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ВІДНОСНІ ПРАВА ЛЮДИНИ В УМОВАХ ОСОБЛИВИХ ПРАВОВИХ РЕЖИМІВ

Анотація. *У статті досліджуються права людини, які можуть бути обмежені в умовах надзвичайного та воєнного станів, що є актуальним в умовах сучасності, виходячи з наявності локальних воєнних конфліктів, ситуацій надзвичайного стану або можливості їх існування в багатьох країнах світу. Мета роботи полягає у з'ясуванні основних особливостей різних видів прав людини, що підлягають обмеженню в умовах особливих правових станів, висвітленні характерних порушень з боку органів державної влади та місцевого самоврядування при застосуванні того чи іншого виду обмежень. Для досягнення поставленої мети у роботі використовується система методів наукового пізнання, зокрема загальнонаукові, приватні, а також спеціально-юридичні. Практична цінність дослідження полягає у здійсненні класифікацій прав людини за критерієм можливості їх обмеження в умовах особливих правових режимів. Так, під час дії особливих правових режимів тимчасово можуть обмежуватися такі права людини і громадянина: право на свободу та особисту недоторканність, право на житло, право на приватність, право на особисте та сімейне життя, свобода пересування, свобода думки, свобода на вільне вираження своїх поглядів і переконань, право брати участь у референдумах, право обирати і бути обраними, право на мирне зібрання, право на власність, право на працю та свободу підприємницької діяльності, право на освіту, право на захист персональних даних. Зроблено висновок, що в умовах особливих правових режимів існує велика кількість прав людини, що є відносиними, не абсолютними, і можуть бути обмеженні державою та її органами, місцевою владою. Проте, для того, щоб такі обмеження були правомірними, відповідали принципу верховенста права, визнавалися допустимими вони повинні відповідати певним критеріям: мають передбачатися законом; не повинні торкатися основного змісту права; мають бути розмірними поставленій меті (принцип пропорційності); здійснюватися в законних цілях, перелік яких є вичерпним і не підлягає розширенню*

Ключові слова: *правовий режим, обмеження прав, право на особисту недоторканність, свобода пересувань, право на житло, свобода релігії*

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RELATIVE HUMAN RIGHTS IN THE CONDITIONS OF SPECIAL LEGAL REGIMES

Abstract. *The article examines the human rights that may be limited in conditions of emergency and martial law, which is relevant in modern conditions, based on the presence of local military conflicts, states of emergency or the possibility of their existence in many countries. The purpose of the work is to clarify the main features of different types of human rights that are subject to restrictions in special legal situations, highlight the specific violations by public authorities and local governments in the application of certain types of restrictions. To achieve this goal, the work uses a system of methods of scientific knowledge, including general, private, and special legal. The practical value of the study lies in the implementation of classifications of human rights on the criterion of the possibility of their restriction in the context of special legal regimes. Thus, during the operation of special legal regimes, the following human and civil rights may be temporarily restricted: the right to liberty and security of person, the right to housing, the right to privacy, the right to private and family life, freedom of movement, freedom of thought, freedom to freely express one's views and beliefs, the right to participate in referendums, the right to vote and to be elected, the right to peaceful assembly, the right to property, the right to work and freedom of entrepreneurial activity, the right to education, the right to personal data protection. It is concluded that in the conditions of special legal regimes there is a large number of human rights, which are relations, not absolute, and may be limited by the state and its bodies, local authorities. However, in order for such restrictions to be lawful, consistent with the rule of law, and recognized as admissible, they must meet certain criteria: they must be provided for by law; should not affect the basic content of the law; must be dimensional to the goal (principle of proportionality); be carried out for lawful purposes, the list of which is exhaustive and not subject to expansion*

Keywords: *legal regme, restriction of rights, right to personal inviolability, freedom of movement, right to housing, freedom of religion*

INTRODUCTION

In modern society, there are many factors and criteria by which members of society differ and, as a result, distance themselves from each other. However, the challenges of nature in the form of insurmountable catastrophes (fires, floods, global warming, environmental threats, pandemics, etc.) and artificial threats to humanity (military conflicts, riots, man-made disasters, weapons of mass impression, etc.) forces humanity to seek unifying tools for the common good and world peace. Human rights are becoming such a unifying tool today. Those rights that everyone would have, being in a state of state, were called natural. These rights are not limited by anything and are the same for everyone. In the transition to civil status, people, mutually (by agreement) renouncing a number of their natural rights, pass on the benefits of their use to the whole society. These include rights, the exercise of which, even in the natural state, is not entirely in the power of man. These are mainly rights related to security and protection.

