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REPRESENTATIVE DEMOCRACY AND PARLIAMENTARISM UNDER THE MARTIAL LAW

Background. The article is devoted to the study of the peculiarities of the implementation of parliamentarism in the conditions of representative democracy under martial law. Military aggression led to the creation of a mechanism for the protection of the state and its bodies, as well as the establishment of an effective mechanism for responding to rapid changes in the situation and preserving the full and effective work of state authorities, which were created in the state precisely thanks to the phenomenon of representation and the role of parliamentarism.

Methods. The research process employed both general scientific and special scientific methods, specifically: structural analysis to examine constitutional norms and key law provisions that serve as the cornerstones of parliamentarism and the means by which the people exercise their power through the parliamentary institution of representation; comparative analysis to compare the types and forms of implementation of representative democracy under unique conditions of martial law; and abstract-logical to analyze literary sources, the regulatory framework, and the formation of conclusions.

Results. After the standards of the existing legislation were examined and modifications made, the following legislative innovations were emphasized in the many areas of the Ukrainian Parliament's (Verhovna Rada Ukrainy, VRU) activity: These areas include: a) allocating the parliament's powers to determine the details of military administrations' operations, to elect and remove officials; b) restricting the parliament's financial authority; c) enforcing the right to information regarding the posting of draft and adopted laws of Ukraine on the official website; d) organizing the work of factions; e) attempting to move the sessions and voting process online; f) planning Council activities and keeping track of the working hours of Ukrainian deputies.

Prior to anything else, it is necessary to look at the roles and authority of the Ukrainian people's representative in the Verkhovna Rada of Ukraine with regard to carrying out their responsibilities in many areas of life. As a result, it was decided that the Cabinet of Ministers of Ukraine, the executive body, would now have additional authority in the area of economic activity. This would enable it to move swiftly and take decisive action to boost the State of Ukraine's economy. In light of the authority and appointment of military administrations, as well as the election and removal of public officials, the division of powers under the supervision of the parliament is addressed.

Conclusions. Such restriction on parliamentary powers can be implemented in line with the model of constitutionalism established in the Ukrainian Constitution, and in certain instances, it is even expressly permitted by the rules of the direct effect of the Basic Law. The intention is to empower the executive authorities to address issues confronting the state and its bodies as quickly and efficiently as possible, especially when it comes to the state's economic protection and the welfare of the nation.

However, there are powers that belong exclusively to the legislative body, such as the establishment of restrictions on human and civil rights and freedoms by the laws of Ukraine. This situation must be observed following international law and the Constitution of Ukraine, in compliance with the decision of the Constitutional Court of Ukraine

Keywords: representative democracy, state power, parliament, public administration, constitution, interpellation procedure, martial law.

Background

War commenced by the Russian Federation against Ukraine opened a new page in the history of our country and created conditions for the consolidation of both state authorities and society as a whole. The challenges of ensuring national security, sovereignty, and territorial unity of the state led to the introduction of changes to the existing order of governance in the state. However, despite the extremely difficult times for the Ukrainian people, compliance with the norms of the Constitution of Ukraine, the provisions of the current legislation of Ukraine are the basis and should become a guarantee of victory in this terrible war.

Methods

Research methods consist in the study of approaches, forms, and methods that are used during the formation of representative authorities under martial law, which in the future will truly implement the will of the Ukrainian people, ensure transitional justice and rule-making, and shape the agenda of the post-war reconstruction (Andersen, 2015) and development of the Ukrainian state.

To achieve the defined goal, a number of general scientific and special scientific methods were used in the

research process, in particular: abstract-logical – for the analysis of literary sources, the regulatory framework and the formation of conclusions; comparative analysis – to compare the types and forms of implementation of representative democracy in special conditions of martial law; structural analysis in the process of researching constitutional norms and provisions of key laws that provide the foundations of parliamentarism and the exercise of the power of the people through the parliamentary institution of representation.

Results

According to V. A. Goshchovskaya's definition of "parliamentarism" (Goshchovskaya et al., 2021), it can be understood in a dualistic sense as a "special" system of organization of state power, one that is based on the principles of the rule of law, the separation of powers, and the leading role of the parliament in establishing and developing social justice relations. It is a system of creating a mechanism of public power that allows citizens' interests to be taken into account when making state decisions, a mechanism that would ensure real people's power. Additionally, as a part of the public administration system, it is a particular political institution that fosters the growth of

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local self-government. It also helps to: foster the formation and activity of political parties; in parliamentary proceedings, parties safeguard the social, political, and economic interests of groups in representative bodies; foster political indoctrination among citizens; and act as a go-between for the populace and the state. In the parliament, their political platforms are translated into decisions that steer the state's future internal and external political development as well as its management system. It involves increasing individuals' political involvement in public administration and helping them express and consolidate their interests by creating more avenues for communication between the state and structural components of civil society.

