

DEMOCRACY PERCEPTION IN WARTIME IN UKRAINE AS AN INDICATOR OF THE DEMOCRATIC TRANSFORMATION

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Annotation. The article is devoted to examining the impact of war on the transformation of democratic perception in Ukrainian society through the prism of legal analysis. The full-scale armed aggression of the Russian Federation against Ukraine has led to significant changes in the functioning of state institutions, the mechanisms for the implementation of human rights and freedoms, and the public understanding of democratic values. Under these circumstances, a reassessment of the role of the constitutional principles such as democracy, the rule of law, popular sovereignty, and guarantees of human rights acquires particular significance. The aim of the article is to analyze democracy perception as a precondition for democratic transformation. Based on this analysis, the markers of the transformation process within the context of the constitutional and legal foundations of the state's functioning are revealed. The impact of the legal regime of martial law on the implementation of democratic procedures, the activities of public authorities, and the balance between ensuring national security and safeguarding constitutional human rights and freedoms are highlighted.

The research is based on a mixed-methods design. Transformation peculiarities of public perception of democracy and its multi-facets are looked into through the data of sociological surveys (quantitative component), as well as doctrinal analysis of regulatory framework and case law in order to provide a comprehensive understanding of the subject matter.

It is concluded that the war has become not only an indicator of limiting certain democratic procedures, but also a catalyst for rethinking democratic values and constitutional principles within society. The constitutional and legal dimension of this process lies in the search for an optimal balance between the need for the effective functioning of public authorities under martial law and the preservation of the fundamental principles of the democratic constitutional order.

Key words: democracy, martial law, constitutional law, democratic values, human rights, constitutional order, perception of democracy, democracy perception as an indicator of democratic transformation, Ukraine.

1. Introduction.

According to the Democracy Index Report of the V-DEM Institute (Sweden) for 2024 and 2025, Ukraine is classified as the third group of states, as electoral autocracy, among the four ones known to the expert community, respectively as 1) "Liberal Democracy", 2) "Electoral Democracy", 3) "Electoral Autocracy", 4) "Closed Autocracy" [1, p. 17; 2, p. 14]. Freedom House democracy index classifies Ukraine as a state with a transitional or hybrid regime in 2024, and as "partly freedom" country depends on the deterioration level in political rights and civil liberties in 2025 [3, 4].

Ukraine is a country of unstable democracy that continues to fight for its statehood in the war launched against it by the Russian Federation. It is rated in such way by at least the above-mentioned democracy index ratings. Thus, the search for answers to the question of the stage and future of democracy in Ukraine

is a continuation of the discussion about the challenges following the consequences of the Russian war against Ukraine as a component of a broader discourse – about global instability, the necessity to preserve the international world order as a balanced system with an explicit demand to reorganize the global security system, in particular regarding the reform of the United Nations institutions or the creation of a new global organization or network of security organizations instead, *etc.* Indicative current trends such as existing the increasing number of votes by populist parties as a result of general elections in stable democracies countries, growing xenophobia, a decrease in the number of countries considered to be democracies, “alternative facts” and half-truths spread via the Internet, *etc.* are direct threats to democracy and significant challenges to the democratic and constitutional system both at the national and international levels. The way in which the Ukrainian people defend not just the statehood of Ukraine, but also the possibility of preserving Ukraine as a democracy, will determine the “tomorrow” of the Ukrainian state and its population.

The full-scale war in Ukraine has fundamentally altered the political, legal, and social landscape of the state. Beyond its immediate humanitarian and security implications, the war has also significantly influenced how democracy is perceived, understood, and evaluated by Ukrainian society. In contexts of existential threat, democratic values are often reinterpreted through the prism of survival, national unity, and security imperatives.

The issues of how war transforms democratic perception in Ukraine, focusing on the interplay between constitutional principles, societal attitudes, and institutional practices are concentrated on. The central argument is that the war actively reshapes the meaning and priorities associated with democracy.

2. Review of academic publications.

In constitutional legal theory and judicial practice, two concepts with different emphases on the protection of the democratic order compete with one another; however, they tend to be the addition rather than entirely oppose each other. These are the doctrine of procedural democracy, associated with the ideas of Joseph Schumpeter and Robert Dahl [5, 6, 7], and the concept of militant democracy formulated and developed by Karl Löwenstein [8]. Their researches remain foundational to deep scrutinizing democracy, including the influence of crisis circumstances that may lead to armed conflicts.

The interrelation between armed conflict and democracy has been extensively examined in legal science and legal scholarship. Traditional approaches suggest that war tends to weaken democratic institutions, leading to centralization of power and restrictions on civil liberties.

