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CONSTITUTIONAL FOUNDATIONS OF STATE OF EMERGENCY IN POLAND AND UKRAINE: A COMPARATIVE ANALYSIS

PODSTAWY KONSTYTUCYJNE STANU WYJĄTKOWEGO W POLSCE I NA UKRAINIE: ANALIZA PORÓWNAWCZA

Abstract: This article analyses and compares the constitutional foundations of state of emergency in the Republics of Poland and Ukraine. Focusing on the allocation of defence-related competences among constitutional organs, the legal regimes of martial law and states of emergency and the risks of competence conflicts, the study identifies two divergent constitutional models. Poland represents a dualistic system anchored in civilian democratic control and institutional balance, while Ukraine has developed a strongly centralised presidential defence model shaped by conditions of armed conflict. The article argues that both models are constitutionally justified but entail different legal and democratic trade-offs, particularly in relation to separation of powers, protection of civil rights and post-conflict constitutional restoration.

Zarys treści: Niniejszy artykuł analizuje i porównuje konstytucyjne podstawy stanu wyjątkowego w Rzeczypospolitej Polskiej i na Ukrainie. Koncentrując się na podziale kompetencji obronnych między organami konstytucyjnymi, reżimach prawnych stanu wojennego i wyjątkowego oraz ryzyku konfliktów kompetencyjnych, badanie identyfikuje dwa rozbieżne modele konstytucyjne. Polska reprezentuje system dualistyczny, zakorzeniony w cywilnej kontroli demokratycznej i równowadze instytucjonalnej, podczas gdy Ukraina rozwinęła silnie

scentralizowany prezydencki model obrony, ukształtowany przez warunki konfliktu zbrojnego. W artykule argumentuje się, że oba modele są uzasadnione konstytucyjnie, ale pociągają za sobą różne kompromisy prawne i demokratyczne, w szczególności w odniesieniu do podziału władzy, ochrony praw obywatelskich i przywrócenia konstytucji po konflikcie.

Keywords: state defence, constitutional law, martial law, state of emergency, civil–military relations, Poland, Ukraine.

Słowa kluczowe: obrona państwa, prawo konstytucyjne, stan wojenny, stan wyjątkowy, stosunki cywilno-wojskowe, Polska, Ukraina.

1. Introduction

The defence of the state constitutes a core function of constitutional governance and a fundamental obligation in modern legal systems. While democratic constitutions typically emphasise civilian control over the armed forces, contemporary security threats increasingly test the resilience of such frameworks. Armed aggression, hybrid warfare and prolonged states of emergency require constitutional systems to reconcile effectiveness with legality and democratic accountability. The war in Ukraine "has raised concerns about the security of Poland and the region, for which threats were seen primarily in the aggressive actions of Russia".[1] At the same moment a negative attitude on the part of some politicians, as well as demonstrating the inability of state institutions to protect and defend citizens, and looking for enemies for themselves, significantly reduces the effective management of the state and the critical opinion of the Polish public.[2]

Poland and Ukraine offer a particularly instructive comparison. Both states define defence as a supreme constitutional value and impose a universal obligation on citizens to protect state sovereignty. However, their constitutional architectures differ markedly. Poland operates within a parliamentary–cabinet system characterised by executive dualism, whereas Ukraine has developed a highly centralised defence model centred on the President.

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[1] J. Bornio, *Bezpieczeństwo narodowe Polski w kontekście kryzysu ukraińskiego. Wymiar polityczno-militarny*, Difin, Warszawa 2019.

[2] A. Kwiatkowski, *Bezpieczeństwo Polski w świetle działań wojennych Rosji na Ukrainie*, "De Securitate et Defensione. O Bezpieczeństwie i Obronności" 2023, vol. 9, no. 1.

2. Methodology

The article applies a qualitative comparative constitutional methodology. The primary method used is doctrinal legal analysis of constitutional provisions, statutory acts regulating martial law and states of emergency and official institutional competences in both Poland and Ukraine. A functional-comparative approach is additionally employed, examining how normative frameworks operate in practice under conditions of heightened security threats. The research is based on analysis of constitutional texts,[3] statutory legislation[4] and official public documents. Supplementary analytical tables are used to systemise competences and identify potential areas of conflict. The study does not rely on empirical military data and focuses instead on legal structures and institutional design.

3. Literature review and normative framework

In Poland, the constitutional foundation is Chapter XI of the 1997 Constitution and the associated emergency regimes; the recent literature stresses that the framework is formally elaborate but used sparingly, with one article noting that the constitution itself does not need urgent amendment, while statutory detailing does.[5]

The Polish discussion is therefore less about inventing emergency power than about how to keep it bounded. Recent work emphasizes the constitutional framework regulating states of emergency, the stability of public-authority competences during emergency and the risk that authorities may either misuse the regime or circumvent it altogether.

