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UKRAINIAN CONSTITUTIONALISM IN THE CONDITIONS OF WAR: THE STRUGGLE FOR VALUES, RIGHTS AND IDENTITY

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The article provides a comprehensive analysis of the functioning mechanism of the constitutional legal order under martial law, in particular the means and methods by which it can protect constitutional values, rights and identity from internal and external threats, and also offers practical recommendations for preventing the possible involution of constitutionalism in the post-war period.

The author believes that after the large-scale invasion of the Russian Federation on the territory of Ukraine, the practical paradigm of Ukrainian constitutionalism acquired new features. First, it is a change in the ideological component of the content of constitutionalism – constitutional legal awareness in the direction of raising the national idea, national identity, and affirming the national dignity of Ukrainians. At the same time, it is based on the European model of constitutionalism, which corresponds to universal human values, first of all, human dignity and freedom, which are unchanged even under martial law. Secondly, these are changes in the functional mechanism of constitutionalism, which are caused by the need for public authorities to ensure a balance between the security and freedom of citizens with the unwavering observance of fundamental human rights and freedoms, which cannot be limited even in war. Thirdly, the formation of a new identity around the new (post-war) constitution, which should become an expression of the hope of the entire Ukrainian people for their dignified political and socio-economic future in a united Europe.

The author of the article claims that the war in Ukraine has a pronounced existential character, as it directly affects the choice of the future of every Ukrainian and the Ukrainian political nation in general. In this war, Ukrainians defend not only their right to exist as a separate ethnic group, but also universal, European values, which are reflected in the Constitution of Ukraine – above all, the idea of freedom and democracy. The European choice of the Ukrainian people is the result of the Orange Revolution and the Revolution of Dignity. This choice remained unchanged even during the war.

In the conditions of war, the legitimacy of the use of extraordinary measures by state authorities lies in two areas: first, such measures must be urgent and eliminate the threat to the constitutional order, in particular, the viability of the nation in the event of external aggression; second, accountability and control of the government, which includes parliamen-

tary and judicial control. In such a situation, the institutional capacity of the state to ensure human rights and freedoms is important. A special role is assigned to the judiciary, which must ensure the inalienable, inalienable right of a person to free access to justice. The article focuses attention on the importance of the Constitutional Court of Ukraine, local self-government bodies and institutions of civil society in ensuring human rights in extraordinary conditions.

Attention is also drawn to the fact that the formation of the Ukrainian political nation in the post-war period should take place around the new constitution. It should become a real social contract of the Ukrainian people – citizens of all nationalities who did not renounce their citizenship during the war and those who acquired it after the war through their will. The basis of this agreement should be the three defining values of constitutionalism – freedom and dignity of the individual, identity and dignity of the nation, supremacy of the constitution and norms of international law. They should find their reflection in the Preamble of the Constitution of Ukraine, which forms the basis of constitutional identity.

Keywords: Ukrainian constitutionalism; war; martial law; values; human rights; national identity; constitutional identity.

Problem formulation. Constitutionalism is an indisputable asset of modern European civilization. This is a political and legal phenomenon, the essence of which is directly related to the limitation of state power in the interests of public peace and protection of human rights within the limits of the current constitution. This phenomenon represents a certain hierarchy of values based on human dignity and freedom. Constitutionalism includes a set of expectations related to the behavior of legitimate authorities, while the constitution is a political-legal construct. The constitution, as one of the main attributes of constitutionalism, reflects the legal awareness of the bearer of the constituent power (the people), public consensus regarding social values that are ensured by the established legal order.

