

Research Article

RESTRICTIONS ON HUMAN RIGHTS DUE TO THE COVID-19 OUTBREAK

Savchenko Viktor,¹ Michurin Ievgen,² Kozhevnykova Viktoriia³

Submitted on 1 Feb 2022 / Revised 1st on 4 May 2022 / Revised 2nd on 7 Jun 2022

Approved 14 Jun 2022 / Published: 15 Aug 2022

Summary: 1. Introduction. – 2. Restrictions Imposed by States during the Covid-19 Pandemic. – 2.1. *Restrictions on the right of movement: China, France, Germany, Ukraine.* – 2.2. *Restrictions on voting rights during Covid-19.* – 2.3. *Restrictions on property rights.* – 3. Public Interest as a Basis for State Restrictions in Relation to the Covid-19 Pandemic. – 4. Conclusion.

Keywords: *human rights; Covid-19; freedom of movement; restrictions on property rights; free will*

1 PhD in Law, Associate professor, Associate professor of the Civil Law Department, V.N. Karazin Kharkiv National University, Kharkiv, Ukraine viktor.savchenko@karazin.ua <https://orcid.org/0000-0001-7104-3559> **Corresponding author**, responsible for responsible for methodology, the exploration of sources and their analysis and interpretation.

2 Dr. Sc. (Law), Professor, Professor of the Civil Law Department, V.N. Karazin Kharkiv National University, Kharkiv, Ukraine michurin@karazin.ua <https://orcid.org/0000-0003-4283-4604> **Co-author**, responsible for responsible for conceptualization, the exploration of sources and their analysis and interpretation, writing, the content of the paper and data curation.

3 Dr. Sc. (Law), Head of the State Law and Industry Law Department, Kyiv Law University of the National Academy of Sciences of Ukraine, Kyiv, Ukraine bojko.v1909@gmail.com <https://orcid.org/0000-0003-3740-3922> **Co-author**, writing, the content of the paper and data curation, responsible for responsible for conceptualization, the exploration of sources and their analysis and interpretation, writing, the content of the paper and data curation.

Competing interests: The authors declare no competing interests. **Disclaimer:** The authors declare that their opinions and views expressed in this manuscript are free of any impact of any organizations.

Managing editor – Dr Tetiana Tsuvina. **English Editor** – Dr Sarah White.

Copyright: © 2022 Savchenko V, Michurin Ie, Kozhevnykova V. This is an open access article distributed under the terms of the Creative Commons Attribution License, (CC BY 4.0), which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

How to cite: Savchenko V, Michurin Ie, Kozhevnykova V 'Restrictions on Human Rights Due to the Covid-19 Outbreak' 2022 3(15) Access to Justice in Eastern Europe 73–86. DOI: <https://doi.org/10.33327/AJEE-18-5.3-a000313>

ABSTRACT

The need to prevent the rapid spread of Covid-19 has led to restrictive measures. Such trends require proper scientific and legal analysis, rethinking existing approaches to realising rights. At the same time, the legal nature and essence of such restrictions should be clarified. This is due to the nature of the Covid-19 pandemic, as such restrictions have a positive effect on curbing the spread of the viral disease. Currently, the vector of major human rights violations is related to compulsory vaccination. It is necessary to continue this research and follow the practice of the European Court of Human Rights. The study used general and special scientific methods of scientific research of legal phenomena, namely: comparative, formal-logical, system-structural, dialectical, and other methods. The dialectical method of cognition allowed us to study the national civil legislation, taking into account the international standards. The public interest in the form of preserving safety, health, and human life determines the establishment of restrictions in connection with the Covid-19 pandemic. Here, the goal of the state to ensure the security of the nation and the public interest are closely related. The comparative legal method was used to determine the common and distinctive features. The formal-logical method contributed to establishing the conceptual apparatus and content of current legislation, highlighting the contradictions in current legislation. The system of human rights was studied by system-structural analysis. The aim was to solve complex problems of restrictions on human rights due to Covid-19.

1 INTRODUCTION

The state authorities of Ukraine introduced an emergency regime on 25 March 2020 to prevent the spread of Covid-19.⁴ The state established certain restrictions on human rights and, as a consequence, freedom of will. Special passes for the use of public transport have been introduced in the capital of Ukraine, Kyiv, and some other cities. The subway is completely suspended in all Ukrainian cities without exception. Regular intercity flights in Ukraine have been cancelled.⁵ This situation actually has led to the restriction of citizens' rights to free movement. However, these restrictions are for the public good and to help stop the spread of deadly infections in individual countries and around the world. Restrictive measures have also been imposed in other states.

For example, on 17 March 2020, the French authorities imposed restrictions on the movement of persons within the territory of the state.⁶ Mass gatherings of people, family, friends, or business meetings were prohibited, and offenders who disregarded state regulations were subject to legal sanctions. French President Emmanuel Macron recommended residents leave their homes only as a last resort. In particular, they were allowed to go for food and medical supplies or visit the workplace if the performance of official duties could not be performed remotely from the workplace. Distance between people was necessary to avoid the spread

4 'The government has introduced an emergency regime throughout Ukraine' (2020) <<https://www.rada.gov.ua/>> accessed 30 December 2021.

