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Олександр Миколайович Буханевич

Національна академія правових наук України

Харків, Україна

Кафедра конституційного, адміністративного та фінансового права

Хмельницький університет управління та права імені Леоніда Юзькова

Хмельницький, Україна

Сергій Олександрович Кузніченко

Національна академія правових наук України

Харків, Україна

Національна академія внутрішніх справ

Київ, Україна

Анастасія Муслімівна Мерник

Кафедра теорії і філософії права

Національний юридичний університет імені Ярослава Мудрого

Харків, Україна

ЗАРУБІЖНИЙ ДОСВІД КОНСТИТУЦІЙНО-ПРАВОВОГО РЕГУЛЮВАННЯ ОБМЕЖЕННЯ ПРАВ ЛЮДИНИ В УМОВАХ НАДЗВИЧАЙНОГО ТА ВОЄННОГО СТАНІВ

Анотація. У статті досліджуються зарубіжний досвід конституційно-правового регулювання обмеження прав людини в умовах надзвичайного та воєнного станів в Македонії, Вірменії, Білорусії, Молдавії, Грузії Латвії, Литві, Албанії, Азербайджані, що є актуальним в умовах сучасності, виходячи з наявності локальних воєних конфліктів, ситуацій надзвичайного стану або можливості їх існування в багатьох країнах світу. Мета роботи полягає у проведенні аналізу тексту та змісту конституцій зарубіжних країн для з'ясування та розтлумачення підстав обмеження прав і свобод людини і громадянина в умовах надзвичайного і воєнного станів. Для досягнення поставленої мети у роботі використовується система методів наукового пізнання, зокрема загальнонаукові (аналізу, синтезу), приватні (порівняльний, кількісного й якісного аналізу, апроксимації), а також спеціально-юридичні (формально-юридичний, порівняльно-правовий). Практична цінність дослідження полягає у виявленні чотирьох переважаючих тенденцій в конституціях зарубіжних держав до порядку визначення обсягу обмежень прав людини в умовах особливих режимів: 1) закріплення в конституціях вичерпного переліку прав і свобод, які не можуть бути обмежені в період надзвичайного та воєнного стану; 2) закріплення в конституції вичерпного переліку прав і свобод, які можуть бути обмежені з метою захисту прав людини, демократичного устрою держави, громадської безпеки, благополуччя населення та моральності; 3) поєднання двох перших варіантів закріплення обмежень в тексті Конституції; 4) закріплення у текстах конституцій можливості обмеження органами державної влади прав і свободи особистості в умовах особливих правових режимів в інтересах національної безпеки без вказівки на конкретні права і свободи, які можуть бути (або не можуть бути) обмежені

Ключові слова: надзвичайна ситуація, правовий режим, обмеження прав людини, національна безпека, громадський порядок, демократичний устрій

Oleksandr M. Bukhanevych

*National Academy of Legal Sciences of Ukraine
Kharkiv, Ukraine*

*Department of Constitutional, Administrative and Financial Law
Leonid Yuzkov Khmelnytsky University of Management and Law
Khmelnytskyi, Ukraine*

Serhii O. Kuznichenko

*National Academy of Legal Sciences of Ukraine
Kharkiv, Ukraine*

*National Academy of Internal Affairs
Kyiv, Ukraine*

Anastasiia M. Mernyk

*Department of Theory and Philosophy of Law
Yaroslav Mudryi National Law University
Kharkiv, Ukraine*

FOREIGN EXPERIENCE IN CONSTITUTIONAL AND LEGAL REGULATION OF RESTRICTIONS ON HUMAN RIGHTS IN CONDITIONS OF EMERGENCY AND MARTIAL LAW

Abstract. *The study investigates the foreign experience of constitutional and legal regulation of restrictions on human rights in conditions of emergency and martial law in Macedonia, Armenia, Belarus, Moldova, Georgia, Latvia, Lithuania, Albania, Azerbaijan, which is relevant in modern conditions, based on the presence of local military conflicts, emergencies, or the possibility of their existence in many countries of the world. The purpose of this study was to analyse the text and content of the constitutions of foreign countries to clarify and explain the grounds for restricting human and civil rights and freedoms in conditions of emergency and martial law. To achieve this purpose, the study employed a system of methods of scientific cognition, namely general scientific (analysis, synthesis), particular (comparative, quantitative and qualitative analysis, approximation), as well as special legal (formal legal, comparative legal) methods. The practical value of the study lies in the identification of four prevailing trends in the constitutions of foreign states to the procedure for determining the scope of restrictions on human rights under special regimes: 1) consolidation of an exhaustive list of rights and freedoms in the constitutions, which cannot be restricted during the period of emergency and martial law; 2) consolidation of an exhaustive list of rights and freedoms in the constitution, which can be restricted to protect human rights, the democratic structure of the state, public safety, the well-being of the population and morals; 3) combining the first two options for consolidating restrictions in the text of the constitutions; 4) consolidation of the possibility of limiting the rights and freedoms of the individual in the texts of constitutions by state authorities under special legal regimes in the interests of national security without specifying particular rights and freedoms that may (or may not) be restricted*

Keywords: *emergency, legal regime, restrictions on human rights, national security, public order, democratic system*

INTRODUCTION

The practice of applying special legal regimes demonstrates that the legislation of most foreign countries considers such regimes as legal institutions governing the state of emergency of the exercise of state power in various situations when the normal functioning of society and the state becomes impossible. Therewith, the introduction of such regimes is inevitably associated with restrictions on human and civil rights and freedoms, which sometimes have an imperative nature with the use of coercion. At the same time, in the modern conditions of the development of civilisation, the introduction of the principle of humanism in all spheres of social existence, restrictions on human and civil

rights and freedoms should be reasonable and proportional, restrictions related to the conduct of special legal regimes should not be excessive and imposed in violation of the procedural order. The above requires the development of proper criteria for restrictions on human and civil rights and freedoms under special regimes. Considering the foregoing, for a correct understanding of the grounds, essence, and limits of restrictions on human and civil rights and freedoms under special legal regimes, it is important to investigate the provisions of international law and foreign practice of applying a state of emergency and martial law.

