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CURRENT CHALLENGES TO THE CONSTITUTIONAL SYSTEM OF UKRAINE IN THE CONDITIONS OF THE RUSSIAN-UKRAINIAN WAR

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The ongoing Russian-Ukrainian war, in particular the current full-scale Russian invasion of Ukraine, in accordance with the declared goals of the aggressor state directly causes a threat to Ukrainian statehood, and therefore to the constitutional identity of Ukraine. Effective counteraction to this threat is successfully provided by the Defense Forces of Ukraine by repelling and deterring Russia's armed aggression.

At the same time, no less important political and legal challenges for the domestic constitutional system in the conditions of the ongoing Russian-Ukrainian war are created by the declaring martial law in Ukraine, the related transformation of the public governance system, and the setting a number of restrictions on the constitutional rights and freedoms. This actualizes the issue of conformity of the acts and decisions of the head of state, parliament, government and other public authorities not only to the criteria of socio-political expediency of countering Russia's aggression, but also to the principles of the constitutional system and constitutional values, which form the basis of the modern constitutional identity of Ukraine.

In addition, it shouldn't only be about assessing compliance of the letter and spirit of the Constitution of Ukraine to the current rule-making and state-authority activities, but also about the need for the next reflection of the experience of the Russian-Ukrainian war in the current constitutional legislation, which, as practice shows, today isn't fully adapted to the realities of a full-scale war.

In this context, let's briefly dwell only on some problematic issues, which are already determined by the ongoing Russian-Ukrainian war.

First of all, the issue of essence and normative detailing of the content of the constitutional duty to defend the Motherland is of essential importance for ensuring the independence and territorial integrity of Ukraine. In the modern realities of the Russian-Ukrainian war, the constitutional establishment of the duty of Ukrainian citizens to defend the Motherland, taking into account broader

legislative regulation and real relations in this area, remains insufficient to ensure effective countermeasures against Russia's armed aggression. In fact, in addition to the duty of Ukrainian citizens to military service (which is usually equated with the constitutional duty to defend the Motherland), currently it separately distinguished their right to military service and participate in voluntary formations of territorial communities, the right of foreigners and stateless persons to military service, the right of civilians to individual armed resistance and participation in the resistance movement. Taking into account the experience of the Russian-Ukrainian war, this actualizes the transformation of the existing constitutional formulation of the duty of Ukrainian citizens to protect the Motherland into their right and duty to protect the sovereignty of Ukraine, a separate right to participate in such protection of foreigners and stateless persons. Guarantees of the protection of the sovereignty of Ukraine should be considered as one of the core elements of the constitutional system, which requires greater detailing of the content, subjects and realization limits of the right and duty to protect Ukraine.

Also, the Russian-Ukrainian war conditioned the expediency of the state's quick and proportional response to manifestations of illegal activity by political parties that support the aggressor state. However, countering the invasion of Russia is aimed not only at averting a military threat, but also at the same time preserving the established constitutional system of Ukraine, which requires compliance with the principle of the rule of law and current constitutional legislation, even under martial law. In view of this, we cannot agree with the practice of extrajudicial «suspension» activities of a number of political parties by the President of Ukraine (Decree dated March 19, 2022, No. 153/2022) on decision of the National Security and Defense Council of Ukraine. Because at that time they didn't have the corresponding constitutional powers for this, which cannot be leveled by social necessity. This creates risks not only of violation of political rights of citizens, but also of usurpation of power.

Thus, there is a need not only to improve the status of political parties, but also to clarify the limits of the constitutional powers of the President of Ukraine and the National Security and Defense Council of Ukraine (primarily during martial law), in particular, a clear solution to the issue of accepting the doctrine of «hidden powers». Because, as the Constitutional Court of Ukraine emphasizes (Decision dated September 22, 2005, No. 5-rp/2005), ensuring sufficient certainty of legal norms ensures their equal application and prevents arbitrariness.

The suspension of the parliamentary rights of People's Deputies of Ukraine from parties whose activities have been suspended (provided for by the draft law dated June 1, 2022, No. 7424) is also ambiguous. Because such an approach would mean an actual review of the results of the last

parliamentary elections in the case of a long-term martial law, as well as the long-term removal of a number of People's Deputies of Ukraine from participating in the parliament activity will reduce its institutional capacity. We believe that in this case it's expedient not to introduce constitutionally dubious restrictions on the parliamentary rights of individual people's deputies of Ukraine (which is already a certain challenge to national parliamentarism), but to ensure the real criminal responsibility of those of them who, regardless of their factional affiliation, carry out anti-Ukrainian activities.

Here, attention should also be paid to the right of people's deputies of Ukraine to military service during the martial law (provided for by the draft law dated March 21, 2022, No. 7187), as well as the granting to parliamentarians the right to participate in the work of territorial defense headquarters (provided for by the draft law dated May 3, 2022, No. 7344). The specified legislative initiatives cannot be supported in general, because they not only do not contribute to the increase of Ukraine's defense capability (by involving conditionally «incompetent» political figures in the military administration), but also negatively affect the ability to work in the conditions of martial law of the Verkhovna Rada of Ukraine (by allowing the removal of a number of parliamentarians from their duties).

