SECTION 3

CONSTITUTIONAL AND LEGAL PRINCIPLES OF ORGANIZATION OF ACTIVITY OF STATE AUTHORITIES AND LOCAL GOVERNMENT

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THEORETICAL FOUNDATIONS OF THE EXERCISE OF DEMOCRACY UNDER SPECIAL LEGAL REGIMES

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Summary

The institution of representation gives rise to a key problem for the modern concept of democracy – between nominal holders of power and absolute rulers, because power, in the end, cannot be anything other than the exercise of power. Accordingly, the holding of free elections in itself cannot be a reliable criterion of true democracy, since the next no less critical and challenging problem arises on the way of its practical implementation – by what means and means it is necessary to increase the influence of the people on the exercise of power formed on behalf of the people and exercised about the people.

The inalienability of popular sovereignty excludes the understanding of the people's constituent power as a one-time act, after which the people allegedly lose their sovereignty, as the concept of "people's democracy" prevailing in the countries of the former socialist camp actually allowed. Therefore, no one, including the state, can usurp popular sovereignty. The latter provision of the Constitution of Ukraine is one of the general principles of the constitutional system of Ukraine, which are subject to increased constitutional protection. It is not legitimate to limit democracy because it is supposedly only capable of giving the people the opportunity to change their rulers through general elections periodically.

The formation of the structure of the legal regime, as well as the technology of introducing legal regimes, should be based on the principles of the rule of law, legality, expediency, and reasonableness, since otherwise the introduction of restrictions and obligations may cause rejection in society and cause socio-political cataclysms. In general, the advantage of legal regimes over other means of legal policy is the comprehensive solution of important constitutional and legal policy tasks.

Keywords: democracy, elections, people's legislative initiative, referendum, legal regime, special legal regime, martial law, state of emergency, human rights

1. Intriduction

The Constitution of Ukraine declared the people to be the bearer of sovereignty and the sole source of power, which it exercises directly and through state and local government bodies. The most direct expression of the people's power is a referendum and free elections. The forms of direct popular power, enshrined in Section 3 of the Constitution, play a decisive role in modern domestic constitutionalism, determining the directions of development of civil society and the state, and providing an opportunity to ensure the free expression of the will of a citizen on the broadest range of issues.

In constitutional doctrine, two fundamental approaches to the concept of emergency regimes can be distinguished: monism and dualism. Representatives of the first approach believe there is no significant difference between a constitutional order functioning under normal conditions and governance under extreme conditions. The rule of law requires the introduction of such mechanisms in the event of extreme conditions that would, on the one hand, ensure the protection of the constitutional order, and on the other, an adequate return to normality.

Representatives of the second group proceed because the constitutional order under normal conditions is based on the unconditional guarantee of individual rights and freedoms and a polyarchic government structure by the principle of separation of powers. Under extreme conditions, there is a temporary suspension of the constitutional order, in particular, individual rights and freedoms, and the polyarchy of the republican system of government is replaced by monocracy. In other words, under extreme conditions, there is a suspension of the ordinary constitutional order, which is replaced, albeit temporarily, by an extraordinary legal order.

2. Special legal regimes as an institution of constitutional law

Special legal regimes ensure public order, national security, and healthcare. They are an essential legal system component, allowing states to promptly respond to emerging challenges and threats. At the same time, the application of such regimes requires a careful balance between the protection of state interests and the observance of human rights and freedoms. The analysis of historical and modern examples of the introduction of special legal regimes shows that their consequences are often complex because, on the one hand, these regimes contribute to stabilizing the situation. On the other hand, they can lead to the restriction of the fundamental rights of citizens, causing a public outcry.

The legal regime is an essential component of the national legal system of any state, since a well-coordinated mechanism of norms, principles, and procedures determines the content and direction of legal regulation of social relations. The foundations of forming legal regimes based on the relationship of trust between the individual and the state have a thousand-year history, which is closely intertwined with the complex global political, economic, social, and cultural transformations of humanity, establishing law and order. Therefore, there is a need for the temporary introduction of special legal regimes, which are characterized by a combination of special legal means: prohibitions, permits, and obligations *(Demyanchenko A.S.)*.

