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## **MILITANT DEMOCRACY AND HUMAN RIGHTS :CHALLENGES AND TASKS FACING UKRAINE DURING WARTIME AND IN THE POST-WAR PERIOD**

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This article provides a comprehensive political-legal analysis of the functioning of democratic institutions during martial law and in the post-war period in Ukraine. The author argues that the prospects of democracy after the war directly depend on the extent to which democracy is able to protect itself during wartime. The stability of a democratic regime is contingent on both state authorities and civil society. Jointly, they must ensure a balanced relationship between state security and human rights.

A key task of militant democracy in wartime is to uphold the separation of powers and prevent their usurpation, given that objective transformations occur in the functioning of constitutional democracy that tend towards the concentration of emergency powers in a single branch of government—either the President or the Cabinet of Ministers (represented by the Prime Minister), depending on the constitutional form of government. Despite the advantages of presidentialism for rapid decision-making under extraordinary conditions, it poses particular threats to constitutionalism. Thus, attempts by the President of Ukraine to assume powers not conferred by the Constitution—such as interference in judicial and law-enforcement activities or obstruction of independent opposition media—pose a direct threat to human rights, in particular the freedom of expression and the right to a fair and impartial trial.

The author asserts that the legitimacy of extraordinary measures exercised by public authorities must meet two requirements: first, such measures must be urgent and necessary to eliminate threats to human rights; and second, their application must be subject to judicial and public oversight. Restrictions of human rights in conditions of militant democracy must be imposed exclusively through judicial procedures, based on a three-part test: legality, legitimate aim, and proportionality.

According to the author, during the post-war period, the Ukrainian state and nation will face the complex task of preserving and strengthening sovereignty, democracy, and human rights. Achieving this objective will inevitably require the formation of a stable and effective constitutional architecture of militant democracy capable of ensuring a balance between security and rights. Addressing this challenge presupposes: safeguarding the integrity of state

power with an equitable distribution of its functions; holding elections for the highest state authorities (the President and the Verkhovna Rada of Ukraine); returning to the constitutional form of government—a parliamentary-presidential republic; ensuring the unhindered functioning of the Constitutional Court of Ukraine as the sole body of constitutional jurisdiction; banning political parties that pose threats to national security; ensuring the rule of law and access to fair justice; enshrining legislative guarantees of the independence of anti-corruption institutions; supporting civil society, free media, and civic participation in exercising and legitimising public power; completing decentralisation reform and restoring local self-government; and implementing institutional reforms through transparency and coordination with international partners.

**Key words:** militant democracy, human rights, Constitutional Court of Ukraine, participatory democracy, electoral law, local self-government, democratic legitimation, President of Ukraine, Verkhovna Rada of Ukraine.

**Problem Statement.** The war in Ukraine has become a threat both to the sovereignty of the state and to the functioning of its democratic institutions. The post-war prospects of democracy depend on the extent to which it can protect itself under wartime conditions. The stability of a democratic regime is a shared responsibility of state authorities and civil society. Its operation under martial law, introduced by the Decree of the President of Ukraine on February 24, 2022, depends on how effectively public authorities can maintain a balance between state security and citizens' freedoms while strictly observing human rights, which must not be curtailed even under extraordinary circumstances.

The relevance of this study stems from the need to preserve and strengthen democratic institutions and universal human values in the post-war period, which is essential for Ukraine's full integration into the European community. Russia's full-scale aggression against Ukraine has an explicitly existential dimension, as it directly affects both the future of individual Ukrainians and the Ukrainian political nation as a whole. In this war, Ukrainians are defending not only their right to exist as a distinct ethnic group but also universal European values enshrined in the Constitution of Ukraine—primarily freedom and democracy. Historian Timothy Snyder emphasizes this value-based choice of Ukrainians. According to him, Ukrainians understand freedom and democracy “as a positive project, as a way of existing in the world, as the wealth of the future,” and are defending “the basic concept of self-government” at a time when authoritarianism appeared to be gaining ground globally [1].

**Analysis of the Research Problem.** The issue of democratic institutions and human rights under extreme conditions, particularly during martial law, has long been the subject of study by scholars in constitutional law, political science, and sociology. One of the first to explore this topic was the German political scientist and constitutionalist Karl Loewenstein, who in 1937 published his essay “Military Democracy and Fundamental Rights.” Subsequently, other scholars, including J. Habermas, A. Chaillot, E. Posner, A. Vermühle, J. Roznay, and R. Albert, have addressed this problem. Following Russia's large-scale invasion of Ukraine, Ukrainian researchers—including O. Vodiannikov, M. Baimuratov, Y. Barabash, O. Borislavska, M. Kozyubra, A. Krusyan, O. Kotseruba, P. Stetsyuk, and M. Savchyn—have examined issues of protecting democratic institutions and human rights in this context.

