

## PROMISING DIRECTIONS FOR ENSURING NATIONAL SECURITY UNDER MARTIAL LAW

## ORIENTAÇÕES PROMISSORAS PARA GARANTIR A SEGURANÇA NACIONAL AO ABRIGO DA LEI MARCIAL

### VOLODYMYR TROKHYMOVYCH KOMZIUK

Doctor of Law, Associate Professor,  
Professor of State and Legal Disciplines  
department of Educational-Scientific  
Institute of Economics and Law of The  
Bohdan Khmelnytsky National University  
of Cherkasy  
[komzjukwt@ukr.net](mailto:komzjukwt@ukr.net)

### YULIIA OLEKSANDRIVNA ZAHUMENNA

PhD in Law Sciences, Associate Professor,  
Professor of the Department of Theory  
and History of State and Law at Kharkiv  
National University of Internal Affairs,  
Ukraine.  
[yuliyazagum@gmail.com](mailto:yuliyazagum@gmail.com)

### ANDRIY LEONIDOVICH BORKO

Doctor of Law, Professor,  
Dean of the Faculty of Maritime Law of  
the Admiral Makarov National University  
of Shipbuilding city of Nikolaev  
[anbork@ukr.net](mailto:anbork@ukr.net)

### SERHII BORTNYK

Doctor of Legal Sciences, Associate  
Professor,  
Vice-Rector of Kharkiv National  
University of Internal Affairs  
(*Kharkiv, Ukraine*)  
[bortnyk@univd.edu.ua](mailto:bortnyk@univd.edu.ua)

**Received:** 05 Jan 2023

**Accepted:** 15 Feb 2023

**Published:** 02 Mar 2023

**Corresponding author:**

[komzjukwt@ukr.net](mailto:komzjukwt@ukr.net)



outra situação de crise ou de emergência. Os autores destacaram os elementos-chave da democracia liberal e do verdadeiro Estado de direito na Ucrânia, em relação aos quais não deve haver

**Abstract:** Ensuring national security is the key to the development of the state and its recognition in the international arena. The most acute problems and issues that may arise in the field of ensuring national security under martial law are studied and discussed in this article. A detailed analysis of the current situation in the indicated socially important sphere is also made, on the basis of which certain steps are proposed regarding the improvement of the current state of affairs in the protection of key national security. Among other things, emphasis is placed on the critical importance and necessity of proper observance of the rights, freedoms and legitimate interests of citizens guaranteed by the Constitution even during martial law or any other crisis or emergency situation. The authors highlighted the key elements of liberal democracy and the real rule of law in Ukraine, with respect to which there should be no compromise, and which, accordingly, should be reliably preserved by the state in the form of its competent agencies.

**Keywords:** Martial law. National security. Rights and freedoms of citizens. Rule of law. Temporary restrictions.

**Resumo:** Garantir a segurança nacional é a chave para o desenvolvimento do Estado e o seu reconhecimento na arena internacional. Os problemas e questões mais agudos que podem surgir no domínio da garantia da segurança nacional ao abrigo da lei marcial são estudados e discutidos neste artigo. É também feita uma análise detalhada da situação actual na esfera socialmente importante indicada, com base na qual são propostas certas medidas relativas à melhoria da situação actual em matéria de protecção da segurança nacional chave. Entre outras coisas, é dada ênfase à importância crítica e à necessidade de uma observância adequada dos direitos, liberdades e interesses legítimos dos cidadãos garantidos pela Constituição mesmo durante a lei marcial ou qualquer

compromisso, e que, conseqüentemente, devem ser preservados de forma fiável pelo Estado sob a forma das suas agências competentes.

**Palavras-chave:** Lei marcial. Segurança nacional. Direitos e liberdades dos cidadãos. Estado de direito. Restrições temporárias.

