

# КОНСТИТУЦІЙНЕ ПРАВО

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## THE INSTITUTE OF LEGISLATIVE POWER IN UKRAINE DURING WAR

The scientific article explores the functioning of the legislative body, the Verkhovna Rada, in Ukraine amidst wartime conditions. It delves into the constitutional provisions that allow the parliament to operate even during martial law, highlighting the significance of legislative activity in upholding the national legal system. The study examines the procedural aspects of the Verkhovna Rada's work during wartime, emphasizing the role of parliamentary sessions and the adoption of laws, resolutions, and other acts. Furthermore, it analyzes key indicators such as the number of substantive issues on the agenda and the adoption of statements and appeals to foreign entities. The article discusses the challenges faced by the parliament, including the threat of physical harm to parliamentarians, and evaluates the effectiveness of legislative decision-making during wartime. Overall, it provides insights into how the institution of legislative power adapts and functions under extraordinary circumstances, contributing to a deeper understanding of the dynamics of governance in conflict situations.

**Key words:** legislative power, Verkhovna Rada, Martial Law, Constitutional provisions, Parliamentary sessions.

### Турчинов К. О. ІНСТИТУТ ЗАКОНОДАВЧОЇ ВЛАДИ В УКРАЇНІ ПІД ЧАС ВІЙНИ

Дана стаття досліджує функціонування законодавчого органу, Верховної Ради, в Україні в умовах воєнного часу. Вона розглядає конституційні положення, які дозволяють парламенту працювати навіть під час воєнного стану, підкреслюючи значення законодавчої діяльності для підтримки національної правової системи. Дослідження аналізує процедурні аспекти роботи Верховної Ради під час воєнного часу, наголошуючи на ролі парламентських сесій та прийнятті законів, постанов та інших актів. Крім того, вивчаються ключові показники, такі як кількість суттєвих питань на порядку денному та прийняття заяв і звернень до іноземних суб'єктів. У статті обговорюються виклики, з якими стикається парламент, включаючи загрозу фізичної шкоди для парламентаріїв, і оцінюється ефективність ухвалення законодавчих рішень під час воєнного стану. Загалом, стаття надає уявлення про те, як інститут законодавчої влади адаптується і функціонує в надзвичайних обставинах, сприяючи глибшому розумінню динаміки управління в умовах конфліктів.

**Ключові слова:** законодавча влада, Верховна Рада, воєнний стан, конституційні положення, парламентські сесії.

**Introduction.** The institution of legislative power is the cornerstone of the functioning of a democratic state, as it is through this institution that the will of the people is realized, laws regulating social relations are enacted, and oversight of the executive branch is ensured. In times of war, the role of the legislative body gains particular significance due to the need for rapid response to challenges, ensuring national security, and maintaining the stability of state governance.

Ukraine, facing large-scale aggression, must adapt its legislative process to new realities. The Verkhovna Rada of Ukraine, as the main legislative body, must not only pass laws that enhance defense capabilities and support the economy during wartime but also safeguard citizens' rights and freedoms, uphold democratic values, and facilitate Ukraine's further integration into the European community.

**The analysis of recent research and publications** highlights that the study of the legislative power in Ukraine and its activities under martial law is highly relevant. Various aspects of this topic are explored in the works of Nazarenko Ya., Omelchenko N., Pohorilka V., Shapoval V., Dobosh A., and other scholars.

**The aim of this article** is to investigate the functioning of Ukraine's legislative power during wartime, identify the main challenges and problems faced by the Verkhovna Rada, and outline the prospects for the development of the legislative process under crisis conditions. Analyzing the current state of legislative activity in Ukraine will allow for the assessment of the effectiveness of the decisions made and the development of recommendations for improving the work of the parliament under martial law.

**Presentation of the main research material.** According to the Constitution of Ukraine, the Verkhovna Rada of Ukraine can and must operate even under martial law. The fact is that Ukraine belongs to the continental law system, where the weight of regulatory governance through parliamentary acts (laws) is extraordinarily high. Article 92 of the Constitution of Ukraine specifies numerous areas (issues) that can only be regulated by laws passed by the parliament. Therefore, the absence of an effective parliament, even in times of war, would lead to significant difficulties for the entire national legal system [1].

Despite this, since the beginning of the full-scale invasion by the Russian Federation into Ukraine, the Verkhovna Rada has not ceased its work, adapting it to the conditions of martial law. The procedures for the operation of the Verkhovna Rada are defined by the Constitution of Ukraine and the Rules of Procedure of the

Verkhovna Rada of Ukraine (hereinafter referred to as the Rules of Procedure) (part five of Article 83 of the Basic Law of Ukraine).