Put differently, parliamentarism in public administration is dualistic in character (Tiilikainen, 2019); it is both a unique way for the state to organize its authority and a particular kind of political organization. Furthermore, it should be noted that the parliament really chooses the government and establishes the primary paths for the state's socioeconomic growth. The concept of parliamentarism is defined by the representational conception of the parliament, which is a type of representative democracy and a reflection of the interests of the Ukrainian people through elected representatives (Ferry et al., 2024). But how did Ukraine's use of martial law impact the structure and nature of parliamentarism? Were these developments in line with the rule of law (Clark, & McCoy, 2010), socially essential, and reasonable (proportionate)? Let's discuss this topic in more detail.

The Verkhovna Rada of Ukraine (hereinafter referred to as the VRU) approves the presidential decrees on the introduction of martial law (Law of Ukraine No. 2102-IX dated 02/24/2022 and others) (On the Introduction of Martial Law, 2022). This is in accordance with Clause 31, Part 1 of Article 85 of the Constitution of Ukraine (Constitution of Ukraine, 1996) and Art. 5 of the Law of Ukraine "On the Legal Regime of Martial Law" dated 05/12/2015 No. 389-VIII (On the Legal Regime....., 2015). Therefore, in accordance with the guidelines of the Ukrainian Constitution, the legislative representative body of authority shall not make choices on its own; rather, it shall approve or disapprove the state president's decision to declare martial law.

That is to say, in line with the Constitution (of Ukraine) (1996) regarding the division of powers, the President of Ukraine is the Supreme Commander of the Armed Forces of Ukraine and leads in the areas of state defense and national security (article 17 of article 106 of the Constitution of Ukraine), i.e., tasks that are currently of utmost importance.

This illustrates parliamentarism's limitations in a certain sense, albeit they are appropriate given the circumstances surrounding martial law. Let us talk about how the Verkhovna Rada of Ukraine ought to function when martial law is in effect.

The elements outlined in Art. 12 of the Ukrainian Law "On the Legal Regime of Martial Law" are adhered to by the VRU in its operations. Yet on March 12, 2022, the May 12, 2022, No. 2259-IX (On Amendments to Certain Laws of Ukraine Regarding..., 2022), Law of Ukraine "On Amendments to Certain Laws of Ukraine Regarding the Functioning of the Civil Service and Local Self-Government During Martial Law" (2022) was passed, bringing about the necessary modifications.

Furthermore, the sequence of events is established by the Verkhovna Rada of Ukraine Resolutions "On the organization of the Verkhovna Rada of Ukraine in the

conditions of a state of emergency and/or martial law" dated 24.02.2022 (On the organization of the work of the Verkhovna Rada of Ukraine in the conditions... , 2022), "On the organization of the work of the Verkhovna Rada of Ukraine in connection with the act of armed aggression of the Russian Federation against Ukraine" dated 24.02.2022 No. 2103-IX (On the organization of the work of the Verkhovna Rada of Ukraine in connection... , 2022), and the VRU Resolution "On some issues of organizing the work of the Verkhovna Rada of Ukraine of the ninth convocation during the eighth session under martial law" dated 09/06/2022 No. 2558-IX.

Consequently, in order to provide favorable circumstances for the execution of policies aimed at defending the state's sovereignty, territorial integrity, and inviolability against the Russian Federation's armed assault against Ukraine it is stated that the VRU operates continuously in plenary session mode and that the Chairman of the Verkhovna Rada of Ukraine (First Deputy or Deputy Chairman of the Verkhovna Rada of Ukraine, who performs his duties) has the authority to choose the location and schedule of the plenary session as well as the procedure for voting on the issues that are being discussed (On certain issues..., 2022).

Article 83 of the Ukrainian Constitution states that the Verkhovna Rada of Ukraine must convene without calling a meeting within two days of the President of Ukraine announcing the imposition of martial law or a state of emergency in the country or in certain of its localities. Simultaneously, in case the Verkhovna Rada of Ukraine's term of office ends during a martial law or state of emergency, its powers will be prolonged until the first meeting of the first session of the Verkhovna Rada of Ukraine, which is elected following the revocation of the state of emergency or martial law. When society's requirements and time allow, it will become evident whether or not it makes sense to challenge this section of the Ukrainian Constitution (On the Legal Regime..., 2015).