## INTRODUCTION

Ensuring the national security of Ukraine is a complex activity in its nature and content. At the same time, in order to assess how effective the legislator's work is in the relevant direction, it is necessary to use a system of indicators (criteria). Efficiency indicates how optimally the available financial, material, technical and human resources were used to achieve the required level of national security. In order to determine how effective the provision of national security is, it must be properly objectively assessed. Thus, the evaluation of the effectiveness of ensuring the national security of Ukraine is the activity of authorized entities carried out in the prescribed manner, which is aimed at establishing the extent to which the measures implemented by the state in the relevant direction, as well as related financial, material and technical and human costs correspond to the set goal (Kobko, 2022).

Due to the fact that the armed, illegal aggression of the Russian Federation towards Ukraine resulted in a full-scale invasion on February 24, 2022, which, in turn, created huge threats to Ukrainian statehood, sovereignty and territorial integrity of Ukraine, and, taking into account the facts of the documented war crimes against the civilian population by the Russian military, we can also claim a threat to the existence of the Ukrainian nation as such. These challenges were faced both by the leadership of the Ukrainian state and by representatives of various strata of Ukrainian citizens. In particular, domestic jurists and legislators faced the need to find new or to adapt and improve the mechanisms already existing in Ukraine or other countries for the proper protection of the rights, freedoms and legitimate interests of citizens under martial law regime. Another goal was, undoubtedly, to achieve, as a result of close interaction between representatives of the state authorities and Ukrainian legal scholars, a high-quality compromise between the need to protect the above-mentioned constitutional rights and freedoms and the justified need for effective protection of national security, including through the introduction by the state of temporary restrictions on the free use by citizens of some of their rights and freedoms,

such as the right to free movement and unhindered travel abroad, as well as the right to freely disseminate certain categories of information.

Given the significant public attention to the problems and issues related to the peculiarities of the functioning of the Ukrainian state and domestic society in the face of confrontation with a full-scale armed invasion of Russia, and also, given the significant interest on the part of domestic and foreign lawyers in Ukraine's ability to maintain and improve the mechanisms for protecting the rights, freedoms and legitimate interests of citizens guaranteed by the Constitution during the active operation of the martial law regime, we state our own confidence that many more high-quality research papers and publications will be devoted to this topic. Among the scientific works that already exist, we can note the works of D. A. Chyzhov, who analyzes the urgent need to streamline the legislation associated with the restrictive imperatives of the martial law regime, as well as I. M. Prots, who was able to thoroughly investigate the intricacies regulatory and legal provision of state response to certain crisis situations in developed and democratic countries of the world.

## **THE PURPOSE AND OBJECTIVES OF THE STUDY**

The main purpose of this article is to consider current problems in the field of legislative provision of mechanisms and tools for the protection of key elements of national security in Ukraine, as well as the protection of fundamental rights, freedoms and legitimate interests of Ukrainian citizens.

The task of the article is to formulate proposals for the potential improvement of directions for ensuring national security in conditions of martial law based on the statements and scientific views of Ukrainian and foreign jurists.

## **METHODOLOGY**

In this article, a bibliographic research method was used, due to which up-to-date information was obtained from leading foreign researchers regarding the mechanisms for supporting the effective functioning of key elements of the national security of Western states in war and other crisis situations.

A comparative method was also used, due to which a comparative analysis of the ways and means of legal response of Western countries to the above-mentioned crisis situations was carried out, in particular, their legal mechanisms for imposing temporary restrictions on individual rights and freedoms of citizens.

## **RESULTS AND DISCUSSION**

The very idea that it is impossible to guarantee people's safety outside the state became revolutionary and for the first time brought the state organization of public relations to the forefront of guaranteeing citizens' safety. Another revolutionary idea was the reliance of the state, while guaranteeing public security, on a rationally constructed and improved law that regulated and directed the development of relations between people who are equal to each other. Accordingly, the security of the policy began to largely depend on the security and protection of the rights of its citizens (Zahumenna, 2022).

