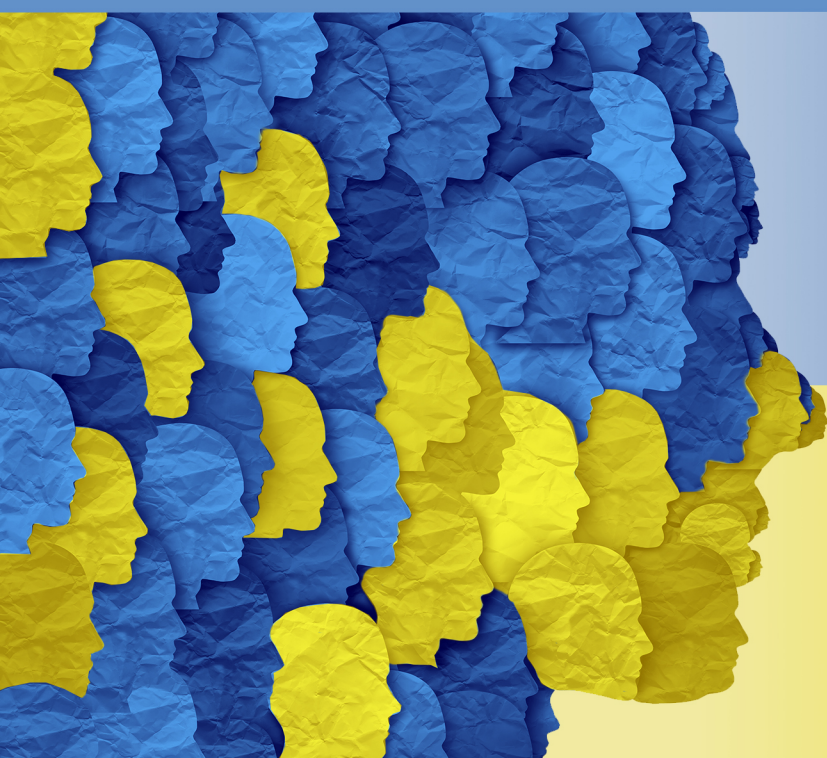


# POLITICAL PARTIES IN UKRAINE: WARTIME CHALLENGES AND POST-WAR PERSPECTIVES



## Needs Assessment Report

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COUNCIL OF EUROPE



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# **POLITICAL PARTIES IN UKRAINE: WARTIME CHALLENGES AND POST-WAR PERSPECTIVES**

## **Needs Assessment Report**

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wartime challenges and post-war perspectives.  
Needs Assessment Report**

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# Introduction

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**T**he full-scale military aggression of the Russian Federation against Ukraine has created extremely harsh conditions for democratic institutions in Ukraine. After all, active hostilities affect all areas of public life, and thus the activities of political parties have also been significantly affected and adjusted.

Political activity in society is entirely conditioned by challenges resulting from the war. The activities of state authorities, local self-government bodies, public associations and businesses now largely depend on the course of hostilities and the scale of the damage caused. The needs of national security, defence, evacuation of residents affected by hostilities and humanitarian support of the population take first place. At the same time, the level of transparency and openness of the work of public authorities, even elected local councils, has been significantly affected. This impact substantially limits not only the possibility of a lively political struggle but also the need for it, because many decisions of public authorities are adopted by consensus and with maximum support from society. Under such conditions, political parties need to transform their significance in society and change the forms of their activity.

The imposition of restrictions on the activities of pro-Russian political parties in Ukraine has also become essential in ensuring national security. The corresponding amendments to legislation have become the basis for initiating more than a dozen legal proceedings to ban certain political parties. Such decisions of the state will undoubtedly have an impact on the party landscape and political structuring of society in the post-war period.

This report attempts to present a systematic analysis of such problems and the challenges exacerbated by the war. The considerations presented herein are based on a comprehensive consideration of international standards in the field of political parties, Ukrainian national legislation and the current state of affairs in Ukraine.

The list of problems suggested by the authors and their analysis obviously require more in-depth and detailed research. At the same time, this report draws attention to the main threats to the democratic development of Ukraine seen through the prism of challenges to the activities of political parties in wartime conditions and the prospects of restoring their full functioning in the post-war period.





# 1. Political party activities under wartime conditions: the possibility of ensuring inter-party competition

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## 1.1. Regulation of party activities under wartime conditions in Ukraine

Because of the full-scale invasion of Ukraine by the Russian Federation, martial law was introduced in Ukraine by Presidential Decree No. 64/2022 dated 24 February 2022, approved by Law No. 2102-IX of Ukraine dated 24 February 2022. Currently, the period of martial law has been extended until 19 February 2023 (information provided at the time of writing. – *Editor's note*).

According to Part 2 of Article 64 of the Constitution of Ukraine, under conditions of martial law or a state of emergency, specific restrictions on rights and freedoms may be established specifying the period when these restrictions will be effective. The rights and freedoms provided for in particular articles of the Fundamental Law of Ukraine may not be restricted. However, this list of protected articles does not include Article 36, which guarantees the right of citizens to freedom of association in the form of political parties and public organisations.<sup>1</sup>

Thus, the Constitution of Ukraine permits discretion in restricting the right to freedom of association in the form of political parties under martial law.

Article 1 of the Law of Ukraine “On Political Parties in Ukraine” allows the establishment of restrictions on the right of citizens to freedom of association in the form of a political party in accordance with the Constitution of Ukraine in the interests of national security and public order, public health protection or protection of the rights and freedoms of other people, as well as in other cases provided for by the Constitution of Ukraine.

An exhaustive list of the constitutional rights and freedoms of a person and a citizen that are temporarily restricted in connection with the introduction of martial law, indicating the duration of these restrictions, is included in the decree of the President of Ukraine on the introduction of martial law (clause 5 of Part 1 of Article 6 of the Law of Ukraine “On the Legal Regime of Martial Law”).

It should be noted that the Decree of the President of Ukraine “On the Introduction of Martial Law in Ukraine” does not establish restrictions on the constitutional right to freedom of association in the form of a political party nor on political parties’ activities under the conditions of war.

Ukrainian national legislation does not provide for specific activities of political parties in extraordinary circumstances (state of emergency and martial law). Some amendments to the Law of Ukraine “On Political Parties in Ukraine” during the martial law period were related to the banning of activities of political parties. However, they did not regulate any specific party activities in extraordinary circumstances. In the period since 24 February 2022, the Law of Ukraine “On Political Parties in Ukraine” has been amended as follows.

First, the Laws of Ukraine “On Amendments to Certain Legislative Acts (on Ensuring the Responsibility of Persons Who Carried out Collaborative Activities)”, dated 3 March 2022 No. 2107-IX,<sup>2</sup> and “On Amendments to Certain Legislative Acts of Ukraine (on Prohibition of Production and Dissemination of Information Products Aimed at Promoting the Actions of the Aggressor State)”, dated 3 March 2022 No. 2109-IX,<sup>3</sup> established additional grounds for banning political parties.

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1. <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>

2. <https://zakon.rada.gov.ua/laws/show/2107-20#n44>

3. <https://zakon.rada.gov.ua/laws/show/2109-20#n13>



Then, due to the armed aggression of the Russian Federation against Ukraine, the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on the Ban of Political Parties”, dated 3 March 2022 No. 2243-IX,<sup>4</sup> expanded the grounds for restricting the formation and activities of political parties, established restrictions on the international activities of parties and determined the procedure for judicial consideration of banning of a political party.

Also the Law of Ukraine “On Prohibition of Propaganda of the Russian Nazi Totalitarian Regime, Armed Aggression of the Russian Federation as a Terrorist State against Ukraine, Symbols of the Military Invasion of the Russian Nazi Totalitarian Regime in Ukraine”, dated 22 May 2022 No. 2265-IX,<sup>5</sup> prohibited the use of symbols of communist or national socialist (Nazi) totalitarian regimes, and symbols of the military invasion of the Russian Nazi totalitarian regime in Ukraine, in the symbols of a political party.

Since the beginning of the war, it has been laid down in by-laws that documents for state registration of political parties’ establishment are not accepted, and consideration of previously submitted documents is suspended for the period of martial law (clause 10 of Resolution No. 209 of the Cabinet of Ministers of Ukraine dated 6 March 2022). Since 29 June 2022, this clause has been in force with a new wording that provides for restrictions on the registration of new political parties, as well as introducing changes to the information about those political parties and their structures that were suspended by the decision of the National Security and Defence Council of Ukraine.<sup>6</sup>

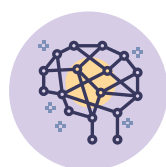
Thus, although the Constitution of Ukraine allows the possibility of restricting party political rights, the appropriate details of the extent of such restrictions and, most importantly, the powers of the democratic legislature are not clearly provided.

## 1.2. International standards and practices on political parties’ functioning

### General considerations

In the international and European legal framework, political parties are considered as a specific type of “free association of individuals”; taking a fundamental role in the functioning of democracy. This role consists in expressing the political will of individuals or groups of persons by participating in government and/or seeking to influence the way a country is governed, especially by presenting candidates at elections. Of course, this definition implies that political parties will also reflect the pluralism of political ideas in a society. And there is no democracy without pluralism.

So, political parties directly refer to the main three fundamental rights in democracy:



the right to hold  
an opinion,



the right to  
freedom of  
expression,



the right to  
freedom of  
association.

The founding documents that define this legal framework in international texts and treaties are, of course, the Universal Declaration of Human Rights (UDHR), in its articles 19 and 22, and the International Covenant on Civil and Political Rights (ICCPR), in its articles 2, 14, 19 and 22.<sup>7</sup>

In Europe, the European Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”),<sup>8</sup> agreed by each Council of Europe member state, recognises also the existence, the status and

4. <https://zakon.rada.gov.ua/laws/show/2243-20#n38>

5. <https://zakon.rada.gov.ua/laws/show/2265-20#Text>

6. <https://zakon.rada.gov.ua/laws/show/209-2022-%D0%BF#Text>

7. International Covenant on Civil and Political Rights adopted by the UN General Assembly by resolution 2200A (XXI) of 16 December 1966. Ukraine ratified the Covenant on 12 November 1973.

8. The Council of Europe’s Convention for the Protection of Human Rights and Fundamental Freedoms entered into force on 3 September 1953. Ukraine ratified the Convention on 11 September 1997.

the role of political parties as a part of the right of freedom of expression (Art. 10) and freedom of assembly (Art. 11), likewise the Organization for Security and Co-operation in Europe (OSCE) Copenhagen Document<sup>9</sup> (articles 5.4, 5.9, 7.5, 7.6, 9.1, 9.2, 9.3 and 9.4).

These four documents do not have the force of binding law – only the ICCPR and the Convention have this force – but nonetheless the UDHR and the Copenhagen Document have a powerful symbolic force which encourages the signatory states to respect their commitments to these fundamental rights. After all, the main principles and standards of this international and European legal heritage have typically inspired national constitutions, standing often as a backbone for them.

