

Challenges in Establishing a Rule-of-Law State under Martial Law: The Ukrainian Experience and Comparative Perspectives

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The purpose of this study is to identify the key challenges arising in establishing a rule-of-law state under martial law. The study involves an analysis of international legal instruments, national regulations, and judicial practices in Ukraine, Israel, Egypt, and the Philippines – countries that have implemented martial law. Particular attention is given to assessing the effectiveness of regulations in safeguarding citizens' rights and freedoms while upholding democratic principles and the rule of law in the context of armed conflicts and the imposition of martial law. The findings indicate that the introduction of martial law has varied effects on the existing legal system in different countries, as martial governance ensures national security and protects citizens' lives and health, simultaneously restricting their rights and freedoms. The effective functioning of a rule-of-law state under martial law depends on maintaining a balance between security measures and the protection of lawful rights, while also adapting legal mechanisms to the prevailing circumstances. The comparative analysis of martial law implementation in Ukraine, Israel, Egypt, and the Philippines demonstrates diverse approaches, distinct challenges in legal system development, and varying degrees of effectiveness in enforcing such regimes. The specific features of martial law enforcement influence the development of a democratic system of a country and its legal framework stabilisation.

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Introduction

The establishment of a rule-of-law state under martial law is an extremely pressing issue requiring in-depth examination, given contemporary geopolitical challenges and the increasing number of armed conflicts across various regions of the world. The need for this study arises from the complexity of ensuring compliance with all rights enshrined at national and international levels during emergencies when the state must balance security needs with the preservation of democratic institutions. Following the full-scale invasion launched by Russia in February 2022, Ukraine imposed martial law, which was a pivotal response to the escalating threat to its sovereignty. This decision marked a significant moment in Ukraine's history, as it led to widespread implications for the protection of citizens' rights, the functioning of the judicial system, and the effective operation of national legislation. Ukraine has faced numerous challenges regarding the protection of citizens' rights and freedoms, the preservation of the judicial system, and the effective functioning of legislation, particularly in the context of a full-scale invasion that has continued to strain the state's legal and institutional capacities. These challenges highlight the delicate balance between ensuring national security and upholding the principles of democratic governance in times of crisis.

The Ukrainian experience in establishing legal protection for its citizens amidst armed aggression from a neighbouring country is particularly important in the context of contemporary global challenges. The introduction of such a regime required the immediate adaptation of national legislation and the continued functioning of state institutions under crisis conditions. On the one hand, these measures strengthened state control, ensured national security, and countered military aggression. On the other, they imposed restrictions on citizens' rights and freedoms.

The study by Wippman and Evangelista⁶ indicates that international law must adapt to new types of conflicts in the twenty-first century, considering the necessity of safeguarding human rights even under martial law. The authors highlight that this also applies to Ukraine, as incorporating global practices related to martial law could positively impact the development

⁶ David Wippman, and Matthew Evangelista, *New wars, new laws? Applying the laws of war in 21st century conflicts*, (Leiden: Brill, 2005). <https://doi.org/10.1163/9789004479692>

of its legal system. Substantial contributions to the examination of maintaining lawful state functions under martial law were made by Bantekas and Oette⁷, who concluded that even in conditions of armed conflict, the protection of human rights and freedoms must remain paramount. Weller et al.⁸ also emphasised the importance of ensuring compliance with international humanitarian law during armed conflicts, which is critically important for the development of a rule-of-law state. In addition, the study by Dinstein⁹ on the right of states to self-defence during armed aggression underscored the necessity of clear legal regulation to prevent abuses of power under martial law. Schmitt¹⁰ provided a detailed analysis of the legal aspects of cyber operations, particularly in times of armed conflict, and demonstrated how international law can be applied in such situations.

Key aspects of maintaining legal protection for the population during armed conflict in Ukraine are highlighted in a study by the Center for Civilians in Conflict¹¹. The authors analysed international experience and identified the most effective tools that Ukraine could adopt to develop its legal system amidst threats to state sovereignty and territorial integrity. One of the defining characteristics of martial law in Ukraine is the increased tax burden on citizens and businesses.¹² This issue is addressed by Dmowski¹³, who focused on changes in the legal regulation of land taxation under martial law in Ukraine, judicial practice in this area, and an assessment of the effectiveness of existing tax relief measures for landowners.

Among the challenges arising in establishing a rule-of-law state under martial law, Salmanova et al.¹⁴ highlighted the specificities of public service operations amid threats to national security. The authors examined how legal and organisational changes affect the functioning of the state apparatus, assessed the adaptation of legislation and practices to the

⁷ Ilias Bantekas, and Lutz Oette, *International human rights law and practice*, (Cambridge: Cambridge University Press, 2024). <https://doi.org/10.1017/9781009306409>

⁸ Marc Weller, Mark Retter, and Andrea Varga, *International law and peace settlements*, (Cambridge: Cambridge University Press, 2021). <https://doi.org/10.1017/9781108627856>

⁹ Yoram Dinstein, *War, aggression and self-defence*, (Cambridge: Cambridge University Press, 2017). <https://doi.org/10.1017/9781108120555>

¹⁰ Michael N. Schmitt, *Tallinn manual on the international law applicable to cyber warfare*, Cambridge: Cambridge University Press, 2013). <https://doi.org/10.1017/CBO9781139169288>

¹¹ Center for Civilians in Conflict, *The role of civil-military cooperation in protection of civilians: The Ukraine experience*, (2023). <https://civiliansinconflict.org/wp-content/uploads/2023/10/The-Role-of-Civil-Military-Cooperation-in-Protection-of-Civilians-The-Ukraine-Experience.pdf>

¹² Oleg Anatoliyovych Gavrysh, Iuliia Gavrysh, Anna Matiukhina, and Iryna Vasylets, “The first year’s impact of the full-scale war on Ukrainian business”, *Economics of Development* 23(1), 2024: 18–29. <https://doi.org/10.57111/econ/1.2024.18>

¹³ Artur Dmowski, “Law regulation of calculation of the individual debt ratio of local government unit”, *International Journal of Legal Studies* 8(2), 2020: 283–292. <https://doi.org/10.5604/01.3001.0014.6371>

¹⁴ Olena Salmanova, Iryna Aristova, Serhii Bodnar, Olexandr Prysyazhnyuk, and Yurii Shovkun, “Peculiarities of public service under the legal regime of martial law”, *International Journal of Religion* 5(5), 2024: 494–500. <https://doi.org/10.61707/12kx3b52>

extreme conditions of war, explored mechanisms ensuring the effectiveness of public administration in crises, and provided recommendations for its improvement. The reviewed studies collectively contribute to a comprehensive understanding of the legal regulation of martial law and underscore the necessity of further research in this area. The authors also emphasise that the successful functioning of a rule-of-law state under martial law is only possible with adherence to international standards and the effective application of legal norms, which are key criteria for maintaining stability and fostering state development.

