

**Ihor ANDRONOV, Larysa DIDENKO, Semen REZNICHENKO,
Roman POZHODZHUK, Vitaliia ROMANIUK**

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secrecy of correspondence under martial law in Ukraine*

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Secção I

Investigação Científica*

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Limitations of the right to personal data protection and the right to secrecy of correspondence under martial law in Ukraine

Limitações do direito à proteção dos dados pessoais e do direito ao sigilo da correspondência no âmbito da lei marcial na Ucrânia

Ihor ANDRONOV¹
Larysa DIDENKO²
Semen REZNICHENKO³
Roman POZHODZHUK⁴
Vitaliia ROMANIUK⁵

ABSTRACT: The right to personal data protection and secrecy of correspondence are important components of the right to privacy, one of the fundamental human rights. In modern society, private life becomes especially vulnerable, taking into account the possibilities of modern technologies. The intervention into the private life can be almost unlimited unless there are some legislative rules which prevent such intervention. Therefore, it is very important to develop reliable mechanisms for the protection of the right to privacy and its elements, in particular, the right to personal data protection and the right to secrecy of correspondence. Unfortunately, the state of ensuring these rights in Ukraine is imperfect. The legislation aimed at protecting personal data does not meet European standards. This state of affairs is especially disturbing in terms of martial law imposed in Ukraine, when it is allowed to limit constitutional human rights, in particular, the right to privacy. It is important to determine the permissible limits of such restrictions, and to provide reliable mechanisms for the protection of these rights in case of exceeding the permissible interference in private life under martial law.

KEYWORDS: personal data; secrecy of correspondence; restrictions; martial law.

RESUMO: O direito à proteção dos dados pessoais e ao sigilo da correspondência são componentes importantes do direito à privacidade, um dos direitos humanos fundamentais. Na sociedade moderna, a vida privada torna-se especialmente vulnerável, tendo em conta as possibilidades das tecnologias modernas. A intervenção na vida privada pode ser quase ilimitada, a menos que existam algumas regras legislativas que impeçam tal intervenção. Portanto, é muito importante desenvolver mecanismos fiáveis para a protecção do direito à privacidade e dos seus elementos, em particular, o direito à protecção de dados pessoais e o direito ao sigilo da

¹ Department of Civil Process of the National University «Odesa Law Academy», Odesa, Ukraine, e-mail: andronov_igor@gmail.com, ORCID ID: 0000-0002-7490-363.

² Department of Civil and Commercial Law and Process of the International Humanitarian Institute, Odesa, Ukraine, e-mail: t795959@gmail.com, ORCID ID: 0000-0002-6806-50172.

³ Odessa State University of Internal Affairs, Odesa, Ukraine, e-mail: srz@ukr.net, ORCID ID: 0000-0003-2311-349X.

⁴ The Secretariat of the Verkhovna Rada of Ukraine, Academician F.H. Burchak Scientific Research Institute of Private Law and Entrepreneurship of the National Academy of Legal Sciences of Ukraine, Kyiv, Ukraine, e-mail: rp@ukr.net, ORCID ID: 0000-0002-6414-4797

⁵ Department of International and European Law of the Leonid Yuzkov Khmelnytskyi University of Management and Law, Khmelnytskyi, Ukraine, e-mail: v774910@gmail.com, ORCID ID: 000-0002-5297-5235.

correspondência. Infelizmente, o estado de garantia destes direitos na Ucrânia é imperfeito. A legislação destinada a proteger os dados pessoais não cumpre as normas europeias. Esta situação é especialmente perturbadora em termos da lei marcial imposta na Ucrânia, quando é permitido limitar os direitos humanos constitucionais, em particular o direito à privacidade. É importante determinar os limites permitidos de tais restrições e fornecer mecanismos fiáveis para a protecção destes direitos no caso de exceder a interferência permitida na vida privada sob a lei marcial.

PALAVRAS-CHAVE: dados pessoais; sigilo de correspondência; restrições; lei marcial.