Three different documents from the Venice Commission can also be used as guidelines for questions concerning political parties: the Code of Good Practices in the Field of Political Parties,<sup>10</sup> the Guidelines on Prohibition and Dissolution of Political Parties and Analogous Measures<sup>11</sup> and the Compilation of Venice Commission Opinion and Reports Concerning Political Parties.<sup>12</sup>

Obviously, in view of the role of political parties in democracy and the relevant international standards, restricting or limiting political parties' activities could be regarded as state interference, and the common norm is to encourage political parties' autonomy. The international standards and the European legal framework differ on that matter because they do not refer to the same philosophical principles. Two ideal models exist: the first one, inspired by liberalism, sacralises freedoms of association and speech, and insists upon the necessity of allowing parties' autonomy and preferring the lowest level of regulation; the second one accepts more state regulation, to guarantee fairness and balance in political life and electoral process. The European legal framework refers more, clearly, to the second one and aims to strengthen a formal democratic model by regulating political parties' activities and creation. As the Venice Commission has emphasised, "the principle of non-intervention, that has prevailed across Western Europe from the very emergence of political parties, is no longer the dominant paradigm. Moreover, in many other countries, having moved away from an authoritarian or totalitarian regime towards a pluralistic approach, there are frequent constitutional references to respect for democratic and equality principles, to be taken into account by political parties".<sup>13</sup>

However, making laws to regulate political parties must always improve democracy's functioning, by ensuring pluralism of political ideas and giving a chance to every political party to take part in electoral competition, and never weaken it. That is the reason why regulation, restrictions, prohibition or any measure limiting the autonomy of a political party must be proportionate and unintrusive. The case law of the European Court of Human Rights tends to consider that special limitations imposed on a political party can only be justified if the activities of this party or its programme are threatening democracy itself.

According to the European Convention on Human Rights, an essential factor to be taken into consideration is whether a party's founding and programme documents contain a call for the use of violence, an uprising or any other form of rejection of democratic principles. However, the founding and programme documents cannot be the only criteria for evaluating the activity of a political party. Of course, the content of the documents should be analysed, but sometimes the direction of the party's activities is directly determined by the actions, intentions and positions of the governing bodies, leaders and members of the political party. The corresponding approach is supported by the practice of the European Court of Human Rights.<sup>14</sup> In an extraordinary situation of a threat to national sovereignty, in the conditions of active hostilities and imposed martial law, the analysis of the activities of political parties and their leaders and structures should be even more of a priority, since formal constituent and programme documents may change slowly or not at all. The analysis of compliance by political parties with constitutional restrictions should be carried out while

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9. The 1990 OSCE Copenhagen Document (29 June 1990), 29 ILM 1305, is available at <http://www.osce.org/odihr/elections/14304?download=true>.

10. Code of Good Practice in the Field of Political Parties, and Explanatory Report, Venice Commission, March 2009, available at [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2009\)002-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2009)002-e).

11. Guidelines on Prohibition and Dissolution of Political Parties and Analogous Measures, Venice Commission, December 1999, available at [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-INF\(2000\)001-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-INF(2000)001-e).

12. Compilation of Venice Commission Opinions and Reports Concerning Political Parties, Venice Commission, October 2021: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2021\)016rev-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2021)016rev-e).

13. Guidelines on Political Party Regulation, 2nd edition, Venice Commission and OSCE, Dec. 2020, p. 12.

14. See, for example, *Herri Batasuna and Batasuna v. Spain* (2009).

taking into account the need to preserve the autonomy of political parties and the need to ensure a proper response to acute public challenges.

In a joint opinion on the last Ukrainian draft law on political parties, the Venice Commission and OSCE considered that, despite the real desire of the authors of the draft law to ensure internal democracy in political parties, Section IV of the draft law was imposing too many obligations on political parties and reducing their autonomy, especially by “obliging parties to convene party congresses with a pre-determined frequency and to convene extraordinary congresses based on certain specified procedures (Article 23 paragraph 1), the detailed competences of party congresses and party organizations (Article 24), and the specific procedures for forming political party governing bodies and their composition (Article 26) would appear to create an instructional blue-print for all political parties in Ukraine, leaving very little to the discretion and decision-making powers of the political parties themselves”.<sup>15</sup>

### Special considerations

The core of the European legal framework, the European Convention for the Protection of Human Rights and Fundamental Freedoms, includes a mechanism that can be used in exceptional circumstances, like a state of emergency, massive terrorist attacks, pandemics or war. This mechanism has been used by EU member states several times in recent years, as in France after terrorist attacks in Paris and Nice, or during the Covid-19 pandemic, but no European country has ever used it because of war. This mechanism stands in Article 15 of the Convention.

Article 15, paragraph 1 of the European Convention on Human Rights provides for exceptions to its own application. These exceptions and derogations, which may only be granted when expressly requested by a signatory state, provide a minimum legal framework compatible with situations requiring a state to declare a state of emergency or even martial law: “In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under [the] Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.”

Furthermore, Article 15 also implies respect for certain fundamental principles, from which it will not be possible to derogate, as explained in paragraph 2, which defines fundamental rights that cannot be restricted even in the context of a derogation granted in the event of a state of emergency. These are the rights guaranteed by:

- ▶ Article 2 (right to life), except for the case of death resulting from lawful acts of war;
- ▶ Article 3 (prohibition of torture and ill-treatment);
- ▶ Article 4, paragraph 1 (prohibition of slavery and forced labour);
- ▶ Article 7 (no punishment without law).

Of course, as mentioned in Article 15, paragraph 3: “Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefore. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate, and the provisions of the Convention are again being fully executed.”

Article 15, paragraph 1 and the interpretations of the European Court of Human Rights in its case law show that such derogations are only possible if (and only if) emergency measures restricting certain freedoms nevertheless respect the principles of democratic pluralism.

Thus, the existence of a “public danger threatening the life of the nation” must not be a pretext to limit the free play of political debate. Even in the event of a state of emergency, contracting states must bear in mind that the measures to be taken must be aimed at defending the threatened democratic order and must do everything to protect the values of a democratic society, such as pluralism, tolerance and openness.

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15. Draft Joint Opinion on the Draft Law on Political Parties, Venice Commission Opinion No. 1022/2021 and OSCE/ODIHR Opinion No. POLIT-UKR/402/2021, March 2021, p. 19.

However, these remarks were made in two judgments that did not concern the prohibition of political parties or other limitations of articles 10 and 11 of the Convention, but rather cases of arbitrary detention of political opponents in Turkey.<sup>16</sup>

At the same time, it must be emphasised that democratic pluralism does not mean ensuring the conditions for the unhindered existence of political movements and organisations undermining democracy, promoting totalitarianism or using violence and terrorism, as the European Court of Human Rights testified, for example, in the case of *Herri Batasuna and Batasuna v. Spain* (2009).

### 1.3. Political struggle under conditions of war: peculiarities of the Ukrainian situation

In the context of the full-scale aggression by the Russian Federation, the activities of political parties in Ukraine have changed dramatically. Leaders of political parties at both national and local levels publicly announced the end of party criticism of the leadership of the state. Party activity has been reduced to neutral-political support of the President of Ukraine and the initiatives of the pro-government majority.

Despite the fact that the laws of Ukraine do not establish restrictions on the activities of political parties during martial law, the exercise by political parties of their rights is actually restricted by the current circumstances of wartime.

Political parties cannot fully conduct their normal activities and face some challenges in conducting it freely. This is due to the displacement, travel abroad or mobilisation of party activists and party members, the destruction of local offices of political parties and security issues related to party activities. While the war continues, the activities of political parties are focused on meeting the needs of defence, repelling the armed aggression of the Russian Federation against Ukraine, and organising and providing humanitarian aid to those in need.

According to the Law of Ukraine “On Political Parties in Ukraine”, political parties have the right to participate in elections of the President of Ukraine, the Verkhovna Rada (Parliament) of Ukraine and other state authorities, local self-government bodies and their officials in accordance with the procedure established by the relevant laws of Ukraine (clause 2 of Part 1 of Article 12). However, under martial law, it is prohibited to hold elections of the President of Ukraine, the Verkhovna Rada of Ukraine, the Verkhovna Rada of the Autonomous Republic of Crimea and local self-government bodies. During martial law, political parties are deprived of such a right in accordance with the provisions of part 1 Article 19 of the Law of Ukraine “On the Legal Regime of Martial Law”. In the case of the introduction of martial law or a state of emergency in Ukraine or in some of its localities, the election process of national elections and/or local elections (if taking place in one of the localities mentioned) or a part thereof must be terminated from the date of entry into force of the relevant decree of the President of Ukraine (Part 3 of Article 20 of the Election Code of Ukraine). Thus, the right of political parties to participate in elections is restricted for the duration of martial law.

Political parties have the right to use state media, as well as to establish their own media (clause 3 of part 1 of Article 12 of the Law of Ukraine “On Political Parties in Ukraine”). However, on 18 March 2022, the National Security and Defence Council of Ukraine decided to implement a unified information policy during the war and to unite all national TV channels, the programme content of which consists mainly of information and information-and-analysis programmes, in a unified information platform of strategic communication – the around-the-clock information marathon “United News #UArazom”. Under these conditions, also taking into account the reorientation of the media to coverage of war-related events and considering the security aspects, it is more difficult for political parties to exercise their right to use state media. The informational component of parties’ websites – in particular, of parliamentary parties – has mostly changed, with an emphasis on the position of factions (groups) regarding events related to Russian aggression and martial law.

Political parties are guaranteed freedom of opposition activity, including:

- 1) the opportunity to publicly express and defend their position on state and public life;

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16. Cf. *Mehmet Hasan Altan v. Turkey* (20 March 2018) and *Şahin Alpay v. Turkey* (20 March 2018).

- 2) the opportunity to participate in discussion, make public and substantiate a critical assessment of actions and decisions of the authorities, using state and non-state media in accordance with the procedure established by law;
- 3) the opportunity to submit proposals to the state authorities of Ukraine and local government bodies, which must be considered by the relevant authorities in accordance with the established procedure.

In the early days of open Russian aggression, politicians consolidated themselves and tried not to openly oppose the authorities. This did not mean the absence of opposition but was an attempt to develop a unified state position primarily in matters of national security. Although the right to opposition activity is not prohibited, it is currently limited by the control of media resources by the authorities (unified news marathon) and the closure of certain media of the opposition.

The Verkhovna Rada of Ukraine has quite accurately organised its work during the war: the Parliament meets in plenary sessions, forms the agenda, considers draft laws and adopts decisions in the vast majority of cases by seeking political consensus and compromise. Most laws are adopted with the support of all political factions and groups in the Parliament. Parliamentary parties that had organised factions as of 23 February 2022 were: "Sluha Narodu" ("People's Servant"), "Oposytsijna Platforma – Za Zhyttia" ("Opposition Platform – For Life"), All-Ukrainian Union "Batkivshchyna" ("Fatherland"), "Yevropeiska Solidarnist" ("European Solidarity") and "Holos" ("Voice"). Such political parties as "Za Maibutnie" ("For the Future" political party) and "Dovira" ("Trust" political party) had their own deputy groups.

The problem of Parliament's work during martial law is the lack of planned work, transparency and openness, so the activities of parliamentary parties can be reviewed only within the range of not officially limited information. However, the lack of information is noticeable: access to data on MPs is closed, and information about the activities of the Verkhovna Rada of Ukraine, its committees, parliamentary factions and groups is partially closed.

Undoubtedly, all the above factors directly affect the ability of political parties to engage in competition with other parties. Also, the focus of public attention has obviously changed under conditions of martial law, so inter-party competition is beyond the attention of society. In addition, restrictions on the flow of information, especially within areas where hostilities take place or in the occupied territories, do not allow to conduct the analysis of political positions.

#### 1.4. Change in the forms of activities of political parties

During the war, political parties and their local organisations have almost entirely focused their activities on ensuring the primary defence needs of society and their local communities. It should be emphasised that certain restrictions are also in force under the conditions of martial law. For example, peaceful assembly is prohibited, and freedom of movement is significantly restricted (curfews are introduced, and access to certain territories is significantly complicated or even completely prohibited). The vast majority of party activists have focused their activities on the implementation of volunteer and humanitarian activities, which is quite clearly reflected on their websites and social media. At the same time, their work with public opinion, monitoring the actions of the authorities and other political activity is now rather limited.