Modern Ukrainian constitutionalism undergoes certain modifications in the context of martial law, which was implemented through the President of Ukraine's Decree on February 24, 2022 [1, p. 12]. These modifications are a response to the objective military threats faced by the country. Primarily, they entail the need to enhance the ideological aspect of constitutionalism, focusing on promoting the national idea, strengthening national identity, and establishing the dignity of Ukrainians. Despite the conditions of martial law, the modern paradigm of Ukrainian constitutionalism remains grounded in principles that align with universal and European values. Secondly, there are adjustments in the functional mechanism of constitutionalism, driven by the imperative for public authorities to strike a balance between citizens' security and freedom while unwaveringly upholding their civil (constitutional) rights and freedoms, which should not be restricted even in times of war. Lastly, the formation of identity around the new (post-war) constitution is crucial, as it represents the collective hope of the entire Ukrainian people for a dignified political and socio-economic future within a united Europe.

Analysis of recent research and publications reveals that the topic of constitutionalism and its manifestations in extreme conditions, particularly during periods of martial law, has been extensively explored by scholars in the fields of social and humanitarian sciences, including legal scholars, political scientists, and sociologists. Karl Loewenstein, a German political scientist and constitutionalist, was one of the early researchers to delve into this subject in his 1937 essay titled "Militant Democracy and Fundamental Rights". Subsequently, other notable scholars such as J. Habermas, A. Chaillot, E. Posner, A. Vermeule, Ya. Roznai, and R. Albert have also addressed this issue. In the aftermath of the large-scale invasion of the Russian Federation into Ukraine, Ukrainian scientists have focused their studies on the protection of constitutional values, rights, and identity. Notable contributions in this regard have been made by researchers such as O. Vodyannikov, M. Baimuratov, Yu. Barabash, O. Boryslavska, My. Kozubra, A. Krusyan, P. Stetsyuk, and M. Savchyn.

The purpose of the article is to provide a scientific analysis of the functioning mechanism of the constitutional legal order during martial law. Specifically, it aims to explore the various means and methods through which this mechanism can protect constitutional values, rights and identity from internal and external threats. Additionally, the article seeks to develop practical recommendations to prevent any potential decline or regression of constitutionalism in the post-war period.

Results. The issue of values and their significance to individuals plays a crucial role in shaping any society. This is particularly true for Ukraine, which has developed its own system of goals and methods for achieving them that hold great importance for the Ukrainian people. Throughout history, it has been evident that people are willing to sacrifice themselves not only for their personal interests but also for their values. The courageous struggle of the Armed Forces of Ukraine and the entire Ukrainian people against Russia's military aggression serves as a vivid testament to this fact.

During times of martial law, the importance of values becomes even more pronounced, because during this war the authenticity of chosen values and the willingness of citizens and state authorities to uphold and protect them are put to the test [2, p. 32]. In such extreme circumstances, spiritual and moral values play a special role. Patriotism, readiness for self-sacrifice, heroism in defense of state sovereignty and territorial integrity, as well as other constitutional assets, become paramount. These values took precedence in response to the proponents of racism who denied the very existence of Ukrainians as a nation. Such claims were repeatedly made by the President of the Russian Federation (particularly during the State Duma meeting in 2005 and the Munich Security Conference in 2007) and the proponents of the "Russian world" ideology. The quintessence of this ideology can be found in an article titled "What Russia Should Do with Ukraine" published in the Russian edition of RIA Novosti by one of the Kremlin's political technologists, Tymofii Serhiytssev, which can be considered as a programmatic document outlining the Rashists' intentions regarding the genocide of the Ukrainian people.

The war in Ukraine possesses an undeniable existential nature as it directly impacts the future choices of every Ukrainian and the Ukrainian political nation as a whole. Within this war, Ukrainians are not only defending their right to exist as a distinct ethnic group but also upholding universal European values that are enshrined in the Constitution of Ukraine, particularly the ideals of freedom and democracy. Timothy Snyder emphasizes the significance of this value-driven choice made by Ukrainians during the conflict. According to Snyder, Ukrainians define freedom: "as a positive project, as a way of existence in the world, as the wealth of the future", they defend the "basic concept of self-government" at a time when it seems that authoritarianism is gaining ground all over the world [3].