The proposal to hold plenary sessions of the Verkhovna Rada of Ukraine remotely (draft law dated March 8, 2022, No. 7129) is rather ambiguous. On the one hand, this form of activity of the Verkhovna Rada of Ukraine can be justified in the conditions of Russia's ongoing armed aggression in order to preserve the functioning of the parliament in the event of the impossibility or justified danger of holding face-to-face plenary meetings. On the other hand, we should not ignore the associated risks of non-compliance with the constitutional requirement for personal voting of People's Deputies of Ukraine, guaranteeing their freedom of expression and the safety of the software environment for such voting.

Next, we note a certain inconsistency in the dismissal of the Commissioner for Human Rights of the Verkhovna Rada of Ukraine on May 31, 2022. This, on the one hand, formally met the requirements of Part 4 of Article 12 of the Law of Ukraine «On the Legal Regime of Martial Law» (as amended by the Law of Ukraine dated May 12, 2022, No. 2259-IX), but, on the other hand, for a long time created a power vacuum for the institution of the ombudsman during martial law. In our opinion, it would be more optimal to elect a new ombudsman at the same time, which would ensure the real continuity of the functioning of this power institution and its human rights activities, especially relevant in the conditions of the Russian-Ukrainian war.

Other challenges to the domestic constitutional system are related to the lack of necessary guarantees for the functioning of the justice system in the full-scale Russian-Ukrainian war, in particular, the lack of possibility to quickly renew the authority of the High Council of Justice. The issue of restoring the military justice system remains open, which is becoming more and more relevant in introduced martial law and a significant increase in the number of the Armed Forces of Ukraine and other paramilitary formations. After all, as noted by the Constitutional Court of Ukraine (Decision dated June 13, 2019, No. 4-r/2019), guaranteeing everyone judicial protection of rights and freedoms and introducing an effective mechanism for such protection is an immanent component of establishing the legal state.

We also note caused by the Russian-Ukrainian war the practice of establishing restrictive measures in linguistic, religious and other spheres by local government bodies. In particular, the Decision of the Khmelnytskyi Regional Council dated June 15, 2022, No. 25-11/2022 introduced a moratorium on the public use of Russian-language cultural products in the territory of the Khmelnytskyi Region. In addition, by the Decisions of the Konotop City Mayor dated May 5, 2022, the Brovar City Council dated May 6, 2022, the Boryslav City Council dated May 19, 2022, etc. there were prohibited on the territory of relevant territorial communities the activities of religious organization affiliated with the aggressor state. Despite the formal reference to the legislation on martial law and local government, the municipal government doesn't have similar powers, the cases of appropriation of which create additional threats to the constitutional system of Ukraine. The foregoing reveals the need not only to increase the legal awareness of representatives of municipal authorities, but also to timely state's respond to those public requests in respect of which local government bodies are forced to act illegally.

In this context, a more constructive way was the approval by the Parliament of the Law of Ukraine dated June 19, 2022, No. 2310-IX on the prohibition of reproduction of musical productions of the origin of the aggressor state. Although this Law of Ukraine isn't without a number of contradictory provisions. In particular, regarding giving powers to draw up a List of persons who pose a threat to national security, the apparatus of the National Security and Defense Council of Ukraine, which doesn't correspond to the status of this auxiliary body.

Thus, in the extraordinary conditions of the Russian-Ukrainian war, cases of social and political expediency prevailing over the norms of constitutional legislation in rule-making and state-power activities of public authorities create certain challenges to the constitutional system of Ukraine. Overcoming them primarily requires the further development of constitutional and legal

regulation and the elimination of its gaps, in particular with regard to the principles of the protection of Ukraine's sovereignty, the provision and protection of human rights and the functioning of public authorities in martial law. Instead, Ukraine's victory in the Russian-Ukrainian war requires not only the averting of Russia's military threat, but also the preservation of the national constitutional identity, which today requires unconditional respect and observance of the principles of the constitutional system and constitutional values of Ukraine.

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TO THE ISSUE OF INTRODUCTION DUAL CITIZENSHIP (BIPATRISM) IN UKRAINE

ДО ПИТАННЯ ЩОДО ЗАПРОВАДЖЕННЯ В УКРАЇНІ ПОДВІЙНОГО ГРОМАДЯНСТВА (БІПАТРИЗМУ)

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Президент України Володимир Зеленський, виступаючи 1 грудня 2021 року у Верховній Раді України зі щорічним Посланням про внутрішнє і зовнішнє становище України, зокрема, сказав: «Важлива складова нашої міжнародної політики – підтримка світового українства. Я знаю, наскільки важливим для українців, що мешкають у США, Канаді, ЄС, є питання множинного громадянства. Сьогодні я вношу відповідний законопроект на розгляд парламенту. Нас 65 мільйонів» [1]. Законопроект «Про внесення змін до Закону України «Про громадянство України» щодо підстав і порядку набуття та припинення громадянства України», як невідкладний, зареєстрований у Верховній Раді України 2 грудня під № 6368 [2].

Крім усього іншого, законопроект передбачає запровадження в Україні множинного (фактично – подвійного) громадянства, хоча терміни «множинне громадянство» і «подвійне громадянство» у тексті законопроекту не вживаються.