5 'In Ukraine, trains do not run, bus traffic is suspended: quarantine has been sharply tightened' (2020) <https://www.rbc.ua/> accessed 1 February 2022.

6 'COVID-19: European Union suspends non-essential travel for non-EU citizens' (2020) <<https://unric.org/en/covid-19-european-union-suspends-non-essential-travel-for-non-eu-citizens/>> accessed 5 February 2022.

of Covid-19, and therefore restrictions that helped to avoid unnecessary contact between people were recognised as important. Such restrictions are legal, as Art. 2 of Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms provides for the exclusion from the right to freedom of movement. There are no restrictions on the exercise of these rights, except for those provided for health care.

As we can see, in addition to the right to free movement in France, certain restrictions limit the voting rights of citizens. To prevent the rapid spread of infection and localise the pandemic, most states are forced to take restrictive measures. Covid-19 has become a unique basis for restricting human rights. The world has never had global pandemics of this magnitude. For the sake of the public good, certain restrictions on human rights can be introduced.⁷

Human rights are essential to all countries. Fundamental rights of the EU are, in principle, applicable in relations of a vertical nature, in which individuals are confronted with the state.⁸ Although international human rights law allows for the restriction of rights in the face of public health emergencies, such restrictions must be the minimum intrusion necessary to effectively address the public health concern.⁹ Therefore, in order to achieve the public good, it is possible to restrict human rights in exceptional cases. Covid-19 has become an undeniable factor that, for the public good, makes it possible to impose restrictions on human rights. Such restrictions are aimed at the common good of preventing and localise the pandemic. Protecting the lives and health of many people are priorities that can lead to restrictions on rights. Restrictions like temporary isolation and restrictions on the right to free movement of people help to localise and stop the spread of Covid-19. This follows from Art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms. In addition, Art. 15 of the same Convention indicates the possibility of derogation from the obligations of the state in exceptional circumstances. This is the possibility of a limited and controlled deviation from one's obligations to ensure certain rights and freedoms provided for in the Convention in the event of a public danger threatening the life of the nation. Given the case law of the European Court of Human Rights (ECtHR) on the violation of such rights in the context of Art. 15 of the Convention, whenever an applicant complains that his/her rights under the Convention have been violated during the derogation period, the Court first examines whether the measures taken can be justified under the main articles of the Convention; only when they cannot be justified in this way does the Court proceed to determine whether the waiver was lawful¹⁰ (for example, *Lawless v. Ireland*¹¹).

Covid-19 has created new restrictions on the rights of citizens that were not implemented until the pandemic. In this article, we will consider different situations of violation of human rights. For example, during Covid-19, it is prohibited in Ukraine to organise and participate in mass events in which more than ten people take part. Currently, this restriction has been tightened, and it is forbidden for more than two adults to appear together in public places. Regular transport connections throughout the country and abroad have been cancelled. This

7 Ye Michurin, *Restriction property rights of physical persons (the civil law aspect)* (Yursvit 2008).

8 W Lewandowski, 'The Implications of the Recent Jurisprudence of the Court of Justice of the European Union for the Protection of the Fundamental Rights of Athletes and the Regulatory Autonomy of Sporting Federations' (2020) 25 (1) *Tilburg Law Review* 55-66.

9 J Amon, K Wiltenburg Todrys, 'Fear of Foreigners: HIV-related restrictions on entry, stay, and residence. *Journal of the International AIDS Society*' (2008) 11 (8) *Journal of the International AIDS Society* <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2621119/?report=classic>> accessed 15 January 2022.

10 O Vasylenko, 'COVID-19 - the latest challenge for the world and human rights: legitimate resistance to the spread of infection?' (2020) 3 (28) *Legal Position* 19-23.

11 *Lawless v. Ireland*, App no 332/57, Judgment of 14 November 1960 <<https://70.coe.int/pdf/lawless-v-ireland.pdf>> accessed 10 January 2022.

is aimed at reducing the possibility of direct contact between people in different cities of the country. Such measures make it possible to minimise the spread of the virus and prevent a total pandemic. The state applies balanced restrictive measures for individual human rights. Most of them are related to the common good and are justified by the general need to stop the increase in cases and the spread of Covid-19.

Studies show that the pandemic poses a threat to human rights. In this article, we want to study in detail the problem of human rights violations in different countries and determine acceptable measures for restrictions. The main objective of our study is to identify cases of human rights violations due to the pandemic and to give a legal assessment of these cases. The identified restrictions on human rights due to the pandemic are only a starting point. Now, in 2022, we can talk about a paradigm shift in the perception of the pandemic. There are new challenges today. Mankind is aware of the health crisis and understands that public interests have an advantage over the private.

