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THE ROLE OF THE CONSTITUTIONAL COURT OF UKRAINE IN ENSURING THE LEGITIMACY OF THE PARLIAMENT AND PRESIDENT'S POWER

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Abstract. The article examines the role of the Constitutional Court of Ukraine in ensuring the legality of the activities of the President of Ukraine. The constitutional and legal status of the Court, its functions and powers to control the constitutionality of presidential acts are analyzed. Based on Article 103 of the Constitution, the president is elected for 5 years. But taking into account the continuity of the exercise of state power in Ukraine, there is a clear record in the first part of Article 108 that the president exercises his powers before the newly elected president of Ukraine takes office. This means that his duty is to perform the functions of the president, there is no other option. This president should be replaced only by his successor – not an acting president, but a full-fledged president, who should be elected in the next free democratic elections.

The purpose of this article is to analyze the constitutional powers of the President and the Parliament of Ukraine, the specifics of their activities under martial law, as well as the development of recommendations for improving legislation to ensure the continuity and efficiency of state administration.

Key words: rule of law, Constitution, president, legal norms.

Introduction. The problem of legitimacy and stability of the government in the conditions of martial law is extremely relevant for Ukraine. In view of the aggression by the Russian Federation and the introduction of martial law, the issue of ensuring the continuity and efficiency of the activities of state authorities, in particular the president and the parliament, arises. One of the most important manifestations of the democratic development of society and the state as a whole is the functioning of a democratic parliament – an institution that enjoys the full trust of the people, speaks on its behalf and maintains public relations with it (In the case of the constitutional submissions). The level of social representation and protection of the interests of the country's citizens directly depends on the efficiency of the parliament. In this case, Ukraine is no exception. After all, the place and role of the Parliament of Ukraine – the Verkhovna Rada in the mechanism of the state and society is determined by its representative nature, the fact that only the Verkhovna Rada of Ukraine has the right to speak on behalf of the people of Ukraine, adopt laws and other acts. These provisions were recorded in the Declaration on State Sovereignty of Ukraine and enshrined in the 1996 Constitution of Ukraine. On the one hand, under the conditions of constitutional and political reforms, there are tendencies to increase the public role of the Parliament of Ukraine, giving it a greater amount of constitutional and control rights. On the other hand, there are signs of a parliamentary crisis, which manifests itself in the emergence of political conflicts in the Verkhovna Rada of Ukraine. The question of the legitimacy and stability of the functioning of state power in the conditions of martial law has become especially relevant for Ukraine in view of the ongoing aggression from the Russian Federation. Martial law requires a special legal regime that ensures prompt and efficient state management, protection of national security and public order. In this context, it is particularly important to study the role and powers of the president and the parliament, since these institutions are key in the system of public administration.

Methodology. To analyze the role of the Constitutional Court of Ukraine in ensuring the legitimacy of the president's power, a comprehensive approach was used, including both empirical and doctrinal

methods. Empirical methods: Study of the texts of decisions of the Constitutional Court, as well as relevant legislative acts and legal documents regulating the activities of the president. The analysis is focused on determining the limits of the president's powers and procedures for their control. Doctrinal methods: Detailed study and interpretation of the Constitution of Ukraine, laws and regulations regulating the powers of the president and the activities of the Constitutional Court. Legal interpretation: Application of various approaches to the interpretation of legal norms governing the activities of the Constitutional Court and the powers of the president, such as literal, systematic and teleological interpretation. Comparative legal analysis: Comparison of functions and decisions of the Constitutional Court of Ukraine with similar institutions in other countries. It allows identifying common features and differences, as well as borrowing best practices to improve the activity of the Ukrainian Court. Critical analysis: Evaluation of the effectiveness of the decisions of the Constitutional Court from the point of view of their compliance with the principles of the rule of law, justice and protection of the constitutional order. Analysis of critical reviews and proposals for reforming the Court. Conceptual analysis: Development of new theoretical approaches to understanding the role of the Constitutional Court in ensuring the legitimacy of the president's power. Justification of the need to improve legal norms and procedures to increase the effectiveness of judicial control. Application of these methods makes it possible to comprehensively investigate the role of the Constitutional Court of Ukraine in ensuring the legitimacy of the president's power, identify existing problems and develop recommendations for their resolution.