If possible, legitimate restrictions on human rights are divided into absolute and relative. Absolutes are not subject to restrictions under any circumstances (the right not to be held in slavery, the right not to be subjected to torture, other ill-treatment or punishment, the right not to be held responsible for acts not considered a crime at the time). Relative rights may be restricted if such restrictions are required by law, are necessary in a democratic society, and pursue a legitimate aim (protection of state security, public order, health,

morals, rights and freedoms of others). Moreover, the proportionality of the restriction of the right must be ensured [1, p. 303]. This classification is largely conditioned upon the problem of legal understanding, which is the dispute between legal positivism and natural law. In general, the discussion has not yet found its logical conclusion, because neither positivism nor natural law can fully embrace the idea of justice. Modern legal science is in constant search of an internally consistent concept of legal understanding, which has an integrative effect, capable of understanding the true essence of law. Integration jurisprudence can play such a role, as it has room for the conceptual positions of each of the known types of legal understanding. It creates a unique field for scientific dialogue, where the fierce conflict of supporters of different types of understanding of law is overcome and a tolerant environment is formed to defend their positions on the essence of law. Based on the integrative approach, we will try to find an answer to the question of which human rights may be limited in conditions of special legal status, and which – not.

Restriction of human freedom occurs under such conditions as violation of individual rights or arbitrariness in relation to others, ensuring the protection of society, the implementation of the preventive function of the state [2, p. 2452]. All these restrictions are clearly regulated at the level of legislation and cannot go beyond the established limits. In this context, special attention should be paid to the category of freedom. The value of freedom in its various manifestations is one of the most important determinants of human existence. However, the path to freedom is not the path to permissiveness. Each of the concepts differently assessed the role of the state in ensuring the functioning of society, but it is based on the idea of freedom as one of the most important values of the individual. Therefore, freedom should be understood not only as an abstract social value, but as a property of social relations, the legal order of which provides that the benefit of freedom for man – is not only his rights but also certain duties and responsibilities to others, society and state.

Legal restriction of freedom is defined as a deviation from the principles of legal equality by narrowing the scope of rights and freedoms or expanding the scope of responsibilities of a particular person. In addition, the need for such restrictions cannot be denied, but their scope and validity need attention. Given that state and municipal authorities use discretionary powers to restrict relative human rights in special legal regimes, the relevance of the study of restrictions on human rights in martial law and emergency situations is beyond doubt. 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]. The study of restrictions on human rights and freedoms is an extremely relevant, necessary and important topic, conditioned upon the practical aspect of coexistence of members of society within the state and the global space, when it is necessary to determine how to ensure order in society and which rights can be restricted and which can not. Some aspects of the relativity of human rights became the subject of research O. Petryshyn [1, p. 303], S. Slyvka [4, p. 144], O. Bukhanevych and others. [5], N. Alivizatos [6], R. Ahdar [7], M. Stenlund [8], T. Berners-Lee and M. Fichetti [9], A. Kolganov [10, p. 442], B. Artiukh [11, p. 54] and in other international sources [12].

The purpose of the study is to classify human rights that are subject to restrictions in special legal conditions, to clarify the main features of each of their types, highlight the specific violations by public authorities and local governments in applying certain types of restrictions.

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), including 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 analysis revealed the characteristics and studied some features of the restriction of the right to liberty and security of person, the right to freedom of movement, freedom of expression, the right to housing, the right to personal data protection, the right to education, freedom of religion, access to the Internet. 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. According to the method of generalization, the classification of human rights restrictions in the conditions of special regimes has been formed.

The method of deduction allowed drawing a general conclusion from the doctrinal views of scholars on the characteristics of restrictions on certain types of human rights (rights to liberty and security of person, rights to freedom of movement, freedom of expression, rights to housing, rights to personal data protection,

rights to education, freedom of religion, access to the Internet) in emergencies and martial law. The inductive method of cognition provided an opportunity to obtain a general conclusion about the characteristics of various types of restrictions on relative human rights in emergencies and martial law.

The article also used special legal methods, including formal-legal and system-structural, which were used in the development and study of the terminological apparatus of this issue, namely in clarifying and disclosing the features of legal instruments used to establish law and order under time of special legal regimes and characteristic features of restriction of the right to liberty and security of person. The normative base for this study includes normative legal acts of Ukraine and foreign states, decisions of the European Court of Human Rights, in particular: Code of Ukraine on Administrative Offenses of December 7, 1984 [13], Law of Ukraine "On Police" of October 11, 2011 ([14], Law of Ukraine "On the National Police" of July 2, 2015 [15], Decision of the Constitutional Court of Ukraine on the constitutionality of Article 263 of the Code of Administrative Offenses and paragraph 5 of Part 1 of Article 11 of the Law of Ukraine "On Police" of 11 October 2011 No. 10-rp/2011 [16], Decree of the President of Ukraine No. 393 of 26 November 2018 "On the Imposition of Martial Law in Ukraine" [17], Decision of the Grand Chamber of the Constitutional Court of Ukraine of 23 November 2017 No. 1-r/2017 [18], Judgment of the Constitutional Court of Ukraine of 13 June 2019 No. 4-r/2019 [19], Judgment of the European Court of Human Rights in the case of Lawless v. Ireland (1960) [20], Convention on the Protection of Human Rights and Fundamental Freedoms [21], Judgment of the European Court of Human Rights in Austin and Others v. the United Kingdom [22], Judgment of the European Court of Human Rights in Dogan and Others v. Turkey of 29 June 2004 [23], Resolution of the Cabinet of Ministers of Ukraine No. 211 of March 11, 2020 "On Prevention of the Spread of Acute Respiratory Disease COVID-19 caused by coronavirus SARS-CoV-2" [24], Criminal Code of Ukraine of April 5, 2001 [25], Judgment of the European Court of Human Rights in Mokuti v. Lithuania of 27 February 2018 [26], Judgment of the Constitutional Court of Latvia of 17 October 2005 in No. 2005-07-01 [27], Law of the Republic of Latvia "On State Secrets" of 17 October 1996 [28], Constitution of the Republic of Latvia [29], Law of the Federal Republic of Germany on the Conditions and Procedure for Inspections of the Federal Security Inspectorate [30], NATO Personnel Security Directive No. AC/35-D/2000 of 7 January 2013 [31], Judgment of the European Court of Human Rights "Golder v. the United Kingdom" [32].