For example, in Germany, the restriction of human rights due to a pandemic was justified by a decision of the German Federal Constitutional Court. The court imposed necessary restrictions, in particular, on holding mass events and protests. The court found that the temporary restrictions were lawful because they were imposed at a certain time and were effective in certain circumstances to prevent the spread of infectious diseases. The court stressed that the risks of spreading Covid-19 are higher than the need to ensure the right to express public dissatisfaction with the government's decision.¹² Here, the principle of proportionality is embodied in all its components, as restrictions have been introduced properly. The sign of the introduction of restrictions by law, the competent authority of the state, which had the authority to do so in these circumstances, was observed. The restrictions imposed proved to be effective in the circumstances of the pandemic, so there is a legitimate purpose to the restrictions.

Ukrainian legislation provides for the possibility of restricting certain human and civil rights and freedoms other than those specified in Art. 64, para. 2 of the Constitution of Ukraine (i.e., the rights and freedoms provided for in Arts. 24, 25, 27, 28, 29, 40, 47, 51, 52, 55, 56, 57, 58, 59, 60, 61, 62, 63 of the Constitution in Ukraine). As we can see, according to Art. 33, 34, 39, 53 of the Constitution of Ukraine, the rights do not belong to them and therefore may be limited in case of quarantine and state of emergency.¹³ Therefore, Ukrainian law explicitly prohibits the restriction of certain human rights under any circumstances. These are the right to life, the right to non-discrimination (on the grounds of race, colour, political, religious, and other beliefs, sex), and others mentioned in the Constitution of Ukraine. Restriction of these rights would not correspond to the legality of the restrictions, which is a component of the proportionality of the restrictions.

A new phase in the restriction of human rights involves the development of a vaccine and the mass vaccination of people. On the one hand, today, there are about ten vaccines that help people overcome Covid-19. On the other hand, a large number of people refuse vaccination. Therefore, the issue of human rights violations due to compulsory vaccination is the most acute. The adoption of norms according to which certain groups of the population must be vaccinated has become a global trend. They are not allowed to work without vaccinations.

For example, in France, 672 fire and rescue workers and volunteers asked the ECtHR to suspend certain provisions of the law that require rescuers to be vaccinated against Covid-19. Firefighters stressed that this violates their right to life and respect for private and family life

12 Bundesverfassungsgericht: Resolution of the 1st Chamber of the First Senate of 5 December 2020 – 1 BvQ 145/20 (2020) <<https://www.bundesverfassungsgericht.de/>> accessed 26 October 2021.

13 M Saenko, V Goloborodko, V Pleskacheva, 'Modern challenges in the field of human rights protection during the pandemic Covid-19' (2021) 64 Scientific Bulletin of Uzhgorod National University 61-64.

principles for this solution can also be applied to the Covid-19 vaccination. Individual contraindications to vaccination may be an exception against compulsory vaccination. The case of *Vavříčka v. The Czech Republic* should also be mentioned. The court considered a situation in which the applicants refused to vaccinate their children. This led to a fine, and the children were denied enrolment in school. As a result, the ECtHR supported the Grand Chamber.²¹

At the same time, an electronic petition has already been submitted to the President of Ukraine on the introduction of criminal liability for forced vaccination. As of 10 September 2021, the petition received more than 26,000 votes out of the required 25,000. Now, this issue must be considered and decided by the President of Ukraine. The petition proposes to equate compulsory vaccination in the form of threats of dismissal or non-admission to work to the concept of forced vaccination. It proposes to introduce criminal liability in the form of imprisonment for a term of three to five years for forced vaccination.²² All this suggests that in 2021 and 2022, the central issue of human rights violations due to Covid-19 will be the problem of compulsory vaccinations. It is unknown when the pandemic will end, so human rights may be subject to new restrictions.

2 RESTRICTIONS IMPOSED BY STATES DURING THE COVID-19 PANDEMIC

2.1 Restrictions on the right of movement: China, France, Germany, Ukraine

The Covid-19 pandemic is a health care crisis with serious human and social consequences and challenges for the courts.²³ The pandemic has affected the justice system and many human rights. For example, Covid-19 has affected the right of movement.

Restrictions on the right of movement in the context of Covid-19 are the most relevant. These restrictions relate to the right of free movement of people, both within and between countries. During Covid-19, some administrative-territorial units in Ukraine imposed entry restrictions and set up checkpoints. Only people who were returning to their place of permanent residence were allowed to enter. Individuals with Covid-19 symptoms were quarantined. Any person arriving on the territory of Ukraine from another state had to isolate for fourteen days.

Freedom of movement and freedom to choose a place of residence belong to everyone who is legally in the territory of Ukraine and include freedom of movement within the territory of Ukraine, free choice of permanent or temporary residence, both in Ukraine and in other states, and the right to leave the territory of Ukraine freely and return. However, persons permanently or temporarily residing in the territory of the state are restricted in the right to freedom of movement in connection with the introduction of an emergency regime. Similar restrictions are applied by most other countries, such as France, China, Germany, and others. We will consider this issue in detail below.

