

# ***THREE-CRITERION MODEL FOR THE LEGITIMATE RESTRICTION OF THE RIGHT TO FREEDOM OF POLITICAL EXPRESSION IN ARMED CONFLICT: INTERNATIONAL STANDARDS AND NATIONAL PRACTICE***

UDC 342.727; 341.3

DOI <https://doi.org/10.32782/ehrlichsjournal-2025-12.09>

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**Abstract.** The article provides a comprehensive analysis of the concept of the three-criterion model of legitimate restriction of human rights, which is based on three interdependent criteria: legality (prescribed by law), the pursuit of a legitimate aim, and the necessity of interference in a democratic society. The study examines the theoretical foundations, legal codification, and practical application of this model in the context of armed conflict, using the right to freedom of political expression as a case example. Emphasis is placed on the special status of the right to freedom of political expression as a subject of enhanced protection under the case law of the European Court of Human Rights. The author analyzes current challenges in the legal practice of Ukraine, including vague legal terminology, excessive administrative interference, lack of effective judicial oversight, and risks of imbalance between security and freedom. It is concluded that under martial law, it is essential not only to formally apply the provisions of international treaties but also to ensure a genuine mechanism for assessing the proportionality and justification of restrictions. The article proposes specific legal measures to improve the regulatory framework, strengthen judicial review, and ensure transparency in processes related to the restriction of political rights under emergency conditions.

**Key words:** human rights, freedom of political expression, legitimacy, armed conflict, three-criterion model, three-step test, triangle of restrictions, ECtHR, international standards.

# ***ТРИКРИТЕРІАЛЬНА МОДЕЛЬ ЛЕГІТИМНОГО ОБМЕЖЕННЯ ПРАВА НА СВОБОДУ ВИРАЖЕННЯ ПОЛІТИЧНИХ ПОГЛЯДІВ В УМОВАХ ЗБРОЙНОГО КОНФЛІКТУ: МІЖНАРОДНІ СТАНДАРТИ ТА НАЦІОНАЛЬНА ПРАКТИКА***

УДК 342.727; 341.3

DOI <https://doi.org/10.32782/ehrlichsjournal-2025-12.09>

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**Анотація.** У статті здійснено комплексний аналіз концепції трикритеріальної моделі легітимного обмеження прав людини, яка базується на трьох взаємозалежних критеріях: передбаченості законом, наявності легітимної мети та необхідності втручання в демократичному суспільстві. Розглянуто теоретичні аспекти, нормативне закріплення та особливості правозастосування цієї моделі в умовах збройного конфлікту на прикладі свободи вираження політичних поглядів. Акцентовано увагу на особливому статусі права на свободу вираження політичних поглядів як об'єкта посиленого захисту згідно з практикою Європейського суду з прав людини. Автор аналізує сучасні виклики, що виникають у процесі правозастосування в Україні, зокрема проблеми нечіткості правових норм, надмірного адміністративного втручання, відсутності ефективного судового контролю та ризиків дисбалансу між безпекою і свободою. Встановлено, що в умовах воєнного стану важливо не лише формально застосовувати положення міжнародних договорів, а й забезпечувати реальний механізм оцінки пропорційності та обґрунтованості обмежень. Запропоновано конкретні правові кроки щодо вдосконалення нормативної бази, посилення судового контролю та забезпечення прозорості процесів, пов'язаних з обмеженням політичних прав у надзвичайних умовах.

**Ключові слова:** права людини, право на свободу вираження політичних поглядів, правомірність, збройний конфлікт, «трикритеріальна модель легітимного обмеження прав», «триступеневий тест», «трикутник обмежень прав», ЄСПЛ, міжнародні стандарти.

**Relevance of the Research Topic.** In the current conditions of armed aggression against Ukraine, the right to freedom of political expression faces significant challenges. The state, reacting to threats to national security, resorts to restricting this right, which necessitates a clear definition of the limits of permissible interference. According to Article 10 of the European Convention on Human Rights, freedom of expression can only be restricted if three cumulative criteria are met: prescribed by law, legitimate aim, and necessity in a democratic society. Analysis of the European Court of Human Rights (ECtHR) practice indicates the importance of adhering to these criteria, especially in armed conflict, where the balance between freedom of expression and the protection of national security becomes particularly delicate.