The purpose of the legal regime is to provide a specific procedure for regulating a particular area of social relations. Considering the social content of law, the legal regime aims to solve specific legal policy tasks. The choice of certain legal means that should form a particular legal regime is determined by the subject of legal regulation, the object and circle of persons to whom it will apply, the time and territorial framework, and the goal set by the subject of law-creative policy. Such a specific state of regulation of social relations about a tangible or intangible object, process, activity or other object of influence consists, according to V. Tchaikovska, in a special combination of methods of legal regulation, forms of law and the procedure for implementing the relevant norms, a special set of rights and obligations of subjects of law about these objects, measures of responsibility for offenses related to their use, and other components of legal influence *(Chaikovska V.V., 2014)*.

The classification of legal regimes causes specific discussions in scientific circles. Thus, O. Yakovlev distinguishes the following types of legal regimes: according to the specifics of the combination of methods, methods and types of legal regulation, sectoral, subsectoral and institutional legal regimes are distinguished; according to the object of legal regulation, we can talk about material and procedural regimes; According to the scope of action, legal regimes can be divided into private law and public law; From the point of view of functional purpose, regimes are classified into regulatory and protective. At the same time, according to the jurist, such regimes should not be opposed to each other, since the same regimes may fall under certain types of different classifications. For example, the protective regime is procedural and public law, and the substantive law regime is regulatory (*Yakovlev O. A., 2015*).

I. Haydamaka gives the following classification of legal regimes: primary and secondary legal regimes; general and special permitting regimes; general and special legal regimes. At the same time, the researcher notes that the general legal regime covers both general and permissive regimes in general (*Haydamaka I., 2008*).

The doctrine distinguishes the following historical varieties of legal regimes:

1. Classical model of a special legal regime.

Some of the first mentions of the change in the legal regime at that time take us back to the era of Ancient Greece and Rome, when, from time to time, the population of these influential states experienced wars, state rebellions, and natural disasters. The ancient Greek philosopher Aristotle warned that the legislator should strive to have a solid foundation by the principles of the preservation and decline of states already stated; he must beware of destructive factors and pass laws, written or unwritten, that will contain all the preservatives of statehood (*Aristotle*).

At the same time, the well-known Latin expression of Cicero, contained in the treatise “On Laws”, underlines one of the basic principles of the legal

regime: "Salus populi suprema lex esto (lat. " the health (well-being, goodness, salvation, happiness) of people should be the highest law (right)" (*Ciceronis. M. Tvli, 1928*). In ancient Rome, to stabilize emergencies (for example, suppressing state rebellions, waging wars, overcoming the consequences of natural disasters, etc.), the senate, as a legislative body, could appoint a dictator to embody a significant range of powers for a specific period, so that the latter would govern the state.

The classical Roman model of special legal regimes evolved significantly during the Modern Age. The philosophy of changing the foundations of public affairs management and the transformation of the relationship between man and the state was actively promoted by pro-enlighteners: D. Diderot, Voltaire, C.L. Montesquieu, and J.J. Rousseau. Their achievements are made up of the well-known concept of separation of powers and the principle of "checks and balances". The most famous reformers of the idea of human rights of their time were F. Bacon with the work "The Great Revival of the Sciences" (supplemented in 1620 with the treatise "New Organon"), G. Grotius – "Three Books on the Law of War and Peace" (1623), T. Hobbes – "Leviathan" (1651), T. Paine – "The Rights of Man" (1791). It should be noted that J. J. Rousseau also supported the idea of powers-prerogatives and was convinced of the need to establish special legal regimes during extraordinary events. The philosopher argued that the inflexibility of laws, which does not allow them to be adapted to emergencies, can in some instances make them disastrous, and thereby cause the destruction of the state during a crisis... There may be a thousand cases for which legislation is not provided, and the awareness that everything cannot be predicted is necessary for foresight (*Rousseau J., 1950*). Thus, the classical model of special legal regimes demonstrates the philosophical and legal foundations of how relations of trust between a person and the state were born in extraordinary situations since ancient times. Significantly, fiduciary ties were based on the primitive ideas of that time about justice, equality, freedom, and humanism. This model evolved during the Modern Age and was filled with additional outlines about the strict observance of legislative bases, boundaries, and procedures for implementing temporary measures of the authorities aimed at returning to the standard social order. These restrictions constituted the content of legal guarantees – "red lines" aimed at protecting a person from the arbitrariness of the authorities.