2. RESULTS AND DISCUSSION

Human rights are a fundamental and fundamental phenomenon, their detailed study is needed to understand the essence of legal science. However, it is not only legal professionals who need to be aware of the importance and relevance of this phenomenon. Everyone should know and be able to exercise their rights. In democracies, the level of human rights is an indicator of the implementation of the principles of the rule of law, constitutionality and the rule of law. Constitutionally enshrined human rights and the means provided by the Basic Law for their protection are important components of a democratic state governed by the rule of law. At first glance, these rights belong to everyone from birth, they can not be taken away, transferred to another person. But on the other hand, the level of development of modern society, medicine, human consciousness may call into question the categorical nature of the first thesis.

2.1. The right to liberty and security of person

The right to liberty and security of person means the possibility of doing things that do not contradict the law and do not violate certain rules established in society. In the Decision of the Constitutional Court of Ukraine on the constitutionality of Article 263 of the Code of Administrative Offenses of December 7, 1984 [13] and paragraph 5 of the first part of Article 11 of the Law of Ukraine "On Police" of October 11, 2011 No. 10-rp/2011 [14] (the latter is currently repealed under the Law of Ukraine "On the National Police" of July 2, 2015 [15]), the court noted that the right to personal integrity is one of the defining and fundamental rights. However, it is a relationship and may be limited on the grounds and in accordance with the procedure clearly defined in law [16].

There is no doubt that freedom is based on the mutual responsibility of both man and state. The dialectical connection between necessity and freedom, their unity and opposite is traced. The state, protecting the law, thus protects human freedom. The responsibility of citizens lies in the freedom to choose behaviour, to make decisions, aware of the consequences of their actions. Freedom cannot be absolute and unlimited. Any legal norm defines the limits of human freedom, giving him the opportunity to choose a model of their behavior. In this regard, the law is not related to freedom in general, but to its specific degree, which exists within a society, according to which the law sometimes restricts the freedom of the individual.

Most scholars seek to find a positive meaning and an objective need to restrict freedom through legal means, because without this freedom can turn into arbitrariness, because there will be no legal limit to protect the freedom of others. S. Slivka, in general, does not object to the need to restrict freedom, calls for caution in this matter. This is conditioned upon the prevention of violence and aggression as a consequence of excessive oppression of individual freedom, because a reasonable person does not need external restrictions imposed by government agencies and officials [4, p. 144]. Probably, it is a question of sufficiency of internal restrictions of the reasonable person for a choice of a positive and useful model of behaviour. Thus, human freedom is not all-encompassing, it has certain restrictions, which are regulated by law and must be legitimate. Arbitrary restriction of human freedom is unacceptable. The legal regime of state of emergency and martial law significantly affects the realization of human freedom. Restrictions in these periods are primarily conditioned upon the need to protect the life and health of the individual, the humane values of society.

In the modern conditions of civilization development, the introduction of the principle of humanism in all spheres of social life, the restriction of human and civil rights and freedoms must be reasonable and proportionate. Restrictions related to the conduct of special legal regimes should not be excessive and such that are imposed in violation of procedural order [5, p. 55]. It should be remembered that the restriction of rights is not the only legal instrument used to establish law and order during special legal regimes. In general, there are three such tools:

1. Exceptions to human rights that exclude certain actions taken under special legal regimes. For example, the prohibition of forced labor does not apply to service required in the event of a natural disaster that threatens human life or the well-being of society.

2. The actual restriction of human rights – measures imposed on non-absolute human rights (the right to freedom of expression, the right to freedom of association or the right to privacy and family life). These restrictions are always subject to a three-level test: legality, legitimacy and necessity.

Restrictions on human rights should be distinguished from exclusion from the rules. For example, the prohibition of forced or compulsory labor implies that the worker should not be enslaved or enslaved, nor should he or she be involved in forced or compulsory labor. However, the term “forced or compulsory labor” does not include, in particular, any compulsory service in cases of emergency or natural disasters that threaten the life or well-being of society. In this case, it is not a question of restricting the right to prohibit forced or compulsory labour, but of excluding from the term a certain kind of legal relationship.