Since special legal regimes serve as the legal basis

for restricting human and civil rights and freedoms, the relevance of the study of the concept, types, and key features of special legal regimes is beyond doubt. Within each country of the modern age and in the international space, emergencies have repeatedly arisen (aggression, threat to the constitutional order of the state, life and health of people and citizens, natural and anthropogenic emergencies, and other exceptional circumstances), when the normal functioning of society and the state had been complicated. In such circumstances, there is an increasing need for a clear, consistent legal regulation of the behaviour model aimed at overcoming and eliminating the negative consequences of emergencies.

The state has a relatively greater freedom of action when dealing with national security issues. However, any decision of a political or legal nature in a state governed by the rule of law where the rule of law applies is limited by the constitution of the country that establishes the scope of discretionary powers of each body. In Ukraine, the regulation of public relations arising in connection with emergencies has become particularly important after the emergence of a military conflict on the territory of Ukraine and the spread of the Severe Acute Respiratory Syndrome-2 virus (SARS-CoV-2) [1, p. 176].

Restriction of human rights and freedoms is an extremely relevant, necessary, and important subject, which is conditioned just by a considerable number of scientific studies of scientists and teachers of higher educational institutions, special academic disciplines, but also by the practical aspect of the coexistence of members of society within the state and global space, when it is necessary to determine how to ensure order in society; which rights can be restricted and which cannot; what is the due procedure for such restriction; how to implement the institution of restriction of human and civil rights and freedoms and still comply with such legal principles as the balance of interests of the individual, society, state, rule of law, legality, proportionality, humanism, etc [2, p. 72].

Certain aspects of the constitutional regulation of human rights restrictions have become the subject of scientific consideration by P. Sabrin [3, p. 219], B. Vankovskaya [4, p. 108], L. Dantfort [5, p. 144], S. Ramet [6, p. 288], D. Harutiunian [7, p. 62], D. Valieiev [8, p. 311], A. Mkrtumian [9, p. 23], M. Bryusis [10, p. 150], M. Rokhava [11, p. 131], E. Chenovich [12, p. 1090], V. Napetvaridze, T. Tskhovrebade [13, p. 311], D. Lukianov [14, 15], Yu. Barabash [16], Ye. Hetman [17]. The relevance of studying the issue of constitutional legal regulation of restrictions on rights in conditions of emergency and martial states is covered through an evaluation of the significance of the principle of legality for society, which ultimately lies in the embodiment of universal values (human dignity, humanism, freedom, justice, and equality) in real legal relations. The principle of legality imposes an obligation on state institutions and their officials to comply with the laws (in a broad sense) in the exercise of power.

It is well known that to decide on the legitimacy of the restriction of human rights, the European Court of Human Rights uses the test: whether the restriction of the right is

stipulated by law; whether a certain restriction pursues a legitimate purpose; whether the restriction was necessary in a democratic society; whether such a restriction is discriminatory [18, p. 467]. This approach emphasises that human rights are based on interests that are fairly balanced with the interests of society, which necessitates the state to limit the exercise of human rights. The first issue – the foreseeability of the restriction of rights by law – become the subject matter of this study.

When restricting the exercise of human rights, state authorities themselves should be limited in their actions by the established provisions of law. Such rules of conduct of state authorities are consolidated in the texts of state constitutions because they act as an agreement between citizens of the country, society and the state to coordinate the interests (private and public) of the parties. Considering the above, it is the constitutional legal regulation of the restriction of human rights by state authorities that is important for preventing arbitrariness by officials in law enforcement in specific life circumstances to coordinate the interests of a person and society.

The purpose of the study is to analyse the content of the constitutions of individual foreign countries to clarify and interpret the grounds for restricting human and civil rights in special conditions to ensure a balance between the protection of fundamental rights and national (state) security.

1. MATERIALS AND METHODS

To carry out the study, a system of methods of scientific cognition was applied, namely general scientific (analysis, synthesis), particular methods of scientific cognition used in the branches of many sciences (comparative analysis, quantitative and qualitative analysis, approximation), as well as special legal methods (formal legal, comparative legal). The authors of this study applied the general philosophical (universal) method of cognition at all stages of the cognitive process. The method of approximation, which lies in replacing some objects with others, in some sense close to the original, but simpler, allowed investigating the numerical characteristics and qualitative properties of the object, reducing the task to the study of simpler or more convenient objects (for example, those whose features are easily calculated or whose properties are already known). Used figuratively as a method of approximation, a sign of an approximate, non-exhaustive nature, the method allowed determining the significance and level of influence of peaceful assemblies of people on the development of a democratic regime in Belarus.

Using the analysis method, the inherent and individual features of the constitutional and legal regulation of human rights restrictions under emergency and martial law conditions in Macedonia, Armenia, Belarus, Moldova, Georgia, Latvia, Lithuania, Albania, and Azerbaijan were identified and studied. Comparative analysis provided an opportunity to identify different approaches to the procedure for determining the scope of restrictions on human and civil rights and freedoms under special regimes stipulated

in the constitutions of foreign states. Using the generalisation method, four prevailing trends of restrictions on human and civil rights and freedoms under special regimes in modern countries were identified.