The European orientation of the Ukrainian people emerged as a result of the Orange Revolution and the Revolution of Dignity. This commitment to a European path remains unwavering even in the face of the ongoing war. This is supported by a sociological study conducted by the Razumkov Center, which examined citizens' perceptions of the country's situation, trust in social institutions, and the political and ideological orientations of Ukrainian citizens in the context of Russian aggression (September–October 2022).

In this context, the socio-political values and orientations of Ukrainian citizens are of particular interest. Between 2010 and 2021, the percentage of respondents considering democracy as the most desirable form of political regime ranged from 48 % to 56 %, while those favoring an authoritarian regime ranged from 18 % to 24 %. However, a survey conducted in September–October 2022, after the onset of the full-scale Russian-Ukrainian war, revealed a notable shift. The proportion of respondents favoring democracy increased to 68 %, while the preference for an authoritarian regime decreased to 11,5 %. When faced with a choice between two models of social development—the European and the Russian—70 % expressed a preference for the European model, with only 0,5 % favoring the Russian model (compared to 58 % and 4 % respectively in 2017). When asked to prioritize between freedom and equality, 71 % of respondents chose freedom (up from 64 % in 2020). However, when faced with the trade-off between

freedom and security, Ukrainians more frequently opted for security, with 56 % choosing security and 44 % choosing freedom [4].

The perception of security among Ukrainian citizens is often associated with strong, unlimited power. According to the aforementioned sociological research findings, a considerable portion of respondents, 61 %, express support for a political system that features a “strong leader independent of the parliament and elections”. Moreover, 30 % of respondents consider a political system where power rests with the military or a military regime to be “good” or “very good”, a notable increase compared to 17,5 % in 2020. While these attempts to blend elements of democracy with authoritarianism in the context of war may be understandable, they also carry adverse consequences. Such circumstances can foster a growing support among post-war Ukrainian citizens for populist parties and leaders who may seek to seize power by appealing to the national and patriotic feelings of Ukrainians and thereby create conditions for the involution of constitutionalism and a threat to human rights.

In the 1930s, the German constitutionalist Karl Loewenstein astutely highlighted the potential for such a scenario in his work titled “Militant Democracy and Fundamental Rights” (1937). Within this work, Loewenstein introduced the concept of “militant democracy,” which suggests that, under extreme circumstances, the rule of law is obliged to limit the rights of citizens in order to protect constitutionalism from aggressive ideology [5, p. 424]. Advocates of such ideologies initially exploit the freedoms and democratic rights afforded to them, only to undermine and dismantle these very principles once they gain power. Essentially, Loewenstein raises a concern that was later formulated by Karl Popper in his renowned “paradox of tolerance”: the tolerance of intolerance is inherently detrimental as it breeds adversaries of freedom. Hence, a democratic society must not tolerate intolerance.

Of course, this concept creates one significant risk. The methods of militant democracy can be applied by populist (authoritarian) regimes. K. Loewenstein himself saw the countermeasure against such a danger in the fact that the rights of citizens were truly institutionalized, that is, protected by strong and mutually controlling political institutions in a system of checks and balances. However, in the conditions of war, the practical application of the principle of separation of powers is significantly complicated.

In the context of martial law, the functional mechanism of constitutionalism undergoes objective changes, which are caused by the need to ensure the state sovereignty and national security of Ukraine in the most effective way. According to the Constitution of Ukraine, the primary responsibility for these functions lies with the President of Ukraine. Article 102 of the Constitution outlines the President’s role in implementation the state’s strategic course towards full membership in NATO. Additionally, Article 106 of the Constitution grants the President a number of powers concerning national security and defense.

As the Supreme Commander-in-Chief, the President exercises leadership in the field of national security and defense. This includes appointing and dismissing individuals occupying positions of command within the Armed Forces of Ukraine and other military formations. Moreover, as the head of the National Security and Defense Council (NSDC) of Ukraine, the President, following discussions within the Council, presents a proposal to the Verkhovna Rada (Ukraine’s parliament) for declaring a state of war or implementing martial law, either nationwide or in specific areas. The President also makes decisions regarding the utilization of the Armed Forces and other military formations established in accordance with the law in response to armed aggression, as well as determining the need for general or partial mobilization.