Introduction

One of the most important human rights is the right to respect for private life. Privacy is the ground for other rights: the free development of personality, identity and beliefs and their expression, and the ability of people to participate in political, economic, social and cultural life. Despite the importance of this right, during long time of influence of Soviet ideology in Ukraine, this right was severely violated. After the declaration of independence in Ukraine, guarantees of privacy were created at the Constitutional level. In particular, Article 32 of the Constitution of Ukraine states that no one can be subjected to interference in his or her personal life, except for the cases stipulated by the Constitution. However, the current mechanisms of protection of the right to respect for private life in Ukraine are still not perfect. The issue of protecting the right to inviolability of private life is of particular importance in Ukraine in terms of martial law, introduced since the beginning of Russian aggression on February 24, 2022. Under martial law, it is allowed to limit the constitutional rights of a person, including the right to private life. In particular, such restriction of the right to privacy are possible as: searches, monitoring of electronic communications, collection and processing of personal data without adequate guarantees of privacy, etc. Therefore, it is very important to clearly define means of protection of the right to privacy as well as limits of its potential restrictions.

The key elements of the right to respect for private life, which might be violated under martial law, are the right to personal data protection and secrecy of correspondence. After the introduction of martial law, Ukraine moved to a new stage in personal data protection issue. Among the challenges related to the military situation, the state is forced to face new negative factors caused by the need to protect citizens, their constitutional rights in cyberspace. Therefore, it is important to develop a kind of action plan to protect personal data in terms of the

war⁶. In particular, it is necessary to solve such issues as: frames of limitation of the right to privacy, determination of the limits and powers regarding the processing of personal data, studying of legal grounds for transferring data from data subjects to competent authorities, protection of personal data against cybercrimes, detection of threats to personal data protection in the occupied territories etc.

Another right that might be legitimately restricted under martial law, is the right to secrecy of correspondence, telephone conversations, telegraphic and other correspondence⁷. The issue of restricting the right to the secrecy of correspondence under martial law, is extremely important to solve in order to prevent its illegal violation or excessive restriction. Applying such restrictions, each country is guided by the norms of Article 29 of the Universal Declaration of Human Rights, which stipulates that in the exercise of rights and freedoms, each person should be subject to only such restrictions as are established by law solely for the purpose of ensuring due recognition and respect for the rights and freedoms of others and ensuring the just requirements of morality, public order and general welfare in a democratic society. Thus, every case of restriction of the right to the secrecy of correspondence should be estimated from this perspective.

1. Limitations of the right to personal data protection under martial law

The legislation on personal data protection in Ukraine is far from being perfect. The main legal act aimed to provide personal data protection is a special Law of Ukraine “On Personal Data Protection”, adopted in 2010⁸. This law provides for basic principles of personal data collection and processing and mechanisms for ensuring personal data protection. However, the provisions of the mentioned law are being criticized for their non-compliance with European

⁶ OLIYNYK, O., ROMANOVA, A., KOVAL, I., CHORNOBAI, O. & POLIARUSH-SAFRONENKO, S. 2023. Protection of personal data in the context of human rights: experience and relevance of ECtHR decisions. *Revista Jurídica Portucalense*, 33: 234–249.

⁷ BLASHCHUK, T. & ARBIDANE, I. 2023. *Personal non-property rights to life, health and medical care in Ukraine: new challenges during martial law*. In: DAVULIS, T. (ed.) & GASPARENIENE, I. (ed.). *The challenges and opportunities in law: Ukrainian case under the conditions of war*. Krakow: Księgarnia akademicka publishing:7-87.

⁸ Verkhovna Rada of Ukraine. 2010. Law of Ukraine “On Personal Data Protection” № 2297-VI of 01.06.2010. *The Voice of Ukraine*. 16.09.2010. № 172. Available at: <https://zakon.rada.gov.ua/laws/show/2297-17#Text>

standards in the area of data protection⁹. In particular, it was discussed the necessity to adjust national legislation into line with General Data Protection Regulation (GDPR). Also, there is a need to create a system of independent administrative, law enforcement, advisory and supervisory bodies that will ensure compliance with the right to personal data protection in both private and public spheres. Thus, the current state of personal data protection of in Ukraine is unsatisfactory and threatening¹⁰.

