is impossible to form a complete court panel to hear civil cases, e.g., when the city council has no chance to approve the list of lay judges due to their shortage, the court transfers the civil case to the closest court territorially. Additionally, the efficiency of the court proceedings and the safety of the participants in extreme conditions of aggression require that measures be taken to move hearings online, which also ensures the timely and efficient delivery of all the necessary information and documents related to the hearing to all the participants. Thus, the challenges of the court in civil cases during Russian aggression add extra reasons for the need to modify the model of lay participation in Ukraine.

The participation of lay judges in criminal cases is governed by the Ukrainian CC and the Ukraine's CCP, under which judges exclusively hear criminal cases unless the accused is punishable by life imprisonment. In that case, at the request of the accused, the case shall be heard by a panel of two judges and three *присяжні*. Thus, as can be seen, in Ukraine, the legislature has established the institute of *присяжні* only in high-profile cases. However, as of the end of 2022, lay judges do not participate in cases involving war crimes (Art. 438 of the CC), even though they are punishable by life imprisonment under the law. Following the imposition of martial law in Ukraine and the amendment to Article 615(10) of the Ukraine's CCP, which entered into force on 1 May 2022, all criminal cases are heard exclusively by judges.

3.4. Organising Elections During Wartime: The Case of Ukraine

3.4.1. The Context of Elections Taking Place in Ukraine

One of the central institutes of democracy is elections (Lenarčič 2005, p. 1; Šileikis 2005, pp. 160). They are a vital form of citizens' participation in the governance of the state, are protected by international human rights law instruments (UN 2021), and are a necessary element in forming the state's political representative institutions (Constitutional Court of Lithuania 2004).

Elections allow citizens to participate in political life, express their opinions, and choose between candidates and political parties who may have different policies, platforms, and visions for society, in return for which citizens expect accountability (Merloe 2008, pp. 17–21). This ensures that the people's will is reflected in the government. If officials do not perform their duties effectively, they can be voted out of office in the next election.

Ukraine, a sovereign, independent, democratic, social, rule of law-based state (Art. 1 of the Constitution 1996) according to its legal acts, also holds several types of elections which are crucial to its system of governance:

(a) *Presidential elections*. The president of Ukraine is the head of state. The citizens elected the president for a 5-year term based on universal, equal, and direct suffrage by secret ballot (Art. 103 of the Constitution of Ukraine).
Regular elections for the position of president shall be held on the last Sunday of March in the 5th year of the president's mandate (Art. 103(5) of the Constitution). In case of early termination of the term of the president, presidential elections shall be held within 90 days from the day of termination of the president's authority (Art. 103(5) of the Election Code 2019). The president exercises their powers until the newly elected president assumes office (Art. 108(1) of the Constitution).

(b) *Parliamentary elections*. The constitutional composition of the Verkhovna Rada consists of 450 members who are elected for 5-year terms based on universal, equal, and direct suffrage by secret ballot (Art. 76(1) of the Constitution). This is based on an open, proportional electoral system (Art. 133 of the Election Code).
Regular elections to the Verkhovna Rada shall be held on the last Sunday of October in the 5th year of the term of the Verkhovna Rada. The president can schedule extraordinary elections to the Verkhovna Rada, which shall be held within 60 days from the day of publication of the decision on the early termination of the powers of the Verkhovna Rada (Art. 77 of the Constitution; Proskurina 2023).

(c) *Local elections*. The Constitution states that a village, settlement, city, district, and oblast council are composed of deputies elected for 5-year terms by the residents of a village, settlement, city, district, or oblast based on universal, equal, and direct suffrage by secret ballot. The term of authority of the village, settlement, city, district, or oblast council whose deputies are elected at regular elections is 5 years (Art. 141 of the Constitution, Art. 3 of the Election Code).

3.4.2. The Implementation of the Principle of Regular Elections

The standard principles (Katuoka 1989) of European constitutional heritage (ECtHR 2007) which form the basis of any genuinely democratic society frame the right to vote in terms of the possibility to cast a vote in universal, equal, free, secret and direct elections held at regular intervals (ECtHR 2017). Despite variations in their form, content, and qualities, regular elections are arguably not only one of the defining characteristics of a democracy (Dahl 2014) that are embedded into many conceptualisations of electoral integrity (Norris 2014), but are also the only tool that upholds the 'democratic' label of a government (Moniruzzaman 2018).

The principle of regular elections as a fundamental aspect of democratic governance or the right to periodic elections means that elections are held at established intervals according to a predetermined schedule or timeframe. This is an essential component of democratic governance, promoting political stability, accountability, and the active participation of citizens in shaping their societies.

Several aspects can be distinguished in relation to the principle of regular elections:

(a) Predictability and stability. Regular elections provide a predictable and stable framework for exercising political power. By having fixed intervals for elections, citizens and political actors can anticipate when elections will occur and plan their strategies and campaigns accordingly.
(b) Accountability and renewal. Regular elections enable citizens to hold their elected representatives accountable for their actions (Shapland 2015) and decisions. This allows citizens to express their satisfaction or dissatisfaction with incumbents' performance and make informed choices about new candidates or political parties.
(c) Legitimacy and democracy. Regular elections contribute to the legitimacy of political systems and the democratic process. By allowing citizens to participate in elections express their preferences, and have their votes counted, regular elections uphold the democratic principles of sovereignty, political equality, and majority rule.
(d) Participation and inclusion. Regular elections encourage citizens' engagement and participation in the political process. They provide a platform for individuals and groups to express their political views, compete for office, and contribute to shaping public policies.
(e) Transparency and fairness. Regular elections should be conducted transparently and fairly, adhering to established rules and procedures. This includes ensuring equal access to information, an impartial electoral administration, proper voter registration, transparency in campaign financing, and mechanisms to prevent electoral fraud or manipulation.

