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## ENSURING HUMAN RIGHTS UNDER MARTIAL LAW: A QUALITATIVE STUDY IN THE CONTEXT OF UKRAINE'S CONTEMPORARY CHALLENGES

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**Abstrak:** Tujuan artikel ini adalah untuk mengungkapkan perlindungan hak asasi manusia di Ukraina dalam kondisi hukum darurat. Hak asasi manusia dan kebebasan adalah nilai tertinggi, tetapi fitur khususnya, sebagai fitur yang sangat penting dari masyarakat progresif, terletak pada ketidakstabilan historis, variabilitas, dan ketergantungan pada proses sosial-ekonomi di negara, yang bertentangan dengan prinsip-prinsip humanisme yang mapan, tetapi tetap khas dalam kondisi perang. Dalam ruang lingkup studi ilmiah, ditentukan bahwa hak asasi manusia memiliki karakter evolusi bersama dengan masyarakat dan negara, dan oleh karena itu, dengan memperhitungkan kompleksitas peristiwa yang terjadi di wilayah Ukraina modern, studi terhadap rentang masalah yang tersedia memiliki peran ilmiah dan praktis yang sangat penting. Untuk mendapatkan kesimpulan ilmiah yang dapat diandalkan, metode ilmiah umum dan khusus untuk mempelajari realitas objektif (berdasarkan pendekatan dialektika terhadap analisis objek) digunakan dalam penelitian ini. Artikel ini merupakan penelitian kualitatif dengan pendekatan historis dan komparatif. Hasil penelitian menyimpulkan bahwa pada tahun 2024, hampir 68.500 kasus terhadap negara-negara pihak dalam Konvensi masih ditangguhkan di Pengadilan Hak Asasi Manusia Eropa. Dari jumlah tersebut, terdapat 8.737 kasus terhadap Ukraina, yang merupakan 12,8% dari jumlah total aplikasi. Selain itu, beberapa aspek peningkatan praktik perlindungan hak-hak warga di bawah kondisi hukum darurat di Ukraina harus merujuk pada beberapa poin berikut: Pertama, pemenuhan Ukraina secara komprehensif terhadap kewajibannya dalam memerangi impunitas atas kejahatan yang paling serius terhadap hak asasi manusia yang dilakukan dalam konteks agresi bersenjata oleh Federasi Rusia, khususnya pemenuhan kewajiban ini dengan cara menyesuaikan KUHP Ukraina dengan perkembangan hukum pidana internasional saat ini; kedua, pemenuhan Ukraina secara komprehensif terhadap kewajibannya dalam memerangi impunitas atas kejahatan yang paling serius terhadap hukum internasional terletak pada mendalaminya pengetahuan para hakim, jaksa, dan pengacara tentang hukum internasional, khususnya hukum internasional kemanusiaan, hak asasi manusia, dan hukum pidana internasional.

**Kata kunci:** Agresi bersenjata, Masyarakat digital, Pengadilan Hak Asasi Manusia Eropa, Hak Asasi Manusia dan kebebasan, Hubungan sosial, Mekanisme dan prinsip, Ketaatan terhadap hak warga negara, Darurat militer, Dasar hukum.

**Abstract:** The purpose of the article is to reveal provision of human rights in Ukraine under the conditions of martial law. Human rights and freedoms are the highest value, but their characteristic feature, as a fundamentally important feature of a progressive society consists in historical instability, variability and subordination to socio-economic processes in the state, which contradicts the established principles of humanism, but remains typical in war conditions. Within the scope of the scientific study, it was determined that human rights have a characteristic of evolution together with society and the state, and therefore, taking into account the complexity of the events taking place on the territory of modern Ukraine, study of the available range of problems has a particularly important scientific and practical role. In order to obtain reliable scientific conclusions, general scientific and specialized methods of studying objective reality (based on a dialectical approach to the analysis of the object) were used in the research. This article is the qualitative research with a historical and comparative approach. The results of the study concluded that in 2024, almost 68,500 cases against



states parties to the Convention are pending in the European Court of Human Rights. Of these, there are 8,737 cases against Ukraine, which is 12.8% of the total number of applications. In addition, certain aspects of improving the practice of protecting the rights of citizens under the conditions of martial law in Ukraine should refer to the following points: Firstly, comprehensive Ukraine's fulfillment of its obligations regarding fighting impunity for the most serious crimes against human rights committed in the context of armed aggression by the Russian Federation, in particular, fulfillment of these obligations by means of bringing the Criminal Code of Ukraine in accordance with the current state of development of international criminal law; secondly, comprehensive Ukraine's fulfillment of its obligations regarding fighting impunity for the most serious crimes against international law consists in deepening the knowledge of judges, prosecutors and lawyers on international law, in particular international humanitarian law, human rights and international criminal law.

**Key words:** Armed aggression, Digital society, European Court of Human Rights, Human rights and freedoms, Social relations, Mechanism and principles, Observance of citizens' rights, Martial law, Legal basis.

## INTRODUCTION

Ukraine's progress regarding civil society entry and exit, access to a stable currency, and freedom to trade internationally was noted. The country scored lower in business regulation, property rights protection, and police reliability. Switzerland, New Zealand, and Denmark top the ranking for the second year in a row. Estonia took the lead among Eastern European countries, with Ukraine ranked 20th out of 22, and Russia and Belarus taking the lowest positions. The Human Freedom Index ranking is based on an assessment of two key components of human freedom: personal and economic freedoms. Ukraine has the best position in terms of personal freedoms — 81st in the world. In terms of economic freedoms, the country ranked 112th.<sup>1</sup>

Today, Ukraine is at one of the most difficult stages of its independent period of social and economic development - namely in the conditions of martial law introduced as a result of treacherous armed aggression on the part of the Russian Federation. Insufficient readiness of our state for occurrence of such events has focused attention on the importance of conducting an in-depth analysis of certain aspects related to improving operation of namely the social sphere. In particular, the issues regarding recognition and implementation of human rights in war conditions remain open for further research.

Human rights in conditions of war are an integral value of a progressive modern society; it acts as a key object of constitutional and legal regulation, which is an unconditional function of national legislation. During an armed conflict, the priority of observing human rights is not only evidence of a high level of democracy achieved in the state and a high degree of society development, but also an indicator of recognizing citizens as the highest social value and a national priority. Taking into account the unchanging importance of individuals and the lack of effective mechanisms, tools and stable principles for realization of human rights during war, recognized at all levels of regulation of social processes, in particular not only at the national level, but also at the global interstate level, it is advisable to continue the research of the selected range of problems.<sup>2</sup>

Review of recent researches and publications. Aspects of realization of human

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<sup>1</sup> Ukraine has improved its position in the Human Freedom Index for 2023. independent Ukrainian organization «Brand Ukraine». <https://brandukraine.org.ua/en/news/ukraine-in-human-freedom-index-2023/>

<sup>2</sup> Voloshanivska, T., Pozihun, I., Losych, S., Merdova, O., Leheza, Y. Administrative and Criminal Law Aspects of Preventing Offenses Committed by Minors in the Sphere of Illegal Circulation of Narcotic Drugs, Psychotropic Substances and Precursors. *Journal of Drug and Alcohol Research*, 2023, 12(10), 236269 <https://www.ashdin.com/abstract/administrative-and-criminal-law-aspects-of-preventing-offenses-committed-by-minors-in-the-sphere-of-illegal-circulation--105305.html>

rights in the conditions of martial law have been focused in works of many modern researchers. Active discussions around the available range of problems are going on, as the issue has gained relevance and has become important for Ukraine in the context of preserving human potential during armed aggression initiated by the Russian Federation.