**Degree of Scientific Development of the Problem.** The issue of restricting human rights during armed conflict, particularly the freedom of political expression, has traditionally attracted the attention of both scholars and the public. It becomes particularly acute during periods of military threat when the narrowing of rights is considered not only an exceptional measure but also a potential test for the democratic system. In this context, freedom of political expression serves as an indicator of the maturity of democratic institutions and the resilience of the constitutional order. Both Ukrainian and foreign researchers have made significant contributions to the development of this topic. Among domestic scholars, the works of O.V. Zaichuk, M.V. Savchuk, S.V. Holovin, and O.M. Matsiuk, who analyzed the legal limits of freedom of speech during states of emergency and martial law, should be noted. Contemporary authors, including A.O. Rusavska, T.V. Mykhailina, L.Yu. Timofeeva, and Kh.M. Vorobets, focus on the balance between protecting national security and human rights, adherence to the principle of proportionality, and the ECtHR's practice regarding legitimate restriction of political freedom. In the foreign academic field, the scientific positions of T. Hammarberg, H. Keller, L. Gosta, D. Forest, T. Ginsburg, and M. Taggart cover a broader analysis of the legal regime of emergency situations, as well as the criteria for the admissibility of restrictions from the perspective of freedom of expression in a democratic society. At the same time, the full-scale aggression of the Russian Federation against Ukraine has revealed new forms of threats – hybrid, informational, and those not regulated by norms. This actualizes the need to update approaches to assessing the permissible limits of restricting political freedom. It is crucial not only to ensure compliance with international standards but also to develop effective national mechanisms capable of guaranteeing the protection of human rights even in extraordinary circumstances.

**The purpose of this article** is a theoretical and legal analysis of the three-part test for legitimate restriction of the right to freedom of political expression in the context of armed conflict, with an emphasis on current problems of practical application of this model.

**Main Body of the Research.** The right to freedom of political expression is a basic element of the democratic legal order, serving as a means of ensuring political pluralism, citizen participation in public

administration, and a mechanism for public control over power. In situations of social instability, especially in armed conflict, the significance of this right only increases. Open discussion and the possibility of legally expressing critical assessments of state actions are necessary conditions for preserving the legitimacy of institutions, trust in power, and maintaining the constitutional order. However, as is rightly emphasized in scientific literature, the exercise of this right is not absolute [5, pp. 124-129; 6, pp. 46-50]. International law, in particular Article 10 § 2 of the European Convention on Human Rights [4] and Article 19 of the International Covenant on Civil and Political Rights [8], allows for its restriction – provided that a clearly defined three-tiered criterion is met. For describing this legal construct in modern scholarship, the concept of a *"three-part test for legitimate restriction"* can be used. This test implies that any interference with freedom of expression must meet three simultaneous (cumulative) conditions: be prescribed by law, have a legitimate aim, and be necessary in a democratic society. Such a structure allows for a reasoned determination of the limits of permissible state interference with human rights and avoids arbitrary action.

While other terms are encountered in scientific discourse – such as *"three-pronged test"*, *"triangle of legitimate human rights restrictions"*, *"triangle of rights limitations"* [7; 8; 9; 10; 11; 12] – this article primarily employs the term "three-part test" as it is the most widely recognized and academically appropriate term within international human rights law for describing the analytical framework for legitimate restrictions. This test allows for a systematic and structural interaction of criteria, enabling not only normative but also practical analysis of the lawfulness of interference in a specific context. As O.M. Ivanchenko rightly notes, legitimacy in a modern state appears not only as formal legality but as a more deeply justified moral and legal justification for legal decisions, which is especially important during wartime [3].

The first criterion – *"prescribed by law"* – means that restrictions must not only be enshrined in a legal act but also formulated with sufficient clarity so that a person can foresee the legal consequences of their actions [2; pp. 16-17]. During martial law in Ukraine, vague terms such as "aggressor propaganda," "collaborationism" are often used, which, as emphasized in legal literature, often lack a legal definition [9]. This complicates law enforcement and creates risks for freedom of speech.

The second criterion – *"legitimate aim"* – requires that restrictions serve to protect values explicitly stated in international acts: national security, public order, morals, health, rights of others, etc. A problem in Ukrainian realities is the tendency to automatically refer to "protection of national security" without deep argumentation, which, L.M. Serdyuk warns, can negate the very idea of legitimate restriction [11].

The third and most substantial criterion – *"necessary in a democratic society"* – implies that the interference must be proportionate, meaning it corresponds to a real need and is the least burdensome way to achieve the goal. It is at this stage that the so-called proportionality test is applied, which includes: the existence of a legitimate aim, the suitability of the means to achieve it, the necessity of the chosen means, and the balance of interests [13].

Thus, the three-part test acts not only as a formal-legal guideline but also as a conceptual tool that allows balancing state interests with individual rights in crisis circumstances. Its importance particularly increases in wartime, when the state tends to act in a format of extreme expediency, which increases the risks of excessive restriction of human rights. That is why the scientific community must consistently support the use of this test not only as an analytical tool but as a standard for the legitimacy of state intervention.

International standards, including Article 19 of the International Covenant on Civil and Political Rights [8], also confirm the mandatory observance of the three-part test when restricting freedom of expression. In the context of armed conflict, this means that any restrictions must be clearly defined in law, serve to protect national security or other legitimate interests, and be proportionate to the stated goal. Ukraine's national legislation formally implements these standards: Article 34 of the Constitution of Ukraine guarantees the right to freedom of thought and speech, as well as the right to freely collect, store, use, and disseminate information. At the same time, especially in the context of full-scale armed conflict, the exercise of this right faces significant problems that complicate compliance with internationally recognized criteria for permissible restriction. Thus, general theoretical difficulties in applying the three-part test manifest themselves already at the stage of analyzing the legality of interference. Ukrainian law enforcement practice often resorts to using norms with undefined content that allow for excessive discretion – for example, provisions on "justifying aggression," "propaganda of the aggressor state," or "collaborationism," which lack a clear legal definition and complicate the predictability of consequences for subjects of expression [9, pp. 55–56].