3. Deviation from rights – suspension for a certain period of time of guarantees of certain human rights and freedoms.

The category of restriction of human rights cannot be identified, considered as a part or, conversely, a generalised concept of the category of deviation from rights, because these terms reflect various legal phenomena of objective reality. When restricting rights, it is a question of temporarily narrowing the limits of realisation of one or another right to achieve the necessary goal of the law. Withdrawal from rights refers to the absolute impossibility of guaranteeing and ensuring human rights by state/municipal bodies to any extent in a certain territory.

Thus, according to paragraph 3 of the Decree of the President of Ukraine No. 393 of November 26, 2018 “On the Imposition of Martial Law in Ukraine” [17] in connection with the imposition of martial law in Ukraine may temporarily restrict such human rights as: the right to housing, the right privacy, the right to privacy and family life, freedom of movement, freedom of thought, freedom to express one's views and beliefs, the right to participate in referendums, the right to vote and to stand for election, the right to peaceful assembly, the right to property, the right to work and freedom of entrepreneurial activity, the right to education. The issue of restriction of the right to personal inviolability is considered in detail in the acts of interpretation of the Constitutional Court of Ukraine. In particular, the Decision of the Constitutional Court of Ukraine of November 23, 2017 No. 1-r/2017 [18] emphasises that:

1) the right to liberty and security of person is relative and is subject to restriction on the grounds and in the manner prescribed by current legislation of Ukraine;

2) such restrictions must be implemented in accordance with the guarantees of human rights protection;

3) the right to personal integrity is subject to protection against arbitrary restrictions through judicial review;

4) the restriction of the right to personal inviolability must be made on the basis of a court decision adopted in accordance with the procedure provided by current legislation.

In the Decision of the Constitutional Court of Ukraine of June 13, 2019 № 4-r/2019 [19] we find two more characteristic features of the restriction of the right to personal inviolability:

5) such restriction must comply with the principles of justice, equality, proportionality and ensure a balance of interests of the individual and society;

6) the restriction must take into account the provisions of international law and the doctrine of the European Court of Human Rights.

The right to personal liberty and security is revealed in the judgment of the European Court of Human Rights in the case of Lawless v. Ireland (1960) [20]. This act was the first court decision to interpret restrictions on human rights to personal liberty and inviolability in special conditions. The historical precondition for this decision was the existence in the Republic of Ireland of the Irish Republican Army (IRA), a paramilitary organisation whose members are united by the idea of irredentism through Irish Republicanism, which is the independence of Ireland from the British state, law and order. The case concerned the applicant's belonging or non-belonging to the said group, whose activities endangered the statehood, life and health of the country's citizens. During the proceedings before the European Court of Human Rights, the applicant's involvement in the IPA was confirmed.

The Court found that the military and underground nature of the IRA, as well as the fear they instilled in the population, the fact that they operated mainly in Northern Ireland outside the Irish Government's jurisdiction and the serious consequences for the general population required special rules of law. and emergency provisions. Moreover, the country's exceptional laws were accompanied by guarantees of prevention of abuse in the form of administrative detention: constant parliamentary scrutiny, the establishment of a special commission of three experts, and, finally, the existence of a guarantee of public release. government of Ireland, and the legal obligation of the state to release all persons who have promised to respect the Constitution and laws of the country and not engage in illegal activities that are contrary to the legal provisions of the state of emergency.

In view of the above, although the applicant's detention without trial was not legally substantiated in Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms [21], it found its source in the right of derogation, which was duly exercised by the Government of Ireland and did not constitute a violation of the Convention.

We see that the right to personal integrity can be limited in special regimes only to those actions that may put him or others at risk. Such freedom is not revoked or revoked, but is limited only for a certain time, for example, during curfew.

2.2. The right to freedom of movement

The right to freedom of movement is restricted during quarantine in order to keep infected and/or potentially infected persons in a separate territory from other members of society. Certain regions, oblasts, cities, towns may be closed for entry and exit. Some diseases, such as COVID-19, pose a particular threat to certain categories of people (e.g., the elderly), so the right to freedom of movement may be restricted to isolate this category of people from the potentially infected. For example, in the Kingdom of Norway, to combat viral infection, public authorities have banned the use of country houses located in villages, in which a person does not live or is not permanently registered [6].

In some cases, the right to freedom of movement may be restricted not in conditions of martial law and state of emergency, but in terms of the need to maintain law and order, prevent harm to life, health, property, public safety. These restrictions have been the subject of proceedings before the European Court of Human Rights in the case of Austin and Others v. The United Kingdom [22]. The case dealt with the legal relationship that took place in London in 2001 during demonstrations in which a large number of participants took part. Intelligence told police there was a risk of injury and death, property damage. In order to save people's lives and health, to prevent damage to property, law enforcement agencies established a solid border, which limited the right of movement of citizens and people, as no one was able to leave the scene.