2. The French model of the "state of siege".

Derived from the Roman model of dictatorship is the French model of 'état de siège réel' (from French 'état de siège'), which was formed during the Great French Revolution (1789-1799). This unique model was the first to include a special set of measures to overcome crises. The basis of the legal regime of the 'state of siege' was the suspension of the Constitution ('supremacy of the constitution') in the event of extraordinary situations, as special temporary measures were put in place.

The initial idea of the institution of the "state of siege" is that emergencies can be prevented and countermeasures can be introduced by promulgating comprehensive legal norms in advance. A carefully developed legal framework establishes the outlined and prescribed measures that must be taken to control or stop a particular emergency *(Reinach T., 1885)*. Thus, the primary source regulating the functioning of the "state of siege" is the normative legal act, which defines the norms and procedures of measures taken by state institutions to prevent or overcome the consequences of threats to the ordinary legal regime. The military's various functions during a siege, the administration of justice, and the protection of civil liberties are paramount (*Gross O., Fionnuala Ní Aolá, 1996*).

The significance of the model of the state of siege lies in the clear legislative consolidation and delimitation of the boundaries of the powers of the authorities, as well as the definition of their spheres of influence for the settlement of extraordinary situations. It should be noted that the introduction of the "state of siege" does lead to radical changes in the state's legal structure and sometimes affects the redistribution of jurisdiction between civil and military authorities. This is done to ensure the stability of the state in the face of the threat of external aggression or internal conflict. However, such measures should be limited in time and scope and should be consistent with international norms and human rights standards. The state of siege presupposes the presence of a fixed number of "legal guarantees", which again ensure citizens' trust in the authorities. In the context of responding to extraordinary situations, the national legal system of Ukraine primarily gravitates towards the model of the "state of siege" of the Romano-Germanic legal family, which is determined by the endowment of the authorities with normatively and procedurally recognized extraordinary powers.

3. Anglo-American model of "martial law".

In contrast to the French model, the "martial law" model was formed in the countries of Anglo-Saxon law. This concept was historically intended to regulate the relations of royal power (military, police) with subjects who committed a rebellion or otherwise expressed disobedience to the monarchical system. Unlike the concept of a state of siege, martial law is the result of judicial lawmaking, since its provisions are determined, for the most part, by precedent. This key feature emphasizes the difference in historical traditions that formed the "martial law" model. The prerequisites for creating an extraordinary administrative and legal regime, which took place in England in the first half of the 17th century, were some court decisions that ratified extraordinary powers of authority. The famous jurist Albert Venn Dicey defines martial law as undoubtedly

a part of the law of England, since it gives the right to maintain public order, at whatever cost to blood or property it is necessary *(Radin M., 1942)*. The term "martial law" actually meant a summary form of criminal justice, carried out under direct or delegated royal authority by the military or police forces of the Crown, which is independent of the established processes of the ordinary law courts, ecclesiastical courts, and courts applying civil law in England. Martial law is not a set of substantive law norms but a summary of powers that apply when the ordinary rule of law is suspended *(Reinach T., 1885)*. According to the provisions of the "martial law" model, emergency powers are an integral part of the "common law", although the "user manual" for their application specifies the preliminary factual conditions that must exist before such powers can be applied in a particular case. Emergency situations are resolved by using the powers within the ordinary legal system, without needing new or additional powers from the government *(Gross O., Fionnuala Ní Aolá, 1996)*.

As for the national legislation of Ukraine, it should be noted that the concept of "legal regime" is used in many regulatory legal acts. In particular, only in the Constitution of Ukraine is the legal regime used about the concepts of "state border", "property", "war and state of emergency, and " zones of emergency ecological situation". It should be noted that the Constitution of Ukraine and other regulatory acts do not disclose the concept of "legal regime" (*Tsytsyura V.I., 2024)*.