According to the Constitution of Ukraine, the Verkhovna Rada operates in sessions (part one of Article 82). Regular sessions of the Verkhovna Rada of Ukraine begin on the first Tuesday of February and the first Tuesday of September each year. Extraordinary sessions of the Verkhovna Rada of Ukraine, with an agenda specified, are convened by the Chairperson of the Verkhovna Rada of Ukraine at the request of the President of Ukraine or at the request of no less than one-third of the People's Deputies of Ukraine from the constitutional composition of the Verkhovna Rada of Ukraine. In the event of the President of Ukraine issuing a decree on the imposition of martial law or a state of emergency in Ukraine or in certain parts thereof, the Verkhovna Rada of Ukraine shall convene for a meeting within two days without convocation (parts one, two, and three of Article 83) [1].

According to the Law of Ukraine "On the Legal Regime of Martial Law," in the event of the President of Ukraine issuing a decree on the imposition of martial law in Ukraine or in certain parts thereof, the Verkhovna Rada of Ukraine shall convene for a meeting within two days without convocation and consider the issue of approving the President's decree on the imposition of martial law in Ukraine or in certain parts thereof in the manner established by the Constitution of Ukraine and the Rules of Procedure of the Verkhovna Rada of Ukraine (part four of Article 5). The Verkhovna Rada of Ukraine, in the event of the imposition of martial law in Ukraine or in certain parts thereof, operates in session mode (part one of Article 12) [2].

According to part four of Article 11 of the Rules of Procedure, in the event of the imposition of martial law or a state of emergency in Ukraine, the Verkhovna Rada shall convene for an extraordinary session no later than within two days without convocation and shall operate until the martial law or state of emergency is lifted. The Chairperson of the Verkhovna Rada of Ukraine, or in their absence, the First Deputy or Deputy Chairperson of the Verkhovna Rada of Ukraine performing the duties of the Chairperson, determines the place and time of the Verkhovna Rada meeting, and members of parliament are urgently informed. Legislative work during wartime has undergone procedural and organizational changes, but it remains fundamentally based on the provisions of the Constitution of Ukraine and the Rules of Procedure.

Currently, certain issues regarding the organization of the work of the Verkhovna Rada of the ninth convocation under martial law are regulated by the Resolution of February 7, 2023, No. 2912-IX, according to which:

The Verkhovna Rada of the ninth convocation operates in the mode of a single plenary session that continues until the day of the termination or cancellation of martial law in Ukraine, but no later than the beginning of the next regular session of the Verkhovna Rada of Ukraine of the ninth convocation;

The Chairperson of the Verkhovna Rada (the First Deputy or Deputy Chairperson of the Verkhovna Rada performing the duties of the Chairperson) announces a recess in the ongoing plenary session of the Verkhovna Rada of Ukraine (hereinafter referred to as the ongoing plenary session), determines the time and place of its continuation, and, if necessary, specifies the method of voting by the People's Deputies of Ukraine on the issue under consideration. This information is communicated to the Conciliation Council of deputy factions (deputy groups) in the Verkhovna Rada of Ukraine of the ninth convocation (hereinafter referred to as the Conciliation Council);

To carry out legislative work, prepare and preliminarily consider issues within the competence of the Verkhovna Rada, and perform the oversight function of the Verkhovna Rada, meetings of committees (temporary special commissions, temporary investigative commissions) of the Verkhovna Rada are convened as necessary, including in the format of video conferences, during the recess of the ongoing plenary session;

The Chairperson of the Verkhovna Rada (the First Deputy or Deputy Chairperson of the Verkhovna Rada performing the duties of the Chairperson) convenes meetings of the Conciliation Council as necessary, as well as at the request of three deputy factions (deputy groups);

The draft agenda for each day after the recess of the ongoing plenary session is prepared by the Secretariat of the Verkhovna Rada of Ukraine and submitted for consideration and approval by the Conciliation Council, generally no later than five days before the day of the Conciliation Council meeting. The Conciliation Council meeting is generally held no later than two days before the continuation of the ongoing plenary session after the recess.

Proposals for amendments to the draft agenda for the day following the recess of the ongoing plenary session can be submitted by at least two deputy factions (deputy groups) in the Verkhovna Rada of Ukraine, which include the majority of People's Deputies of Ukraine from the constitutional composition of the Verkhovna Rada of Ukraine;

The duration of time allocated for considering the agenda items for each day after the recess of the ongoing plenary session is determined by the Conciliation Council;

The ongoing plenary session is interrupted by the presiding officer during an air raid alarm. The session resumes 15 minutes after the air raid alarm ends, except when the air raid alarm lasts for more than three consecutive hours [3].

All those present at the ongoing plenary session on the day after the recess are prohibited from disseminating information regarding the beginning, progress, and decisions made at the session earlier than one hour after the recess of the ongoing plenary session is announced.

