
WAR AND DEMOCRACY: Examining Ukraine’s Judiciary Under Martial Law

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Autocratic and democratic scholars observe a powerful pattern: democratically elected leaders often use states of emergency—like wars, natural disasters, and civil unrest—to consolidate considerable power. When the emergencies end, in many cases, so does the country’s democracy.¹ Russia’s full-scale invasion of Ukraine in February 2022 unleashed terror and destruction not seen in Europe since WWII. The invasion prompted Ukrainian President Volodymyr Zelensky to immediately declare martial law on February 24. While the law is designed with restricted timelines, the government has extended it ten times to date and will likely continue to extend if the present security environment remains.² As a democracy fighting an existential defensive war, Ukraine since 2022 provides an interesting contemporary case study to examine wartime democratic development following the imposition of martial law. The established dynamic between wars, martial law, and democracy raises an important question: how has Ukrainian democracy developed in the context of Russia’s full-scale invasion? To answer this, one must first establish a definition of democracy to frame the analysis of this paper.

According to Mark Warren, democracy means “inclusive, collective will formation and decision making” seeking to effectively transform citizen preferences “into policies and outcomes, while ensuring political rights and liberties via constraints of the will of the people.”³ Normatively, democracy “must be related to the concrete functioning of political institutions ... as expressed in the rule of law.”⁴ To comprehensively analyze Ukrainian democratic development since 2022, one would need to evaluate many indicators from the quality of government institutions to the protection of civil liberties. That would be outside of the scope of this paper. Instead, this paper will focus on perhaps the single most important indicator of democratic development: rule of law.

While changes in media consolidation, government transparency, and freedom of expression and movement in Ukraine should not be overlooked, Ukraine’s judiciary remains integral to establishing genuine rule of law and contributing to a healthy democracy. Rule of law is so fundamental to ensuring quality democracy that diplomats discussing EU accession negotiations refer to it as the first item to open and the last to close, demonstrating its role in the EU’s democratic standards for prospective members.⁵ Investigating how Ukraine’s judicial sector

¹ Steven Levitsky and Daniel Ziblatt, *How Democracies Die* (London: Penguin, 2018).

² Dinara Khalilova, “Parliament Approves 90-Day Extension of Martial Law, Mobilization,” *The Kyiv Independent*, February 6, 2024.

³ Mark E. Warren, “A Problem-Based Approach to Democratic Theory,” *American Political Science Review* 111, no. 1 (2017): 39–53.

⁴ Ferdinand Müller-Rommel and Brigitte Geißel, “Introduction: Perspectives on Democracy,” *Politische Vierteljahresschrift* 61, no. 2 (2020): 1–11.

⁵ George P. Kent, personal communication to author, 2023.

has changed since Russia's full-scale invasion will reveal how the war has affected a pillar of Ukraine's democratic development, and, by extension, the quality of its democracy. Using government reports, non-governmental organization assessments, media articles, and law analyses, I find that despite Russia's ongoing invasion, Ukraine's judiciary has continued to function under extreme duress and even advance key judicial reforms, demonstrating both democratic resilience and development.

First, the paper provides background information on the state of Ukraine's judiciary before 2022. This is followed by an investigation into how the war has affected the practical functioning of courts in Ukraine. Finally, I consider the impact of the war on judicial reform efforts seeking to build quality rule of law closing with a general assessment of Ukraine's democracy given wartime developments in the judicial sector.

Ukraine's Judiciary: A Brief History

Since Ukraine's independence in 1991, the country's judiciary has struggled to foster rule of law. The courts have been rife with corruption, as judges frequently serve the interests of oligarchs and politicians. Reforms following the 2014 Revolution of Dignity moved the country in the right direction, especially with the creation of the High Anti-Corruption Court (HACC), which successfully empowered professionals with integrity to prosecute high level complex corruption cases. Judicial bodies like the High Council of Judges (HCJ) and the High Qualifications Commission of Judges (HQCJ) resisted reform for years, making them the primary target of Zelensky's 2021 judicial reform push.

In addition, both the Constitutional Court of Ukraine (CCU) and the Kyiv District Administrative Court (KDAC) presented a barrier to good faith improvements in rule of law. CCU rulings against anti-corruption measures prompted a constitutional crisis, and the head of the constitutional court was credibly prosecuted for high corruption in mid 2022.⁶ The head of the KDAC, Pavlo Vovk, and other judges of the court faced charges of "usurpation of power, obstruction of justice, organized crime and abuse of authority." They represented the rot at the core of Ukrainian judicial institutions and have long escaped accountability. Parliament (the Rada) introduced a draft law in 2020 to liquidate the court, but it did not make the agenda until December 2022.