The method of deduction made it possible, based on the doctrinal opinions of researchers, to draw a general conclusion on the inherent features of constitutional legal regulation of human rights restrictions in conditions of emergency and military conditions, the existing grounds for their classification. The inductive method of cognising the provisions of the Constitution of the Republic of Macedonia, the Constitution of the Republic of Armenia, the Constitution of the Republic of Belarus, the Constitution of the Republic of Moldova, the Constitution of the Republic of Latvia, the Constitution of the Republic of Lithuania, the Constitution of the Republic of Albania, the Constitution of the Republic of Azerbaijan provided an opportunity to obtain a general conclusion on the inherent features of the grounds for restricting human rights under a state of emergency and martial law. The historical method of cognition contributed to the coverage of teleological prerequisites for the development of constitutional provisions of foreign countries regarding the restriction of human and civil rights, allowed achieving an in-depth understanding of their essence and substantiate new recommendations for improving the legal provisions.

The study also used special legal methods, namely formal legal and system-structural methods, which were used in the development and study of the terminology of this study, specifically upon clarifying the content of the categories “martial law”, “state of emergency”, as well as to cover the features of the definition of these legal categories in different modern countries.

The regulatory framework for this study includes the Constitutions of foreign countries that establish the legal grounds for the legal restriction of human rights, namely the Constitution of the Republic of Macedonia of November 17, 1991¹, the Constitution of the Republic of Armenia of November 27, 2005², the Constitution of the Republic of Belarus of March 15, 1994³, the Constitution of the Republic of Moldova of July 29, 1994⁴, the Constitution of Georgia of August 24, 1995⁵, the Constitution of the Republic of Latvia⁶, the Constitution of the Republic of Lithuania⁷, the Constitution of the Republic of Albania⁸, the Constitution of the Republic of Azerbaijan⁹. In addition, the paper used doctrinal sources that cover the content of constitutional legal regulation of human rights restrictions.

2. RESULTS AND DISCUSSION

The legal regime is a meaningful legal phenomenon that connects an integral set of legal provisions. The analysis of the constitutions of foreign countries demonstrates that most of them consolidate the possibility of restricting human and civil rights and freedoms in conditions of emergency and martial law. Notably, the scope of such restrictions is almost the same for both the martial law regime and the state of emergency. Based on the results of a comparative analysis, the identified various approaches to the procedure for determining the scope of restrictions on human and civil rights and freedoms under special regimes stipulated in the constitutions of foreign states, which include four prevailing trends:

2.1. Consolidation of an exhaustive list of rights and freedoms in the constitutions, which cannot be restricted (terminated) during a state of emergency and martial law.

Thus, Article 54 of the Constitution of the Republic of Macedonia of November 17, 1991¹⁰ stipulates that the freedom and rights of a person and citizen may be restricted only in cases defined by the Constitution. The freedom and rights of a person and citizen may be restricted during a state of war or a state of emergency in accordance with the provisions of the Constitution. Restrictions on freedoms and rights may not result in discrimination based on gender, race, colour, language, religion, national, or social origin, property, or social status. Restrictions may not apply to the right to life, the prohibition of torture, inhuman and degrading treatment and punishment, the legal definition of punishable crimes and sentences, or the freedom of personal opinion, conscience, thought, and religious beliefs.

The work on the text of the Constitution of Republic of Macedonia began before the collapse of socialist Yugoslavia in 1991 [3, p. 219]. The most important dispute in the drafting of the Constitution was related to the description of Macedonia as a “state of citizens” (all citizens enjoy equal rights) or as a “national state” (privileges are granted to Macedonians over other groups of nationalities living in the country) [4, p. 108]. The drafters of the Constitution applied a compromise formula, defining the country as national in the preamble and consolidating equal rights and obligations of all nationalities in the text. This regulation retains the name “Constitution of the Republic of Macedonia” despite the change in the country's name (originally – the Former Yugoslav Republic of Macedonia, then – North Macedonia). The changes are explained

1. Constitution of the Republic of Macedonia. (1991, November). Retrieved from https://www.sobranie.mk/the-constitution-of-the-republic-of-macedonia-ns_article-constitution-of-the-republic-of-north-macedonia.nspix.
2. Constitution of the Republic of Armenia. (2005, November). Retrieved from <https://www.president.am/en/constitution-2005/>.
3. Constitution of the Republic of Belarus. (1994, March). Retrieved from <http://by-law.narod.ru/index02.html>.
4. Constitution of the Republic of Moldova. (1994, July). Retrieved from <http://www.presedinte.md/titul2#2>.
5. Constitution of Georgia. (1995, August). Retrieved from <https://matsne.gov.ge/ru/document/view/30346?publication=36>.
6. Constitution of the Republic of Latvia. (1922, February). Retrieved from <https://likumi.lv/doc.php?id=57980>.
7. Constitution of the Republic of Lithuania. (1992, October). Retrieved from https://www.lrs.lt/home/Konstitucija/Konstitucija_RU.htm.
8. Constitution of the Republic of Albania. (1998, November). Retrieved from <https://www.parlament.al/Files/sKuvendi/kushtetuta.pdf>.
9. Constitution of the Republic of Azerbaijan. (1995, November). Retrieved from <https://mincom.gov.az/ru/view/pages/13/>.
10. Constitution of the Republic of Macedonia. (2019, January). Retrieved from https://www.sobranie.mk/the-constitution-of-the-republic-of-macedonia-ns_article-constitution-of-the-republic-of-north-macedonia.nspix.

by the political and legal conflict between Macedonia and Greece, where the latter “insists on its ownership of the copyright to the name “Macedonia” [5, p. 288]. The Former Yugoslav Republic of Macedonia was the official name used since 1993 in the UN [6, p. 144]. In 2018, the governments of Greece and the Republic of Macedonia came to a consensus on the name of the country, as a result of which the Macedonian party changed its name to the Republic of North Macedonia.

