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LEGAL AND POLITICAL CONSEQUENCES OF THE CONSTITUTIONAL PAUSE FOR UKRAINE'S INTEGRATION INTO THE EU

ПРАВОВІ ТА ПОЛІТИЧНІ НАСЛІДКИ КОНСТИТУЦІЙНОЇ ПАУЗИ ДЛЯ ІНТЕГРАЦІЇ УКРАЇНИ ДО ЄС



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The article analyzes the impact of the "constitutional pause" implemented in Ukraine during martial law on the country's integration process with the European Union. It examines the legal, political, and social consequences of this practice, particularly its effect on upholding citizens' rights and freedoms, the stability of the legal system, and Ukraine's international reputation.

It notes that on July 23, 2024, the martial law in Ukraine was extended for the twelfth time since the full-scale invasion began. The official stance is that there are no time limits on martial law as per the Law of Ukraine "On the Legal Regime of Martial Law." However, under Article 19 of Ukraine's Constitution, government authorities must act strictly within their constitutional powers, and no provisions allow for the repeated extension of martial law.

The constitutional pause, introduced by the President of Ukraine on December 23, 2022, at the Conference of Ukrainian Ambassadors, helped resolve this legal conflict. The International Court of Justice (ICJ) considers statements and actions of high-level state officials as holding significant evidentiary value. This principle was established in cases such as *Cambodia vs. Thailand over the Preah Vihear Temple* (1962) and *Norway vs. Denmark over Eastern Greenland*, recognized by the Permanent Court of International Justice.

Methods. The methodological basis of the research is modern general scientific and special methods of cognition, among which the following should be highlighted: formal-legal method, comparative-legal method for the analysis of international legal documents, case method for researching the practice of International Court of Justice (ICJ) in the relevant category of cases.

Results. 1. The category of "constitutional pause" can be hypothetically viewed as a temporary suspension or limitation of specific provisions of the Constitution during emergencies, such as wartime or a state of emergency, to ensure effective functioning of state bodies in critical situations. It involves adapting the constitutional order to extraordinary conditions for prompt responses to challenges related to national security, war, or other emergencies. The constitutional pause may allow for swift decision-making that deviates from standard procedures, but it must uphold the fundamental principles of the rule of law and protect human rights to avoid violations of international obligations and standards.

2. The implementation of a constitutional pause during martial law in Ukraine allows state bodies to make prompt decisions in wartime. However, the temporary suspension of the Constitution or its key provisions may contradict European legal standards, particularly calling into question the adherence to the rule of law, which is fundamental for EU membership.

3. Since the Constitution of Ukraine guarantees fundamental rights and freedoms of citizens, their temporary limitation or postponement may provoke a negative reaction from the European Union, which places great importance on human rights. Any restrictions resulting from the constitutional pause could pose a serious obstacle to Euro-integration.

4. Introducing a constitutional pause also carries political risks for the stability and functioning of democratic institutions in Ukraine. The European Union expects democratic processes to remain transparent and accountable, even in critical conditions like war. The temporary suspension of certain democratic mechanisms may raise concerns about the state's ability to maintain a balance between security and democratic freedoms, potentially impacting

political dialogue with the EU and leading European partners to reconsider their expectations regarding Ukraine as a reliable candidate for membership..

Keywords: European integration, constitutional pause, political dialogue, Association Agreement with the European Union.

У статті аналізується вплив конституційної паузи, що була впроваджена в Україні під час дії воєнного стану, на процес інтеграції країни до Європейського Союзу. Розглядаються правові, політичні та соціальні наслідки цієї практики, зокрема її вплив на дотримання основних прав і свобод громадян, стабільність правової системи та міжнародну репутацію України.

Зазначено, що 23 липня 2024 р. відбулось дванадцять продовження воєнного стану з початку повномасштабного вторгнення. Офіційна позиція полягає в тому, що в Законі України «Про правовий режим воєнного стану» немає жодних обмежень щодо строків його введення.

Встановлено, що, відповідно до ст. 19 Конституції України, органи державної влади, їх посадові особи зобов'язані діяти лише на підставі, в межах повноважень та у спосіб, що передбачені Конституцією та законами України. Тобто головне не те, що немає жодних обмежень щодо строків введення воєнного стану, а те, що Конституцією та законами України не передбачено його повторне продовження.

Вийти з такої правової колізії допомогло введення в Україні конституційної паузи, про що об'явив Президент України 23 грудня 2022 р. на Конференції послів України

Оскільки щодо заяв представників держав вищого рівня та їхніх дій Суд ООН дотримується позиції, що такі заяви та дії мають особливу доказову цінність, відсутні підстави ігнорувати офіційну заяву Президента.