Complications in the organisation of the parties' work have led to changes in the form of their activity. The imbalance of their internal management systems is quite noticeable after the partial loss of ties with local branches and party members. The promptness of the decision-making process, informing party members about decisions taken and the implementation of such decisions have all become problematic.

A problem with staff policy has also occurred. According to part 2 Article 36 of the Constitution of Ukraine, *"Only citizens of Ukraine may be members of political parties. Restrictions on membership in political parties are established exclusively by this Constitution and the laws of Ukraine"*. However, the law does not regulate the termination (suspension) of membership in political parties of persons who have obtained citizenship of other states, in particular as a result of the so-called "passportisation" on those territories temporarily occupied by Russia. In addition, the issue of changing party leadership during the period of martial law is particularly relevant. In accordance with part 7 of Article 6 of the law, the membership of a leader and deputy leader of a political party shall be terminated from the day following the day of election of the new leader or his/her deputy. Due to organisational restrictions, the inability to ensure security measures and proper



election process, there may be a situation when it is impossible to elect a leader or their deputy in the manner prescribed by the law and party charter.

During the period of martial law, political parties' activities suffer from insufficient staffing at both levels – at the level of parties' central bodies and their apparatus (the secretariat) and, specifically, at the level of the party's local organisations – as a result of mobilisation, departure of a significant number of citizens from their place of residence, or even outside the country, and loss of personnel due to captivity or death. A particular problem is the threat of under-representation in territorial election commissions, which work on a permanent basis. The problem is the loss of links with local cells of political parties in the occupied territories. In this case, it is important to ensure the security of databases: databases of party members, information about activists, representatives in the authorities, activities of the party and any analytics, such as electoral cards. It becomes irrelevant to keep party records: population migration is changing and unpredictable, so it is unrealistic to estimate the number of party members. It is particularly problematic to maintain ties between political parties and their representatives in the government, especially deputies of local councils and village, settlement and city mayors.

Another negative factor affecting the activities of political parties during the period of martial law is limited resources. Obviously, donations in support of a political party (clause 2 of Part 3 of Article 14 of the law) are less probable in view of other wartime priorities. Thus, the first and foremost concern for a political party during the period of martial law is to preserve the party's property, control over its use and possession. Besides that, the work of political parties' offices in offline format in some regions ceases to be relevant.

The political parties' reporting procedure during the period of martial law has also been changed. The National Agency on Corruption Prevention issued an explanation of when to submit property reports during the period of martial law, specifying the deadlines for submission of political parties' reports on property, income, expenses and financial liabilities for the period not previously reported. Following the expiration of a three-month period after the termination or cancellation of martial law or a state of war, the quarantine measures established by the Cabinet of Ministers of Ukraine will remain, and political parties will be obliged to submit reports within the period established by clause 5 of Section VI "Final Provisions" of the Law "On Political Parties in Ukraine".<sup>17</sup>

Currently, political parties' main commitment during the period of martial law is related to volunteering activities. Pursuant to part 1 Article 1 of the Law of Ukraine "On Volunteering Activities", *"Volunteering activity is a voluntary, socially directed, non-profit activity carried out by volunteers through the provision of volunteer assistance ... Volunteering is a form of charitable activity"*.<sup>18</sup> However, the law does not expressly specify the right of political parties to conduct charitable activities.

Moreover, the legislation has certain inaccuracies as regards regulation of political parties' charity activities. In particular, donations in support of political parties, including those made by charitable organisations, are not allowed (clause 6 part 1 Article 15 of the law). A party has a right to make a decision on the transfer of property and funds for charitable purposes only when making a decision on the party's self-dissolution or reorganisation (part 2 Article 23 of the law). Therefore, the legislative regulation of a political party's volunteering activity – in particular, in terms of compliance with the requirements for the engagement of volunteers as established by the Law of Ukraine "On Volunteering Activities", observance of their rights and conditions of personal security – has to be analysed separately in more detailed way. In addition, although there is a provision on state policy on volunteering in the relevant law, it is necessary to strengthen control mechanisms to prevent abuses in the field of volunteering. It should be noted that some politicians had become accustomed to using volunteering for personal campaigning purposes and PR campaigns.

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17. <https://wiki.nazk.gov.ua/category/zapobigannya-politychnij-koruptsiyi/roz-yasnennya-stosovno-strokiv-podannya-zviv-politychnyh-partij-pro-majno-dohody-vytraty-i-zobov-yazannya-finsovogo-harakteru/>

18. <https://zakon.rada.gov.ua/laws/show/3236-17#Text>





## 2. Restriction and banning of the activities of pro-Russian political parties

### 2.1. Prerequisites and grounds for banning the activities of pro-Russian political parties in Ukraine

In Ukrainian society, there have been two main ideological trends in the main vector of state policy throughout the years of Ukraine's independence. One trend, which has become almost dominant over the years, aims at supporting European integration; it implies strengthening the democratic nature of the state, its law-based nature and the protection of human rights. This ideology is commonly referred to as "pro-European".

The other trend, which had considerable influence in the early years of Ukraine's independence, but gradually has lost its influence, is based on the idea of a "fraternal union of peoples", rapprochement with Russia and a Eurasian path of development (while abandoning the European vector). As a result, it is characterised by a certain nostalgia for the Soviet past, promoting ideas of the "Russian world" and continuing a Russianisation policy in Ukraine under the slogan of "protection of the Russian-speaking population". Political parties supporting this ideology are referred to as pro-Russian parties. Some parties supporting this ideology profess left-wing or far left political views. In particular, it is generally recognised that pro-Russian parties include the Communist Party of Ukraine, the Progressive Socialist Party, the Rus United party (also known as the Putin Politics Party), the Union of Left Forces and some others.<sup>19</sup>

For a long time, the Ukrainian state was quite liberal towards pro-Russian parties, based on the constitutional principle of political pluralism and ensuring freedom of expression. The situation changed after the Revolution of Dignity (2013–14) with the beginning of Russian aggression in 2014, in particular, the seizure and annexation of Crimea and the occupation of certain areas of Donbas. In particular, in April and May 2014, court decisions banned (enforced dissolution of) such pro-Russian political parties as the Russian Unity ("Russkoe Edinstvo") and Russian Wing ("Russky Blok") parties, which actively supported by their actions the Russian aggression in Crimea, the holding of an illegal Crimean referendum and actions aimed at illegally annexing Crimea to the Russian Federation. However, such measures were not applied during the period 2014–21 to other pro-Russian parties, including the newly formed ones (e.g. "Opposition Platform – For Life" political party, "Ours", "Sharii Party" and some others).

In 2015, an additional sanction was introduced in the Law "On Condemnation of Communist and National Socialist (Nazi) Totalitarian Regimes in Ukraine and Prohibition of Propaganda of Their Symbols", which launched the decommunisation process in Ukraine. This new sanction – termination (via court proceedings) of the activities of political parties that violate the requirements of this law regarding the propaganda of communist and national socialist (Nazi) ideology, totalitarian regimes and symbols – does not expressly provide for the termination (dissolution) of a political party, only its activities, and can be applied regardless of the banning of a political party based on the Law "On Political Parties in Ukraine", most often as a prerequisite for a ban.

Both procedures were applied to the Communist Party of Ukraine. Court proceedings were initiated in 2014–15 and lasted several years. As late as June 2022, a court reached a decision to terminate the activities of the Communist Party of Ukraine pursuant to the Law "On Condemnation of Communist and National Socialist (Nazi) Totalitarian Regimes in Ukraine and Prohibition of Propaganda of Their Symbols". The ban on the Communist Party of Ukraine, initiated in 2014, did not finally come until the corresponding court decision was rendered by the court of first instance in July 2022.

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19. See, for example: V. Matola. 14 pro-Russian parties registered in Ukraine (<https://tyzhden.ua/v-ukraini-zareiestrovano-14-pro-rosijskykh-partij/>).

The public demand for banning the activities of pro-Russian political parties in Ukraine developed quite rapidly in recent years before the full-fledged war, although such demands existed before. The Russian war of aggression launched in February 2022 made this public demand even bigger. Political parties that promoted pro-Russian values and narratives in Ukrainian society in peacetime have become a “fifth column” in the conditions of war, which is a known phenomenon in the recent history of Europe. This term “fifth column” denotes the internal enemy within the state, those people and organisations that support and promote the ideological positions and disinformation messages of the enemy, participate in or contribute to collaboration or separatist activities, and create a favourable environment for subversive activities, sabotage, the spread of panic and loss of confidence in the government or in national unity. The threat from the activities of the “fifth column” during the war is tremendous; therefore, actions aimed at stopping such activities, including preventive measures, should be assessed as being caused by a special need. It should be noted that similar preventive measures were taken during the Second World War to counteract the German (Hitler) “fifth column”. The Russian aggression, posing a serious threat to the existence of Ukraine as a state and having signs of genocide against the Ukrainian nation, is ideologically based on ideas of the “Russian world”, which are mostly supported by pro-Russian political parties. Such ideas are far from European values and the ideas of the rule of law, democracy and human rights.

To counter this phenomenon, on 18 March 2022 the National Security and Defence Council of Ukraine adopted a decision to suspend (temporarily) any activity of 11 political parties in Ukraine for the period of martial law. However, such a decision did not have any direct legal consequences; thus, it was mainly political in nature, although it instructed the Ministry of Justice of Ukraine to initiate the statutory procedures for banning pro-Russian parties.

Adherence to due legal process and international standards are crucial here. Ban of political parties’ activities should be legal and duly justified. The Ministry of Justice of Ukraine should conduct a detailed analysis of the actions of political parties and distinguish the harmful (threatening and dangerous) forms of their political activity. In particular, it is publicly unacceptable to justify, recognise as lawful or deny the fact of armed aggression by the Russian Federation and/or the Republic of Belarus against Ukraine, or to propagate the Russian Nazi totalitarian regime and support any form of co-operation with the aggressor state. An urgent and decisive cut-off of such activities becomes an imperative in the context of existing threats to the Ukrainian state.

## **2.2. International standards and foreign practices on prohibition and dissolution of political parties**

Political parties are one of the main forms of realisation of freedom of association – a fundamental freedom of individuals, protected by international legal instruments (in particular, by the International Covenant on Civil and Political Rights and also by the Convention for the Protection of Human Rights and Fundamental Freedoms) and enshrined in Article 36 of the Constitution of Ukraine. At the same time, political parties stand out from all other associations in view of their special function: to promote the formation and expression of the political will of citizens and to participate in political elections by nominating candidates. In this respect, their role is generally recognised. Thus, the Venice Commission and the OSCE/ODIHR believe that political parties are vital for implementing representative democracy. The European Court of Human Rights recognises them as integral elements of the democratic process.

Such a role of political parties, and their important place in state governance mechanisms as an intermediary between civil society and the state, also determines the need to establish certain restrictions on political parties in order to prevent usurpation of power and harm to the democratic state system. Freedom of association in political parties cannot be unlimited, in view of their role in the state and society. The historical experience of many states confirms the need to establish specific safeguards aimed at, on the one hand, preventing usurpation of power, elimination of democratic rule and establishment of a one-party totalitarian regime based on violations of human rights and freedoms, and, on the other hand, preventing abuse of the freedom of activity of parties in order to undermine the existence of the state, its sovereignty and territorial integrity, or the use of violent methods to seize power.

