

INTERNATIONAL APPROACHES TO CONSTITUTIONAL AND LEGAL REGULATION OF HUMAN RIGHTS RESTRICTIONS DURING MARTIAL LAW

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Abstract

This article examines international practices in the constitutional and legal regulation of human rights restrictions during emergency and martial law across various European countries. An analysis of foreign constitutions reveals that most of them allow for the limitation of individual and citizen rights under these extraordinary conditions. The scope of these restrictions is generally similar for both martial law and states of emergency. Through a comparative analysis, the study identifies different constitutional approaches to defining the extent of human and civil rights restrictions under special legal regimes. Four main trends emerge: constitutions that explicitly list rights and freedoms that cannot be restricted (or suspended) during emergencies and martial law; constitutions that provide an exhaustive list of rights and freedoms that may be restricted during such periods to safeguard human rights, democratic order, public security, public welfare, and morality; constitutions that combine both approaches; and constitutions that grant state authorities the power to restrict personal rights and freedoms under special legal regimes for national security purposes without specifying the particular rights that may or may not be restricted. Typically, the specific rights subject to restriction are defined by subordinate regulatory legal acts issued by state authorities.

Keywords: martial law; emergency conditions; human rights; rights restrictions.

1. Introduction

The application of special legal regimes in most foreign countries reflects the understanding that these regimes are legal frameworks designed to regulate the extraordinary exercise of state power during situations where the normal functioning of society and the state is disrupted. The implementation of such regimes often involves the restriction of human and civil rights, sometimes enforced through coercive measures. However, in today's context of civilizational progress and the widespread adoption of humanistic principles, any restrictions on human and civil rights must be both reasonable and proportional. Limitations imposed under special legal regimes should not be excessive and must adhere strictly to procedural norms. This underscores the need for clear and appropriate criteria to guide the limitation of human and civil rights during such exceptional circumstances (Hyliaka et al., 2020).

Given this, understanding the grounds, nature, and scope of restrictions on human and civil rights under special legal regimes is significantly informed by studying international law norms and foreign practices regarding states of emergency and martial law.

The importance of studying the concept, types, and key characteristics of

special legal regimes is undeniable, as these regimes provide the legal foundation for restricting human and civil rights. Throughout history, individual countries and the international community have frequently faced extraordinary situations, such as acts of aggression, threats to constitutional order, dangers to life and health, natural and man-made disasters, and other exceptional circumstances that disrupt the normal functioning of society and the state. In these challenging conditions, the need for clear and consistent legal frameworks governing behavior becomes even more critical, as they are essential for effectively addressing and mitigating the negative impacts of emergencies (Bukhanevych et al., 2021).

While the state has considerable freedom in addressing national security issues, any political or legal decision in a state governed by the rule of law is limited by the country's Constitution, which delineates the discretionary powers of each authority. The restriction of human rights and freedoms is an extremely relevant and necessary topic, driven not only by the extensive body of scholarly work and specialised academic disciplines but also by the practical aspects of coexisting within a state and the global space. This involves determining how to maintain order in society, which rights may be restricted, the procedures for such restrictions, and how to adhere to legal principles such as balancing individual, societal, and state interests, the rule of law, legality, proportionality, and humanism in the implementation of rights restrictions.

The importance of studying the constitutional and legal regulation of rights restrictions during emergency and martial law conditions is underscored by the critical role that the principle of legality plays in society. This principle ensures that universal human values—such as human dignity, humanism, freedom, justice, and equality—are upheld within real legal relationships. It requires that state institutions and their officials strictly follow the law (in its broadest sense) while exercising their powers, even in extraordinary circumstances.