In executing these functions, the NSDC plays a vital role as it facilitates strategic analysis and the preparation of relevant draft documents in the field of national security and defense.

The Government’s authority in this domain is restricted, as outlined in Article 116 of the Constitution. The Cabinet of Ministers is responsible for ensuring state sovereignty, implementing the state’s strategic course towards full membership in NATO, and undertaking measures to ensure Ukraine’s defense capability. The analysis of the political level of authority in the field of national security and defense shows that the President prevails in this field. This division of powers also influences the

allocation of funds from the State Budget for Ukraine's defense needs. The Cabinet of Ministers, in formulating its proposals, must adhere to the directives of the President, who holds leadership responsibility in these specific areas.

It is worth noting that throughout Ukraine's period of independence, despite the formal parliamentary-presidential system of government, a tradition has developed where the President holds a position of "dominance" over the Government. This is evident in the President's efforts to lead the executive branch of government. This dominance became particularly apparent following the presidential and parliamentary elections in 2019. The concentration of power in the President's office was evident as the political party he led secured an absolute majority in the Verkhovna Rada of Ukraine, allowing them to form a single-party Government. This development may have played a significant role in facilitating the implementation of urgent measures during the extensive invasion by the Russian Federation on Ukrainian territory.

However, despite the advantages of presidentialism in decision-making during extraordinary circumstances, it also poses certain threats to constitutionalism. For instance, when the President of Ukraine attempts to assume powers that are not granted by the Constitution, such as interfering in the activities of judicial and law enforcement agencies or obstructing the work of independent opposition media, it directly jeopardizes constitutional (civil) rights, including freedom of speech, the right to a fair trial, and impartial justice. In such a situation, the institutional capacity of the state to ensure human rights and freedoms becomes crucial. Therefore, the legitimacy of implementing extraordinary measures rests on two key aspects: first, these measures must be necessary and effectively address the threat to the constitutional order, particularly the nation's viability in the face of external aggression; second, the accountability and controllability of the government, which includes parliamentary and judicial control [6, c. 8].

During the period of martial law, state authorities often prioritize the principle of political expediency over the principle of legality when making decisions. While this can be justified from the perspective of the legitimate objective of defeating the enemy, it is essential that such decisions by the authorities are subject to judicial scrutiny. Failing to do so would undermine the principle of the rule of law. An example of this can be observed in the suspension of activities of eleven political parties by the National Security Council. While the anti-state nature of these parties may have been evident, and the NSDC may have generally followed the principle of proportionality in pursuing a legitimate goal, the argumentation provided in the relevant decision does not stand up to criticism. In this specific case, concerns arise regarding the adherence to legality since, at that time, Ukrainian legislation did not prescribe a procedure for suspending the activities of a political party, but rather for banning a party based on a court decision [7, c. 39].

In order to ensure civil rights during wartime, it is crucial to establish an effective constitutional mechanism that prevents an excessive concentration of power. While the Constitution of Ukraine serves as the primary safeguard against the violation of human rights and freedoms, the details of this mechanism are not extensively prescribed in the text of the Constitution or in the constitutional legislation. Section II of the Basic Law, for instance, has a more declarative nature and primarily consists of Article 64, which states that the constitutional and legal status of individuals and citizens during martial law involves the restriction of rights and freedoms, but only within the limits outlined by the Constitution. Moreover, this restriction is temporary, and there is a list of rights and freedoms that cannot be limited. The regulation of this mechanism is only partially addressed by the Law of Ukraine "On the Legal Regime of Martial Law" dated 12th May 2015, and the Decree of the President of Ukraine "On the Introduction of Martial Law in Ukraine" dated 24th February 2022. However, as demonstrated by practical experience, these provisions are insufficient in guaranteeing constitutional law and order during extreme conditions.