The European democratic heritage recognises the existence of two approaches to the regulation of political parties.<sup>20</sup> The first approach, which is mainly based on formal or procedural democracy, considers political parties as private associations completely autonomous from the state; it is spread in countries with long lasting (at least since the nineteenth century) democratic traditions. The second approach, which is spread usually in countries that have a negative experience of authoritarian or totalitarian regimes or where procedural democracy has failed, implies a militant democracy, or, as defined by the European Court of Human Rights, a democracy capable of defending itself, one that provides for constitutional restrictions on the freedom of association in political parties and certain statutory state control over the formation and activities of political parties, including their political goals and internal party organisation.

Although these two theoretical models of state regulation of political parties are not implemented in their “pure” form in any European state, Ukraine, which belongs to the “new democracies”, applies in its legal regulation of political parties an approach that is closer to the second model.

The most radical measure of state influence on political parties is the ban (forced dissolution) of a political party. According to European democratic standards, the dissolution of a party should only be used as a last resort, that is, when the legitimate aim cannot be achieved by less restrictive means of regulation.<sup>21</sup>

The practice of a number of European states on the banning of political parties has undergone a thorough analysis and consideration by the European Court of Human Rights. The well-known three-part test (interference with rights shall be necessary in a democratic society, pursue a legitimate aim, and be proportionate to that aim) was developed by the Court primarily for such cases.

It should be recognised, however, that these standards, based on the interpretation of the Convention for the Protection of Human Rights and Fundamental Freedoms, have been developed by the European Court of Human Rights mainly in the presumption of peaceful development of states. In cases concerning the occurrence of threats to internal public peace or terrorist threat, the Court recognised the validity of banning certain political parties by decisions of national judicial bodies,<sup>22</sup> although it based its position on the need to protect democracy rather than protecting the sovereignty and territorial integrity of the states concerned. However, the Court stressed the need to take into account the peculiarities of the situation prevailing in a particular state in order to properly assess the validity of the measures taken. It should be noted that, during the period of the Convention’s existence, there has been no need for its judicial application in terms of freedom of association in the context of external armed aggression against a European state. However, it is natural that in the context of armed aggression, which jeopardises the very existence of a state, the preservation of its sovereignty, state independence and territorial integrity, the need to apply such an extreme measure as the ban of a certain political party may be significantly higher than in peacetime. The above conditions seem to meet the criterion of “urgent public need”, established by the European Court of Human Rights.

Regarding all these aspects, it should be noted that political parties have a central importance in the functioning of democracy, so the European approach consists in this assertion: political parties cannot be, in principle, prohibited or dissolved. That is the reason why prohibition or dissolution imposed on a political party could be allowed only as an exceptional measure, and only if this party threatens the democratic functioning of a country. Actually, the dissolution and prohibition of political parties can only be used as exceptional measures. The difficulty is, obviously, to determine the conditions that could allow dissolution or banning of a political party.

In order to define the conditions that could legitimate such an exceptional measure, it is better to refer firstly to the Venice Commission work on general principles of prohibition and dissolution of political parties, and secondly to the European Court of Human Rights’ case law in these matters.

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20. See: Venice Commission and OSCE/ODIHR. *Guidelines on Political Party Regulation*. 2nd edn. CDL-AD(2020)032. Para. 25, available at [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2020\)032-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2020)032-e).

21. See: Venice Commission. *Guidelines on the Prohibition and Dissolution of Political Parties and Analogous Measures*. CDL-INF(2000)1. European Democratic Best Practice in the Field of Electoral Law in Papers of the Venice Commission, the Parliamentary Assembly, the Committee of Ministers, the Congress of Local and Regional Authorities of the Council of Europe; translated from English, ed. Yu. Kliuchkovskiy. 2nd edn, revised and enlarged, Kyiv: Logos, 2009, pp. 320-9, at p. 292, available at <https://www.venice.coe.int/files/CDL-elec-opinions-UKR.pdf>. See also: Venice Commission and OSCE/ODIHR. *Guidelines on Political Party Regulation*. 2nd edn. CDL-AD(2020)032. Para. 52, available at [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2020\)032-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2020)032-e).

22. See, for example, *Refah Partisi (The Welfare Party) and Others v. Turkey*. European Court of Human Rights Judgment (Grand Chamber), 13 February 2013, available at <https://hudoc.echr.coe.int/eng?i=001-60936>; *Case Herri Batasuna and Batasuna v. Spain*. Court Judgment, 30 June 2009, available at <https://hudoc.echr.coe.int/eng?i=001-93475>.

## Principles of the Venice Commission

The Venice Commission underlined three basic principles concerning prohibition or dissolution of political parties:

- ▶ firstly, the exceptional nature of this measure of prohibition or dissolution;
- ▶ secondly, the proportionality of the dissolution or prohibition to the legitimate aim pursued;
- ▶ thirdly, the procedural guarantees.

Trying to explain what “exceptionality” could mean, the Venice Commission argued that “prohibition or enforced dissolution of political parties may only be justified in the case of parties which advocate the use of violence or use violence as a political means to overthrow the democratic constitutional order, thereby undermining the rights and freedoms guaranteed by the constitution”.

In sum, the overall examination of whether prohibition or dissolution of a political party is justified must concentrate on the following points:

- ▶ whether there was plausible evidence that the risk to democracy, supposing it had been proved to exist, was sufficiently imminent;
- ▶ whether the act and speeches of the leaders and members of the political party formed a whole which gave a clear picture of a model of society conceived and advocated by the party which was incompatible with the concept of “a democratic society”.

International standards are, apparently, characterised by their lack of definition of the conditions that could lead to prohibition or dissolution, because these measures are not supposed to exist when democracy’s functioning is as smooth as it ought to be. Nonetheless, the Venice Commission has examined national legislation to list motives for prohibition, which could be:

- ▶ threatening the existence or sovereignty of the state;
- ▶ threatening the basic democratic order;
- ▶ threatening the territorial integrity of the state;
- ▶ fostering social, ethnic or religious hatred;
- ▶ fostering ethnic discrimination;
- ▶ use or threat of violence;
- ▶ Nazism or fascism;
- ▶ criminal associations;
- ▶ military or paramilitary associations;
- ▶ secret or subversive methods.

All of these reasons to ban or dissolve a political party, according to the already mentioned international standards and also invoked traditionally, have in common the will to undermine democracy and fundamental rights and to use or praise violence and the political use of violence. At the same time, in the Ukrainian situation, we are dealing with a threat to the existence and sovereignty of the state, which significantly increases the weight of relevant state decisions to limit the activities of political parties in such circumstances.

### ***Proportionality***

The second central point of the Venice Commission’s reasoning is the concept of “proportionality”. Because measures of interdiction or dissolution could be regarded as a kind of “nuclear weapon” in the political field, the Venice Commission considers that restrictions to the freedom of association of political parties should be strictly proportional, which implies that “as far as possible, less radical measures than dissolution should be used”.

This idea of proportionality could also lead us to take into account the importance of the incriminated political party in political life, on the basis that a really small party could not have any real influence. In that case, another kind of measure could be considered, like suspension of public funding. For instance, there were

changes in the German Constitution in 2018 after the case concerning the NPD, neo-Nazi party. Because of the weak influence of this party, suspension of public funding was regarded as a more proportionate measure.

From this point of view, the activities of political parties that pose a threat to the existence and sovereignty of a state require especially proportional measures. The actual purpose of the activity of such political parties should be taken into account. In time of peace, such a party might attempt to influence the electorate in order to obtain support at elections or in an effort to implement its policy programme, even if undemocratic, just in case it might come to power via democratic procedures. In time of war, such a party's activity might not pursue any party political goals at all, but rather serve as cover for overthrowing the constitutional system and violating sovereignty.

### ***Procedural guarantees***

Lastly, the Venice Commission has pointed out the importance of procedural guarantees when a state needs to adopt measures of prohibition or dissolution of a political party:

*The procedure for prohibition or dissolution must be a judicial one that guarantees fair trial, due process and openness. Article 6 of the [European Convention on Human Rights] protects the right to a fair trial, which consists in the requirement of public hearing, within a reasonable time, and before an independent and impartial tribunal established by law. The general rulings on due process and fair trial dictated by the Court apply to the cases of dissolution of political parties.*<sup>23</sup>

Moreover, the Venice Commission considers that appropriate procedural guarantees can only be given at the highest level of jurisdictions, which means that "the prohibition or dissolution of a political party should be reserved to the constitutional court or other appropriate jurisdictions in a procedure offering all guarantees of due process, openness and fair trial."

### **Principles of the European Court of Human Rights**

We can observe that likewise the Strasbourg Court's case law stands upon some fundamental principles, since "only convincing and compelling reasons can justify restrictions on such parties' freedom of association".

The Court has set out two conditions on which a political party may promote a change in the law or the legal and constitutional structures of the state: firstly, the means used to that end must be legal and democratic; secondly, the change proposed must itself be compatible with fundamental democratic principles. Consequently, a political party whose leaders incite to violence or put forward a policy which fails to respect democracy or which is aimed at the destruction of democracy and the flouting of the rights and freedoms recognised in a democracy cannot lay claim to the Convention's protection against penalties imposed on those grounds.

An essential factor to be taken into consideration is whether a party's programme contains a call for the use of violence, an uprising or any other form of rejection of democratic principles.

The programme of a political party, however, is not the sole criterion for determining its objectives and intentions; the content of the programme must be compared with the actions of the party's leaders and the positions they defend. Taken together, these acts and stances may be relevant in proceedings for the dissolution of a political party, as they can disclose its aims and intentions.

The Court takes into account the following points:

- ▶ whether there was plausible evidence that the risk to democracy was sufficiently imminent;
- ▶ whether the leaders' acts and speeches taken into consideration in the case under review were imputable to the political party concerned, or to the leader as an individual;
- ▶ whether the acts and speeches imputable to the political party formed a whole which gave a clear picture of a model of society conceived and advocated by the party which was incompatible with the concept of a "democratic society".

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23. CDL-AD(2007)002 Comments on the conformity of the Law on Political parties of the Republic of Armenia with international standards (Amicus Curiae Opinion at the request of the constitutional court of Armenia), endorsed by the Venice Commission at its 69th plenary session (Venice, 15-16 December 2006), §9.

The jurisprudence of the European Court of Human Rights establishes this necessity, in order to determine precisely whether the words or actions of the members involve the responsibility of the whole party. The dissolution of political parties based solely on the related activities of party members as individuals is incompatible with the protection granted to parties as associations. This incompatibility extends to the individual actions of the party leaders unless it can be proven that these persons act as representatives of the party as a whole.

However, the context of war into which Ukraine has been plunged since Russia's aggression is obviously consistent, on the one hand, with that of "exceptional circumstances" and the concept of "imminent threat" which justify restrictions on freedom of association. On the other hand, the conduct and statements of the Russian authorities and the occupying army also clearly show that the Russian Federation is seeking to challenge both the independence and sovereignty of the Ukrainian state and the proper functioning of democracy. Therefore, any support expressed by a political party and its leaders for Russian aggression and Russia's project that undermines Ukraine's sovereignty, independence and territorial integrity, can only be considered as sufficient ground for dissolution and prohibition.

### 2.3. National legislation on banning political parties in Ukraine

The activities of political parties in Ukraine are regulated mainly by the Constitution of Ukraine (primarily by articles 36, 37) and the Law "On Political Parties in Ukraine". Some aspects of political parties are regulated by other laws; for example, the state registration of political parties and information about them is determined by the Law "On State Registration of Legal Entities, Individual Entrepreneurs and Public Organizations"; the electoral activities of parties are regulated by the Election Code.

