

PROTECTION OF HUMAN RIGHTS BY THE NOTARIAT UNDER MARTIAL LAW: DIGITAL RESILIENCE, LEGAL CERTAINTY AND DIRECTIONS FOR REFORM

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Abstract.

This article examines the notariat as an institution of preventive human-rights protection under martial law in Ukraine, focusing on its growing dependence on digital public infrastructure. Using doctrinal legal analysis, analysis of legislation in force and conceptual synthesis of scholarship on wartime notarial practice and digitalisation, the study identifies four dimensions of institutional resilience: continuity of access to State registers, territorial accessibility of services, integrity and security of notarial data, and the legally controlled transition to the Unified State Electronic E-Notariat System. The article shows that wartime regulation has preserved important functions relating to property, inheritance, family and other civil rights, while access restrictions, territorial displacement, cyber risks and dependence on electronic registers can also obstruct the exercise of those rights. Particular attention is paid to extraterritoriality, services for displaced persons and citizens abroad, the protection and backup of notarial records, and the staged legal architecture of e-notariat. The article argues that e-notariat should not be equated with unrestricted remote notarisation: digital procedures require an explicit legal basis, reliable identification, preservation of notarial secrecy, access control, auditability and effective fallback mechanisms. A governance matrix is proposed using four criteria: legal continuity, accessibility, data resilience and procedural safeguards. The study concludes that resilient digital infrastructure is now part of the substantive capacity of the notariat to protect human rights and maintain legal certainty under prolonged emergency conditions.

Keywords: notariat; human rights protection; martial law; e-notariat; digital resilience; legal certainty; sustainable governance.

1. INTRODUCTION

The full-scale armed aggression against Ukraine and the continuing legal regime of martial law have created exceptional conditions for the functioning of institutions that protect private rights. The notariat is one of those institutions. Its role is distinct from judicial protection: a notary acts primarily before a dispute arises, certifying rights and legally significant facts, ensuring the authenticity of documents and transactions, and reducing uncertainty in civil circulation. During wartime, this preventive function becomes especially important because individuals may need to formalise inheritance, manage or dispose of property, issue powers of attorney, certify wills, confirm family or civil-law facts, and secure documentary evidence while simultaneously facing displacement, occupation, damaged infrastructure and disrupted access to public institutions.

The wartime problem is therefore not limited to whether notaries are formally authorised to act. It concerns whether the infrastructure required for the exercise of that authority remains available, secure and legally reliable. Modern Ukrainian notarial practice depends on access to State electronic registers, digital identification and information exchange, protected storage of data, functioning communication networks and reliable mechanisms for verifying the authority and identity of participants. A failure of that infrastructure can transform a technical disruption into a human-rights problem by preventing a person from exercising or proving a civil right.

This connection places the subject within the broader field of law, digital technologies and sustainable governance. The sustainability of a legal institution under emergency conditions depends on its ability to preserve its essential functions when ordinary territorial, administrative and technological arrangements are disrupted. For the notariat, this requires not merely more digital tools but a governance model that combines accessibility with security, continuity with legal certainty, and technological innovation with procedural safeguards.

The aim of the article is to determine how the notariat protects human rights under martial law, to identify the main legal and infrastructural risks affecting the continuity of notarial protection, and to formulate directions for reform based on digital resilience and sustainable governance. The article asks three questions: (1) which human-rights protection functions of the notariat become especially important during martial law; (2) how wartime regulation and digital dependence reshape access to those functions; and (3) which legal and organisational safeguards are necessary so that digitalisation strengthens, rather than weakens, legal certainty and accessibility.

2. PRIOR RESEARCH AND THE RESEARCH GAP

Ukrainian scholarship has examined the constitutional role of the notariat, its preventive function, the protection of property and inheritance rights, and the digitalisation of notarial procedures. Ivashkova (2024) emphasises the protective role of notaries in providing legally secure transactions and executive instruments. Bysaha (2023) and Marchenko (2020) discuss the increasing use of digital technologies in notarial activity, while Chyzhykov (2024)

highlights information-security and regulatory challenges. More recent work by Vdovichena (2025) addresses the preservation and relocation of notarial records under emergency conditions, and Zozulia et al. (2025) analyse the notariat as an institution for securing constitutional guarantees of rights and freedoms.