Nevertheless, the topic of the present study remains highly relevant, especially given the tasks and challenges Ukraine will face in the post-war period.

**The purpose of this article** is to provide a comprehensive study of the mechanisms that ensure the stable functioning of democratic institutions and the protection of human rights under martial law, as well as to examine the challenges and tasks confronting Ukraine in the post-war period.

**Presentation of the Main Material.** The European orientation of the Ukrainian people is the result of the Orange Revolution and the Revolution of Dignity. This orientation has remained steadfast even during wartime, as evidenced by a sociological study conducted by the Razumkov Center on citizens' assessments of the situation in the country, trust in social institutions, and the political and ideological orientation of Ukrainian citizens in the context of Russian aggression (September–October 2022).

According to the survey, between 2010 and 2021, the share of respondents who considered democracy the most desirable form of political regime ranged from 48 % to 56 %, while those who preferred an authoritarian regime ranged from 18 % to 24 %. After the onset of Russia's full-scale invasion, support for democracy increased to 68 %, and support for authoritarianism decreased to 11.5%. When asked to prioritize freedom versus equality, 71 % of respondents chose freedom (compared to 64% in 2020). However, when faced with a choice between freedom and security, Ukrainians more frequently prioritized security (56 %), while 44% prioritized freedom [2] .

The perception of security among Ukrainian citizens is often associated with strong, unchecked power. The study found that 61 % of respondents supported a political system featuring a "strong leader, independent of parliament and elections." Moreover, 30 % of respondents considered a system in which power rests with the military, or a military regime, to be "good" or "very good" (compared to 17.5 % in 2020). While such attempts to combine democratic principles with elements of authoritarianism in wartime are understandable, they carry negative implications. They may foster conditions in post-war Ukraine for increased support for populist parties and leaders who could attempt to usurp power by appealing to national-patriotic sentiments, thereby undermining constitutionalism and threatening human rights.

The possibility of such developments was noted by the German constitutionalist Karl Loewenstein in the 1930s. In his work "Militant Democracy and Fundamental Rights," he articulated the concept of a self-defending democracy (militant democracy), which holds that, under extreme conditions, a constitutional state may be obliged to restrict certain citizen rights to protect constitutionalism from aggressive ideologies. Accordingly, during wartime, in order to preserve constitutional order, state authorities must prevent the activities of political parties and movements whose anti-state nature is demonstrably established.

However, this concept entails a significant risk: the methods of militant democracy can be exploited by authoritarian or populist regimes. Loewenstein himself identified a safeguard against this danger in the genuine institutionalization of citizens' rights—that is, ensuring their protection through strong, mutually controlling political institutions within a system of checks and balances. For example, if the principle of separation of powers is effectively upheld and ordinary citizens can defend their rights in independent courts (including in conflicts with the executive branch), there is little reason to fear that dictatorship might be concealed under the guise of democracy [3,p.77] .

At the same time, wartime conditions complicate the practical application of the separation of powers, as rapid, decisive action is often required to safeguard national security and state sovereignty. Consequently, objective shifts occur in the functioning of constitutional democracy, tending toward the concentration of special powers in a single branch of government—either the President or the Cabinet of Ministers (represented by the Prime Minister), depending on the constitutional form of government. It should be noted that a mixed form of government is often ineffective under extraordinary circumstances and tends to transform into either presidentialism or parliamentary government.

Under the Constitution of Ukraine, security powers are primarily vested in the President, who, according to Article 102, is the guarantor of state sovereignty and territorial integrity and is responsible for implementing the strategic course toward full NATO membership. Article 106 outlines additional presidential powers in the areas of national security and defense. Throughout Ukraine's independence, a tradition of presidential "domination" over the Government has developed, manifested in the Head of State's attempts to lead the executive branch through informal or "hidden" powers. This pattern became particularly evident following the presidential and parliamentary elections of 2019, when the President's political party secured an absolute majority in the Verkhovna Rada and formed a single-party government. This concentration of power may have been a critical factor in facilitating the introduction of emergency measures during Russia's large-scale invasion of Ukraine.