Thus, M. Kovaliv determines the importance of processes of recognition and realization of human rights in the conditions of modern progressive society. Summarizing the general practice of realizing citizens' rights, the scientist came to the conclusion that there is a direct connection between development of the state, society and the organizational and legal mechanism for ensuring protection of human and civil rights and freedoms; this connection "is expressed in the fact that in a totalitarian state with an unstable political and economic situation, there cannot be a perfect organizational and legal mechanism for ensuring protection of human rights"<sup>3</sup>. Accordingly, quality of citizens' life, even in the conditions of martial law, directly depends on perfection of legal regulation rights of each of the aforementioned subjects of legal relations.

V. Sverdlichenko investigates the current phenomenon of abuse of the right to honor, dignity and business reputation under conditions of martial law. It has been determined that abuse of law is one of the most popular ways of delaying court proceedings under the special/martial law regime. However, in the course of permanent studies of the investigated range of problems, the scientist proves that the abuse of the right to honor, dignity and business reputation in war conditions is made impossible, in particular, the assignment of the right is manifested through "each person's awareness of his/her value, social significance and moral equality alongside other persons", even in conditions of war.<sup>4</sup>

Organizational aspects of the regulation of social relations arising in connection with emergency and military situations are investigated by O. Bukhanevich, A. Mernyk, O. Petryshyn.. According to the scientists martial law, being one of the manifestations of a special legal regime introduced, involves the application of a set of specific legal means that determine human rights, provide citizens with certain permissions, prohibitions or restrictions, while focusing on the regulatory functions of legal instruments or specific legal regime.<sup>5</sup> In addition, aspects of realization of human rights and freedoms during armed conflicts are given considerable attention in the works by V. Pylypenko, P. Pylypyshyn, N. Radanovych. The scientists carried out a retrospective analysis of human rights within the framework of international human rights law and international humanitarian law<sup>6</sup>, they summarized the evolution of human rights in the context of the armed conflict that began

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<sup>3</sup> Kovaliv M. V. (2021). Protection of rights and freedoms of man and citizen as one of the tasks of the state. State-building and law-making in the context of European integration: Mat. add. participants of the VII All-Ukrainian Round Table. Lviv: Lviv State University of Internal Affairs. 74-77

<sup>4</sup> Sverdlichenko V.P. Analysis of the category "abuse of the right to honor, dignity and business reputation" in conditions of emergency or martial law. *Forum of law: electronic. of science professional type*. 5 (2017). 356–361. <http://doi.org/10.5281/zenodo.1199304>. M Maimunah, "Politik Islam Perspektif Maqashid Syariah," *El-Masblahah*, no. Query date: 2024-04-12 15:19:49 (2018), <http://e-journal.iainpalangkaraya.ac.id/index.php/masblahah/article/download/1093/920>.

<sup>5</sup> Bukhanevych O.M., Mernyk A.M., & Petryshyn O.O. Approaches to understanding the category "special legal regimes". *Journal of the National Academy of Legal Sciences of Ukraine*. №28(1) 2021. 71–78. [http://doi.org/10.37635/jnalsu.28\(1\).2021.71-78](http://doi.org/10.37635/jnalsu.28(1).2021.71-78). Also compare with research A Hasan, A Hafidzi, and Y Zaidah, "Modern Law Aspect on Procedural Decision of Sultan Adam Law," *Al-Ahkam*, no. Query date: 2024-03-12 11:48:55 (2019), <https://journal.walisongo.ac.id/index.php/ahkam/article/view/4285>.

<sup>6</sup> Pylypenko V.F., Pylypyshyn P.B., & Radanovych N.M. Features of legal regulation of human rights in armed conflicts. *Journal of the National Academy of Legal Sciences of Ukraine*. №28 (1) (2021). 43–51. [http://10.37635/jnalsu.28\(1\).2021.43-51](http://10.37635/jnalsu.28(1).2021.43-51). Compare with,

J Baehaqi, "Pengaruh Islam Dan Budaya Dalam Pembentukan Hukum Di Indonesia," *AL-IHKAM: Jurnal Hukum & Pranata Sosial*, no. Query date: 2024-04-12 15:50:16 (2016), <https://ejournal.iainmadura.ac.id/alihkam/article/view/928>.

in Ukraine in 2014, and also determined the prospects for further transformations in the context of current events.

In the course of determining various aspects of ensuring realization of citizens' rights, scientists determined that in conditions of armed aggression, imperative methods are actualized, in particular, in the forms of emergency regulation of social relations, sometimes relying on means of coercion.<sup>7</sup>

Highlighting previously unsolved parts of the overall problem. To date, the range of problems has been studied in detail by the above-mentioned scientists, who are knowledgeable and competent in realization of human rights in conditions of war or martial law. However, the issue is becoming more relevant as a result of the terrible events taking place on the territory of modern Ukraine, and, accordingly, it requires new research, justifications and generalizations. As it was mentioned, human rights are that very socio-legal category, which is characterized by a high degree of dependence on changes of a legal or socio-economic nature, but remains a universal value, and therefore preserves a priority importance for any society, especially in conditions of martial law ; these aspects determine importance of conducting in-depth research on the outlined topic in the context of the current events caused by the Russian armed aggression

The purpose is to carry out an original study of the main aspects of state functioning during martial law, in particular, study of the characteristic features and mechanisms determining realization of human rights and the legislative basis for their observance in conditions of armed aggression. In order to achieve the set goal, the following tasks have been formed and solved: analyze human rights from the point of view of the category as the highest value that evolves along with society and the state; determine the foundations of legal and constitutional regulation of human rights in Ukraine under martial law.

## METHOD

In order to obtain reliable scientific conclusions, general scientific and specialized methods of studying objective reality (based on a dialectical approach to the analysis of the object) were used in the research. A variety of scientific methods have been taken into account, such as dialectical one, historical-legal one, logical-semantic one, formal-logical one, systemic-structural one, systemic one, comparative-legal one, and others.

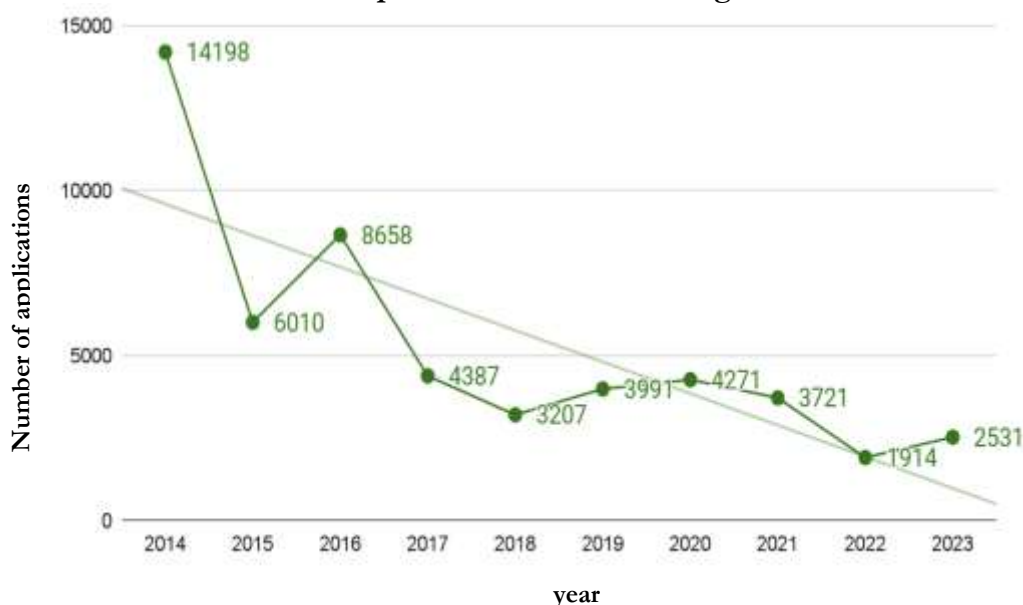
A dialectical approach was used to analyze restrictions on rights and freedoms in the context of martial law, taking into account interaction with constitutional norms, international standards of human rights and other legal factors. Advantages and disadvantages of institutional models of guaranteeing rights and freedoms were determined, as well as the validity of restrictions and their compensations were studied. Based on this, proposals were formulated to improve the regulatory control of the specified restrictions. The historical-legal method made it possible to retrospectively study the genesis of the causes and historical-legal bases of restricted human and civil rights and freedoms in connection with armed conflicts in different periods . The logical-semantic method made it possible to formulate and deepen the conceptual and categorical framework. Using the formal-logical method, a legal analysis of the current normative constructions was carried out, the degree of restrictions on person's constitutional rights under martial law conditions was determined, their problems were identified, and proposals were formulated. The systemic-structural method was used to analyze limitations