The study of constitutional and legal mechanisms for restricting human rights under states of emergency and martial law in countries such as Macedonia, Armenia, Belarus, Moldova, Georgia, Latvia, Lithuania, Albania, and Azerbaijan is justified by several factors. First, these countries represent a broad spectrum of political, legal, and cultural contexts, allowing for a detailed examination of diverse approaches to regulating human rights in extreme conditions (Rohava, & Burkhardt, 2019). For instance, some of these nations have historical experience with authoritarian regimes, while others gained independence following the dissolution of the Soviet Union or have undergone significant political and social changes. This diversity provides a deeper understanding of how different systems address the challenges of national security and human rights. Secondly, studying these countries enables a comparative analysis to identify both common trends and unique approaches to restricting human rights. For example, the Baltic states may have different approaches to rights protection compared to countries in the South Caucasus or Central Asia. Thirdly, in the context of contemporary global challenges such as terrorism, military conflicts, and pandemics, the examination of these countries' experiences is crucial for understanding how national legal systems adapt to emergency situations. This knowledge can be instrumental in developing recommendations for improving mechanisms to safeguard human rights during states of emergency and martial law. Thus, the analysis of constitutional and legal mechanisms in these countries provides a comprehensive understanding of how legal systems balance the demands of national security with the protection of human rights in extreme situations.

It is widely recognized that the European Court of Human Rights applies a specific test to assess the legitimacy of restrictions on human rights. This test examines whether the restriction is prescribed by law, pursues a legitimate aim, is necessary in a democratic society, and is non-discriminatory. This approach highlights the principle that human rights are grounded in interests that must be fairly balanced with societal

needs, thereby justifying state-imposed limitations on the exercise of those rights. This article will focus on the first aspect of this test—the foreseeability of restrictions under the law.

When restricting human rights, state authorities must themselves be bound by established legal norms. These rules of conduct for state authorities are embedded in constitutional texts, as constitutions function as a social contract between a country's citizens, society, and the state, aimed at harmonizing the private and public interests of all parties involved.

Given the above, constitutional and legal regulation of restrictions on human rights by state authorities is crucial to preventing arbitrariness by officials in applying legal norms under specific life circumstances, aiming to reconcile individual and societal interests.

2. Materials and Methods

The research employed a comprehensive system of scientific methods, including general scientific methods such as analysis and synthesis, along with specific methods drawn from various scientific fields, including comparative analysis, quantitative and qualitative analysis, and approximation. Additionally, specialized legal methods, like formal-legal and comparative-legal analysis, were utilized. The general philosophical (universal) method was applied throughout all stages of the research process. The approximation method, which involves substituting complex objects with simpler, analogous ones, facilitated the examination of numerical characteristics and qualitative properties by simplifying the study to more manageable or familiar objects—those with easily calculable characteristics or known properties. In this context, the method was used metaphorically to reflect the approximate and provisional nature of assessing the impact of peaceful assemblies on the development of a democratic regime in Belarus.

Through analysis, the research identified key features and specific aspects of constitutional and legal regulation of human rights restrictions under emergency and martial law conditions in countries such as Macedonia, Armenia, Belarus, Moldova, Georgia, Latvia, Lithuania, Albania, and Azerbaijan. Comparative analysis uncovered various approaches to defining the scope of restrictions on human and civil rights under special regimes as established in the constitutions of these states. The generalization method was employed to identify four predominant trends in these approaches.

Deductive reasoning was employed to draw general conclusions about the key features of constitutional and legal regulation of human rights restrictions under emergency and martial law conditions, based on established doctrinal perspectives. Conversely, the inductive method was used to analyze the constitutions of Macedonia, Armenia, Belarus, Moldova, Georgia, Latvia, Lithuania, Albania, and Azerbaijan, enabling the formulation of general conclusions about the grounds for restricting human rights under these special conditions. The historical method played a crucial role in uncovering the teleological foundations behind the development of constitutional norms related to human and civil rights restrictions in foreign countries. This approach provided a deeper understanding of these norms and supported the development of new recommendations for legal reforms.

Using legal methods, including formal-legal and systemic-structural approaches, were utilized to refine the terminological framework of the study. These methods helped clarify the definitions of «martial law» and «emergency law» and highlighted the distinct features of these legal concepts across different contemporary countries.

The research's normative foundation is rooted in the constitutions of foreign countries that establish the legal basis for the lawful restriction of human rights. Additionally, doctrinal sources that explore the content of constitutional and legal regulations on human rights restrictions were integral to the study.

