

The Fight for Freedom: Ukraine's Mitigation of War Conditions for Democratic Process

Taras Prodaniuk¹

Abstract

Amidst a severe military crisis instigated by the Russian invasion, Ukraine is faced with maintaining democratic stability problems due to implementing stringent policies and regulations such as Martial Law to make fast decisions and safeguard its sovereignty. This paper explores the complexities and challenges of preserving democratic norms, focusing on (1) political rights, (2) civil liberties, and (3) governmental transparency during the exigencies of warfare. While these democratic elements face potential erosion during the war, their preservation and eventual restoration are crucial for Ukraine's post-war recovery and ongoing democratic development as well as Eurointegration. Recommendations focus on the mitigation of policies that constrain democracy during wartime, maintaining public engagement, ensuring the power of human rights protection and enhancing transparency and accountability, which are essential for maintaining a robust democratic framework.

Introduction

On February 24, 2022, Russia started a military invasion of Ukraine, targeting essential cities and pushing towards Kyiv. Consequently, President Volodymyr Zelenskyy declared a Martial Law regime, subsequently ratified by the Parliament of Ukraine². Martial Law implies a special governmental order where the military officers and the executive power have the privilege in power to strengthen the governance during a period of external

¹ 2023 Think Visegrad Non-V4 Expert Fellow at the Polish Institute of International Affairs, Warsaw (Poland). Taras Prodaniuk is a scholar on democracy and global trends, focusing on Ukraine's recovery. He currently holds research and fellowship roles at the University of Oxford, and the Canadian Global Affairs Institute. He founded ADASTRA, a Ukrainian think tank, where he delves into international partnerships, the EU's role in Ukraine's rebuilding, and Ukrainian-Canadian relations. His academic background includes an LL.M. and a B.A. in International Relations from Taras Shevchenko Kyiv National University.

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² Order of the President of Ukraine on Martial Law. Web: <https://zakon.rada.gov.ua/laws/show/64/2022#n2>



threat. The order of Martial Law (ML)³ presumed the restriction of a few dispositions of the Constitution of Ukraine (CU). While this step was crucial for addressing the immediate military threat, it also posed significant constraints on the democratic process in Ukraine.

The imposition of Martial Law for the long-lasting war has accelerated concerns about democratic backsliding, a phenomenon characterised by the weakening or reversing of democratic norms and institutions. For 2022, Freedom House⁴ indicated the freedom status of Ukrainian democracy as ‘partially free’ with 50 out of 100 points (2021 year – 61 points).

Democracy of the wartime

The values of freedom, respect for human rights and the principle of holding periodic and genuine elections by universal suffrage are essential elements of democracy^{5/6}. Democratic governance embodies⁷ a collection of values and principles that advocate for enhanced participation, equality, security, and human development. It fosters an environment that honours human rights and fundamental freedoms, executing the will of the people through their freely expressed desires and choices. The aspects of democratic governance I focus on in this paper include (1) political rights that ensure citizens have the power to choose their leaders as well as express political views without repression; the respect of (2) civil liberties, which implies protecting freedoms relating to speech, beliefs and expression; and the last but not least is the (3) governmental transparency, which means that a State should be accountable, with mechanisms to prevent corruption and validate whether leaders act in the public interest.

The country, besieged by an external threat from Russia, strives to protect its national borders and sovereignty, utilising martial law as a vital instrument to navigate wartime's immediate and palpable imperatives. The Ukrainian military government, by restricting its people's rights in a bid to protect national sovereignty, put democracy in Ukraine at risk. The dilemma lies in the juxtaposition of a war that is perceived as a fight for the freedom of the Ukrainian people. Hence, Ukraine finds itself ensnared in a paradox where the fight for freedom simultaneously necessitates the curtailment of certain liberties. This interplay presents a complex scenario where democratic principles are being safeguarded and restricted simultaneously by internal governance warfare mechanisms, painting a complex picture of democracy's role during wartime.