These strands of research are valuable but are often considered separately. Studies of wartime notarial practice tend to focus on emergency rules and accessibility; studies of digital notariat focus on technological modernisation; studies of human-rights protection focus on the preventive legal function. The remaining gap concerns their interdependence. Under wartime conditions, the notary can protect rights only if the digital and organisational infrastructure through which notarial authority is exercised remains available, trustworthy and legally controlled. This article therefore treats digital resilience not as a technical annex to notarial law but as part of the institutional capacity to secure human rights.

A second gap concerns the legal status of the e-notariat transition. Discussion in the literature sometimes uses „electronic notariat” as if it already meant general remote performance of notarial acts. The current regulatory architecture is more cautious and staged. The Unified State Electronic E-Notariat System has a legal framework, while the commencement of particular registers and software components is tied to separate technical-readiness decisions and official notices. This distinction is important because digitalisation of records, workflows and verification is not the same thing as legally unrestricted remote notarisation.

3. MATERIALS AND METHODS

The study is doctrinal and conceptual. It analyses the Constitution of Ukraine, the Civil Code of Ukraine, the Law of Ukraine „On Notariat”, wartime resolutions of the Cabinet of Ministers, subordinate regulation of notarial procedures, and the legal framework of the Unified State Electronic E-Notariat System. The regulatory material was checked against the official Legislation of Ukraine database and updated through 14 August 2026. In particular, the analysis takes account of Resolution No. 164 of 28 February 2022 in its current wartime form, the Procedure for the Performance of Notarial Acts by Notaries of Ukraine (Order No. 296/5), Resolution No. 1406 of 29 December 2023 on the E-Notariat System, and subsequent acts governing the staged integration of particular notarial registers.

The formal-legal method is used to identify the legal status, powers and safeguards relevant to notarial protection. Systemic analysis is used to examine how wartime restrictions, register access, territorial rules and data-protection requirements interact. A functional approach is used to assess the notariat not only through the formal list of notarial acts but through the human-rights functions those acts serve: prevention of disputes, preservation of property and inheritance rights, legal certainty, authentication and access to remedies. Conceptual synthesis is then used to formulate a governance matrix for resilient notarial services.

The study does not contain an empirical survey, statistical measurement or evaluation of the performance of individual notaries. Statements about institutional risks and reform priorities are normative conclusions derived from legislation and published scholarship. This limitation is important: the proposed governance model requires subsequent empiri-

cal testing using data on service accessibility, interruptions of register access, user experience, cyber incidents and cross-border notarial demand.

4. THE NOTARIAT AS AN INSTITUTION OF PREVENTIVE HUMAN-RIGHTS PROTECTION

Articles 3 and 8 of the Constitution of Ukraine place the human being, human rights and the rule of law at the centre of State activity (Konstytutsiia Ukrainy, 1996). In the sphere of private-law relations, the notariat contributes to this constitutional orientation by giving legal authenticity to rights, facts and transactions and by preventing disputes before they require judicial resolution. Article 18 of the Civil Code recognises a specific mechanism of protection of civil rights by a notary, while the Law of Ukraine „On Notariat” defines the notary as a natural person authorised by the State to certify rights and legally significant facts and to perform other notarial acts (Tsyvilnyi kodeks Ukrainy, 2003; Pro notariat, 1993).

The protective function of the notariat should therefore be understood more broadly than the performance of individual technical procedures. It includes at least five functions: safeguarding the realisation and proof of property rights; securing inheritance rights and continuity of succession; protecting family and other private-law interests; preventing conflicts through verification and authentication; and maintaining legal certainty in civil circulation. Unlike a court, which usually intervenes after a dispute or violation has materialised, the notary generally acts *ex ante*, reducing the probability that uncertainty, fraud, defective form or an evidential gap will later undermine a person’s legal position.

This preventive function becomes more visible under martial law. War produces sudden changes in residence, family circumstances, access to property, documentary control and the territorial availability of institutions. In such circumstances, the inability to execute a will, establish an inheritance file, obtain a power of attorney, certify a transaction or retrieve legally significant information may have consequences that persist long after the immediate emergency. Vdovichenko (2025) therefore rightly links the preservation of notarial records with the preservation of property and personal rights.

At the same time, the notary’s protective role is not equivalent to the exercise of judicial power or general public administration. The notary is authorised by the State and performs legally defined public functions, but operates within a distinctive preventive-justice model. This distinction matters for digital transformation: technology should support the notary’s legally structured professional judgment and verification duties rather than replace them with an automated administrative process.