Despite the advantages of presidentialism for decision-making under extraordinary circumstances, it also poses certain risks to constitutionalism. For example, attempts by the President of Ukraine to assume powers not provided for by the Constitution—such as interference in judicial and law enforcement activities or obstruction of independent opposition media—pose a direct threat to personal and civil rights, including the right to freedom of expression and the right to a fair and impartial trial.

During martial law, state authorities often prioritize political expediency in decision-making, which can at times override legality. From the perspective of achieving a legitimate goal—such as victory over an aggressor—this may be justified, provided that such decisions are subject to judicial review. Otherwise, the principle of the rule of law is undermined. A typical example occurred when the National Security and Defense Council (NSDC) suspended the activities of eleven political parties. While the anti-state nature of these parties was evident and the NSDC generally adhered to the principle of proportionality in pursuing a legitimate aim, the legal reasoning presented in the relevant decision was inadequate. At that time, Ukrainian legislation did not provide a procedure for suspending a political party's activities, only for banning a party through a court decision, highlighting a gap between emergency measures and the rule of law.

Institutional mechanisms for preventing the excessive concentration of power are critically important. One such mechanism is the Constitutional Court of Ukraine, which exercises constitutional review over the acts and actions of state authorities and ensures compliance with the constitutional rights and freedoms of individuals. As the guardian of the Constitution, this body—provided its independence is preserved—can serve as a genuine guarantor of constitutionalism and democratic values. A significant challenge for the Constitutional Court is assessing the constitutionality of legislation enacted specifically for the period of martial law. In this context, Ukraine could benefit from examining precedents from armed conflicts, such as those between Armenia and Azerbaijan, considered by the European Court of Human Rights (ECHR). In several cases against Croatia and Bosnia and Herzegovina, the ECHR developed standards based on the positive obligations of States Parties under the European Convention on Human Rights to guarantee the right to life and the prohibition of torture, as enshrined in Articles 2 and 3 of the Convention.

The organization and functioning of state power in the post-war period must adhere strictly to the principles of popular sovereignty, separation of powers, and political pluralism.

While democratic elections may be practically impossible during wartime, the reconstitution of the highest bodies of state power and local self-government in the post-war period is a priority task. Such elections should be held no later than six months after the cessation of hostilities and the lifting of martial law. Excessive delays in holding elections increase the risk of power concentration and a legitimacy crisis.

Ensuring a democratic electoral process will require addressing several key issues, including: preventing the adoption of special electoral laws that contradict the principles and provisions of the Electoral Code or attempts to introduce a new electoral system; facilitating the participation of as many citizens as possible, including internally displaced persons, diaspora members, temporary labor migrants, and vulnerable groups (persons with disabilities, military personnel, etc.); introducing electronic or remote voting, voting abroad, and mobile polling stations; countering disinformation from the aggressor state, cyberattacks, and hostile propaganda; guaranteeing the free nomination and security of candidates; and developing a clear legal framework for conducting elections under emergency conditions or martial law.

In the post-war period, Ukraine will also face the challenge of returning to the legitimate constitutional form of government—a parliamentary-presidential republic. Achieving this will require parliamentary reform that ensures full representation of the people in the Verkhovna Rada and strengthens its function of parliamentary oversight over the executive branch.

The main challenges for Ukrainian parliamentarism in the post-war period include: ensuring a democratic procedure for forming parliament based on a proportional electoral system with open lists; guaranteeing openness and transparency of parliamentary activities through public consultations and mandatory broadcasting of sessions; strengthening procedures for parliamentary review and discussion of draft laws while avoiding rapid adoption without substantive analysis; institutionally regulating the status of the parliamentary opposition; introducing the mechanism of interpellation; and refraining from political

influence or pressure on independent bodies through legislation (e.g., the recent law limiting the independence of anti-corruption institutions, which sparked protests and criticism from international partners).

The implementation of the principle of political pluralism during wartime is necessarily limited, which directly affects the functioning of political parties. During this period, full-fledged political debate is often absent, and party activities are significantly constrained. In the post-war period, political parties will require more supportive, rather than restrictive, state measures to foster their development. However, in the Ukrainian context, the absence of regulation does not promote intra-party democracy, as parties are generally reluctant to adopt internal democratic mechanisms that are not legally mandated.