The constitutional legislation of many countries guarantees the right to free movement of people. So, in Art 33 of the Constitution of Ukraine, it is established that everyone who is legally in the territory of Ukraine is guaranteed freedom of movement, free choice of

²¹ Ibid.

²² 'Official Internet Representation of the President of Ukraine' <<https://petition.president.gov.ua/petition/121610>> accessed 10 January 2022.

²³ O Rozhnov, 'Towards Timely Justice in Civil Matters Amid the COVID-19 Pandemic' (2020) 2/3 (7) Access to Justice in Eastern Europe 100-114.

residence, and the right to leave the territory of Ukraine freely, except for restrictions established by law. A citizen of Ukraine cannot be deprived of the right to return to Ukraine at any time. However, the specifics of the pandemic, which is spread through close physical contact between people, have caused corresponding restrictions, in particular, regarding the free movement of people.

Given the difficult global situation caused by Covid-19, it is important to pay attention to aspects of the proportionality of the establishment of restrictions, including: 1) the suitability of means of influence on humans, the fundamental possibility of achieving this goal; 2) the minimal choice of alternative means that are the least burdensome for fundamental rights; 3) balance, finding a compromise between constantly conflicting individual and social values. Thus, the general purpose of establishing certain restrictions in law is considered in the certainty of their validity and appropriateness of existence.²⁴ Therefore, enshrining restrictions in the law is only a prerequisite for their application – human rights, in addition to the purpose of restrictions, must be their justification. The legitimacy of restrictions is not limited to their formal establishment in law. This is preceded by the possibility of achieving a social goal by means other than restricting human rights. Only if measures other than human rights restrictions are less effective should their indispensability (compared to other measures) in a democratic society be considered. Even after that and the establishment of restrictions by law, the proportionality of these restrictions is examined by the ECtHR in individual cases. This kind of multi-level test to restrict human rights in general and in individual cases is aimed at respecting human rights in a democratic society.

With regard to restrictions on human rights, it is worth talking about the proportionality of restrictions that allow the exercise of civil rights in accordance with their purpose in society. Taking into account the designation of rights in general, it should be assumed that the priority is usually to ensure the implementation of the right by the state. However, the exercise of the law cannot run counter to the important interests of society. Human health and life in society are important public interests, for the observance of which restrictions on individual human rights can be temporarily applied. Accordingly, proportionality in this aspect is manifested in the presence of a public factor that must be considered when satisfying the private interest. Substitution of private interest for public leads to state intervention in the exercise of human rights.²⁵ The observance of restrictions on the values and principles existing in a democratic society is obligatory. Even when human rights restrictions are imposed because they cannot be replaced by other means, such as quarantine restrictions, they are temporary. That is, they are removed immediately or shortly after the threat to the public interest has been reduced. This strikes a balance between rights and restrictions: the latter apply only in the 'acute stage', with exceptions (persons with individual contraindications may not be vaccinated). In some cases, permission was given to move despite quarantine. For example, you could visit the shops in masks to buy the necessary food. It was possible to visit parks to walk animals. That is, the application of restrictions should be strictly controlled, temporary, and should immediately cease after the reduction of public danger. Thus, the reduction in the number of patients with Covid-19 led to the easing of quarantine restrictions with the subsequent abolition in the event of elimination of public danger.

In Ukraine, restrictions on the free movement of people across the state border began to be introduced by the decision of the National Security and Defense Council of Ukraine of 13 March 2020.²⁶ In particular, checkpoints across the state border of Ukraine were closed to

24 K Möller, *Proportionality: Challenging the critics* (Oxford University Press 2012).

25 Ye Michurin, *Restrictions on property rights of individuals (general provisions)* (Yursvit 2007).

26 Decision of the National Security and Defense Council of March 13, 2020 'On urgent national security measures in the context of an outbreak of acute respiratory disease Covid-19 caused by the SARS-CoV-2 coronavirus' (2020) < <https://www.rnbo.gov.ua/> > accessed 12 January 2022.

regular passenger traffic from 17 March 2020 for the next two weeks.²⁷ Entry into Ukraine of foreigners and stateless persons was also suspended from 16 March 2020 for the next two weeks, except for persons with the right to permanent or temporary residence in Ukraine and employees of diplomatic missions, consular offices, and missions of international organisations.²⁸

The particular focus in establishing restrictions on the right to movement of persons is placed on validity and exclusivity. When human rights are restricted, there is interference in everyone's personal life. However, the purpose of applying such restrictions and prohibitions is justified because the state protects the personal rights of all in general and, at the same time, of every person to life and health. In this context, French President Emmanuel Macron closed all borders to the EU, and the Schengen area suspended non-essential travel for non-EU citizens.²⁹