Today, no state in the world can independently solve its security problems and guarantee its own territorial integrity and sovereignty without the support of the international community. The national security system is complex and multi-element, because it finds its manifestation in various spheres of public life, and its basis consists of a system of legal acts that effectively regulate national security in unity. In Ukraine, the legal regulation of various aspects of ensuring national security does not cover all its areas (Kobko, 2022).

In recent times, especially since the beginning of the full-scale Russian invasion of Ukraine on February 24, 2022, an increasingly significant part of Ukrainian jurists is beginning to pay attention to the possible directions of qualitative provision of the key foundations of national security under martial law. It is worth noting that although the proper settlement of this problem requires complex efforts not only in the legal sphere, it should, nevertheless, include them. After all, any strategies for the potential development and provision of components of national security of the state must necessarily demonstrate full compliance with the norms and prescriptions of the current legislation of the state. In particular, a wide range of rights of individuals to the inviolability of their private life, confidentiality, etc., must be reliably protected. This especially applies to the period of active martial law in the state (Antonov, 2017). After all, according to the statements of the vast majority of Ukrainian and foreign lawyers, it is during this period that the personal

rights and freedoms of citizens are in a more vulnerable position than usual. Thus, for example, certain opportunities and benefits that Ukrainian society used to enjoy in peacetime have become sharply limited or impossible since the declaration of martial law. Among such public goods, which were limited in Ukraine after February 24, 2022, should be mentioned the right of citizens to free movement of certain categories of citizens (both within the borders of the state and in relation to going abroad), as well as the right to free and unhindered distribution of certain types of information (Prots, 2020). Of course, we must strongly emphasize the fact that in the conditions of armed aggression by a foreign state against the sovereignty and territorial integrity of Ukraine, when the question of a real threat to the physical existence of the Ukrainian nation and statehood is at stake, such measures may be acceptable in the context of actions to strengthen national security and defense of the state. After all, it is widely known that during the introduction of martial law in Ukraine, as well as in many other states, the imposition by competent state bodies of restrictions on the mass distribution of certain information is a completely logical, rational, justified and acceptable step. Among other things, this is due to the fact that the risks of causing excessive damage to the population of the state, as well as its defense capability and national security due to the excessive dissemination of certain types of information, are much higher and more serious than the possible negative consequences of limiting freedom of speech (Kubetska, Ostapenko, Paleshko, 2020).

It should also be noted that the introduction of such restrictions on the unhindered dissemination of certain types of information is a standard mechanism (means) underlying government actions in the case of war or other emergency (crisis) situations in a number of developed, liberal and democratic countries. For example, a similar mechanism is included in almost every response strategy to a crisis situation or any other threat to national security in the United States. Thus, it is claimed that in 1987, the US Congress adopted the Law "On Ensuring Computer Security" Mb HR-145, which established the priority of national interests in solving issues of information security, in particular private information (Horodnia, 2014). Also, this normative legal act of the federal legislation of the United States of America legally established the ability of the US federal government to unilaterally impose temporary restrictions on the distribution of information. In addition, this law also effectively introduced a new subtype of restricted information, which is not classified, but instead is recognized as sufficiently important in the context of ensuring national security.

Disclosing and detailing this subsection, it is stated that most of the above information is non-classified data of government agencies, as well as most of the information circulating or processed in the information and telecommunications systems of corporations and private companies and enterprises that are contractors for the US Government (Yakovenko, Piskorska, 2016).