3. Result and Discussion

3.1. *Legal regime is a substantive legal phenomenon*

The legal regime is a substantive legal phenomenon that encompasses a comprehensive array of legal norms and principles. When examining constitutions from various countries, it becomes evident that most of them provide mechanisms for restricting human and citizen rights and freedoms during states of emergency and martial law. These exceptional legal regimes are characterized by their capacity to modify or suspend the normal legal framework in response to crises, thereby allowing governments to implement extraordinary measures.

An in-depth comparative analysis of constitutional provisions across different jurisdictions reveals that, while the scope of rights limitations during emergency and martial law conditions is broadly similar, the specific approaches and extent of these restrictions can vary significantly. In general, constitutions grant the authority to impose such limitations based on the perceived severity of the threat and the necessity of the measures to restore or maintain public order and national security.

In many countries, the state of emergency is declared in response to severe situations such as natural disasters, civil unrest, or significant threats to public safety. The legal framework governing emergencies typically allows for temporary suspension or restriction of certain rights, such as freedom of movement, assembly, and expression. However, these limitations are often designed to be proportional and temporally confined to the duration of the emergency.

For example, the German Basic Law permits the suspension of certain fundamental rights during emergencies, but only under stringent conditions and with the requirement of maintaining the core of human dignity. Similarly, the French Constitution allows for the declaration of a state of emergency, during which the government can restrict rights like free movement and assembly, yet such measures are subject to judicial review and must be justified as necessary and proportional to the threat. Martial law, often invoked in situations of armed conflict or severe internal disorder, typically involves more extensive and prolonged restrictions on rights compared to emergency regimes. Under martial law, the scope of limitations may encompass broader areas, including judicial oversight, civil liberties, and administrative controls. This regime grants the military authority to enforce laws and maintain order, which can lead to significant curtailments of individual freedoms.

In the United States, for instance, martial law has historically been declared in exceptional circumstances, such as during the Civil War and World War II. Although the U.S. Constitution does not explicitly address martial law, historical precedents and legal interpretations have shaped its application. The restrictions imposed under martial law are generally justified by the need to address immediate and substantial threats to national security, but they also raise important questions about the balance between security and civil liberties.

The comparative analysis of constitutional approaches reveals that while most countries incorporate mechanisms for restricting rights during emergencies and martial law, the specifics of these mechanisms vary. Some constitutions provide detailed provisions and procedural safeguards to ensure that limitations are applied in a controlled and transparent manner. Others adopt a more flexible approach, allowing broader discretion to the authorities during exceptional conditions.

For example, the Indian Constitution provides a comprehensive framework for declaring a state of emergency, with clear provisions for the suspension of fundamental rights and the imposition of limitations. However, it also mandates parliamentary approval and periodic review to ensure that such measures are not misused.

In contrast, other countries may grant broader emergency powers with fewer explicit constraints, relying on the judicial system to oversee and adjudicate the

proportionality and necessity of measures taken. This approach underscores the importance of an effective and independent judiciary in safeguarding rights and ensuring that emergency powers are not exercised beyond their legitimate scope.

In conclusion, while the fundamental principle of allowing for rights restrictions during exceptional states is widely accepted, the degree of specificity, procedural safeguards, and oversight mechanisms vary across different legal systems. Comparative analysis of these approaches provides valuable insights into how different countries balance the need for security with the protection of fundamental rights, highlighting the importance of both legal frameworks and judicial review in maintaining this balance.

3.2. Non-derogable rights and constitutional safeguards during states of emergency: comparative analysis

In examining foreign experiences with constitutional and legal regulation of human rights restrictions during emergency and martial law, North Macedonia and Armenia stand out for their distinctive approaches to protecting fundamental rights under exceptional circumstances. North Macedonia's Constitution explicitly enumerates inviolable rights that cannot be suspended, offering a clear framework for the protection of essential freedoms even during states of emergency. In contrast, Armenia's Constitution allows for the temporary restriction of certain rights while adhering to international obligations, highlighting a more flexible approach to balancing security and rights protection. By comparing these two countries, the analysis provides valuable insights into how different legal systems manage the tension between ensuring national security and preserving fundamental human rights, contributing to a broader understanding of effective constitutional safeguards in various national contexts.