³ Law. On the legal regime of martial law. Web: <https://zakon.rada.gov.ua/laws/show/389-19#Text>

⁴ Freedom House Index. Web: <https://freedomhouse.org/explore-the-map?type=fiw&year=2023>

⁵ UN. Web: <https://www.un.org/en/global-issues/democracy>

⁶ Freedom House Index. Web: <https://freedomhouse.org/reports/freedom-world/freedom-world-research-methodology>

⁷ UN. Web: <https://www.un.org/en/global-issues/democracy>



The anti-democratic threat in times of long-lasting war is inevitable. For example, Syria was under emergency law (akin to martial law) from 1963 to 2011. Under this law, security forces had sweeping powers of arrest and detention. The emergency law also suspended many constitutional protections, allowed for censorship, and limited political activities. On the other hand, is the case of South Korea, in its early years following the Korean War, was under prolonged martial law, which facilitated military-backed authoritarian regimes. Political freedoms were curtailed during this period, and opposition leaders were arrested and persecuted.

Hence, Ukraine must be on keeping democratic backsliding under control for several reasons. First and foremost, democracy is instrumental in ensuring that Ukraine's governance remains attuned to its citizens' needs and rights rather than becoming a tool for authoritarian power consolidation. The Revolution of Dignity of 2014, where citizens mobilised against government corruption, epitomise the deep-seated desire for democratic governance among Ukrainians. The movement underscored the rejection of authoritarianism and marked a pivotal moment for Ukraine's democratic evolution. Secondly, in June 2022, the European Council granted⁸ Ukraine the status of a candidate for joining the European Union (EU). This pushed Ukraine to follow Articles 2 and 3 of the Treaty on the European Union⁹ (TEU) and meet the Copenhagen Criteria¹⁰ for accession to the EU. Thirdly, as a signatory to the Universal Declaration of Human Rights¹¹ (UDHR), Ukraine is inherently bound to uphold and promote democratic principles, further solidifying the mitigating democratic backsliding. Finally, Ukraine, as a recipient of substantial financial aid and military equipment from Western democracies to resist Russia, must affirm its democratic intentions and showcase tangible progress in consolidating democracy. Without assistance from international partners, including aid from the International Monetary Fund¹², Ukraine cannot resist Russia in the war. Thus, western partners, as staunch proponents of democracy, consider Ukraine's democratic solidity vital and, therefore, Ukraine must continually demonstrate to its international partners its unwavering commitment and advancements in buttressing its democratic institutions and norms to ensure ongoing assistance.

In the Ukrainian context, democracy serves as a bulwark against internal and external threats to sovereignty. The benefits of democracy that brings a competitive political system and pluralism are multifaceted, for example, during the 2004 and 2014

⁸ European Council conclusions, 23-24 June 2022. Web: <https://www.consilium.europa.eu/en/press/press-releases/2022/06/24/european-council-conclusions-23-24-june-2022/>

⁹ Treaty on the European Union. Web: https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF

¹⁰ Accession criteria (Copenhagen criteria). Web: <https://eur-lex.europa.eu/EN/legal-content/glossary/accession-criteria-copenhagen-criteria.html>

¹¹ Universal Declaration of Human Rights. Web: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

¹² Memorandum of Economic & Financial Policies. Web: https://mof.gov.ua/en/memorandum_of_economic_financial_policies-677

transformative years of Ukrainian history. Economically, it creates a stable environment that fosters investment and recovery development¹³. Socially, they ensure that the rights and liberties of the Ukrainian population are protected, cultivating a modern society where citizens can voice their opinions and advocate for their rights without fear of repression. Furthermore, adherence to democratic principles such as the Rule of Law enhances Ukraine's international standing, enabling cooperative relationships and alliances with other democratic nations.

In a specific warfare context, the aspects of (1) political rights, (2) civil liberties, and (3) governmental transparency can potentially be constrained or utilised in the name of national security. However, preserving them is integral to avoiding a descent into authoritarianism and ensuring that the post-war period can be navigated with a societal framework that continues to respect and uphold democratic values. The preservation of democracy is an intricate task, yet one of predominant importance for Ukraine's future trajectory, ensuring that it emerges from the war crisis with its democratic principles intact and robust. Hence, to secure such a prosperous future, international support and legitimacy, Ukraine must mitigate the regulations that restrict human rights and the democratic process.