Regular elections are a fundamental principle recognised and emphasised in various international documents and instruments that apply to Ukraine. While their exact phrasing and interpretation may vary, the focus is generally on the regular and periodic holding of elections as a crucial aspect of democratic governance. For instance:

(a) Article 21 of the UDHR states that 'the will of the people shall be the basis of the authority of government' and emphasises the right to take part in the

government; this will be expressed in periodic and genuine elections, which shall be by 'universal and equal suffrage' (Charity 2015). The reference to 'periodic and genuine elections' emphasises the need for elections to be held at regular intervals.

(b) Article 25 (1) of the ICCPR provides the right of every citizen to 'take part in the conduct of public affairs, directly or through freely chosen representatives' (May 2017), including the right to elect and to be elected in 'genuine periodic elections'. Regular elections enable citizens to exercise their right to participate in public affairs and choose their representatives.

(c) Article 3 of Protocol No. 1 of the ECHR (1952) provides that 'the High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the legislature's choice' (ECtHR 2007; Karimi 2012).

The principle of regular elections is also stated in the American Convention on Human Rights (1969, Art. 23(1.b)), the African Charter on Democracy, Elections and Governance (2007, Art. 3), the Human Rights Declaration of the Association of Southeast Asian Nations (2012), etc. (European Parliament 2020).

It is worth mentioning that the Venice Commission, an advisory body of the Council of Europe (Culik 2016), has developed the Code of Good Practise in Electoral Matters, which also stresses the importance of regular elections and that they should be held at fixed intervals to ensure democratic legitimacy.

The Guidelines on Elections adopted by the Venice Commission at its 51st Plenary Session in 2002 also state that 'elections must be held at regular intervals' (Para. No. 1) (Guidelines on elections) and 'a legislative assembly's term of office must not exceed 5 years' (Para. No. 5; The Charter Center 2016); 'general elections are usually held at 4- or 5-yearly intervals, while longer periods are possible for presidential elections, although the maximum should be 7 years' (Para. 57; The Charter Center 2016).

In various commitments and declarations, the OSCE also notes the importance of regular and periodic elections. For instance, the 1990 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSC (now the OSCE) (Bernard 2009) states 'the participating States declare that the will of the people, freely and fairly expressed through periodic and genuine elections, is the basis of the authority and legitimacy of all government' (OSCE 1990). Also, the Charter of Paris for a New Europe states that 'democratic government is based on the will of the people, expressed regularly through free and fair elections' (D'Aspremont and Brabandere 2011).

Thus, while these legal acts of international organisations do not provide a specific timeframe for the regularity of elections, they establish the fundamental principle that elections should be held regularly to ensure democratic governance, popular participation, and the accountability of elected officials.

The ECtHR has also noted that elections must be regular (*Gitonas and Others v. Greece* (1997); *Py v. France* (2005); *Russian Conservative Party of Entrepreneurs and Others v. Russia* (2007); *Doyle v. UK* (2007); *Krasnov and Skuratov v. Russia* (2007); *The Georgian Labour Party v. Georgia* (2008); *Sarukhanyan v. Armenia* (2008). However, the court has not indicated what specific deadlines for the organisation of elections should be considered reasonable, and in which periods elections must be organised (so that such a deadline is not too short or too long).

Only the European Commission of Human Rights has spoken out in this regard, noting that too short an interval between elections may impede political planning for the implementation of the will of the electorate, which is the basis of governmental legitimacy. Too long an interval can lead to the petrification of political groupings in parliament, which may no longer bear any resemblance to the prevailing will of the electorate (Timke 1995).

The precise intervals and procedures for holding elections are typically defined by national legislation, and practises are determined by the principles outlined in international legal instruments.

In Ukraine, various legal acts, including the Constitution (Art. 76–77, 136(2) for the parliamentary elections and Articles 103, 108 for presidential elections) and the Election Code, outline the specific intervals and timing of elections. According to the Constitution, there cannot be a situation in which elections are not held or are held outside of the periods provided for in the Constitution. For instance, parliamentary elections shall be organised in the 5th year of the Verkhovna Rada of Ukraine. This means that the next parliamentary elections should be held on 29 October 2023. Assuming the last presidential election was on 31 March 2019 and the president's term is 5 years, the next presidential election is expected in 2024.

The organisation of local self-government elections at certain intervals is also stated in the legal acts. Considering that the last local elections were in 2020 and the local self-government term is 5 years, new regular local elections should take place in autumn 2025, according to the Constitution.

In other countries, the leading legal acts also enshrine the periodicity of elections and establish that regular elections must be held regularly. For instance, the Constitution of the Republic of Lithuania (1992) also includes guarantees for the periodicity of elections – the exact time of the ordinary parliamentary elections (both to the Seimas and the ordinary elections of the president of the republic)

are determined: ordinary elections to the Seimas are held on the second Sunday of October in the year when the powers of the members of the Seimas expire (Art. 57 of the Constitution); ordinary presidential elections are held on the last Sunday 2 months before the end of the term of office of the president (Art. 80 of the Constitution of Lithuania). Regarding elections to municipal councils, the Constitution does not contain information as to when regular municipal council elections must be held; here, the powers granted to the legislator are determined by the Election Code (Pukanasytė 2014).

Thus, the constitutional provisions providing for the organisation of presidential, parliamentary, and local self-government elections every 5 years ensure that elections should not be arbitrary or *ad hoc*. Instead, they are conducted according to a predetermined schedule and held at regular intervals, providing for periodic renewal and providing citizens with the opportunity to regularly express their political preferences and participate in the democratic process.