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<sup>7</sup> Leheza, Ye. Shablysty, V. Aristova, I. V. Kravchenko, I. A. Korniakova, T. (2023). "Foreign Experience in Legal Regulation of Combating Crime in the Sphere of Trafficking of Narcotic Drugs, Psychotropic Substances, their Analogues and Precursors: Administrative and Criminal Aspect." *Journal of Drug and Alcohol Research*. Vol. 12 . No. 4, 1-8. DOI: <https://doi.org/10.4303/JDAR/236240>

of constitutional rights and freedoms in the context of martial law, necessity of these limitations; and this method was also used when studying the internal structure and interrelationships of the elements of the martial law legal regime, as well as the grounds and procedure for introduction of this regime. The systemic approach was used to consider individual elements of martial law and restrictions on rights and freedoms under martial law as a single system that has its own specific characteristics, which are not a simple sum of characteristics of individual elements. The method of comparative legal research was used to compare different legal regimes that provide for the limitation of constitutional rights and freedoms, as well as to analyze legislative norms in order to clarify their compliance with constitutional principles and international standards in the sphere of human rights.

**Figure 1. Number of applications regarding human rights violations in Ukraine submitted to the European Court of Human Rights from 2015 to 2023**



Although there are still many appeals, there is a tendency to decrease the number of ECtHR applications filed against Ukraine. It can be explained by the fact that citizens increasingly rarely consider the Court to be the highest instance where it is possible to appeal the decision of the Ukrainian Themis. In fact, the Court determines whether the state has violated its obligations under the Convention.

We see a general trend towards a decrease in the number of applications to the European Court of Human Rights filed against Ukraine. It can be connected with a reassessment of the place and role of the Court. Ukrainians used to perceive it as the fourth level of the judicial system, but now they are increasingly aware of its real role: to establish the facts of violations by states of their obligations under the Convention.

Based on the statistical reports of the ECtHR, we will consider how the number of applications filed against Ukraine and the number of decisions rendered changed. We will separately analyze the cases under Articles 8 (right to respect for private and family life) and 10 (freedom of expression) of the Convention, in the field of implementation of which TsEDEM provides expertise.

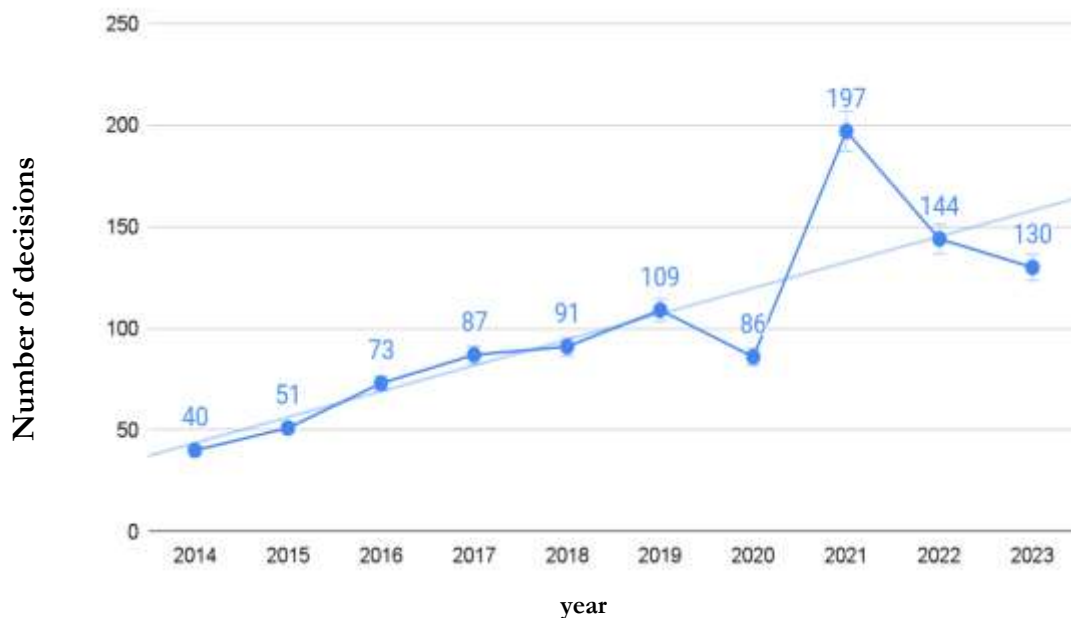
At the same time, the number of applications per 10,000 citizens in our country is only slightly higher than the average of the states participating in the Convention. And the general level of preparation of applications to the ECtHR and their validity remain quite low.

According to the ECHR statistics for 2023, the Court received a total of 34,650 applications during the year (in 2022, there were 45,500). This is the lowest indicator in the last 10 years. Among them, 2,531 applications were filed against Ukraine.

However, it would be incorrect to consider this as evidence of a high level of human rights violations in Ukraine. The average number of submitted applications per 10,000 inhabitants is 0.41, and in Ukraine - 0.56. For comparison, the number of submitted applications per 10,000 inhabitants in Poland is 0.5, in Moldova - 2.6, in Belgium - 1.13, in Estonia - 0.75. Therefore, our indicator cannot be called extremely high compared to other countries.

In 2023, the Court considered 38,260 applications, of which 67% were deemed inadmissible, and only 18% were dealt with by the Court. That is, out of 38,260 applications, decisions were made for 6,931 applications. In 2022, 79% of applications were deemed inadmissible, and in 2021 - 76%. That is, the rejection rate is already traditionally high. The reason is that the majority of applications do not meet the court's admissibility criteria: the six-month deadline for submitting an application to the Court has been violated, the applicant has not exhausted national legal remedies or has not substantiated which right provided for by the Convention, in which way the state has violated it. The Court has even prepared a special Practice Guide on the admissibility of applications designed to assist applicants.

**Figure 2. The number of decisions of the European Court of Human Rights from 2015 to 2023**



At the same time, we see another clear trend: an increase in the number of decisions that the Court has issued based on applications against Ukraine. This is also reflected in the growing number of decisions where violations of obligations under Article 8 (right to respect for private and family life) and Article 10 of the Convention (freedom of expression) have been recorded.

The number of decisions under Articles 8 and 10 of the Convention remains insignificant, although it shows a tendency to increase (in proportion to the total number of decisions).

This increase may indicate that Ukrainians have become more knowledgeable and qualified when it comes to applying to the ECtHR (in particular, the jurisdiction of the Court, the admissibility of applications, the procedure for applying, etc.).