It is important to understand the nature of the restriction of the law in the context of mass demonstrations and the maintenance of law and order to differentiate between measures of restriction and deprivation of freedom of movement. The case of Austin and Others v. The United Kingdom concerned the restriction of human liberty, and the difference between the applicants, which was that one of the applicants was a demonstrator and the others were passers-by, was irrelevant in establishing the lawfulness of such a restriction. In this case, the court ruled that there was no illegal restriction on a person's freedom of movement, as a solid border had been set to keep people in the crowd and endanger their lives and health, and tougher deterrence could lead to a risk of injury. Given the circumstances of the case, the police had no alternative to prevent the risk of injury to protesters or damage to property, other than establishing a solid border. Its establishment was the smallest but effective means of interfering with the rights of movement of the individual.

2.3. The right to freedom of expression

Under special legal regimes, there are sometimes grounds for restricting freedom of expression. In particular, it is about spreading false information about the real state of affairs through social networks. Individuals commit offenses in order to create panic among the population (for example, false information about the planting of explosives). Such an act is punishable and may even, in some cases, be classified as terrorism. In this case, there is a right to require providers to remove false information and restrict access to such information. However, on the other hand, such powers can be abused by authoritarian and totalitarian governments in non-democratic countries in order to retain power. An example is the disconnection of the Internet in the Republic of Belarus during the presidential election in 2021.

However, the legal restriction of freedom of expression in emergencies and martial law must have its limits and not apply to all without exception, as citizens must remain levers of influence on the executive branch with discretionary powers. Collecting, disseminating and freely discussing information on existing threats, analysing expert opinions on coping strategies, and having a free "market for ideas" can help eliminate the negative effects of special situations. True messages about all the circumstances of the situation help members of society to make their own decisions and choose a model of behaviour. Therefore, the right to information should be ensured by the positive responsibilities of the state by creating back-up opportunities to obtain information in emergencies (eg, arranging and maintaining radio communications). In addition, countering false information and news is possible only by disseminating reliable and objective information that will prevent the spread of panic in society.

2.4. The right to housing

The right to housing may also be subject to restrictions under special legal regimes, for example, in the event of unforeseen man-made circumstances, a person may be forcibly evacuated. In this case, the state should provide other housing for such persons. Ownership of the home from which the person was evacuated does not end. State or municipal authorities may use the land of the community and legal entities to provide accommodation for evacuees in connection with an emergency, to organise temporary hospitals, etc.

It may be necessary to temporarily withdraw basic resources and stop exporting/importing goods. Discretionary powers may also include the closure of privately owned facilities (shopping malls, sports facilities) to prevent the massive outbreak of disease that has been observed in almost every country in 2020 to combat the COVID-19 pandemic. For example, in the United States, the Department of Defense on behalf of the President may carry out work to eliminate the consequences of emergencies, take measures to save lives and property of citizens [6].

An example of the restriction of the right to housing during special legal regimes is the case of the European Court of Human Rights "Dogan and Others v. Turkey" of 29 June 2004 [23]. The applicants also lived in a village in Turkey, which had a special legal regime. They owned houses and land, raised sheep and goats, and engaged in beekeeping. The main problem of the district was the conflict between paramilitary law enforcement agencies and the local population, which intended to create autonomy. Dogan and the other applicants were evicted from their homes without their consent. Their homes were deliberately destroyed by security forces. Current Turkish law stipulates that the governor of a region in a state of emergency cannot be held legally liable for such decisions. Moreover, such a decision cannot be appealed in court.

Here we return to the discretionary powers of the state administration of the region in which the state of emergency was in force, as it was endowed with special powers conditioned upon the need to maintain the safety of life and health of people in a state of emergency. Of course, a provision that precludes judicial review of acts issued by the governor of a state of emergency cannot be compared to the concept of the rule of law. The system of public administration in the event of a state of emergency is not arbitrary and can not but be subject to judicial review. Individual and regulatory acts issued by competent authorities during a state of emergency should be subject to judicial review. Violations of this principle are excluded in countries with democratic regimes based on freedom.

In many cases of restrictions on the right to housing due to emergencies or martial law, administrative courts award compensation for not being able to access their property due to insecurity in the region. It is worth mentioning the doctrine of "social risk", which does not require a causal link between the harmfulness of actions and damages, and stipulates that the damage caused by terrorism must be common to society as a whole in accordance with the principles of "justice" and "social" states. Damage in such cases is paid for as a result of the authorities being held accountable for failing to prevent terrorist incidents and maintain security.

Ensuring property rights includes three different aspects:

1. The first is general in nature and establishes the principle of peaceful use of property.

2. The second aspect covers deprivation of property and makes its possibility conditional on certain conditions.

3. The third recognizes that states have the right, inter alia, to control the use of property in accordance with the common interest.