In France, during the period of restrictive measures caused by Covid-19, residents were prohibited from leaving the premises in which they lived, with the exception of seeking medical care, visiting the workplace (in connection with the official activities the person is obliged by the state to perform despite the pandemic), visiting grocery stores or pharmacies, or walking with pets at a set distance of not more than 100 meters from the place of residence. When going outside, people had to keep a set distance from each other. The only exception to this rule was a taxi ride. Currently, there is a plan to implement a system that will control the movement of people and their compliance with the home regime. At the same time, the state authorities imposed sanctions on violators of the self-isolation regime via fines. However, Covid-19 restrictions at the French border were eased on 12 February 2022 for fully vaccinated travellers.³⁰

In the unfavourable situation created by the rapid spread of Covid-19, the restrictions imposed by the state on certain human rights are admissible in society. In the past decade, academic and non-academic attention to human rights risks has increased.³¹ Predictability is important even before human rights restrictions are established in law. Here the legislature must consider the exclusivity of restrictions. The idea of the validity of restrictions and their irreplaceability by other means should be applied in each case. It is important to understand the value of a law that protects the public interest in a case of human rights restrictions. Thus, vaccination, restrictions on the right to move, and other quarantine restrictions during Covid-19 were indispensable for the preservation of another value – the right to life of many people who were threatened by the pandemic. Quarantine restrictions in such circumstances are justified. This is a clear prediction of the social, political, economic, and other consequences of their establishment. Along with imposing restrictions, the state must minimise these consequences. Thus, in Ukraine, the possibility for an employer to instruct an employee to perform the work specified in the employment contract at home for a certain period is legislatively enshrined. Thus, the state protected a person's right to work during the quarantine period. Yet, even before the problems with the pandemic, the right to movement was restricted. This can be seen in the decisions of the ECtHR.³²

²⁷ Ibid.

²⁸ Ibid.

²⁹ 'COVID-19: European Union suspends non-essential travel for non-EU citizens' (2020) <<https://unric.org/en/covid-19-european-union-suspends-non-essential-travel-for-non-eu-citizens/>> accessed 5 February 2022.

³⁰ 'Coming to France? Your Covid-19 questions answered' (2022) <<https://www.diplomatie.gouv.fr/en/coming-to-france/coming-to-france-your-covid-19-questions-answered/>> accessed 20 February 2022.

³¹ A Duval, D Heerd, 'FIFA and Human Rights – A Research Agenda' (2020) 25 (1) *Tilburg Law Review* 1-11.

³² B von Rütte, 'Social Identity and the Right to Belong – The ECtHR's Judgment in *Hoti v. Croatia*' (2019) 24(2) *Tilburg Law Review* 147-155.

2.2 Restrictions on voting rights during Covid-19

There were numerous cases of temporary restrictions on citizens' voting rights during the pandemic. In particular, the second round of French municipal elections, which were to be held at the end of March, was postponed at least until mid-July, even though the first round of elections had already successfully passed before the pandemic. The suspension of suffrage in French law makes it temporarily impossible for a person to participate in elections. In this context, the period of suspension of the right depends on the degree of public danger caused by Covid-19. Currently, registration as candidates for election has been postponed, as provided by French suffrage. This restriction is temporary, given that it arises at the second stage of the election process and is established to protect the population from infection.

Several states decided to postpone elections and votes or introduced restrictive measures to prevent activities from taking place within the established time frame. These include Australia, Armenia, Bolivia, the United Kingdom, Russia, Iran, Italy, Canada, Cyprus, Kyrgyzstan, the Republic of Northern Macedonia, Serbia, Syria, the United States, France, Chile, Switzerland, Sri Lanka, and South Africa. Presidential elections are threatened in the United States and Poland. Due to the pandemic, primaries were indefinitely postponed in several US states. Another part of the US postponed the election procedure from spring to summer.³³ Art. 3 of the First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms establishes the right to free elections. However, the ECtHR points out that while the right to free elections is essential, it is not unlimited. Restrictions must be imposed to achieve a legitimate aim by proportional means and must not prejudice the essence of the right to free elections and make it ineffective.³⁴ Such restrictions are justified during the spread of Covid-19 by the requirements of safety of life and health of the population. The state's concern for these social values causes these restrictions on suffrage, which are temporary and appropriate in such circumstances and meet the requirements of proportionality. The introduction of these restrictions is justified by the risk of Covid-19 in crowded places, like polling stations. However, due to restrictions, suffrage was subject to restriction, with some delay during the period of exacerbation of the pandemic. As soon as the state passed this stage of danger, citizens were provided with the opportunity to exercise their right to vote.

2.3 Restrictions on property rights

The imposition of restrictions on certain property rights due to the spread of Covid-19 is necessary and justified in cases where other measures are not effective. They are motivated by the desire of the state to develop human property rights and promote their effective implementation, except when this is contrary to the interests of society. This leads to restrictions and, conversely, when such factors are absent, there are no grounds for restricting property rights. These rights must be developed, and the individual must exercise them at his/her own discretion, as long as they do not become an obstacle to the interests of society.