O. Petryshyn and V. Tkachenko consider the legal regime as a special order of legal regulation applied to a particular type of social relations, which is ensured by legal means and methods and types of legal regulation (*Tsvik M.V., Tkachenko V.D., Petryshyn O.V., 2002*).

In turn, V. Nastyuk, V. Believtseva, the legal regime is considered as a set of legal norms that determine rights and obligations, including responsibility, which are necessarily fixed at the level of legislation and with the help of which relations are regulated by applying legal means (methods, techniques) based on the principles of law (*Nastyuk V.Ya., Believtseva V.V., 2009*).

D. Kosse, studying special legal regimes, notes that they are an administrative form of activity of state authorities in non-standard conditions, which allows applying extraordinary measures and guaranteeing their compliance with the constitutional status (*Kosse D.D., 2013*).

Analysis of different approaches to the concept of "special legal regimes" allows us to determine their main characteristics:

Temporary nature, which can be established for a specific period (martial law, state of emergency, special economic zone regime);

Territorial limitation is because they are introduced in a particular territory (state, region, oblast, city, etc.), in a certain industry, or about specific subjects.

To achieve the goal for which a special legal regime is introduced, citizens' constitutional rights and freedoms may be temporarily limited, but only within the limits specified by legislation.

Expanding the powers of state and local authorities to ensure the effective functioning of the special legal regime; the introduction of a special legal regime must be provided for by law and carried out by the established procedure.

Sokolova, having analyzed the category of legal regime, concluded that the legal regime is a set of legal means that are interconnected, which provide normative regulation of a separate sphere of relations in society, which express the degree of legal regulation and are intended to satisfy the interests of legal subjects (*Sokolova I.O., 2011*).

Today, it is no longer possible to apply legal forms of ensuring the country's national security that do not meet world standards in the field of ensuring human rights and freedoms. Characterizing the establishment and development of forms of exercising power by the people in independent Ukraine, we can state disparities both in their legislative support and in practical application. Thus, the exercise of power by the people through state authorities and local self-government bodies has received a fairly thorough study in domestic legal science. At the same time, the situation with the direct exercise of power by the people is significantly different: Ukraine has not yet gained significant experience in the exercise of power directly by the people, the relevant legislative framework is outdated or imperfect, the legal regulation of the direct exercise of power by the people is aimed at regulating its forms, while ignoring the types of such activity. Special attention should be paid to exercising popular power precisely in the conditions of the influence of global risk factors on society, that is, during the introduction of emergency legal regimes. The transformation of modern Ukrainian society requires new approaches to solving issues in the scientific provision of national security (*Kuznichenko S.O., 2020*).

3. Possibilities and features of holding elections during the introduction of special legal regimes

As is known, Ukrainian legislation does not allow elections to be held during the legal regime of martial law. At the same time, the Constitution of Ukraine regulates the holding of different types of elections under martial law in various ways. Thus, Part 4 of Article 83 makes it impossible to hold elections for the people's deputies of Ukraine during a state of emergency or martial law. According to this article, the Verkhovna Rada, whose powers are ending, remains in full force until the first meeting of a new council elected after the abolition of the state of emergency or martial law. Amendments to the Constitution under a state of emergency or martial law are prohibited under Part 2 of Article 157.

As for other types of elections, the Fundamental Law does not establish such a prohibition. The corresponding restrictions are provided by the Law "On the Legal Regime of Martial Law" and the Election Code. Thus, to hold elections of the President of Ukraine or local elections under martial law, it is sufficient to amend the rules.