Features of Martial Law

Martial law constitutes a special legal regime implemented to establish an adequate system for safeguarding national interests and ensuring the highest possible level of public order during war or military conflict. The introduction of martial law in any given country varies depending on the level of democratisation, the specifics of national legislation, and judicial practice, thereby exerting differing impacts on the established legal system.¹⁵

In Ukraine, martial law was first declared in November 2018 in ten regions for one month in response to aggression by the Russian Federation in the Kerch Strait.¹⁶ Subsequently, in 2022, amidst a full-scale invasion launched by Russia, this regime was enforced across the entire territory of the country. In accordance with Law of Ukraine No. 389-VIII “On the Legal Regime of Martial Law”,¹⁷ the imposition of martial law entails restrictions on a range of civil rights and freedoms, including freedom of movement, assembly, and expression, while also permitting the compulsory expropriation of property for defence purposes.

Figure 1 illustrates the features of martial law implementation in Ukraine and the restrictions imposed on the population under this regime.

¹⁵ Andrejs Vilks, Aldona Kipane, Inga Kudeikina, Karina Palkova, and Janis Grasis, “Criminological aspects of current cyber security”, *Law, State and Telecommunications Review* 14(2), 2022: 94-108. <https://doi.org/10.26512/lstr.v14i2.41411>

¹⁶ Decree of the President of Ukraine No. 393/2018 “On the Introduction of Martial Law in Ukraine”, (2018). <https://zakon.rada.gov.ua/laws/show/393/2018?lang=en#Text>

¹⁷ Law of Ukraine No. 389-VIII “On the Legal Regime of Martial Law”, (2015). <https://zakon.rada.gov.ua/laws/show/389-19?lang=en>

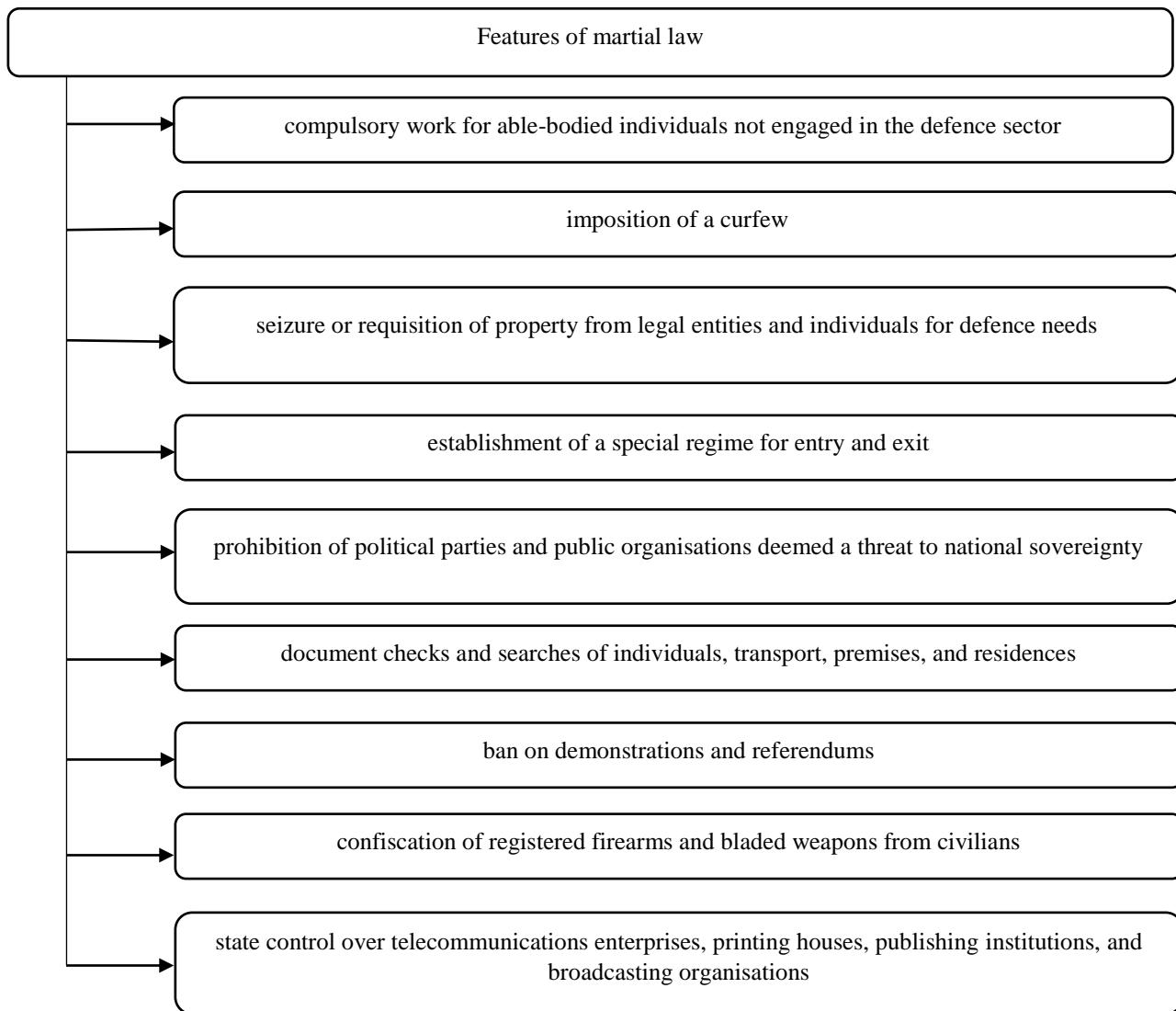


Figure 1: Features of martial law in Ukraine

Source: Compiled by the authors ¹⁸

One of the primary challenges faced by a state governed by the rule of law under martial law conditions is the significant concentration of power in the hands of the executive branch. This is often accompanied by the limitation of the functions of the legislative and judicial branches. For instance, during the martial law declared in Ukraine in 2022, there was a substantial increase in the influence of the President and military administrations, which curtailed the role of Parliament in decision-making. This, in turn, created risks of abuse of

¹⁸ Larisa Kovalenko, “The administrative process of Ukraine under martial law”, *Slovo of the National School of Judges of Ukraine* 3(44), 2023: 153-160. [http://doi.org/10.37566/2707-6849-2023-3\(44\)](http://doi.org/10.37566/2707-6849-2023-3(44))

power, as the absence of adequate parliamentary oversight could lead to decisions that contradict the fundamental principles of the rule of law.¹⁹

The functioning of the judicial system undergoes substantial transformations under martial law, critically impacting the preservation of the rule of law. In Ukraine, following the imposition of martial law, specialised military courts were established to adjudicate cases related to war crimes and treason.

For example, in April 2023, a military court in the city of Dnipro heard the case of a citizen accused of collaborating with occupying forces under Article 111(1) of the Criminal Code of Ukraine.²⁰ The case was expedited, with the primary evidence consisting of classified materials accessible only to the presiding judge. Defence lawyers argued that restricted access to case materials violated the right to an effective defence. The verdict was delivered within a single day, prompting criticism from human rights organisations, as it was perceived to undermine the principle of a fair trial.