State restrictions on political parties are applied through a combination of constitutional, legislative, and formal (procedural) measures. The most stringent constitutional restrictions involve bans on parties, which fall into two categories: the prohibition of forming parties whose programs contradict Article 37 of the Constitution, and the prohibition of activities by parties whose actions violate this Article. Legislative restrictions on party freedoms should be evaluated according to a three-part test: they must be established by law, pursue a legitimate aim, and be necessary and proportionate within a democratic society. Formal (procedural) measures should be assessed in light of good governance principles, taking into account whether cumulative rules, requirements, procedures, or obligations create an unlawful influence on political parties [4, p.5].

In post-war Ukraine, party registration requirements should reflect the real threats to national security arising from Russia's aggression. Clearly defined legal timeframes and grounds for preventive restrictions during the transitional period after armed conflict can serve as justification in cases before the European Court of Human Rights (ECHR) regarding the proportionality of such restrictions. Current formal requirements for party registration in Ukraine are burdensome. The issue of parties registering solely for technical purposes in elections should be addressed by reforming electoral admission practices rather than by imposing artificial barriers to new party registration.

The restrictive influence of the state on political parties during election periods should aim to strengthen democratic standards and ensure the transparency and fairness of elections. Restrictions on candidate nomination and registration are an important means of oversight, but they must be clearly regulated by law. For example, compliance with gender quotas and minimum requirements for candidate lists in districts should not create opportunities for manipulation or circumvention of legislative norms. Among the most significant shortcomings of state restrictions during elections are the outdated reporting system for election fund managers—which requires submission of reports both in paper form and on electronic media, complicating public oversight—and the ineffective system for controlling the receipts and expenditures of election funds [4, ibis] .

To ensure proportionality of sanctions relative to established offenses, it is recommended to introduce a wider range of measures, including restrictions on participation in the electoral process, withholding state funds until written explanations are provided by parties, and differentiated fines.

Ensuring human rights and independent justice during martial law and in the post-war period is a fundamental condition for the functioning of a democratic regime. An effective constitutional mechanism to prevent excessive concentration of power is particularly important in wartime. The primary safeguard against violations of human and civil rights is the Constitution of Ukraine. However, this mechanism is not elaborated in detail in the Constitution or in constitutional legislation. Section II of the Fundamental Law is largely declarative, reduced primarily to Article 64, which provides that the constitutional and legal status of individuals and citizens during martial law is subject to restrictions on rights and freedoms, but only within limits established by the Constitution. Such restrictions are temporary, and a list of rights and freedoms that cannot be limited has been established. This mechanism is only partially supplemented by the Law of Ukraine "On the Legal Regime of Martial Law" (12 May 2015) and the Decree of the President of Ukraine "On the Introduction of Martial Law in Ukraine" (24 February 2022). As practice demonstrates, these provisions are insufficient to fully guarantee constitutional order under extreme conditions.

The war in Ukraine has caused profound human rights challenges. Russian aggression against Ukraine began in 2014 with the occupation of the Autonomous Republic of Crimea (ARC) and the city of Sevastopol. Nine years later, armed aggression escalated dramatically, resulting in the largest population displacement in Europe since World War II. Millions of Ukrainians fleeing the fighting have become internally displaced persons or refugees, forced to leave Ukraine in search of temporary shelter. According to the Office of the United Nations High Commissioner for Refugees (UNHCR) [5], more than 7 million Ukrainian citizens have left Ukraine since the start of Russia's full-scale invasion, with over 3.3 million granted temporary protection in European Union (EU) countries. In addition, approximately 8 million people have become internally displaced, moving from conflict zones and temporarily occupied territories to safer regions within Ukraine.

Civilians and critical infrastructure have been primary targets in the war. Thousands of civilians have lost their lives due to Russian shelling and acts of violence committed by Russian military personnel. According to confirmed data from the Office of the United Nations High Commissioner for Human Rights, between February 24, 2022, and February 5, 2023, there were 18,817 civilian casualties, including 7,155 killed or wounded [6]. More than 1,300 of these victims were children, with injuries ranging from minor to fatal. Thousands more died defending the country as members of the Armed Forces of Ukraine or other paramilitary formations.

Russia has committed severe crimes, including acts with characteristics of genocide [7]. Among these are massive violations of the rights of Ukrainian children, including their deportation and forcible transfer to another national group. According to the Prosecutor General's Office, between February 24, 2022, and December 31, 2024, 596 children were killed and 1,740 were seriously injured as a result of hostilities; 16 cases of sexual violence against children were recorded. The National Police of Ukraine reports that 2,012 children are considered missing. According to the National Information Bureau (NIB) [8], 19,546 children were forcibly displaced within temporarily occupied territories (TOT) of Ukraine or deported to the Russian Federation [9].