Article 44 of the Constitution of the Republic of Armenia¹ establishes that some fundamental human and civil rights and freedoms – except for those referred to in Articles 15, 17-22, and 42 of the Constitution – may be temporarily restricted, as provided by law, during martial law or a state of emergency, within the scope of international obligations assumed to derogate from obligations in emergencies.

The Constitution of the Republic of Armenia was amended in 2005 [7, p. 61]. The changes were a prerequisite for the development of a new judicial system in the country. The effectiveness and efficiency of judicial protection is a guarantee of the inviolability of human rights under special regimes. The judicial code, which summarises all approaches and principles of the judicial system and which is designed to ensure judicial and legal reforms, is a unique document that has no world analogues [8, p. 311]. The new judicial system of Armenia recognises case law, the same resolution of judicial disputes in cases with similar factual circumstances. The source of case law in Armenia considers the decisions of the European Court of Human Rights and the Court of Cassation of Armenia [9, p. 23].

According to Articles 23 and 63 of the Constitution of the Republic of Belarus², restriction of individual rights and freedoms is allowed only in cases stipulated by law, in the interests of national security, public order, protection of morals, public health, and the rights and freedoms of others. The exercise of the rights and freedoms of the individual stipulated in this Constitution may be suspended only under conditions of a state of emergency or martial law, in accordance with the procedure and limits defined by the Constitution and law. When implementing particular measures during a state of emergency, the rights stipulated in Article 24, Part 3, Article 25, Articles 26 and 31 of the Constitution may not be restricted.

The mechanism for implementing the institution of restriction of human rights in the interests of the state in the Republic of Belarus is becoming particularly important in 2020 in the presidential elections of the country for the 6th term of office. As noted by M. Briusys, O. Lukashenko

has been the country's president for 26 years. This means that he has been in power in the post-Soviet space longer than the current de facto ruling heads of state, except for Emomali Rahmon in Tajikistan. In international comparison, the regime in Belarus has outlived other regimes by 7-23 years, depending on which typology is used for comparison [10, p. 150].

Article 35 of the Constitution of the Republic of Belarus³ guarantees freedom of assembly. However, according to M. Rokhav, this right is violated, which suggests that the Constitution is a formality. This feature is often found in authoritarian regimes, but it becomes particularly important for personalist regimes, where the ruler can break the rules according to their will [11, p. 131].

According to the European Union Human Rights Report⁴, “the most commonly used tool of the regime's rule in Belarus is “soft” repression: these are restrictions that are designed to pre-emptively prevent the opposition from gaining influence on social processes in the country. The regime systematically restricts freedom of assembly, expression, and association”. When determining the significance and level of influence of peaceful assemblies of people on the development of a democratic regime in the country, it is worth referring to the opinion of E. Chenovich, who justified the interrelation between the democratic struggle for power and the active, voluntary participation of the country's population in elections using the example of the law of physics: momentum is equal to mass multiplied by speed ($p = mv$). It approximates the law of physics and assumes that the impulse of disagreement of citizens with the current political and legal regime is the product of the participation of citizens (mass) and the number of protest actions per week (speed) [12, p. 1090]. That is, systematic illegal and undemocratic restrictions on freedom of assembly and expression in a particular country ultimately determine the absence of any influence of the country's population on the political and legal authorities of the country.

Article 6 of the Law of the Republic of Belarus “On Mass Events in the Republic of Belarus” also draws attention to itself⁵, imposing the obligation to pay for state functions to maintain law and order during meetings carried out by law enforcement agencies of state authorities on civil society institutions. Thus, the decision to allow or prohibit holding a mass event of the head of the local executive and administrative body is made considering the payment for public order protection services provided by the internal affairs bodies, expenses related to medical care, cleaning the territory after holding a mass event on it.

Article 54 of the Constitution of the Republic of

1. Constitution of the Republic of Armenia. (2005, November). Retrieved from <https://www.president.am/en/constitution-2005/>.

2. Constitution of the Republic of Belarus. (1994, March). Retrieved from <http://by-law.narod.ru/index02.html>.

3. *Ibidem*, 1994.

4. Human rights in Belarus: The EU's role since 2016. (2018, June). Retrieved from [www.europarl.europa.eu/RegData/etudes/STUD/2018/603870/EXPO_STU\(2018\)603870_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2018/603870/EXPO_STU(2018)603870_EN.pdf).

5. Law of the Republic of Belarus No. 114-3 “On Mass Events in the Republic of Belarus”. (1997, December). Retrieved from https://kodeksy-by.com/zakon_rb_o_massovyh_meropriyatiyah.htm.

Moldova¹ establishes that laws prohibiting or diminishing human and civil rights and fundamental freedoms cannot be adopted in the Republic of Moldova. The exercise of rights and freedoms is not subject to any restrictions other than those stipulated by law, comply with generally recognised provisions of international law and are necessary in the interests of national security, territorial integrity, economic well-being of the country, public order, to prevent mass disorder and crime, to protect the rights, freedoms, and dignity of others, to prevent the disclosure of information obtained confidentially, or to maintain the authority and impartiality of justice. These provisions do not allow restrictions on the rights proclaimed in Articles 20-24 of the Constitution.