According to Article 9 of the Rules of Procedure, sessions of the Verkhovna Rada consist of meetings of the Verkhovna Rada, meetings of committees, temporary investigative commissions, and temporary special commissions held during the period between plenary sessions, as well as the work of People's Deputies in deputy factions (deputy groups) and with voters (part four).

The main form of activity of the Verkhovna Rada is plenary sessions during sessions, which are regular gatherings of the People's Deputies of Ukraine of the respective convocation, conducted according to an established procedure at a specified time and place. At plenary sessions, issues within the authority of the Verkhovna Rada of Ukraine, as defined by the Constitution of Ukraine, are considered. Decisions on these issues are made by voting of the People's Deputies of Ukraine.

Under normal circumstances, the first and third weeks of each calendar month during a session are allocated for plenary sessions of the Verkhovna Rada. The second week is for work in committees, temporary special commissions, and temporary investigative commissions, and deputy factions (deputy groups). The fourth week is for People's Deputies to work with their constituents (part one of Article 19 of the Rules of Procedure).

However, during martial law, this rule does not apply. The Verkhovna Rada of Ukraine of the ninth convocation operates during the session in the mode of a single plenary session that continues until the day martial law in Ukraine is terminated or canceled, but no later than the start of the next regular session of the Verkhovna Rada of Ukraine of the ninth convocation. For security reasons, the time and place of the session are determined by the Chairperson of the Verkhovna Rada and communicated to the People's Deputies of Ukraine [4].

According to Article 84 of the Constitution of Ukraine, sessions of the Verkhovna Rada are conducted openly; a closed session can be held by a decision of the majority of the constitutional composition of the Verkhovna Rada of Ukraine. Decisions of the Verkhovna Rada of Ukraine are made exclusively at its plenary sessions by voting, and voting at the sessions of the Verkhovna Rada of Ukraine is performed personally by the People's Deputy of Ukraine [1].

In accordance with the Basic Law of Ukraine, the Verkhovna Rada of Ukraine passes laws, resolutions, and other acts by a majority of its constitutional composition, except in cases provided for by the Constitution of Ukraine (Article 91). The constitutional composition of the Verkhovna Rada of Ukraine is 450 People's Deputies of Ukraine, who are elected on the basis of universal, equal, and direct suffrage by secret ballot for a term of five years (part one of Article 76).

According to Article 2 of the Rules of Procedure, the Verkhovna Rada holds sessions in the building of the Verkhovna Rada (Kyiv, 5 Hrushevsky Street). By a decision of the Verkhovna Rada, adopted by a majority of the People's Deputies of Ukraine from the constitutional composition of the Verkhovna Rada, its sessions can be held in another location. In cases provided for by part three of Article 83 of the Constitution of Ukraine, the Verkhovna Rada convenes for an extraordinary session at a location determined in accordance with part four of Article 11 of the Rules of Procedure. All sessions of the Verkhovna Rada of the tenth convocation, as well as all other sessions since February 24, 2022, have been closed. However, the location of their conduct has not changed, with all sessions being held in the building of the Verkhovna Rada of Ukraine [3].

**According to the Constitution of Ukraine, the Verkhovna Rada of Ukraine can and must function even under martial law.** Ukraine adheres to a continental legal system where parliamentary acts (laws) hold significant regulatory power. Article 92 of the Constitution of Ukraine stipulates numerous areas that can only be regulated through laws passed by the parliament. The absence of an effective parliament, even during wartime, would cause significant difficulties for the entire national legal system.

Despite the onset of the full-scale invasion by the Russian Federation, the Verkhovna Rada has not ceased its activities but adapted them to the conditions of martial law. The procedure for the Verkhovna Rada's work is determined by the Constitution of Ukraine and the Rules of Procedure of the Verkhovna Rada of Ukraine (hereinafter referred to as the Rules) (part five of Article 83 of the Basic Law of Ukraine).

**Under the Constitution of Ukraine, the Verkhovna Rada operates in sessions (part one of Article 82).** Regular sessions of the Verkhovna Rada begin on the first Tuesday of February and the first Tuesday of September each year. Extraordinary sessions, with a specified agenda, are convened by the Chairperson of the Verkhovna Rada at the request of the President of Ukraine or at least one-third of the People's Deputies of Ukraine from the constitutional composition of the Verkhovna Rada. In the event of a declaration by the President of Ukraine regarding the introduction of martial or state of emergency in Ukraine or its specific localities, the Verkhovna Rada convenes within a two-day period without summons (parts one, two, and three of Article 83) [1].