3.4.3. The Impact of Martial Law on Elections

Regular elections are an essential feature of democratic practices (James and Alihodzic 2020). According to international human rights law, participating in government and voting in 'periodic, genuine elections' is a well-established right (Commonwealth Parliamentary Association 2021). Without elections – according to Bjørn Berge, the deputy secretary general of the Council of Europe, and Martin Candinas, president of the Swiss National Council – democracy is impossible (Council of Europe 2023).

Although laws generally provide that rights are usually protected and cannot be restricted and that elections are held regularly, certain circumstances can affect election timing.

Political rights, including voting rights, can be temporarily restricted under a minimal set of circumstances – for instance, in emergencies (Global Citizenship Observatory 2020), on public safety grounds, during significant crises such as world or civil wars, natural or humanitarian disasters, or as a result of technical delays related to logistical issues (Commonwealth Parliamentary Association 2021).

It should be emphasised that all restrictions must respect the standards of legality, necessity, proportionality and temporariness. Moreover, according to the Siracusa Principles adopted by the former UN Commission of Human Rights, which explain the relevant ICCPR provisions, 'the burden is upon a state imposing limitations so qualified to demonstrate that the limitations do not impair the democratic functioning of the society'(European Parliament 2020).

However, each situation is unique in practice and needs to be adequately assessed (Maryunani 2019) based on the circumstances (Elections Canada). Sometimes, elections can be held under challenging conditions, and sometimes the situation can be too risky for those participating.

There are many reasons as to why elections might not take place (James and Alihodzic 2020). This is perfectly illustrated by the decision of the Supreme Council of Turkey 1966, which decided that elections could be postponed following an earthquake that hit the country's eastern provinces 2 days ahead of the vote, making it impossible to hold elections (Soylu 2023). Another example is Nigeria. The 2019 Nigerian presidential and national assembly elections were postponed by the Independent National Electoral Commission 3 days before the scheduled elections 'following a careful review of the implementation of the logistics and operational plan' (Mckenzie and Wails 2019; James and Alihodzic 2020). This decision was announced only 5 hours before polls were due to open, and the election was put back a week. Of course, election-related delays can sometimes be longer. For instance, the Bosnian post-war elections in 1996 were postponed for 3 months due to technical delays (James 2020): the 1991 census was to be used as an electoral register, but mistakes were made in scanning the data. Meanwhile, voter identification was hampered by the problem of issuing documents to IDP (Hadziabdic 2019).

This chapter focuses on one reason for the postponement of elections: the declaration of martial law.

Martial law should be declared only via the law, and authorised only in the case of a threat to the nation's life, where measures compatible with the Constitution and laws in force are inadequate to address the situation (The Charter Center 2016).

The imposition of martial law is intended to be a temporary measure implemented in exceptional circumstances such as *war, invasion, insurrection, rebellion, riot or any* violent resistance to law (Phillimore 1900, pp. 45–72), primarily to address threats to the country's territorial integrity, independence, or constitutional order.

Declaring martial law is a complex process that requires the consensus of several branches of government. Ukraine is no exception. Under Article 106 (21) of the Constitution of Ukraine, the president may 'adopt a decision, by law, on the general or partial mobilization and the introduction of martial law in Ukraine or its particular territories in the event of a threat of aggression or danger to the independence of Ukraine' (КримSOS 2021). However, this decision only enters into force after approval by the parliament.

Similar regulation regarding martial law is in force in other countries. For instance, Article 29 of the Constitution of Poland (Buamah 2018) states that 'in the case of external threats to the State, acts of armed aggression against the territory of the Republic of Poland or when an obligation of common defence against aggression arises by international agreement, the president of the republic may, on request of the Council of Ministers, declare a state of martial law in a part of or upon the whole territory of the State' (Constitution of Poland 1997). Article 71(5) of the Constitution of Georgia also states that 'in cases of an armed attack, or a direct threat of armed attack on Georgia, the president of Georgia shall, upon recommendation by the prime minister, declare martial law' (Constitution of Georgia 1995). However, in some countries, martial law is declared only by parliament. For instance, according to Article 142 of the Constitution of the Republic of Lithuania, martial law is introduced by parliament (the Seimas) (Constitution of Lithuania).

Martial law typically involves suspending or limiting certain civil liberties and fundamental rights – for instance, involving restrictions on freedom of assembly, freedom of speech, freedom of the press, and the right to political participation. Such limitations can impede the ability of political parties, candidates, and voters to engage in election-related activities, participate in the election campaign, express their views, or access the information necessary for informed voting.

The specific measures and limitations imposed during martial law, including any impact on voting rights, are determined by the relevant legislation and decrees enacted by the government during that period.

As in many other countries, the introduction of martial law in Ukraine is inevitably associated with the restriction of specific rights. The president, with the consent of the Verkhovna Rada, can impose not only martial law but also restrictions on certain constitutional rights and freedoms, which may include limitations on the right to vote.

The Constitution of Ukraine does not explicitly state that elections are not organised or that certain elections are not organised during martial law. On the other hand, the Constitution provides that if the term of the Verkhovna Rada expires while martial law is in effect, its mandate shall be extended until the day of the first meeting of the first session of the Verkhovna Rada of Ukraine elected after the cancellation of martial law or the state of emergency (Art. 83 (4) of the Ukraine Constitution).

Moreover, such a restriction or prohibition is detailed at the level of the laws governing the martial law regime. For instance, according to Article 19 entitled 'Guarantees of Legality Under Martial Law' of the Law of Ukraine 'On the Legal Regime of Martial Law' (2015), in a period of martial law, it is prohibited to

conduct: elections for the president of Ukraine, the Verkhovna Rada of Ukraine, the Verkhovna Rada of the Autonomous Republic of Crimea, and local self-government bodies; all-Ukrainian and local referenda; and strikes, mass meetings, and actions. In other words, the Law 'On the Legal Regime of Martial Law' directly prohibits holding all types of elections during martial law.