The issue of restricting human rights in the Republic of Moldova under special legal regimes is becoming relevant in the context of the existence of the self-proclaimed Pridnestrovian Moldavian Republic on the territory of the state, unrecognised by the international community. Thus, in the case of *Ilaşcu and others v. Moldova and Russia*², the applicants submitted that they had been convicted by the Pridnestrovian Court, which had not had the relevant powers to carry out proceedings under Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms³, the proceedings had not been fair, resulting in deprivation of property, which was in breach of Article 1 of Protocol No. 1; their detention in Transnistria had not been lawful, which was in breach of Article 5 of the Convention and the conditions of their detention had been contrary to Articles 3 and 8 of the Convention; there had been a violation of Article 2 of the Convention due to his conviction to death. The applicants submitted that the Moldovan authorities were responsible under the Convention for the alleged violations of the rights vested in them because they had not taken any proper measures to put an end to them, the Russian Federation shared the responsibility as the territory of Transnistria had actually been and still is under Russian control due to the Russian troops and military equipment stationed there.

The European Court of Human Rights has noted that Member States must be held accountable for any violations of the rights and freedoms protected by the convention committed against persons under their “jurisdiction”. The extension of jurisdiction is a necessary condition for the state to be held accountable for actions or inaction that cause violations of human and civil rights and freedoms. The concept of jurisdiction is interpreted in the sense of a term used in public international law⁴. From the standpoint of public international law, the phrase “within their jurisdiction” should be interpreted as the territorial jurisdiction

of a state, which implies the jurisdiction of a state throughout its territory. The said presumption may contain an exception under special circumstances, in particular when a state is deprived of the right to exercise its powers in part of its territory. This may be the result of military occupation by the armed forces of another state effectively controlling the territory concerned, acts of war or insurrection, or acts of a foreign state supporting the establishment of a separatist state on the territory of the state concerned.

The European Court of Human Rights emphasises the superiority of the territorial principle of jurisdiction in the application of the Convention for the Protection of Human Rights and Fundamental Freedoms⁵, however, when solving particular cases, it is not necessarily limited to the national territory of states, since in exceptional circumstances the actions of states committed outside their territory or giving rise to consequences there, may indicate that they exercise their jurisdiction under Article 1 of the Convention.

According to the principles of international law, the responsibility of a state can be provided for if, because of military actions (legal or illegal), it exercises in practice effective control over a territory found outside its national territory. The obligation to ensure human and civil rights and freedoms within the specified territory comes from the fact of such control, regardless of whether it is carried out directly through its armed forces or through a subordinate local administration.

2.2. Consolidation of an exhaustive list of rights and freedoms in the constitution, which may be restricted during a state of emergency and martial law to protect human rights, the democratic structure of the state, public safety, the well-being of the population and morals.

Thus, Part 4, Article 71 of the Constitution of Georgia⁶ stipulates that during a state of emergency or martial law, the President of Georgia has the right to restrict by decree the rights listed in Articles 13, 14, 15, 17, 18, 19, 21, and 26 of the Constitution in the country or any part of it. During a state of emergency or martial law, the President of Georgia has the right to suspend by decree the operation of Paragraphs 2-6, Article 13; Paragraph 2, Article 14; Paragraph 2, Article 15; Paragraphs 3, 5, and 6, Article 17; Paragraph 2, Article 18; and Paragraph 3, Article 19 of the Constitution in the country or any part of it. The President of Georgia immediately submits the decree provided for in this paragraph to Parliament for approval. The decree on restriction of the rights comes into force immediately after its publication, and the decree on suspension of the provision – immediately after its approval by the Parliament.

V. Napetvaridze and T. Tskhovrebadze, analysing

1. Constitution of the Republic of Moldova. (1994, July). Retrieved from <http://www.presedinte.md/titul2#2>.

2. Case of *Ilaşcu and others v. Moldova and Russia*. (2004, July). Retrieved from <https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%22248787/99%22%5D%22itemid%22:%5B%222001-61886%22%5D%7D>.

3. Convention for the Protection of Human Rights and Fundamental Freedoms. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004#Text.

4. Case of *Ilaşcu and others v. Moldova and Russia*, op. cit.

5. Convention for the Protection of Human Rights and Fundamental Freedoms, op. cit.

6. Constitution of Georgia. (1995, August). Retrieved from <https://matsne.gov.ge/ru/document/view/30346?publication=36>.

the process of adopting the Constitution of Georgia from the standpoint of discourse ethics, used the tool of the discourse quality index in accordance with the criteria developed by Jurgen Habermas [13, p. 311]. This methodology focuses on observing the behaviour of participants in the discourse, which allows measuring the quality of political debates. Within the framework of the study, the researchers investigated and analysed over 200 pages of verbatim records of the parliamentary debate on the adoption of the Constitution of Georgia in 1995.

The Constitution of Georgia of 1995 is the legal successor of the 1921 Constitution, which stipulated the mandatory referendum on constitutional issues. Due to the activities of self-proclaimed governments in the Tskhinvali region and Abkhazia, the Georgian government failed to hold a referendum. The topic of the referendum was the main cause of controversy during the debate in the Georgian parliament. One group of parliamentarians argued that the Constitution could not be adopted in violation of the 1921 Constitution. The second group argued for the necessity of adopting the Constitution by the Parliament, since the restoration of the country's independence encourages the adoption of the Fundamental Law of the state, which would guide the future development of the state. On August 24, 1995, the Parliament of Georgia adopted a new Constitution of Georgia.

G. Gabrichidze and his colleagues, analysing the so-called Foundations of the “constitutional” and “legal” system of individual unrecognised subjects on the territory of Georgia and Ukraine, claim that the “constitutional” orders in these “republics” are described by indisputable similarities, and residents of these entities have the same problems regarding the protection of their fundamental rights and the application of international conventions to them [19, p. 93].

According to Article 116 of the Constitution of the Republic of Latvia¹, human rights established by Articles 96, 97, 98, 100, 102, 103, 106, and 108 of the Constitution, may be restricted in cases stipulated by law to protect the rights of others, democratic state structure, public security, prosperity, and virtues. The expression of religious beliefs may also be restricted based on the conditions set out in this Article.