**According to the Law of Ukraine "On the Legal Regime of Martial Law",** if the President of Ukraine declares martial law in Ukraine or specific areas, the Verkhovna Rada convenes within two days without summons and considers the issue of approving the President's decree on introducing martial law in Ukraine or its specific areas in accordance with the procedure established by the Constitution of Ukraine and the Rules of Procedure of the Verkhovna Rada of Ukraine (part four of Article 5). In the event of martial law, the Verkhovna Rada operates in session mode (part one of Article 12). Article 11, part four of the Rules states that in case of martial or state of emergency, the Verkhovna Rada convenes for an extraordinary session within two days without summons and works until the martial or state of emergency is canceled. The Chairperson of the Verkhovna Rada (or in their absence, the First Deputy or Deputy Chairperson) determines the time and place of the Verkhovna Rada meeting and promptly informs the People's Deputies [2].

For the illustration of the "substantive" load of plenary sessions, a special indicator such as the "number of substantive issues on the agenda" is highlighted. This refers to issues on which decisions were made at the final stage of consideration. Article 91 of the Constitution of Ukraine states that the Verkhovna Rada adopts laws, resolutions, and other acts by a majority of its constitutional composition, except in cases provided by the Constitution of Ukraine. Decisions of the Verkhovna Rada are acts, procedural, and other decisions recorded in the minutes of plenary sessions of the Verkhovna Rada. Acts of the Verkhovna Rada include laws, resolutions, declarations, appeals, and statements (Article 46 of the Rules). After discussing issues, the Verkhovna Rada makes decisions solely at its plenary sessions by a majority of votes of the People's Deputies from the constitutional composition of the Verkhovna Rada, except in cases provided by the Constitution of Ukraine and the Rules. Decisions of the Verkhovna Rada are made by open roll-call vote unless the Rules specify secret voting by ballot (parts one and two of Article 47) [1].

During the 10th session, the Verkhovna Rada considered 191 substantive issues. The infographics illustrate the monthly data. An important indicator in the work of the Verkhovna Rada during wartime is the number of statements, appeals, and calls to foreign states, organizations, and other entities. According to part four of Article 89 of the Rules, draft resolutions, declarations, appeals, and statements are submitted by People's Deputies. Article 138 of the Rules states that resolutions and other acts (resolutions, declarations, appeals, statements) of the Verkhovna Rada are adopted by a majority vote of the People's Deputies from its constitutional composition, except as provided by the Constitution of Ukraine, following the procedure for considering bills in the first reading and adopting them as a whole, unless the Verkhovna Rada decides otherwise [5].

**These acts are signed and published by the Chairperson of the Verkhovna Rada of Ukraine.** During the 10th session, the Verkhovna Rada adopted five such acts, including appeals to international organizations, parliamentary assemblies, governments, and parliaments of foreign states regarding illegal elections conducted by the Russian Federation on temporarily occupied territories; statements on the 10th anniversary of the beginning of Euromaidan and the Revolution of Dignity; a statement on the 90th anniversary of the Holodomor of 1932-1933 in Ukraine; an appeal to newly elected members of the Sejm and Senate of the Republic of Poland for continued cooperation between Ukraine and Poland; and an appeal to EU member states and institutions to support opening negotiations on Ukraine's EU membership.

From February 24, 2022, to June 30, 2023, the Verkhovna Rada adopted 50 such resolutions, and from early September 2022 to early February 2023, 16 statements and appeals.

**The Verkhovna Rada has completed its third year of operation under the illegal invasion of the Russian Federation.** The Parliament continued to work in a live (offline) mode in its usual premises in the center of the capital of Ukraine, despite the real threat of missile attacks and the physical destruction of parliamentarians. Despite martial law restrictions, the Verkhovna Rada of Ukraine has maintained its constitutional role as a forum for discussing and adopting laws critical for the nation's resilience and functioning during martial law. The number of legislative initiatives adopted without discussion has significantly decreased, with 31% of laws being approved without discussion compared to 69% in the previous period (February 24, 2022 – May 31, 2023) [3].

**In conclusion,** the mechanism of planning parliamentary work needs some improvement or adaptation to the current conditions. The activities of the committees of the Verkhovna Rada of Ukraine during this challenging period for Ukrainian parliamentarism are noteworthy. Parliamentary committees have adapted to the challenges of martial law, continuing to perform their constitutional functions at a high level. Online meetings and the support of international partners have allowed the committees to involve a wide range of stakeholders in their work, despite regime restrictions. The growth rate of subscribers and views on the Parliament's official social media pages has significantly decreased or shown a negative trend, related to the general national decline in trust in all state institutions. Therefore, the Verkhovna Rada's intention to transition to planned work on improving its external communications and adopt a Communication Strategy is welcome. The Verkhovna Rada of Ukraine, recognizing the public's demand for transparency, continues to seek ways to involve media and the public more in its activities.

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