## RESULTS AND DISCUSSIONS

### Theoretical and legal principles of ensuring human rights in Ukraine

Article 3 of the Constitution of Ukraine stipulates that “a person, his/her life and health, honor and dignity, inviolability and security are recognized as the highest social value in Ukraine”.<sup>8</sup> The rights of citizens and their guarantees reflect the content, functional duties and strategic direction of the state’s activities. As a participant in social and economic relations, the state is obliged not only to perform certain functions, but also to bear responsibility to the person for its activities.<sup>9</sup> Thus, the establishment and provision of human rights and freedoms is the main duty of the state, including in the conditions of martial law. The organization of interaction between the state and citizens can undergo transformations under the pressure of global socio-economic trends, external factors or internal changes, which include the processes of introducing a state of emergency or martial law. However, the Constitution (being the highest law in Ukraine and having a powerful regulatory potential) gives priority to human rights over the needs or interests of the state, which is an evidence of modified relations between the specified subjects and claims to bring to a mechanism of a qualitatively new level for the realization of citizens' rights in the conditions of modern society.

The theory developed by the French lawyer of Czech origin Karel Vašák is an interesting practice of determining human rights as a social category. He claimed the existence of several generations of human rights that arose in the course of their evolution.<sup>10</sup> Such a theoretical concept, given the context of the martial law introduced in modern Ukraine, is particularly important, as it confirms the existence of a whole range of citizens’ rights, which were historically formed and cannot be taken away from a person even in the event of an armed conflict. In particular, the main three generations have the following meaning (Fig. 1).

**Figure 1. Three generations of ensuring human rights in conditions of war**

<b><i>The first generation of human rights (according to classification)</i></b>	
	Civil and political rights. It is believed that the rights of the first generation are the basis of the institution of human rights, as they include the right to life, the right to freedom and personal integrity, the right to personal dignity, etc.
<b><i>The second generation of human rights (according to classification)</i></b>	

<sup>8</sup> Constitution of Ukraine: Law of Ukraine dated 28.06.1996 No. 254k/96-BP. Available at: <https://zakon.rada.gov.ua/laws/card/254%D0%BA/96-%D0%B2%D1%80>.

<sup>9</sup> Leheza, Yevhen. Pisotska, Karina. Dubenko, Oleksandr. Dakhno, Oleksandr. Sotskyi, Artur. 2022. the essence of the principles of ukrainian law in modern jurisprudence. *revista juridica portugalense*, december, 342-363. doi: [https://doi.org/10.34625/issn.2183-2705\(32\)2022.ic-15](https://doi.org/10.34625/issn.2183-2705(32)2022.ic-15)

<sup>10</sup> Malozhon O. I. The fourth generation of human rights in the Ukrainian context modernity Legal scientific electronic journal. 2021. 12. 41–44. <https://doi.org/10.32782/2524-0374/2021-12/6>

	Social, economic and cultural rights (the right to work, rest, social security, medical care, maternity and childhood protection, etc.) - it was formed in the process of people's struggle aimed at improving their economic situation and raising their cultural status.
<b><i>The third generation of human rights (according to classification)</i></b>	
	Solidarity (collective) rights, that is, the rights of all humanity - human rights, peoples' rights, nation's rights, community rights and association rights: the right to peace, security, the right to self-determination of peoples, etc.

Taking into account the conceptual basis and the generational approach to the development of citizens' rights, modern researchers have determined that the unconditional evolution of the formed concept cannot be stopped, and therefore the fourth generation of rights (which is formed in conditions of actualization of such concepts as human freedom, human thoughts and judgments) is connected precisely with the emphasis on the development of society and complication of social processes. It is worth noting that modern society is an environment that, on the one hand, is an association of equal citizens, but, on the other hand, it is an environment that supports individuality of each person, his/her unique value, subjective judgment and powerful potential. Thus, the fourth generation of human rights includes rights to person's optionality in his/her choice of lawful behavior, rights to individual's autonomy and uniqueness, as well as rights to a high degree of independence in both physical and mental capabilities.<sup>11</sup>

When investigating the concept of the historical development of human rights in the context of martial law, it is the fourth generation that emphasizes the fact that a person cannot be limited only to political and civil rights, although they certainly remain basic.<sup>12</sup> Interaction between the state and the citizen in conditions of war must be effective for both sides. In turn, effectiveness depends on independence of both the person and the state, as they are equal subjects of legal relations.<sup>13</sup> Development of the fourth generation of human rights in the conditions of martial law consists in recognition of the high status of each individual, who, regardless of external circumstances, is endowed with the highest value and achievement of modern society - freedom. Accordingly, autonomy of a person in conditions of war consists in his/her right to persist in his/her own point, defend his/her civil position; "this is the recognition of the human right to form and preserve a personal, sovereign space, which is necessary for each person for independent expression of will, self-determination, which is based on an alternative choice of norms of morality, religion, law, and must be guaranteed to be protected against interference of other subjects, in particular states".<sup>14</sup>

The theory of law testifies to the existence of a set of progressive concepts that only

<sup>11</sup> Leheza, Yevhen. Shablysty, Volodymyr. Aristova, Irina V. Kravchenko, Ivan O. Kornikova, Tatiana. 2023. Foreign Experience in Legal Regulation of Combating Crime in the Sphere of Trafficking of Narcotic Drugs, Psychotropic Substances, their Analogues and Precursors: Administrative and Criminal Aspect. *Journal of Drug and Alcohol Research*. 12, 4, 1-8. DOI: <https://doi.org/10.4303/JDAR/236240>

<sup>12</sup> Leheza, Y., Dubenko, O. ., Pavlyk, L., Prasov, O. & Pavlov, V. (2024). Foreign Experience of Responsibility for Driving Vehicles in Condition of Alcohol Intoxication: International Standards, Administrative and Criminal Aspects. *Revista Juridica Portucalense*, 161-174. [https://doi.org/10.34625/issn.2183-2705\(35\)2024.ic-08](https://doi.org/10.34625/issn.2183-2705(35)2024.ic-08)

<sup>13</sup> Yerofieienko, L. Komashko, V. Leheza, Ye. (2023). Peculiarities of legal regulation of intellectual property protection in Ukraine under martial law: administrative and civil aspects. *Law of Justice Journal*, 37(3), 157-172. <https://doi.org/10.5335/rjd.v37i3.15233>

<sup>14</sup> On the legal regime of martial law: Law of Ukraine dated May 12, 2015 No. 389-VIII. Available at: <https://zakon.rada.gov.ua/laws/card/389-19>



confirm the high importance of constitutional rights, defined taking into account the mentality of citizens, uniqueness of the nation and strategic priorities. Thus, Ukraine is characterized as a state that follows a socially oriented vector of development during the entire period of its independence. Accordingly, the constitutional rights of citizens are defined in compliance with the principles of building a progressive, free, democratic and humane society. Conditions of martial law cause specific restrictions on life activities of citizens, but they in no way concern cancellation of such unconditional rights as:

1. equality of citizens with regard to constitutional rights and freedoms and equality before the law (Art. 24);
2. prohibition of deprivation of citizenship, the right to change citizenship (Article 25);
3. inalienable right to life (Art. 27);
4. the right to respect person's dignity (Art. 28);
5. the right to freedom and personal inviolability (Art. 29);
6. the right to send individual/collective written appeals or to personally address state authorities, local self-government bodies and officials of these bodies (Art. 40);
7. the right to housing (Art. 47);
8. equal rights and obligations of spouses in marriage and family; equal rights of children (Art. 51, 52);
9. the right to judicial protection (Art. 55);
10. the right to compensation at the expense of the state or local self-government bodies for material and moral damage caused by illegal decisions, actions or inaction of state authorities, local self-government bodies, their officials and employees in the exercise of their powers (Art. 56);
11. the right to know one's rights and duties (Art. 57);
12. irreversibility of the time effect of laws, normative legal acts (Art. 58);
13. the right to professional legal assistance (Art. 59);
14. the right not to carry out clearly criminal instructions or orders (Art. 60);
15. the right not to be twice brought to legal responsibility of the same type for the same offense (Art. 61);
16. presumption of innocence (Art. 62);
17. the right not to give testimony or explanations about oneself, family members or close relatives, whose circle is determined by law (Art. 63).<sup>15</sup>

The following question arises: what circumstances can cause restriction of citizen's rights and why human rights appear to be restricted exactly in the conditions of war, when the stability of social relationships is already losing its strength, and the level of nationwide demoralization is gaining unprecedented indicators? And such restrictions are connected with the need to reduce the subjective influence on the strategy of settling the armed conflict. In particular, according to Art.1 of the Law of Ukraine "On the Legal Regime of Martial Law", martial law is "a special legal regime introduced in the state or in some of its localities in the event of armed aggression or threat of attack, danger to state independence, its territorial integrity and it provides for granting the relevant state authorities, military command, military administrations and local self-government bodies the powers necessary to avert the threat, repulse armed aggression and ensure national security, eliminate the threat of danger to state independence, territorial integrity of the country." It is indisputable that the majority of civilians do not have even the basic skills to implement the measures

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<sup>15</sup> Leheza, Y., Shcherbyna, Bogdan. Leheza, Yulia. Pushkina, Olena & Marchenko O. (2023). "Features of Applying the Right to Suspension or Complete/ Partial Refusal to Fulfill a Duty in Case of Non-Fulfilment of the Counter Duty by the Other Party According to the Civil Legislation of Ukraine." *Revista Juridica Portucalense*, 340–359. Retrieved from <https://revistas.rcaap.pt/juridica/article/view/29662>

necessary to counter an aggressor, and their judgments are based mainly on subjective views, individual interests, or their own observations, which may contradict the strategy and tactics of military operations. This leads to the need to limit the rights of citizens in certain aspects, but it makes it completely impossible to violate the basic rights and freedoms defined by the Constitution.

International humanitarian law or the law of armed conflicts is an important source of human rights in the context of interstate conflicts, particularly in the current conditions of severe manifestations of armed aggression initiated by the Russian Federation in Ukraine. This is precisely the branch of international law that defines the key norms and principles of human rights protection, contains restrictions on the use of violence during armed conflicts, putting forward the following requirements: first, spare those who do not take or have stopped taking direct part in hostilities; secondly, limit violence to the extent necessary to achieve the goal of the conflict, which may consist (regardless of the reasons for which the conflict began) only in weakening the military potential of the opposing side.

16

The specifics of human rights protection are laid down in the key provisions of IHL, one of which is known as the “Martens Declaration (Reservation)”. This reservation was first included in the preamble of the Hague Convention on the Laws and Customs of War on Land in 1899 at the suggestion of international lawyer and diplomat F. F. Martens, and later became an independent norm, which with editorial changes was included in subsequent conventions of international humanitarian law.<sup>17</sup> It was included in the articles devoted to the legal consequences of the denunciation of Geneva Conventions I-IV (Art. 63/62/142/158), as well as to par. 2 of Art. 1 of the Additional Protocol to the Geneva Convention I, where the Martens declaration is set out in the following wording: “In cases not covered by this Protocol or by other international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience.”<sup>18</sup>

Separate components of control over violations of human rights are summarized not only in the sources of international humanitarian law, but also in European human rights law, which is based on the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter - the Convention). It is this document that enshrines a complex of basic human rights and freedoms, criminal procedural guarantees of their observance and implementation. In order to protect these rights and freedoms, the European Court of Human Rights (hereinafter referred to as the ECtHR) was established; jurisdiction of this court extends to all cases and its decisions are binding for all States parties to the Convention.<sup>19</sup> It is in the practice of European human rights law that the aspects of prosecution of persons guilty of the most serious violations

<sup>16</sup> Dymko, I., Muradian, A., Manzhula, A., Rudkovskiy, O., Leheza, Ye. “Integrated approach to the development of the effectiveness function of quality control of metal products”.. *Eastern European Journal of Enterprise Technologies*. 6/3 (90). (2017). 26-34. doi: 10.15587/1729-4061.2017.119500.

<sup>17</sup> Shkuta, O., Karbovskiy, D., Pushkina, O., Potip, M., Varhuliak, O. Object and Subject of State Control in the Sphere of Legal Turnover of Narcotic Drugs, Psychotropic Substances and their Precursors in Ukraine: Administrative, Criminal and Civil-Legal Aspect. *Journal of Drug and Alcohol Research*. 12(7), (2023), 236-255. <https://doi.org/10.4303/JDAR/236255>

<sup>18</sup> Hnatkovskiy M. . Respect for human rights in conditions of armed conflict in Application of norms of international humanitarian law and standards of protection by courts in Ukraine of human rights, Kyiv. 2017. 22. [https://newjustice.org.ua/wp-content/uploads/2017/09/Report\\_Respect-for-HR-in-Conflict\\_Gnatovskiy\\_UKR.pdf](https://newjustice.org.ua/wp-content/uploads/2017/09/Report_Respect-for-HR-in-Conflict_Gnatovskiy_UKR.pdf)

<sup>19</sup> Korniienko, M. Desyatnik, A. Didkivska, G. Leheza, Ye. Titarenko, O. (2023). Peculiarities of investigating criminal offenses related to illegal turnover of narcotic drugs, psychotropic substances, their analogues or precursors: criminal law aspect. *Khazana Hukum*. Vol. 5. No. 3, 205-215 DOI: <https://doi.org/10.15575/kh.v5i3.31742>.

of human rights are defined. This aspect of legal relations is formulated in the practice of the ECtHR as a so-called “procedural obligation” in accordance with Art.2 and Art.3 of the Convention. It defines the obligation “to conduct an effective investigation of violations of the material aspects of these norms.” The criminal component of this procedural obligation is also directly mentioned by the Court: “The Court has repeatedly stated that the effective judicial system required by Article 2 must, in certain circumstances, include recourse to the criminal law”.<sup>20</sup>

Other international documents enshrining human rights include the European Social Charter (1961), the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987). Activities of the Organization for Security and Cooperation in Europe (hereinafter - OSCE) are an important channel for asserting rights and freedoms of a person and a citizen in the European region, in particular, on the territory of the post-Soviet space.<sup>21</sup>

Introduction of martial law on the entire territory of Ukraine is an unprecedented measure during the years of independence, which causes difficulties in organization of human rights protection, in particular, taking into account the need to oppose the enemy in the conditions of severe mass battles and the complete disregard on the part of the aggressor-state (the Russian Federation) of all international customs and procedures for implementation of the strategy and tactics of warfare.<sup>22</sup> Under the pressure of these circumstances, it is expedient to increase the role and improve the practice of protecting the rights of Ukrainian citizens. In particular, in our opinion, the need to strengthen protection of individual rights is obvious, especially in spheres where legality control alone is not sufficient. Accordingly, the concept of improving the mechanism should be based primarily on: consolidation of a high degree of independence of law-making processes and bodies implementing law-making activities and human rights protection activities in the system of state authorities of Ukraine; reducing the formality of procedures for consideration of complaints submitted by citizens regarding violation of their rights and freedoms, which must not be restricted even under martial law because this contradicts provisions of the Constitution of Ukraine; providing free-of-charge assistance, in particular information and explanatory services, continuous legal support or accompaniment, as well as meeting other needs of citizens in the context of law-making and human rights protection activities.