In Latvia, national security issues are governed by the Law “On National Security”², which defines the national security system and its tasks. The specified law defines the competence of the Parliament (Seimas), the Cabinet of Ministers and the President of the state, individual ministries, and self-government bodies regarding discrediting actions to maintain law and order. The Constitution of the Republic of Latvia does not state *exresis verbis* that the legitimate purpose of restricting fundamental human and civil rights is to ensure national or state security. But if one looks at the

practice of the Constitutional Court of the Republic of Latvia, they can see that the court has identified the protection of state security as a legitimate purpose of restricting rights, along with protecting the democratic structure of the state.

As noted by the head of the Constitutional Court of the Republic of Latvia A. Lavinis, if there is a legitimate purpose of restricting fundamental rights, then the Constitutional Court must perform its special task of weighing, on the one hand, a specific restricted right, and on the other hand, national security [20]. Thus, in case No. 2004-14-01 of December 6, 2004³, the Constitutional Court of the Republic of Latvia noted that to use public safety as a lawful purpose of legal regulation, the legislator had to objectively justify the existing or potential link between the adoption of an act and the elimination or reduction of a security threat. Taking this position, the court ruled out the possibility of the legislator to “hide” behind unfounded references to national security.

In this case, the Constitutional Court of the Republic of Latvia, recognising the restriction as disproportionate, and the refuted provision as unconstitutional, pointed out to the legislator that the reference to the interests of national security was unfounded. The case was related to the institution of migration, which is currently of great interest in European countries due to the desire of citizens of less developed countries to obtain permanent residence in legal, democratic, and social states with an elevated level of economic development. The legal provision contested before the Constitutional Court was part of the Law “On Immigration”⁴ and provided that the decision of the Minister of Foreign Affairs and the Minister of the Internal Affairs to include a person in the list of persons for whom entry to the Republic of Latvia is prohibited was not amenable to appeal. Thus, the legislator restricted the human right to a fair trial, pointing out that the purpose of the provision is to protect state and national security, as well as to create quick and effective means for situations where state and public security is at risk. Furthermore, as the legislator noted, this is necessary not only to protect state and public security, but also to prevent the disclosure of information with restricted access⁵.

Referring to the practice of the European Court of Human Rights, the Constitutional Court of the Republic of Latvia confirmed that it was within the competence of the state to determine the procedure for controlling the entry and residence of foreigners, and especially to regulate the expulsion of foreigners found guilty of a criminal offence. This refers to the case of *C. v. Belgium* No. 35/1995/541/627, of May 26, 1996⁶.

The Constitutional Court, assessing within the framework of the case the balancing exercise between the interests of protecting national security and the impact on the

1. Constitution of the Republic of Latvia. (1922, February). Retrieved from <https://likumi.lv/doc.php?id=57980>.

2. Law of Latvia “On National Security”. (2002, May). Retrieved from <https://likumi.lv/ta/en/en/id/14011-national-security-law>.

3. Judgment of the Constitutional Court of the Republic of Latvia “On the Compliance of Section 61, Paragraph Six of the Law “On Immigration” with Article 92 of the Constitution of the Republic of Latvia”. (2004, December). Retrieved from <https://likumi.lv/ta/id/97554>.

4. Law of Latvia “On Immigration”. (2003, July). Retrieved from <https://likumi.lv/ta/en/en/id/68522>.

5. Judgment of the Constitutional Court of the Republic of Latvia “On the Compliance of Section 61, Paragraph Six of the Law “On Immigration” with Article 92 of the Constitution of the Republic of Latvia”, op. cit.

6. Judgment of European Court of Human Rights in the case “*C. v. Belgium* No. 35/1995/541/627”. (1996, May). Retrieved from <https://www.refworld.org/cases,ECHR,3f3266b04.html>.

applicant's right of access to a court, not only determined the limits of the legislator's discretion, but also made several important findings:

– firstly, the court pointed out that a democratic society had the right to national security;

– secondly, internal security services should be empowered to fulfil their legitimate purpose of protecting national security, but they should not be given an uncontrolled opportunity to violate fundamental rights and freedoms. Therewith, the court recognised the need for procedural restrictions on human rights to prevent the leakage of information that harms national security and noted the breadth of the scope of discretionary powers of the executive branch in matters of national security;

– thirdly, the court recognised that the limits of the exercise of the right to a fair trial can be narrowed in cases related to national security. However, the complete exclusion of remedies cannot be justified, and the authorities cannot be exempted from effective control by the judiciary when they claim that a case involves national security and terrorism.

Under Article 145 of the Constitution of the Republic of Lithuania¹, when martial law or a state of emergency is imposed, the rights and freedoms specified in Articles 22, 24, 25, 32, 35, and 36 of the Constitution may be temporarily restricted. According to Article 25 of the Constitution of the Republic of Lithuania, everyone has the right to have their beliefs and express them freely. No one should be hindered from finding, receiving, or distributing information and ideas. Freedom of expression, as well as the right to receive and impart information, may not be restricted except by law, when it is necessary to protect a person's health, honour, or dignity, private life or morals, or for protecting the constitutional order. Freedom of expression of belief and the right to impart information are incompatible with criminal acts – incitement to national, racial, religious, or social hatred, incitement to violence or discrimination, and slander and misinformation.

The interpretation of the content of the specified Article is provided in the decision of the Constitutional Court of the Republic of Lithuania of 16 May 2019 “On the Compliance of the Decision of the Seimas of the Republic of Lithuania of January 12, 2018 on the Establishment of a Special Investigative Commission of the Seimas of the Republic of Lithuania and the Obligation to Conduct a Parliamentary Investigation of the Lithuanian National Radio and Television and Its Financial and Economic Activities

with the Constitution of the Republic of Lithuania”². Notably, the Constitutional Court of the Republic of Lithuania exercised a considerable influence on the development of a democratic state governed by the rule of law, the formation of legal practice and legal doctrine of the country [21, p. 234].