The Ukrainian literature is more security-centred and more directly shaped by war. The main focus on the Constitution of Ukraine[6], plus the laws on martial

[3] Constitution of the Republic of Poland Act of 2 April 1997, Dz.U. (Journal of Laws) 1997, No. 78, item 483, https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19970780483, (accessed 12.02.2025); Constitution of Ukraine Act of 28 June 1996, VVR (The Bulletin of the Verkhovna Rada of Ukraine) 1996, No. 30, item 141, https://zakon.rada.gov.ua/laws/show/254к/96-вр, (accessed 12.02.2025).

[4] Act of 16 March 2000 on the Legal Regime of a State of Emergency, VVR (The Bulletin of the Verkhovna Rada of Ukraine) No. 22, item 171, https://zakon.rada.gov.ua/laws/show/1550-14, (accessed 13.02.2025); Act of 17 April 2025 on Martial Law and on the Competences of the Commander-in-Chief of the Armed Forces, Dz.U. (Journal of Laws) 2025, item 504.

[5] M. Florczak-Wątor, *Constitutional Challenges in Emergency Governance: An Analysis of Poland's Reluctance and Regulatory Ambiguities in States of Emergency*, "European Journal of Risk Regulation" 2025, vol. 16, iss. 2.

[6] Constitution of Ukraine…, op. cit.

law and the state of emergency, repeatedly flags the same tension: the state needs broad defence and emergency powers, but the legal criteria and procedures are often too open-ended, which weakens rights protection and invites executive overreach.One paper also frames the President as holding significant powers in security and defence, which makes the constitutional design of emergency governance closely tied to the presidency and the command structure. This is an initial search showing limited input to comparative studies, so a deeper pass could surface more specialised Polish and Ukrainian doctrinal work.[7]

In constitutional theory, defence is treated as a fundamental function of the state constrained by civilian democratic control. The Polish Constitution reflects this model by emphasising the political neutrality of the Armed Forces and their subordination to civilian authorities. Defence is thus framed as both a state function and a universal civic duty. The Constitution of Ukraine similarly elevates defence to the rank of the state's most important function but assigns a more centralised coordinating role to the President, particularly through the National Security and Defence Council. Scholarly debate highlights the tension between operational effectiveness and long-term constitutional balance, particularly regarding parliamentary control and local democracy.

4. Comparison of martial law and state of emergency in terms of defence in both countries

Comparing martial law and a state of emergency in Poland and Ukraine requires distinguishing their purposes: martial law serves to repel external aggression, while the state of emergency (in Ukraine, called the state of emergency – *nadzvychaynyy stan*) concerns internal threats, such as attempts to overthrow the system or natural disasters.[8]

[7] O. Vasylchenko, *Nadzvychayni povnovazhennya hlavu derzhavy: pravove rehulyuvannya i ryzyky*, "Visnyk Uzhhorodskoho natsionalnoho universytetu" 2025, vol. 4, no. 87, https://visnyk-pravo.uzhnu.edu.ua/article/view/325710/315598, (accessed 27.02.2025).

[8] O. Babaitskyi, S. Ivashchenko, *Pravove rehulyuvannya voyennoho stanu ta nadzvychaynoho stanu v Ukrayini*, "Slovo Natsionalnoyi shkoly suddiv Ukrayiny" 2025, no. 1, https://slovo.nsj.gov.ua/images/pdf/2025_1_50/Barbaitskyi.pdf, (accessed 14.10.2025).

4.1. Poland: the problem of "two centres"

In the Polish parliamentary-cabinet system, the constitutional term "supreme authority" of the President is constantly being reinterpreted:[9]

- Appointments and resignations: According to reports from March 2026, President Karol Nawrocki entered into an open conflict with the Ministry of Defence, convening meetings with generals without coordination with the Ministry of Defence, which was seen as a show of force against the government.
- Reform of the Armed Forces: Work is underway on the reform of the command and control system (SKiD), which is to restore the Commands of the Armed Forces. The main point of contention is who they are to report directly to during a crisis – the Chief of Staff (military concept) or the Minister (civilian concept).

In Poland, both states are instruments of state protection, but with different vectors of action. Martial law (Article 229 of the Constitution):

- Prerequisites: External threat to the state, armed attack on the territory of the Republic of Poland or duty of common defence (NATO alliances).
- Defence: The defence system is fully activated. The President may appoint the Commander-in-Chief of the Armed Forces[10], who takes over the operational command.
- The military gains broad powers over combat operations and supporting administrative bodies.
- Restrictions: Possible militarization of organizational units (e.g. workplaces), mandatory benefits for defence.
- State of emergency (Article 230 of the Constitution):
- Premises: A threat to the constitutional system of the state, the safety of citizens or public order.