At the same time, the constitutionality of the norms of the aforementioned laws concerning the postponement of the next elections of the President of Ukraine may be questioned. On the one hand, Article 64 of the Constitution of Ukraine does not list the electoral rights of citizens among those that cannot be restricted during a state of war or emergency. On the other hand, the norms of the Constitution directly establish the date of the next elections of the President of Ukraine and people's deputies of Ukraine (unlike local elections) - the last Sunday of March and October, respectively, of the fifth year of office. Postponing voting in connection with the operation of the legal regime of a state of emergency or martial law is not conditioned by the circumstances for the elections of the President of Ukraine. None of the subjects of the submission has applied for clarification to the Constitutional Court of Ukraine. However, it is not excluded that such submissions will appear in the event of a protracted war closer to the date of the elections established by the Constitution.

The principal risks of holding elections during hostilities (Makarov G., 2023)

So, in 2024, under the legal regime of martial law, it is possible to hold regular elections of the President of Ukraine. To remove the relevant restrictions, it is necessary to amend the Law "On the Legal Regime of Martial Law" and the Electoral Code. However, assuming the elections will still have to be held during martial law, they pose a very high risk to the country's political development. Let us consider in more detail what risks elections during hostilities have.

It is impossible to comply with OSCE (Organization for Security and Cooperation in Europe) standards due to the temporary restriction of political rights and freedoms of citizens. In particular, peaceful assemblies have practically ceased, citizens' freedom of movement has been restricted, and most audiovisual media operate in the Unified Information Marathon mode.

It is problematic to ensure voting security. This is especially true for areas close to hostilities. However, the danger of missile strikes remains throughout the country.

The complexity of financing elections. For example, in 2019, almost 2 billion UAH was spent from the State Budget on the polls of people's deputies, and 2.3 billion UAH on the elections of the President of Ukraine. Considering inflation, the cost of elections will only increase in the future. Therefore, holding elections will require reducing expenses for social services and support, state authorities, local self-government bodies, defense, and the army.

Problems of organizing the electoral process, particularly, are related to implementing the electoral rights of specific categories of citizens. Let us note in more detail which ones.

- ✓ Identification of the place of residence of temporarily displaced persons. A significant proportion of displaced persons is not registered at their actual residence. As for citizens of Ukraine who have left abroad, according to the Ministry of Foreign Affairs, fewer than 5% of them are registered with the consular authorities. As a result, it is not easy to enter relevant information into the Voter Register.
- ✓ The difficulty of ensuring the voting rights of voters who remain abroad. According to data from the Ministry of Foreign Affairs of Ukraine, provided at the request of the OPORA network, as of June 21, 2023, more than 8 million Ukrainian citizens were abroad. This is about 20% of the population as of the beginning of the full-scale Russian invasion on February 24, 2022. The existing network of foreign polling stations cannot ensure the voting rights of internally displaced persons. For example, in Poland alone, each of the four polling stations will have more than 300 thousand voters. Organizing elections under such conditions is impossible without introducing new voting methods - postal or electronic.

Voting by military personnel directly in combat zones is practically impossible to organize.

The possibility of mobilizing members of election commissions during the election campaign is not excluded, which could lead to the disorganization of their work. The same applies to official observers and candidates for elected positions.

The danger of intensifying internal political conflicts and adopting populist administrative decisions in wartime.

If holding elections in conditions of hostilities becomes critically necessary (for example, to fill vacant positions of people's deputies of Ukraine), it is possible through the temporary abolition or suspension of the legal regime of martial law. In this case, it is also possible to make amendments to the Constitution of Ukraine that would allow holding elections in conditions of martial law. However, the suspension or temporary abolition of the legal regime of martial law will not mean the cessation of Russian armed aggression. Therefore, it will not solve the problem of the security of the electoral process at all stages, the deficit of budget funds, the organization of elections abroad, or the aggravation of internal conflicts.

All the reasons why democracies refuse to hold elections during wartime can be classified into the following groups: economic (the need to spend money and other resources on elections), electoral (unstable psychological state of the population, the possibility of influencing elections by the enemy state, the lack of an

opportunity for the population in the occupied territories to vote in elections), political (the presence of a period of political instability during elections) and security. Whether elections during wartime are possible depends on how these problems are resolved. If most issues can be resolved without causing significant harm to society, then elections during wartime are theoretically possible (Novak D.E., Moryak-Protopopova H.M., 2023). It is worth considering them in more detail in the context of the Ukrainian situation.