Regarding the criterion of a legitimate aim, although the protection of national security, territorial integrity, or public order are undoubtedly legitimate aims for restriction, in many cases their application is not accompanied by proper justification. There is a tendency to transform a legitimate aim into a universal justification for interference with freedom of expression, without a detailed assessment of its expediency and necessity in a particular case [1, p. 250].

The greatest concern is caused by compliance with the criterion of necessity in a democratic society. This element requires that restrictions be proportionate, respond to an urgent social need, and not exceed the limits necessary to achieve the stated goal. However, in Ukrainian reality, procedures are often used that are implemented not through the courts but by administrative bodies, in particular the National Security and Defense Council, which deprives the interference of proper adversarial and independent evaluation [13, pp. 57–59].

The practice of the European Court of Human Rights consistently confirms the exceptional importance of freedom of political expression as one of the fundamental guarantees of a democratic system. In its judgments, particularly in the cases of *Lingens v. Austria* [16], *The Observer and The Guardian v. United Kingdom* [17], *Castells v. Spain* [15], the Court has repeatedly emphasized the special status of political speech, which should have an enhanced level of protection even in situations of social tension or conflict. According to the ECtHR's position, freedom of expression includes not only those statements that are perceived neutrally or positively but also those that may offend, shock, or disturb – since precisely such freedom is the basis of pluralism, tolerance, and openness in a democratic society.

In this context, the issue of Ukraine's national practice compliance with international standards in the field of freedom of expression, particularly in the conditions of armed aggression, becomes especially relevant. After the full-scale invasion of the Russian Federation in 2022, the state was forced to take a number of security measures, among which – the prohibition of certain political parties and the restriction of the activities of some media [14]. Such actions, although motivated by considerations of national security, raised a number of legal and ethical questions.

In the case of prohibiting the activities of political parties, it was, in particular, about formally justifying their involvement in spreading pro-Russian narratives. However, a clear and public review procedure was not always ensured, in which evidence would be properly evaluated, judicial review guaranteed, and a proportionality analysis of the interference conducted. A similar situation occurred in the media sphere when blocking TV channels or online platforms was carried out by decisions of the National Security and Defense Council without open court hearings and without a proper opportunity for appeal. These examples reveal several key problems, among which, first of all, is insufficient concretization of the legal grounds for restriction, which complicates the predictability of legal consequences for individuals exercising political expression. Some terms used in legislation, such as "aggressor propaganda," "information attack," "collaborationism," are excessively general or evaluative, which contradicts the criterion of the restriction being prescribed. In addition, the widespread use of references to national security protection as a universal justification for interference in political communication without proper justification significantly weakens the requirement of a legitimate aim for the restriction.

The most problematic remains the implementation of the criterion of necessity in a democratic society, which implies that interference must be proportionate, justified, and responsive to an urgent social need. However, in the practice of Ukrainian authorities, there is often no proper analysis of whether less burdensome means of achieving the goal existed, whether the chosen measures were effective, and whether they did not create excessive pressure on freedom of expression. Such an approach contradicts the practice of the ECtHR, which insists on the mandatory nature of the proportionality test as a key element in assessing the legality of any interference. Against the background of these challenges, there is a need to review both the regulatory framework and practical approaches to restricting the freedom of political expression in armed conflict. This primarily concerns clarifying legislative norms and terms, introducing mandatory judicial control over decisions to ban parties or block media, and institutionalizing the obligation of authorities to apply the proportionality test in each specific case. In addition, it is advisable to create a coordinated state policy in the field of information security, which would allow counteracting hybrid threats without unreasonable narrowing of fundamental rights.

In conclusion, it should also be emphasized that ensuring freedom of expression in wartime is not just a technical challenge – it is a test of the resilience of the democratic system. And only through a balanced and legitimate application of the criteria of legality, legitimacy, and necessity can the balance between state protection and citizen freedoms be maintained.

**Conclusion.** Thus, in armed conflict, it is critically important not only to normatively enshrine the so-called triangle of legitimate human rights restrictions – prescribed by law, legitimate aim, and necessity in a democratic society – but also its consistent and reasoned application. This is not about formal references to security needs, but about a thorough analysis of specific circumstances with adherence to standards formed by the ECtHR's practice. Ignoring these requirements threatens not only the violation of international obligations but also the destruction of trust in state institutions and the undermining of legal stability within the country. This creates conditions for abuses, erosion of democratic legitimacy, and legal vulnerability at the international level. Today, when Ukraine is simultaneously fighting for territorial integrity and striving to assert itself as a rule-of-law state, it is the adherence to the principles of the rule of law – including ECtHR standards – that must become not only an obligation but also proof of political maturity and commitment to democratic values.

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