Before 2022, Ukraine's judiciary had made improvements towards better rule of law. Overall, however, the judiciary remained the country's greatest challenge toward quality democracy and European integration. Russia's full-scale invasion of Ukraine in 2022 would shake the judiciary at its foundation while reinvigorating previously stalled democratic reforms.

Administering Justice Under Martial Law

Ukraine's judiciary has continued to administer justice through the courts despite Russia's invasion and the imposition of martial law, demonstrating unprecedented democratic resilience. Russian aggression has killed at least eighteen judiciary staff and damaged or destroyed over 114 courts and sixty-four prosecutors' office buildings. More than 173 buildings remain in temporarily occupied territories, and total damages amount to over EUR 69 million.⁷ As a result, many case

⁶ "Judicial Reform in Ukraine: A Short Overview," DEJURE Foundation, March 2023; Mykhailo Zhernakov and Nestor Barchuk, "Ukraine's President Zelenskyy Must Prove He Is Serious about Judicial Reform," *Atlantic Council*, October 11, 2021; "Ukrainian President Fires Constitutional Court Head as Crisis over Anti-Graft Reform Deepens," Radio Free Europe/Radio Liberty, March 28, 2021; Oleg Sukhov, "Zelensky Signs Law to Liquidate Ukraine's Most Notorious Court," *The Kyiv Independent*, December 13, 2022.

⁷ European Commission, "Ukraine 2023 Report," November 8, 2023.

files have been lost. Russian air strikes, air raid alerts, and power outages frequently interrupt court proceedings and the large-scale displacement of millions of Ukrainians, both internal and international, has affected the ability of courts to consider cases.⁸ Despite these security challenges, and a dramatic wartime reduction of funding, Ukrainian courts maintained a 100% clearance rate or even higher in 2022. Clearance rates varied depending on case type, with administrative cases boasting a high 111.7% clearance rate. The Constitutional Court maintained the lowest clearance rate of 68%.⁹ Under unprecedented security constraints, Ukraine's courts, where able, continue to function, take cases, and administer justice according to the laws and constitution of Ukraine.

Russia's full-scale invasion has changed the scale and nature of cases facing the judiciary, challenging the effective administration of justice. More than 80,000 cases related to Russian war crimes, crimes against humanity, and other war related offenses like looting and property damage were opened, shifting the work priorities and stressing the capacity of Ukraine's criminal justice system.¹⁰ Administering this kind of justice at scale would challenge the judiciary sectors of most developed democracies, let alone developing ones. Nevertheless, Ukraine's judiciary has moved to process these cases. The judiciary has removed Russia's sovereign immunity in its courts, clearing the way to process legal actions against Russian persons, as well as state and private entities.¹¹ As of November 2023, Ukrainian courts have indicted 267 and convicted sixty-three people for war crimes. Additionally, there are 2,944 open cases regarding child victims of war crimes such as forced deportation, military recruitment, killings, and sexual violence. Both the War Crimes Department and the Office of the Prosecutor General have developed new tools to process the rapid influx of cases more efficiently.¹² Identifying this challenge, international partners have made the effective prosecution of Russian war crimes in Ukraine a key priority of judicial assistance.¹³ Ukraine has made administrative and legal moves to process war crimes cases and deliver justice to its citizens.

However, Ukraine lacks concrete enforcement and compensation measures in cases where the criminals sit at the highest levels of the Russian government. To this end, Ukraine has used international cooperation to advance the legitimacy of its war crimes trials and provide a possible mechanism for victim compensation. Ukraine appealed to the International Criminal Court (ICC) to investigate Russian crimes, culminating in the ICC issuing arrest warrants for President Vladimir Putin and Maria Lvova-Belova for the forced deportation of Ukrainian children.¹⁴ To sustain the processing of war crimes, Ukraine should work with international partners to update its domestic legal framework for international criminal accountability to improve wartime administration of justice.

Martial law has affected Ukraine's judiciary functions on security matters but has otherwise preserved the legitimacy and authority of the courts. Ukraine's 2022 Martial Law established temporary military administrations which have special powers relating to "defense, public safety, and order."¹⁵ It also provides for certain limitations of rights and freedoms normally

⁸ "Supreme Court Judge Talks about the Administration of Justice in Ukraine during Martial Law at the Judicial Council of Singapore Meeting," Supreme Court of Ukraine, October 16, 2023.

⁹ European Commission, "Ukraine 2023 Report."

¹⁰ European Commission, "Ukraine 2023 Report."

¹¹ Yevhen Synelnykov, "The Administration of Justice under Martial Law," live presentation, October 16, 2023.

¹² European Commission, "Ukraine 2023 Report."