Main part. Studying the legal regulation, functions and powers in the field of law-making interaction between the President of Ukraine and the Verkhovna Rada of Ukraine, special attention should be paid to legal acts of different status and legal force. Some of the norms are contained in the Constitution of Ukraine as acts of the constituent power, but their details are also contained in separate laws, for example, in the Law of Ukraine "On the Regulations of the Verkhovna Rada of Ukraine" and other laws, as well as in Presidential Decrees, separate bylaws. Both individuals and state institutions can be the main subjects during law-making interaction, it must be clearly distinguished. For example, the President of Ukraine can act on his own behalf, defining this or that project of the law as urgent, while the Office of the President of Ukraine is an institution that is also the official representation of the head of state, which provides civil servants, the patronage service and other responsible employees its organizational, informational, analytical, legal, administrative and material and technical support of the activities of the head of state (Danyliuk, 2015: 23).

The Council of Ukraine is a collegial body, which authorized to activate the legislative function of this body, however, in accordance with the name of a specific people's deputy of Ukraine with the same President of Ukraine (in advance, a deputy's appeal or a deputy's request) has an individual character, which is determined by such criteria by which the corresponding document of the People's Deputy of Ukraine. deputy of Ukraine (Voychuk, 2019: 56).

The said higher distinction during law-making interaction must always be carried out in order to distinguish between normative provisions that reveal a general structure, powers and functions, individual actions and individual acts that have a narrower scope, and very often may not be covered by law-making interaction, which is primarily aimed at for the adoption of laws. Here you need to remember that laws are external in the form of internal content in your dominant position, they are aimed at regulating homogeneous social relations that have a general character and repeatability. It is appropriate for this assessment to be based on the constitutional norm, namely, Art. 92, which states that "only the laws of Ukraine begin:

- 1) human and citizen rights and freedoms, guarantees of these rights and freedoms; basic duties of a citizen;
- 2) citizenship, legal personality of citizens, status of foreigners and stateless persons;
- 3) rights of indigenous peoples and national minorities;

- 4) order of use of languages;
- 5) principles of use of natural resources, use of (marine) economic zone, continental shelf, development of outer space, organization and operation of energy systems, transport and communication;
- 6) basics of social protection, forms and types of pension provision; principles of regulation of work and employment, marriage, family, protection of childhood, motherhood, parenthood; upbringing, education, culture and health care; environmental safety;
- 7) legal regime of ownership;
- 8) legal principles and guarantees of entrepreneurship; competition rules and antimonopoly regulations;
- 9) principles of foreign relations, foreign economic activity, customs affairs;
- 10) principles of regulation of demographic and migration processes;
- 11) principles of formation and activity of political parties, other associations of citizens, mass media;
- 12) organization and activity of executive authorities, foundations of public service, organization of state statistics and informatics;
- 13) territorial organization of Ukraine;
- 14) judicial system, judiciary, status of judges; principles of forensic examination; organization and activity of the prosecutor's office, notary, pre-trial investigation bodies, bodies and institutions for the execution of punishments; procedure for execution of court decisions; principles of the organization and activity of the bar;
- 15) principles of local self-government;
- 16) the status of the capital of Ukraine; special status of other cities;
- 17) basics of national security, organization of the Armed Forces of Ukraine and ensuring public order;
- 18) legal regime of the state border;
- 19) legal regime of military and state of emergency, emergency zone ecological situation;
- 20) organization and procedure of holding elections and referenda;
- 21) organization and order of activity of the Verkhovna Rada of Ukraine, status people's deputies of Ukraine;
- 22) principles of civil liability; acts that are crimes administrative or disciplinary offenses, and responsibility for them" (Concept of separation of powers).