1. Political Rights

Military actions and the need for rapid decision-making side-lined regular democratic attributes such as open debates and public consultations. The imposition of Martial Law, while essential for national security, inherently restricts (Article 8 of ML) certain political rights, such as free assembly and sometimes even free expression (presumed by Article 39 of CU; Article 19 of UDHR), to prioritise stability and security. The constraint of political rights, even in the context of warfare, raises concerns about long-term impacts on the democratic process and citizen participation in governance (see Article 21 of UDHR). Ukraine should stand for the imperative to revitalise political competition and pluralism even during the war to secure the freedom of political rights. Concrete decisions might encompass initiating robust dialogue forums, both online and in safe zones, ensuring continued public engagement in political discourse, and establishing secure, accessible mechanisms for political expression and dissent, even amidst military operations.

In light of this, the prudence of conducting elections as a dominant political right during war surfaces as a critical discourse. If a war had not happened, the elections were planned for autumn (Parliamentary) and spring 2024 (Presidential). The possible elections of wartime confront several impediments: firstly, ensuring representative participation is

¹³ See V-Dem, POLICY BRIEF, No. #20, 2019. Carl Henrik Knutsen, Department of Political Science, University of Oslo. Web: https://v-dem.net/media/publications/v-dem_policybrief_20_2019_v2.pdf

compromised with a substantial number of Ukrainians under Russian occupation and thus, disenfranchised; secondly, approximately¹⁴ 6-7 million Ukrainians residing abroad, primarily in Western countries, face potential underrepresentation due to inadequate polling stations to facilitate their participation. The CU is based on equality principles, so harsh discrimination can be observed while the population remains underrepresented. Furthermore, executing elections within Ukraine poses tangible risks, considering the potential of rocket attacks during polling. Hence, as a democratic country Ukraine must be prepared to hold elections. However, Ukraine should do it as soon as the conditions allow for it. In a case where the war will be protracted for more, Ukraine must elaborate on how to conduct such a legitimate electoral process during wartime, considering all the risks and the advances on the battlefield. This means that it should now think of polling stations abroad, electoral system, voter lists, voting instruments etc. For late 2023, the election process should be postponed until Ukraine ensures that the democratic elections are both representative and secure. With regards to the calls¹⁵ from foreign partners to arrange the election process during wartime to ensure the legitimacy of the government of Ukraine, State officials should appeal that it is Russia who deprives the electoral rights of Ukrainian citizens.

2. Civil Liberties

During the war, civil liberties, freedom of expression and belief are precariously balanced against the imperatives of national security. Amidst the Russian invasion, the Ukrainian government instituted a measure, consolidating all television channels under a single, government-controlled information platform, 'United News', to broadcast around the clock across Ukraine. This action, while ensuring a unified communication front, put the media independence at risk as well as freedom of expression. Behind the scenes, the government also used the war to silence¹⁶ other pro-Ukrainian opposition forces on TV channels such as Espresso, Priamiy, and 5 Channel. Such TV channels were switched off¹⁷ from cross-national broadcasting. Also, TV stations, broadcasting 'United News' are given public funds, while those which do not, like are deprived of these funds. Media independence and equality is one of the pillars of the democratic process. Further, in December 2022, President Zelenskyy signed Law¹⁸, expanding government oversight over print and online media aimed at staunching the potential spread of Russian propaganda.

¹⁴ UNHRC. Web: <https://www.unrefugees.org/emergencies/ukraine/>

¹⁵ Lindsey Graham for Radio Freedom. Web: <https://www.radiosvoboda.org/a/news-vybory-ukrayina-usa/32563160.html>

¹⁶ Detector Media. Web: <https://detector.media/infospace/article/209695/2023-04-03-reportery-bez-kordoniv-zaklykayut-vladu-ukrainy-garantuvaty-plyuralizm-informatsii-povernuvshy-espreso-5-kanal-i-pryamyy-dotsyfrovogo-efiru/>