¹³ Margaryta Khvostova, Yuliia Kyrychenko, and Michael Meyer-Resende, "Ukraine's Democratic Institutions during the War: A Check-Up," Центр політико правових реформ, March 2023.

¹⁴ "Ukrainian Civil Society Calls on Ukraine to Ratify the Rome Statute—Coalition for the International Criminal Court," Coalition for the ICC, May 5, 2023.

¹⁵ "On the Legal Regime of Martial Law," Verkhovna Rada of Ukraine, 2015; "Martial Law," Ukraine Invest, accessed January 11, 2024.

afforded to citizens and legal entities.¹⁶ In practice, people are subject to frequent document checks and digital monitoring; able bodied men are generally prohibited from leaving the country; and the military can temporarily requisition property to facilitate security operations.¹⁷ Overall, the European Commission assessed that these restrictions are limited in scope and proportional to Ukraine's real security needs.¹⁸ While these restrictions may change how the judiciary rules on cases relating to national security compared to before 2022, the courts remain the sole legitimate institution through which to enforce rule of law and settle civil and criminal disputes.¹⁹

Importantly, Ukrainian civilian courts remain the only institution that administers justice in the country, demonstrating continuity of rule of law under the martial law regime. In cases where they cannot administer justice due to physical proximity to the line of contact or Russian occupation, judicial authorities have shifted the territorial jurisdiction of cases to ensure that citizens continue to have access to judicial services.²⁰ As Ukraine liberates territory, normal jurisdiction is restored. To effectively administer justice for citizens who have been displaced by the war or are unable to attend court due to safety concerns, Ukraine has introduced online legal procedures. While this adaptation allows the courts to continue functioning in compliance with the country's legal principles, independent assessments determined that the existing support infrastructure requires desperate modernization.²¹ The 2022 Martial Law also does not unilaterally postpone or accelerate court deadlines, allowing the state to continue administering justice under the constitution.²² This demonstrates that the judiciary has tried to maintain, and even improve, access to justice despite the martial law regime. These efforts, and apparent institutional continuity under martial law, suggest surprising democratic resilience in the justice sector.

Ukraine's judiciary faced unprecedented challenges because of Russia's 2022 invasion, from the destruction of courthouses and the murder of judicial workers to the sheer scale of Russian war crimes. Despite this, Ukrainian courts continued to administer justice to its citizens and develop new tools and procedures to fill capability gaps, demonstrating democratic resilience. While the overall quality of rule of law in Ukraine before 2022 did not meet the standards of civil society or international partners, Russia's 2022 invasion and Ukraine's subsequent martial law did not reduce the legitimate authority of the courts in territories not under Russian occupation, indicating continuity in the country's most important democratic institution.

Reform Reinvigorated

Ukraine has revived judicial reform initiatives following Russia's 2022 invasion, demonstrating positive democratic development under wartime conditions. Ukraine reformed the HCJ and the HQCJ, which have prevented quality rule of law in the country for decades.²³ Two separate selection committees composed of three national and three international experts began reviewing the integrity of existing HCJ and HQCJ members as well as selecting new members to fill vacancies.²⁴ In February 2022, ten members of the HCJ resigned. Of the five that remained, three passed the committee's integrity checks, one failed, and the other, the head of the

¹⁶ Olha Chernovol, "Explainer: The Impact of Martial Law on Ukrainian Corruption-Prevention Measures," *Jurist*, October 14, 2022.

¹⁷ "Martial Law," *Ukraine Invest*.

¹⁸ European Commission, "Ukraine 2023 Report."

¹⁹ Synelnykov, "The Administration of Justice under Martial Law."

²⁰ Synelnykov, "The Administration of Justice under Martial Law;" Valentyn Gvozdiy and Sergiy Oberkovych, "Claims and Recoveries during Martial Law in Ukraine," *European Business Association*, June 30, 2024.

²¹ European Commission, "Ukraine 2023 Report."

²² European Commission, "Ukraine 2023 Report."

²³ "Judicial Reform in Ukraine: A Short Overview," *DEJURE Foundation*.

²⁴ European Commission, "Ukraine 2023 Report."

Supreme Court of Ukraine, was charged with high corruption for allegedly receiving a \$2.5 million bribe to influence supreme court decisions in favor of a particular oligarch. The Rada also added “anti-corruption crusader” Roman Maselko and respected law professor Mykola Moroz to the HCJ.²⁵ Another committee selected sixteen new members for the HQCJ following a thorough integrity check. The EU rated the selection processes of both governing institutions as thorough and merit-based. However, civil society watchdogs raised concerns over the integrity of several candidates who passed selection screenings, particularly for the HCJ.²⁶

While the reforms of these institutions were initiated before the 2022 invasion, Ukraine fulfilled them after Russia’s 2022 invasion. This had been on the agenda of civil society and international partners since 2014, demonstrating concrete democratic development under full-scale war and martial law. One cannot make a direct causal claim that the war was the sole factor motivating the successful implementation of the reforms, but the war-motivated political will of the government to rapidly pursue an EU trajectory in good faith certainly contributed to these positive developments. The government’s increased engagement with international partners, the Venice Commission, and domestic judicial and anti-corruption civil society groups since February 2022 has led to progress.