Така позиція сформульована Міжнародним Судом ООН у справі зі спору між Камбоджею і Таїландом щодо суверенітету над районом храму Преах Віхеар, розглянутій Міжнародним Судом ООН 15 червня 1962 р.

У свій час і Постійна палата міжнародного правосуддя в рішенні по спору між Норвегією і Данією про Східну Гренландію визнала зобов'язувальним висловлювання норвезького міністра закордонних справ. Так само розцінюється в міжнародно-правовій літературі заява Чжоу Еньлай, який, перебуваючи з візитом в Індії 1956 року, в перемовинах з прем'єр-міністром Індії Д. Неру про індокитайський кордон заявив про визнання китайським урядом лінії Макмагона. Ця заява розцінюється як безумовне визнання Китаєм лінії Макмагона, що становить угоду сторін про даний кордон.

Категорію «конституційна пауза» гіпотетично пропонується розглядати як тимчасове призупинення або обмеження дії окремих положень Конституції в умовах надзвичайних обставин, таких як воєнний стан, з метою забезпечення ефективного функціонування державних органів у критичних ситуаціях. Вона передбачає певну адаптацію конституційного ладу до важких умов для оперативного реагування на виклики, що виникають у зв'язку з національною безпекою, війною або іншими надзвичайними обставинами. Конституційна пауза була впроваджена для швидкого прийняття рішень, що не відповідають стандартним процедурам мирного часу, проте в цій ситуації повинні зберігатися основоположні принципи верховенства права та забезпечуватися захист прав людини, щоб уникнути порушень міжнародних зобов'язань і стандартів.

Отже, впровадження конституційної паузи під час воєнного стану в Україні дає змогу державним органам ухвалювати оперативні рішення в умовах війни. Але тимчасове призупинення дії Конституції України чи її ключових положень може суперечити європейським правовим стандартам. Зокрема, це може поставити під сумнів дотримання принципу верховенства права, що є фундаментом для членства в ЄС.

Ключові слова: *Європейська інтеграція, конституційна пауза, політичний діалог, Угода про асоціацію з Європейським Союзом.*

The aim of the article is to analyze the impact of the constitutional pause introduced during martial law on Ukraine's integration process with the European Union. The article examines the legal and political consequences of this pause, particularly its effect on Ukraine's fulfillment of its obligations to the EU, adherence to European standards of justice and human rights, as well as the alignment of Ukraine's national policies with the criteria for EU membership.

The problem lies in the need to research and analyze the legal consequences and impact of implementing a constitutional pause during martial law on Ukraine's European integration processes.

Analysis of Recent Research and Publications. O. Morgun analyzed the existence of limitations on the duration of the imposition of martial law in Ukraine. S. S. Zdorovko researched international political dialogue as the foundation for Ukraine's integration into the EU. R. Sulyma and A. studied the grounds and legality of Ukraine's temporary derogation from the European Convention on Human Rights. An evaluation of the legal consequences and impact of implementing a constitutional pause during martial law on Ukraine's Eurointegration processes has not been conducted.

Article Objectives: the objectives of the article are to analyze the legal implications of the constitutional pause for Ukraine's national legislation and its compliance with European legal standards, and to assess the political consequences of the constitutional pause, particularly concerning the implementation of the Association Agreement and the alignment with European Union standards.

Presentation of the main research material. Cooperation between Ukraine and the European Communities was initiated by the Partnership and Cooperation Agreement between Ukraine and the EU and its member states, signed on June 14, 1994, in Luxembourg. In 2007, to update the format, objectives, and mechanisms of cooperation, negotiations were launched between Ukraine and the EU to conclude a new foundational treaty on these issues [8, p. 153]. An important factor influencing both Ukraine's domestic and foreign financial policy is the 2014 Association Agreement between Ukraine and the EU, which has already become part of national legislation [7, pp. 97–98].

The Association Agreement between Ukraine and the EU outlined trends for the gradual convergence of Ukraine and the EU in the economic sphere. Additionally, obtaining candidate status for EU membership supports this process [16, p. 58; 3]. Ukraine's integration into the European Union requires the adaptation of national legislation to European standards to establish the rule of law, ensure social protection for citizens, and achieve a stable economy. The key means of spreading the Union's common values is through the strategy of expanding relations with neighboring countries [2].