It should be noted that martial law also affects any election process that has already started. The election process stops after the announcement of elections and the introduction of martial law in all of Ukraine or its separate territories. Under Article 20 of the Election Code, 'in the event of martial law or a state of emergency being imposed in Ukraine or its separate territories, the election process of national elections and/or local elections held in these territories, or their parts shall be terminated from the date of entry into force of the respective decree of the president of Ukraine'. The Code provides that 'after the entry into force of the decree of the president, the Central Elections' Commission (hereafter – CEC) shall decide to terminate the election process throughout Ukraine or in its separate territories and determine the rules for completing election procedures initiated in the framework of the election process'.

The Election Code establishes a deadline for calling elections where the electoral process was suspended or failed to start due to the introduction of martial law. Article 20 of the Election Code establishes that after the cessation or abolition of martial law, any electoral process which has been suspended in connection with this shall begin again. The decision on calling elections which had their electoral process suspended or which did not begin due to the imposition of martial law shall be adopted by the subject of their appointment no later than 1 month from the date of the termination or abolition of martial law. If the law does not require a separate decision on the appointment for holding the elections, the CEC shall announce the start of the election process no later than 1 month from the date of the termination or abolition of martial law (Art. 20 of the Election Code). However, this does not seem realistic, because 'the Verkhovna Rada of Ukraine, no later than 90 days from the date of termination or cancellation of martial law, if regular or special elections to the relevant bodies were to be held during the period during which martial law was imposed, shall decide on the appointment of elections for deputies of the Verkhovna Rada Autonomous Republic of Crimea, local elections' (Kliuchkovskyi and Volodymyr 2022).

3.4.4. The Influence of the War of Aggression on the Organisation of Elections in Ukraine in 2023–2024

According to the Ukrainian Constitution, regular parliamentary and presidential elections must be held in 2023–2024. In 2019, for the first time in independent

Ukraine, extraordinary elections to the Verkhovna Rada were held in the summer, on 21 July 2019. The Verkhovna Rada acquired powers on 29 August 2019. Considering that, according to the Constitution of Ukraine, parliamentary elections are held on the last Sunday of October of the 5th year of the parliamentary term, the next parliamentary elections should take place on 29 October 2023.

Since presidential elections are also held every 5 years and the last election was held in March 2019, the next elections are scheduled for 31 March 2024, i.e., 6 months after the parliamentary elections.

However, this time, holding elections within the deadlines set by the Constitution of Ukraine and ensuring compliance with the principle of regular elections may be difficult, or even impossible.

On 24 February 2022, the Russian Federation launched large-scale armed aggression against Ukraine (National Security and Defense Council of Ukraine Report 2022). To resist the aggressor and to protect the sovereignty and territorial integrity of the state, based on the proposal of the National Security and Life Council of Ukraine and Article 106 (20) of the Constitution of Ukraine and the Law of Ukraine 'On Martial Law' of 24 February 2022, martial law was introduced by presidential decree No. 64/2022.

On the same day, the Verkhovna Rada approved the presidential decree allowing the imposition of the legal regime of martial law for 30 days (Decree Art. 1). Later, in connection with the ongoing military aggression of the Russian Federation against Ukraine, the decrees of the president of Ukraine 'On the Extension of Martial Law in Ukraine' were adopted. At the time of preparing this chapter, under the president's decree, the period of martial law has been extended until 14 February 2024.

Following the declaration of martial law in Ukraine by presidential decrees, restrictions on human rights were introduced, regarding which the Ukrainian government, according to the ICCPR and the ECHR, notified the European Council (Democracy Reporting International 2023). Restrictions on human rights included a ban on holding any mass events, election campaigns, or elections, which have been an integral part of Ukraine's political system throughout its years of independence.

Ukraine has been successfully holding regular parliamentary and presidential elections since its independence with the exception of 2004, which led to the Orange Revolution. However, this time, due to the full-scale invasion of the Russian Federation into Ukraine, the occupation of part of the Ukrainian territories (Oliinyk 2023) and the declaration of martial law throughout the country, as long as martial law continues, national and local elections, whether ordinary, extraordinary, or by-elections, cannot be held and should be postponed.

Many constitutions of foreign countries also provide for postponement or the opportunity to postpone elections during emergencies, for example by extending the term of the parliament. This is the case in Croatia, Italy, Germany, Greece, Poland, Lithuania, Slovenia, Spain, Hungary and Canada.

In other countries' constitutions, an emergency precludes the dissolution of the parliament, e.g., Germany, Spain, Portugal, Poland, Hungary (European Parliament 2020).

However, there are also countries whose legal acts do not stipulate that elections are not organised during wartime. For instance, the USA Constitution does not provide in express language any authority for a federal official or institution to 'postpone an election' under any circumstances. If there is time for elections, they should be held at that time. Many elections in US history illustrate this well. For example, presidential elections were held during the War of 1812, the Civil War (1864) (Ho 2020), World War II (1944), the Vietnam War (1964, 1968, 1972), and the wars in Iraq and Afghanistan (2004, 2008, 2012, 2016) (The National Task Force on Election Crises 2003). Interestingly, the Civil War lasted 48 months, and in at least half of those months major elections occurred in the North. 'On average, the North witnessed a major election every other month of the war (White 2020).'

Election postponements represent a departure from the normal democratic procedure and hold the potential to compromise or destabilise democracy. Such postponements can diminish institutional certainty (James and Alihodzic, 2020) by altering the expectation of power transfer (Plutowski 2022). Postponing a vote also entails political risks: leaders (European Parliament 2020) and representatives who are not necessarily doing a good job will remain in office for longer, and citizens will be temporarily denied their right to shape public policy – perhaps at exactly the moment they need to (Maury 2020). Therefore, although election postponement can be a democratic process (James and Alihodzic 2020), this remedy should be chosen when all other options have been exhausted (Maury 2020). In addition, extraordinary measures such as election postponement must comply with all international standards for such derogations, and not threaten democracy itself (ICCPR).

