THE PRINCIPLE OF CONTINUITY AND CONTINUITY IN THE ACTIVITIES OF THE PRESIDENT OF UKRAINE

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The article analyzes the norms of the Constitution of Ukraine, which guarantee every citizen the right to directly manage state affairs, and provides a constitutional and legal description of the principle of continuity and continuity in the activities of the President of Ukraine. It is noted that the constitutional right of a citizen to participate in the management of state affairs is not absolute and its implementation has its own constitutional and legal limits. Russia's full-scale invasion of Ukraine continues. Martial law has been introduced in Ukraine. Elections of the President of Ukraine are not held. This limitation of the right of citizens who would like to exercise their constitutional right to participate in the management of state affairs by electing the Head of State is not determined by law arbitrarily, but in accordance with the Constitution of Ukraine, in particular, the principle of the rule of law established by it and its requirement – the principle of proportionality). The limitation of this constitutional right is due to the protection of the constitutional legal order, rights, freedoms and dignity of a person and citizen, the interests of society, the state, is a proper and necessary measure to achieve such a legitimate goal, and also ensures a fair balance between the requirements of public interests and the protection of the citizen's constitutional right to participate in the management of state affairs. The principle of continuity and continuity in the activity of the President of Ukraine is characterized. Attention is focused on the exceptions of Art. 108 of the Constitution of Ukraine, when the term of office of the President of Ukraine may be shorter than 5 years or longer than 5 years. Attention is drawn to the term of office of the Presidents of Ukraine L. D. Kuchma and V. A. Yushchenko. It is argued that the President of Ukraine until the moment the newly elected President of Ukraine takes office is the President of Ukraine, and not the acting President. President of Ukraine. Only if the powers of the President of Ukraine are prematurely terminated, the Chairman of the Verkhovna Rada of Ukraine becomes acting President.

Key words: the right to participate in the management of state affairs, the principle of continuity and succession, the President of Ukraine, continuity, constitutional and legal limits of the right to participate in the management of state affairs, the martial law regime.

Formulation of the problem

The Constitution of Ukraine guarantees every citizen the right to directly manage state affairs [1]. On May 20, 2019, the inauguration of the President of Ukraine took place. Regular elections of the President of Ukraine in 2024 have not been scheduled. This caused discussions among politicians, experts, scientists regarding the limitation of the right of citizens to participate in the management of state affairs directly – by electing the Head of State, as well as whether the President of Ukraine will be the acting President of Ukraine after the expiration of the 5-year term whether, in accordance with the principle of continuity and continuity in the activities of the President of Ukraine, the powers will pass to the Chairman of the Verkhovna Rada of Ukraine and others.

State of problem research

In the science of constitutional law, the issues of limiting human rights, constitutional principles, interaction between the President of Ukraine and the Verkhovna Rada of Ukraine were studied in the works of Yu. Bysaga, O. Vasylchenko, L. Deshko, O. Lotyuk, V. Fedorenko and other scientists [2-13]. At the same time, this is the first time in the history of Ukraine that the President of Ukraine will perform his duties for an indefinite period under martial law. This created a field for scientific discussions regarding the principle of continuity and continuity in the activities of the President of Ukraine and ensuring the stability of the constitutional order in conditions of war with these principles.

The purpose of the article is to characterize the principle of continuity and continuity in the activities of the President of Ukraine.

Presenting main material

According to Art. 38 of the Constitution of Ukraine, citizens have the right to participate in the management of state affairs, in all-Ukrainian and local referendums, to freely elect and be elected to state and local self-government bodies [1]. The Basic Law of Ukraine not only declares the right of citizens to participate in the management of state affairs, but also defines the mechanisms for its implementation [14].

According to part four of Article 15 of the Constitution of Ukraine, the state guarantees freedom of political activity, which is not prohibited by the Constitution and laws of Ukraine [1]. This means that at the constitutional and legislative levels, certain restrictions and conditions for the realization of the right of citizens to freedom of political activity may be established [15].

Ensuring compliance with the periodicity of the elections of the President of Ukraine established by the current legislation of Ukraine is of decisive importance for the functioning of a democratic state, its republican foundations (paragraph one of subparagraph 3.1 of point 3 of the motivational part of the Decision of the Constitutional Court of Ukraine No. 8-рп/2009 dated April 28, 2009) [16]. The right to be elected in the elections of the President of Ukraine consists in the possibility of a citizen of Ukraine who has reached the age of thirty-five, has the right to vote, has lived in Ukraine for the last ten years before the election day and speaks the state language (part two of Article 103 of the Basic Law of Ukraine), to be elected in the presidential elections of Ukraine [15]. Russia's full-scale invasion of Ukraine continues.