The specified provision of the Constitution of Ukraine means that it is forbidden to regulate the above-mentioned issues by any other acts. In the case of their adoption, such acts will be unconstitutional, that is, those that do not correspond to the Constitution of Ukraine.

Therefore, the legal basis of law-making interaction is defined mainly in the Constitution of Ukraine, however, specific laws and other regulatory legal acts also partially contain provisions that detail and clarify it, but it is necessary to take into account that constitutional norms are norms of direct effect. Subjects of the studied interaction can act both on their own behalf (individually) and be a representative of an institution or a member of a legislative collegial body. Their powers and functions have a clear character, which arises from the corresponding regulatory consolidation, but they are not limited only legally, because in fact, in practice, the parties during interaction can use legally permitted alternative methods.

Martial law in Ukraine is regulated by the Law of Ukraine "On the Legal Regime of Martial Law", adopted in 2015. This law defines the legal basis for the introduction, implementation and termination of martial law, the rights and obligations of state authorities, military command, local self-government bodies, enterprises, institutions, organizations, as well as citizens of Ukraine and other persons staying on the territory of Ukraine.

During martial law, the President of Ukraine acquires additional powers necessary to ensure national security and defense. The President has the right to impose martial law on the territory

of Ukraine or in some of its localities with the approval of the Verkhovna Rada, to make decisions on general or partial mobilization, to appoint military command and to exercise overall leadership of the state's defense (The Law of Ukraine).

The Verkhovna Rada of Ukraine plays a key role in ensuring the legality and constitutionality of actions of executive authorities during martial law. Parliament approves the president's decision to introduce martial law, approves presidential decrees regulating defense and security issues, adopts laws necessary for the functioning of the state under martial law, and exercises parliamentary control over the actions of the executive power and military command (The Law of Ukraine).

One of the main problems is the lack of a clear mechanism for extending the president's mandate if his term expires during martial law. The Constitution of Ukraine and legislation do not provide for the automatic extension of the president's powers in such conditions, which may lead to legal uncertainty and political instability (Voychuk, 2019: 56).

During martial law, there is a risk of restrictions on the democratic rights and freedoms of citizens, including freedom of speech and assembly, as well as the possibility of abuse of power by executive bodies. This may lead to a violation of the principles of the rule of law and democracy (Volodymyr Zelensky announced).

In international practice, there are different approaches to regulating the powers of the president and parliament during martial law. For example, in the US, the president has broad powers in the field of national security, but his actions are limited by constitutional norms and controlled by Congress and the judiciary. France and Germany have mechanisms in place to ensure a balance between the executive and the legislature, even during emergencies (Voychuk, 2019: 56).

In order to solve the problem of legal uncertainty regarding the powers of the president during martial law, it is necessary to make changes to the Constitution of Ukraine and legislation. In particular, it is possible to provide for the automatic extension of the president's powers for the period of martial law or to introduce a mechanism for the appointment of a temporary acting president (The Law of Ukraine).

In order to ensure the stability of state administration during martial law, it is possible to consider the possibility of introducing amendments to the Constitution of Ukraine, which will provide for clear mechanisms for extending the powers of the president and parliament, as well as establishing additional guarantees for the observance of the rights and freedoms of citizens.

It is important to take into account the international experience of regulating the activities of state authorities during emergency situations. In particular, it is possible to borrow the best practices of countries with developed democratic traditions and effective mechanisms of checks and balances.

According to the Constitution of Ukraine, a limited circle of subjects can apply to the Constitutional Court to clarify the legitimacy of the president. They include:

1. President of Ukraine – for the purpose of resolving issues related to the interpretation of the Constitution.
2. Not less than 45 People's Deputies of Ukraine – a group of deputies can apply to the Constitutional Court with a corresponding submission.
3. Supreme Court of Ukraine – in cases where it is necessary to resolve a specific case.
4. Human Rights Commissioner of the Verkhovna Rada of Ukraine – to protect the constitutional rights and freedoms of citizens.
5. The Supreme Council of the Autonomous Republic of Crimea – on issues related to the competence of autonomy.