A key element of the Russian Federation's targeted policy in the temporarily occupied territories (TOT) of Ukraine is indoctrination, carried out through large-scale propaganda, coercion to adopt a Russian identity, and the use of the Russian education system as an instrument of influence. The indoctrination of children involves the imposition of narratives that justify Russia's aggression and distort historical events. One primary mechanism is the forced integration of propaganda into children's daily lives. For example, mandatory "Lessons about the Important" are held in educational institutions, during which children are exposed to ideas about the "liberation mission" of the Russian army, shown propaganda videos, and required to meet representatives of occupation forces [10].

Ensuring personal and civil rights after the lifting of martial law is a central task for militant democracy. This is especially relevant for personal rights, including the right to life, liberty and personal integrity, respect for dignity, non-interference in private life, freedom of opinion, and property rights. The state will face a number of urgent challenges, such as: the return of missing persons, including forcibly deported children and adults; restoration of personal documents and identification; determination of the status of missing persons, including recognition as deceased where appropriate; verification of individuals' involvement in collaborationist activities and assessment of voluntariness; safeguarding the social rights of servicemen who defended the state, including medical care, rehabilitation, pension provision, free psychological assistance, employment, and retraining; and compensation for material and moral harm caused by the aggressor state.

The question of property ownership in the occupied territories will be among the most complex post-war issues. Loss of de facto control over a territory does not equate to the deprivation of citizens' property rights. Therefore, a large number of court cases concerning property rights can be expected. Ukraine will not recognize documents issued by occupation authorities that purport to confer ownership. Resolving these disputes may require reference to international experience. In addition to judicial protection, it may be advisable to establish a special Real Estate Commission, similar to the one in Cyprus, where property disputes arising from the occupation of Northern Cyprus have been adjudicated for over fifty years [11].

Ensuring the uninterrupted operation of the judiciary under martial law is of critical importance, given the challenges facing Ukraine and its justice system. Even in peacetime, issues related to guaranteeing a fair trial exist, but war exacerbates these problems and introduces additional obstacles.

Challenges for the judicial system under martial law include: overloading of courts due to a shortage of judicial personnel in courts of first and appellate instance; physical inaccessibility of courts in occupied territories or combat zones, which limits citizens' access to justice; systematic threats to life and health from air attacks; and power outages, destruction, or damage to court premises.

Respecting the right to a fair trial during martial law is essential for the protection of human rights, the maintenance of public trust in the state, and the strengthening of the rule of law. This not only contributes to domestic law and order but also preserves Ukraine's international reputation as a lawful state, even under extraordinary circumstances.

Key challenges and tasks for Ukrainian courts after the war include: addressing a large backlog of cases, overcrowding, and shortages of personnel and resources; restoring court infrastructure; filling vacancies, particularly in local and district-level courts; managing court overloads and long trial durations; reestablishing state control and returning courts to de-occupied territories, while optimizing the court map according to the new administrative structure; addressing non-enforcement of final court decisions, especially those involving state budget payments (e.g., pensions, social benefits); ensuring physical security of premises, documents, and archives; safeguarding judicial independence from political or external pressure; managing potential political influence in cases related to security and state interests; developing specialized courts and training judges in international humanitarian law, criminal law, and human rights law; securing adequate funding for court operations, infrastructure restoration, salaries, technical equipment, and information systems; implementing mobile or remote solutions and improving digital technologies; and restoring or reforming jury trials in accordance with European standards.

In the post-war period, it is essential to avoid abandoning reforms due to crises or "post-traumatic" conditions. Respect for international standards of justice must be maintained, and criminal liability should be ensured for war crimes, crimes against national security, and genocide. The judicial system must be capable of adjudicating such cases in accordance with international law.

Civil society institutions play a special role in ensuring the legitimacy of power during wartime, enjoying a high level of trust among citizens. These include human rights and volunteer organizations, whose wartime activities have been recognized both nationally and internationally, as evidenced by the awarding of the 2022 Nobel Peace Prize to the Center for Civil Liberties. Religious organizations, though operating outside politics, also influence Ukrainians—who are predominantly believers—and help shape the moral and spiritual boundaries of behavior, particularly under extreme conditions. Universities should act as defenders of human rights, contributing to the development of civic legal awareness among young people and promoting a modern paradigm of Ukrainian constitutionalism.

In wartime, participatory democracy has become one of the primary means for citizens to engage in public and national decision-making. In situations where elections and referendums are not feasible, participatory mechanisms allow citizens not only to oversee governmental power but also to participate directly in its exercise. In recent years, various civil society institutions have developed rapidly and continue, even during war, to contribute actively to the democratic legitimization of public authority.

Currently, more than fifteen forms of public participation are used in Ukraine to varying degrees, including public expertise, local initiatives, public hearings, citizens' appeals, requests for public information, consultative and advisory bodies, public consultations, citizens' meetings at the local level, self-organization bodies, participatory budgeting, electronic petitions, early termination of powers of community leaders, and other forms of civic engagement. In the post-war period, local referendums and elections will become especially important forms of public participation. This underscores the need for legislative regulation, including the adoption of a law on local referendums, which is currently absent.

Legislative regulation of participatory democracy is an important condition for its effective functioning. However, state involvement should not result in excessive regulation. Local self-government bodies, within the scope of powers delegated to them, should be able to independently establish principles

of regulation and management in the interests of their communities. It is therefore essential to provide local self-government with maximum autonomy in applying various forms of participatory democracy, since excessive national-level regulation may hinder their effective implementation. Local authorities should have the discretion to select legal instruments for exercising local democracy.

Acts of local law, particularly community charters, play a crucial role in regulating forms of participatory democracy. These charters function as a kind of local constitution. Over the past five years, their content has evolved qualitatively; however, some charters still contain standard provisions and rigidly prescribe forms of civic participation without adequately considering local contexts, which can complicate their practical application. Key factors influencing the effectiveness of public participation at the local level include the quality of local lawmaking, the self-organization capacity of the community, the institutional capacity of local government bodies, the level of trust residents have in local authorities, the presence of an active core of engaged citizens, and the strength of local civil society institutions.

Participatory democracy in Ukraine has proven effective in addressing a range of local and national challenges and should be further developed in the post-war period. Its applications include solving local issues (e.g., road repair, residential development), adopting local regulations and contributing to the formation of local law, developing public policy at local and national levels through consultation and oversight of government bodies, and supporting business programs and investment initiatives through participatory budgeting, active grant policies, and attracting investors [12, p.37].

The foundation of democracy in the post-war period should be territorial communities (TCs) and local self-government (LSG) bodies. Local self-government, understood as the self-organization of residents within territorial communities functioning in administrative-territorial units or their associations within a state, is a crucial element and an inherent feature of a democratic rule of law, typically operating under normal conditions, that is, during national and international peace [13]. Moreover, it is the LSG bodies—directly elected or democratically appointed by residents of territorial communities—that represent the level of public administration closest to the population and constitute a relatively independent (autonomous) tier of public power, as enshrined in Article 5 of the Constitution of Ukraine.

Even under conditions of militant democracy, local self-government contributes significantly to the establishment, functioning, and improvement of local systems for the protection and defense of human and citizen rights and freedoms [14,p.67]. This highlights some of the most important functions of local self-government, particularly in the areas of human rights and law enforcement. Self-government bodies are closest to residents and their needs, enabling them to provide immediate assistance and support.

The role of LSG bodies during the war has been especially critical. They remain an essential mechanism for ensuring the effective functioning of public authorities and the defense capability of the state. This was clearly demonstrated in the first days of Russia's large-scale invasion of Ukraine, when local authorities were tasked with creating volunteer formations of territorial communities in accordance with the Law of Ukraine "On the Fundamentals of National Resistance." This included establishing checkpoints, protective structures, and other necessary conditions for the effective operation of volunteer units [15].

In regions where active hostilities did not occur, local governments played a vital role in volunteer initiatives and assistance to the Armed Forces of Ukraine. Many local authorities not only supported but also initiated volunteer movements, while others actively promoted them at the territorial community (TC) level.

The vast majority of representatives of local self-government bodies (LSGBs) remained in their communities, organizing the life of territorial communities under new and extreme conditions. Only isolated cases were reported of deputies or community leaders who failed to take responsibility for critical decisions or relocated to safer areas. This demonstrates that local governments have largely succeeded in meeting the new challenges posed by martial law. One of the main factors contributing to such coordinated and effective responses was the decentralization reform and the expansion of powers at the local level—reforms that, although not fully implemented, were significantly advanced in recent years.