Another pressing issue faced by a state governed by the rule of law under such an exceptional legal regime is ensuring the protection of citizens' legal rights. In Ukraine, for instance, restrictions on public gatherings and the introduction of a curfew seriously impacted citizens' freedom of movement. While such measures may be justified by national security imperatives, they frequently contradict fundamental international human rights standards and may result in abuses by state authorities.

The imposition of martial law is also associated with a rise in corruption. Data from the National Corruption Perceptions and Experience Poll²¹ indicate that corruption represents one of the most significant challenges for Ukraine, second only to the consequences of Russia's full-scale invasion.

The survey, which included 10,117 respondents aged 18 and above, revealed that 71.6% of participants identified corruption as a critical issue, ranking it as the second most pressing concern after the war, which was cited by 89.7% of respondents. A notable increase in corruption levels was recorded in the business sector, with 46.3% of business representatives reporting an upsurge in corrupt practices, three times the 2022 figure (16%). The responses of

¹⁹ Magdalena Węclawska-Misiurek, "The importance of the rule of law in European Union law and Polish constitutional law in the context of the principle of mutual trust", *International Journal of Legal Studies* 9(1), 2021: 13-24. <https://doi.org/10.5604/01.3001.0015.0422>

²⁰ Criminal Code of Ukraine, (2001). <https://zakon.rada.gov.ua/laws/show/2341-14?lang=en>

²¹ National Corruption Perceptions and Experience Poll, (2023). <https://engage.org.ua/eng/national-corruption-perceptions-and-experience-poll-2023/>

survey participants regarding their direct encounters with corruption within Ukrainian state institutions over the past year are presented in Figure 2.

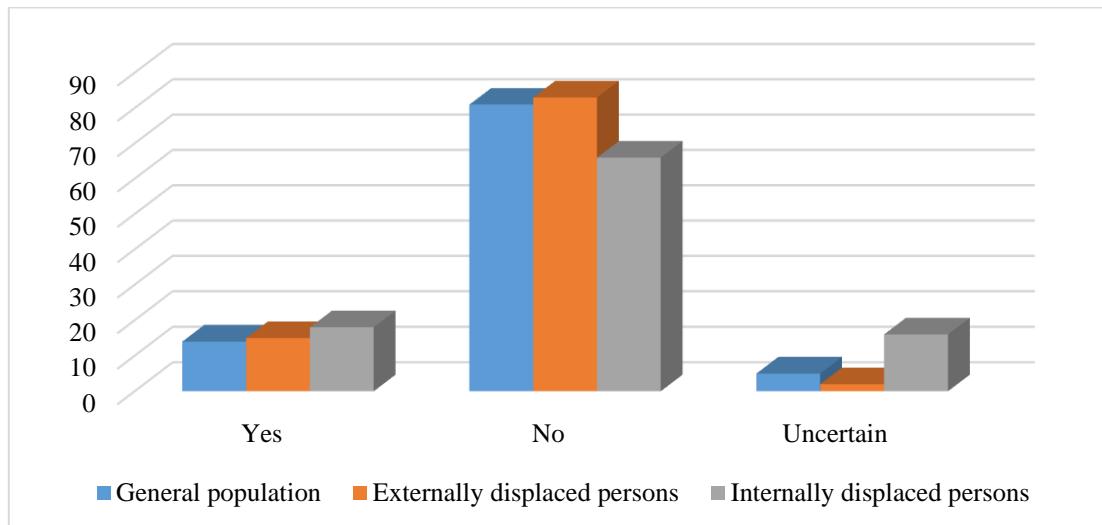


Figure 2: Respondents' answers regarding whether they encountered corruption within the state structures of Ukraine over the past year, %

Source: Compiled based on data of National Corruption Perceptions and Experience Poll²².

According to the obtained data, 14% of the general population and 15% of internally displaced persons reported that over the last year, they or their relatives' encountered instances of corruption, such as unofficial payments in the form of money, gifts, or services.

During a state of emergency, executive actions often lose transparency and accountability, which creates favourable conditions for corrupt practices.²³ This is particularly relevant in situations where state authorities have significant powers regarding the allocation of resources and decision-making in the defence and security sectors.²⁴ Instances of abuse of power and corruption have been recorded among officials responsible for the distribution of humanitarian aid and military resources in Ukraine, negatively impacting public trust in state

²² Ibid.

²³ Bohdana Meduna, "Improving administrative decision-making processes in Ukraine by ensuring their publicity under martial law", *Democratic Governance* 16(2), 2023: 28–41. <https://doi.org/10.23939/dg2023.02.028>

²⁴ Enrico Carloni, and Michela Gnaldi, *Preventing corruption in Europe: An interdisciplinary perspective*. In: E. Carloni, M. Gnaldi (Eds.), *Understanding and Fighting Corruption in Europe: From Repression to Prevention* (pp. 1-4), (Cham: Springer. 2021). https://doi.org/10.1007/978-3-030-82495-2_1

institutions and highlighting corruption as a substantial obstacle to the establishment of a rule-of-law state under current conditions.²⁵

To address the issues Ukraine faces in establishing a rule-of-law state under conditions of martial law, it is useful to examine the implementation of such a regime in other countries. Israel's experience in the context of the introduction of martial law is crucial for considering issues related to the restriction of human rights and adherence to international standards during military conflicts. One of the key challenges faced by Israel was maintaining a balance between ensuring national security and the right to a fair trial. This issue became particularly relevant after the introduction of martial law in the occupied territories, where serious concerns arose regarding violations of the rights of civilians and the administration of justice under military jurisdiction.²⁶

Military tribunals operating in the occupied territories of the West Bank and East Jerusalem have often been criticised by international human rights organisations such as the Human Rights Watch World Report²⁷ and Amnesty International.²⁸ The tribunals, which operate under Israeli law, have broad powers regarding the use of classified evidence and expedited procedures for trial, which critics argue violate the fundamental principles of fair trial and the right to defence.

Moreover, Israeli military laws allow for detention without charge for extended periods, representing another example of human rights violations under martial law. According to the Human Rights Watch World Report²⁹, detention without trial, which was widely used during military operations, particularly during the 2002 Defensive Shield operation, raised significant concern within the international community. This phenomenon is a serious issue for the rule of law, as it undermines key principles of justice and accountability.

Attention should also be drawn to the issue of expedited court procedures. In Israel, military courts in the occupied territories often employed accelerated procedures for cases related to state security, raising concerns about violations of the right to a fair trial. In Ukraine, there is

²⁵ Human Rights Watch World Report, (2022). https://www.hrw.org/sites/default/files/media_2022/01/World%20Report%202022%20web%20pdf_0.pdf

²⁶ Dante B. Gatmaytan, *Judicial review and emergencies in post-Marcos Philippines*. In: R. Albert, Y. Roznai (Eds.), *Constitutionalism Under Extreme Conditions: Law, Emergency, Exception* (pp. 41-62). (Cham: Springer, 2020). https://doi.org/10.1007/978-3-030-49000-3_4

²⁷ Human Rights Watch World Report, (2023). https://www.hrw.org/sites/default/files/media_2023/01/World_Report_2023_WEBSPREADS_0.pdf

²⁸ Amnesty International. *Philippines: Martial law must not facilitate human rights violations*, (2017). <https://www.amnesty.org/en/documents/asa35/6344/2017/en/>

²⁹ Human Rights Watch World Report, (2023).

a practice of expedited court hearings during military conflicts, but it is necessary to consider the introduction of additional safeguards to protect citizens' rights. One possible solution is the implementation of independent monitoring commissions to assess the legality of court proceedings during wartime. These commissions could serve as a mechanism for ensuring human rights compliance during judicial proceedings, helping to prevent potential abuses of power.