Martial law has been introduced in Ukraine [17]. Elections of the President of Ukraine are not held. This limitation of the right of citizens who would like to exercise their right to participate in the management of state affairs by electing the Head of State is not determined by law arbitrarily, but in accordance with the Constitution of Ukraine, in particular, the principle of the rule of law established by it and its requirement – the principle of proportionality (proportionality). The limitation of this constitutional right is due to the protection of the constitutional legal order, rights, freedoms and dignity of a person and citizen, the interests of society, the state, is a proper and necessary measure to achieve such a legitimate goal, and also ensures a fair balance between the requirements of public interests and the protection of the citizen's constitutional right to participate in the management of state affairs.

According to Article 1 103 of the Constitution of Ukraine: "The President of Ukraine is elected by the citizens of Ukraine on the basis of universal, equal and direct suffrage by secret ballot for a term of five years" [1]. Article 108 of the Constitution of Ukraine contains exceptions when the term of office of the President of Ukraine may be shorter than 5 years or longer than 5 years. During the period from the restoration of Ukraine's independence in 1991 until today, there were cases when the term of office of the Presidents of Ukraine was more than 5 years (L.D. Kuchma 07.19.1994-11.30.1999 (5 years, 4 months and 11 days; 11/30/1999 – 01/23/2005 (5 years, 1 month and 24 days), V. A. Yushchenko 01/23/2005 – 02/25/2010 (5 years 1 month and 2 days).

As already mentioned above, the presidential elections of Ukraine will not be held in 2024 under martial law. The President of Ukraine is the President of Ukraine – he is the head of the state and speaks on its behalf – until the mo-

ment of his accession to the post of the newly elected President of Ukraine. The President of Ukraine performs all functions assigned to him, the range of his powers remains unchanged. Moreover, the President of Ukraine does not become acting. of the President of Ukraine because his powers did not end prematurely. In the history of Ukraine since the restoration of its independence in 1991, there was a case when acting of the President of Ukraine, but this case concerns the situation when the powers of the President of Ukraine V. Yanukovych ended prematurely and the Chairman of the Verkhovna Rada of Ukraine became acting President of Ukraine. It is not possible to extrapolate this situation to the situation when the powers of the President of Ukraine in 2024, because there is no premature termination of the powers of the current President of Ukraine – on the contrary, the President of Ukraine will exercise his powers for more than 5 years under martial law. It is also impossible to entrust the duties of the President of Ukraine to the Chairman of the Verkhovna Rada of Ukraine because the President of Ukraine did not submit his credentials ahead of time.

According to Part 2 of Art. 108 of the Constitution of Ukraine, the powers of the President of Ukraine are terminated early in the event of: 1) resignation; 2) inability to fulfill one's powers due to one's health; 3) removal from office by impeachment; 4) death [1]. The resignation of the President of Ukraine takes effect from the moment he personally announces his resignation at a meeting of the Verkhovna Rada of Ukraine (Article 109 of the Constitution of Ukraine) [1]. The inability of the President of Ukraine to exercise his powers due to his state of health must be established at a meeting of the Verkhovna Rada of Ukraine and confirmed by a decision adopted by a majority of its constitutional composition on the basis of a written submission to the Supreme Court – at the request of the Verkhovna Rada of Ukraine, and a medical opinion (Article 110 of the Constitution of Ukraine [1]). The President of Ukraine may be removed from office by the Verkhovna Rada of Ukraine by impeachment if he commits treason or another crime (Article 111 of the Constitution of Ukraine [1]).

In the case of early termination of the powers of the President of Ukraine in accordance with Articles 108, 109, 110, 111 of this Constitution, the performance of the duties of the President of Ukraine for the period before the election and entry into office of the new President of Ukraine is entrusted to the Chairman of the Verkhovna Rada of Ukraine [1]. The Chairman of the Verkhovna Rada of Ukraine during his performance of the duties of the President of Ukraine cannot exercise the powers provided for in clauses 2, 6-8, 10-13, 22, 24, 25, 27, 28 of Article 106 of the Constitution of Ukraine (Article 112 of the Constitution of Ukraine [1]).