1) Economic reasons. The most obvious reason is the priority of state budget expenditures. The 2019 Presidential elections in Ukraine cost the State Budget 2.4 billion hryvnias. Taking into account inflation, as well as new challenges (updating the destroyed electoral infrastructure, compiling voter lists in the conditions of a long "freeze" of the State Register, a more complex than usual organization of voting outside polling stations, perhaps even the need to hold voting for longer than 1 day due to shelling, prolonged air raids, etc.), the cost of the elections will only increase. According to the data provided by the Ministry of Finance based on calculations received from the CEC, the estimated expenditures of the State Budget and the conditions for 2024 for the holding of the Presidential elections in Ukraine will amount to 5,418.3 million hryvnias (the Ministry of Finance explained why it asked the CEC for the cost of the elections for the next year).

2) Electoral problems – this group is the most numerous.

3) Political problems. The danger of intensifying internal political conflicts and adopting populist administrative decisions in wartime.

4) Security risks. It is problematic to ensure the security of the vote. This is especially true in areas close to hostilities. However, the danger of missile strikes remains throughout the country.

It is worth emphasizing that formally we are not talking about all elections, but only about regular elections (for some reason, various experts do not specify this), because according to Part 2 of Article 135 of the Electoral Code, "in connection with the expiration of the constitutional term of office of the Verkhovna Rada of Ukraine," regular elections of people's deputies are held. It should also be understood that "expiration of the constitutional term of office" and "termination of office" differ. According to Part 1 of Article 90 of the Constitution of Ukraine, "the powers of the Verkhovna Rada of Ukraine shall terminate on the day of the opening of the first session of the Verkhovna Rada of Ukraine of the new convocation." However, the President may terminate the powers of the Parliament early by Part 2 of the same Article. And if the provisions regarding the prohibition of early termination of the powers of the Verkhovna Rada of Ukraine in the last six months of its term of office or the powers of the President of Ukraine are spelled out, then the impossibility of "dissolving" the Parliament during martial law is not mentioned. At the moment, this point is irrelevant, because the constitutional terms of office of both these bodies have reached/are coming to an end, but for the future, the provisions of the Basic Law should be clarified. Also, the Constitution of Ukraine does not contain a direct prohibition on holding by-elections of people's deputies (for now, this is relevant, because the current Verkhovna Rada of Ukraine was elected under a mixed electoral system even before the Electoral Code came into force). Filling vacant seats in Parliament in the event of early termination of the powers of deputies elected in single-mandate constituencies does not affect either the expiration of the term or the termination of the powers of the Verkhovna Rada of Ukraine as a whole; therefore, it does not fall under constitutional prohibitions (*Hrynyuk R.F., Gutsulyak O.I., 2023*). Thus, formally, the Constitution of Ukraine excludes the possibility of holding only regular elections for the people's deputies of Ukraine. As for other types of elections (in particular, by subject, presidential, and local), the Constitution does not establish such a prohibition. The corresponding restrictions are provided for by the Law "On the Legal Regime of Martial Law" and the Electoral Code. Therefore, changes to the legislation can unblock certain types of elections during martial law.

In conclusion, the teleological interpretation of the Constitution of Ukraine indicates that it is in favor of the impossibility of discussing regular elections of people's deputies during martial law. As for other types of elections, despite the absence of a direct constitutional ban on their holding during martial law (against the background of the legislative ban, which can be eliminated), it seems impossible to organize them in compliance with all essential principles and foundations, and therefore democratic elections are currently not available to us, and undemocratic ones are not needed.

It should be noted that in the countries of the European Union, at the level of constitutions, restrictions on elections during a state of emergency or martial law are mainly not stipulated. The Constitution of Italy allows (but does not oblige) the postponement of elections to the chambers of Parliament and the extension of the powers of their current composition during a period of martial law. In general, most EU countries have not had the opportunity to use the legal regime of martial law since there were no hostilities in their territories after World War II. In Croatia, where an armed conflict continued in 1991–1995, direct parliamentary and presidential elections were held in August 1992, during a decrease in the intensity of hostilities. However, the international community criticized these elections and recognized them as undemocratic.