The Constitution of Ukraine provides only for a judicial proceeding of banning the activities of political parties. Previous experience of such activities proves that this is a rather complicated process that requires proper justification and reasoning. The Ministry of Justice of Ukraine, authorised to appeal to the court to ban a political party, has to substantiate its position extensively, providing it with proper evidence.

The complexity and duration of such trials, which have political repercussions, necessitated adjustment of the relevant legislation. In May 2022, the Parliament amended the Law of Ukraine "On Political Parties in Ukraine", to clarify and specify the grounds for banning political parties. Parliament also amended the Code of Administrative Procedure of Ukraine, which establishes a special judicial procedure for the consideration of such cases with granting of powers of last (appellate) instance to the Supreme Court, has significantly reduced the procedural time limits both for consideration of the case by the court and for appeal. The effectiveness and thoroughness of these procedures will need to be assessed over time, after its long-term application, but during the period of martial law such amendments may be considered appropriate.

The main restrictions on political parties in Ukraine, which provide for the banning of political parties, are set out in Article 37 of the Constitution and are detailed in Article 5 of the Law "On Political Parties in Ukraine". These grounds for application of the banning of a party comply with the general restrictions on the exercise of the freedom of association established by part 2 Article 11 of the Convention, as well as part 2 Article 22 of the ICCPR.

Considering the nature of the negative consequences which they are supposed to protect against, the established restrictions can be divided into two groups.

The first group of restrictions is aimed at protecting democracy against threats to the democratic and law-governed nature of the state. It includes the prohibition of goals or activities of parties aimed at:



## I Group of Restrictions



forced change of the constitutional order;



infringement of human rights and freedoms;



propaganda of communist and/or national socialist (Nazi) totalitarian regimes and their symbols.



propaganda of war or violence, incitement of inter-ethnic, racial or religious enmity;



infringement of public health;

## II Group of Restrictions



liquidation of Ukraine's independence;



justification, recognition as lawful or denial of armed aggression against



glorification (i.e. praise, exaltation, glorification) or justification of actions and/or inaction of



violation of the sovereignty and territorial integrity of Ukraine;

Ukraine, including by representing the armed aggression of the Russian Federation and/or the Republic of Belarus against Ukraine as an internal conflict, civil conflict or civil war, and denial of temporary occupation of part of the territory of Ukraine;

persons who have carried out or are carrying out armed aggression against Ukraine, as well as representatives of the occupation administration of the Russian Federation, and representatives of self-proclaimed bodies controlled by the Russian Federation that usurped power in the temporarily occupied territories of Ukraine.



undermining the security of the state;

The last two grounds for banning a party to some extent reflect the current situation in Ukraine, opposing direct Russian armed aggression, which threatens the very existence of Ukraine as a sovereign independent state.

In 2015, the Law "On Condemnation of Communist and National Socialist (Nazi) Totalitarian Regimes in Ukraine and Prohibition of Propaganda of Their Symbols" was adopted, thereby launching the decommunisation processes in Ukraine. This Law, in particular, provided for the termination of activities (via a court order) of political parties that violate the requirements of this Law regarding the propaganda of communist and national socialist (Nazi) ideology, totalitarian regimes and their symbols. This sanction does not expressly provide for the termination (dissolution) of a political party and can be applied regardless of the ban of a political party in accordance with the Law "On Political Parties in Ukraine", most often as a prerequisite for the latter sanction.

With the beginning of the major Russian aggression on 24 February 2022, martial law was introduced in Ukraine by a decree of the President of Ukraine, approved by the Law of Ukraine,<sup>24</sup> and has been repeatedly extended. The legal regime of martial law is defined by law. Article 8 of the Law "On the Legal Regime of Martial Law" allows the following during martial law:

*raising in the manner prescribed by the Constitution and the laws of Ukraine the issue of banning the activities of political parties, public associations, if they are aimed at eliminating the independence of Ukraine, changing the constitutional order by force, violating the sovereignty and territorial integrity of the state, undermining its security, illegal seizure of state power, propaganda for war, violence, inciting inter-ethnic, racial, and religious hatred; encroachment on the stability of critical infrastructure, human rights and freedoms, and public health (clause 9 part 1 of this Article).*

24. Decree of the President of Ukraine No. 64/2022 dated 24 February 2022 "On the Introduction of Martial Law in Ukraine", available at <https://www.president.gov.ua/documents/642022-41397>; Law of Ukraine "On Approval of the Decree of the President of Ukraine 'On the Introduction of Martial Law in Ukraine'" No. 2102-IX dated 24 February 2022.



Formally, this wording repeats the restriction on freedom of association established by Article 37 of the Constitution, although Article 64 of the Constitution allows additional restrictions on this freedom during martial law or a state of emergency. The above decree of the President of Ukraine on the introduction of martial law in Ukraine does not provide for additional restrictions on freedom of association either.

However, such a formal absence of additional restrictions (compared to those established by Article 37 of the Constitution and Article 5 of the Law “On Political Parties in Ukraine”) on the goals and activities of political parties does not mean that it is impossible to change the interpretation of the meaning of these restrictions. According to the European Court of Human Rights, activities that are acceptable in times of peace, when parties can spread ideas that offend, shock or disturb, should be assessed as threatening and therefore unacceptable in wartime (not only in conventional warfare, but also in a hybrid war, which is also fought in the field of dissemination of information, ideas and propaganda).

Considering the possibility of different interpretations of the law in terms of the principle of legal certainty, the Court has noted that the need to avoid excessive rigidity of the law and to keep pace with changing circumstances means that many laws are inevitably formulated in terms that are more or less vague, and therefore, there will always be a need for clarification of ambiguous issues and adaptation to specific circumstances. The interpretation and application of such acts of legislation depend on practice. The role of the judgment entrusted to the courts is precisely to dispel such doubts about interpretation that remain, considering changes in everyday practice.<sup>25</sup>

So, in the formal absence of additional restrictions established by law on political parties in the conditions of war, the state may recognise the need for a more demanding and strict interpretation of restrictions already established, which were interpreted more liberally in peaceful conditions. If a political party has not clearly and publicly distinguished itself from its previous goals and actions that, in the context of Russian aggression and hybrid war, objectively serve to support the actions and propaganda of the aggressor state; if a political party continues to disseminate ideas and narratives that objectively contribute to the enemy’s benefit, does not refute promptly and officially such public positions of its members (including leaders) or local organisations, or does not condemn their harmful activities that have signs of collaboration or treason, such a party objectively violates the ban on activities aimed at eliminating the independence of Ukraine, changing the constitutional order by force, violating the sovereignty and territorial integrity of the state or undermining its security, thereby harming these fundamental constitutional values.

Also, there are conditions for the state when it needs to apply decisive and urgent measures, particularly, via the ban on an organisation. As the European Court of Human Rights has pointed out, in some cases the application of radical and even drastic measures involving the immediate and permanent dissolution of an organisation and confiscation of its property may be justified by Article 11 of the Convention.<sup>26</sup> A war to protect the independence and territorial integrity of the state, in which the aggressor state shows disrespect for the law, democracy and human rights, undoubtedly is one such case.

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25. See: *Gorzelik and Others v. Poland*. Judgment (Grand Chamber) 17 February 2004, §§64, 65. URL: <https://hudoc.echr.coe.int/eng?i=001-61637>.

26. See: *Parti Socialiste de Turquie et autres v. Turquie*. CEDH Arrêt 12 novembre 2003, §39. URL: <https://hudoc.echr.coe.int/eng?i=001-65997>; *Case Gorzelik and Others v. Poland*. ECtHR Judgment (Grand Chamber) 17 February 2004, § 105. URL: <https://hudoc.echr.coe.int/eng?i=001-61637>.

## 2.4. Court proceedings regarding the ban of pro-Russian political parties in Ukraine

As already been mentioned, the decision of the National Security and Defence Council of Ukraine (NSDC) dated 18 March 2022, enacted (following part 7 Article 107 of the Constitution) by decree of the President of Ukraine,<sup>27</sup> suspended any activity of 11 political parties in Ukraine for the period of martial law.<sup>28</sup>

In addition to indicating violations of the requirements established by Article 37 of the Constitution and Article 5 of the Law “On Political Parties in Ukraine”, the NSDC decision was motivated in response to anti-Ukrainian political and organisational activities, programmes and statutory goals containing an anti-Ukrainian position, and evidence of collaborationism on the part of the named political parties.

It should be emphasised that by this decision the NSDC did not ban those political parties; such a ban, following part 4 Article 37 of the Constitution, is possible only if rendered by a court decision. The NSDC applied to these parties a measure (temporary suspension of the activities of a political party) that was provided for in Articles 28 and 31 of the Law “On Citizens’ Associations”, which expired in 2012, which, however, could also be applied (when this law was in force) only by a court. However, the current legislation does not provide for such a sanction against political parties; therefore, as stated above, this measure is political by its nature.

Thus, without calling into question the urgent need to take such a measure in the context of the acute threat to Ukrainian statehood faced as a result of the large-scale Russian aggression, it should be noted that the NSDC decision does not constitute a legal ground prescribed by law with regard to the limitations of political parties’ activities and, therefore, a need has appeared to adopt appropriate legislative changes and for the Ministry of Justice of Ukraine to take appropriate measures.

The activities of the Ministry of Justice of Ukraine in this regard have significantly intensified since the adoption of legislative changes to the procedure for banning political parties in May 2022. In June 2022, the Ministry of Justice took legal action to ban 14 political parties.<sup>29</sup> In addition, new procedures were applied to the two previously initiated cases on the ban of the Communist Party of Ukraine and the Labour (Marxist-Leninist) party of Ukraine. The courts then made decisions to ban all 16 political parties, and those decisions became legally binding.

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27. Decree of the President of Ukraine On the Decision of the National Security and Defence Council of Ukraine dated 18 March 2022 ‘On the Suspension of the Activities of Certain Political Parties’ No. 153/2022 dated 19 March 2022. URL: <https://zakon.rada.gov.ua/laws/show/153/2022#n2>.

28. The 11 political parties were: “Opposition Platform – For Life”; “Sharii Party”; “Derzhava” (“The State”); “Left-Wing Opposition”; Progressive Socialist Party of Ukraine; “Union of Left-Wing Forces”; Socialist Party of Ukraine; “Socialists”; “Opposition Bloc”; “Nashi” (“Ours”); and “Volodymyr Saldo Bloc”.

29. In addition to the 11 parties mentioned above, whose activities were suspended by the NSDC decision, the Ministry of Justice of Ukraine also initiated a ban on the “Justice and Development”, “Rus United” (formerly known as the “Putin’s Politics Party”; the transition to the new name has not been completed so far), and the “Happy Ukraine” political party.



## 3. Ensuring post-war political pluralism

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### 3.1. Preserving the prerequisites for party competition in the post-war period

Political pluralism, which implies the functioning of a multi-party system, is one of the essential features of a democratic society. According to the Constitution of Ukraine, public life in Ukraine is based on the principles of, *inter alia*, political diversity and the state guarantees of freedom of political activity, if not prohibited by the Constitution and the laws of Ukraine (parts 1 and 4 Article 15); citizens of Ukraine have the right to freedom of association, in particular, in political parties (part 1 Article 36). Preserving and ensuring political pluralism in Ukraine is an important aspect of the European vector of Ukraine's development.

The competitive political environment provides, in particular, for free functioning of political parties and their local organisations, free functioning of media and equal competitive access to any information, organisational, financial and other resources.