Considering the indisputable fact that the possibility of influence of certain information operations on the state of security and stability of the state increases every year, just as the weight of the informational component of war increases in both traditional armed conflicts and in hybrid ones, it is quite logical that the governments of almost all Western countries, as well as the Ukrainian government, are trying to develop new or improve existing means and methods of effective information warfare in order to protect their own state and citizens. And one of these methods and means is recognized as actions to limit the ways of mass and unauthorized dissemination of information, which is of critical value for the proper provision of the national security of the state in conditions of martial law, as well as other emergency situations that endanger the national sovereignty and territorial integrity of the country (The National Security Strategy of the United States of America, 2017). That is, we state that the illegal invasion of the Russian Federation into Ukraine should be considered a typical situation that posed an unprecedented threat to the state sovereignty and territorial integrity of Ukraine. Individual cases of this armed aggression threatened the physical existence of the Ukrainian nation itself (Mernyk, Kuzmina, Burlakov, 2022). That is why it needed the immediate introduction of martial law throughout the country and the implementation of a whole series of measures to limit some constitutional rights of Ukrainian citizens, such as freedom of movement for some categories of the population (mostly adult men aged 18 to 60), the right to free exit abroad and the constitutionally enshrined right to freedom of speech and free dissemination of information.

It should be noted that in the national legislation of Ukraine, in particular in the current Law of Ukraine "On National Security of Ukraine", national security of Ukraine is defined as "the protection of state sovereignty, territorial integrity, democratic constitutional system and other national interests of Ukraine from real and potential threats." In other words, based in particular on a number of definitions provided by domestic jurists, we are able to define the national security of the state as a certain state of

organization of the protection of relevant objects, which ensures their integrity and inviolability by its existence and unhindered functioning (Drobotov, 2020).

Scientists emphasize that "security is the main feature that reveals the meaning of the concept of national security. It is this feature that characterizes security from the point of view of means of achieving it. Without denying its role and place in ensuring security, we should consider it from the point of view of whether it is sufficient to ensure security in general (people, society, state)". At the same time, it should be noted that there is no list of objects that should be considered as constituent elements of national security in the regulatory legal acts of the national legislation of Ukraine.

We emphasize the fact that the sphere of national security of the state and society covers almost all spheres of social life and should be understood as the protection of the vital interests of a person, society and the state from external and internal threats (Chyzhov, 2021).

The definition of national security indicates the existence of such integral elements as: state sovereignty, territorial integrity, democratic constitutional order and other national interests of Ukraine that require protection from real and potential threats. It should be noted that although the above list of national security objects is accepted in the scientific and legal environment to be called "national interests of Ukraine", at the same time, the actual provision of the law attests that this list is non-exhaustive and therefore it could potentially include additional objects.

Based on this, domestic jurists do not stop trying to establish and provide society with a complete list of national interests, as well as to achieve its further consolidation in normative legal acts of Ukrainian legislation (Ruban, 2019). In addition to this, among the key problematic issues currently facing Ukrainian legal scholars is the invention of an effective mechanism for ensuring human rights in the field of national security, during the legal regime of martial law, due to the need to resist military aggression by the Russian Federation, which would guaranteed reliable observance of the private rights of individuals at a level no worse than in comparison with peacetime.

Legal experts emphasize that one of the key objects, the protection of which is important for the proper provision of national security and state interests of Ukraine, is a person and a citizen, or rather their constitutional rights and obligations. After all, it is the person (as an individual) who, due to his interaction with other citizens, creates the very foundation of society. Of course, every citizen has his own (personal) needs and interests

and, accordingly, needs their protection from the state. The needs and interests of individuals have a primary character and only due to them and for them a person creates a society from which the state is already formed and consolidate (Analytical note, 2019). That is, precisely due to the consolidating force, which is able to unite people into a single society, citizens, as a constituent element of this society, are able to stimulate and direct their own joint activity to change the surrounding environment, to reform the social and legal norms that prevail in their time, to creation of new, more perfect living conditions, in other words, act as driving forces of social development. In their essence, the needs of society and the individual not only have a single focus, but also ultimately coincides (Smolianiuk, 2018).

Based on this, we strongly support the statement that the protection of the interests of the individual should be recognized as one of the most important priorities of society. And that is why the individual is an object of security and, according to its conceptual scope, remains subordinate to the concept of society".