Institutional mechanisms to prevent the excessive concentration of power during wartime are of utmost importance. One such mechanism is the Constitutional Court of Ukraine, which serves as the guardian of the constitution. The Court exercises constitutional control over the acts and actions of state

authorities, ensuring compliance with the constitutional rights and freedoms of individuals. Preserving its independent status, the Constitutional Court can truly act as a guarantor of upholding the values of constitutionalism. A significant challenge faced by the Court is determining the constitutionality of specially enacted legislation that is in effect during martial law. In this regard, it would be beneficial for Ukraine to consider cases related to armed conflicts between Armenia and Azerbaijan, which were examined by the European Court of Human Rights (ECtHR). Institutional mechanisms to prevent the excessive concentration of power during wartime are of utmost importance. One such mechanism is the Constitutional Court of Ukraine, which serves as the guardian of the constitution. The Court exercises constitutional control over the acts and actions of state authorities, ensuring compliance with the constitutional rights and freedoms of individuals. Preserving its independent status, the Constitutional Court can truly act as a guarantor of upholding the values of constitutionalism. A significant challenge faced by the Court is determining the constitutionality of specially enacted legislation that is in effect during martial law. In this regard, it would be beneficial for Ukraine to consider cases related to armed conflicts between Armenia and Azerbaijan, which were examined by the European Court of Human Rights (ECtHR).

Institutional mechanisms to prevent the excessive concentration of power during wartime are of utmost importance. One such mechanism is the Constitutional Court of Ukraine, which exercises constitutional control over the acts and actions of state authorities, ensuring compliance with the constitutional rights and freedoms of individuals. Performing the function of guardian of the constitution, this body of constitutional jurisdiction, provided that its independent status is preserved, is capable of being a real guarantor of ensuring the values of constitutionalism. A significant challenge faced by the Court is determining the constitutionality of specially enacted legislation that is in effect during martial law. In this regard, it would be beneficial for Ukraine to consider cases related to armed conflicts between Armenia and Azerbaijan, which were examined by the European Court of Human Rights (ECtHR).

The Constitutional Court of Ukraine is one of the guarantors of the observance of human and citizen rights and freedoms. In this regard, it would be valuable to draw on the experience of resolving similar issues during past military conflicts. For example, in a number of cases against Croatia, Bosnia and Herzegovina, the ECtHR developed and established standards arising from the positive obligations of states parties to the Convention on the Guarantee of the Right to Life and the Prohibition of Torture, which are provided for in Articles 2 and 3 of the Convention.

The existence of local self-government and the functioning of its bodies undoubtedly contributes to the formation, functioning and improvement of the local system of protection and protection of human and citizen rights and freedoms. This underscores one of the key functions of local self-government – the protection and enforcement of human rights [8, p. 85]. The issue of ensuring the legal framework for the implementation and protection of human rights acquires increased importance, special actualization and emphasis in such conditions. Here, first of all, the issues of restoration and organization of the functioning of territorial communities and their self-governing bodies in the conditions of a humanitarian disaster and post-war rehabilitation of the local economy. This includes tasks like demining, debris removal, territorial restoration, road reconstruction, provision of essential services (medical care, access to basic necessities), transportation, and revival of production. Essentially, it entails restoring the administrative and social capacities of the region and reviving the local community to establish basic and minimal conditions for the functioning of territorial communities and the activities of self-government bodies in the newly liberated areas.

Civil society institutions, which enjoy a high level of trust among citizens, play a crucial role in legitimizing the authorities during wartime. Human rights organizations and volunteer groups, in particular, have made significant contributions during the war, earning recognition not only from the Ukrainian population but also from the international community. The recent awarding of the 2022 Nobel Peace Prize to the Center for Civil Liberties serves as compelling evidence of their impact. Additionally, religious organizations, while staying outside of politics, hold considerable influence over Ukrainians, who

are predominantly believers. They play a crucial role in shaping the spiritual and moral boundaries, especially in extreme conditions, both for the citizens and the government. Furthermore, universities should take on the responsibility of defending the values of constitutionalism and civil rights. One of their primary tasks is to cultivate constitutional legal awareness among young people and promote a modern paradigm of Ukrainian constitutionalism.