However, more recent studies highlight the possibility of democratic resilience, whereby societies adapt and reaffirm democratic values under crisis conditions [9, 10, 11].

Scholars have explored the concept of “democratic resilience” as the capacity of democratic systems to withstand external shocks while maintaining core principles. On the other hand, there are trends of abusing of this concept. For instance, the explanations of how states justify extraordinary measures by framing issues as existential threats in the situations of possible their abusing are emphasized in some contemporary researches [12].

The process of comprehension transit democratic processes in the context of Ukraine is ongoing [13, 14, 15, 16, 17]. Intending to build effective strategies for the post-crisis era in Ukraine, it is important to continue rethinking the socio-state processes of the ongoing wartime in dynamics.

3. The aim of the article is to illustrate democracy perception not merely as a precondition for democratic transformation with its outcome, but as well an indicator of whether democratic transformation is substantive and able to achieve effective implementation in practice in Ukrainian society under conditions of war, and to reveal the markers of the transformation process within the context of the constitutional and legal foundations of the state’s functioning.

4. Analysis and discussion.

The debate about the advantages and drawbacks of procedural and militant democracy remains relevant today. A classic example of the implementation of K. Löwenstein's concept of militant democracy is the practice of constitutional courts to ban anti-constitutional political parties. According to this concept, democracy is implied to defend itself against forces seeking to destroy the democratic order, even if such forces operate within the framework of formally democratic procedures. Within this concept, the banning of 'anti-democratic' political parties, restrictions on the activities of organisations that undermine the constitutional order, and other special constitutional protection mechanisms are regarded as permissible precautionary measures to protect democracy from encroachment or destruction. In contrast, procedural democracy is based on formalised rules and institutions: a) regular, free and competitive elections; b) a multi-party system and political pluralism; c) constitutional procedures; d) the functioning of representative state institutions; e) the formal equality of citizens in the political process, etc. As R. Dahl argues, democracy should be understood not as a fully achieved state but as an ongoing and "unfinished journey" toward greater political equality [7, p. 179–181]. Alternatively, militant democracy is considered as a protective system that is used when the ability to effectively defend democracy is under the threat. Nowadays, an attempt to find a balance between political pluralism and the need to protect democratic values is an illustration of this discourse. Therefore, reconsidering of these ideas remains relevant.

Since the full-scale invasion of the Russian Federation in Ukraine, a trend of developing modern constitutional doctrine has been traced in the direction from the doctrine of peacetime to the realities caused by the legal regime of martial law. The Russian war against Ukraine as a causation for the ongoing martial law regime that was entered in first on February 24, 2022 not only provokes a limitation of democratic procedures (*for ex.*, the impossibility of holding elections), but strengthens public perception of democratic values as a separate protection object of the Ukrainian people in this war, and which, in the conditions of the predominance of measures necessary for national security and preservation of statehood, are under constant threat of restriction.

For the vast majority of Ukraine citizens, democracy remains a priority socio-political orientation, as evidenced by a sociological survey conducted in May 2023 by the Razumkov Center that had been made within the framework of the MATRA Programme supported by the Embassy of the Kingdom of the Netherlands in Ukraine [18]. A total of 2,020 respondents aged 18 and over were interviewed face-to-face between May 23 and May 31, 2023, in territories controlled by the Government of Ukraine. According to the data of the survey, 73,1 % of respondents agreed with the assertion that democracy is the most desirable type of government for Ukraine; 67,2% ones believed that Ukraine is not yet a fully democratic country, but is moving towards democracy, while 17,8% answered that Ukraine is a completely democratic state; to the question of whether the political system in Ukraine allows people to influence the actions of the government the largest percentage received the answer option "not enough" – 30,3%; 72,7 % of respondents considered the European model of state development to be the most attractive one.

Between 28 May and 3 June 2025, the Kyiv International Institute of Sociology (KIIS) conducted a nationwide public opinion survey (Omnibus), which included an additional question assessing whether Ukraine is perceived as moving toward democratic development or toward authoritarianism. 50% of Ukrainians believe that Ukraine is moving towards the development of democracy. At the same time, 41% feel that the country is moving towards authoritarianism, while another 9% are undecided [19].

Therefore, it is extremely important to distinguish between the system of values formed through the prism of the centuries-old existence of the Ukrainian people, enshrined in the Constitution, and how the Russian Federation imposes its own system of values on the Ukrainian occupied territories, which is rooted in imperialism and revanchism. In the context of that, it seems reasonable to convey to the world community what Ukrainians are defending, why and what they are fighting for.