Among some lawyers of Ukraine, there is even an opinion that human rights and freedoms are not one of the main objects of national interests, but even primary. In other words, they tend to claim that society begins to be formed by guaranteeing respect for a person, his life, rights and freedoms (Abramov, Sytnyk, Smolianiuk, 2016). After all, according to their general belief, only if the state, in the form of its competent bodies, ensures the rights of every citizen in the field of national security, only then it can be considered fair to claim that national security in society is fully ensured.

In connection with the fact that the personal rights and interests of citizens will be properly guaranteed and protected by the state, as well as the unimpeded existence of reliable legal mechanisms (primarily the judicial system), due to which persons, whose rights or interests have been violated by the state or other subjects, will be able to effectively protect their violated rights and obtain compensation for damage, other national interests will automatically be ensured (Shcherbaniuk, 2019). In particular, this applies to such fundamental foundations of a reliably functioning statehood as the constitutional system, sovereignty and territorial integrity of the state. Therefore, lawyers who tend to support the above statement believe that the key priority in the development of certain strategies for protecting the national security of the state should be given to a person as an individual, his rights and freedoms, which are the highest value for a liberal democratic state with a real rule of law.



Currently, it is noted that the current Law of Ukraine "On National Security of Ukraine" does not contain specific definitions or classifications of national security objects. Unfortunately, for the state, as well as for its scientific and legal community, this is a disadvantage due to the lack of a potential, legally established, legal foundation (the presence of definitions in the legislation), which could be used as a starting point when creating certain modern development strategies and improving mechanisms ensuring national security, including during martial law (On the National Security of Ukraine, 2018). But at the same time, we note that this factor should not affect the determination of state entities and domestic lawyers to contribute to the qualitative guarantee of the safety of the individual, society and the state, especially during martial law. In particular, it is considered necessary to develop and submit draft laws on amendments to the current version of the Law of Ukraine "On National Security of Ukraine", which would include specific definitions or classifications of national security objects.

One way or another, it is noted that the topic related to the development of promising directions for ensuring national security in crisis and emergency conditions, in particular during martial law, should definitely be continued in domestic, scientific and legal discussions, because it has a critical importance for maintaining the constitutional liberties of citizens during wartime.

## **CONCLUSIONS**

Thus, summarizing all the given theses, statements and scientific views, as well as forming the final conclusions to this article on their common basis, we can state that in the conditions of the current martial law, which was introduced throughout the territory of Ukraine in connection with full-scale armed invasion of Russia on February 24, 2022, it is extremely necessary to maintain an adequate level of provision of key components of national security in the state.

Also, among other things, it is critically important that the state guarantees the inviolability of one of the key objects of national security, namely the rights, freedoms and legitimate interests of citizens enshrined in the Constitution of Ukraine.

The article substantiates the scientific and legal thesis that even in the conditions of martial law, or any other emergency or crisis situation, a true liberal democratic state with real, and not only declared, rule of law should be ready to ensure the inviolability of the

above-mentioned personal benefits of individuals. The statement that human rights and freedoms are the primary, key object of national interests was supported. After all, it was on the basis of the joint association of Ukrainian citizens, on their joint approval of the idea of Ukrainian unity that the Ukrainian state was created. Therefore, any existing and promising strategy for ensuring national security in Ukraine must first of all be based on the importance of protecting the rights, freedoms and legitimate interests of Ukrainian citizens. At the same time, we recognize that in some individual cases, certain freedoms of citizens, such as their right to free movement, or the right to free dissemination of information, or the possibility of unimpeded travel abroad, may be restricted by the state during martial law when it is necessary to eliminate the threat to the very existence of the Ukrainian state or the Ukrainian nation. However, after objective confirmation of the disappearance of such a threat, restrictions must be immediately lifted.