The first requirement for powers during martial law is found in clause 31 of Article 85 of the Ukrainian Constitution, which states that decrees pertaining to the introduction of martial law or a state of emergency in Ukraine or in some of its localities, on general or partial mobilization, and on the declaration of some localities as ecological emergency zones must be approved within two days of the President of Ukraine's appeal.

The first prerequisite for any activity, including that of the Ukrainian Verkhovna Rada, is the execution of the laws now in effect. Indeed, Article 9 of the Law of Ukraine "On the Legal Regime of Martial Law" stipulates that state authorities and local self-government bodies must exercise their powers during martial law conditions. It also states that the President of Ukraine and the Verkhovna Rada of Ukraine act solely in accordance with, and within the parameters of, the laws and Constitution of Ukraine (Constitution of Ukraine, 1996).

After examining the standards of the existing legislation and the modifications made to it, the following innovations in the legislation throughout the VRU's many activity areas may be highlighted: the division of powers among the parliament with regard to the details of military administrations' operations, official elections, and dismissals; the financial domain; the application of the right to information regarding the posting of draft and adopted laws of Ukraine on the official website; the organization of the work of factions; attempts to move sessions and the voting process online; the Council's operations and the recording of the working hours of the People's Deputies of Ukraine.

Makes updates to the Verkhovna Rada of Ukraine's authority over military administration operations by revising Article 10 of the "On the Legal Regime of Martial Law" law. On the President of Ukraine's proposal, the Verkhovna Rada of Ukraine may decide to give military administrations the authority to exercise the functions of the village, settlement, city council, executive committee, village, settlement, mayor, and so on for the duration of martial law and for 30 days after its termination or cancellation. This includes the ability to subordinate these councils to the military administration. The Verkhovna Rada of Ukraine may decide to resume local self-government body operations in the relevant region's territory upon the President of Ukraine's request in the event that threats to law and order and security have been eliminated. This decision may be made before the 30-day period stipulated in part two or three of this article, but not before martial law has been terminated or canceled (On the Legal Regime..., 2015).

In line with the Law of Ukraine "On Amendments to Certain Laws of Ukraine Regarding the Functioning of the Civil Service and Local Self-Government during the Period of Martial Law", dated March 12, 2022 No. 2259-IX, which states that the Verkhovna Rada of Ukraine may make a decision regarding the dismissal of an official from a position during the period of martial law, the amendments also included the implementation of the right to elect and dismiss officials. Except in cases where specific laws specify otherwise, the Verkhovna Rada of Ukraine has the authority to nominate and remove officials, even when it expresses lack of confidence in them. This does not include representatives whose nominations and removals are handled by the Ukrainian Verkhovna Rada on behalf of the President or the Cabinet of Ministers (On Amendments to Certain Laws of Ukraine Regarding..., 2022). Such a motion of no confidence may be brought forth by the chairman of the Verkhovna Rada of Ukraine or by at least one-fourth of the People's Deputies of Ukraine from the Verkhovna Rada of Ukraine's constitutional composition. It may be considered immediately, without regard to the prescribed procedures, and it is deemed adopted if the majority of the Verkhovna Rada of Ukraine's constitutional composition votes in favor of it. The most crucial thing to note is that expressing this kind of mistrust implies that the individual is being fired. In other words, the interpellation method that was still a draft law in 2020 (On Interpellation..., 2020).

Significant changes pertaining to the VRU's financial authority, including its transfer to executive authorities. As a result, the Verkhovna Rada assigns, by decree of the Cabinet of Ministers of Ukraine, the responsibility of obtaining loans based on concluded international treaties of Ukraine and amending said treaties to the Minister of Finance of Ukraine during the duration of martial law in that country. The Verkhovna Rada of Ukraine is not required to ratify any of the designated international treaties that pertain to Ukraine, including those that contain provisions pertaining to the waiver of Ukraine's sovereign immunity in potential disputes involving those commitments". (modifications to the Budget Code of Ukraine's "Final and Transitional Provisions" section) (On Amendments to the Tax Code..., 2022).