The principle of continuity and continuity in the activities of the President of Ukraine provides that there cannot be a vacuum in the exercise of power by the President of Ukraine. In accordance with Article 108 of the Constitution of Ukraine, the President of Ukraine exercises his powers until the newly elected President of Ukraine takes office [1]. Therefore, if the powers of the President of Ukraine were not terminated pre-term, then there cannot be a period of time that can be called a "break" between the performance of the powers of the President of Ukraine and the newly elected President of Ukraine. The provisions of the Constitution of Ukraine were developed in the laws of Ukraine. In accordance with Clause 1 of Art. 10 of the Law of Ukraine "On the Legal Regime of Martial Law" during the period of martial law, the powers of the President of Ukraine, the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine, the National Bank of Ukraine, the Commissioner of the Verkhovna Rada of Ukraine for Human Rights, courts, prosecutor's offices, bodies, that carry out operational investigative activities, pre-trial investigation, intelligence agencies and agencies whose subdivisions carry out counter-intelligence activities [18].

Conclusions

1. Elections of the President of Ukraine are not held under martial law. This limitation of the right of citizens who would like to exercise their constitutional right to participate in the management of state affairs by electing the Head of State is not determined by law arbitrarily, but in accordance with the Constitution

of Ukraine, in particular, the principle of the rule of law established by it and its requirement – the principle of proportionality). The limitation of this constitutional right is due to the protection of the constitutional legal order, rights, freedoms and dignity of a person and citizen, the interests of society, the state, is a proper and necessary measure to achieve such a legitimate goal, and also ensures a fair balance between the requirements of public interests and the protection of the citizen's constitutional right to participate in the management of state affairs.

2. The principle of continuity and continuity in the activities of the President of Ukraine provides that there cannot be a vacuum in the exercise of power by the President of Ukraine. If the powers of the President of Ukraine were not terminated pre-term, then there cannot be a period of time that can be called a "break" between the performance of the powers of the President of Ukraine and the newly elected President of Ukraine. The President of Ukraine will exercise his powers until he takes office as the newly elected President of Ukraine.

3. The list of grounds for early termination of the powers of the President of Ukraine contained in the Constitution of Ukraine is exhaustive. The laws of Ukraine, which develop the provisions of the Constitution of Ukraine, cannot provide for other or additional grounds for early termination of the powers of the President of Ukraine, as they would contradict the Constitution of Ukraine.

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ПРИНЦИП БЕЗПЕРЕРВНОСТІ ТА НАСТУПНОСТІ В ДІЯЛЬНОСТІ ПРЕЗИДЕНТА УКРАЇНИ

В статті аналізуються норми Конституції України, які гарантують кожному громадянину право безпосередньо здійснювати управління державними справами та надається конституційно-правова характеристика принципу безперервності та наступності в діяльності Президента України. Зазначається, що конституційне право громадянина брати участь в управлінні державними справами не є абсолютним і його здійснення має свої конституційно-правові межі. Триває повномасштабне вторгнення росії в Україну. В Україні запроваджено режим воєнного стану. Вибори Президента України не проводяться. Таке обмеження права громадян, які б хотіли реалізувати своє конституційне право брати участь в управлінні державними справами шляхом обрання Главою держави, визначені законом не свавільно, а відповідно до Конституції України, зокрема і до встановленого нею принципу верховенства права та його вимоги – принципу домірності (пропорційності). Обмеження цього конституційного права обумовлене захистом конституційного пра-

вопорядку, прав, свобод та гідності людини і громадянина, інтересів суспільства, держави, є належним та необхідним заходом для досягнення такої легітимної мети, а також забезпечує справедливий баланс між вимогами публічних інтересів та захистом конституційного права громадянина на участь в управлінні державними справами.

Охарактеризовано принцип безперервності та наступності в діяльності Президента України. Акцентується увага на винятках ст. 108 Конституції України, коли строк повноважень Президента України може бути коротшим за 5 років або довшим за 5 років. Звертається увага на терміни виконання повноважень Президентами України Л. Д. Кучмою, В. А. Ющенком. Аргументується, що Президент України до моменту вступу на пост новообраного Президента України є Президентом України, а не в.о. Президента України. Лише якщо повноваження Президента України припинилися достроково Голова Верховної Ради України стає виконуючим обов'язки Президента.

Ключові слова: право на участь в управлінні державними справами, принцип безперервності та наступності, Президент України, континуїтет, конституційно-правові межі права на участь в управлінні державними справами, режим воєнного стану.