This situation becomes especially problematic in terms of martial law, introduced in Ukraine from the beginning of Russian aggression on February 24, 2022. It causes special concerns due to the fact that the Law of Ukraine “On personal data protection” has no clear rules on limitations of the right to personal data protection in terms of the war. Martial law provides the relevant state authorities, military command, military administrations, and local self-government bodies with the powers necessary to avert the threat, repulse armed aggression and ensuring national security, eliminating the threat of danger to the state independence of Ukraine, its territorial integrity.¹¹ Accordingly, under martial law, the right to protect personal data might be limited considering the interests of the national security.

Considering the possibility of such restrictions and constant cyberattacks, the issue of the specifics of personal data protection in terms of martial law is relevant. The limitation of the right to personal data include: 1) permission for public authorities to create backup copies of state information resources and systems on individual physical media in encrypted form on cloud resources and data processing centers abroad¹²; 2) simplifying investigative actions related to personal data; 3) establishment of special rules for selection, processing, storage, state registration of genomic information for certain categories of

⁹ Custers, B., Dechesne, F., Sears, A. M., Tani, T. & van der Hof, S. 2018. A comparison of data protection legislation and policies across the EU. *Computer law & security review*, 34(2):234-243, doi 10.1016/j.clsr.2017.09.001

¹⁰ NEKIT, K., KOLODIN, D. & FEDOROV, V. 2020. Personal data protection and liability for damage in the field of the Internet of Things. *Juridical Tribune*, 10(1): 80-93.

¹¹ Current trends in young scientists' research: X all Ukrainian scientific and practical conference (April 20, 2023). Zhytomyr: Zhytomyr Polytechnic State University. 248 p. <https://conf.ztu.edu.ua/wp-content/uploads/2023/05/povnyy-tekst.pdf>

¹² Verkhovna Rada of Ukraine. 2022. Law of Ukraine “On state registration of human genomic information” No. 2391-IX of 09.07.2022. *The Voice of Ukraine*. 05.11.2022. № 226. Available at: <https://zakon.rada.gov.ua/laws/show/2391-20#Text>

persons (policemen, military personnel, prisoners of war, etc.)¹³; 4) considerations on special threat of personal data of citizens in the temporarily occupied territories, which are illegally collected by the occupiers under the guise of a "population census", etc.

The Law of Ukraine "On Personal Data Protection" also contains provisions concerning the limitation of its action. In particular, in Art. 25 of the mentioned Law stipulates that the restriction of the validity of Articles 6 (General requirements for the processing of personal data), 7 (Special requirements for the processing of personal data) and 8 (Rights of the subject of personal data) of this Law may be carried out in cases provided for by law, to the extent necessary in a democratic society in the interests of national security, economic well-being or protection of rights and freedoms of subjects of personal data or other persons¹⁴. That is, in accordance with Part 2 of Art. 19 of the Constitution of Ukraine, state authorities and local self-government bodies, their officials are obliged to act only on the basis, within the limits of authority and in the manner provided for by the Constitution and laws of Ukraine¹⁵.

In terms of martial law, the collection and processing of personal data is carried out in accordance with Art. 11 of the mentioned Law in order to protect the particularly important interests of the owner of this data. In such a case, prior consent is not required. However, if it is possible to obtain such consent in the future, the relevant authority should contact the original source with a request for its provision.

The main points in the collection, processing and storage of personal data by subjects of authority based on their legally defined powers under martial law are as follows:

¹³ Verkhovna Rada of Ukraine. 2022. Law of Ukraine "On state registration of human genomic information" No. 2391-IX of 09.07.2022. *The Voice of Ukraine*. 05.11.2022. № 226. Available at: <https://zakon.rada.gov.ua/laws/show/2391-20#Text>

¹⁴ GEDMINTAITE, A., SHCERBANYUK, O. & PAUZAITE-KULVINSKIENE, J. 2023. *System of human rights protection and judicial protection in Ukraine during the war and its compatibility problems in the context of EU integration*. In: DAVULIS, T. (ed.) & GASPARENIENE, I. (ed.). 2023. *The challenges and opportunities in law: Ukrainian case under the conditions of war*. Krakow: Ksiegarnia akadematica publishing: 787-859. <https://books.akademicka.pl/publishing/catalog/download/554/1790/2225?inline=1>

¹⁵ DIDENKO, L., SPASOVA, E., MYKHAILOVA, I., TSERKOVNA, O., & YARMAKI, V. 2022. Peculiarities of personal data protection according to European and Ukrainian legislation. *Cuestiones Políticas*, 40(74): 585-606.