A modern national constitutional state is a harmonious combination of the established tradition and culture of the dominant ethnic nation and the right to self-expression of all ethnic groups living within this state as its citizens. The cultural factor plays a crucial role in shaping the identity of a political nation. The stronger the sense of cultural unity, the deeper the awareness of identity within the nation. Conversely, the absence or weakness of a unifying cultural element can lead to the decline and weakness of the nation. It is essential for other national groups to show respect for the historical heritage, language, and religion of the dominant ethnic group in order to foster the formation of a political nation.

National identity is a complex socio-psychological phenomenon that brings people together based on shared legal values such as freedom, justice, and equality. These values have evolved over a long historical period and have become an integral part of the state-building practice and strategic goals of further development. National identity is reflected in public legal awareness, which enables individuals to perceive themselves as part of a unified cultural and legal space and to be recognized as part of a political nation. The strength of national-legal identity depends on the extent of cultural bonds among members of the political community. The combination of political and cultural factors is essential in the formation of a modern constitutional state. National dignity and constitutional values serve as the foundation of national-legal identity and should form the basis of the legal ideology of the Ukrainian state.

In the context of war, the issue of identity becomes crucial, as it is directly related to the territorial integrity and sovereignty of the state. Even after the de-occupation of the territories, the occupied regions of Ukraine, such as Donbass and Crimea, can pose ongoing political challenges. Therefore, the reintegration of these territories, along with the return of their people into the political, legal, and cultural framework of Ukraine requires identifying common ground that can serve as the foundation for the identity of a united Ukrainian nation.

The future of national identity is closely linked to the integration of the Ukrainian state into the single European legal framework. The Constitution of Ukraine reflects these intentions through amendments that came into effect on February 21, 2019. These amendments include provisions in the preamble of the Constitution emphasizing the European identity of the Ukrainian people and the irreversibility of Ukraine's European and Euro-Atlantic course. Additionally, relevant articles of the Constitution outline the responsibilities of the Verkhovna Rada, the President, and the Government to implement, within their respective competencies, a strategic course aimed at achieving full membership of Ukraine in the European Union and NATO. This goal is aligned with Ukraine's legal tradition and contemporary state-building practices.

It is important to note that while geopolitical orientation is not commonly explicitly defined in national constitutions, several countries have incorporated provisions regarding their European or Euro-Atlantic integration in their constitutional preambles or articles. However, Ukraine is certainly not the first to do this. Lithuania, Montenegro, Hungary, and the Czech Republic are among the countries whose national constitutions include references to their European geopolitical orientation. For instance, the preamble of the Montenegrin Constitution explicitly mentions European and Euro-Atlantic integration. The Constitution of Romania also includes provisions on Euro-Atlantic integration. Furthermore, in 2017, Georgia, as a country within the EU's Eastern Partnership, amended its constitution to require state institutions to take all necessary measures to ensure Georgia's full integration into the European Union and NATO.

Conclusions. During times of war, there are objective changes in the functional mechanism of constitutional democracy as the focus shifts towards ensuring state sovereignty and national security. The

effective achievement of these goals requires maximum mobilization and cooperation from the authorities. While certain restrictions on human rights, particularly political rights, may be justified, fundamental rights centered around freedom and human dignity remain inviolable even in wartime.

Martial law does not negate a person's right to judicial protection, as guaranteed by Article 64 of the Ukrainian Constitution. Therefore, courts cannot refuse to accept subpoenas or other statements (complaints) that meet the requirements established by law. Legitimacy of the government during the war is possible only under the condition of control over its actions by independent courts.