When it comes to martial law, the state objectively acquires broader powers to restrict human rights and freedoms, which arises from the priority of national security and state survival. Although such restrictions

may comply with the principles of legality, necessity, and proportionality, they require adequate public justification and communication. Otherwise, a disparity between the formal legality of these measures and their social perception takes place.

A lack of communication from public authorities regarding the content, objectives and scope of restrictive measures leads to a deficit of understanding among citizens. As a result, a weakening of the legitimacy of legal decisions that should be perceived as a legitimate is occurred. Even objectively necessary measures may be perceived as arbitrary or unjust if they are not accompanied by transparent explanations and effective safeguards against abuse.

In such a scenario, a negative dynamic of public sentiment develops: from misunderstanding to critical rejection, and ultimately to distrust in public authority as an institution. This gains particular significance in a situation where, as a result of martial law, standard democratic mechanisms of political accountability – in particular electoral procedures – are restricted. The inability to provide electoral renewal of public authority through elections may foster perceptions of diminished accountability, thereby generate deepening the crisis of trust.

In the context of current circumstances in Ukraine, abovementioned trend is evident in areas where state intervention should be most intense, specifically in mobilisation policy. Controversial coercive practices, contentious approaches to encouraging military service, and the perception that anti-corruption measures are ineffective foster a sense of inequality, selectivity or injustice in the application of the law among citizens. Finally, weakening of trust to not only specific institutions but in the legal system as a whole becomes inevitable effect.

The accumulation of distrust and public dissatisfaction generates social tension, which has the potential to destabilise the legal order. In the absence of effective channels for political participation and feedback, such tension tends to transform into legal conflicts.

In view of the above, the full burden of society's demand for fairness falls on Ukraine's courts. The growth number of disputes related to appealing decisions of public authorities, the protection of human rights, and the review of the legality of restrictive measures constitutes a logical consequence of unresolved social contradictions. Eventually, the higher level of accumulated social tension, the greater the burden on the judicial system, which is required not only to protect or restore violated rights, but also rehabilitate trust to the public authority and belief in fairness in the state.

Belief, like confidence in state institutions is not a static indicator. While some institutions gain increased legitimacy, others face scrutiny. This selective trust reflects a more pragmatic evaluation of institutional performance. An illustrative example is the case of Bill No. 12414, which was adopted by the Verkhovna Rada of Ukraine on 22 July 2025 [20]. Whilst it was formally aimed at improving pre-trial investigations under martial law, however, its provisions concerning the National Anti-Corruption Bureau (NABU) and the Specialised Anti-Corruption Prosecutor's Office (SAPO) raised serious concerns regarding the loss of independence of anti-corruption bodies.

Ukraine's anti-corruption infrastructure has been actively developed since 2015. Following the adoption of the relevant draft law by the Verkhovna Rada of Ukraine and its subsequent signing by the President of Ukraine, the powers of the Prosecutor General to oversee anti-corruption bodies were strengthened. Although the investigative jurisdiction of the NABU in corruption-related cases was expanded, the autonomy of the SAPO was reduced. At the same time, the Prosecutor General was granted the authority to withdraw cases from NABU and transfer them to the Bureau of Economic Security of Ukraine or other agencies, and vice versa.

The adoption of the Bill was preceded by searches carried out by officers of the Security Service of Ukraine and the Office of the Prosecutor General, without court warrants, at the offices of the NABU and the SAPO. It happened the day before the Bill was passed. Such actions by public authorities provoked resistance from civil society, including nationwide protests that had been held on 23 July 2025 across various cities of Ukraine, as well as criticism from Ukraine's international partners. Furthermore, the

country's European integration trajectory was under the criticism in light of the Bill adoption. Under such pressure, on 31 July 2025, a new law was passed which effectively revised the problematic provisions and restored the independence of the NABU and the SAPO from excessive interference by the Prosecutor General [21].

To sum up, the case demonstrates the interaction between democratic procedures and public scrutiny, and, in addition, can be interpreted as an example of "militant democracy," shown through institutional self-defense.

Among the issues that shed light on the consequences of the Russian aggression on the territory of Ukraine and require rethinking and strategic elaboration, generating if not ready-made cliché solutions, then at least clear criteria in searching for answers to them, and which are a benchmark of the perception the democratic nature of the state, are the following.

The pursuit of justice in cases of compensation for war-related damage.