- the right to processing is carried out by the bodies defined in the Law of Ukraine "On the Legal Regime of Martial Law"¹⁶;
- the term, form and procedure of data processing must not be exceeded;
- the governmental bodies must act only on a certain set of data and within the limits of authority.

In accordance with the "Plan for the introduction and provision of measures for the implementation of the legal regime of martial law in Ukraine" approved by the Cabinet of Ministers of Ukraine on February 24, 2022 some changes, related to citizens' information security were implemented, for example, checking personal documents and inspecting citizens' belongings and vehicles, as well as their homes and other premises¹⁷. These changes somewhat limited the scope of constitutional rights, but their implementation was a necessary step for the introduction and implementation of new state security measures.

The Resolution of the Cabinet of Ministers of Ukraine "On approval of the Procedure for checking documents of persons, inspecting things, vehicles, luggage and cargo, office premises and housing of citizens during the provision of measures of the legal regime of martial law" dated December 29, 2021, clearly defines the list of competent authorities for checking citizens' documents. Namely, these are the National Police, the Security Service of Ukraine, the National Guard, the State Customs Service, units of the Armed Forces of Ukraine¹⁸. For these bodies, a list of grounds for conducting document checks is defined, in particular:

- in case the person has external signs similar to the signs of a wanted or missing person;

¹⁶ Verkhovna Rada of Ukraine. 2015. Law of Ukraine "On the Legal Regime of Martial Law" No. 389-VIII of 12.05.2015. *The Voice of Ukraine*. 10.06.2015. № 101. Available at: <https://zakon.rada.gov.ua/laws/show/389-19#Text>

¹⁷ Cabinet of Ministers of Ukraine. 2022. Resolution of the Cabinet of Ministers of Ukraine "Plan for the introduction and provision of measures for the implementation of the legal regime of martial law in Ukraine" № 181-p of 24.02.2022. *Official Gazette of Ukraine*. 20.05.2022. № 39. Available at: <https://zakon.rada.gov.ua/laws/show/181-2022-%D1%80#Text>

¹⁸ Cabinet of Ministers of Ukraine. 2021. Resolution of the Cabinet of Ministers of Ukraine "On approval of the Procedure for checking documents of persons, inspecting things, vehicles, luggage and cargo, office premises and housing of citizens during the provision of measures of the legal regime of martial law" № 1456 of 29.12.2021. *Official Gazette of Ukraine*. 11.02.2022. № 12. Available at: <https://zakon.rada.gov.ua/laws/show/1456-2021-%D0%BF#Text>

- in case there are sufficient evidences regarding the person's intention to commit the offense, or there is the fact of its commission, as well as the fact of involvement in the commission;
- in case of illegal stay at an object with a special access regime;
- if the person has ammunition, weapons, narcotics or other substances with prohibited or restricted circulation;
- presence of a person at the place of commission of an offense or road accident;
- violation of conditions for the territory where the martial law regime has been introduced.

If the person who is being checked by the relevant authorities does not have documents certifying his or her identity, they may be subjected to coercion in the form of detention by an authorized person in order to establish their identity according to the Code of Ukraine on Administrative Offenses (Art. 260-263).

But in any case, regardless of the restrictions imposed by the legal regime of martial law, the vast majority of methods of obtaining, processing and storing personal data must be based on conditions of voluntariness and awareness. Otherwise, the data can be considered unreliable and their use illegal according to Part 2 of Article 7 and Part 1 of Article 13 of the Law of Ukraine "On Access to Public Information"¹⁹.

Some changes were implemented in the criminal procedural legislation under the martial law. The actions of investigative bodies were simplified and the powers of relevant bodies regarding procedures for inspecting the scene of the incident were extended. From now on, the inspection of computer systems is allowed to be carried out by the prosecutor's office and investigative bodies with the help of photo, video recording or in paper form. Such investigative actions can be carried out both under the sanction of the court and without it.