¹⁷ Detector Media. Web: <https://detector.media/infospace/article/198111/2022-04-04-espreso-pryamyy-ta-5-kanal-vymknuly-u-tsyfri/>

¹⁸ Law №2849-IX. Web: <https://zakon.rada.gov.ua/laws/show/2849-IX#Text>



The Law permits authorities to shutter unregistered news sites without court orders. Journalist groups criticise¹⁹ such policies as a step against free speech and a deviation from EU standards. The imposition of "war censorship" has inadvertently pivoted Ukrainians towards alternative information sources. The public's dwindling trust and interest in official media have precipitated a shift towards the internet and social media platforms, which have become pivotal in disseminating unfiltered information and diverse perspectives. Thus, while on the one hand, there is a palpable restriction of liberties, on the other, citizens have managed to manoeuvre through these constraints, exploring innovative avenues to preserve and exercise their right to free expression and access to information.

The juxtaposition of security and freedom is further exemplified²⁰ in the realm of religious expression. While the CU (Articles 24, 35) and The 1991 Law²¹ delineate religious rights, which are primarily respected, some religious groups occasionally report discrimination. A notable incident in 2022 saw the arrest²² and sanction imposition²³ of several clergy members of the Ukrainian Orthodox Church (UOC) of Moscow Patriarchate, one of the country's largest^{24/25} Orthodox churches, due to maintaining links to the pro-invasion Russian Orthodox Church, which used to be its parent church but with which the UOC says²⁶ it broke ties in May 2022. Subsequently, the institutional pressure on its

¹⁹ New York Times. Web: <https://www.nytimes.com/2022/12/30/world/europe/zelensky-journalism-law-free-speech.html>

²⁰ US Department of State. 2022 Report on International Religious Freedom: Ukraine. Web: <https://www.state.gov/reports/2022-report-on-international-religious-freedom/ukraine/>

²¹ Law №987-XII. Web: <https://zakon.rada.gov.ua/laws/show/987-12#Text>

²² Reuters. Web: <https://www.reuters.com/world/europe/top-ukraine-cleric-accused-glorifying-russian-invasion-appears-court-2023-04-01/>

²³ TSN. Web: <https://tsn.ua/ato/zelenskiy-zaprovadiv-sankciyi-proti-diyachiv-upc-mp-kogo-ce-stosuyetsya-2220862.html>

²⁴ Forbes Ukraine. Web: <https://forbes.ua/lifestyle/konfesiya-iz-tsentrom-v-moskvi-dosi-naybilsha-religiy-na-organizatsiya-ukraini-chomu-zvirstva-rosii-ne-vidvernuli-ukraintsiv-vid-upts-mp-rozbirav-sya-zhurnalist-vladislav-golovin-23032023-12581>

²⁵ PISM. Web: <https://pism.pl/publications/russian-aggression-speeding-up-changes-in-religious-situation-in-ukraine>

²⁶ UOC Website. Web: <https://news.church.ua/2022/05/27/postanova-soboru-ukrajinskoji-pravoslavnoji-cerkvi-vid-27-travnja-2022-roku/#2023-10-17>

organisations^{27/28/29/30} and followers^{31/32/33}, driven by social polarisation against all Russian affiliated, including the UOC, started. This tension between safeguarding national unity and respecting religious freedom becomes a complex issue against the backdrop of external aggression. Going beyond institutional church problems, such polarisation spills over into the social inter-confessional marginalisation of Ukrainian people. As a result, the UOC faced acts of vandalism where the churches were set on fire^{34/35/36}. In the frame of the war, the Ukrainian people should be mobilised rather than polarised. To do so, Ukraine should involve international media and observers in ensuring that legal proceedings on state's treason of the UOC representatives are in line with democratic norms and uphold civil liberties. Also, the government of Ukraine should facilitate interfaith dialogues to foster unity among diverse religious groups and mitigate potential societal divisions, particularly focusing on reducing tensions related to the UOC to avoid vandalism.