However, all three aspects are not separate from each other and in this sense the second and third aspects relate to specific cases of interference with the right to peaceful possession of property. Therefore, they must be interpreted in the light of the general first aspect. Speaking about the fact that the right to housing is not absolute, it is necessary to consider the circumstances of a particular situation, which necessitates the imposition of a state of emergency. Very often, events are characterised by brutal confrontations between state security forces and members of paramilitary groups, leading to double violence caused by the actions of both sides of the conflict. In such circumstances, some people are forced to leave their homes on their own, while others are forcibly evicted by the authorities to ensure the safety of the region's population. At the same time, cases when security forces deliberately destroy the houses and property of citizens, depriving them of their livelihood, do not indicate the relativity of the right to housing, but a violation of the right to peaceful possession of their property.

2.5. The right to protection of personal data

The right to protection of personal data in the context of the use and use of metadata in order to monitor the location of potential suspects, patients with pandemic diseases, etc. is also subject to restrictions. In this context, the protection of personal data cannot be higher in the value system than saving lives. To ensure that the right to data protection is respected, owners must be informed about the processing of personal data. When data is consolidated and separated from identifiable information, there is no restriction on the right to protection of personal data. However, the use of metadata at the personal level, such as the use of metadata to detain quarantine/isolation offenders, restricts the right to protection of personal data, in which case such restrictions should be necessary for society, as clearly defined in national law. goals.

For example, according to the Resolution of the Cabinet of Ministers of Ukraine No. 211 of March 11, 2020 “On Prevention of the Spread of Acute Respiratory Disease COVID-19 Caused by Coronavirus SARS-CoV-2” [24] persons crossing the state border of Ukraine may choose, in particular, fourteen-day self-isolation at the place of residence using the application “Action at home”, which confirms the place of self-isolation with the definition of geolocation. The person must confirm the decision to choose this model of behavior during the passport control – by stating his phone number and address of the place of self-isolation.

Self-isolation is monitored by checking the compliance of the photo of the person's face with the reference photo taken during the installation of the mobile application, and the geolocation of the mobile phone at the time of photography. This control is carried out by artificial intelligence. The location of the person is recorded only at the time of photo confirmation. Verification is considered unsuccessful after 5 warnings, after which the application sends a message to the police. Police officers check information about self-isolation during a personal visit. If a person commits an offense, he or she is subject to administrative (Article 44-3 of the Code of Administrative Offenses of Ukraine [13]) or criminal liability (Article 325 of the Criminal Code of Ukraine [25]).

2.6. Freedom of religion

The state and municipal authorities of the countries may also decide to restrict freedom of religion in conditions of martial law and emergencies by banning religious rites or establishing additional conditions for their implementation. Freedom of religion is not absolute. The right to freedom of religion and belief may, if necessary, be restricted in the interests of public security, public order, health and morals, or the protection of the rights and freedoms of others. Modern democratic legal order is based on the fact that religious organisations of any type exist in a certain legal field and are obliged to obey current laws. Religious freedom is a complex and multifaceted category that encompasses the internal aspect of freedom of religion (*forum internum*). This right protects the freedom to hold one's own convictions, the freedom to have or not to have religious beliefs and the freedom to change them. Internal freedom is inextricably linked to the right to express one's religion (*forum externum*). It is the freedom to carry out religious activities without hindrance.

At first glance, it may seem that only the external aspect of freedom of thought, opinion, religion is subject to restriction, but a more detailed analysis may lead to other conclusions. The terms *forum externum* and *forum internum* are commonly used in discussions of human rights related to the right to freedom of thought, conscience, religion and belief [7]. The dichotomy associated with discussions on the right to freedom of thought, opinion, religion and expression is explained by the division between external and internal rights. Human rights theory in general conceptualises freedom of thought, conscience, religion and belief, and

freedom of expression, offering absolute protection in the so-called *forum internum*. At the very least, it means the right to keep thoughts in one's mind, whatever they may be, no matter how others may relate to them.

However, if we take this position, it will mean that there is an absolute right to adhere to psychotic illusions [8]. This finding is ethically problematic in terms of psychiatric treatment and the rights of people with psychosis. In life, there may be a situation where the absoluteness of the *forum internum* is not necessarily correct. To confirm this, we can consider the current discussions in the field of human rights theory and political philosophy, which analyze psychotic illusions and ways to justify involuntary treatment. However, despite these arguments, in most cases the freedom of *forum internum* should be conceptualised as a negative freedom. And if *the forum internum* includes the right to certain inner possibilities, this right should remain with people with psychotic delusions. For example, in the case of the European Court of Human Rights Mokuti v. Lithuania of 27 February 2018 No. 66490/09 [26] the court ruled that there had been an interference with the applicant's right to respect for her religion when psychiatrists tried to correct the patient's religious beliefs. The case focuses on religious beliefs that are generally accepted in the society of the country (adherence to Catholicism), and not on the personal beliefs of a sick person, which are considered delusional. Thus, the question arises as to whether delusions or thoughts are protected from psychiatric intervention, and to what extent is such protection guaranteed if we consider that the purpose of psychiatric care is to treat a patient with a psychotic disorder and that such delusions or thoughts are understood as symptoms. It cannot be said that some human rights do not apply to patients with psychosis. Instead, the possibility of restricting *forum externum* rights in certain situations and limiting interference with *forum internum* rights, even during involuntary treatment, should be discussed.