The new legislation also provides for the recording of statements from surveillance cameras installed in public places without obtaining the personal consent of the person being recorded. However, it is necessary to clearly trace

¹⁹ Verkhovna Rada of Ukraine. 2011. Law of Ukraine "On Access to Public Information" № 2939-VI of 13.01.2011. *Official Gazette of Ukraine*. 18.02.2011. № 10. Available at: <https://zakon.rada.gov.ua/laws/show/2939-17#Text>

and prove the connection between the specific criminal proceedings and the recording itself in order to use it as evidence.

Since the introduction of the martial law regime, changes have been made that allow prosecutors to gain simplified access to medical and banking secrets that were not previously possible, as well as data from telecommunications providers, including information about calls, routing, the content and duration of that data.

Therefore, under the martial law, it is allowed to limit the right to the protection of personal data, but state and local authorities, when exercising powers aimed at limiting the right to personal data, must still act within the limits determined by the Constitution of Ukraine and special laws. Otherwise, the action on violation of the right to personal data protection as an element of the right to respect for private life can be brought to the court.

During the legal defense in order to determine the legality of the restriction of the right to personal data protection, the following principles of the legality of restrictions must be considered:

- the restriction of human rights and freedoms in the state of emergency must be caused by the fact that the realization of such rights can lead to an increase in social tensions and create obstacles for state authorities authorized to maintain and restore the constitutional legal order;
- citizens must be informed that a state of emergency has been introduced in the territory where they live, and what rights and freedoms will be restricted in this regard;
- restriction of human rights and freedoms in terms of a state of emergency must be of a temporary nature;
- restrictions on human rights and freedoms must not be accompanied by discrimination on the basis of race, color, language, sex, religion;
- the restriction of human rights and freedoms under the state of emergency must be carried out under parliamentary control, that is, the introduction of the state of emergency and the extension of its validity period must be approved by the parliament;
- the introduction of a state of emergency does not stop the activities of judicial bodies, and therefore citizens retain their right to apply to the court for the

protection of their rights and freedoms, as well as to challenge illegal restrictions of these rights²⁰.

To analyze the grounds for interference within human rights, the ECtHR uses the so-called "three-fold test", which should provide answers to the following questions: 1) whether the intervention was carried out in accordance with the law, which includes compliance with the requirements of the quality of the law in the light of the ECtHR practice; 2) whether the intervention corresponds to a legitimate purpose; 3) whether intervention is necessary in a democratic society.

The "Rule of Law Checklist" index system contains the interpretation of the criteria for deviating from human rights obligations in emergency situations within the framework of the "according to the law" principle. Such criteria are: the presence of special prescriptions of national law applicable to states of emergency, with appropriate derogations from human rights obligations; established grounds for the introduction of restrictions (circumstances and criteria); the prohibition of deviating from obligations under certain rights, even in emergency situations; proportionality of retreat methods in the context of the urgency of the needs of the situation, its duration, conditions and scope; limitation of the executive power's ability to deviate from the usual distribution of powers; parliamentary control and judicial supervision over the effect and duration of the state of emergency and the scope of any concession within its framework²¹.

2. Limitations of the right to secrecy of correspondence under martial law

In most countries, the restriction of rights during a state of emergency or war usually means a temporary refusal to guarantee certain rights and freedoms. At the same time, such restrictions are not arbitrary.

The modern constitutions of most states are based on the concept of the rule of law, one of the features of which is the recognition of the natural nature of human rights and freedoms²².

Three models of constitutional regulation of human rights and freedoms in terms of emergency or martial law can be distinguished: 1) a model in which

²⁰KHOTYNSKA-NOR, O. & POTAPENKO, A. 2022. Courts of Ukraine in wartime: issues of sustainable functioning. *Revista Jurídica Portucalense*, 31: 218-239.