## REFERENCES

Abramov, V. I., Sytnyk, H. P., Smolianiuk, V. F. (2016). Global and national security /; by general ed. H. P. Sytnyk. Kyiv: National Academy of Public Administration under the President of Ukraine.

Analytical note. (2019). Ensuring the continuity of the management process in the field of national security. National Institute of Strategic Studies. URL: <http://old2.niss.gov.ua/articles/3257/>

Antonov, V. O. (2017). Constitutional and legal principles of national security of Ukraine: monograph / scien. ed. Yu. S. Shemshuchenko. Kyiv: Talkom.

Chyzhov, D. (2021). State policy of human rights in the field of national security in the context of digitalization. *Scientific Journal of the National Academy of Internal Affairs*, 4(26), 46–52. <https://doi.org/10.33270/01211214.46>

Drobotov, S. (2020). Constitutional and legal adjusting of national security in Ukraine. *ScienceRise: Juridical Science*, 2(12), 24–29. <https://doi.org/10.15587/2523-4153.2020.210858>

Horodnia, N. (2014). The 2015 US National Security Strategy: New Emphasis and Priorities. *Bulletin of Kyiv University: History*, 5(123), 5–9.

Kobko, Y. V. (2022-1). To the problem of optimization of criteria for evaluating the effectiveness of providing the national security of the State. *Law and Safety*, 84(1), 66-72. <https://doi.org/10.32631/pb.2022.1.07>

Kobko, Y. V. (2022-2). Legal regulation of national security in Ukraine: today's challenges. *Law and Safety*, 85(2), 179-188. <https://doi.org/10.32631/pb.2022.2.17>

Kubetska, O. M., Ostapenko, T. M., Paleshko, Y. S. (2020). Conditions of providing national security of the state. *Scientific bulletin of the Dnipropetrovsk state university of internal affairs*, 2, 321–327.

Mernyk, A.M., Kuzmin,a V.O., Burlakov, B.M. (2022). Restrictions on human rights and freedoms in modern conditions: theoretical and practical aspects. *Juridical scientific and electronic journal*, 2, 42-46. DOI <https://doi.org/10.32782/2524-0374/2020-2/9>

On the National Security of Ukraine (2018): Law of Ukraine № 2469-VIII. <https://zakon.rada.gov.ua/laws/show/2469-19#Text>.

Prots, I. M. (2020). Certain organizational and legal mechanisms of limitation of fundamental rights and freedom of human and citizen under the legislation of Ukraine. *Comparative and analytical law*, 1, 381–384.

Ruban, A. V. (2019). Public administration in the sphere of national security of Ukraine [Dissertation on competition of Candidate of Sciences degree in Public Administration. National University of Civil Defense of Ukraine], Kharkiv. <http://repositc.nuczu.edu.ua/bitstream/123456789/12918/1/disruban.pdf>

Shcherbaniuk, O. (2019). Human rights and national security: problems of ensuring by the constitutional court of Ukraine. *Human rights and national security: the role of the body of constitutional jurisdiction*: collection of materials of the international scientific and practical conference (Kyiv, June 27) Kyiv: VAITE, 368–375.

Smolianiuk V. F. (2018). Systemic principles of national security of Ukraine. *The Bulletin of Yaroslav Mudryi National Law University. Series: Philosophy, philosophy of law, political science, sociology*, 2 (37), 107–126. DOI: 10.21564/2075-7190.37.133543

The National Security Strategy of the United States of America. (2017). Whitehouse.gov. <https://www.whitehouse.gov/wp-content/uploads/2017/12/NSS-Final-12-18-2017-0905.pdf>

Yakovenko, N., Piskorska, H. (2016). Priorities of international political activity of the United States of America in national security strategies. *American history and politics*, 2, 38–47.

Zahumenna, Y. O. (2022). Public security in the pre-classical political and legal thought of ancient Greece. *Law and Safety*, 84(1), 133-142. <https://doi.org/10.32631/pb.2022.1.14>