During wartime, the activities of political parties may be limited, but the post-war restoration of a democratic society requires a fully-fledged political process and political pluralism.

It is obvious that the war of the Russian Federation against Ukraine has had a significant impact on the functioning of the party system in Ukraine. This is related to both its participants and the ability of parties to adapt to the new realities caused by the war.

The challenges of the war cannot but influence public opinion in the country and it will differ from public opinion in pre-war times. It is quite natural that the political environment should respond to these changes, show flexibility and be as close as possible to the needs of society in a specific period. In view of this, the statutory tasks, programme objectives and political plans of the existing parties will need to be adjusted to consider the consequences of the war and the prospects for post-war reconstruction. This will require considerable efforts and time needed to develop a political position, devise an algorithm of actions, implement organisational measures and make appropriate amendments to party charters and programmes. However, the level of political parties' support in society and elections in the future will depend on how they adapt to the challenges caused by the war. Therefore, to ensure democratic procedures, political parties at national and local levels should be given the opportunity for meaningful and organisational revitalisation.

Apart of that, it is worth focusing on ensuring organisational opportunity for the creation of new political forces in the post-war period in accordance with the law. In Decision No. 18-пн/2001 of 13 December 2001, the Constitutional Court of Ukraine stated that freedom of association means, in particular, the legal and actual possibility to form or join associations of citizens voluntarily, without coercion or prior permission.<sup>30</sup> After the war, there will be a public demand for new political parties. According to recent sociological survey, Serhii Prytula's party has already the support of 13.8% of Ukrainian citizen,<sup>31</sup> though it is not yet formed but only announced to be formed by Serhii Prytula before the war. So, considering the consequences of the war, citizens should be provided with both legal and *de facto* opportunities to form new political parties.

The military aggression of the Russian Federation against Ukraine has significantly increased the unity of the Ukrainian people, as well as changed their priorities and political views. For most people, the real activity of a political party, its representatives, their ability to handle specific situations caused by the war, a sense of support relative security will be decisive in making a choice of a political party to support.

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30. <https://zakon.rada.gov.ua/laws/show/v018p710-01#Text>

31. [https://ukraine-elections.com.ua/uk/socopros/parlamentskie\\_vybory](https://ukraine-elections.com.ua/uk/socopros/parlamentskie_vybory)

The ruling party has many advantages in this respect, given that the state implements an active policy of supporting the military, internally displaced persons businesses, as well as introduces various social programmes. At the same time, the political activity of other parties during the war has significantly decreased; their actions at all levels are mainly aimed at the defence related issues and covering respective needs resulting from the armed aggression of the Russian Federation. For example, in January 2022 the rating of the “Servant of the People” political party was rapidly decreasing and at the end of that month, according to research by the sociological team of the Razumkov Centre, it was 18.4%,<sup>32</sup> but during martial law its support significantly increased to 57.9% by 1 August 2022.<sup>33</sup>

Therefore, to ensure equal competition between political parties in the post-war period, these factors must also be taken into account. Political parties should be given time and opportunity to fully resume party activities, develop alternative positions and communicate them to a broader audience. Competition of political parties in the Verkhovna Rada of Ukraine and local government bodies can be ensured, in particular, by including representatives of various parliamentary factions and groups in developing the agenda and consideration of initiatives and by ensuring transparency of activities. In other cases, it is necessary to ensure citizens’ access to information communicated by political parties through the media or other information sources.

### 3.2. Media and political pluralism according to international standards

Ensuring political pluralism and equal competition also implies taking the media landscape into account: the principle of equality of opportunity requires that access to the media will be granted to any political party.

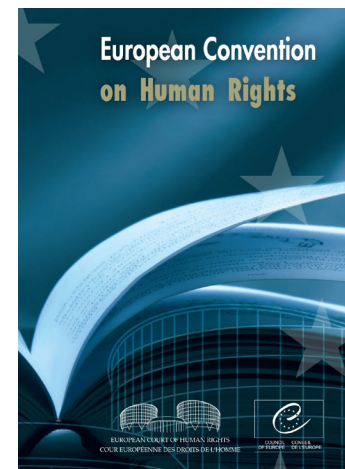
The European legal framework on media and elections consists of a few major legal documents and recommendations.

The core of the European legal framework is the European Convention of Human Rights, especially its Article 10 and also Article 3 of the Protocol 1 to the Convention.

Other texts complete the core legal frame, namely:

- ▶ Recommendation R (99) 15 on media coverage of election campaigns, adopted by the Committee of Ministers of the Council of Europe in 1999;
- ▶ Recommendation CM/Rec(2007)15 on media coverage of election campaigns, adopted by the Committee of Ministers of the Council of Europe in 2007;
- ▶ Resolution 2144 (2017) on online media and journalism, adopted by the Permanent Assembly of the Council of Europe in 2017;
- ▶ The Code of Good Practice in Electoral Matters, CDL-AD(2002)023rev2-cor-e, elaborated by the Venice Commission.

A few additional texts also exist, like OSCE statements and declarations, and even reports and surveys from EPRA (European Platform for Regulation Authorities).



32. <https://razumkov.org.ua/napriamky/sotsiologichni-doslidzhennia/elektoralni-orientatsii-gromadian-ukrainy-sichen-2022r>

33. [https://ukraine-elections.com.ua/uk/socopros/parlamentskie\\_vybory](https://ukraine-elections.com.ua/uk/socopros/parlamentskie_vybory)





### Article 10 of the Convention

*According to the European Convention on Human Rights, especially Article 10, two kinds of fundamental freedoms must exist in European democracies: freedom of speech, and freedom of access to information which is neutral, impartial and non-discriminatory. They constitute the basis of democracy, and so you cannot have a free country and free people if these two fundamental freedoms are not respected.*

*Freedom of speech allows the creation and existence of partisan media, whereas the freedom to access objective, balanced and neutral information requires that impartial media do really exist. Usually in Europe, this second objective and neutral information mission is devolved to public broadcasters but it can also be assumed by private media.*



### Article 3 of Protocol 1 to the Convention

*The European Court of Human Rights recognises that freedom of speech can be restricted, especially during the electoral process. The main aim here is to find a balance between free speech and the need to preserve fair, equal and non-discriminatory treatment of candidates and parties.*



### Recommendation CM/Rec(2007)15 on measures concerning media coverage of election campaigns

*The second legal text of reference is the Committee of Ministers' Recommendation of 2007, which was needed to take into account new contextual elements, particularly the development of regulatory authorities in the influence area of the Council of Europe, or the brand-new services allowing non-linear consumption of television programmes.*

*Firstly, it states that member states should apply the principles concerning broadcast media and the rules on "fairness, balance and impartiality" to "non-linear audio-visual media services of public service media".*

*Secondly, in relation to the editorial independence of media, the 2007 Recommendation adds that member states should ensure that "there is an effective and manifest separation between the exercise of control of media and decision making as regards media content and the exercise of political authority or influence".*

*Thirdly, the 2007 Recommendation includes a new provision on professional and ethical standards of the media. It states that "all media are encouraged to develop self-regulatory frameworks and incorporate self-regulatory professional and ethical standards regarding their coverage of election campaigns, including respect for the principles of human dignity and non-discrimination".*



### The Assembly Resolution on online media and journalism

*In January 2017, the Parliamentary Assembly of the Council of Europe adopted an important Resolution on online media and journalism. While the Resolution broadly concerns online media, it does contain several findings relevant for the discussion of media and elections.*

*Firstly, member states should initiate norms and mechanisms to prevent the risk of “information distortion” and the “manipulation of public opinion”.*

*Secondly, member states should recognise in law and practice a right of reply or any other equivalent remedy that allows a rapid correction of incorrect information in online and offline media. In relation to the European Internet Services Providers Association members who provide social media, search engines and news aggregators, the Resolution notes that where “political” interests might conflict with the neutrality of these media, providers “should be transparent about such a bias”. Notably, in relation to “false information”, the Resolution calls on members of the Association to empower users to report “false information” and make such falsity known publicly, and to voluntarily correct false content or to publish a reply (in accordance with the right of reply), or to remove such false content.*



### OSCE Recommendations

*The Organization for Security and Co-operation in Europe (OSCE) Opinions, recommendations and statements lay down five fundamental electoral principles, including “universal, equal, free, secret and direct suffrage”. This means that equality of opportunity must be guaranteed for parties and candidates, which entails a neutral attitude on the part of state authorities regarding coverage by the media, and especially by the state media.*

*In particular, the “principle of equality of opportunity can, in certain cases, lead to a limitation of political party spending, especially on advertising” according to the OSCE. These guidelines also provide sets of standards for regulation of the media during election campaigns.*

*The OSCE has also issued several important standards and policies in relation to media and elections, advising member states to ensure that “no legal or administrative obstacle stands in the way of unimpeded access to the media on a non-discriminatory basis for all political groupings and individuals wishing to participate in the electoral process”.<sup>34</sup>*

*The OSCE has also said, in relation to political advertising, that it should be illegal for the media to discriminate, based on political opinion or other recognised grounds, in respect of the allocation of and charging for paid political advertisements, where these are permitted by law.*

In addition, the Venice Commission has produced opinions on individual member state laws in this area, including on electoral laws applicable to the media. In this regard, the Venice Commission also issues guidelines for election monitoring.

A further important source is the European Platform of Regulatory Authorities,<sup>35</sup> which has also been cited on occasion by the European Court of Human Rights.

34. OSCE commitments on elections (Copenhagen 1990, §7.8), at [www.osce.org/files/f/documents/3/3/16815.html](http://www.osce.org/files/f/documents/3/3/16815.html).

35. EPRA (established 1995) is an independent platform of 52 regulatory authorities from 46 countries; the Council of Europe, European Commission, European Audio-visual Observatory and Office of the OSCE Representative on Freedom of the Media are standing observers.



In the European Union, of which Ukraine wants to become a member, political advertising is totally prohibited in several member states, such as Belgium, Denmark, France, Germany, Ireland and Sweden. Spain allows it only during the election period and only on commercial radio, Italy only on local channels, Croatia only during the election period (60 days before the election). On the other hand, it is allowed in Austria, Bulgaria, Hungary, Poland and the three Baltic states.

However, since 2018, EU states have become aware of how political advertising can be part of disinformation strategies, especially online advertising, and are seeking to put in place arrangements to ensure greater transparency in political advertising.<sup>36</sup>

It would therefore not be irrelevant or inappropriate to reflect on the positive consequences of banning political advertising on Ukrainian political life, such as reducing corruption, the influence of oligarchs and media owners, reducing also opportunities for violent polarisation of debates and misinformation of the public, reducing then the financial needs of parties, and pacifying election campaigns as well as the relations between political parties and their candidates.

### **3.3. Competitive information environment as a basis for the democratic functioning of political parties**

The competitive information environment has always been the key to the democratic functioning of political parties. In the post-war period, this factor will have a particular significance because, in martial law, the information component of the activities of political parties is significantly limited.

The information environment has changed in the conditions of the war. Since the beginning of the war, almost all media have focused on the coverage of the most critical national security and defence developments. In addition, on 18 March 2022, the National Security and Defence Council of Ukraine decided that, under the conditions of martial law, a unified information policy was a priority issue of national security, to be implemented by unifying all national TV channels, the programming content of which consists mainly of information and/or information-analytical programmes on a single information platform of strategic communication – the around-the-clock information marathon “United News #UArazom”.<sup>37</sup>

Without questioning the need for such a decision during martial law, its consequences for the activities of political parties in the post-war period should be considered. The functioning of the media, considering the “United News #UArazom” joint information telethon, has become an essential factor limiting the information component of political parties’ activities. Formally, any party can be present in the information environment in the given format. However, such presence varies, given the subject, role and significance of the political force and its participation in the fight against the aggressor. Obviously, the information environment mainly consists of information from the President of Ukraine, government representatives and heads of military administrations. Information about volunteer activities, assistance to the Armed Forces of Ukraine and internally displaced persons is acutely important; therefore, the political parties that are actively engaged in volunteer activities are constantly present in the media space. The same applies to representatives of political parties among combatants who can readily communicate with the media about the situation on the battlefield.