3. Governmental Transparency

Wars often necessitate a level of secrecy and rapid decision-making that can reduce transparency in government actions and decisions. As a result, most of the data rosters were closed for civic access. However, there have been concerns regarding the availability and clarity of information related to military actions, governmental decisions, and the allocation of resources during the conflict. Lack of transparency can breed mistrust among citizens and allies and can also facilitate corruption or mismanagement, particularly concerning resource allocation.

To constrain on their own, the Ukrainian government has already made a few steps towards transparency. In February of 2024, after the revealing of information by an independent journalist on corruption schemes in the defence industry, the Parliament of

²⁷ *Suspilne News*. Web: <https://suspilne.media/434601-v-hmelnickomu-pripinili-pravo-koristuvanna-zemleu-gromadam-upc-mp/>

²⁸ *Suspilne News*. Web: <https://suspilne.media/440715-rivneoblrada-prijnala-risenna-pro-zaboronu-upc-mp-ak-ce-bulo/>

²⁹ *Suspilne News*. Web: <https://suspilne.media/441909-volinrada-uhvalila-risenna-pro-zaboronu-upc-mp-na-volini/>

³⁰ *Suspilne News*. Web: <https://suspilne.media/444642-zaborona-koristuvanna-zemleu-dla-upc-mp-v-cernivcah-ci-ce-mozливо-i-so-zminiti/>

³¹ *UkrInform*. Web: <https://www.ukrinform.ua/rubric-polytics/3657904-rnbo-zaprovadila-sankcii-proti-22-rosijskih-cerkovnikiv.html>

³² *TSN*. Web: <https://tsn.ua/prosport/rozplata-za-pidtrimku-moskovskih-popiv-lomachenka-vnesli-do-reyestru-zradnikiv-ukrayini-2236768.html>

³³ *TSN*. Web: <https://tsn.ua/prosport/ukrayina-rozpochala-viynu-proti-boga-lomachenko-probiv-cherbove-dno-opublikuvavshi-video-z-mitropolitom-upc-mp-2234701.html>

³⁴ *ZBRUC*. Web: <https://zbruc.eu/node/114985>

³⁵ *UkrInform*. Web: <https://www.ukrinform.ua/rubric-regions/3751059-na-cernigivsini-spalili-cerkvu-moskovskogo-patriarhatu.html>

³⁶ *Suspilne News*. Web: <https://suspilne.media/455013-pozeza-v-cerkvi-upc-mp-na-bukovini-so-ocevidci-kazut-pro-jmovirnij-pidpal/>



Ukraine adopted Law³⁷ “On Defence Procurement” to ensure in-defence procurement (except for information on the procurement of defence goods, works and services, which constitute a state secret) with the provision of protection of state customers from military threats during the period of the Martial Law in Ukraine”. Another breakthrough was made regarding the income and wealth-state declarations of governmental officials. Since the war broke out, Martial Law presumed the closure of the roasters from open access and gave them a chance to officials submit their declarations after the end of the war. However, during August-September of 2023, because of the pressure of Ukrainian civic society^{38/39} and international partners the Parliament adopted⁴⁰ laws on the restoration of declaration, as well as on responsibility for its untimely submission, opening access to the roaster of seized assets administered by ARMA⁴¹; restoration of reporting for parties for received funding⁴².

Consequently, a vast number of roasters still remain unavailable for people due to ‘security concerns.’ The roaster of Court Cases partially opened, but most of it still remains closed in violation of the Law “On Access to Court Decisions”⁴³. In addition, a number of authorities and local self-government bodies abuse martial law and do not provide information to citizens in accordance with the Law “On Access to Public Information”⁴⁴. Another problem is a restriction to give access to journalists to visit plenary sessions of the Parliament. There are also no online broadcasts from the session hall of the Parliament. The ensuing opacity in government and judicial operations raises alarm bells about the deteriorating state of democratic values and the potential erosion of checks and balances within the system. Left in the dark, the citizenry might foster a growing disillusionment and scepticism towards governmental bodies, thereby weakening the social contract that binds a nation. Immediate, tangible actions, such as implementing secure online platforms for the transparent dissemination of public information and embracing policies that fortify, not hinder, public access to information, are pivotal to reinstating trust and safeguarding democratic principles in the nation.