As a result, the representatives of the people do not approve of the state being in debt for many generations to come (McBride et al., 2020). First, the US Law "On Lendlease" (Ukraine Democracy Defense, 2022) might serve as an example, as it stipulates that all expenditures shall be reimbursed in the manner listed below. Furthermore, it is remarkable how governments that offer

loans – a sort of help that is not free – as well as demand that Ukraine be deprived of its sovereign rights – that is, the ability to defend its legal rights in court – in such a trying position for the country (Villaroman, 2010). That being said, the state of Ukraine approves of everything, even in the absence of the MPs' approval (since they reflect the will of the people).

Clause 4 of Article 92 of the Regulations of the VRU (hereinafter referred to as the Regulations) states that all registered bills, drafts of other acts, and accompanying documents are entered into a single automated system and posted on the Verkhovna Rada website. This realization of the right to information is the next feature. Furthermore, as per Clause 5 of Article 139 of the Verkhovna Rada Regulations, laws, resolutions, and other acts of the Verkhovna Rada must be made public on their official website in addition to being published in official publications (On the Regulations of the Verkhovna Rada of Ukraine, 2010).

Therefore, it is possible to discuss the existence of a violation of citizens' rights to information (Akdeniz, 2011) regarding the freedom to receive, use, distribute, store, and protect information necessary for the realization of one's rights, freedoms, and legitimate interests, as well as the duty of subjects of power to inform the public and mass media about their activities and decisions (Articles 5–6) of the Law of Ukraine "On Information" (On Information, 1992). This is based on the fact that the aforementioned information about draft laws and adopted legislative acts is either not received at all or is received after a delay of two to three weeks.

Clause 5 of Article 60 of the VRU Regulations pertaining to the deputy faction activity method has been modified. Therefore, when a political party that has established a parliamentary fraction in the Verkhovna Rada is banned by the court, the party's parliamentary faction is dissolved by the Chairman of the Verkhovna Rada of Ukraine once the court's order to prohibit the political party takes effect.

The question that remains, though, is how proportionate (commensurate) are the amendments made by the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Regarding the Prohibition of Political Parties" dated 05.03.2022, specifically to the Administrative Judicial Code of Ukraine dated 07.06.2005 (Administrative Judicial Code of Ukraine, 2005), as decided by the VRU, regarding the transfer of jurisdiction in cases involving political party bans from the city of Kyiv to the city of Lviv. Accordingly, under martial law, administrative proceedings pertaining to the aforementioned matters are heard as a court of first instance by the appellate administrative court in the appellate district, which encompasses the city of Lviv (On Amendments to some Laws...Political Parties, 2022). However, given the level of security in Kyiv has not changed from May 2022 – in fact, it may have even improved – compared to Lviv, the grounds for the transfer of jurisdiction remain unclear.

A draft law on conducting sessions remotely (Draft of the Law of Ukraine "On Amendments to the Regulations of the Verkhovna Rada of Ukraine on Conducting Remote Sessions of the Verkhovna Rada of Ukraine" No. 7129 dated 08.03.2022) (On Amendments to the Regulations..., 2022) was one of the most recent innovations in the work of the Verkhovna Rada of Ukraine.

However, in the case that martial law is declared, the Verkhovna Rada "is gathering" for the first time, an extraordinary session, according to Art. 82, 83 of the Ukrainian Constitution. The Academic Explanatory Dictionary of the Ukrainian Language states that the semantics of this term

highlight the primary objective, which is "to be in one place" (Bilodid, 1980). Simultaneously, Article 2 of the Verkhovna Rada Regulations stipulates that meetings must take place in the Verkhovna Rada building (5 Hrushevskogo St., Kiev), unless otherwise decided by the Verkhovna Rada through a resolution approved by the majority of the country's deputies elected according to the Constitution. The VRU Regulations' Article 60, Clause 5, which deals with the deputy faction activity mechanism, has been changed. The Verkhovna Rada convenes in extraordinary session at a location chosen by the chairman in the event that martial law is imposed. But the Verkhovna Rada is, once more, "continuing to work".

In addition, Art. 84 of the Constitution of Ukraine establishes that decisions of the Verkhovna Rada are made exclusively at its plenary sessions by voting, which is carried out by the people's deputy of Ukraine in person. Which is actually difficult to provide online in the absence of appropriate technical programs for such control. It is clear that it is not a "good idea" to develop the corresponding software in a war, which costs a lot of money.

As a result, the assembly's norms stem from the parliament's charter as a representative body and the many years of turbulent Ukrainian history in which people's representatives met to determine the state's fate during its darkest moments (Cossack Rada, Central Rada, etc.). It is true that there were no technological tools available at the time, but given the significance and content of the decisions made during the martial law era, it is not feasible for the deputies to be "in the kitchen in slippers" and attend the Verkhovna Rada meetings when the state's most pressing problems were being resolved.