In Bosnia and Herzegovina, no elections were held during the armed conflict. It is worth considering the experience of Israel, which is cited by supporters of holding elections in wartime. Even though this state is constantly threatened by external aggression, it has minimal understanding of long-term, full-scale wars. The only exception is the Israeli War of Independence of 1947–1949. Other full-scale wars were short-lived (from 6 days to 3 months). Some wars were not constant hostilities, but strings of armed incidents between army units of different states (for example, the so-called "war of attrition" of 1967–1970 between Israel and Egypt) or long series of terrorist attacks (the so-called "Intifadas"). Such conflicts did not require significant restrictions on the rights and freedoms of citizens and could not disrupt the electoral process. That is why the ban on holding elections was used extremely rarely: yes, elections were not held during the War of Independence; in 1973, during the Yom Kippur War, parliamentary elections were postponed for 2 months.

In contrast, elections under the legal regime of martial law were actively held in some of Israel's neighboring authoritarian Arab states, since such a regime had lasted for years. For example, in Egypt, martial law, which was declared in 1981 after the assassination of then-President A. Sadat, lasted 30 years and was only lifted after the overthrow of the regime of H. Mubarak in 2011.

The UK does not have a single codified act in the form of a Constitution, so the possibility of postponing elections depends on legislation passed by Parliament *(Case Studies, 2024)*. Generally, the UK legal order does not contain classic legislation on a state of emergency. Part 2 of the Civil Contingencies Act 2004 (the Civil Contingencies Act, "CCA") is the most relevant part. Other provisions allow the government to act urgently in response to crises in specific areas (for example, the Public Health (Control of Disease) Act 1984 (PH(CoD)A), but the CCA contains general provisions for responding to emergencies. The powers granted by section 2 of the CCA are of a broad regulatory nature, under which the monarch can make "emergency regulations" by order in Council. In practice, this power will only be exercised with the consent of the government, primarily the Home Secretary. The most recent examples of postponement of elections in the UK are 2001 and 2020.

In 2001, the first election since the Second World War was postponed due to the foot-and-mouth disease epidemic. It was expected that the General Election was due to be held on May 3 to coincide with the local elections, but on April 2, 2001, both the general and local elections were postponed to June 7 due to rural movement restrictions imposed in response to the foot-and-mouth disease outbreak that began in February. This was achieved by the Elections Act 2001, which postponed the 2001 local elections in England and Wales from May 3 2001 to June 7 2001, and Northern Ireland from May 16 2001 to June 7 2001. In 2020, the Coronavirus Act 2020 (CA) was passed, which provided that neither general nor presidential elections would be held during the coronavirus pandemic. Some local elections were postponed for a year. This decision was made by Parliament, having passed an Act providing the legal basis for the postponement. About local council elections, s. 60 provides that "an ordinary election of councillors of any local authority in England which would otherwise be held on the ordinary election day in 2020 shall be held instead on the ordinary election day in 2021". By s. 60(2). The election of the Mayor of London has been postponed. 60(6), as have the elections of mayors of local and combined authorities. 60(8) and (10). The election of police and crime commissioners has been postponed. 60(12). S. 64 amends the provisions governing the timing of elections in Northern Ireland. S. 61 CA provides for the power of the Secretary of State to postpone an election due to be held from March 16, 2021, until May 5, 2021, but only until May 6, 2021.

Like the United States, Canada is an interesting example of a democratic state located far from the theater of hostilities of the First and Second World Wars, but it took an active part in them *(Case Studies, 2024)*. The war never took place on their territory, allowing them to hold regular parliamentary elections on schedule. However, in another respect, Canada's military experience differs significantly from the experience of the United States: the country experienced a social and internal political split associated with the decision to mobilize Canadians to participate in the war. As a British dominion, Canada depended on Great Britain's foreign policy. The declaration of war on Germany in 1917 and 1939 automatically meant Canada's involvement in the war on the Allies' side. The Canadian government could only determine the degree of the participation, but could not remain neutral. It was for this purpose that the independent Canadian Expeditionary Force was created, which was under the command of the armed forces of Great Britain. However, this decision immediately created a split in society and among political parties regarding the need for a general mobilization of Canadians to fight in the interests of Great Britain and France, countries that many Canadians did not perceive as their homeland. This problem was a key topic of political debate during the First and Second World Wars. Its basis was mainly ethno-linguistic differences between Canadians from Great Britain and those from France and other French-speaking countries. The confrontation between Anglo-Canadians and Franco-Canadians had a substantial impact on the political process, the struggle for power between political