Another important issue arising from Israel's experience is the question of restricting freedom of speech and access to information during a state of emergency. During numerous conflicts, the Israeli government imposed stringent measures to control the information space, including restrictions on the media, bans on certain types of publications, and censorship. In 2015, during Operation Protective Edge, substantial restrictions were introduced on the coverage of military operations in the media, which caused outrage among human rights organisations and international observers. Freedom House³⁰ criticised the Israeli government for excessive censorship and restrictions on access to information, claiming that this violated freedom of speech and information, which are fundamental human rights.

Ukraine, facing similar challenges, has also imposed certain restrictions on media operations during the war. However, it is important to maintain a balance between national security and the right to freedom of speech to prevent excessive control and censorship.³¹ International human rights organisations, in particular Human Rights Watch, have already expressed concern about restrictions on freedom of speech under martial law in Ukraine; therefore, the state should ensure transparency and accountability of its decisions in this area.³²

Ukraine should consider the experience of Israel in improving the legal regulation during the introduction of martial law; an important factor is the need to ensure proper judicial control over all measures that take place under martial law to avoid abuse of power and violation of citizens' rights. Israel's example also demonstrates that legal mechanisms which allow the limitation of rights and freedoms must be clearly regulated and proportional to the actual threat.

³⁰ Freedom House, (Freedom of the press 2015: Israel, 2015). <https://www.refworld.org/reference/annualreport/freehou/2015/en/105041>

³¹ Nurlan Apakhayev, Kairat Koishybaiuly, Gulzhan Khudaiberdina, Aizhan Urisbayeva, Zinaida Abduazizovna Khamzina, and Yermekhan Abduazizovich Buribayev, "Legal basis for ensuring freedom of access to information on the operation of state administration bodies in Kazakhstan", *Journal of Advanced Research in Law and Economics* 8(3), 2017: 722–729. [https://doi.org/10.14505/jarle.v8.3\(25\).04](https://doi.org/10.14505/jarle.v8.3(25).04)

³² Human Rights Watch World Report, (2023).

Exploring the experience of introducing martial law in Egypt is important for understanding the consequences of such legal measures, comparing them with the situation in Ukraine, and identifying similar challenges and potential solutions. Egypt has repeatedly resorted to declaring martial or emergency law, and these instances are characterised by specific legal, social, and political features.

The first instance of martial law in Egypt occurred in 1952 during the revolution that led to the overthrow of the monarchy. The introduction of martial law was accompanied by mass arrests, restrictions on political activity, and increased control by the military. The main issue at that time was the suppression of political opposition and the restriction of freedom of expression. This continued throughout the following decades, impacting the development of civil society in the country.³³

Particular attention should be paid to the introduction of martial law in Northern Sinai in 2014, which was partially justified by the threat posed by terrorist groups such as the Islamic State of Iraq and Syria (ISIS). This episode became key in analysing the contemporary issues within Egypt's legal system. The use of military measures to combat terrorism, in combination with martial law, was accompanied by stringent restrictions on freedom of movement, media, and numerous arrests without trial. These measures once again drew criticism from the international community, particularly for violating international human rights standards, including the Geneva Conventions.³⁴

In the debate surrounding the effectiveness of martial law in Egypt, several opposing viewpoints can be identified. According to Al-Rasheed³⁵, martial law is a necessary measure to ensure national security in the face of increasing terrorist activity, especially in the case of Northern Sinai. The author emphasised that, in situations where the state faces threats such as terrorism, restrictions on rights and freedoms can be justified to protect the civilian population. On the other hand, Brownlee³⁶ noted that such restrictions often lead to an excessive strengthening of executive power and the suppression of civil liberties, which contradicts the principles of the rule of law. This is especially significant in the context of

³³ Constitution of the Arab Republic of Egypt, (2014). https://adsdatabase.ohchr.org/IssueLibrary/EGYPT_Constitution_EN.pdf

³⁴ Geneva Conventions, (1949). <https://www.icrc.org/sites/default/files/external/doc/en/assets/files/publications/icrc-002-0173.pdf>

³⁵ Madawi Al-Rasheed, "The Arab uprising: The unfinished revolutions of the new Middle-East. Middle Eastern Studies" 48(4), 2012: 675-677. <https://doi.org/10.1080/00263206.2012.684546>

³⁶ Jason Brownlee, *Democracy prevention: The politics of the U.S.-Egyptian alliance*, (Cambridge: Cambridge University Press, 2012). <https://doi.org/10.1017/CBO9781139198721>

Egypt's international obligations under the Geneva Conventions³⁷ and the European Convention on Human Rights.³⁸

When comparing the Egyptian experience with the current situation in Ukraine, similar challenges become apparent. Both countries face the issue of maintaining a balance between national security and the protection of human rights during times of crisis. However, in Ukraine, clear legal mechanisms for parliamentary and judicial oversight of executive actions during martial law are established by law, which minimises the risk of abuse of power.^{39,40} In contrast, such oversight mechanisms were poorly developed in Egypt, leading to a concentration of power in the hands of the president and government.

Thus, the Egyptian experience demonstrates that prolonged application of martial law without proper judicial and parliamentary control can lead to violations of human rights, the undermining of democratic institutions, and the establishment of an authoritarian regime. For Ukraine, this example serves as an important lesson, allowing the country to avoid similar mistakes and focus on building an effective legal system that adheres to international standards even in times of crisis.

Examining the cases of martial law in the Philippines is extremely important for understanding how the state can balance ensuring national security with protecting citizens' rights during an emergency. One of the most well-known examples is the imposition of martial law by President Ferdinand Marcos in 1972, which marked the beginning of authoritarian rule in the Philippines and had a lasting impact on the country's political development. The primary reason for the introduction of this regime was the stated desire to counter the communist threat and stabilise the security situation, but this move led to severe human rights violations, mass arrests, censorship, and political persecution. The 1972 experience in the Philippines demonstrated that martial law could be used not only to ensure state security but also to usurp power, suppress political opposition, and curtail civil liberties.⁴¹

³⁷ Geneva Conventions, (1949).

³⁸ European Convention on Human Rights, (1950). https://www.echr.coe.int/Documents/Convention_ENG.pdf

³⁹ Constitution of Ukraine, (1996). <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80?lang=en>

⁴⁰ Law of Ukraine No. 389-VIII "On the Legal Regime of Martial Law", (2015). <https://zakon.rada.gov.ua/laws/show/389-19?lang=en>

⁴¹ Christopher S. Chivvis, *Understanding Russian "hybrid warfare" and what can be done about it*. (Santa Monica: Rand Corporation, 2017).

Political prisoners, restrictions on free media, and the rise of corruption became the key consequences of this period. The corruption problems that arose during the rule of F. Marcos became deeply ingrained in the state system, further complicating the restoration of the rule of law after his regime. This example shows how legal mechanisms introduced for security purposes can be abused if proper oversight by the judicial system and parliament is not ensured.⁴²

Another noteworthy case is the introduction of martial law on the island of Mindanao by President R.R. Duterte in 2017, when the city of Marawi was seized by terrorist groups, including militants affiliated with the Islamic State (IS). Martial law in Mindanao lasted until 2019 and was accompanied by restrictions on freedom of assembly, arrests without judicial orders, and media control. During this time, some authors, including Human Rights Watch World Report⁴³, noted that numerous human rights violations were recorded, including unlawful detentions and violence by the military against the civilian population. This confirms that the introduction of emergency measures without proper oversight leads to violations of citizens' rights.

Corruption-related issues also played a considerable role during the period of martial law in the Philippines. According to Amnesty International⁴⁴, part of the humanitarian aid and military resources that were supposed to be used to stabilise the situation in Mindanao were improperly distributed among officials, which led to a decrease in the effectiveness of the measures and heightened societal tensions. Corruption undermines trust in state institutions and serves as an obstacle to the establishment of the rule of law.⁴⁵

A comparison with the Ukrainian experience of martial law allows for several conclusions regarding the maintenance of law and order and the protection of human rights. While Ukraine has faced similar challenges, such as risks of corruption and abuse of power, the Ukrainian legal system has the potential to prevent such situations through greater international support and the establishment of control mechanisms by parliament and the

⁴² Constitution of the Republic of the Philippines, (1987). <https://www.officialgazette.gov.ph/constitutions/1987-constitution/>

⁴³ Human Rights Watch World Report, (2019). https://www.hrw.org/sites/default/files/world_report_download/hrw_world_report_2019.pdf

⁴⁴ Amnesty International, *Israel and occupied Palestinian territories*, (2023). <https://www.amnesty.org/en/location/middle-east-and-north-africa/middle-east/israel-and-the-occupied-palestinian-territory/report-israel-and-the-occupied-palestinian-territory/>

⁴⁵ Yermekhan Abduazizovich Buribayev, Zhanibek Khamitovich Oryntayev, Zinaida Abduazizovna Khamzina, Serik Zhumabayevich Kussainov, and Askar Toleubekovich Yermekov, "Evaluation of the reform efficiency in public social sector management of the Republic of Kazakhstan", *Mediterranean Journal of Social Sciences* 6(3), 2015: 191–198. <https://doi.org/10.5901/mjss.2015.v6n3s5p191>

judiciary. A key factor is the implementation of recommendations from international organisations, such as the United Nations (UN) and the Council of Europe, which aim to limit opportunities for abuse and guarantee human rights even in times of crisis.^{46,47}

The Philippine experience demonstrates that the rule of law can face challenges during martial law if adequate control mechanisms are not in place. For Ukraine, it is crucial to adapt the international experience to its own circumstances and ensure that extraordinary powers do not become an instrument for limiting democracy. Control and transparency of state processes are key factors in avoiding systematic human rights violations, as occurred in the Philippines.

Table 1 presents a comparative analysis of the challenges in establishing the rule of law during martial law in Ukraine and other countries.

Table 1: Comparative analysis of the problems in the establishment of the rule of law under martial law in Ukraine and other countries

Country	Law enforcement issues and violations
Ukraine	<ul style="list-style-type: none"> – insufficient judicial control over military decisions; – problems with adherence to international human rights standards in the areas of freedom of speech and assembly; – increased corruption risks due to lack of transparency in the use of military budget funds; – insufficient control over state procurement and defence contracts.
Israel	<ul style="list-style-type: none"> – excessive use of military powers to limit political opposition; – violations of freedom of movement and assembly, detentions without judicial oversight; – corruption risks in state procurement and logistics for the military; – cases of abuse of office among military personnel during resource distribution.
Egypt	<ul style="list-style-type: none"> – illegal detentions and torture as a means of political control; – lack of clear legal boundaries regarding the duration and scope of powers during martial law; – systemic corruption in security and law enforcement agencies; – use of emergency powers to suppress opposition through bribery and abuse of power.
Philippines	<ul style="list-style-type: none"> – ethnic minorities and local communities becoming objects of discrimination and mistreatment by the military; – inadequate judicial oversight over military actions, leading to impunity for human rights violations; – corruption among the military in distributing humanitarian aid and rebuilding infrastructure;

⁴⁶ Charter of the United Nations and Statute of the International Court of Justice, (1945). <https://treaties.un.org/doc/publication/ctc/uncharter.pdf>

⁴⁷ European Convention on Human Rights, (1950). https://www.echr.coe.int/Documents/Convention_ENG.pdf

	– abuse of power by local officials and military personnel in conflict zones.
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Source: compiled based on footnotes ⁴⁸ and ⁴⁹

The comparative analysis of issues in the establishment of the rule of law that countries face under martial law highlights the need to find an optimal balance between security measures and the protection of the population's rights. In emergency situations, such as military conflicts or national security threats, states are forced to take decisive actions to protect their citizens and sovereignty.⁵⁰ However, such actions often lead to the restriction of certain rights and freedoms, which may provoke dissatisfaction among the population and criticism from the international community.⁵¹

In the countries under review, the introduction of martial law has ensured the necessary level of national security and stability. Nevertheless, there have been documented instances of violations of citizens' legal rights, abuse of power by government bodies, and lack of transparency in decision-making. Such situations undermine public trust in governmental institutions and can lead to internal conflicts that weaken the state overall. This underscores the importance of careful planning and oversight of government actions during martial law.

To minimise the issues related to the establishment of the legal foundations of the state under martial law in Ukraine, the country should consider the characteristics and mistakes made by other nations in similar situations. An analysis of the experiences of other states will help avoid repeating negative scenarios and contribute to more effective governance in crisis conditions. Achieving this goal requires a comprehensive set of measures aimed at improving legislation, strengthening control mechanisms, and adapting to international standards.