In the post-war period, the formation of the Ukrainian political nation should revolve around a new constitution. This constitution should serve as a real social contract among Ukrainian citizens of all nationalities, including those who maintained their citizenship during the war and those who acquired it afterwards. The foundation of this agreement should be the three defining values of constitutionalism: individual freedom and dignity, national identity and dignity, and the supremacy of the constitution and norms of international law. These values should be reflected in the Preamble of the Constitution of Ukraine, which establishes the basis of constitutional identity.

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УКРАЇНСЬКИЙ КОНСТИТУЦІОНАЛІЗМ В УМОВАХ ВІЙНИ: БОРОТЬБА ЗА ЦІННОСТІ, ПРАВА ТА ІДЕНТИЧНІСТЬ

В статті здійснено комплексний аналіз механізму функціонування конституційного правопорядку в умовах воєнного стану, зокрема тих засобів та способів за допомогою яких він може захистити конституційні цінності, права та ідентичність від внутрішніх та зовнішніх загроз, а також запропоновано практичні рекомендації запобігання можливої інволюції конституціоналізму в післявоєнний період.

Автор вважає, що після широкомасштабного вторгнення РФ на територію України практична парадигма українського конституціоналізму набула нових рис. По-перше, це зміна ідеологічної складової частини змісту конституціоналізму – конституційної правосвідомості у бік піднесення національної ідеї, національної ідентичності та утвердження національної гідності українців. Водночас в її основі лежить європейська модель конституціоналізму, яка відповідає загальнолюдським цінностям, передусім людській гідності та свободі, які є незмінними навіть в умовах воєнного стану. По-друге, це зміни функціонального механізму конституціоналізму, що зумовлені необхідністю забезпечення органами публічної влади балансу між безпекою і свободою громадян з неухильним дотриманням основоположних прав і свобод людини, які не можуть бути обмежені навіть в умовах війни. По-третє, формування нової ідентичності навколо нової (післявоєнної) конституції, яка має стати вираженням надії всього українського народу на своє гідне політичне та соціально-економічне майбутнє в об'єднаній Європі.

Автор статті стверджує, що війна в Україні має яскраво виражений екзистенціальний характер, оскільки безпосередньо стосується вибору майбутнього кожного українця та української політичної нації загалом. У цій війні українці захищають не лише своє право на існування як окремого етносу, але й загальнолюдські, європейські цінності, які відображені в Конституції України – передусім ідею свободи та демократії. Європейський вибір українського народу є результатом Помаранчевої революції та Революції гідності. Цей вибір залишився незмінним і в умовах війни.

В умовах війни легітимність застосування органами державної влади екстраординарних заходів лежить у двох площинах: по-перше, такі заходи мають бути невідкладними та усувати загрозу конституційному порядку, зокрема життєздатності нації у разі зовнішньої агресії; по-друге, підзвітність і підконтрольність уряду, яка включає парламентський та судовий контроль. В такій ситуації важливою є інституційна здатність держави забезпечити права та свободи людини. Особлива роль покладається на судову владу, яка повинна забезпечити невідчужуване, невід'ємне право людини на вільний доступ до правосуддя. В статті акцентується увага на значенні Конституційного Суду України, органам місцевого самоврядування та інститутам громадянського суспільства в забезпеченні прав людини в екстраординарних умовах.

Також звертається увага на те, що формування української політичної нації у післявоєнний період повинно відбуватися навколо нової конституції. Вона повинна стати реальним суспільним договором українського народу – громадянами всіх національностей, які під час війни не відмовилися від свого громадянства, і тими, хто після війни його набув шляхом свого волевиявлення. В основі цього договору мають бути покладені три визначальні цінності конституціоналізму – свобода та гідність особи, самобутність та гідність нації, верховенство конституції та норм міжнародного права. Вони мають знайти своє відображення в Преамбулі Конституції України, яка становить основу конституційної ідентичності.

Ключові слова: український конституціоналізм; війна; воєнний стан; цінності; права людини; національна ідентичність; конституційна ідентичність.