5. WARTIME TRANSFORMATION OF NOTARIAL SERVICES

5.1. EMERGENCY REGULATION AND ACCESS TO STATE REGISTERS

After the introduction of martial law, the Cabinet of Ministers adopted Resolution No. 164 of 28 February 2022, „Certain Issues of the Notariat under Martial Law”. The resolution has been amended repeatedly as the security environment and territorial classification of hostilities have changed; the official legislative database records a current revision from 22

May 2026 following Resolution No. 635 of 20 May 2026 (Kabinet Ministriv Ukrainy, 2022, 2026b). The continuing amendment of the instrument demonstrates that wartime notarial regulation is not a one-time emergency response but an adaptive legal regime.

The emergency framework has combined two competing objectives. The first is continuity: individuals must retain access to legally significant services even when ordinary institutions are displaced or unavailable. The second is security: State registers and property-related procedures cannot remain open in the same manner where there is a high risk of unauthorised access, coercion, document abuse, occupation or cyberattack. Restrictions on access to registers and on specific registration or property operations must therefore be understood as risk-control measures, but they also create direct barriers to the exercise of private rights when they last too long or when alternative procedures are unavailable.

The legal-policy task is consequently to apply the principle of proportionality to digital restrictions. A restriction that is justified by an immediate security threat should be linked to the nature of that threat, periodically reviewed, and accompanied where possible by alternative procedures. Otherwise, information security can itself become a source of legal insecurity.

5.2. TERRITORIAL ACCESSIBILITY, DISPLACED PERSONS AND THE EXTRATERRITORIAL PRINCIPLE

The displacement of individuals and notaries, the temporary occupation of territory and the destruction or interruption of local institutional capacity make territorial accessibility one of the principal wartime challenges. The Procedure for the Performance of Notarial Acts by Notaries of Ukraine provides as a general rule that notarial acts may be performed by any notary throughout Ukraine, subject to statutory exceptions (Ministerstvo yustytzii Ukrainy, 2012). This general extraterritorial logic is especially important in wartime because a person's need for a notarial act may be disconnected from the person's place of permanent residence or from the location in which an earlier notarial file was created.

Extraterritoriality, however, should not be described as unlimited. Certain acts remain tied to statutory territorial or procedural requirements, and the practical ability to act depends on access to relevant registers and records. The proper reform direction is therefore not simply to „broaden extraterritoriality” in the abstract, but to identify which remaining territorial restrictions are substantively necessary, which can be removed without creating fraud or jurisdictional risks, and which require secure electronic access to records before they can be relaxed.

Internally displaced persons are particularly affected by these constraints. For them, the accessibility of notarial services is connected not only with physical proximity but also with documentary continuity: the ability of a notary in a new region to verify information, open or continue an inheritance matter where legally permissible, and access secure records. This makes interoperability and continuity of State registers part of equality of access to legal protection.

5.3. CITIZENS ABROAD AND THE CONSULAR DIMENSION

Large-scale displacement outside Ukraine has also increased the importance of consular notarial functions. Article 38 of the Law of Ukraine „On Notariat” assigns a range of notarial acts to authorised consular officials. The practical significance of this channel lies in enabling citizens abroad to execute legally significant acts without returning to Ukraine solely for notarial purposes. The effectiveness of the mechanism nevertheless depends on consistent access to relevant information systems, clear division of competence between consular officials and notaries in Ukraine, and reliable recognition and transmission of the resulting records.

The emerging e-notariat architecture reinforces this cross-border dimension. For example, the 2026 regulation of the Inheritance Register expressly provides for access by authorised officials of consular institutions and embassies within the E-Notariat System (Kabinet Ministriv Ukrainy, 2026a). At the cut-off date of this study, however, Resolution No. 52 of 21 January 2026 had not yet entered fully into force because its operative commencement depends on an official Ministry of Justice notice regarding the functioning of the relevant software. This is a useful illustration of why planned digital interoperability must be distinguished from functionality already available in practice.

5.4. INFORMATION SECURITY, DATA INTEGRITY AND CONTINUITY OF RECORDS

Notarial protection depends on the integrity, confidentiality and availability of data. The classic paper archive remains important, but the modern notariat also relies on electronic registers containing information about powers of attorney, inheritance, encumbrances, real rights, civil-status acts and other legally significant data. Wartime cyberattacks, power disruptions, communication failures and physical damage to infrastructure create risks not only of temporary unavailability but also of loss, corruption or unauthorised disclosure of information.