Defence: The army plays an auxiliary role. If the Police forces are insufficient, the President may decide to use Armed Forces units to restore order (the so-called support for the operation of the Ministry of Interior and Administration). However, the Army does not take full operational power over the state here.

[9] Constitution of the Republic of Poland…, op. cit.

[10] Act of 17 April 2025 on Martial Law and on the Competences of the Commander-in-Chief of the Armed Forces, op. cit.

4.2. Ukraine: centralization vs. local democracy

In Ukraine, the war has forced a vertical command structure, which gives rise to conflicts with a political background:[11]

- Military administrations: The introduction of military administrations (especially in citiessuch as Kharkiv and Dnipro) has led to the marginalisation of elected local authorities. The conflict mainly concerns the management of local budgets, which the military administrations want to transfer entirely to the army.
- Autonomy of the Army: After personnel changes in the high command (e.g. the departure of General Zaluzhny), the key flashpoint is the degree of interference of the President's civilian advisers in specific tactical decisions on the front line.[12]

Ukrainian law separates these states in a very strict way, especially in the context of the ongoing war with Russia. Martial law (*voyennyy stan*):

- Prerequisites: Armed aggression or threat of aggression, threat to independence and territorial integrity.
- Defence: The state is goes into a mode of complete militarization. The key role is played by the Military Administrations, which can limit the competences of local governments. The President, as Commander-in-Chief, manages the Security Council and the General Staff.
- Specificity: The law allows for the forced expropriation of property for defensive purposes and the introduction of curfews and information blockades.

State of Emergency (*nadzvychaynyy stan*):

- Premises: Technogenic catastrophes, epidemics or attempts to seize power by force and riots.
- Defence: The main burden of action lies with the Ministry of Internal Affairs and the Security Service (SBU). The Armed Forces can only be used to protect strategic facilities or help in the mitigation of the effects of disasters and not for strictly combat operations against citizens.

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[11] O. Vasylchenko, *Nadzvychayni povnovazhennya hlavu derzhavy: pravove rehulyuvannya i ryzyky*, "Visnyk Uzhhorodskoho natsionalnoho universytetu" 2025, vol. 4, no. 87, https://visnyk-pravo.uzhnu.edu.ua/article/view/325710/315598, (accessed 27.02.2025).

[12] O. Kotliarenko, *Povnovazhennya Prezydenta Ukrayiny yak Verkhovnoho Holovnokomanduvacha Zbroynykh Syl Ukrayiny: kharakterystyka zmistu ta obsyahu*, "Analitychno-porivnyalne pravoznavstvo" 2022, no. 2, https://journal-app.uzhnu.edu.ua/article/view/261612/258035, (accessed 1.03.2025).

Table 1 Comparison of states of emergency in terms of defence

Feature/ Area	Martial law (Poland)	State of emergency (Poland)	Martial law (Ukraine)	State of emergency (Ukraine)
Constitutional basis	Article 229[13]	Article 230	Article 106(1)(20)[14]	Article 106(1)(19)
Source of the threat	External (aggression, threat to borders)	Internal (system, public safety)	External (armed aggression, independence)	Internal (riots, natural disasters)
Chief decision-maker	The President at the request of the Council of Ministers	The President at the request of the Council of Ministers	President (decree approved by the Verkhovna Rada)	President (decree approved by the Verkhovna Rada)
Operational management	Commander-in-Chief of the Armed Forces (appointed for the duration of the war)	The Minister of Higher Education and Administration and Voivodes	General Staff of the SZU and commanders of the	MSW, SBU, The State Emergency Service of Ukraine
The role of the military	Full combat operations; superiority over civilian services	Police support (only if necessary)	Taking over the functions of civil administration	Critical Infrastructure and Border Protection
Local structure	Civil administration subordinated to the needs of defence	No changes (Voivodes have increased powers)	Military Administrations (Oblasna/ Miska)	Territorial Commands (civil-military coordination)
Civil Rights	Suspension of personal freedoms, censorship, ban on strikes	Restrictions on movement, curfew, searches	Forced labour, confiscation of property, ban on leaving the country	Document control, ban on gatherings, quarantine

[13] Constitution of the Republic of Poland…, op. cit.
[14] Constitution of Ukraine…, op. cit.