Most parties use their own information resources to inform about their activities: websites, Telegram channels and social media pages. However, the target audience of such resources is limited mainly to members of such parties or their long-time supporters.

If such a format of informational activity is acceptable for political parties during the war, it is necessary to take practical measures to ensure in the post-war period the right of political parties to use state media to cover their activities, as well as to establish their own media, as provided for in clause 3 part 1 Article 12 of the Law of Ukraine “On Political Parties in Ukraine”.

Ensuring real access to the media will enable political parties to publicly present and defend their position on issues of state and public life, to participate in debate and discussion, and to publish and substantiate their

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36. See the EU Code of Practice on Disinformation:  
<https://digital-strategy.ec.europa.eu/en/policies/code-practice-disinformation>.

37. <https://www.rnbo.gov.ua/ua/Ukazy/5295.html>

critical analysis of the actions and decisions taken by the authorities, that being among the components of political parties' opposition activities, guaranteed by part 2 Article 12 of the Law of Ukraine "On Political Parties in Ukraine".

Therefore, to ensure free competition of political ideas and development programmes in the post-war period, it is necessary to restore the competitive work of the media and ensure equal access of political parties to the media in conditions of free competition.

The influence of manipulative information and propaganda from the aggressor state poses another serious concern during the war and for the post-war period. Russian television was the main channel for conveying misinformation in 2014, but it is social media and mobile messenger services now. Social media and mobile messengers (Telegram, Viber, WhatsApp, Signal, etc.), which are the easiest channels for dissemination of such information, have become almost the primary source of information for most citizens of Ukraine.

It should be noted that on 31 March 2021 the Centre for Strategic Communications and Information Security was established under the Ministry of Culture and Information Policy of Ukraine<sup>38</sup> as one of the mechanisms for countering disinformation through the joint efforts of the state and civil society. This Centre has focused on communication counteraction to external threats, particularly information attacks from the Russian Federation.

The Centre for Countering Disinformation under the NSDC, established by the decree of the President of Ukraine No. 187/2021 dated 7 May 2021,<sup>39</sup> has also been operating in Ukraine since May 2021 and ensuring the implementation of measures, in particular with regard to effective counterpropaganda, with identification of and counteraction against misinformation, destructive information influences and campaigns, and attempts to manipulate public opinion.

It is important to continue the development and prompt implementation of effective mechanisms to counter the spread of propaganda and fake news and to ensure the safe use of modern technologies in order to prevent malign manipulative influence on public opinion. Without these measures, it is impossible to ensure equal competition of political parties in the information environment in the post-war period.

### 3.4. Regulation of the limits of state interference in internal party activities

It may seem that there are no legislative obstacles to ensuring political pluralism in Ukraine in the post-war period. However, it is likely to be challenging in practice, because of a number of factors, particularly the revitalisation of internal party activities after the war (ensuring the work of the entire structure of a political party, the governing bodies of a party and its local organisations, human resources and financial capacity) and the ability to quickly adapt to post-war challenges, at national and local levels.

The full activity of political parties is currently impossible because of battle action, the temporary occupation of certain territories, destruction of property and documents, displacement of a large number of people to other regions and travel abroad. Its restoration in the post-war period will take time, political parties' efforts and the legislature's assistance. The available procedures for establishing political parties, their internal party activities, registration of changes to their structure, charters and programme documents do not consider the peculiarities caused by the consequences of war.

Therefore, to effectively resume the activities of political parties in the post-war period, it is preferable to amend the legislation on political parties, in particular, in terms of the regulation of key aspects of internal party activity, given the problems caused by the war.

In accordance with part 1 Article 10 of the Law of Ukraine "On Political Parties in Ukraine", a decision to establish a political party should be supported by the signatures of at least 10 000 citizens of Ukraine who are entitled to vote in elections according to the Constitution of Ukraine, collected in at least two thirds of districts of at least two thirds of regions of Ukraine, Kyiv and Sevastopol cities and in at least two thirds of districts of the Autonomous Republic of Crimea. Given active armed hostilities going on across a large part of Ukraine,

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38. <https://spravdi.gov.ua/pro-nas/>

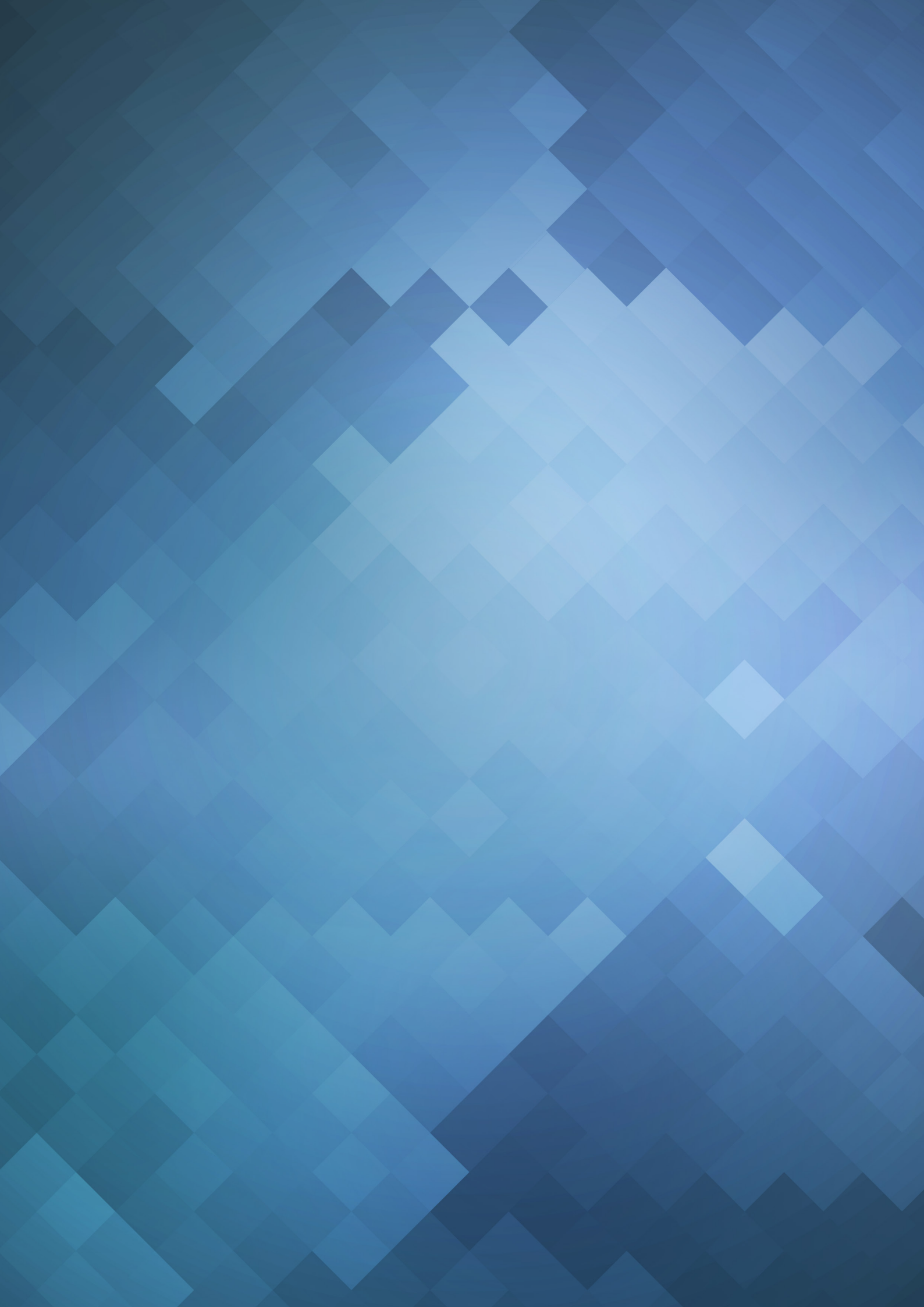
39. <https://zakon.rada.gov.ua/laws/show/187/2021#Text>

as well as the scale of destruction and damage incurred throughout some regions of Ukraine, it would be necessary to analyse the feasibility of implementing this rule in the post-war period and, possibly, to provide for a transitional option of legal regulation of the procedure for founding political parties to ensure freedom of association in political parties, considering the consequences of the war. At the same time, it is necessary to provide effective mechanisms to assess the activities of leaders and members of banned political parties, as well as protective measures against their possible transformation into other political forces with veiled programmes and goals.

The Law of Ukraine “On Political Parties in Ukraine” should provide for a transitional period for the restoration of normal functioning of the entire structure of political parties, as well as providing mechanisms for the restoration of full (internal organisational, socio-political and electoral) party activity in the post-war period, in particular by simplifying the procedures for state registration of local party organisations, changes in the composition of governing bodies, in statutory documents, expanding the list of state registration entities, enabling registration actions elsewhere than at the location of the legal entity or ensuring the implementation of certain actions in an automatic mode without the participation of the state registrar (using the Unified State Web Portal of Electronic Services).

At the same time, it is necessary to enshrine at the legislative level the mechanisms of interaction and control, not only of central bodies over local organisations but also of local organisations over the activities of central bodies, as well as to ensure the transparency of their activities, the public nature of programmes and charters of political parties, and their structure (the presence of local organisations and cells, and their leaders).

Such changes should, on the one hand, ensure effective state control over parties’ activities and, on the other hand, avoid making political parties completely dependent on the will of public officials and regulatory bodies.



## 4. Operational capacity of political parties to engage in post-war politics

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### 4.1. The main challenges that complicate the functioning of “party infrastructure”

Ukrainian national legislation does not provide for special regulation of the activities of political parties in conditions of war. The Constitution of Ukraine allows for restriction of the right to an association under martial law or a state of emergency. As already noted, such a restriction of political rights has not been introduced in Ukraine since February 2022. However, in practice, the scope of activities of political parties in Ukraine during the war has been significantly narrowed by circumstances.

Public political consolidation in the face of the threat to the very existence of the independent Ukrainian state and efforts focused on countering the large-scale aggression resulted in the cessation of traditional public and political activities of political parties, including their public competition within representative bodies, in the information environment or through the organisation of mass events. At the all-Ukrainian level, party activities have been reduced to support for the President of Ukraine and initiatives of the majority in Parliament, whose functioning during martial law has demonstrated the effective co-operation of various political forces.

At the level of local self-government, the activities of party factions in local councils (where such bodies are able to function in wartime) have their specific difficulties. However, the tendency towards more consolidated and politically neutral work is also apparent.

In public life, political parties (except for certain pro-Russian political forces) and their local organisations, where they have adequate organisation and resources, together with other civil society organisations, have concentrated their activities on volunteer support for the Armed Forces of Ukraine and humanitarian assistance to persons affected by the hostilities or the war crimes of the occupiers, and to internally displaced persons.