parties, and the policies of governments. At the same time, this domestic political crisis and the search for a solution each time increased Canada's independence and sovereignty.

Regarding respecting and exercising the right to choose, Judith S. Trent and Robert W. Frydenberg state that the right to choose is essential because it gives us the freedom to participate actively in selecting our leaders. It is the core of democracy. There is no other country in the world where citizens exercise their right to choose more vigorously and responsibly than in the United States. Whether the election results determine the winners of two seats on the city council or the presidential seat in the White House, the exercise of the right to choose continues to be an essential element of democratic government. The right to choose allows us to determine how our fundamental interests can best be served.

Conclusion

Summarizing the views of scientists on the concept of democracy, it can be concluded that it certainly implies a democratic nature of governance, where society has the opportunity to influence decision-making both through elected representatives in state and local government bodies, and directly through elections, referendums, as well as other forms of citizen participation in political decision-making. However, its content should not be limited only to the right of the people (society, communities, citizens) to express their will in its purely constitutional forms (doctrinal approach), which is too narrow an understanding, but also includes the ability, opportunity and will of citizens to take an active part in the political life of the country in the broadest sense, expressing their own opinions and support for decisions important to society.

A special legal regime can be defined as an extraordinary administrative and legal regime that is temporarily introduced by state or local authorities on the entire or a specific territory of the state by special legislation, as an extreme measure of the state about the elimination of an extreme (extraordinary) situation that cannot be resolved in the general order and the introduction of which, as a rule, provides for the expansion of the powers of state and local authorities and is associated with the restriction of the rights and freedoms of a person, citizen and the interests of legal entities.

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ТЕОРЕТИЧНІ ЗАСАДИ ЗДІЙСНЕННЯ НАРОДОВЛАДДЯ В УМОВАХ ОСОБЛИВИХ ПРАВОВИХ РЕЖИМІВ

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Анотація

Інститут представництва породжує ключову проблему для сучасної концепції демократії – між номінальними носіями влади та абсолютними правителями, адже влада, врешті-решт, не може бути нічим іншим, як здійсненням влади. Відповідно, проведення вільних виборів саме по собі не може бути надійним критерієм справжньої демократії, оскільки на шляху її практичної реалізації постає наступна не менш критична і складна проблема – якими засобами і засобами необхідно посилити вплив народу на здійснення влади, що формується від імені народу і здійснюється щодо народу.

Невідчужуваність народного суверенітету виключає розуміння народної установчої влади як одноразового акту, після якого народ нібито втрачає свій суверенітет, як фактично дозволяла пануюча в країнах колишнього соціалістичного табору концепція «народної демократії». Тому ніхто, в тому числі і держава, не може узурпувати народний суверенітет. Останнє положення Конституції України є одним із загальних принципів конституційного ладу України, які підлягають посиленню конституційного захисту. Обмежувати демократію нелегітимно, тому що вона нібито здатна лише дати народу можливість періодично змінювати своїх правителів шляхом загальних виборів.

Формування структури правового режиму, як і технологія введення правових режимів, має ґрунтуватися на принципах верховенства права, законності, доцільності та обґрунтованості, оскільки в протилежному випадку введення обмежень та обов'язків може викликати неприйняття в суспільстві та стати причиною соціально-політичних катаклізмів. В цілому перевагою правових режимів перед іншими засобами правової політики є комплексне вирішення важливих завдань конституційно-правової політики.

Ключові слова: демократія, вибори, народна законодавча ініціатива, референдум, правовий режим, спеціальний правовий режим, воєнний стан, надзвичайний стан, права людини.