In democratic societies where several religions coexist for the same population, it may be necessary to restrict freedom of thought, conscience and religion to reconcile the interests of different groups and ensure the observance of each other's beliefs. In this case, the state acts as a neutral and impartial organizer of the coexistence of different religions and beliefs. This function of the state should promote the establishment of the rule of law, religious harmony and tolerance in the societies of democratic countries. The duty of the state to neutrality and impartiality is incompatible with any action of the authorities to assess the legitimacy of religious beliefs or ways of expressing these beliefs. The state, exercising its discretion, is limited by law and its fundamental principles and must convincingly prove good reasons that justify any interference with individual freedom. Such activities of the state should be carried out under the supervision of independent and impartial courts.

2.7. The right to access the Internet

The right of the fourth generation today is the right to access the Internet, which may also be limited in emergencies. Given today's conditions, the Internet plays an important role in everyone's life, is an everyday part of it. The inventor of the World Wide Web T. Berners-Lee emphasizes: “The most common goal of the Web is to support and improve our existence in the world…” [9, p. 107]. At present, the Internet provides citizens with the necessary mechanisms to participate in the activities of public authorities, discuss political issues and issues of common interest.

Unfortunately, in today's world there are cases of illegal restrictions on Internet access, thus distracting people from the opportunity to inform and be informed. For example, during the presidential election in Belarus on August 9, 2020, the Internet was completely disconnected for several days [10, p. 442]. The declared purpose of the restriction of power was to ensure the non-interference of external forces in the elections [11, p. 54]. Although the actual goal was to limit the interference of civil society institutions in the impartial elections of the President. On December 20, 2019, in New Delhi, India, amid mass protests, Internet services were shut down, limiting the ability to exchange voice and text messages. It happened with the help of local police. Local, regional and national authorities regularly disconnect the Internet in India during riots: according to the Software Freedom Law Center, a digital data protection group, in 2019 there were 96 such disconnections [12].

Such actions of the authorities of a number of countries of the modern world testify to the application of imperative methods of the right to access the Internet, which leads to the inability of man to communicate with the outside world. This indicates the use of discretionary powers of the government contrary to the principle of the rule of law, without respect for the balance of public and private interests. However, when referring the right to access the Internet to fundamental rights, it should be understood that it is subject to restrictions, i.e. not absolute. The exercise of the right to access the Internet is subject to duties and responsibilities and may be subject to limitations or sanctions established by law and necessary in a democratic society in the interests of national security, territorial integrity or public security, to prevent riots or crimes, to protect health or morals, to protect the reputation or rights of others, to prevent the disclosure of confidential

information, or to maintain the authority and impartiality of the court. Thus, in conditions of martial law or state of emergency, certain restrictions on Internet access rights may be imposed.

2.8. Restrictions on rights that apply only to certain subjects of law or special restrictions

It should be recalled that in addition to the general restrictions on human and civil rights and freedoms, in the context of special legal regimes, there may be special restrictions on the rights that apply only to certain subjects of law. Here is an example of the legal relationship set out in the Judgment of the Constitutional Court of Latvia of 17 October 2005 in the case No. 2005-07-01 [27]. Pursuant to Articles 9-11 of the Law of the Republic of Latvia "On State Secrets" of 17 October 1996 [28], the law allows access to state secrets only to persons who, in accordance with their official duties or specific tasks, are required to perform work related to use or protection of state secrets and who have received special permits. Verification of persons for access to classified information of foreign and international organisations and their institutions is carried out by the National Security Office of the Republic of Latvia. The procedure and term of the inspection shall be determined by the Director of the Bureau for the Protection of the Constitution. The decision of the Director of the Office for the Protection of the Constitution on access to classified information of foreign and international organisations and their institutions is final and cannot be appealed. In his constitutional complaint, Guido Ivanovs (the applicant) asked to assess whether the impugned norm prohibiting appeals against the decision of the Director of the Bureau contradicts Article 92 of the Constitution of the Republic of Latvia, which enshrines the right to a fair trial [29].

It should be noted that the state has exclusive rights to objects of state secret and they are under special state protection to avoid harm to national security. The status of a state secret is fully covered by classified information of NATO, the EU, foreign and international organisations and institutions. In the interests of national security, access to state secrets is not guaranteed to everyone. To obtain a special permit for access to state secrets, a person must meet the requirements established by law.