3.4.5. Cases in Which Elections Can Be Held

Elections are prohibited in Ukraine during martial law. Therefore, in order for the elections to take place within the terms stipulated in the Constitution and not be postponed, there are several alternatives: (a) to change the legal acts that determine the specific date of the elections; or (b) to amend the legislation relating to the declaration of martial law in the country.

The dates of parliamentary and presidential elections are set in the Constitution. Therefore, for parliamentary or presidential elections to take place on a day other than that provided for in the Constitution, amendments to the Constitution should first be initiated. The Constitution can be changed if there is an objective judicial necessity for this and the Constitution's norms, principles, and stability are not violated as a result (The Constitutional Court of Lithuania 2014). The nation can change the Constitution directly or through democratically elected representatives, but only according to the rules established in the Constitution (Lithuanian Constitutional law 2017). However, in this case, considering that a state of war was declared in Ukraine, the Constitution cannot be changed (Art. 157(2) of the Constitution).

Another option is to change legislation prohibiting elections during times of war or emergency.

Under the Ukrainian Constitution, sole legislative power belongs to the Verkhovna Rada (Art. 75 of the Constitution). The Verkhovna Rada's legislative authority continues during martial law, i.e., the Ukrainian Constitution does not delegate legislative powers to the president under these circumstances. Given this, the parliament could initiate amendments to legislation, such as the emergency law prohibiting elections during wartime and others.

Another alternative to elections is to reverse martial law. For example: (1) end martial law if there is no longer a threat (this can be done by the president by a decree on the proposal of the SC or parliament); (2) do not renew martial law after the expiration of its term (if a new request for its extension is not submitted); or (3) introduce martial law only in part of Ukraine's territories.

Notably, on 28 November 2018, martial law was introduced in Ukraine for 30 days for the first time (Human Rights Watch Report 2018). However, it was not valid across the entire Ukrainian territory, but only in 10 of the 25 regions on the border with Russia and Moldova (Daren and Way 2018). Since the presidential decree on the imposition of martial law was not extended, on 31 March 2019, presidential elections took place as planned.

3.4.6. The Announcement of Elections after the End of Martial Law

Elections are a political process during which political representative institutions are formed, i.e., institutions whose decisions are of decisive importance for the life of the state and society; therefore, it is important that this process is based on the Constitution (Pukanasytė 2013, p. 633).

Article 136 (2) of the Election Code, which regulates time frames for the organisation of elections for members of the Ukrainian parliament, states that

in ordinary elections, the regular election process shall begin 60 days before the day of voting.

The Central Elections Commission must announce the start of the election no later than one full day before it begins. Theoretically, if the armed actions had ended by mid-August 2023 and martial law was not extended beyond 18 August 2023, it would have been possible to plan parliamentary elections in 2023. In other words, the requirement provided for in Article 77 of the Constitution would have been fulfilled (Opora analysis 2023). On the other hand, the organisation of elections immediately after this state of war is ambiguously assessed by Ukrainians. As surveys of the population show, respondents' opinions on 'when Ukraine should hold the first elections after the end of martial law' differ. In general, 16 % believe that elections should take place immediately, 28 % suggest waiting for 3–6 months, 30 % think that they should happen in around a year, another would 13 % prefer to wait a few years, and 2 % have other opinions (Opora analysis 2023).

A short deadline of a few months for holding elections is also stated in the constitutions of other countries. For instance, according to Article 37 (3) of the Constitution of Georgia, 'if the election date coincides with a state of emergency or martial law, elections shall be held no earlier than the 45th day and no later than the 60th day after the state of emergency or martial law has been revoked' (Constitution of Georgia). In some countries – for instance, in Lithuania – a longer deadline is provided for the conduct of elections organised after the end of the state of emergency. Article 143 of the Constitution of the Republic of Lithuania stipulates that 'elections must be called not later than 3 months after the end of the war'(Constitution of Lithuania).

However, the reasons and circumstances for martial law may be different. Therefore, assessing whether a 2–3-month period in which to hold new elections after the introduction of martial law is sufficient is quite difficult. In one case, a state of war may be introduced to strengthen the defence of the country, taking into account growing foreign threats; in another case, it may be a response to an armed attack by a foreign state, a violation of territorial integrity, etc. Accordingly, depending on the consequences, in one case, 2 months may be enough to hold new elections; in another case, serious obstacles may be encountered in election preparation. This applies especially in cases where the country's political situation is not stabilised after the end of the state of war, political parties and candidates are not ready to participate in the elections, and there is no possibility to prepare the necessary infrastructure for the elections or to ensure the safety of the persons participating in the process.

On the other hand, holding elections immediately after martial law has several advantages.

Firstly, if martial law in the country was not extended, then ensuring that the parliamentary and presidential elections in Ukraine would take place within the terms set by the Constitution would be helpful. This would partially correspond to the position of the president of the PACE, Tiny Kox: that holding parliamentary and presidential elections in Ukraine is a duty under the Council of Europe Charter (Europeiska Pravda 2023), and elections must be held even while martial law is in effect (Pohorilov 2023). The positions of the representatives of Ukraine and the Council of Europe are radically different in this respect, as Ukrainian officials, responding to the position expressed by the representative of the Council of Europe, have noted that Ukraine has its own Constitution and laws which they must observe. This means that election matters must be decided according to the laws in force in their country, which do not grant the right to organise elections while martial law is in effect. Meanwhile, although the representative of the Council of Europe admitted that the Ukrainian Constitution does not allow elections to be held while martial law is in effect, he stated that Ukraine must find a solution. According to the representative, they cannot say how it is to be achieved, but free and fair elections must be held because that is an obligation under the statute and conventions (Pohorilov 2023). The representative also observed that winning the war and surviving the invasion are incredible challenges, but in order to restore, strengthen, and rebuild the country while observing the rules of democracy, the rule of law, and human rights, this challenge will remain with Ukraine for many years. Nonetheless, Ukraine must overcome it (Zubkova 2023). According to the PACE president, organising elections under these conditions will be extremely difficult; however, there are examples from other countries – particularly Turkey, which managed to hold elections after a devastating earthquake (Zubkova 2023). Because the constitution prohibits elections during martial law, the position of the PACE president that elections should be held anyway can be analysed in more detail.