However, in our opinion, it is wise to convene in a safer location or seriously consider other options for holding meetings in the event that there is a genuine threat to the deputies' physical safety or health. However, there must be genuine threats and dangers that affect not just the deputies but also the civilian population as a whole. Note that although the majority of people's deputies presented the aforementioned measure, it was considered in committee and recommended for inclusion in the agenda, but it did not obtain enough votes to be included in the agenda as required by procedure. But if there is a real threat to the deputies' physical safety or health, we believe it is prudent to move the meetings to a safer place or give alternative options careful thought. But there have to be real risks and hazards that impact the civilian community as a whole in addition to the people's deputies. It should be noted that although though the majority of people's deputies proposed the aforementioned proposal, it was not approved by enough votes to be placed on the agenda as needed by process, despite being discussed and recommended for inclusion in committee.

Discussion and conclusions

The issues of limitation of parliamentarism, participation of representatives of the people of Ukraine in the establishment of restrictions on human and civil rights and freedoms exclusively by the laws of Ukraine by the Parliament of the State, and the actual exercise of such powers by the executive branch are debatable. Thus, the provisions of bylaws, in violation of international law and the Constitution of Ukraine, the decision of the Constitutional Court of Ukraine of 28.08.2020 No. 10-r/2020, define derogation on human and civil rights and freedoms, and this situation needs to be addressed.

We can declare that there has been a reduction in parliamentarism in line with the rules of the current Ukrainian legislation regarding military aggression and the

imposition of martial law. However, in accordance with the model of constitutionalism established in the Ukrainian Constitution, such a restriction can be applied, and in some cases, it is even explicitly allowed by the rules of the direct effect of the Basic Law, with the goal of enabling the executive authorities to respond to challenges facing the state and its bodies as quickly and effectively as possible, particularly when it comes to the economic protection of the state and people's welfare.

Authors' contributions: Nadiia Maksimentseva (corresponding author) – framing the goals and objectives of the research, writing the draft of the article; Maksym Maksimentsev (co-author) – methodology, addition of research materials, revision and editing.

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ПРЕДСТАВНИЦЬКА ДЕМОКРАТІЯ І ПАРЛАМЕНТАРИЗМ В УМОВАХ ВОЄННОГО СТАНУ

Вступ. Присвячено дослідженню особливостей реалізації парламентаризму на засадах представницької демократії в умовах воєнного стану. Наголошено, що воєнна агресія зумовила необхідність створення механізму захисту держави та її органів, а також ефективного механізму реагування на швидкі зміни ситуації та збереження повноцінної та ефективної роботи органів державної влади, які з'явилися в державі саме завдяки феномену представництва та ролі парламентаризму.

Методи. У процесі дослідження використано як загальнонаукові, так і спеціальнонаукові методи, а саме: структурний аналіз для вивчення конституційних норм і основних положень закону, які є наріжним камінням парламентаризму та засобів здійснення народом своєї влади через парламентський інститут представництва; порівняльний аналіз для порівняння видів і форм реалізації представницької демократії в унікальних умовах воєнного стану; абстрактно-логічний метод – для аналізу літературних джерел, нормативної бази та формування висновків.

Результати. Після вивчення положень чинного законодавства і нещодавніх новацій законотворця та внесення змін було наголошено на необхідності подальших законодавчих новацій у багатьох сферах діяльності Верховної Ради України (ВРУ). До завдань входить: а) розподіл повноважень парламенту щодо визначення деталей діяльності військових адміністрацій, обрання та звільнення посадових осіб; б) обмеження фінансових повноважень парламенту; в) забезпечення права на інформацію щодо розміщення проєктів та прийнятих законів України на офіційному веб-сайті; г) організація роботи фракцій; д) перенесення засідань та процесу голосування у режим онлайн; е) планування діяльності Ради та ведення обліку робочого часу народних депутатів України.

Висновки. Зроблено припущення, що обмеження функціоналу парламентаризму під час воєнного стану можна реалізувати відповідно до моделі конституціоналізму, закріпленої у Конституції України, а в окремих випадках навіть це прямо допускається нормами прямої дії Основного Закону. Метою є надання повноважень органам виконавчої влади якомога швидше та ефективніше вирішувати питання, що постають перед державою та її органами, особливо коли йдеться про економічний захист держави та добробут нації.

Ключові слова: представницька демократія, державна влада, парламент, публічне управління, конституція, воєнний стан.

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