Additionally, Ukraine advanced in reforming its troublesome Constitutional Court. Upon granting Ukraine candidate status in June 2022, the European Commission insisted that Ukraine continue Constitutional Court reforms to retain its standing.²⁷ In response, the Rada adopted a law on the selection process for new constitutional court judges in December 2022, but the law controversially did not give independent international experts a role in selecting new judges. After months of close engagement with the Venice Commission, international organizations, and civil society organizations, the Rada amended the law in July 2023 to match the Venice Commission’s recommendations. This law, and the subsequent implementation efforts, directly informed the European Commission’s decision to recommend opening accession negotiations with Ukraine. While the law met the Venice Commission’s standards, and the Ukrainian government and international stakeholders formed the vetting committee, it excluded civil society participation, lowering public trust in the reform.²⁸ The selection of Constitutional Court candidates is ongoing; however, Ukraine made undoubtable progress in close cooperation with international partners to reform the institution that impeded many post-2014 anti-corruption reforms. The intense engagement between the Ukrainian government and international partners like the EU, upon which Ukraine’s macro-financial and defense existence rely, has been key in motivating judicial reform advancement. Observers must continue to track this issue closely to ensure further improvements to Ukrainian rule of law.

Ukraine finally dismantled the Kyiv District Administrative Court on December 13, 2022, almost two years after the first draft law to dismantle the court was introduced in the Rada in early 2021.²⁹ The court’s members have been sanctioned by foreign governments, embroiled in corruption scandals, and charged with attempted seizure of power. The liquidation of the court stalled in the judicial committee of the Rada but was finally included on the agenda following Russia’s full-scale invasion and subsequent revival of Ukraine’s justice reforms. The law is not perfect, however. It liquidated the court without outlining disciplinary actions against former members, allowing low-integrity professionals to remain in the judiciary. Additionally, the Kyiv

²⁵ Oleg Sukhov, “Parliament Appoints Anti-Corruption Crusader to Top Judicial Body amid Botched Reform,” *The Kyiv Independent*, August 15, 2022; “Judicial Reform in Ukraine: A Short Overview,” DEJURE Foundation.

²⁶ “Judicial Reform in Ukraine: A Short Overview,” DEJURE Foundation.

²⁷ Freedom House, “Ukraine: Freedom in the World 2023 Country Report,” 2023.

²⁸ “Judicial Reform in Ukraine: A Short Overview,” DEJURE Foundation.

²⁹ “Judicial Reform in Ukraine: A Short Overview,” DEJURE Foundation.

regional court absorbed the caseload of the KDAC, though it does not have the capacity to adequately process its new workload.³⁰ Thus, the HCJ and HJCJ must establish a quality framework to form a new district court staffed with thoroughly vetted professionals to administer good faith justice. Despite the remaining work on the KDAC, the fact that the controversial court was finally liquidated presents a big win for judicial reform stakeholders and Ukraine's rule of law.

Under the context of war and martial law, Ukraine advanced key judicial reforms with close cooperation with the EU and other international partners. Reforms that had halted before the full-scale war were finally realized or set back on track. Wartime pressures and extreme levels of cooperation with western partners significantly influenced the positive trajectory of reforms. Despite, or perhaps because of, the existential nature of Russia's 2022 invasion, Ukraine has improved its most important democratic institution, and by extension, its democracy.

Conclusion

Contrary to observed relationships between wars, martial law, and democracy, Ukraine's judiciary endured under extreme duress, demonstrating democratic resilience, and advanced key judicial reforms, indicating democratic development. Ukraine's courts continued to administer justice to its citizens and develop new tools and procedures to fill capability gaps. Ukraine's martial law did not reduce the legitimate authority of the courts in territories not under Russian occupation, signifying continuity in the country's most important democratic institution. Ukraine made rapid progress to transform its judiciary to better reflect the democratic principles it is fighting for, responding to domestic and international political pressures in the context of an existential war where the government's survival depends on continued support from the Ukrainian people and international partners. While we must continue to monitor Ukraine's judicial system along with other democratic indicators, such as the quality of government institutions and the protection of civil liberties, it seems that Ukrainian rule of law has improved rather than suffered because of Russia's 2022 full-scale invasion and Ukraine's subsequent martial law.

³⁰ European Commission, "Ukraine 2023 Report."