Therefore, restrictions should be inferior to human rights, except where restrictions are justified by the priority of public interests. First of all, the ECtHR's practice of restricting property rights should be noted. Among the criteria for its restriction, the ECtHR uses a test that includes several questions: 1) was there property? 2) was there an interference with

33 N Bashlykova, 'A blow below the rating as Covid canceled elections in 18 countries of the world' <<https://iz.ru/>> accessed 20 January 2022.

34 *Ahmed and Others v The United Kingdom*, App no. 22954/93, Judgement of 2 September 1998 <<https://www.echr.coe.int/>> accessed 17 April 2022.

the applicant's property rights? 3) was the interference lawful? 4) did the intervention have a legitimate aim? 5) was the interference proportionate to the aim pursued?³⁵

The caution established in Art. 4 of the International Covenant on Economic, Social and Cultural Rights is important to justify the need to establish proportional restrictions on the property rights of individuals. It states that restrictions on such rights are likely if they are compatible with their nature. The state may restrict human rights to the extent required by the public interest and the rights of others. From this follows the need to proportionally limit the property rights of individuals. At the same time, the right of an individual must be respected as much as possible. It should not be unduly limited. An excess restriction of a right is when the restriction does not contribute in any way to the social purpose for which the restriction is established. This leads to a balanced, reasonable, and careful approach to restricting human rights. At the same time, the degree and type of restrictions should correspond to socially necessary goals for which this right is limited. Restrictions should contribute to the socially useful goal for which they are imposed. It is also necessary to follow the rules according to which the right of an individual, despite restrictions, must continue to exist. A person's right should be limited only to the extent required for the public interest or the rights of others. Restrictions on human rights are temporary and must cease when the socially useful purpose for which they were established has been achieved. Thus, the recovery of the majority of the population and the cessation of the spread of Covid-19 should be reasons for lifting the restrictions imposed in this regard.

During the Covid-19 pandemic in Ukraine and some other countries, there were some restrictions on entrepreneurship. Here, the restrictions were related to the legitimate expectations of entrepreneurs to make a profit, which they were deprived of to some extent during the introduction of restrictions. The ECtHR stated that the property also included so-called 'legitimate expectations'. For entrepreneurs in some industries, there were restrictions on carrying out activities required by law. If it were not for the quarantine restrictions, they could expect to make the profit they normally would receive from their activities in this area.

The Cabinet of Ministers of Ukraine temporarily banned some actions for the period of quarantine until 24 April 2020:

- Holding all mass events (cultural, entertainment, sports, social, religious, advertising, and other), except for events necessary to ensure the work of state and local authorities. Permitted events were possible only if participants were provided with personal protective equipment, including respirators or protective masks, as well as complied with appropriate sanitary and anti-epidemic measures.
- Work of business entities, which provides for the reception of visitors, including catering establishments (restaurants, cafes, etc.), shopping and entertainment centres, other entertainment establishments, fitness centres, cultural institutions, and trade and consumer services.³⁶ The exceptions were trade in food and other certain urgent necessities, which were allowed in compliance with quarantine measures. The inability to carry out such measures led to a restriction of the rights of providers of sports and other services and sellers of certain goods relevant to entrepreneurial activities. In addition, the state established control over the prices of medicines, medical supplies, and socially significant goods. This restricted the right of the entrepreneur to freely set prices for certain groups of goods.

35 B Karnaukh, 'Protection of property by the European Court and horizontal effect' (2021) 5 Law of Ukraine 149-166.

36 Resolution of the Cabinet of Ministers of Ukraine (2020) <<https://www.rada.gov.ua/>> accessed 10 February 2022.

At the international level, a circumstance like the Covid-19 pandemic could lead to restrictions on exports from certain countries. After all, more than thirty countries signed the General Agreement on Tariffs and Trade in 1947. Art. XI of this regulation establishes export restrictions that may be temporarily applied to prevent or mitigate a critical shortage of food or other goods of importance to the exporting party.³⁷ Such restrictions on the export of goods are due to the need to provide the population of each state with basic necessities, in particular, food products.

The specifics of the Covid-19 pandemic have caused a boom in demand for some products. Among them are food, medicine, and hygiene products. Based on this, there are cases of restrictions on the property rights of human beings to freely purchase certain goods. They consist of the fact that certain goods are sold in a certain quantity, which can be purchased by one person at a time (limiting the number of sales of goods). A prerequisite for such restrictions is the public interest, which is to provide the ability of everyone to purchase products that are in high demand during a pandemic. Such restrictions are necessary so that some people do not accumulate an excess and unnecessary amount of goods, while others will lack such goods due to increased demand.