The Constitutional Court of the Republic of Lithuania stressed that the provisions of Article 25 of the Constitution represent the constitutional basis of freedom of information, which is inseparable from the constitutional freedom of belief and expression and is a condition of the latter. Consequently, the right of a person to have their beliefs and express them freely (freedom of belief and expression) and the freedom to look for, receive, and disseminate information and ideas (freedom of information) are directly related.

Interpreting the content of freedom of information as the innate freedom of the individual, the Constitutional Court held that this freedom was one of the foundations of an open, just, and harmonious civil society and a democratic state, and an important prerequisite for the exercise of human rights and freedoms stipulated in the Constitution, since a person could fully exercise most of their constitutional rights and freedoms only if they could freely seek, receive, or transmit information, which, in particular, is realised through freedom of the media³. In this context, Lithuania is a pluralistic democracy, and freedom of the media is one of its foundations. The content of media freedom is based on the constitutional principle of diversity of sources of public information⁴.

The public's interest in proper information presupposes the corresponding constitutional obligations of the state. The state (its institutions and officials) bears not only a duty of negative content not to obstruct the free flow of information and ideas, but also a duty of positive content to take all necessary measures so that, firstly, other persons do not obstruct such activities, secondly, the media engage in their mission in accordance with the fundamental values of a democratic society in a state governed by the rule of law. Proceeding from this, the state should have proper mechanisms for monitoring the activities of media because the latter have a great influence on society, which can threaten national security, public order, and the legitimate interests of society. Consequently, the freedom of the media is not absolute, there is a possibility of their control as far as other constitutional obligations allow, such freedom does not negate parliamentary control over the media.

2.3. Combination of the first two options for consolidating restrictions in the text of the Constitution.

1. Constitution of the Republic of Lithuania. (1992, October). Retrieved from https://www.lrs.lt/home/Konstitucija/Konstitucija_RU.htm.

2. Decision of the Constitutional Court of the Republic of Lithuania. (2019, May). Retrieved from <https://www.lrkt.lt/en/court-acts/search/170/ta1942/content>.

3. Ruling “On the Compliance of Article 8 and Paragraph 3, Article 14 of the Republic of Lithuania’s Law on the Provision of Information to the Public with the Constitution of the Republic of Lithuania”. (2002, October). Retrieved from <https://www.lrkt.lt/en/court-acts/search/170/ta1212/content>.

4. Resolution “On the compliance of Paragraph 5, Article 5 (wording of June 29, 2000), Paragraphs 1, 3, and 4 of Article 6 (wording of June 29, 2000), Paragraph 1, Article 10 (wording of June 29, 2000), Paragraphs 1 and 2, Article 15 (wording of June 29, 2000) of the Law of the Republic of Lithuania on National Radio and Television of Lithuania and Paragraph 4, Article 31 (wording of August 29, 2000) of the Law of the Republic of Lithuania on the Provision of Information to the Public Under the Constitution Republic of Lithuania”. (2006, December). Retrieved from <https://www.lrkt.lt/en/court-acts/search/170/ta1325/content>.

Under Article 175 of the Constitution of the Republic of Albania¹, during a state of war or emergency, the rights and freedoms stipulated in Articles 15; 18; 19; 20; 21; 24; 25; 29; 30; 31; 32; 34; 39, Paragraph 1; 41, Paragraphs 1, 2, 3 and 5; 42; 43; 48; 54; 55 cannot be limited. In case of a natural disaster, the rights and freedoms stipulated in Articles 37; 38; 41, Paragraphs 4; 49; 51 may be restricted. Acts declaring a state of war, emergency, or natural disaster should indicate the rights and freedoms that are restricted.

Albania recognised COVID-19 as an emergency and applied the *rebus sic stantibus* principle [22, p. 53], which indicates the impossibility of performing international contractual obligations due to substantial changes and leads to the suspension of the international human rights treaty. This principle allows the treaty to become unusable due to fundamental changes in circumstances. In the international public domain, this principle is an exemption clause from the general rule *pacta sunt servanda* (promises must be fulfilled).

The suspension of international treaties is stipulated by the law of the Republic of Albania on international agreements, which states that a country can temporarily suspend the implementation of relevant international agreements in relations with other subjects of international law but must always do so in accordance with the provisions of international law. Therewith, international, governmental, and interdepartmental agreements differ. Agreements are signed on behalf of Albania by the President of the Republic, or any person authorised by him/her, intergovernmental agreements are signed by the Prime Minister, and interdepartmental agreements are signed by the head of the corresponding institution. International treaties are suspended in the same form and by the same person, who, depending on the type of agreement and its nature, has the authority to sign.

The internal procedure involves putting forward a proposal by the competent ministry to suspend an international agreement, which is accompanied by a draft law or decision on suspension and an explanatory report explaining the reasons for the suspension. The consent of the Ministry of Foreign Affairs and the Ministry of Justice is obtained separately. Agreements dealing with European Union issues require the consent of the Ministry of European Integration.

Notably, Albania used the right to suspend international treaties for the second time after 1997, when there were riots and armed uprisings and the overthrow of the state regime in the country.

2.4. Consolidation of the possibility of state authorities to restrict individual rights and freedoms in the texts of constitutions under special legal regimes in the interests of national security, without specifying particular

rights and freedoms that may (or may not) be restricted. Consolidation of the list of rights that may or may not be restricted is usually established by special provisions of sub-legislative acts of state authorities. Notably, consolidation of the list of human and civil rights and freedoms in the texts of solely sub-legislative acts provides an opportunity for abuse of the right by state authorities, which in practice can lead to violations of human and civil rights and freedoms.