A notable example is case No. 757/13711/22, in which a judgment was delivered by the Supreme Court on 5 March 2025 [22]. As a result of artillery shelling during the Russian Federation's military invasion of Ukraine, in particular in the town of Gostomel, which was under occupation by Russian forces until 2 April 2022, the claimant suffered pecuniary and non-pecuniary damage, for which, in the claimant's view, the State of Ukraine and the Russian Federation are fully liable. The case was adjudicated by the Supreme Court through the application of the doctrine of the positive obligations of the state. The court held that the State of Ukraine does not bear liability for material and non-pecuniary damage caused to the owner of real estate as a result of the armed aggression of the Russian Federation, provided that the State of Ukraine has duly fulfilled its positive obligations to protect property rights. The existence of state-approved legal and regulatory acts establishing a mechanism for compensation for damaged or destroyed property as a result of armed aggression, as well as the availability of procedures to apply for such compensation, were considered indicative of the State's compliance with its positive obligations.

Punishment for collaboration and the possibility of political rehabilitation for those who were forced to cooperate with the occupying administrations.

The relevance of the causes and consequences of collaborationist activity – and not merely in light of the Russian Federation's full-scale invasion in Ukraine territory – necessitates to seek and provide answers to complex questions regarding the criteria for determining penalties for collaboration. In Case No. 183/184/23, the Supreme Court held that the convicted person had committed a crime against the foundations of Ukraine's national security, constituting a significant public danger, and had engaged in activities aimed at introducing the educational standards of the aggressor state into educational institutions during the period of martial law [23]. The Court determined that the primary sentence imposed in the form of arrest did not comply with the general principles of sentencing, including legality, fairness, proportionality, and individualization of punishment, and would not contribute to the rehabilitation of the convicted person or to the prevention of further offenses. The court concluded that the imposition of arrest as the primary punishment constituted a misapplication of Ukrainian criminal law, resulting in the leniency of the sentence imposed and the non-compliance of the appeal court's decision with the requirements of Articles 370 and 420 of the Code of Criminal Procedure of Ukraine.

In case No. 953/7182/23, the Supreme Court held that the fact that a Ukrainian citizen voluntarily assumed a position in an unlawfully established body – rather than the performance of specific activities – constitutes sufficient grounds for classifying such actions as collaboration under Part 7 of Article 111-1 of the Criminal Code of Ukraine [24].

According to the circumstances of the case, a Ukrainian citizen, acting upon a proposal from members of the armed forces of the Russian Federation, voluntarily took up a post as a patrol officer in the unlawfully established body known as the 'People's Militia', created in a temporarily occupied territory, and began performing night-time security duties at its administrative building. The defence argued that the accused had only committed an attempted offence of voluntarily assuming a position in a law enforcement body, as

his activities were limited to guarding the building and did not include the execution of functions inherent to the role of a police officer.

Rejecting the arguments put forward in the appeal, the Supreme Court held that the disposition of Article 111-1(7) of the Criminal Code of Ukraine establishes liability for holding a position in an unlawfully established body, rather than for the specific activities of the individual whilst performing their duties. Following the consideration of the appeal, the Supreme Court upheld the decisions of the lower courts. Rejecting the arguments of the cassation appeal, the Supreme Court held that the disposition of Article 111-1(7) of the Criminal Code of Ukraine establishes liability for the assumption of a position within an unlawfully established body, rather than for the specific activities carried out by the individual in the course of such employment. Following the review of the cassation appeal, the Supreme Court upheld the decisions of the lower courts.

Cases concerning collaboration are particularly sensitive in light of the challenges facing post-war Ukraine. The issue of criteria for the application of lustration measures will arise, particularly with regard to preventing individuals found guilty of collaboration from holding elected public offices.

5. Conclusions.

From a legal perspective, democracy perception through: a) citizens' views on the legitimacy of public authority, the fairness of law, and the effectiveness of legal institutions; b) the level of trust in the judiciary, electoral processes, and public authorities; c) compliance with the principles of the rule of law, human rights, and equality before the law, serves as a socio-legal indicator of democratic transformations. The last one constitutes a structural process of change in the state. Both concepts are interrelated but not identical: the first one reflects a subjective (socio-legal) dimension, while the latter denotes an objective (institutional and legal) process.

Russian war against Ukraine reshapes democratic perception in Ukraine. As it has been illustrated, security considerations significantly influence public attitudes; legal frameworks adapt to wartime conditions; democratic resilience is evident despite challenges. The war has served not only as an indicator of limiting some democratic procedures, but also as a catalyst for a re-evaluation of democratic values and constitutional principles within society. The constitutional and legal dimension of this process implies the search for an optimal balance between the need for the effective functioning of state power under martial law and the preservation of the fundamental principles of the democratic constitutional order.

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