Organising elections during martial law would violate the principle of the supremacy of the constitution. An essential requirement of a democratic legal state is that it does not allow anyone to violate the constitution, meaning that the constitutional order must be defended. Among other things, a violation of this principle would mean that the principle of the constitutional state is also violated, a universal principle that underpins the entire legal system and the constitution itself (The Constitutional Court of the Republic of Lithuania 2002).

Secondly, the defence of human rights is critical for any democracy (International Institute for Democracy and Electoral Assistance 2022) – even more so for a country that is fighting for its territorial integrity. Ever since Ukrainians decided to make their country more democratic in the Maidan revolution of 2014 and to freely choose their own foreign policy direction, the Russian government has responded with warfare. The full-scale Russian invasion of 24 February 2022 marked only the latest step in the escalation of a war the Kremlin launched in 2014 (Democracy Reporting International 2023).

If Ukraine succeeds in holding democratic and well-organised elections, it will send an important message to the world about unity and commitment to democracy and democratic renewal (Democracy Reporting International 2023). This is reflected in Ukrainian polling – for instance, one poll in August 2022 found that 95 % of Ukrainians believe that it is essential that Ukraine become a fully functioning democracy (Democracy Reporting International 2023).

Thirdly, by organising elections under challenging conditions, Ukraine would also show the world that it is a unique state that, even during a full-scale war for its freedom and independence, does not forget about democracy. This would be a powerful signal that the state does not deviate from democratic standards and the political rights of citizens under any conditions.

Although the organisation of elections immediately after the end of the state of war would bring a lot of added value to the country, certain disadvantages can also be observed.

Firstly, infrastructural challenges may be encountered when organising elections. During the state of war, the infrastructure intended for elections (the work of election commission members, polling stations, etc.) may suffer or need to be improved, and it may be difficult and sometimes downright impossible to restore it in a relatively short time.

Secondly, challenges of voter awareness and participation in elections may be encountered. During martial law, it is not uncommon for voters to relocate and be isolated from information. Over 6 million Ukrainians are currently abroad. Therefore, informing them about elections and their right to participate in state governance may take a lot of time and effort.

Thirdly, there may be some security challenges, as war can cause instability or discord between different groups in society. There may be threats to the organisation of elections and the persons participating in them, starting with members of election commissions, spreading to voters and ending with candidates. Meanwhile, elections as a democratic institute are only possible where a secure environment can be guaranteed so that there is no threat to the safety of any participant. In addition, as Leendert Verbeek, the president of the Council of Europe

Congress of Local and Regional Authorities, observed, governments should ask themselves whether elections may be held and consider different aspects of elections, including voters' security (Democracy Reporting International 2023). Democratic elections cannot be organised and held where people must take care of their survival and meet only their basic needs (safety, health care, food, hygiene, etc.) (Council of Europe Needs Assessment Report 2022).

Fourthly, there may be some challenges related to the restoration of democracy and democratic principles, especially since democracy is unthinkable without a credible electoral process. This includes not only voting, but also equal possibilities to campaign for all candidates, freely exercising the right of assembly, participating collectively in the political process and ensuring pluralism of ideas. As stated by the ECtHR – for example in the cases of *Stefan Stankov v. Bulgaria* (2015) and *Karacsony and Others v. Hungary* (2016) – freedom of expression, assembly, and association are essential foundations and are among the paramount values of a democratic society (Briefing of European Parliament 2020).

Elections should make voting possible, but it is much more essential to create conditions where voters can freely form their will and then express it by voting in elections (Kliuchkovskyi and Venher 2022). Meanwhile, the threat of political manipulation and corruption influencing election results may arise after military action. This can undermine confidence in the electoral system and the authorities. Additionally, organising free and fair elections in some territories may be impossible due to occupation or other territorial disputes.

Finally, it can be challenging to meet international democratic standards in such circumstances (Parliamentary Conference 2023). Ukraine has long been an example of democratic progress in the region, and already has experience in organising fair and free elections (Erben and Kokakhidze 2022). Thus, lowering election standards in the post-war period could lead to a high degree of degradation of the political system. Losing the dynamics of democratic progress is a daunting prospect that could unbalance the trust that has been formed between the citizens and the state of Ukraine (Opora 2023).

3.4.7. The Extension of the Mandate

Suppose the military actions in Ukraine were to continue, and martial law continued to apply. In that case, the mandates of both members of parliament and the president may expire during martial law, i.e., when no election could be held. However, the fact that the mandate of representatives of the nation elected by the citizens expired during a particular situation, such as martial law, would not

mean that the country would remain without a parliament or a person holding the office of the president.