For example, Article 54 of the Constitution of the Republic of North Macedonia, initially enacted on November 17, 1991, stipulates that the freedoms and rights of individuals and citizens may only be restricted in cases specified by the Constitution. Any such limitations during wartime or a state of emergency must comply with constitutional provisions. These restrictions must not result in discrimination based on sex, race, skin color, language, religion, national or social origin, property, or social status. Certain rights, such as the right to life, the prohibition of torture, inhuman or degrading treatment or punishment, the legal definition of criminal offenses and penalties, and freedom of personal beliefs, conscience, opinion, and religion, remain inviolable.

The drafting of the Macedonian Constitution began before the dissolution of socialist Yugoslavia in 1991 (Sabrina and Ramet, 1995). A significant debate during its formulation was whether Macedonia should be defined as a «state of citizens» (where all citizens have equal rights) or as a «national state» (favoring Macedonians over other ethnic groups within the country) (Vankovska, 2013). The drafters reached a compromise by defining the country as a national state in the preamble, while guaranteeing equal rights and obligations for all nationalities in the main body of the text.

Despite the country's name change from the Former Yugoslav Republic of Macedonia to North Macedonia, the normative act continues to be titled «Constitution of the Republic of Macedonia» due to a political-legal dispute with Greece over the use of the name «Macedonia» (Danforth, 1995). From 1993, the official designation in the UN was the Former Yugoslav Republic of Macedonia (Ramet, 2017). In 2018, an agreement was reached between Greece and the Republic of Macedonia regarding the country's name, resulting in its renaming to the Republic of North Macedonia.

Likewise, Article 44 of the Constitution of the Republic of Armenia states that certain fundamental rights and freedoms—except for those outlined in Articles 15, 17-22, and 42 of the Constitution—may be temporarily restricted during martial law or a state of emergency, as prescribed by law, in accordance with international obligations related to derogations during emergencies.

In 2005, the Constitution of the Republic of Armenia was amended (Application No. 36549/03..., 2007), leading to the establishment of a new judicial system in the country. Ensuring the effectiveness and efficiency of judicial protection is crucial for safeguarding human rights during exceptional regimes. The Judicial Code, which encapsulates all the principles and approaches of the judicial system, is a distinctive document without global equivalents (Rakipova et al., 2023). Armenia's reformed judicial system acknowledges precedent law, with the sources of precedent being decisions from the European Court of Human Rights and the Armenian Court of Cassation (Utkina & Reznik, 2022).

3.3. *Presidential powers and parliamentary oversight in rights restrictions*

Some constitutions provide an exhaustive list of rights that can be restricted during a state of emergency or martial law to protect human rights, democratic institutions, public safety, and morality.

For example, Part 4 of Article 71 of the Constitution of Georgia allows the President to restrict certain rights listed in Articles 13, 14, 15, 17, 18, 19, 21, and 26 of the Constitution during a state of emergency or martial law. The President can also suspend the application of specific provisions during these states. Such decrees must be immediately submitted to Parliament for approval. Decrees limiting rights take effect immediately upon issuance, while decrees suspending provisions become effective once approved by Parliament (Brusis, et al., 2016).

V. Napetvaridze and T. Tsxovrebadze, analysing the drafting of the Georgian Constitution from a discourse ethics perspective, employed Jürgen Habermas's discourse quality index (Napetvaridze et al., 2020). This methodology, focusing on the behaviour of discourse participants, measures the quality of political debates. The researchers studied and analysed over 200 pages of parliamentary debate transcripts regarding the adoption of the 1995 Georgian Constitution. The 1995 Georgian Constitution succeeded the 1921 Constitution, which mandated a referendum for constitutional issues. Due to the activities of self-proclaimed governments in South Ossetia and Abkhazia, the Georgian government was unable to hold a referendum. The issue of the referendum became a major point of contention during parliamentary debates, with one group arguing that the Constitution could not be adopted in violation of the 1921 Constitution, while another group advocated for its adoption to guide the country's future development. On 24 August 1995, the Georgian Parliament adopted the new Constitution (Petryshyn, 2020).