²¹ Venice Commission of the Council of Europe. (2016). *The Rule of Law Checklist*. Available at: https://www.venice.coe.int/images/SITE%20IMAGES/Publications/Rule_of_Law_Check_List.pdf

²² DE LA TORRE, MCM. 2018. The constitutional State as a democratic culture of justification. *Revista de estudios políticos*, 182: 13-41, doi 10.18042/cepc/rep.182.01

constitutional legislation establishes a list of rights and freedoms that can be limited under special legal regimes; 2) the model according to which the constitution lists those rights and freedoms that cannot be limited under any circumstances; 3) the model in which the Constitution only mentions the possibility of restricting rights and freedoms in a state of emergency or martial law, however it does not list such rights, but refers to a special law²³.

Regardless of the chosen model of regulation of restrictions on human rights and freedoms, most states limit the right to secrecy of correspondence during a state of emergency or war. Thus, in accordance with Article 55 of the Constitution of Spain, only certain rights may be suspended during a state of emergency or war, in particular, the right to secrecy of correspondence, including postal and telegraphic messages, as well as telephone conversations.

The right to secrecy of correspondence, telephone conversations and other correspondence is listed also among the rights and freedoms, which are subject to restrictions in terms of martial law according to the Constitution of Germany (Art. 10). However, the German Constitution contains several provisions that protect citizens from the arbitrariness of the state in case of martial law and ensure the observance and protection of human rights and freedoms (Art. 34, 71). In case one considers his or her fundamental rights violated or limited without proper grounds, they can apply to the Constitutional Court of Germany²⁴.

In accordance with Article 64 of the Constitution of Ukraine, certain restrictions on rights and freedoms with an indication of the period of validity of these restrictions may be established under martial law or a state of emergency. The right to secrecy of correspondence, telephone conversations, telegraphic and other correspondence, guaranteed by Article 31 of the Constitution of Ukraine, is not mentioned among the rights and freedoms, which cannot be limited under martial law. Accordingly, this right may be limited as a result of the introduction of martial law or a state of emergency.

²³ KHYLA, I. Yu. 2019. Constitutional bases of restriction of the rights and freedoms in the conditions of a state of emergency: experience of foreign countries. *Naukovyy visnyk publichnoho ta pryvatnoho prava*, 2 (1): 39–44.

²⁴ SLAVKO, A. S. 2016. Restrictions of human and civil rights and freedoms under martial law: a comparative legal aspect. *Naukovyy visnyk Uzhhorodskoho natsionalnoho universytetu*, 41 (2): 74–78.

Following these constitutional provisions, the Law of Ukraine "On the Legal Regime of Martial Law" mentions that an exhaustive list of the constitutional rights and freedoms, which are temporarily limited under martial law, with an indication of the period of validity of these restrictions, is defined in the Presidential Decree on introduction of martial law dated February 24, 2022. According to the mentioned Decree, the constitutional rights and freedoms, provided for in Articles 30–34, 38, 39, 41–44 of the Constitution of Ukraine, may be temporarily limited for the period of the legal regime of martial law²⁵. Therefore, this Decree directly provides for the possibility of limiting the right to secrecy of correspondence.

The right to secrecy of correspondence under martial law is limited by the new provisions of criminal legislation, in particular, regarding simplification of investigative actions during martial law and regarding changes to the procedures for inspection of the scene, search, temporary access, which relate to computer systems and access to data.

These new legal provisions expanded the rules of conducting searches, which now provide the opportunity to get the access to computer data as well. The examination is conducted by the prosecutor/investigator and can be recorded in any convenient way, for example, by photo or video recording. At the same time, the recording of private communication within the scope of computer data examination remained unregulated.

However, according to Ukrainian legislation, any investigative action that includes interference with private communication must be conducted on the basis of a decision of the investigating judge. Therefore, the procedure for examining computer data needs to be clarified with regard to the general provisions on interference in private communication.

Besides, the new provisions of criminal legislation significantly expanded the powers of prosecutors and investigators regarding access to data during searches. They will now have the right to search, discover and copy data stored on electronic devices, even if access to such data has not been ordered by a court.

²⁵ Current trends in young scientists' research: X all Ukrainian scientific and practical conference (April 20, 2023). Zhytomyr: Zhytomyr Polytechnic State University. 248 p. <https://books.akademicka.pl/publishing/catalog/download/554/1790/2225?inline=1>

This is allowed in cases where the prosecutor/investigator has sufficient grounds to believe that this data is relevant to criminal proceedings. Access and copying of such data should only be carried out at the location of the search.