Conclusions and Recommendations

The intricate tableau of Ukraine’s democratic landscape, juxtaposed against the backdrop of war, illustrates a complex interplay between safeguarding national security and

³⁷ Law, №2958-IX. Web: <https://zakon.rada.gov.ua/laws/show/2958-20#Text>

³⁸ Ukrainska Pravda. Web: <https://dostup.pravda.com.ua/news/publications/hromadskist-vymahaie-vidkryty-reiestry-ta-ponovyty-dostup-do-publichnoi-informatsii-zaiava>

³⁹ StateWatch. Web: <https://statewatch.org.ua/publications/koalitsii-rise-ukraine-zaklykaie-terminovo-vidnovyty-dostup-do-vidkrytykh-danykh-rozgholoshennia-iakykh-ne-zahrozhuie-bezpetsi/>

⁴⁰ UNIAN, Web: <https://www.unian.ua/economics/finance/elektronni-deklaraciji-rada-uhvalila-zakon-pro-vidkrittya-12399270.html>

⁴¹ Forbes, Web: <https://forbes.ua/news/arma-vidkrilo-dostup-do-reestru-areshtovanikh-aktiviv-25082023-15647>

⁴² Law №9419-1. Web: <https://itd.rada.gov.ua/billInfo/Bills/Card/42290>

⁴³ Law №3262-IV. Web: <https://zakon.rada.gov.ua/laws/show/3262-15#Text>

⁴⁴ Law №2939-VI. Web: <https://zakon.rada.gov.ua/laws/show/2939-17#Text>

preserving democratic norms. The imposition of Martial Law, while a pragmatic response to the immediate threats posed by the Russian invasion, has inadvertently catalysed democratic backsliding in the realms of political rights, civil liberties, and governmental transparency. It is imperative that these democratic pillars, though momentarily shaken, are not permanently eroded. What is more, all these things are not only important to maintain democracy in Ukraine, but also to keep a high level of social mobilisation, which is crucial to the victory in the war. Accordingly, in order to secure the democratic process in Ukraine it is required:

Political Rights:

- > The Government of Ukraine should initiate dialogue forums, both online and in safe zones discussing the political and decision-making process in Ukraine, ensuring public engagement as well as civic society and opposition representatives in political discourse to establish secure, accessible mechanisms for political debate expression and dissent.
- > For late 2023, the Government of Ukraine should postpone national elections until Ukraine ensures that the democratic elections are both representative and secure. Considering the war can be protracted for more, Ukraine now must do its homework on how to conduct such a legitimate electoral process during wartime.

Civil Liberties:

- > The Ministry of Culture and Information Policy should initiate cancellation of the government-controlled information platform 'United News' or at least limit it to a short programme only to give itself the platform for an official message, but not too much to encourage pluralism and create respectful discourse and understanding among citizens with differing views on identity and national issues.
- > The Parliament of Ukraine in collaboration with international bodies and NGOs should elaborate on supplementing the Law "On Media" with a determination of the role of national security in media protection design for the transition period to establish a transparent appeals process for media outlets affected by government decisions, allowing them to challenge closures or restrictions.
- > The State Service of Ukraine for Ethnopolitics and Freedom of Conscience should facilitate interfaith dialogues to foster unity among diverse religious groups and mitigate potential societal divisions, particularly focusing on reducing tensions related to the UOC. It also should encourage international media and observers' presence for public hearings in courts to ensure that legal proceedings against the

UOC representatives are in line with democratic norms and does not violate civil liberties.

Governmental Transparency:

- > Strengthen control over compliance with The Law “On Access to Public Information by State Authorities” by the Office of Ukrainian Parliament Commissioner for Human Rights and other authorised subjects provided for in Article 17 of The Law to provide a transparent governance.
- > The Government of Ukraine should conduct an audit on State transparency and discover what data source does not impact the war process. Then, order the restoration of full open access to such data.
- > The Parliament of Ukraine should grant journalists and civic society representatives access to be present at its sessions, enabling them to monitor and report on decisions and resource allocation.

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Appendix:

