НАПЯМ 1. РЕАЛІЗАЦІЯ НОРМ ПРАВА В ТЕОРІЇ ТА ІСТОРІЇ ДЕРЖАВИ ТА ПРАВА. КОНСТИТУЦІЙНЕ ПРАВО

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IMPLEMENTATION OF REGULATIONS ON LIMITATIONS OF CITIZENS RIGHTS IN STATES OF EXTRAORDINARY EMERGENCY – THEORY AND PRACTICE

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Modern models of states of emergency (the terms "state of exception", "state of siege" and "public emergency" are also widely recognized [1, p. 11]) draw inspiration – to varying extents – from the institution of dictatorship that originated in ancient Rome [1, p. 27]. Extraordinary measures, allowing states to temporarily limit civil rights during crises, are a key focus in contemporary constitutional law and human rights. Both international law and domestic regulations tend to emphasize that any state action must adhere to principles of proportionality, necessity, and temporality [2, p. 246–255; 5]. For example, Article 4 of the International Covenant on Civil and Political Rights (ICCPR) and Article 15 of the European Convention on Human Rights (ECHR) allow certain rights to be suspended in the event of a national emergency. Nevertheless, states are required to adhere to stringent guidelines in order to safeguard fundamental human rights. States of emergency hold significant implications for human rights, as the suspension of legal frameworks frequently creates conditions conducive to widespread and systematic violations of human rights.

This article aims to explore the theoretical and practical challenges associated with implementing civil rights restrictions during states of emergency.

Theoretical Aspects of Emergency Measure Implementation

International law recognizes the potential risks posed by states of emergency, and therefore imposes strict limitations on when states can lawfully suspend their duties to uphold civil and political rights [5, p. 46]. These legal boundaries are meant to ensure that even in crises, fundamental rights are not disregarded or compromised [5, p. 44–46]. Each of the major

human rights conventions requires that states substantiate the necessity for declaring a state of emergency before implementing specific emergency measures. Among these, European regulations, particularly the European Convention on Human Rights (ECHR), have been the most influential in shaping international and regional standards for emergency powers [5, p. 48]. The ECHR, along with the ICCPR and the Arab Charter, allows states to derogate from certain human rights obligations during a national crisis, but only under clearly defined conditions where the crisis threatens the "life of the nation." [6, p. 10].

European legal frameworks have provided the most detailed and widely adopted criteria for assessing whether an emergency justifies derogation from human rights protections [5, p. 48]. Through cases like Lawless v. Ireland, the European Court of Human Rights (ECtHR) has set forth rigorous standards [5, p. 48]. The requirement that the emergency must be present or imminent, exceptional, affect the entire population, and pose a direct threat to the organized life of the community [7, 8]. These European legal precedents have significantly influenced international and regional human rights law by establishing the procedural and substantive conditions that must be met before entering a state of emergency. This ensures that emergency powers are used in a manner that respects fundamental rights and freedoms.

Moreover, many national constitutions themselves contain similar restrictions on the declaration and implementation of states of emergency. For instance, the Polish Constitution specifies that a state of emergency can only be declared in the event of war, a state of exception (threat to the constitutional system as well as to the security of citizens or public order) or a state of natural disaster, and that any measures taken must be proportional to the threat posed, duration etc. [11]. Similarly, the German Basic Law (*Grundgesetz*) allows for derogation from certain rights during a state of emergency, but strictly limits the circumstances and duration of such measures. [12]. Other countries, like France and Spain, also include constitutional provisions that regulate the use of emergency powers and ensure that such measures do not unduly infringe upon fundamental rights. [13; 14].

Once a state demonstrates that a crisis qualifies as an emergency, attention turns to the legality of the measures taken in response [5, p. 49]. Legal frameworks such as the ICCPR, ECHR, ACHR [9], and Arab Charter do not grant states unchecked authority during national emergencies. Instead, they impose both substantive and procedural limits on emergency actions. These frameworks define the scope – both temporal and geographic – of derogations and safeguard certain non-derogable human rights, such as the prohibition of

torture and arbitrary detention [4; 5, p. 49; 10, p. 120–125]. State fundamental laws and case law usually provide exhaustive clarification on these topics.

A state of emergency can drastically alter the lives of citizens by temporarily suspending essential rights and liberties. Simultaneously, it shifts the balance of power within government. The executive branch gains substantial authority, while the legislative and judicial branches often see their powers curtailed [15]. Precisely because of this, a cynical government might deliberately provoke or exaggerate a crisis to justify a state of emergency. This allows them to bypass democratic processes, stifle dissent, and consolidate their own power [15].

Two main models have evolved to manage crises effectively while balancing the need for rapid response with democratic integrity: the neo-Roman and legislative models [16, p. 211–221].

The neo-Roman model centralizes emergency powers in a single executive, allowing for swift, unilateral decision-making [16, p. 211–214]. This approach is advantageous in situations demanding immediate action – such as natural disasters or security threats – by streamlining authority and enabling decisive responses. However, it carries the risk of sliding into authoritarianism, as unchecked power may undermine democratic institutions and civil liberties [16, p. 211–214].

In contrast, the legislative model requires that emergency powers be granted to the executive by legislative action [16, p. 215]. This framework ensures that any extraordinary authority is approved and limited by the legislature, thereby safeguarding democratic accountability and legitimacy. While this approach mitigates the risk of executive overreach, it can be slower to implement, posing challenges in rapidly escalating situations [16, p. 215–221].

Practical Aspects of Emergency Measure Implementation

According to Bjørnskov and Voigt, emergency provisions are embedded in the constitutions of 90% of countries [17]. The authority to declare states of emergency has been widely exercised. From 1985 to 2014, 137 nations implemented such declarations at least once [15, 17]. This suggests that roughly two-thirds of all sovereign states enacted emergency powers during this nearly 30 years period [15]. Recent events related to the 2019 pandemic may have significantly increased these statistics [18, 19]. Furthermore, it also raised new concerns about how emergency power is actually used [18].

Detailed regulations regarding the operation of individual public authorities during states of emergency are usually regulated by the extraconstitutional laws of individual countries. Unfortunately, the general threats seem to be common to all as well.

The implementation of emergency measures often presents significant challenges to governments, especially when decisions must be made quickly

under pressure. Haste in responding can lead to legal imperfections, such as poorly drafted laws, formal errors, or the bypassing of regular legal review processes, which can create confusion and hinder proper enforcement [20]. These rushed measures can also result in the erosion of fundamental rights, particularly when restrictions on movement, assembly, or expression are imposed disproportionately, sometimes targeting political opposition or marginalized groups [2, p. 254].

Additionally, the expansion of emergency powers may foster the abuse of authority, with governments overstepping their legal mandates and infringing on democratic processes, often undermining both domestic governance and international relations [19, 21]. Moreover, the suspension of constitutional rights and the overuse of executive authority can strain judicial systems, delay the resolution of legal disputes, and undermine due process [19, 22].

Public trust is further jeopardized when emergency measures are inconsistently enforced or poorly communicated, leading to confusion and noncompliance [23]. The economic and social consequences of such measures can disproportionately affect vulnerable populations, exacerbating inequality and causing lasting damage to economic stability. Furthermore, technological overreach, particularly through increased surveillance, can violate privacy rights and raise concerns regarding the abuse of personal data [2, p. 235–237].

Summary

While states of emergency provide governments with necessary tools to respond to crises, they also pose significant risks to civil rights and democratic processes. Legal frameworks strive to impose safeguards, but the rush (or other reasons) to act often leads to legal imperfections, abuses of power, and disproportionate impacts on vulnerable populations. Ensuring that emergency measures are transparent, proportionate, and accountable remains a critical challenge for safeguarding human rights and maintaining public trust. The implementation of law in emergency situations is extremely important and despite the existing measures to protect actions in emergency situations (not discussed in detail here), it is better to act preventively than subsequently.

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RÓWNOŚĆ OBYWATELI W ŚWIETLE KONSTYTUCJI UKRAINY I POLSKI

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Wprowadzenie. Równość wobec prawa jest podstawowym elementem demokratycznego państwa prawa, a jego zasady są szczególnie uwypuklone w aktach konstytucyjnych obu krajów – Polski i Ukrainy. Konstytucje Polski i Ukrainy odzwierciedlają zobowiązanie obu krajów do zapewnienia wszystkim obywatelom równych praw i ochrony przed dyskryminacją. Równość konstytucyjna nie tylko symbolizuje ideę sprawiedliwości, ale także wskazuje na głębokie zmiany społeczne, jakie zachodzą w naszych czasach, na rzecz praw człowieka i poszanowania różnorodności. Celem tej analizy porównawczej jest zbadanie podobieństw i różnic w zakresie równości obywateli tych państw na podstawie zapisów konstytucyjnych oraz realiów politycznych. Analiza ta pomoże zrozumieć, jak Polska i Ukraina rozumieją i wdrażają zasady równości w kontekście ich polityki wewnętrznej i międzynarodowej.

Kontekst teoretyczny

Równość w prawie konstytucyjnym oznacza, że wszyscy obywatele są traktowani w sposób jednakowy przez państwo, niezależnie od ich pochodzenia, wyznania, płci czy innych cech. Zasada ta jest kluczowa w kształtowaniu polityki państwowej, zapewniając równy dostęp do dóbr publicznych i eliminując dyskryminację. Warto również zauważyć, że pojęcie równości zmienia się w zależności od kontekstu, w jakim jest rozpatrywane – może dotyczyć równości formalnej (równie traktowani przez prawo), jak i równości materialnej (realne warunki życia obywateli).

Równość w polskiej Konstytucji *versus* ukraińskiej Konstytucji

Zasada równości obywateli została zawarta w artykule 32 polskiej Konstytucji z 1997 roku [1, p. 6]. Zgodnie z tym przepisem, „wszyscy są wobec