The prosecutor/investigator has the right to overcome access restrictions if a person refuses to remove them or the search is carried out in the absence of a person who knows how to omit the restrictions.

Such powers are supplemented by the right of any person who may know about the data to be accessed, to notify the prosecutor or investigator during the search.

It can be clearly argued that such changes to the search procedure give the prosecutor/investigator excessive power to access data. The law does not define the limits of discretion and does not establish objective criteria for accessing data on devices that are not specified in a court order.

It is also not clear the amount of data which is copied if the prosecutor/investigator does gain access to the electronic device. It is obvious that only those data that are potentially important for criminal proceedings can be copied. However, the vagueness of the wording of the new powers allows the prosecutor/investigator to copy the entire contents of the device. After all, during the search, in most cases it's impossible to reliably determine which data are really needed.

Under such conditions, a person may experience an unjustified violation of the rights to preserve the confidentiality of information or private communication.

In some cases, temporary seizure of the device is permitted, in particular when access to it is restricted by its owner, possessor or custodian or involves defeating protection.

Seizure rules have also been updated with new features for device owners. In particular, the prosecutor or investigator is obliged to leave copies of data from the device, if it is technically possible, at the request of the owner with the help of a specialist.

However, the changes did not take into account the proportionality of access to data on devices. Thus, pre-trial investigation authorities will potentially be able to access all information contained on a seized device, whether or not it is needed for criminal proceedings. However, according to the recent changes, owners will be able to get copies of the data that is only stored on the device.

Conclusions

Under martial law some constitutional rights can be limited, among them the right to privacy and its key elements, such as the right to personal data protection and the right to secrecy of correspondence. However, it is important to ensure the balance between the interests of national security and individuals. First of all, it is necessary to consider the principles of proportionality of intervention in human rights.

Based on the three-part test and the criteria for deviating from human rights obligations in emergency situations (according to the Rule of Law Checklist), it can be stated that the criteria of legal certainty, primarily in the context of accessibility (notability), comprehensibility and predictability, are met by the key legal acts in Ukraine: the Law of Ukraine "On the legal regime of martial law" and the Decree of the President of Ukraine "On the introduction of the legal regime of martial law", which establish the very possibility of limiting certain rights, as well as the main measures of the legal regime of martial law.

At the same time, questions regarding the extent (proportionality) of restrictions, principles and specific subjects of their application, demarcation of spheres of competence, legal procedures that will ensure legality and guarantees of protection during restrictions on information rights, often remain without an exact answer. First of all, this concerns the right to personal data protection as a component of the right to privacy (Part 2 of Article 32 of the Constitution of Ukraine).

In general, the approach to ensuring the personal data protection in Ukraine is unsystematic and imperfect. It is particularly disturbing in terms of martial law, when restrictions on privacy are allowed. The protection of personal data in terms of martial law in Ukraine has a number of features due to the specific conditions of such protection (active hostilities, regular cyberattacks by the enemy, the stay of citizens in temporarily occupied territory, etc.), which in turn requires special legal means and methods of personal data protection during such period.

Limitation of the right to secrecy of correspondence under martial law is allowed on the grounds that this right is not listed among constitutional rights, which cannot be limited under any circumstances. The right to secrecy of correspondence under martial law in Ukraine may be limited during detentions, searches, temporary seizure of property, in particular, devices that may contain

private communication. Problems in this area may be caused by gaps in new legal regulations. In particular, the new provisions of the criminal law do not clearly define the amount of data to be copied if a prosecutor or investigator gains access to an electronic device. Only those data that are potentially important for criminal proceedings should be copied. However, the vagueness of the wording of the new powers allows the prosecutor or investigator to copy the entire contents of the device. In such case, it becomes obvious the violation of the right to secrecy of correspondence.

Therefore, the approaches to limiting the right personal data protection and the secrecy of correspondence should be reviewed and improved in order to ensure a proper balance of the interests of society and individuals and to protect the latter from exceeding permissible restrictions.

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Rua Dr. António Bernardino de Almeida, 541 - 4200-072 Porto

Email: upt@upt.pt