It is necessary to pay special attention to the problems in the system of distribution of mutual control functions between the President of Ukraine and the Verkhovna Rada of Ukraine (In the case of the constitutional submissions). The Constitution of Ukraine grants powers in the field of control to both of these subjects of power, however, secondary legal acts, as well as the practice of law-making

in Ukraine, show that there is a need to improve the spheres of influence and the proper implementation of constitutional powers. However, this problem has a more theoretical component than a practical one. Its solution completely depends on the understanding of specific officials of this problem, as well as the desire to get rid of it (Concept of the National Program).

The right of veto gives significant powers to the head of state during law-making interaction, because the work already mentioned the experience of foreign countries, and therefore we observed a trend that such an option is not available everywhere. In essence, the President acts as a transitional element for each law adopted by the parliament to bring it into legal force, because the further fate of the draft law, which has already been signed, depends on its signing or non-signing almost acquired the status of law (Zelinska, 2010: 69).

It is interesting in this aspect to compare the signature of the President of Ukraine and the signature Chairman of the Verkhovna Rada of Ukraine.

Yes, in Clause 3, Part 2, Art. 88 of the Constitution of Ukraine states that "Chair of the Verkhovna Rada of Ukraine signs acts adopted by the Verkhovna Rada of Ukraine. In the same part of this article, it is specified that the Chairman of the Verkhovna Rada of Ukraine exercises the powers provided for by this Constitution in the manner established by the Regulations of the Verkhovna Rada of Ukraine" (Constitution of Ukraine).

In addition, Art. 94 of the Constitution of Ukraine is formulated as follows – "The Chairman of the Verkhovna Rada of Ukraine signs the law and immediately sends it to the President of Ukraine" (Constitution of Ukraine).

Most likely, the above-mentioned norm should be interpreted unambiguously, which would mean that the Speaker of the Ukrainian Parliament cannot refuse to sign the Law adopted by the Verkhovna Rada of Ukraine.

For a full understanding of the veto issue, in particular, the scope laws in respect of which such a right may be applied, it is definitely worth referring to the official interpretation and relevant decisions of the Constitutional Court of Ukraine on this matter.

In particular, in the "Decision of the Constitutional Court of Ukraine in the case based on the constitutional submission of 73 people's deputies of Ukraine regarding the conformity with the Constitution of Ukraine (constitutionality) of the veto power exercised by the President of Ukraine in relation to the Law of Ukraine adopted by the Verkhovna Rada of Ukraine "On Amendments to Article 98 of the Constitution of Ukraine" and its proposals (the case regarding the right of veto on the law on amendments to the Constitution of Ukraine) dated March 11, 2003 N 6-пг/2003, an official interpretation and analysis of the relevant constitutional provisions regarding the scope of application was carried out veto rights by the head of state" (Basics of interaction, 2019).

In this case, in my opinion, it is worth paying attention during its analysis to the fact that the right of veto, on the one hand, can be considered an act of the President of Ukraine, because this is exactly the argument used by the People's Deputies of Ukraine in constitutional submission, and also asked to recognize the right of veto as unconstitutional (Basics of interaction, 2019).

The status of President Volodymyr Zelenskyi after May 2024 remains legal and legitimate based on the principle of continuity of power enshrined in the Constitution of Ukraine. Even after his five-year presidential term expires on May 20, 2024, Zelensky will continue to perform his duties until the newly elected president takes office. This is explained by the fact that there cannot be a vacuum of the highest state power, especially during the martial law currently operating in Ukraine (O'Brien, 1995: 12).

The Constitutional Court of Ukraine must finally resolve the issue of Zelenskyi's legitimacy after May 2024. The President's Office has prepared an appeal to the Constitutional Court on this issue, but a decision has not yet been made. According to current legislation, the provision of the law on the extension of the president's powers during martial law is constitutional until the Constitutional Court finds otherwise (The Law of Ukraine).