The Law 'On the Legal Regime of Martial Law' and the Constitution specify that if the term of authority of the Verkhovna Rada of Ukraine expires while a state of martial law is in effect, its powers are valid until the day when the Verkhovna Rada elected after the cancellation of the state of martial law convenes its first meeting of the first session (Art. 83(4) of the Constitution). Very similar regulation also exists in other countries – for instance, Article 53(3) of the Constitution of Greece states 'in case of war, the parliamentary term shall be extended for the entire duration thereof. If parliament has been dissolved, elections shall be postponed until the termination of the war and the parliament dissolved shall be recalled *ipso jure* until that time' (Constitution of Greece, 1974). Article 63(3) of the Constitution of North Macedonia states 'the term of office of the Representatives to the Assembly can be extended only during states of war or emergency' (Constitution of Macedonia, 1991). Very similar regulation is found in Article 143 of the Constitution of Lithuania, which provides that if a regular election must be held in a time of war, either the Seimas or the president of the republic shall adopt a decision to extend the term of powers of the Seimas, the president of the republic, or municipal councils (Constitution of Lithuania). This means that one of the two leading institutions of the country – the parliament or the president of the republic – must extend the powers of the nation's representatives. There is no freedom to extend the powers of the people's elected officials or hold new elections according to the Constitution of the Republic of Lithuania. Article 131 of the Constitution of Estonia also states that 'the Riigikogu, the president, and representative bodies of local authorities may not be elected, nor may their authority be terminated during a state of emergency or war. If the term of office of the Riigikogu, the president or representative bodies of local authorities should expire during a state of emergency or a state of war that term is extended' (Constitution of Estonia, 1992).

As polls show, many Ukrainians support such legal regulation during times of martial law. For example, according to sociological surveys in which Ukrainians were asked how the authorities should act in a situation of martial law when, according to the Constitution of Ukraine, no elections are possible, the vast majority (61.6 %) spoke in favour of extending the powers of the current Verkhovna Rada of Ukraine until the end of martial law, no matter how long it lasts. Only 11.7 % of the surveyed respondents were comfortable with suspending martial law and holding a shortened election campaign and elections in October

2023, while 26.7 % were unsure and could not answer the question (Vedernikova 2023). Therefore, in this case, if martial law in Ukraine was extended and then the mandate of the members of parliament was to end, a situation would arise in which the current term of office of the deputies of the Verkhovna Rada would be the longest in the history of Ukraine so far.

However, the legal regulation in this case is not precise. For instance, specific questions could be raised in cases where, during martial law, members of parliament would themselves refuse their mandate (resign) or lose it on the grounds provided for in legal acts.

Currently, the Election Code provides that 'the election of members of parliament of Ukraine shall be held according to the proportional system with unified lists of members of parliament candidates in the nationwide election district, based on which regional lists of members of parliament candidates shall be formed from parties' (Art. 130). The members of the Verkhovna Rada of the current term were elected according to a mixed election system: half of the members of the parliament were elected based on a proportional system, with closed party lists in one multi-member constituency; the other half of the members of parliament were elected in a single-member constituency under a plurality system in a single round (first-past-the-post) (The Office for Democratic Institutions and Human Rights 2019).

The termination of the powers of a member of the Verkhovna Rada of Ukraine elected in a single-mandate constituency will result in a vacant mandate in parliament, which cannot be filled during martial law as by-elections in individual constituencies – established in Article 106 of the Law of Ukraine 'On Elections of People's Deputies of Ukraine' – can be held only after the termination (lifting) of martial law (Council of Europe 2022).

However, if there were many such vacancies, the Verkhovna Rada of Ukraine would have fewer than 300 elected members. There is a risk that the Verkhovna Rada of Ukraine would then lose its powers on the grounds stipulated in the Constitution. For instance, Article 82(2) of the Constitution states that 'The Verkhovna Rada of Ukraine shall be legally constituted provided that at least two-thirds of its constitutional composition has been elected' (Constitution of Ukraine). A method through which to control this situation under the conditions of martial law is not provided, although such a situation should be described in detail in the law.

According to the Law 'On Elections of People's Deputies of Ukraine' (2004), the decision on calling by-elections for a member of the Verkhovna Rada in a single-mandate constituency shall be made by the Central Election Commission

within 10 days following the early termination of powers of a People's Deputy elected in a particular constituency.

However, regarding calling Verkhovna Rada by-elections in individual constituencies, no special regulations are adapted for the period after the termination of martial law. For instance, there is no procedure for replacing members of the Verkhovna Rada who have died during the Russian invasion (Constitution of Ukraine). Therefore, legislative instructions shall be provided regarding the timeframe for the by-elections of people's deputies of Ukraine in individual single-mandate constituencies where the grounds for calling and holding by-elections arise during martial law or immediately after it is lifted. Moreover, parliamentary by-elections cannot be designated by the CEC during the 5th year of power of the Verkhovna Rada (Art. 16(7) of the Law 'On Elections of People's Deputies of Ukraine') (Venice Commission 2005). Lithuania's experience can also be relied on here. For instance, the Election Code of the Republic of Lithuania stipulates that repeated elections must be held no later than 15 days from the day on which the grounds for holding these elections arose. Repeated elections must be held no later than 3 months from their announcement (Art. 14(2)) of the Election Code of the Republic of Lithuania (2022).

Similar regulation as in the case of the expiration of the mandate of the members of parliament also applies to the expiration of the powers of the president of Ukraine during a state of war. The Law 'On the Legal Regime of Martial Law' prescribes the extension of the authority of the president of Ukraine if the constitutional term of their mandate expires during martial law. In other words, the election of the president of Ukraine can be called only after the termination of martial law. However, in the event of the early termination of the mandate of the president of Ukraine, the discharge of the president's duties is vested with the speaker of the Verkhovna Rada (Art. 112 of the Constitution).

3.4.8. The Organisation of Elections in Occupied and De-Occupied Territories

When preparing this chapter, some parts of Ukraine's territory were occupied and some were de-occupied. Holding elections in occupied territories where hostilities are occurring is impossible (Council of Europe 2022). Despite this, in sociological surveys (Vedernikova 2023), 46.8 % of respondents who were asked 'Should voters living in the occupied territories take part in the parliamentary elections' answered positively. While 24.6 % found it difficult to answer, 28.7 % of respondents answered that there is no need to hold parliamentary elections because they are not yet relevant.