According to the Preamble of the Association Agreement, Ukraine's political association and economic integration with the European Union will depend on the progress in implementing the provisions of this Agreement. Ukraine will gradually align its legislation with EU law (Article 474) [17]. Harmonization of Ukrainian legislation with that of the European Union will help avoid legal obstacles due to differences in national law and create unified legal standards across various sectors of society. The unification aims at bringing legal frameworks closer together to ensure consistent regulation of similar relations [6, p. 29]. One of the key requirements the European Union imposes on candidates for membership is the alignment of their national legislation with EU law [11, p. 245]. Ukraine aspires to full EU membership but lags significantly behind EU countries in terms of economic development, has limited competitiveness, and faces high levels of corruption [9, p. 23]. These challenges indicate Ukraine's non-compliance with the Copenhagen criteria, which require respect for democratic principles, the rule of law, and the protection of human rights and fundamental freedoms. Therefore, the Agreement's participants committed to engage in dialogue and cooperation to bring Ukraine closer to meeting these requirements. As M. Sarakutsa writes, ensuring compliance with and protection of human rights is an integral part of interstate cooperation, and the principle of human rights observance has become central to the functioning of EU institutions and bodies [15, p. 80].

Therefore, the integration of a candidate country into the EU is possible only if three accession criteria, defined at the European Council in Copenhagen in 1993 and thus referred to as the "Copenhagen criteria," are met, namely:

Political criteria: stable institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities;

Economic criteria: a functioning market economy and the ability to cope with competition and market forces within the EU;

EU *acquis* criteria: the ability to assume and effectively implement the obligations of membership, including adherence to the objectives of a political, economic, and monetary union [1].

According to Part 2 of Article 1 of the Association Agreement, its objectives include, among others, cooperation in the areas of justice, freedom, and security in order to ensure the rule of law and respect for human rights [12]. Of course, by joining the Convention for the Protection of Human Rights and Fundamental Freedoms back in 1997, Ukraine committed to aligning its regulations with it and implementing its principles and standards in the practical activities of state authorities [18, p. 3]. It can be said that our state has already made significant progress in this direction.

The main problem in recent years that has significantly affected Ukraine's ability to meet the high requirements for EU membership is the armed aggression of the Russian Federation, which resulted in the imposition of martial law in Ukraine on February 24, 2022. The Verkhovna Rada of Ukraine adopted as a whole the draft Law of Ukraine on the approval of the Decree of the President of Ukraine "On the Extension of the Martial Law in Ukraine" on July 23, 2024 (registration No. 11433 dated 23.07.2024), submitted by the President of Ukraine.

The bill was developed in accordance with Article 5 of the Law of Ukraine "On the Legal Regime of Martial Law" with the aim of ensuring the extension of the martial law in Ukraine due to the ongoing armed aggression of the Russian Federation against Ukraine. The project proposes to approve the Decree of the President of Ukraine dated July 23, 2024, No. 469/2024 "On the Extension of the Martial Law in Ukraine." It is noted that the bill was developed in accordance with paragraph 20 of Part 1 of Article 106 of the Constitution of Ukraine [4]. This has already been the twelfth extension of martial law since the beginning of the full-scale invasion.

Is it legal to extend martial law an indefinite number of times? The official position of the state was expressed by lawyer Oleksandr Morgun, who noted in the publication "Fakty" that there are no restrictions regarding the duration of its implementation in the Law of Ukraine on the Legal Regime of Martial Law [5]. However, this law contains an interesting provision stating that the legal basis for the introduction of martial law is the Constitution of Ukraine and the presidential decree on the introduction of martial law in Ukraine or in certain localities, approved by the Verkhovna Rada of Ukraine (Article 2) [13]. According to Article 7 of the Law of Ukraine "On the Legal Regime of Martial Law," martial law throughout the territory of Ukraine or in certain localities is terminated after the expiration of the term for which it was introduced [13]. There is no provision for its extension. Furthermore, according to Article 19 of the Constitution of Ukraine, government authorities and their officials are obliged to act solely on the basis of, within the powers granted by, and in the manner prescribed by the Constitution and the laws of Ukraine [4]. Thus, the key point is not that there are no restrictions on the duration of martial law, but rather that the Constitution and laws of Ukraine do not provide for its repeated extension.

Exiting such a legal conflict was aided by the introduction of a constitutional pause in Ukraine, which was announced by the President of Ukraine on December 23, 2022, at the Conference of Ukrainian Ambassadors: "All those rights guaranteed by the Constitution of Ukraine are currently on pause for us as representatives of our state..." [See: 14].

Since the UN Court maintains that statements and actions from representatives of high-level states hold particular evidentiary value, there are no grounds to ignore the official statement of the President.

In the case regarding the dispute between Cambodia and Thailand over sovereignty over the area of the Preah Vihear temple, which was considered by the International Court of Justice on June 15, 1962, Thailand asserted that it had always effectively owned Preah Vihear and had never recognized the border line indicated on the disputed map. However, when Prince Damrong visited the temple in 1930, he was officially received by the French resident of the adjacent Cambodian province, and there was no reaction from Siam (at that time, France was exercising protectorate over Cambodia). Based on these facts, the Court concluded that Thailand recognized the map [See: 10, p. 185].