At the moment, 13 judges work in the Constitutional Court of Ukraine. Consideration of the issue of the legitimacy of the president is one of the key and most significant tasks of the court, since the president performs many important functions in the state.

Important points regarding the adoption of decisions by the Constitutional Court of Ukraine:

Quorum: In order to hold a plenary session of the Constitutional Court, at least two-thirds of its constitutional composition is required. If there are 13 judges, at least 9 judges are required for a quorum.

Making decisions: Decisions regarding the legitimacy of the president and other constitutional issues are made by a majority of votes from the constitutional composition of the court. In the case of 13 judges, this means that the decision must be supported by at least 10 judges.

The question of the legitimacy of the president is one of the most important, since the president of Ukraine plays a key role in the executive power, international relations, defense and security of the state. Therefore, to ensure legal stability and compliance with constitutional norms, the decision of the Constitutional Court on this issue is of great importance.

The Verkhovna Rada of Ukraine must act exclusively within the framework of the Constitution of Ukraine. However, even strict observance of the provisions of the Constitution is sometimes insufficient to solve all the complex issues that arise in the process of public administration. Therefore, in addition to formal compliance with constitutional norms, active and responsible participation in the law-making process, adoption of new laws and amendments to existing ones is necessary to ensure effective state management and protection of citizens' rights and freedoms.

The Constitutional Court cannot, on its own initiative, begin the interpretation of certain provisions of the Constitution, because this would be an excess of power on its part. For this, the law defines certain entities that can apply. This can be done by the President, at least 45 People's Deputies, the Cabinet of Ministers, the Supreme Court, and the Commissioner for Human Rights. There are many subjects. An appeal to the Constitutional Court should have been made last year. Because according to the Electoral Code, the Verkhovna Rada calls presidential elections no later than 100 days before the voting day. That is, approximately December 21, 2023 was the deadline for the adoption of the resolution of the Verkhovna Rada on the appointment of the regular presidential elections of Ukraine for March 31, 2024. So, by that date, we had to not only apply to the Constitutional Court, but also get its decision on this issue (Constitution of Ukraine).

A positive decision of the Constitutional Court of Ukraine should be a guarantee for the president of Ukraine regarding the extension of his powers. This decision is key to confirming the legitimacy of the president and his ability to continue to fulfill his duties under the Constitution (Zelinska, 2010: 68).

Thus, the work of the Constitutional Court and the Verkhovna Rada is critically important for maintaining the constitutional order and legality in Ukraine, as well as for ensuring the proper functioning of state institutions.

Conclusions. This article was established that the constitutional powers of the President and the Parliament of Ukraine are important for ensuring the stability and efficiency of state administration, especially in the conditions of martial law. The constructive dialogue between the President and the Verkhovna Rada, aimed at agreeing their positions at a certain historical stage, ended on June 8, 1995 with the signing of the Constitutional Treaty "On the Basic Principles of the Organization and Functioning of State Power and Local Self-Government in Ukraine for the Period Before the Adoption of the New Constitution of Ukraine", and also the adoption of an important document for the state – the Constitution of Ukraine on June 28, 1996. As of 2004, relations between the President and the Parliament lost their constructive character, which negatively affected the state-building processes and the socio-economic situation in the country. In the Constitution of Ukraine, it is necessary to clarify the powers of the legislative and executive branches of power, as well as the urgent need for administrative reform.

The process of formation of the branches of state power and the search for an optimal model of interaction continues to this day, requiring constructive solutions and fruitful cooperation of both the legislative and executive branches of power, especially in the modern period.

At the same time, there are a number of problems and challenges associated with the lack of a clear mechanism for extending the president's powers and potential risks for democratic processes. The proposed solutions include amendments to the Constitution and legislation of Ukraine, as well as the use of international experience to improve the legal system.

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