### **Ensuring human rights in the decisions of the European Court of Human Rights**

On January 25, 2024, the statistical report of the European Court of Human Rights on the results of work in 2023 was released. Let's take a closer look at the report and the decisions made against Ukraine under Article 8 (right to respect for private and family life) and Article 10 of the Convention (freedom of expression).<sup>23</sup>

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<sup>20</sup> Hnatkovskiy M. . Respect for human rights in conditions of armed conflict in Application of norms of international humanitarian law and standards of protection by courts in Ukraine of human rights, Kyiv. 2017. 22. [https://newjustice.org.ua/wp-content/uploads/2017/09/Report\\_Respect-for-HR-in-Conflict\\_Gnatovsky\\_UKR.pdf](https://newjustice.org.ua/wp-content/uploads/2017/09/Report_Respect-for-HR-in-Conflict_Gnatovsky_UKR.pdf) also compare with R Basri, “Tbnu Qayyim Al-Jawziyyah Tentang Pengaruh Perubahan Sosial,” *Al-Manahij: Jurnal Kajian Hukum Islam*, no. Query date: 2024-04-12 15:42:17 (2015), <https://ejournal.uinsaizu.ac.id/index.php/almanahij/article/view/489>.

<sup>21</sup> Leheza, Y., Sinkevych, O., Kravtsova, Z., Kudriavtseva, O., Cherniak, I. The human right to an environment safe for life and health: legal regulation, contemporary challenges and comparative perspectives. *Syariab: Jurnal Hukum dan Pemikiran*, 2023, 23(2), 138–150 <https://doi.org/10.18592/sjhp.v23i2.12257>

<sup>22</sup> Hryhorash, Olha, Maxim Korneyev, Yevgeny Leheza, Liliya Zolotukhina, and Tetiana Hryhorash. ‘The Development of Small Business as a Source of Formation of Local Budget Revenues in Ukraine’. *Investment Management and Financial Innovations* 15, no. 1 (2018): 132–40. [https://doi.org/10.21511/imfi.15\(1\).2018.12](https://doi.org/10.21511/imfi.15(1).2018.12).

<sup>23</sup> Leheza, Yevgeny, Maryna Savielieva, and Olena Dzhafarova. ‘Structural and Legal Analysis of Scientific Activity Regulation in Developed Countries’. *Baltic Journal of Economic Studies* 4, no. 3 (2018): 147–57. <https://doi.org/10.30525/2256-0742/2018-4-3-147-157>. Saw another with R Adawiah, N Khasyi’in, and ...

According to the ECHR statistics for 2023, the Court received a total of 34,650 applications during the year (in 2022, there were 45,500). This is the lowest indicator in the last 10 years. Among them, 2,531 applications were filed against Ukraine.

However, it would be incorrect to consider this as evidence of a high level of human rights violations in Ukraine. The average number of submitted applications per 10,000 inhabitants is 0.41, and in Ukraine - 0.56. For comparison, the number of submitted applications per 10,000 inhabitants in Poland is 0.5, in Moldova - 2.6, in Belgium - 1.13, in Estonia - 0.75. Therefore, our indicator cannot be called extremely high compared to other countries.<sup>24</sup>

In 2023, the Court considered 38,260 applications, of which 67% were deemed inadmissible, and only 18% were dealt with by the Court. That is, out of 38,260 applications, decisions were made for 6,931 applications. In 2022, 79% of applications were deemed inadmissible, and in 2021 - 76%. That is, the rejection rate is already traditionally high. The reason is that the majority of applications do not meet the court's admissibility criteria: the six-month deadline for submitting an application to the Court has been violated, the applicant has not exhausted national legal remedies or has not substantiated which right provided for by the Convention, in which way the state has violated it. The Court has even prepared a special Practice Guide on the admissibility of applications designed to assist applicants.

In 2023, 1,014 decisions were issued for 6,931 applications — some of the applications were combined due to the similarity of their subject matter. In cases against Ukraine, 130 decisions were issued, of which the Court recognized at least one violation of an article of the Convention in 123 cases. In terms of the number of such decisions, we became the second among all member countries of the Convention. At the same time, a violation of several articles of the Convention may be recorded in one decision.

The first place in terms of the number of judgments handed down in the Russian Federation: 217 of them. And although Russia ceased to be a party to the Convention six months after its exclusion from the Council of Europe on September 16, 2022, it still has a legal obligation to comply with the Court's decisions on applications that were submitted for consideration by the Court until September 16, 2022.

The third place in terms of the number of issued decisions is occupied by Turkey (78 decisions), the fourth by Romania (74 decisions), the fifth by Italy (52 decisions).

The judgments issued against Ukraine recorded:

- 1) 7 violations of Article 2 of the Convention (deprivation of the right to life and lack of effective investigation);
- 2) 50 violations of Article 3 of the Convention (in terms of lack of effective investigation and inhuman, degrading treatment);
- 3) 77 violations of Article 5 of the Convention (right to freedom and personal integrity);
- 4) 50 violations of Article 6 of the Convention (in terms of the right to a fair trial and excessive length of proceedings);
- 5) 13 violations of Article 8 of the Convention (right to respect for private and family life);
- 5 violations of Article 10 of the Convention (freedom of expression);
- 6) 1 violation of Article 11 of the Convention (freedom of assembly and

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“Strategi Antisipasi Gerakan Fanatisme Mazhab Melalui Moderasi Beragama Dalam Pendidikan Di UIN Antasari Banjarmasin,” *Al-Banjari: Jurnal Ilmiah* ..., no. Query date: 2024-04-14 14:21:40 (2021), <https://jurnal.uin-antasari.ac.id/index.php/al-banjari/article/download/6435/2982>.

<sup>24</sup> Volobueva, O. Leheza, Ye. Pervii, V. Plokhuta, Ye. Pichko, R. “Criminal and Administrative Legal Characteristics of Offenses in The Field of Countering Drug Trafficking: Insights from Ukraine.” *Yustisia*. Vol 12, No 3. (2023). 262-277 <https://doi.org/10.20961/yustisia.v12i3.79443>

association);

7) 56 violations of Article 13 of the Convention (the right to an effective remedy);

8) 1 violation of Article 14 of the Convention (prohibition of discrimination);

9) 7 violations of Article 1 of the Additional Protocol (protection of property rights);

10) 2 other violations of articles of the Convention.<sup>25</sup>

In general, in 2024, almost 68,500 cases against the States Parties to the Convention are pending before the Court. Of these, there are 8,737 cases against Ukraine, which is 12.8% of the total number of applications.

The trend of the last 10 years.

Among the 130 rendered decisions in cases against Ukraine, the Court established 13 violations of Article 8 of the Convention and 5 violations of Article 10 of the Convention. The corresponding solutions are given in the tables below.