One of the main problems is the insufficient clarity and detail of legislative norms regulating the martial law regime. The Law of Ukraine No. 389-VIII “On the Legal Regime of Martial Law”⁵² needs to be specified in certain provisions to avoid potential abuses and ensure legal certainty. For example, Article 7 of this law grants broad powers to government bodies

⁴⁸ Michael N. Schmitt, *Tallinn manual on the international law applicable to cyber warfare*, (Cambridge: Cambridge University Press, 2013). <https://doi.org/10.1017/CBO9781139169288>

⁴⁹ Marc Weller, Mark Retter, and Andrea Varga, *International law and peace settlements*, (Cambridge: Cambridge University Press, 2021). <https://doi.org/10.1017/9781108627856>

⁵⁰ Darya Ospanova, Serhii Moroz, and Alina Niyazova, “Legal obligations of a lawyer and standards for the protection of minors in juvenile justice”, *Social and Legal Studies* 7(4), 2024: 231–239. <https://doi.org/10.32518/sals4.2024.231>

⁵¹ Youngky Fernando, “Protection of law and justice and human rights must be enforced even in large-scale social restrictions”, *Journal Equity of Law and Governance* 2(1): 2022.43-52. <https://doi.org/10.55637/elg.2.1.4871.43-52>

⁵² Law of Ukraine No. 389-VIII “On the Legal Regime of Martial Law”, (2015). <https://zakon.rada.gov.ua/laws/show/389-19?lang=en>

without sufficient safeguards for protecting citizens' rights, which creates the risk that authorities could exceed their powers, limiting rights and freedoms without proper justification. Amending the legislation to establish clear criteria and procedures for decision-making on rights and freedoms restrictions is a necessary step. This will promote greater transparency in government actions and enable public and judicial oversight.

Equally important is the establishment of effective mechanisms for overseeing the respect of human rights during martial law. The development and implementation of independent institutions, such as human rights commissions or ombudsmen, with the authority to monitor the actions of government bodies and review citizens' complaints, will help prevent violations and respond promptly to them. These mechanisms will strengthen public trust in government and ensure the rule of law, even in difficult conditions.⁵³

Adapting legal norms to international standards is another key aspect. In shaping and adjusting legislation, it is essential to consider the recommendations and requirements of international organisations such as the UN and the Council of Europe. For example, Article 15 of the European Convention on Human Rights⁵⁴ allows states to derogate from some obligations in cases of emergency, but only if such measures are strictly necessary and proportionate to the existing threat. Incorporating these principles into national legislation will help avoid excessive restrictions on rights and freedoms that could be deemed unacceptable from the standpoint of international law and ethical norms.⁵⁵

Strengthening human rights protection activities and public oversight also plays an important role in ensuring respect for human rights during martial law. Activating the work of human rights organisations, providing them with broader powers and resources, will allow for more effective monitoring of the situation and intervention in cases of violations. Public control over government actions will promote greater transparency and accountability, which are necessary conditions for the functioning of a rule-of-law state.⁵⁶

⁵³ Alan Greene, "Derogating from the European Convention on Human Rights in response to the Coronavirus pandemic: If not now, when?", *European Human Rights Law Review* 2020. <https://doi.org/10.2139/ssrn.3593358>

⁵⁴ European Convention on Human Rights, (1950). https://www.echr.coe.int/Documents/Convention_ENG.pdf

⁵⁵ Mohammed Ibrahim Gariba, Solomon Gyamfi, and Vita Jukneviciene, "Exploring social media knowledge as a means for fighting corruption in CEE countries", *European Conference on Knowledge Management* 23(1), 2022: 424-433. <http://doi.org/10.34190/eckm.23.1.613>

⁵⁶ Jerg Gutmann, Fabio Padovano, and Stefan Voigt, "Perception vs. experience: Explaining differences in corruption measures using microdata", *European Journal of Political Economy* 65, 2020: 101925. <http://doi.org/10.1016/j.ejpol eco.2020.101925>

The imposition of martial law in certain situations is a necessary measure for the protection of national interests and security. However, such actions must adhere to the principles of the rule of law and democracy. Establishing clear boundaries for the restriction of citizens' rights and freedoms is critical to ensuring their proportionality to the threats faced by the state. Transparency and accountability of state bodies must be ensured at all stages to prevent potential abuses of power and maintain public trust.⁵⁷

Adherence to international human rights standards remains an important condition, even under the challenging circumstances of martial law, as it not only protects fundamental rights and freedoms but also supports international community backing.⁵⁸ In the modern globalised world, states interact on many levels, and violations of human rights can negatively affect international relations, economic cooperation, and a country's image on the world stage.⁵⁹ Building the rule of law during martial law is a complex task that requires a balanced approach, considering many factors. Effective functioning of state institutions must be ensured, national security protected, and citizens' rights and freedoms upheld. This can only be achieved through close cooperation between the authorities, civil society, and international organisations.⁶⁰

Ukraine has the opportunity to draw on the experiences of other countries to improve its legislation and practices. Considering previous mistakes and successes will help develop more effective strategies and mechanisms that respond to national needs and international standards, which in turn will strengthen statehood, increase public trust in the authorities, and ensure sustainable development even in difficult conditions.

Overall, balancing the need to ensure security with the protection of human rights is a key aspect of building the rule of law during martial law. Effective legislation, transparent control mechanisms, and active participation of civil society are tools that will allow this balance to

⁵⁷ Maria Jose Añón, "Human rights obligations, especially, in times of crisis", *Age of Human Rights Journal* 17, 2021: 6406. <https://doi.org/10.17561/tahrj.v17.6406>

⁵⁸ Liana Viktorivna Spytska, "Assessment of the Political and Security Decisions of the Nuremberg Trials from a Legal Perspective", *Pakistan Journal of Criminology* 15(1), 2023: 63–76.

⁵⁹ Viktor Petkov, "Bulgaria's European integration: prospects and unresolved issues regarding the country's entry into the Eurozone", *Clio. Revista de Historia, Ciencias Humanas y Pensamiento Crítico* 5(10), 2025: 1999–2036. <https://doi.org/10.5281/zenodo.15598398>

⁶⁰ Patrick J. Cullen, and Erik Reichborn-Kjennerud, *Multinational Capability Development Campaign Countering hybrid warfare project: Understanding hybrid warfare*, (2019). https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/647776/dar_mcdc_hybrid_warfare.pdf

be achieved. The state must act responsibly, adhering to the principles of the rule of law and respect for human rights, which form the foundation of a democratic society.⁶¹

Thus, Ukraine faces both a challenge and an opportunity to strengthen its legal institutions and establish high standards in the field of human rights even in exceptional circumstances. This will require political will, professionalism, and cooperation at all levels, but the results will justify the efforts, ensuring the resilience and prosperity of the state in the long term.

Analysis

The findings of this study highlight the complexity of building the rule of law in the context of military aggression and martial law, particularly in the search for a balance between ensuring national security and protecting citizens' rights and freedoms. Martial law is a necessary measure implemented to preserve a state's sovereignty and territorial integrity in the event of armed conflict or other exceptional situations. However, as the experiences of Ukraine and other countries demonstrate, legal regulation under such conditions becomes one of the greatest challenges for the state, with the primary issue remaining the adherence to the principles of the rule of law and international standards for human rights protection during martial law.⁶²

The study confirms that while states have the right to impose temporary restrictions on the rights of their citizens during martial law, these measures must be proportional, justified, and aimed at achieving legitimate objectives. International law, particularly the International Covenant on Civil and Political Rights⁶³ and the European Convention on Human Rights⁶⁴, permits the temporary limitation of certain obligations in cases of national security threats. However, such measures must be time-bound and limited in scope to ensure their compliance with the principles of the rule of law.