At one time, the Permanent Court of International Justice recognized the binding statement of the Norwegian Foreign Minister regarding Denmark's plans to exercise its sovereignty over East Greenland, which did not encounter resistance from Norway, in the dispute between Norway and Denmark over East Greenland. Similarly, in international legal literature, the

statement made by Zhou Enlai during his visit to India in 1956 is regarded as significant. In negotiations with Indian Prime Minister Jawaharlal Nehru regarding the Indochina border, he acknowledged the recognition of the McMahon Line by the Chinese government. This statement is interpreted as China's unconditional recognition of the McMahon Line, representing an agreement between the parties regarding this border (see: 10, p. 209).

Although the constitutional law of Ukraine does not have a category such as "constitutional pause," I hypothetically propose to consider it as a temporary suspension or limitation of the operation of certain provisions of the Constitution under conditions of extraordinary circumstances, such as a state of war or emergency, to ensure the effective functioning of state bodies in critical situations. It implies a certain adaptation of the constitutional order to extraordinary conditions for the prompt response to challenges arising in connection with national security, war, or other extraordinary circumstances.

The constitutional pause may be implemented for the swift decision-making that does not conform to the standard procedures of peacetime; however, such a pause must uphold the fundamental principles of the rule of law and ensure the protection of human rights to avoid violations of international obligations and standards.

In addition to the positive aspect of resolving legal conflicts regarding the extension of martial law, the introduction of a constitutional pause during the period of martial law in Ukraine could enable the state to respond more effectively to the challenges posed by war and emergencies. The government and military authorities can make critical decisions more quickly, without the need for prolonged procedures typically required in peacetime.

However, implementing a constitutional pause during martial law in Ukraine may have negative consequences for the country's integration into the European Union. First and foremost, such a pause could jeopardize the foundational democratic principles that are crucial for EU membership. The European Union places great importance on the rule of law, adherence to human rights, and stability of constitutional order. A temporary suspension of the Constitution or its key provisions may raise doubts about Ukraine's ability to ensure the proper functioning of democratic institutions under the challenging conditions of war.

Another negative aspect concerns the protection of human rights. The Constitution of Ukraine guarantees the rights and freedoms of citizens, and their temporary limitation or postponement during a constitutional pause may be ambiguously assessed by European partners regarding the level of human rights protection in Ukraine. The European Union pays particular attention to this aspect, and any changes in the constitutional structure that potentially limit citizens' rights could become an obstacle on the path to Euro-integration..

Moreover, the introduction of a constitutional pause may slow down the reform processes necessary for integration into the EU. Ukraine needs to implement a number of reforms, particularly in the areas of justice, anti-corruption policy, and economic development. A constitutional pause could block or delay the implementation of these reforms or reduce the effectiveness of their realization, complicating negotiations with the EU and diminishing opportunities to accelerate the euro-integration processes (source).

Conclusions. 1. The category of "constitutional pause" is hypothetically proposed to be considered as a temporary suspension or limitation of the action of certain provisions of the

Constitution in situations of emergency, such as war or a state of emergency, in order to ensure the effective functioning of state bodies in critical situations. It implies a certain adaptation of the constitutional order to complex conditions for rapid response to challenges arising in connection with national security, war, or other extraordinary circumstances.

The constitutional pause may be implemented for quick decision-making that does not conform to standard procedures of peacetime; however, such a pause should maintain the fundamental principles of the rule of law and ensure the protection of human rights to avoid violations of international obligations and standards.

2. The implementation of a constitutional pause during the state of war in Ukraine allows state authorities to make operational decisions in wartime conditions. However, the temporary suspension of the Constitution or its key provisions may contradict European legal standards. In particular, this could call into question adherence to the principle of the rule of law, which is foundational for EU membership.

3. Since the Constitution of Ukraine guarantees fundamental rights and freedoms of citizens, their temporary limitation or deferral may provoke a negative reaction from the European Union, which places great importance on human rights adherence, and any restrictions arising from the constitutional pause could become a serious obstacle to European integration.

4. The introduction of a constitutional pause also carries political risks for the stability and functioning of democratic institutions in Ukraine. The European Union expects that even in critical conditions, such as war, democratic processes remain transparent and accountable. The temporary suspension of certain democratic mechanisms may raise concerns about the state's ability to maintain a balance between security and democratic freedoms. This could impact the political dialogue with the EU and compel European partners to reassess their expectations regarding Ukraine as a reliable candidate for membership.

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