R. Petrov and colleagues, analysing the constitutional and legal order of unrecognised entities in Georgia and Ukraine—such as «Abkhazia,» «South Ossetia,» «Donetsk People's Republic,» and «Luhansk People's Republic»—assert that the constitutional orders in these entities exhibit undeniable similarities, and their inhabitants face similar challenges regarding the protection of fundamental rights and the application of international conventions (Petrov et al., 2020).

3.4. *Constitutional and legal frameworks for rights restrictions in Latvia: Balancing national security and fundamental freedoms*

In Latvia, national security issues are governed by the National Security Law, which defines the national security system and its objectives. This law outlines the competencies of Parliament (Saeima), the Cabinet of Ministers, the President, and various ministries and local authorities regarding measures to maintain order. Although the Latvian Constitution does not explicitly state that ensuring national or state security is a legitimate aim for restricting fundamental rights, the Constitutional Court has recognized the protection of state security as a legitimate aim alongside the protection of democratic institutions.

As noted by A. Lāviņš, Chair of the Constitutional Court of Latvia in 2016, if there is a legitimate aim for restricting fundamental rights, the Constitutional Court must balance

the specific restricted right against national security concerns (Puraite-Andrikiene, 2019).

In case No. 2004-14-01 of 06.12.2004, the Constitutional Court of Latvia noted that for public safety to be a legitimate aim for legal regulation, the legislator must objectively justify the connection between the enactment of a particular act and the mitigation of security threats. The Court rejected the legislator's reliance on unsubstantiated references to state security. This case involved migration issues, which are of significant interest in European states due to the desire of citizens from less developed countries to live in developed, democratic, and socially advanced states (Shqarri & Rusi, 2021). The contested legal norm was part of the Immigration Law and provided that decisions by the Minister of Foreign Affairs and the Minister of the Interior to include a person on a list of those banned from entering Latvia could not be appealed. The legislator restricted the right to a fair trial, citing the protection of state and public security and the need for swift and effective measures in situations threatening security. Additionally, the norm aimed to prevent the disclosure of confidential information.

Referring to the European Court of Human Rights' practice, the Latvian Constitutional Court confirmed that it is within the state's competence to regulate the entry and residency of foreigners, including deportation of those convicted of criminal offenses. The Court noted that democratic societies have the right to national security, but internal security services must be authorized to protect state security without having unchecked powers to infringe on fundamental rights. It recognized that procedural limitations on human rights might be necessary to prevent harm to national security, emphasizing the broad discretionary powers of the executive in matters of national security.

5. Conclusions

National security issues are regulated at the constitutional level, with each state's fundamental law delineating the national security system, its objectives, and the competencies of Parliament, the President, the executive branch, individual ministries, and local government bodies. Analysis of political and legal relations in various countries around the world reveals that the structuring of rights and responsibilities of legal subjects gains particular significance following the outbreak of armed conflict within a state. Consequently, the process of implementing human and citizen rights necessitates more imperative regulatory methods and may justify the adoption of emergency measures, occasionally relying on coercive means.

Legal norms and actions of executive state authorities and local government bodies cannot escape judicial scrutiny if such norms or actions infringe upon the legitimate interests of individuals. Judicial power, as a whole and its constituent parts specifically, must ensure oversight over the other two branches of power. Constitutional courts, by assessing the compliance of laws with the Constitution, implement the principle of constitutional supremacy, thereby ensuring constitutional justice. Courts are empowered to review the legality and constitutionality of decisions made by other branches of power, especially when such decisions relate to national security.

National security and human rights often come into conflict when fundamental rights are restricted in the interest of national security. In such cases, it is the responsibility of state authorities and local governments to strike a balance between safeguarding fundamental rights and ensuring national (state) security. Restrictions on fundamental rights are only permissible if they serve a legitimate purpose. The European Convention on Human Rights recognizes national security as a legitimate aim for restricting certain rights in several of its articles. However, only the protection of constitutional values can justify limiting fundamental rights. Rights enshrined in the Constitution may be restricted under legally defined conditions, with objectives including: first, the protection of others' rights; second, the maintenance of the democratic order; and third, the preservation of public safety, welfare, and morality.

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