Since joining NATO, Latvia has committed itself to protecting restricted, confidential, secret and top-secret information in accordance with NATO's standards for the protection of classified information. Access to any classified information is a special privilege granted to a person after the standard verification procedure. Access is provided only for certain types and amounts of information required for the performance of professional duties. For example, the Law of the Federal Republic of Germany on the Conditions and Procedure for Inspections by the Federal Security Inspectorate [30] stipulates that the person whose case is being considered may be present at a hearing with a lawyer. The hearing shall be conducted in such a way as to ensure both the protection of the sources of information and the protection of the legitimate interests of the person to be audited. A hearing shall not be held if it could cause significant harm to the security of the federation or the state, in particular during the investigation by the federal intelligence service.

The NATO Personnel Security Directive No. AC/35-D/2000 of 7 January 2013 [31] obliges NATO or a competent national authority to evaluate all available information to decide whether to issue a certificate to the person being audited. The Directive, in particular, emphasises that the mere indication of a potential impact should not be a reason for refusing to issue a certificate. However, the degree of risk must be assessed individually to decide whether a certificate can be issued. The aim of the legislator in protecting the provisions of Articles 9-11 of the Law of the Republic of Latvia "On State Secrets" of 17 October 1996 was to protect not only the interests of the state and public security, but also other NATO member states in this field. The European Court of Human Rights has recognized in a number of its rulings that the protection of national security is a legitimate aim that may restrict a person's right to go to court. Therefore, a person's right to go to court is not absolute and may be limited.

The right to a fair trial has both substantive and procedural aspects. This means that everyone has the right not only to a fair trial but also to access to justice. Substantive and procedural aspects are inextricably linked: insignificant justice of the court, if the existence of the court was not ensured, and vice versa. Thus, in the judgment of the European Court of Human Rights "Golder v. The United Kingdom" [32], the court was called upon to resolve two issues arising from the facts of the case:

1) Is Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms [21] limited to the right to a fair trial in ongoing trials, or does it further provide the right of access to a court for anyone wishing to bring an action?

2) Are there any indirect restrictions on the right of access to court?

Answering the first question, the court concluded that the right of access to court is a component of a fair trial along with an impartial court, reasonable time, presumption of innocence. These constituent elements are different, but are the result of the same basic idea of a fair trial, and, taken together, constitute a single right. Explaining the content of the article, the court applied the principle of unity and integration, setting

different elements on one plane. The terms of the article, taken in their context, give reason to believe that the right of access to court is included in the number of guarantees set out in the article. Attributing Article 6 exclusively to legal relations beginning after a court case, literally understanding the text of the article, can lead to state arbitrariness, when public authorities abolish courts altogether or refer cases to the jurisdiction of state bodies dependent on the government. It seems illogical and absurd that Article 6 of the Convention describes in detail the procedural guarantees provided to the parties to the proceedings, while not protecting what in itself actually allows the use of such guarantees, i.e. access to justice. The fairness, publicity and efficiency of the trial are of no value if the trial is not conducted.

However, in exercising the right of access to court, there are justified restrictions due to certain legal circumstances, as the right of access to court is not absolute. In addition to the limits set by the very content of any right, there is room for restrictions that are allowed indirectly. The right of access to court, by its very nature, requires such regulation by the state, which may vary in time and place depending on the needs and resources of society and individuals. It goes without saying that such regulation should never harm the essence of the right of access to court and should not contradict other rights guaranteed by the state.

CONCLUSIONS

In general, we see that in the context of special legal regimes there are a large number of human rights that are relative, not absolute and may be limited the state and its bodies, local authorities. During the operation of special legal regimes, such human and civil rights may be temporarily restricted, such as: the right to liberty and security of person, the right to housing, the right to privacy, the right to privacy and family life, freedom of movement, freedom of thought, freedom of liberty. expression of their views and beliefs, the right to participate in referendums, the right to vote and to be elected, the right to peaceful assembly, the right to property, the right to work and freedom of entrepreneurial activity, the right to education, the right to personal data protection.

However, in order for such restrictions to be lawful, consistent with the rule of law and recognized as admissible, they must meet certain criteria: they must be provided for by law; should not affect the basic content of the law; must be dimensional to the goal (principle of proportionality); be carried out for legitimate purposes, the list of which is exhaustive and not subject to expansion, to be necessary in a democratic society. In a state of war or emergency, human rights may be restricted in the interests of public order, public health and morals, or the protection of the rights and freedoms of others. In some cases, the exercise of a right may be restricted not only to ensure public order, but also for the safety of the person whose rights are being restricted (paternalistic approach to restriction of liberty).

Restrictions on rights are not the only legal instrument used to establish law and order during special legal regimes. In addition, exceptions to human rights may be used, which exclude from the sphere of human rights certain actions taken during the operation of special legal regimes and derogations from rights – the suspension of certain human rights and freedoms for a certain period.

Today, the European Court of Human Rights makes a great contribution to the protection and guarantee of human rights in the face of their restriction, checking each time for compliance with the values of law specific restrictions in European countries in martial law and state of emergency, while forming a separate doctrine of restrictions on human rights in special legal regimes.

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