individual's right to a fair trial and right of access to justice which, in his opinion, should be considered as a single entity. Furthermore, for the right of access to a court to be effective, a person "must have a real opportunity to appeal the action that violates his rights" (ECHR, 1995). When applying to the court, a person expects and counts on the fact that his dispute will be resolved by the court and that will be able to properly protect his violated rights and interests.

In general, the European standards of justice developed through the practice of the ECHR, according to their specificity and direction, can be conventionally divided into institutional and procedural requirements of the judicial process. Institutional requirements relate, in particular, to the definition of the concept of "court" and compliance with the criteria of "established by law", "independence", "impartiality" and "fairness" of the court. For example, Article 5 of the Law of Ukraine "On the Judiciary and the Status of Judges" establishes that justice in Ukraine is administered exclusively by courts. The decisions of the ECHR emphasize that the "court" must also meet several requirements – independence; impartiality; terms of office of judges, and the existence of guarantees provided by judicial procedures. At the same time, a key issue in the functioning of courts and compliance with justice standards is that courts must be established a priori in accordance with the law and strictly adhere to it in the process of administering justice. The case law of the ECHR indicates that the phrase "established by law" does not only mean legal grounds for the existence of the court but also its compliance with specific rules governing its activities (ECHR, 2006). The effectiveness of judicial protection and compliance with the standards of justice are key factors and guidelines in the activities of the state's judicial authorities. Court

decisions made during the administration of justice are subject to mandatory and proper execution. Unjustifiably prolonged non-enforcement of a court decision leads to a decrease in the effectiveness of the protection of the party's rights in the case and in the restoration of justice.

Regarding the requirement of the independence of courts, it primarily refers to the independence from other authorities and parties involved in the judicial case during the decision-making process. In their activities, courts must be guided exclusively by legislative provisions. The independence of the court is often considered in relation to its impartiality – the absence of bias or subjective attitudes of the judge to the circumstances of the case, which can be assessed in many ways (ECHR, 2000). The judge's impartiality is a guarantee of a fair judgment and confirmation of society's belief in the fairness and effectiveness of judicial protection of violated rights.

Procedural requirements or standards of justice include ensuring the fairness of the trial, compliance with the principle of competition, with the procedure for the admission, examination, and evaluation of evidence, etc. Regarding the fairness of a judicial hearing and decision, the ECHR has repeatedly emphasized that it is “one of the basic principles of any democratic society, in accordance with the Convention” (ECHR, 1983). Any person who applies to the court has the right to a fair and impartial consideration of his case by the court. This is a guarantee of the proper protection of the individual's rights. A person's right to a fair trial also includes the right to an adversarial proceeding, which means the ability of the parties in a criminal or civil hearing to be informed of all comments regarding the evidence and observations presented, even if they are presented by an independent representative of national legal services, as they can influence the court's decision (ECHR, 1993b). Along with the above guarantees, a fair trial also includes the principle of equality of arms, which provides the parties with equal opportunities to present and prove their position before the court.

The recommendations of the Committee of Ministers of the Council of Europe on measures facilitating access to justice emphasize the need to inform the public about the location and competence of courts, familiarize them with the procedure for appealing to the court, and protecting their interests in court proceedings, etc. (Council of Europe, 1981).

Therefore, the European standards of justice are provided for by international legal acts and developed by the precedents of the ECHR, which are requirements or models put forward for the procedure of judicial proceedings, covered by conventional guarantees and understanding of the concept of a fair trial, and aimed at ensuring effective protection of the rights and interests of a person in court. The implementation of European guarantees of a fair trial involves their enshrining in national legislation, being considered within the development and improvement of the activities of the judicial system, and applying them in the practice of judicial bodies.

Provisions regarding the necessity of guaranteeing judicial protection of violated individual rights are implemented in national legislation at both the Constitution and branch procedural legislation levels. The issues of ensuring judicial protection of individual rights and accessibility of justice have also been regulated in the Law of Ukraine “On the Judiciary and the Status of Judges”. In particular, the content of Article 7 reproduces the provisions of the Convention on guaranteeing the protection of the rights, freedoms and interests of each person within a reasonable time by an independent, impartial and fair court established in accordance with the law (Verkhovna Rada of Ukraine, 2016). It should be noted that the guarantees of the right to access to justice apply not only to the citizens of Ukraine, but also to foreigners, stateless persons, and foreign legal entities.

Conventional provisions on access to justice are also reflected in the Code of Administrative Proceedings of Ukraine. According to Article 5, any person has the right to appeal to a court of administrative jurisdiction to protect rights, freedoms or legitimate interests violated by a decision, action or inaction of a subject of authority. Moreover, the waiver of the right to legal protection is invalid. Such appeals are directly guaranteed by the state on the basis of the Constitution of Ukraine.