Ukraine's experience in this regard is particularly illustrative, as since the introduction of martial law in certain territories of Ukraine in 2018, and later across the entire country in

⁶¹ Srikant Parthasarathy, *Martial law during time of war – An international law view*, (2022). <https://www.berkeleyjournalofinternationallaw.com/post/martial-law-during-time-of-war-an-international-law-view>

⁶² Olena Miliienko, "Internal migration and displaced persons in Ukraine: Governing policies and protections by the administrative courts", *Social and Legal Studios* 6(3), 2023: 103–112. <https://doi.org/10.32518/sals3.2023.103>

⁶³ *International Covenant on Civil and Political Rights*, (1976). <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

⁶⁴ European Convention on Human Rights, (1950). https://www.echr.coe.int/Documents/Convention_ENG.pdf

2022 in response to the full-scale aggression by the Russian Federation, significant challenges have arisen concerning the protection of citizens' rights and freedoms and the establishment of the rule of law. The study showed that one of the main issues is the need to ensure the transparency and accountability of state actions. A lack of transparency may lead to abuses of power and violations of citizens' rights, which in turn undermine trust in state institutions and create conditions for destabilising the situation.⁶⁵ The findings of the study align with those of other researchers, who also emphasise the importance of balancing security measures with the protection of human rights.

Expanding the discussion on legal mechanisms in times of martial law, it is essential to consider the various approaches of researchers to the preservation of human rights and the rule of law during crises. While many authors, such as Schmitt⁶⁶, emphasise the necessity of adhering to international law, particularly human rights, even in the context of cyber conflicts, some researchers point to significant challenges that may arise in the practical application of these principles under the real conditions of martial law.

For example, Bantekas and Oette⁶⁷ emphasised that legal restrictions imposed during armed conflicts should be temporary and strictly justified. They stress that the duration of restrictive measures must adhere to the principles of proportionality, as enshrined in international humanitarian law, particularly in the Geneva Conventions⁶⁸, which ensure the protection of civilians in wartime. However, in practice, a problem often arises: temporary measures may become prolonged and permanent, which poses legal risks to democratic institutions.⁶⁹

In this context, Engler⁷⁰ draws attention to the fact that emergencies often provide a pretext for the strengthening of political control and abuse of power by governments. Countries that already face issues with the rule of law are particularly vulnerable. During martial law, governments may use the fight against corruption or terrorist threats as a justification for human rights violations and the suppression of political opponents. This risk is also relevant

⁶⁵ Nadiia Volodymyrivna Fedorchenco, Serhii Ihorovych Shymon, Svitlana Volodymyrivna Vyshnovetska, Liudmyla Volodymyrivna Mikhnevych, and Mykola Ihorovych Bazhenov, "Community Organisation as a Subject of Civil Relations According to Law of Ukraine and CIS Countries", *Memoria E Ricerca* 1, 2020: 353–370. <https://doi.org/10.4478/98143>

⁶⁶ Michael N. Schmitt, *Tallinn manual on the international law applicable to cyber warfare*, (Cambridge: Cambridge University Press, 2013). <https://doi.org/10.1017/CBO9781139169288>

⁶⁷ Ilias Bantekas, and Lutz Oette, *International human rights law and practice*, (Cambridge: Cambridge University Press, 2024). <https://doi.org/10.1017/9781009306409>

⁶⁸ Geneva Conventions. 1949.

⁶⁹ Stuart Wallace, "Derogations from the European Convention on Human Rights: The case for reform", *Human Rights Law Review* 20(4), 2020: 769–796. <https://doi.org/10.1093/hrlr/ngaa036>

⁷⁰ Sarah Engler, "'Fighting corruption' or 'fighting the corrupt elite'?" Politicizing corruption within and beyond the populist divide", *Democratization* 27(4), 2020: 643–661. <https://doi.org/10.1080/13510347.2020.1713106>

for Ukraine, where the issue of government transparency during wartime is critically important but difficult to control.

Moreover, in the cases of Israel and Egypt, which have extensive experience in conducting military operations on their territories, the issue of preserving human rights is also contentious. The World Zionist Organization-Jewish Agency (Status) Law⁷¹ allows military structures to restrict the rights of citizens in areas under their jurisdiction, which creates a debate regarding whether such restrictions are in line with international human rights standards. For instance, the study by Weller et al.⁷² discusses how excessive military administration control can lead to the prolonged weakening of democratic institutions.

When analysing European standards for the protection of human rights, Article 15 of the European Convention on Human Rights⁷³ permits the derogation of rights in emergencies, but these restrictions must be clearly defined, proportional, and temporary. This creates a certain balance between the need to ensure national security and the protection of human rights. Nevertheless, researchers note that in practice, this balance is often disrupted in favour of strengthening security at the expense of citizens' freedoms.⁷⁴

Thus, different academic views demonstrate the contradictions surrounding the effectiveness of maintaining the rule of law during martial law. Some authors, such as Schmitt⁷⁵, optimistically believe that the state can adhere to international legal standards even during conflicts, while others, such as Bantekas and Oette⁷⁶ and Engler⁷⁷, are more critical of this idea, pointing to potential abuses of power and the prolonged weakening of democratic institutions during periods of crisis.

Another aspect revealed in the study is the role of the judiciary during the state of martial law. Martial law presents serious challenges to the independence of the judiciary and its

⁷¹ World Zionist Organization-Jewish Agency (Status) Law, (1952). <https://oxcon.ouplaw.com/display/10.1093/law:ocw/cd9.regGroup.1/law-ocw-cd9?prd=OXCON>

⁷² Marc Weller, Mark Retter, Andrea Varga, *International law and peace settlements*, (Cambridge: Cambridge University Press, 2021). <https://doi.org/10.1017/9781108627856>

⁷³ European Convention on Human Rights. 1950.

⁷⁴ Ilias Bantekas, and Lutz Oette, *International human rights law and practice*, (Cambridge: Cambridge University Press, 2024). <https://doi.org/10.1017/9781009306409>

⁷⁵ Michael N. Schmitt, *Tallinn manual on the international law applicable to cyber warfare*, (Cambridge: Cambridge University Press, 2013). <https://doi.org/10.1017/CBO9781139169288>

⁷⁶ Ilias Bantekas, and Lutz Oette, *International human rights law and practice*, (Cambridge: Cambridge University Press, 2024). <https://doi.org/10.1017/9781009306409>

⁷⁷ Sarah Engler, ““Fighting corruption” or “fighting the corrupt elite”? Politicizing corruption within and beyond the populist divide”, *Democratization* 27(4), 2020: 643-661. <https://doi.org/10.1080/13510347.2020.1713106>

ability to administer justice.⁷⁸ As noted by Clapham and Gaeta⁷⁹, the independence of the judiciary is critical to the preservation of the rule of law in times of armed conflict. The study showed that in Ukraine, the judicial system has faced numerous challenges, including pressure from the executive branch and restricted access to justice in certain regions under occupation or in active conflict zones. In addition, the main issue is ensuring justice for victims of war crimes and human rights violations.⁸⁰ According to the results of the study, special attention should be paid to documenting and investigating such crimes, which is necessary to bring those responsible to justice and ensure justice for victims.