In the first days of the war, local self-government bodies became key centers for the protection and defense of the civilian population. Different regions faced distinct challenges: in the North, South, and East, efforts focused on deterring enemy forces, while in the West—especially in regions bordering the European



Union—the primary challenge was managing an unprecedented influx of people seeking refuge. Among the additional responsibilities local authorities assumed was the organization of registration and certification for internally displaced persons (IDPs) and coordination of housing and humanitarian assistance, often with the help of community members.

The scale of this challenge is illustrated by the example of Lviv. Before the war, the city's population stood at approximately 717,000 residents; by March 2022, that number had risen to about 2 million. In the first month of the war alone, the Lviv region received around 5 million temporarily displaced persons, underscoring the immense logistical and social pressure faced by local authorities in managing the humanitarian crisis.

Both before the war and after the introduction of martial law, citizens' trust in local government has shown steady growth. This trend is clearly demonstrated by the results of a sociological survey conducted by the International Republican Institute (IRI) [16]. The study assessed citizens' opinions—from their overall mood to perceptions of local authorities' performance and attitudes toward reconstruction. The findings, reflecting the sentiments of Ukrainians during the full-scale invasion, were strikingly positive: residents of Kyiv and 20 regional centers continued to express strong support for their mayors, even after enduring a harsh winter and wartime hardships. Most citizens also evaluated the activities of city councils positively, with the highest levels of trust recorded in Kharkiv (73%), Khmelnytskyi (69 %), Lutsk (68 %), Vinnytsia (67 %), and Ivano-Frankivsk (62 %). A noteworthy feature of current public sentiment is the high proportion of respondents who plan to remain in their cities after the war. The overwhelming majority of Ukrainians are optimistic about their country's future, though the degree of optimism varies by region.

Ukraine's wartime experience has underscored the advantages of local self-organization over centralized management. The central government cannot effectively replace or perform the functions of local self-government bodies. Therefore, in the post-war period, it will be essential—at the level of state ideology—to preserve and strengthen the understanding that local self-government bodies constitute a constitutional institution equivalent in importance to the state itself. The Constitution of Ukraine clearly defines the status of local self-government bodies, specifying their functions and powers under peacetime conditions. Additional legislative regulation is required only for their operation during wartime. This rationale underpinned the adoption of the Law of Ukraine “On Amendments to Certain Laws of Ukraine Regarding the Functioning of the Civil Service and Local Self-Government During the Period of Martial Law.” Based on this law, significant amendments were introduced to the Law “On Local Self-Government in Ukraine” and the Law “On the Legal Regime of Martial Law.” The latter is of particular significance for Ukraine's constitutional order, serving as a *de facto* supplement to the Constitution whose provisions are activated in times of war.

**Conclusions.** All the above considerations indicate that, in the post-war period, the Ukrainian state and nation will face the complex task of preserving and strengthening sovereignty, democracy, and human rights. To achieve this goal, it will be essential to develop a stable and effective constitutional framework of militant democracy capable of maintaining a balance between security imperatives and human rights protection. In the author's view, addressing this challenge requires the following key steps:

Ensuring the integrity of state power through an equitable distribution of functions and powers among the legislative, executive, and judicial branches.

Legitimizing public authority by conducting fair and secure elections of the highest state institutions—the President and the Verkhovna Rada of Ukraine—within six months after the lifting of martial law, ensuring the broadest possible participation of citizens.

Returning to the constitutional form of government—a parliamentary-presidential republic—in which the Verkhovna Rada forms the executive branch headed by the Cabinet of Ministers of Ukraine and exercises parliamentary oversight of its activities.

Defining the President's role as limited to representative and security functions, with additional powers granted only in extraordinary situations, particularly during wartime, to act as the guarantor of the integrity and sovereignty of the state.

Ensuring the uninterrupted operation of the Constitutional Court of Ukraine as the sole body of constitutional jurisdiction, responsible for reviewing the constitutionality of legal acts and actions of higher state authorities and for considering completed constitutional complaints as a safeguard of human rights.

Regulating the use of extraordinary measures by state authorities so that they meet two essential requirements: (a) they must be urgent and aimed at eliminating threats to human rights; and (b) their application must be subject to judicial and public oversight.

Restricting human rights under conditions of militant democracy only through judicial procedures, applying the three-part test of legality, legitimate purpose, and proportionality.