**Table 1 Decisions of the Court in 2023, which established Ukraine's violation of Article 8 of the Convention of the European Court of Human Rights<sup>26</sup>**

Decision of the ECtHR	Application submission date	Date of decision	More details
CASE OF TERESHCHENKO v. UKRAINE	08/05/2020	19.10.2023	Translation of the Ministry of Justice of Ukraine
CASE OF POGREBNYY AND OTHERS v. UKRAINE	11/15/2004	19.10.2023	Translation of the Ministry of Justice of Ukraine
CASE OF OKSUZOGLU v. UKRAINE	10.11.2018	31.08.2023	Translation of the Ministry of Justice of Ukraine
CASE OF GOLOVIN v. UKRAINE	23.09.2018	07/13/2023	Translation of the Ministry of Justice of Ukraine
CASE OF MEMULAKAN AND MARKIV v. UKRAINE	24.11.2014	01.06.2023	Translation of the Ministry of Justice of Ukraine
CASE OF BAHAROV v. UKRAINE	05/21/2019	05/04/2023	Translation of the Ministry of Justice of Ukraine

<sup>25</sup> Leheza, Yevhen, Tatiana Filipenko, Olha Sokolenko, Valerii Darahan, and Oleksii Kucherenko. 'Ensuring Human Rights in Ukraine: Problematic Issues and Ways of Their Solution in the Social and Legal Sphere'. *Cuestiones Políticas* 37, no. 64 (2020): 124–36. <https://doi.org/10.46398/cuestpol.3764.10>.

<sup>26</sup> Annual Report European Court of Human Rights 2023. <https://www.echr.coe.int/documents/d/echr/annual-report-2023-eng>

CASE OF LYAKH v. UKRAINE	04.10.2019	05/04/2023	Translation of the Ministry of Justice of Ukraine
CASE OF BOGDANOV v. UKRAINE	12.06.2020	05/04/2023	Translation of the Ministry of Justice of Ukraine
CASE OF MAYBORODA v. UKRAINE	15.03.2007	04/13/2023	Analysis of the case from TsEDEM Translation of the Ministry of Justice of Ukraine
CASE OF DUBAS v. UKRAINE	09.11.2020	03/09/2023	Translation of the Ministry of Justice of Ukraine
CASE OF PLESHKOV AND PLESHKOVA v. UKRAINE	13.01.2020	03/09/2023	Translation of the Ministry of Justice of Ukraine
CASE OF KLYMENKO v. UKRAINE	07.02.2014	03/02/2023	Translation of the Ministry of Justice of Ukraine
CASE OF MUKOVOZ v. UKRAINE	12.03.2011	12.01.2023	Translation of the Ministry of Justice of Ukraine
CASE OF OVCHARENKO AND KOLOS v. UKRAINE	20.05.2015, 02.07.2015 (two applications combined)	12.01.2023	Translation of the Ministry of Justice of Ukraine

*Case of Tereshchenko v. Ukraine of the European Court of Human Rights.* The application (no. 35481/20)<sup>27</sup> lodged with the Court against Ukraine under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 5 August 2020 by a Ukrainian national, Mr Oleksandr Petrovych Tereshchenko, who was born in 1983 and lives in Kyiv (“the applicant”);

The case concerns the domestic courts’ alleged failure to establish a schedule providing sufficient contact for the applicant to be able to maintain and develop a relationship with his daughter, who was born in 2016 and lives with her mother (B.) separately from the applicant. The applicant complained of a violation of Articles 6, 8 and 13 of the Convention.

<sup>27</sup> Case of Tereshchenko v. Ukraine 2023. European Court of Human Rights. [https://hudoc.echr.coe.int/eng#{%22appno%22:\[%2235481/20%22\]}](https://hudoc.echr.coe.int/eng#{%22appno%22:[%2235481/20%22]})

Specifically, in December 2017 the applicant brought civil proceedings in the Pervomaisk Town Court (“the first-instance court”), contending that B. had prevented him from having contact with his daughter and asking the court to establish arrangements for regular contact with his child every Saturday and Sunday between 12 noon and 6 p.m. at the child’s place of residence, including outside walks with her between 2 and 4 p.m. without the presence of B. The guardianship authority, intervening in the proceedings as a third party, noted that the relationship between the applicant and B. was strained and opined that the applicant should be given the opportunity to meet with his daughter every Saturday and Sunday between 12 noon and 6 p.m. in the presence of both parents. B. agreed with the contact schedule recommended by the guardianship authority. She also submitted a psychologist’s report stating that the child had developed an attachment to her, had a “tense, emotionally traumatic and distrustful relationship” with the applicant and had suffered “psychological pressure” from him. The report contained no reference to any specific incidents.<sup>28</sup>

On 2 July 2019 the first-instance court ordered B. not to prevent the applicant’s contact with the child and ruled that he could meet with his daughter on the first and third Saturday and Sunday of every month between 12 noon and 6 p.m. at the child’s place of residence and could have outside walks with her between 2 and 4 p.m. in B.’s presence.

The applicant appealed, arguing, *inter alia*, that the first-instance court had failed to give any reasons for not allowing the requested frequency of meetings. On 11 September 2019 the Mykolaiv Court of Appeal upheld the first-instance judgment, finding that the reduced frequency of meetings with the applicant’s daughter (compared to that recommended by the guardianship authority) had been ordered to ensure that the child communicated with the applicant in the presence of her mother, regard being had to the psychologist’s report (see paragraph 2 above) and the best interests of the child.

The applicant appealed on points of law, arguing, *inter alia*, that the lower courts had disregarded the provisions of Article 19 of the Family Code, by which the courts deciding on disputes concerning parents’ participation in a child’s upbringing were entitled to disagree with the opinion of a guardianship authority – which the courts were obliged to involve in such proceedings – only if the authority’s opinion was insufficiently substantiated or if it was contrary to the interests of the child. On 8 April 2020 the Supreme Court dismissed the applicant’s appeal as unfounded, holding that the first-instance court had established the frequency of the applicant’s meetings with the child “in the light of the circumstances of the case and the interests of the child” and had given “due consideration” to the guardianship authority’s opinion.

Relying on Articles 6, 8 and 13 of the Convention, the applicant complained that the courts had unfairly limited his contact with the child without sufficient grounds.

The Government contended that the contested domestic decisions had been duly reasoned and in the best interests of the applicant’s daughter. The limited frequency of the applicant’s meetings with his child had not adversely affected their mutual enjoyment of each other’s company. It remained open to the applicant to seek the revision of the contact arrangements in a new set of proceedings, which he had brought in 2019.

The Court finds that the applicant’s complaint falls to be examined solely under Article 8 of the Convention.

The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

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<sup>28</sup> Zadyraka, Nataliia, Yevhen Leheza, Mykola Bykovskiy, Yevhenii Zheliezniak, and Yulia Leheza. ‘Correlation of Legal Concepts of Administrative Procedure and Administrative Liability in the Sphere of Urban Planning’. *Jurnal Cita Hukum* 11, no. 1 (2023): 33–44. <https://doi.org/10.15408/jch.v11i1.31784>.

The relevant general principles under Article 8 that require the domestic authorities to strike a fair balance between the interests of the child and those of the parents and to attach particular importance to the child's best interests when dealing with disputes between parents regarding access to children have been summarised in, among other authorities, *Sahin v. Germany* ([GC], no. 30943/96,<sup>29</sup> § 66, ECHR 2003-VIII) and *Strand Lobben and Others v. Norway* ([GC],<sup>30</sup> no. 37283/13, §§ 202-07, 10 September 2019).

The Court has previously found a violation of Article 8 in cases where restrictions on the frequency and other aspects of applicants' meetings with their children had been imposed without a proper assessment of all the relevant aspects of the case and the interests at stake (see, for instance, *Cința v. Romania*, no. 3891/19, §§ 45-58, 18 February 2020).

The present case concerns a similar issue. The domestic courts limited the applicant's meetings with his daughter to four days per month without providing any concrete reasons or indications that this would be in the child's interests.

While the appellate court stated that it was in the child's best interests to have her mother present when communicating with the applicant, it did not explain how that could imply that the frequency of the applicant's meetings with the child should be reduced (see paragraph 4 above). The decisions of the first-instance court and the Supreme Court contain no assessment at all of how the reduced frequency of the meetings could be in the child's best interests (see paragraphs 3 and 5 above). Nor did the courts point to any grounds set out in Article 19 of the Family Code allowing them to depart from the guardianship authority's opinion (see paragraph 5 above).