Thus, Part 3, Article 71 of the Constitution of the Republic of Azerbaijan² establishes that when declaring war, a state of war and a state of emergency, as well as mobilisation, the exercise of human and civil rights and freedoms may be partially and temporarily restricted, considering the international obligations of the Republic of Azerbaijan. The rights and freedoms whose exercise is restricted are notified to the population in advance.

In the Judgment of the European Court of Human Rights in the case of Chiragov and others v. Armenia of June 16, 2015³, the issue of human rights was raised in Nagorno-Karabakh, which today is de jure a recognised part of Azerbaijan, but before such recognition was actually controlled by Armenia and was called the “Nagorno-Karabakh Republic” [23, p. 3840]. In this decision, the court referred to the provisions on the laws and customs of warfare on land, the so-called Hague Regulations (The Hague, October 18, 1907)⁴ and noted that the territory is considered occupied when it is actually transferred to the power of the enemy army. Accordingly, occupation, in the interpretation of The Hague Regulations of 1907, exists when a state exercises effective power over the territory or part of the territory of a hostile state. The term “de facto power” is considered synonymous with the term “effective control”⁵. Military occupation is referred to, in particular, when foreign troops are present on the territory or part of the territory, which capable of exercising effective control without the consent of a sovereign state. Accordingly, the European Court of Human Rights recognised the authority to ensure human rights by the Armenian side in the territory of the “Nagorno-Karabakh Republic”, applying the principle of hybrid control and found that the Republic of Armenia, due to its military presence and provision of military equipment, took part in the conflict in Nagorno-Karabakh. It is this military support that has been and remains the decisive factor for conquering and maintaining permanent control over the territory. Furthermore, the budget of the “Nagorno-Karabakh Republic” was formed at the expense of sources of the Republic of Armenia, that is, there is a monetary impact involved. Consequently, the European Court of Human Rights recognised Armenia's obligation to ensure respect for human rights in this territory.

1. Constitution of the Republic of Albania. (1998, November). Retrieved from <https://www.parlament.al/Files/sKuvendi/kushtetuta.pdf>.

2. Constitution of the Republic of Azerbaijan. (1995, November). Retrieved from <https://mincom.gov.az/ru/view/pages/13/>.

3. European Court of Human Rights (ECHR). Case of Chiragov and Others v. Armenia. (2015, June). Retrieved from <http://www.refworld.org/cases,ECHR,5582d29d4.html>.

4. Regulations on the Laws and Customs of War on Land. (1907, October). Retrieved from https://zakon.rada.gov.ua/laws/show/995_222#Text.

5. European Court of Human Rights (ECHR). Case of Chiragov and Others v. Armenia, op. cit.

CONCLUSIONS

National security issues are governed at the constitutional level, the Fundamental Law of each state defines the national security system and its tasks, the competence of the Parliament, the President of the state, the executive body, individual ministries, and self-government bodies. As the analysis of political and legal relations in different countries of the world has demonstrated, the regulation of the rights and obligations of subjects of law becomes particularly important after the emergence of a military conflict on the territory of a particular state. In this regard, the process of implementing human and civil rights requires more imperative methods of regulation, justifiably takes the form of an emergency procedure for regulating public relations, sometimes relying on means of coercion.

Therewith, legal provisions and actions of executive state and local self-government bodies cannot avoid control by the judiciary if such a provision or action encroaches on the legitimate interests of a person. The judiciary in general and its constituent parts in particular must guarantee control over the other two branches of government. The Constitutional Court of countries, assessing the compliance of laws with the Constitution, implements the principle of the supremacy of the Constitution, thereby ensuring constitutional

justice. Courts are competent to verify the lawfulness and constitutionality of decisions taken by other branches of government in cases where such decisions are related to national security.

National security and human rights come into conflict when restrictions on fundamental rights are imposed in the interests of public safety. The task of state and local government bodies in such cases is to ensure a balance between the protection of fundamental rights, on the one hand, and national (state) security, on the other hand. Fundamental rights can only be restricted if there is a legitimate purpose for such restriction. Several articles of the Convention for the Protection of Human Rights and Fundamental Freedoms refer to national security as a legitimate purpose for which it is permissible to restrict certain rights. Only the protection of constitutional values can be the legitimate purpose of restricting fundamental rights. The rights of persons stipulated in the Constitution may be subject to restrictions in the circumstances provided for by law, in order to, firstly, protect the rights of others, secondly, protect the democratic structure of the state, and thirdly, protect public safety, welfare, and morality.

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Oleksandr M. Bukhanevych

Doctor of Law, Professor
National Academy of Legal Sciences of Ukraine
61024, 70 Pushkinska Str., Kharkiv, Ukraine

Corresponding Member of the National Academy of Sciences of Ukraine
Professor of the Department of Constitutional, Administrative and Financial law
Leonid Yuzkov Khmelnytsky University of Management and Law
29000, 8 Heroyiv Maydanu Str., Khmelnytskyi, Ukraine

Serhii O. Kuznichenko

Doctor of Law, Professor
National Academy of Legal Sciences of Ukraine
61024, 70 Pushkinska Str., Kharkiv, Ukraine

Corresponding Member of the National Academy of Sciences of Ukraine
Vice-Rector of the National Academy of Internal Affairs
03035, 1 Solomyanska Sq., Kyiv, Ukraine

Anastasiia M. Mernyk

Candidate of Law, Associate Professor
Assistant of the Department of Theory and Philosophy of Law
Yaroslav Mudryi National Law University
61024, 77 Pushkinska Str., Kharkiv, Ukraine

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