Applying state restrictions on political parties—including bans or refusals to register them for elections—only when there is a real and proven threat to national security, particularly stemming from Russia's act of aggression against Ukraine.

Upholding the rule of law by ensuring access to fair justice, restoring and improving the institution of jury trials, and enhancing public oversight of the judiciary.

Guaranteeing the independence of anti-corruption institutions through explicit legislative safeguards.

Supporting civil society, free media, and civic participation as integral components of democratic legitimacy and governance.

Completing decentralization reform and restoring local self-government, including: clear delineation of powers between local self-government bodies and local state administrations; elimination of district councils; introduction of the institution of prefects; restitution of territorial communities' funds redirected for defense during the war to local budgets; and the organization of local elections.

Ensuring transparency and coordination with international partners in institutional reforms and in strengthening the foundations of democracy and constitutionalism.

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## **ВОЙОВНИЧА ДЕМОКРАТІЯ ТА ЛЮДСЬКІ ПРАВА: ВИКЛИКИ ТА ЗАВДАННЯ, ЩО СТОЯТЬ ПЕРЕД УКРАЇНОЮ В УМОВАХ ВІЙНИ ТА ПОВОЄННИЙ ПЕРІОД**

У статті здійснено комплексний політико–правовий аналіз особливостей функціонування демократичних інститутів в умовах воєнного стану та післявоєнний період в Україні. На думку автора, залежно від того наскільки демократія здатна себе захистити в умовах війни залежать її перспективи у повоєнний період. Стійкість демократичного режиму залежить як від державної влади, так і громадянського суспільства. Спільними зусиллями вони повинні забезпечити баланс між державною безпекою та людськими правами.

Ключовим завданням войовничої демократії в умовах війни є дотримання принципу розподілу функцій державної влади та недопущення її узурпації, оскільки з’являється відбуваються об’єктивні зміни функціонування механізму конституційної демократії в напрямку зосередження особливих повноважень одним органом державної влади – президентом чи урядом (в особі прем’єр-міністра), в залежності від установленної форми державного правління. Не дивлячись на переваги президенціалізму в процесі ухвалення рішень в екстраординарних умовах, він несе у собі і певні загрози для конституціоналізму. Так намагання Президента України перебрати на себе непередбачені Конституцією повноваження, як от втручання в діяльність судових та правоохоронних органів чи перешкоджання в роботі незалежних опозиційних ЗМІ, створює безпосередню загрозу людським правам, зокрема таким як праву на свободу слова, праву на справедливий суд та неупереджене правосуддя.

Автор переконаний, що легітимність застосування державною владою екстраординарних заходів повинно відповідати двом вимогам: по-перше, такі заходи мають бути невідкладними та усувати загрозу людським правам, по-друге, за їх застосуванням має здійснюватися судовий та громадський контроль. Обмеження людських прав в умовах войовничої демократії повинно здійснюватися виключно в судовому порядку, з урахуванням трискладового тесту: законності, легітимності мети та пропорційності.

На думку автора статті у повоєнний період перед Українською державою та нацією постане складне завдання збереження та зміцнення суверенітету, демократії та людських прав. Для досягнення цієї мети неминуче постане питання вироблення стійкої, ефективної конституційної конструкції войовничої демократії, яка здатна забезпечити баланс між питаннями безпеки та прав. Вирішення цього питання передбачає наступне: забезпечення цілісності державної влади з рівномірним розподіленням її функцій; проведення виборів вищих органів державної влади (Президента та Верховної Ради України); повернення до конституційної форми правління – парламентської – президентської республіки; Повернення до конституційної форми правління, парламентської – президентської республіки; забезпечення безперешкодного та безперешкодного функціонування єдиного органу конституційної юрисдикції – Конституційного Суду України; заборона діяльності політичних партій, які становлять загрозу національній безпеці держави; забезпечення верховенства права та доступу людини до справедливого правосуддя; закріплення в законодавстві гарантій незалежності антикорупційних інституцій; підтримка громадянського суспільства, вільних медіа та громадянської участі у здійсненні та легітимзації влади; завершення реформи децентралізації влади та відновлення місцевого самоврядування; проведення інституційних реформ шляхом відкритості та координації дій з міжнародними партнерами.

Ключові слова: войовнича демократія, людські права, Конституційний Суд України, учасницька демократія, виборче право, місцеве самоврядування, демократична легітимність, Президент України, Верховна Рада України.