The courts can be seen as having relied largely on the psychological report submitted by the child's mother, according to which the child had a "tense, emotionally traumatic and distrustful relationship" with the applicant and had suffered "psychological pressure" from him. However, the courts did not investigate the factual background to the psychologist's conclusions, and the report did not refer to any specific incidents. The material before the Court contains no indication that the applicant ever abused or traumatised the child or that meeting him in person presented a risk to the child's well-being or security. Regard being had to the guardianship authority's opinion in this case and to the first-instance court's finding that B. had hindered the applicant's contact with the child, it cannot be ruled out that the child's attitude towards him was linked to the strained relationship between the applicant and B. In any event, the psychologist's conclusions as such did not suggest that the meetings should have been less frequent than requested by the applicant and recommended by the guardianship authority – on average eight days per month, an arrangement to which the child's mother agreed (see paragraphs 2 and 3 above).

Furthermore, the courts did not explore whether the alleged problem in the applicant's relationship with his daughter could have been alleviated by other measures to give practical effect to the guarantee of mutual enjoyment by parent and child of each other's company (see *Strand Lobben and Others*, cited above).

The Court is mindful that the domestic courts, which have, *inter alia*, the benefit of direct contact with the interested parties, are better placed to evaluate specific situations relating to disputes between parents regarding contact arrangements with their children and to balance the conflicting interests at stake. The Court's task is not to substitute its own assessment for that of the domestic courts, provided that the decision-making process was fair and allowed those concerned to present their case fully, and that the best interests

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<sup>29</sup> Case of *Sahin v. Germany*. European Court of Human Rights. 2003. <https://hudoc.echr.coe.int/eng#%7B%22appno%22%3A%2230943/96%22%7D>

<sup>30</sup> Case of *Strand Lobben and Others v. Norway*. European Court of Human Rights. 2019. <https://hudoc.echr.coe.int/eng#%7B%22appno%22%3A%2237283/13%22%7D>



of the child were defended (see, among other authorities, *X v. Latvia* [GC], no. [27853/09](#)<sup>31</sup>, § 102, ECHR 2013, with further references).

In this case, however, the decision-making process did not satisfy the relevant requirements of Article 8 (see paragraphs 10 and 16 above), because the domestic courts adduced no relevant and sufficient reasons to justify the imposition of limitations on the frequency of the applicant's meetings with his daughter. Accordingly, it was not established that those limitations were in the child's best interests, and the applicant's interest in meeting his child more often was not duly taken into account.

There has been a violation of Article 8 of the Convention on that account.

The new set of contact-arrangement proceedings, which the applicant brought in 2019 and the outcome of which is unknown, is of no relevance to the issue decided in the present case.

The applicant claimed 1,463,225.04 Ukrainian hryvnias (UAH – equivalent to approximately 42,500 euros (EUR)) in respect of pecuniary damage, UAH 100,000 (equivalent to approximately EUR 2,900) in respect of non-pecuniary damage, UAH 16,482 (equivalent to approximately EUR 500) in respect of costs and expenses incurred before the domestic courts and UAH 8,370 (equivalent to approximately EUR 250) in respect of those incurred before the Court, regarding which he submitted copies of his legal assistance contract and receipts.

The Government contested those claims.

The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it awards the applicant EUR 2,900 in respect of non-pecuniary damage, plus any tax that may be chargeable.

Having regard to the documents in its possession, the Court considers it reasonable to award the applicant EUR 250 in respect of costs and expenses in the proceedings before the Court, plus any tax that may be chargeable to him.

*Declares* the application admissible. *Holds* that there has been a violation of Article 8 of the Convention. *Holds* (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 2,900 (two thousand nine hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 250 (two hundred and fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points. *Dismisses* the remainder of the applicant's claim for just satisfaction.

## CONCLUSION

In the course of the study, it was determined that human rights under martial law are the highest value, historically inalienable rights of citizens, which simultaneously make an emphasis on the following: on the one hand, on the unconditional value of a person, as well as on the need to support him/her in difficult circumstances; on the other hand, on limiting the influence of citizens on the strategy and tactics of resolving an armed conflict, in particular, by means of making it impossible to make subjective decisions or perform ineffective actions by citizens.

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<sup>31</sup> Case of *X v. Latvia*. European Court of Human Rights. 2013. <https://hudoc.echr.coe.int/eng#%7B%22appno%22%3A%2227853/09%22%7D>

The entire set of rights can be structured and divided into conditional groups. In particular, in the theory of law, there is a scientific concept that asserts existence of three generations of human rights: the first generation includes political and civil rights, the second generation includes social, economic and cultural rights, the third generation includes solidarity (collective) rights; they arose in a historical sequence and continue to evolve together with the state and society.

In Ukraine, the basis of the legal framework is formed by constitutional rights, which by their nature are political ones, economic ones, and solidarity ones. Their cancellation is impossible regardless of the legal regime introduced in the state. International humanitarian law is an equally important source of law in times of war.

Introduction of martial law on the entire territory of Ukraine is an unprecedented measure during the years of independence, which causes difficulties in organization of human rights protection, in particular, taking into account the need to oppose the enemy in the conditions of severe mass battles and the complete disregard on the part of the aggressor-state (the Russian Federation) of all international customs and procedures for implementation of the strategy and tactics of warfare.<sup>32</sup> Under the pressure of these circumstances, it is expedient to increase the role and improve the practice of protecting the rights of Ukrainian citizens. In particular, in our opinion, the need to strengthen protection of individual rights is obvious, especially in spheres where legality control alone is not sufficient. Accordingly, the concept of improving the mechanism should be based primarily on:

- consolidation of a high degree of independence of law-making processes and bodies implementing law-making activities and human rights protection activities in the system of state authorities of Ukraine;

- reducing the formality of procedures for consideration of complaints submitted by citizens regarding violation of their rights and freedoms, which must not be restricted even under martial law because this contradicts provisions of the Constitution of Ukraine;

- providing free-of-charge assistance, in particular information and explanatory services, continuous legal support or accompaniment, as well as meeting other needs of citizens in the context of law-making and human rights protection activities.

The key set of human rights is reflected in the Constitution of Ukraine and determined in scientific works. However, the daily life of citizens in the conditions of martial law is a particularly difficult period for Ukraine, and therefore the concepts and practice of implementation of human rights require to be improved, and this determines the prospects of the range of problems and forms vectors for further research.

The large number of appeals to the European Court of Human Rights from our citizens can be explained by the significant role that Ukrainians assign to the court: a place where justice can be restored. Therefore, it should not be considered an objective assessment of the situation with human rights in the state. There are other objective reasons — there are more Ukrainians (and, therefore, potential applicants) than citizens of most countries that are signatories to the Convention. At the same time, we will emphasize the "delayed effect" of the decisions European Court of Human Rights made, because the decisions made in 2023 related to applications submitted in 2007-2020. Therefore, it is not possible to draw conclusions about the situation European Court of Human Rights with human rights in 2023 from last year's decisions.

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<sup>32</sup> Hryhorash, Olha, Maxim Korneyev, Yevgeny Leheza, Liliya Zolotukhina, and Tetiana Hryhorash. 'The Development of Small Business as a Source of Formation of Local Budget Revenues in Ukraine'. *Investment Management and Financial Innovations* 15, no. 1 (2018): 132–40. [https://doi.org/10.21511/imfi.15\(1\).2018.12](https://doi.org/10.21511/imfi.15(1).2018.12).

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