Three dimensions of information security have direct legal significance. Confidentiality is connected with notarial secrecy and personal-data protection. Integrity ensures that the legal system can rely on the authenticity and completeness of registry information. Availability determines whether a person can actually exercise a right when the relevant information is needed. A resilient notarial system must therefore treat backup, redundancy, disaster recovery, access logging and secure authentication as components of legal protection rather than purely technical IT functions.

Resolution No. 475 of 21 April 2025 is relevant to the broader emergency-management framework because it amends the general evacuation procedure, but it should not be treated as creating a dedicated legal regime for the relocation of notarial offices or archives. The more precise conclusion is that evacuation and preservation of notarial records must be coordinated with general emergency-management rules while also requiring sector-specific procedures for chain of custody, access rights, confidentiality, restoration and evidentiary integrity of notarial records.

5.5. E-NOTARIAT AS A STAGED LEGAL AND TECHNOLOGICAL TRANSITION

The most important structural development in the digital transformation of the Ukrainian notariat is the Unified State Electronic E-Notariat System. Resolution No. 1406 of 29 December 2023 establishes the general legal and organisational framework of the system and its components (Kabinet Ministriv Ukrainy, 2023). The system is designed to automate notarial activity, integrate information exchange, support registers within the Ministry of Justice system, and enable verification and access mechanisms while preserving notarial secrecy.

It is essential, however, to distinguish the existence of the regulatory framework from the commencement of every technological component. The 2025 and 2026 acts dealing with particular registers continue to tie full operation to official notices on the availability or commencement of the necessary software. Resolution No. 52 of 2026 concerning the Inheritance Register is a particularly clear example: most of its operative provisions take effect only after the Ministry of Justice publishes notice that the relevant E-Notariat software is functioning (Kabinet Ministriv Ukrainy, 2026a). The transition is therefore phased.

This staged model has an important human-rights implication. E-notariat should not be equated with a general right or possibility to perform all notarial acts remotely. Digital records, electronic identifiers, register integration and online verification can increase resilience and accessibility, but remote performance of a notarial act raises separate questions of identity assurance, free and informed will, capacity, coercion, confidentiality, territorial competence, evidence and professional liability. Each remote or partially remote procedure therefore requires an explicit legal basis and safeguards appropriate to the legal consequences of the act.

For sustainable governance, the correct objective is not maximal digitalisation but controlled digital resilience: the ability to continue lawful notarial services through secure digital infrastructure while preserving human professional responsibility and maintaining fallback procedures when electronic channels fail.

6. A GOVERNANCE FRAMEWORK FOR RESILIENT NOTARIAL PROTECTION

The analysis above suggests that reform should be organised around institutional functions rather than around isolated technologies. The central question is whether a proposed measure improves the capacity of the notariat to protect rights under stress without introducing disproportionate new risks. Four criteria are especially important: legal continuity, accessibility, data resilience and procedural safeguards.

Legal continuity means that emergency rules, digital systems and territorial arrangements should preserve the legal validity and traceability of notarial acts across disruptions. Accessibility means that displaced persons, persons in territories affected by hostilities, persons with limited digital access and citizens abroad should have realistic routes to obtain necessary services. Data resilience means that records must remain confidential, accurate, recoverable and available. Procedural safeguards mean that digitalisation must preserve the notary's verification duties, professional independence, legal responsibility and the pos-

sibility for the person to understand and challenge an adverse legal consequence where appropriate.

Table 1. Governance matrix for resilient notarial services under martial law

Governance issue	Current legal / institutional position	Human-rights risk	Recommended safeguard
Access to State registers	Emergency rules permit security-based restrictions and differentiated access; the regime remains adaptive.	A person may be unable to prove or exercise a right when registry access is interrupted.	Proportional, reviewable restrictions; documented fallback procedures; prioritised restoration of rights-critical registers.
Territorial accessibility	A general extraterritorial principle operates subject to statutory exceptions and technical access conditions.	Displaced persons may face delay or practical exclusion from inheritance, property or representation procedures.	Review residual territorial limits; enable secure cross-regional file continuity; publish clear routing rules for exceptional cases.
Data and archive resilience	Notarial practice depends on electronic registers and protected records; general emergency evacuation rules also apply.	Loss, corruption or disclosure of records can create long-term legal uncertainty and privacy harm.	Multi-level backup, disaster recovery, integrity checks, access logging, sector-specific chain-of-custody procedures and periodic resilience testing.
Citizens abroad	Consular officials perform defined notarial acts; digital register integration is being developed.	Fragmented access and delays may prevent timely formalisation of rights.	Secure consular access to relevant registers, clear competence rules, interoperable record transmission and user guidance.
E-notariat transition	Resolution No. 1406 establishes the system; particular components enter operation in stages and may depend on official technical-readiness notices.	Treating planned functionality as already available can create false expectations; over-automation can weaken safeguards.	Explicit legal basis for each digital procedure, strong identification, least-privilege access, auditability, notarial secrecy, human professional control and non-digital contingency routes.