The rationale for such restrictions is whether there were remedies other than restrictions on the sale of certain groups of goods to address the shortage of medical devices or food. Given the global trend of the pandemic, such tools were not available. After all, there was a shortage of the same goods, especially medical goods, all over the world, and the world economy had limited opportunities to replenish such goods due to the need for time to produce them. An example is the order of distribution of doses of vaccines for the prevention of Covid-19 in individual countries.

We can question the efficacy of state-centric legality in the enforcement of human rights.³⁸ For example, the right to private property was subject to certain restrictions during the pandemic. In particular, according to Ukrainian legislation aimed at combating the consequences of Covid-19, forced eviction from housing owned by private property was prohibited. This restriction provided tenants with housing regardless of their solvency for the duration of the virus.

3 PUBLIC INTEREST AS A BASIS FOR STATE RESTRICTIONS IN RELATION TO THE COVID-19 PANDEMIC

The protection of human rights must be people-centred.³⁹ The public interest, in the form of preserving safety, health, and human life, determined the establishment of restrictions in connection with the Covid-19 pandemic. Here, the goal of the state to ensure the security of the nation and the public interest are closely related. State security, environmental security, and public health are of public interest, which can serve as a basis for restricting human rights. The law allows the interests of a person to be realised, but the duties and prohibitions imposed on a person limit the realisation of his/her interest for the sake of the interests of others, determining the priority of the realisation of a legal interest. The objective of law is to ensure proper order.

37 General Agreement on Tariffs and Trade (1947) <<https://www.rada.gov.ua/>> accessed 10 February 2022.

38 An-Na'im AA, 'The Spirit of Laws is Not Universal: Alternatives to the Enforcement Paradigm for Human Rights' (2016) 21 *Tilburg Law Review* 255-274.

39 N Jägers, 'Human Rights Enforcement Towards a People-Centered Alternative? A Reaction to Professor Abdullahi An-na'im' (2016) 21 *Tilburg Law Review* 275-283.

State intervention in the sphere of the property interest of the owner should be minimised and motivated by public interests.⁴⁰ Only in extreme cases should the state impose such restrictions on human rights, even if they benefit the whole society and constitute the public good. Therefore, a state cannot unreasonably and arbitrarily impose such restrictions and must consider the public interest underlying such restrictions.

In order to protect the interests of the population, the state established and, in some cases, strengthened protection measures in connection with the difficult situation caused by Covid-19. Thus, to prevent Covid-19, the following restrictions were set:

- the presence of persons in public places without a mask or respirator;
- the movement of more than two persons as a group of persons, except for business necessities or the accompaniment of children;
- the presence of persons under the age of 16 in public places, unaccompanied by adults;
- visiting parks, squares, or recreation areas except in cases of extreme necessity (walking animals) or official necessity;
- visiting children's play areas and sports grounds;
- conducting cultural, sports, entertainment, social, religious, advertising, and other events except those necessary to ensure the work of state authorities and local governments.

These restrictions indicate the reconciliation of private interest with public interest. The rights of the individual in the establishment of restrictions gave way to public necessity for the sake of general security. Ensuring the life and health of the population during the spread of the Covid-19 pandemic proved to be in the public interest, which led to the necessary restriction of certain human rights. The state has justifiably created a system of proportional restrictions on human rights. An important condition for the introduction of such restrictions is that they must act to the extent necessary to meet the public good. At the same time, human rights that do not improve the situation regarding the spread of Covid-19 should not be restricted.

As we can see, the Covid-19 pandemic has forced governments around the world to adopt special measures to limit the spread of the contagion. In the field of the administration of justice, social distancing and other health safety measures have brought about alternatives to the normal management of judicial business.⁴¹ All of this has an impact on human rights.

4 CONCLUSIONS

Public interest in the form of preserving safety, health, and human life determines the establishment of restrictions in connection with the Covid-19 pandemic. Here, the goal of the state to ensure the security of the nation and the public interest are closely related. The rights of the individual in the establishment of restrictions give way to public necessity for the sake of general security. Such restrictions benefit society as a whole and constitute a public good. The state must take into account the public interest that underlies such restrictions. Ensuring the life and health of the population during the spread of Covid-19 proved to be in the public interest and led to the necessary restriction of individual human rights. It must also be agreed that medical influence on a person (the list of which should be exhaustive)

40 V Samoilenko, *Civil and family law of Ukraine* (Yursvit 2007).

41 E Silvestri, 'Italy and COVID-19: Notes on the Impact of the Pandemic on the Administration of Justice' (2020) 2/3 (7) *Access to Justice in Eastern Europe* 148-155.

can be applied only in cases specified by the law and that are within administrative legal regulation. Other cases of medical services provision aimed to support, improve, or correct a person's health are carried out within the framework of civil law regulation.⁴²

In general, the proportionality of human rights restrictions during the Covid-19 pandemic is justified by the following factors. The restrictions imposed were legitimate. They were imposed by public authorities in response to pandemic threats. These restrictions were not feasible by other means. An infectious disease that is rapidly transmitted between people in public places has led to the need to avoid crowds, wear masks, refrain from traveling, and so on. These restrictions were necessary to stop the onset of acute and rapid disease in a large number of people. These restrictions were temporary and were gradually lifted with the passing of the most dangerous stage of the pandemic. Therefore, the rule was followed that restrictions were inferior to human rights as soon as the risk of infection could be minimised by means other than restrictions. Thus, vaccinated people were given more opportunities to travel, in particular by public transport, than those who had not been vaccinated and were, therefore, more vulnerable.