4. Permissible derogation from obligations under martial law

During the legal regime of martial law, the observance of human rights and freedoms and the existence of an effective mechanism for their protection in case of violation require special attention. However, the right to judicial protection, even in wartime conditions, is not absolute. According to the legal positions expressed in the precedents of the ECHR, the right of access to justice may be subject to permissible restrictions. State parties are given some discretion in regulating this issue. At the same time, permissible limitations of the right of access to the court should not negate its very purpose. In general, any restrictions on the right of access to justice must pursue a legitimate aim and observe reasonable proportionality between the means used and the aim pursued (ECHR, 2001b). The risk and potential possibility of restriction and violation of individual rights require adequate control of such restrictions. Limitation of individual rights and derogation from obligations is allowed only in exceptional circumstances and subject to compliance with the requirements of legality and proportionality of the pursued goal.

The state’s right to derogate from its obligations in emergency and crisis situations is enshrined in the Convention. In particular, the provisions of Article 15 provide that, in the event of a public emergency, such as war or other threat to national security, any Contracting Party may temporarily derogate from its obligations, taking into account that these measures must correspond to the urgency of the situation and without contravening other international rules (Convention, 1950). The key is that this derogation must be limited and controlled. Additionally, in the case of taking such measures, the Contracting Party shall fully inform the

Secretary General of the Council of Europe of the reasons and the measures taken, as well as the time when such measures ceased to have an effect and the Convention resumed full force. At the same time, Article 15 establishes certain reservations and outlines the rights regarding which of such situations cannot be a reason for their limitation and derogation from certain articles of the Convention: Article 2 (right to life), Article 3 (prohibition of torture), Article 4 (prohibition of slavery and forced labour), Article 7 (prohibition of a punishment without law). The main purpose of notifying the Secretary General is to make the derogation public. In the absence of official and public notification of the derogation, Article 15 does not apply to measures taken by the respondent State (ECHR, 2001a).

The emergency and public danger that arose in connection with the military invasion of the Russian Federation, the declaration of a state of emergency and then martial law was assessed precisely as falling within the scope of Article 15 of the Convention. According to the case law of the ECHR, the expression “public danger that threatens the life of the nation” means “an exceptional crisis situation or an emergency that affects the entire population and poses a threat to the established life of the community that forms the State” (ECHR, 1960).

When considering cases concerning a violation of conventional rights during the period of derogation from obligations, the ECHR primarily examines whether the measures taken can be justified under the fundamental articles of the Convention. Only if these measures cannot be justified in this way, does the Court proceed to determine whether the derogation from obligation was lawful (ECHR, 2009). At the same time, the right of states to withdraw from their obligations is not unlimited. The ECHR reserves the right to decide whether States have gone beyond the “limits required by the urgency” of the crisis. When solving such issues, attention is primarily paid to such factors as the nature of the rights affected in connection with the deviation from obligations, the circumstances leading to the emergence, and its duration (ECHR, 1993a). Due to the restrictions of rights in the territory of Ukraine under martial law and the possible need to justify them, it has become well known that there is a public danger, a threat to the lives of citizens, and the killing of the country’s civilian population; therefore, appropriate measures have been taken in response to this threat and these have been widely acknowledged

Conclusions

The European standards of access to justice are reflected in the internal national legislation of Ukraine by enshrining the right to judicial protection of violated rights of individuals at the level of the Constitution and branch administrative procedural legislation. The implementation of European standards of access to justice is key to the development of the national judicial system and the judiciary and a guarantee of proper and effective protection of the rights, freedoms and interests of everyone.

The right to access to justice, which serves as a tool for safeguarding other rights, becomes particularly significant in emergency situations and, under no circumstances, should it be restricted. The state must guarantee an adequate level of access to justice by implementing an effective mechanism for its practical realization, as the level of protection of other human rights depends on it.

The administrative courts play an important role in protecting human rights under martial law and are an effective and independent mechanism for ensuring consideration of cases to resolve disputes and conflicts related to their violation in these extraordinary conditions. Unimpeded access of persons to administrative justice, even under martial law, is ensured by low measures, such as postponement of hearings, consideration of cases via video conferencing, changing the territorial jurisdiction of certain courts, etc. The restrictions on the territory of active hostilities were imposed with the legitimate purpose of avoiding threats to the lives, health and safety of court visitors, judges and court staff.

The exploration of the functioning of administrative courts under martial law has uncovered the indispensable role they play in upholding human rights during extraordinary circumstances. Even in times of heightened tension, administrative justice remains a crucial and effective mechanism for resolving disputes and conflicts arising from violations. The innovative measures employed, such as the use of video conferencing and adjustments to territorial jurisdiction, highlight the adaptability of legal systems in addressing challenges posed by martial law.

In essence, this work stands as a testament to the author's dual contribution – firstly, in unveiling the resilience of administrative courts under martial law, and secondly, in subtly highlighting the transformative potential of digitalization in ensuring that justice prevails, irrespective of any challenging circumstances. This nuanced exploration lays the groundwork for further research at the intersection of legal issues, technology, and the pursuit of a more accessible and adaptive legal system.

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