Note. The matrix is an authorial synthesis based on the legislation and scholarship analysed in this article. It is intended as a policy-evaluation tool rather than as a statement that all listed measures are already implemented.

6.1. PRIORITY DIRECTIONS FOR REFORM

1. Complete the staged introduction of e-notariat while preserving the distinction between digital workflow and legally authorised remote notarisation. The Ministry of Justice should publish clear implementation milestones, legal status of each component, and contingency rules for periods of technical unavailability.

2. Establish sector-specific continuity and disaster-recovery standards for notarial data and records. These standards should define redundancy, backup frequency, restoration priorities, access control, incident reporting and preservation of evidentiary integrity.

3. Review territorial restrictions through a rights-and-risk lens. Restrictions that remain necessary for fraud prevention or jurisdictional coherence should be retained; those that survive only because records are not interoperable should be reconsidered as digital continuity improves.

4. Strengthen cross-border accessibility through consular integration. Citizens abroad should receive clear information on which acts may be performed by consular officials, which require action by a notary in Ukraine, and how electronic records move between the two systems.

5. Introduce periodic accessibility and resilience assessment. Sustainable governance requires evidence on service interruption, regional access, restoration times, user barriers and cyber incidents. Without such evidence, the success of digital reform cannot be evaluated only by the number of services placed online.

7. CONCLUSIONS

Under martial law, the notariat remains an important part of the national mechanism for protecting civil rights and legal certainty. Its preventive function is especially significant in relation to property, inheritance, family and representation matters, because wartime displacement and institutional disruption increase the cost of legal uncertainty and make delayed formalisation of rights more dangerous.

The principal conclusion of this study is that the effectiveness of notarial protection now depends on the resilience of the digital and organisational infrastructure through which the notary acts. Access to State registers, secure identification, continuity of electronic records, protected archives and cross-regional information exchange are not merely administrative conveniences. They determine whether a person can obtain a legally effective notarial act at the moment it is needed.

The wartime regulatory response has demonstrated considerable adaptability, but it also reveals a structural tension between security and accessibility. Register restrictions and territorial limitations may be justified by concrete security risks, yet they should remain proportionate, reviewable and accompanied by viable alternatives. The extraterritorial principle is valuable precisely because it reduces the dependence of legal protection on a person's pre-war place of residence, but it must operate together with reliable access to records and clear procedural rules.

The development of the Unified State Electronic E-Notariat System is a central element of future reform. Its legal architecture shows that implementation is staged and technologically conditional. Consequently, e-notariat should not be described as if unrestricted remote notarisation were already available. The appropriate model is one of controlled digital resilience in which electronic infrastructure supports, rather than replaces, the notary's professional verification and responsibility.

For sustainable governance, five priorities follow: completion of legally transparent e-notariat implementation; sector-specific data-continuity and disaster-recovery standards; evidence-based review of territorial restrictions; strengthened integration with consular services; and regular assessment of accessibility and infrastructure resilience. These measures would connect digital transformation with the core purpose of the notariat: preserving legal certainty and enabling individuals to realise and protect their rights even under prolonged emergency conditions.

The scientific contribution of the article lies in reframing wartime notarial reform as a

problem of institutional and digital resilience. The proposed governance matrix links technical continuity with substantive human-rights protection and provides a basis for future empirical evaluation. Further research should test the model using regional service data, interviews with notaries and users, measures of register downtime and restoration, and comparative analysis of digital notarial systems in European jurisdictions.

FUNDING

This research received no external funding.

CONFLICTS OF INTEREST

The authors declare no conflicts of interest.

ETHICS STATEMENT

Not applicable. The study is doctrinal and uses publicly available legislation and scholarly sources; it does not involve human participants, personal data collection or experimental procedures.

DATA AVAILABILITY

No original dataset was generated or analysed. The legal materials discussed in the article are publicly available through official Ukrainian legislative databases.

DECLARATION OF GENERATIVE AI USE

Generative AI tools were used for language editing and structural revision during the preparation of this manuscript. The authors reviewed and verified all substantive statements and references and take full responsibility for the final text.

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