In essence, the prohibitions imposed during Covid-19 are for the public good. They are meant to protect the rights of the population and prevent the rapid spread of the virus. The state has justifiably created a system of proportional restrictions on human rights. An important condition for the introduction of such restrictions is that they must act to the extent necessary to meet the public good. The need for public interest, namely, ensuring the health of the nation, makes these restrictions proportional. At the same time, human rights that do not improve the situation during the spread of Covid-19 should not be restricted.

The most typical restrictions on human rights are restrictions on the right to freedom of movement, restrictions on suffrage (in some countries), restrictions on property rights, and, as a result, restrictions on freedom of liberty. Due to the nature of the Covid-19 pandemic, such restrictions have a positive effect on curbing the spread of the disease. Currently, the vector of major human rights violations is related to compulsory vaccination. We expect that there will be many lawsuits regarding compulsory vaccination in the future. It is necessary to continue this research and follow the practice of the ECtHR.

Our results show that due to the pandemic, human rights are temporarily and reasonably limited. As soon as the danger is eliminated, human rights restrictions are abolished or mitigated. The same thing happens when the threat that caused the restriction can be eliminated in another way. At the same time, governments create conditions for the rapid correction of emerging problems.

The results of this article can be used for further research and development in the science of civil law. The provisions, conclusions, and proposals can be used in law enforcement practice, as well as in scientific and pedagogical activities. The results are aimed at use in law-making.

REFERENCES

1. Michurin Ye, *Restriction property rights of physical persons (the civil law aspect)* (Yursvit 2008).
2. Lewandowski W, 'The Implications of the Recent Jurisprudence of the Court of Justice of the European Union for the Protection of the Fundamental Rights of Athletes and the Regulatory Autonomy of Sporting Federations' (2020) 25 (1) *Tilburg Law Review* 55-66.
3. Amon J, Wiltenburg Todrys K, 'Fear of Foreigners: HIV-related restrictions on entry, stay, and residence. *Journal of the International AIDS Society*' (2008) 11 (8) *Journal of the International*

42 V Savchenko, 'Dynamics of civil law relations in psychiatry' (2020) 73(2) *Wiadomości Lekarskie* 390-395.

- AIDS Society <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2621119/?report=classic>> accessed 15 January 2022.
4. Vasylychenko O, 'COVID-19 - the latest challenge for the world and human rights: legitimate resistance to the spread of infection?' (2020) 3 (28) Legal Position 19-23.
 5. Saenko M, Goloborodko V, Pleskacheva V, 'Modern challenges in the field of human rights protection during the pandemic Covid-19' (2021) 64 Scientific Bulletin of Uzhgorod National University 61-64.
 6. Rozhnov O, 'Towards Timely Justice in Civil Matters Amid the COVID-19 Pandemic' (2020) 2/3 (7) Access to Justice in Eastern Europe 100-114.
 7. Möller K, *Proportionality: Challenging the critics* (Oxford University Press 2012).
 8. Michurin Ye, *Restrictions on property rights of individuals (general provisions)* (Yursvit 2007).
 9. Duval A, Heerdt D, 'FIFA and Human Rights – A Research Agenda' (2020) 25 (1) Tilburg Law Review 1-11.
 10. von Rütte B, 'Social Identity and the Right to Belong – The ECtHR's Judgment in *Hoti v. Croatia*' (2019) 24(2) Tilburg Law Review 147-155.
 11. Bashlykova N, 'A blow below the rating as Covid canceled elections in 18 countries of the world' <<https://iz.ru/>> accessed 20 January 2022.
 12. Karnaukh B, 'Protection of property by the European Court and horizontal effect' (2021) 5 Law of Ukraine 149-166.
 13. An-Na'im AA, 'The Spirit of Laws is Not Universal: Alternatives to the Enforcement Paradigm for Human Rights' (2016) 21 Tilburg Law Review 255-274.
 14. Jägers N, 'Human Rights Enforcement Towards a People-Centered Alternative? A Reaction to Professor Abdullahi An-na'im' (2016) 21 Tilburg Law Review 275-283.
 15. Samoilenko V, *Civil and family law of Ukraine* (Yursvit 2007).
 16. Silvestri E, 'Italy and COVID-19: Notes on the Impact of the Pandemic on the Administration of Justice' (2020) 2/3 (7) Access to Justice in Eastern Europe 148-155.
 17. Savchenko V, 'Dynamics of civil law relations in psychiatry' (2020) 73(2) Wiadomości Lekarskie 390-395.