Attention should also be drawn to the conclusions of Dinstein⁸¹, who analysed the legal aspects of state self-defence in the context of aggression. The author emphasised that the right to self-defence must be exercised within the framework of international law, specifically the Charter of the United Nations and the Statute of the International Court of Justice⁸² and should not violate the basic rights of the population. This is particularly relevant in the context of Ukraine, where the introduction of martial law necessitated the adaptation of national legislation to the new circumstances while ensuring adherence to international standards.

Moreover, an important aspect is the fight against corruption during martial law. As noted by Dunda⁸³, corruption during the war can have devastating consequences, undermining trust in state institutions and weakening the effectiveness of governance. The study supports this conclusion, demonstrating that combating corruption is critical to preserving the rule of law in times of crisis. Therefore, to maintain citizens' trust in the authorities and ensure justice, anti-corruption measures must be effective and transparent.⁸⁴

⁷⁸ Liudmyla Volodymyrivna Mikhnevych, Larysa Vasylivna Vasylchuk, Artem Oleksandrovych Hryhorenko, and Iuliia Rud, "Constitutional model of parliamentary immunity: Ukrainian and European experience", *JUS Rivista di Scienze Giuridiche* 2023(3), 210–229. https://doi.org/10.26350/18277942_000133

⁷⁹ Andrew Clapham, and Paola Gaeta, *Oxford handbook of international law in armed conflict*, (Oxford: Oxford University Press, 2019). <https://doi.org/10.1093/law/9780199559695.001.0001>

⁸⁰ Petro Mykhailovych Petrovskyy, "A democratic trend in the development of the public administrative sphere in Ukraine in the post-war period", *Democratic Governance* 16(1), 2023: 1–11. <https://doi.org/10.23939/dg2023.01.001>

⁸¹ Yoram Dinstein, *War, aggression and self-defence*, (Cambridge: Cambridge University Press, 2017). <https://doi.org/10.1017/9781108120555>

⁸² Charter of the United Nations and Statute of the International Court of Justice, (1945). <https://treaties.un.org/doc/publication/ctc/uncharter.pdf>

⁸³ Oleh Dunda, *Corruption in war is worse than looting*, (2022). <https://lexinform.com.ua/vukraini/koruptsiya-na-vijni-girsha-za-maroderstvo/>

⁸⁴ Karlis Ketners, Zolzaya Jargalsaikhan, Antony D. Miller, Olena Miliienko, and Lilit Malkhasyan, "Evaluation of effective anti-corruption strategies in state institutions", *Ceridap* 2025(1), 93–118. <https://doi.org/10.13130/2723-9195/2025-1-48>

Another factor confirmed by the study is the impact of martial law on labour rights and social protection. As noted by Tocicka⁸⁵, changes in labour and tax legislation during war can have serious consequences for workers, especially in the context of mass migration and job losses. The study demonstrated that to ensure social stability, mechanisms for social protection need to be developed, considering the specifics of wartime and providing support for the most vulnerable segments of the population.

Moreover, the study emphasised the importance of international cooperation in ensuring the rule of law during martial law. As the analysis shows, international organisations (the UN, Council of Europe, Organization for Security and Co-operation in Europe (OSCE)) play a crucial role in monitoring human rights compliance and assisting states in strengthening their legal systems, as demonstrated in Engler's⁸⁶ study, which underscores the importance of international cooperation in the fight against corruption and ensuring transparency.

The results of the study indicate that the establishment of the rule of law under martial law is a multifaceted process that requires balancing national security concerns with the rights of the country's population. This is confirmed by the experience of Ukraine, which faced the necessity of quickly adapting its legal system to the conditions of war. The success of this process depends on the state's ability to ensure effective law enforcement, maintain judicial independence, and adhere to international obligations.

The findings demonstrated the importance of the impact of martial law on the establishment of the rule of law, particularly with regard to challenges associated with maintaining public order and protecting human rights in the context of armed conflict. The analysis of the effects of martial law on the legal systems of Ukraine and other countries showed that this regime substantially alters the state's legal landscape, creating both opportunities to strengthen state control and risks of limiting citizens' rights and freedoms.

Conclusions

The introduction of martial law into the legal systems of various countries, including Ukraine, demonstrated the inevitability of restrictions on citizens' rights and freedoms during

⁸⁵ Julia Wioletta Tocicka, "Interpretation of the tax screen for income taxes in Poland", *International Journal of Legal Studies* 12(2), 2022: 133-144. <https://doi.org/10.5604/01.3001.0016.2387>

⁸⁶ Sarah Engler, "“Fighting corruption” or “fighting the corrupt elite”? Politicizing corruption within and beyond the populist divide", *Democratization* 27(4), 2020: 643-661. <https://doi.org/10.1080/13510347.2020.1713106>

this regime. The experiences of Ukraine, Israel, Egypt, and the Philippines, countries with a history of military conflict on their territories, showed that the effective functioning of the rule of law is only possible when a clear balance is struck between security measures and human rights. Meanwhile, the high level of concentration of power in the hands of executive authorities during martial law can lead to risks of abuse and the weakening of democratic institutions. To preserve the principles of the rule of law, robust parliamentary and judicial oversight must be established over the actions of the executive.

The functioning of the judiciary under martial law is crucial for maintaining public order. Studies showed that in Ukraine, as in several other countries, military courts, established to handle cases related to war crimes and treason, often become tools that restrict citizens' rights and undermine the fairness of the judicial process. This is particularly evident in cases where the use of classified evidence and expedited procedures result in limitations on the right to defence. Such an approach undermines the fundamental principles of justice, provoking negative reactions from international organisations and human rights groups.

Corruption during martial law poses one of the greatest threats to the stable functioning of the rule of law, as reduced transparency and accountability in the actions of executive authorities create favourable conditions for the spread of corrupt practices among officials managing resource distribution, humanitarian aid, and military supplies. Research findings indicate that the increase in corruption during martial law in Ukraine has led to a decline in citizens' trust in state institutions. To combat this issue, it is necessary to implement effective control and accountability mechanisms and ensure the inevitability of responsibility for corrupt actions.

International experience in legal regulation during martial law is an important resource for improving national legal mechanisms. The practices of countries such as Israel, Egypt, and the Philippines demonstrate that the integration of international standards into the national legal system can enhance the effectiveness of the rule of law. For Ukraine, it is crucial to utilise these international practices to strengthen its legal system, ensure public order, and protect human rights, even in the challenging conditions of martial law.

Overall, the study indicated that the creation of the rule of law during martial law is an extremely complex process that requires a careful approach and consideration of global experience. For the legal system to function stably and develop during wartime, it is necessary to continuously update legal tools, effectively oversee the activities of executive authorities, ensure human rights compliance, combat corruption, and implement international

legal standards. Only under these conditions can the key principles of the rule of law be preserved and sustainable societal development ensured, even in times of serious challenges.

A limitation of this study is its focus on analysing the legal mechanisms of individual countries and generalising international experience, which may not fully account for the national features of other countries' legal systems in the context of martial law. Moreover, there is limited access to detailed information regarding judicial practice under classified or simplified procedures.