On the other hand, holding elections during or in the aftermath of a public emergency brings challenges (UN 2021).

Firstly, the security challenge is relevant. De-occupied territories often face lingering security concerns that pose many challenges. For instance, the presence of armed groups, unresolved conflicts, or the risk of reprisals can create an environment that is not conducive to conducting elections smoothly and safely. Without adequate security guarantees, even calling elections is a risk (Council of Europe 2022). Therefore, ensuring the safety of election officials, candidates, and voters could become crucial, requiring well-thought-out decisions. Second, infrastructure and logistics present concerns: elections are enormous, complex logistical events requiring resources, laws and staff (James 2011, pp. 37–52). In de-occupied territories, infrastructure, communication, and other networks are often damaged (LB.ue 2023), and the rebuilding of essential infrastructure can pose logistical challenges for organising elections. Third, population displacement is relevant: the occupation of a specific territory or part of it means the relocation of the population living in it, or the movement of these people to other places. In the case of de-occupation, some residents may return to their homes, but there may also be those who will not return to their former residential areas due to destroyed infrastructure, negative memories, and other factors. In this way, the place of residence of some residents who left occupied territories may be known, but there will be many whose places of residence are unknown. Therefore, ensuring that residents are involved in electoral processes can be difficult (Radio Free Europe 2023), as there are too many challenges for the State Voters Register. Fourth, legitimacy is difficult: establishing the legitimacy of the electoral process in de-occupied territories can be challenging as citizens may distrust election processes, the candidates participating, and election results, which might exacerbate rather than resolve political conflicts.

Fifth, rebuilding trust is key: usually, de-occupied territories are marked by deep political divisions and fractured societal relationships. Rebuilding trust among the locals, fostering reconciliation efforts, and creating an environment encouraging participation in the electoral process can be complex and time-consuming.

Lastly, international involvement and support is decisive. Organising elections in de-occupied territories may require international involvement and support, as international organisations and peacekeeping missions may play a role in facilitating the electoral process, providing technical assistance, or monitoring the fairness and transparency of the elections.

3.4.9. The Importance of Securing Elections During the Application of Martial Law

Elections held amid ongoing armed conflicts are rare, as it is nearly impossible to meet international democratic standards in such circumstances (Council of Europe 2023). On the other hand, ensuring regular elections during wartime is vitally essential for several reasons:

(a) Democratic legitimacy: regular elections provide a mechanism for peaceful power transfer and the establishment of legitimate governments. They allow citizens to express their preferences, choose representatives, and participate in the democratic process. By conducting regular elections during wartime, the legitimacy of the government and its decisions can be maintained, fostering democratic principles and upholding the people's will.
(b) Accountability and transparency: regular elections hold governments accountable for their actions, policies, and decision-making (Cutler 2004), even during wartime. Elections allow citizens to evaluate the performance of implemented policies and express their approval or disapproval through the ballot box (Topaloff 2017). This helps to ensure that those in power remain responsive to the needs and concerns of the people, promoting transparency and accountability in governance.
(c) Stability: regular elections can contribute to stability and social cohesion during conflicts. By allowing citizens to have a say in the political process, elections provide an outlet for the peaceful expression of differing views and conflict resolution through democratic means. They can help promote dialogue, reconciliation, and a shared vision for the future.
(d) The protection of human rights: regular elections, even during wartime, help safeguard fundamental human rights. Elections allow citizens to exercise their right to participate in public affairs (UN 2018), including suffrage. Elections contribute to protecting civil and political rights, promoting inclusivity, and empowering individuals to have a voice in shaping their society.

While organising elections during wartime may pose logistical and security challenges, regular elections remain essential for upholding democracy, maintaining government legitimacy, ensuring accountability, and promoting stability. They contribute to the long-term resolution of conflicts and the establishment of a more inclusive and prosperous society.

3.4.10. Interim findings

Because Ukraine has held regular elections since the restoration of its independence, except for in 2004 when the Orange Revolution occurred, postponing the elections would represent a deviation from standard democratic procedure. Therefore, this measure should be chosen responsibly and not threaten democracy itself.

As armed conflict continues in Ukraine, there are several alternatives to holding elections within the term based on the Constitution: (1) lifting martial law; (2) the non-extension of the state of war after its termination; or (3) the extension of martial law only in some regions of the country.

The Election Code stipulates that elections must be held within 90 days of martial law ending. However, such a deadline may be too short to prepare for smooth elections meeting democratic election principles and international standards.

By organising elections even under challenging conditions, Ukraine would show the world that it is a unique state that does not forget democracy even during a large-scale war for its freedom and independence, and this would be a powerful signal that the state does not deviate from democratic standards and the political rights of citizens under any conditions. On the other hand, holding elections in wartime can make it challenging to adhere to international democratic standards. Given that Ukraine has long been a model of democratic progress in the region, the post-war lowering of electoral standards could lead to the significant degradation of the political system.

In organising elections during wartime, various challenges could be faced, such as: the absence or lack of adequate infrastructure for elections; a lack of voter awareness regarding elections and low voter turnout; multifaceted security issues; political manipulation and corruption; the inability to hold elections in occupied territories, etc.

The Constitution or other legal acts do not describe in detail how to address the situation when, during a state of war, the Verkhovna Rada of Ukraine consists of fewer than the 300 members provided for in Article 82 of the Constitution.

3.5. The Administrative Procedure Act in Ukraine: Recent Development, Challenges, and Solutions

3.5.1. The Concept of an Administrative Procedure

This chapter reveals the concept of an administrative procedure and the development of the Law of Ukraine on Administrative Procedure (2005); provides

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