Feature/ Area	Martial law (Poland)	State of emergency (Poland)	Martial law (Ukraine)	State of emergency (Ukraine)
Economy	Transition to war mode; priority for military orders	Possible restrictions on trade in goods	Militarization of plants, obligation to supply to the army	State control over strategic resources
Duration	Constitutionally unspecified (until the threat ceases)	Max. 90 days + 60 days option (with the consent of the Sejm)	Determined by decree (usually renewed every 90 days)	Max. 30 days (whole country) or 60 days (selected regions)
Justice	Military courts can take over some civil cases	Common courts (expedited procedure possible)	Military and civilian courts operate in a specific mode	No changes in the structure of the judiciary
Elections and Referendums	Banned during and 90 days after completion	Banned during and 90 days after completion	A total ban on holding elections to all bodies	Possible restrictions depending on the security situation

Source: own compilation.

5. Discussion

The comparison of Polish and Ukrainian defence systems reveals two distinct constitutional logics. In Poland, executive dualism mitigates the risk of power concentration but generates uncertaintyin crisis situations. The coexistence of presidential supremacy and governmental leadership createsthe potential for competence disputes during wartime transitions[15].

Ukraine represents a contrasting model prioritising centralisation. The President exercises directcommand authority and military administrations may replace civilian governance in affected regions. While effective for wartime command, this model restricts local democracy and raises concerns regarding post-conflict constitutional restoration.

[15] M. Florczak-Wątor, *Constitutional Challenges*…, op. cit.

In both countries, defence is defined as the highest function of the state and a universal duty, but key features should be pointed out:[16]

- Mechanism of transfer of power (administration)
  - In Poland: The system is dualistic. Even under martial law, the civil administration (Voivodes) still exists, although it has to implement military guidelines. The key figure becomes the Commander-in-Chief of the Armed Forces, who reports directly to the President.
  - In Ukraine: The system is monistic (integrated). Military administrations directly replace civilian city councils where there is fighting or where the situation is critical. Mayors and councillors lose real power to officers appointed by the President.
- The Right to Resistance and Mobilization
  - Poland: Mobilisation (general or partial) is managed by the President. The Constitution guarantees the right to compensation for material losses suffered by citizens as a result of the restrictions of states of emergency (Article 233).
  - Ukraine: The law is more restrictive. The law on martial law allows for the so-called "social expropriation" – the army can seize cars, buildings or food from private entities for a receipt (compensation is often paid only after the war).
- Democratic Restrictions
  - Parliamentary scrutiny: In both countries, the Parliament (Sejm/Verkhovna Rada) must approvethe President's decision. However, in Ukraine, the Verkhovna Rada works continuously and has a real influence on the shape of war decrees.
  - Elections: In both countries, there is an absolute ban on elections. In Poland, this ban extends to 90 days after the end of the state, in Ukraine – elections must be ordered immediately after the lifting of martial law (although the logistics of this process after the war is a legal challenge).
- Relations with Allies (NATO/EU)
  - Poland: Martial law automatically triggers NATO's allied procedures (Article 5). Command of part of the forces may be transferred to NATO structures.
  - Ukraine: As a non-NATO state, Ukraine under martial law relies on bilateral security agreements and its own command system, retaining full decision-making autonomy over the army.

[16] Constitution of the Republic of Poland…, op. cit.; Constitution of Ukraine…, op. cit.

6. Conclusions

Poland and Ukraine have developed constitutionally coherent yet structurally divergent models of defence governance. Poland prioritises democratic safeguards and civilian control, while Ukraine prioritises centralisation and operational effectiveness in response to existential threats.

So, Poland looks like a relatively settled but cautiously underused emergency architecture, while Ukraine looks like a more heavily securitised and less settled model, where the key constitutional question is how far defence powers can expand during a crisis without eroding legal certainty, parliamentary control and rights guarantees[17].

For Poland, the challenge is clarifying presidential supremacy to avoid institutional paralysis[18]. For Ukraine, the primary task is restoring civilian governance and parliamentary oversight after the cessation of hostilities.

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[17] O. Vasylchenko, *Nadzvychayni povnovazhennya hlavu*…, op. cit.

[18] K. Eckhardt, *Constitutional Grounds for Introducing the State of Emergency. Comments in the Light of Threats Caused by the War in Ukraine, the Polish-Belarusian Border Crisis and the Covid-19 Pandemic*, "Przegląd Prawa Konstytucyjnego" 2022, no. 4(68).

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Summary

Poland and Ukraine have developed constitutionally coherent but structurally different models of defence governance. Poland's system is based on democratic safeguards, civilian control and a relatively stable emergency framework, although its practical use remains cautious and limited. Its main constitutional challenge is to clarify the scope of presidential authority in order to prevent institutional deadlock during crises. Ukraine, by contrast, has adopted a more centralised and securitised model shaped by the demands of an existential armed conflict. While this approach strengthens operational effectiveness, it also raises concerns about legal certainty, parliamentary oversight and the protection of fundamental rights. After the end of hostilities, Ukraine's key task will be to restore civilian governance and effective parliamentary control, while preserving the defence capacity developed during wartime