Finally, the organisational activities of political parties in these conditions are limited only by measures to ensure volunteer and humanitarian activities and, in exceptional cases, by situations of an urgent need to handle some organisational issues related to violations of the manageability of party organisations. An additional factor here is that many party activists have been mobilised or have voluntarily joined the Armed Forces of Ukraine or the Territorial Defence; this is significant because, under clause 5 part 3 and part 4 Article 6 of the Law “On Political Parties in Ukraine”, military service personnel must suspend their membership in political parties, and therefore, in the management bodies of their political parties, for the duration of their military service.

Even these limited activities can be carried out by political parties during martial law only in the part of Ukraine that has not suffered occupation or hostilities. Obviously, any activity of political parties is practically impossible under the conditions of hostilities, and even more so on temporarily occupied territory. Finally, it should be noted that a certain number of political parties in Ukraine have entirely stopped their activities during martial law.

The challenges caused by the war and the need for post-war reconstruction, the overall scale of which can already be generally assessed, have had a significant impact on public opinion that, according to sociologists, has changed radically from pre-war public opinion. For the purpose of their activities, political parties that seek to reflect socio-political trends must respond to these changes in public attitudes, adjusting their own goals, programmes and political platforms and adapting their internal organisational structure and personnel policy accordingly.



The revitalisation of political parties' activities should correlate with the legalisation of programme, organisational and (management) staff changes in parties and their local organisations. The experience of recent years has shown that the state should have reliable information about the organisational structure of a party and the compliance of its programme with constitutional restrictions, and should also know who is included in the management bodies of the party as a whole and its local organisations, to prevent persons who have collaborated with, or voluntarily acquired the citizenship of, the aggressor state from joining the leadership of political parties.

Legalisation (state recognition) of changes in information about political parties is primarily the task of the Ministry of Justice of Ukraine as a body authorised by law to carry out the state registration of political parties, to be the administrator (holder) of the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organizations (part 2 Article 5 of the Law "On State Registration of Legal Entities, Individual Entrepreneurs and Public Organizations"), as well as its sub-register – the Unified Register of Public Organizations,<sup>40</sup> which contains information about political parties and their registered local organisations. However, it should be noted that registration of parties and their local organisations and updates of information about them are carried out not by notification but by notification and further registration,<sup>41</sup> which implies consideration of information provided by a party after verification against the restrictions and requirements established by law. Thus, the function of for registering any updated information about a political party is closely related to the function of monitoring the observance by a political party of the requirements of the Constitution and laws of Ukraine, as well as monitoring the charter of a political party. Herewith, as prescribed by Article 18 of the Law of Ukraine "On Political Parties in Ukraine",<sup>42</sup> it's the Ministry of Justice of Ukraine who is responsible for this monitoring function.

The practical implementation of these legal provisions has shown that the Ministry of Justice and its local bodies face a lot of obstacles while fulfilling the tasks (defined by law) of registration of political parties and monitoring their activities. The state of information in the Unified Register of Public Organizations before the large-scale Russian aggression (access to the register was blocked for the period of martial law), disputes that arose during the 2020 local elections and the legal processes initiated by the Ministry of Justice of Ukraine to cancel the registration of political parties (under Article 24 of the Law of Ukraine "On Political Parties in Ukraine") and to ban pro-Russian political parties (under Article 21 of the same law) proved that the information in the register maintained by the Ministry and its territorial bodies – in particular, the availability of information about local organisations, party branches and the composition of their management bodies, was insufficiently complete and relevant.

Also, state monitoring of compliance with restrictions and requirements established by the Constitution and laws of Ukraine in the programmes and activities of political parties revealed to be inadequate and faced many obstacles. To some extent, these problems are caused by inadequate legislative regulation of registration actions by the justice bodies, which equate political parties and their structural formations legally with business entities, and also by the lack of a clear standard procedure for operational checks to ensure that parties comply with the requirements of the law and their charter as a prerequisite for registration actions. Regulation of registration and supervision should be improved in order to ensure completeness, reliability and relevance of the information contained in the register within the limits specified by law, considering the specific circumstances of political parties, their special role in the state and their role for society, while protecting constitutional freedom of association and preventing improper state interference in the legitimate activities of political parties.

At the same time, it is necessary to strengthen the legislative requirements for political parties to submit all relevant information in a timely way for their update in the register and with respective supporting documents, in particular, in terms of compliance with statutory requirements (including convocation and conduct of party congresses, conferences of local organisations, compliance with the powers of management bodies and party officials defined by a party charter).

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40. See: Ministry of Justice of Ukraine. Unified Register of Public Organizations, available at <https://minjust.gov.ua/unitarylist>. Please note that access to this Register is blocked for the period of martial law.

41. N. V. Bohasheva, *Relations Between the State and Political Parties in Ukraine: Constitutional and Legal Aspects*, monograph, Kyiv: Logos, 2012, p. 276.

42. See also: subclauses 83<sup>13</sup>–83<sup>15</sup>, 83<sup>19</sup> of clause 4 of the Regulation On the Ministry of Justice of Ukraine, approved by Resolution No. 228 of the Cabinet of Ministers of Ukraine dated 2 July 2014, available at <https://zakon.rada.gov.ua/laws/show/228-2014-n>.

Increased quality, completeness and relevance (within limits defined by law) is needed in the information about political parties, their ideology and programme goals, the existence of local structures and the composition of their management bodies and local organisations if full democratic processes are to be restored as soon as possible in the state, where political parties play an important role. In particular, it should be noted that part 2 Article 19 of the Law of Ukraine “On the Legal Regime of Martial Law” establishes a rather short 90-day period for the appointment of local elections (where needed) immediately after martial law is lifted. This will force political parties and their local branches to revitalise their full functions in a very short period of time since, before the local elections start, all political party activities as described above (including registration of relevant updates in the information about these parties) should be completed.

## **4.2. Organisational readiness of political parties to resume work in the post-war period**

The post-war revitalisation of normal peacetime functioning of the Ukrainian state and civil society, with full democratic processes, will require the restoration of real political life and the activity of political parties in all main areas of their activities. However, such restoration cannot occur simultaneously with the abolition of martial law and will be accompanied by certain problems. Changes of this “apolitical” form of activity (or, for some parties, the state of inactivity) will require some time (a transition period), as well as appropriate additional efforts on the part of the political parties themselves, their local organisations, deputies of local councils and party activists, as well as on the part of the state, which should at least ensure the regulatory framework of opportunities for the parties. The duration of such a transition period cannot be established in advance, but a certain minimum period for the revitalisation of party life must be recognised by the state as a rule.

First and foremost, the parties will face the task of promptly solving organisational and staff problems. Demographic processes, large-scale losses among the civilian population, which inevitably affected party members, the repression of activists by the occupiers in the temporarily occupied territories, as well as the enlistment of the most active citizens to the Armed Forces of Ukraine, will not only result in significant negative consequences for the quantitative composition of the parties but will also inevitably manifest in the actual disappearance of a certain part of local party structures or loss of their organisational capacity due to the incapacity of management bodies that existed before the large-scale Russian aggression.

After martial law is lifted, political parties will have to assess their actual organisational capacity and human resources quickly. To restore parties’ capacities, they will first have to restore their structure of local party organisations (branches) and their statutory activities. This will require parties to hold post-war conferences (meetings) in local party branches, often via a special convocation procedure. The first such meeting should appoint additional staff and/or a new management body of the organisation. Such organisational activity should be conducted in parallel with the recruitment of new party members at the expense of local activists in order to bring in new faces and restore the capacity of party organisations and branches. At the same time, the legal restrictions on the right of certain categories of officials (civil servants) and military personnel to be members of political parties should be observed.

During the period of martial law, and after martial law is lifted, it is important for society that those persons who are suspected on good grounds of treason, collaboration or other offences against the national security of Ukraine are prevented from becoming members of Ukrainian political parties, and even more so from leadership in political parties and their local organisations. However, Article 5 of the Law of Ukraine “On Political Parties in Ukraine”, in the current wording as of December 2022, which intertwines the right to be a member of a political party with the right to vote in elections (i.e., with the status of a voter), does not restrict the political rights of those convicted of any crime, and even more so those accused of a crime (until the court verdict enters into force). The introduction of automatic deprivation of voter status (and consequently, the right to be a member of a political party) on the basis of a criminal record does not comply with the Constitution of Ukraine<sup>43</sup> and European democratic standards.<sup>44</sup> However, given an urgent public need, the law may prohibit

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43. See: Decision of the Constitutional Court of Ukraine dated 26 February 1998 No. 1-pn/98 (case on the election of people’s deputies of Ukraine), available at <https://zakon.rada.gov.ua/laws/show/v001p710-98>.

44. European Court of Human Rights, *Hirst v. the United Kingdom*. Judgment (Grand Chamber), 6 October 2005, available at <https://hudoc.echr.coe.int/eng?i=001-70442>.



citizens convicted for certain particularly dangerous crimes (or, possibly, those who are officially served with notice of charges for such crimes) from being members of management bodies of a political party. Such a prohibition should apply to those who tarnished themselves by co-operation with the occupation regime, treason, espionage in favour of the aggressor state or other crimes against the national security of Ukraine.

The parties at this stage should also bring their territorial organisational structure into line with the new boundaries resulting from the administrative and territorial reform and local elections in 2020, since many political parties had still not completed this reorganisation at the beginning of 2022. Revitalisation of organisational capacity and human resources of a political party should naturally result in the conduct of a party's congress (conference) as that party's highest management body.

The conduct of political parties' congresses as a result of the transition period should solve another important problem of revitalisation of party activities. The lessons learned during the war, the large-scale and complex tasks for post-war reconstruction of Ukraine, combined with the need to maintain a high-level defence capability of the state, the implementation of foreign policy on the matter of Ukraine's accession to the European Union and (in one form or another) Euro-Atlantic integration, while ensuring the stability of the democratic, legal and social nature of the Ukrainian state, will require all subjects of the political process, at both national and local levels, to significantly review their primary goals, programmes and political plans. It is important for the parties to fully accumulate new political ideas that should consider the war-related experience and consequences, the tasks for post-war reconstruction and the prospects of European integration. Therefore, the transition period should be used by political parties to update their party programmes and develop long-term plans and directions for party activities.

One can hope that the revision of the main goals and programme principles by many political parties will cause significant changes to the party system in Ukraine. Processes of ideological determinacy of political parties are to take place, with the refusal to focus exclusively on specific leaders or to serve certain financial and industrial (oligarchic) groups. One can expect the disappearance of a certain number of parties that existed before the major military actions and the consolidation of political forces around the main ideological trends being common to modern European political culture.

Another complex problem, that political parties will inevitably be focused on, will be material and financial support for political parties' activities. The standard of living of the majority of Ukrainian citizens, in general, has decreased because of inflationary processes caused by the war. Ukrainians donated a significant part of their personal savings to the support fund for the Armed Forces of Ukraine. Economic losses from the targeted destruction of production facilities and infrastructure in combat zones and the large-scale robbery committed by Russians in the occupied territories reduced the income of Ukrainian companies. Another factor (though generally positive) is the deoligarchisation policy in Ukraine. All the abovementioned factors have significantly reduced possible income from membership fees and private donations for the benefit of political parties, thereby reducing their material and financial capacity. The loss of a number of offices of political parties and their equipment in those districts that have suffered significant destruction has also had a negative impact.

In these conditions, state support of political parties' activities during the transition period, particularly some compensation for losses caused by military action and destructive activities of the occupation regime, may become an essential factor of positive impact on the revitalisation of political life in Ukrainian society. Such support obviously cannot be too extensive in view of the general problems of post-war reconstruction of the state. However, specific steps can be recommended to mitigate the material aspect of the problem of revitalisation of political parties' activities.

Firstly, it is advisable to at least partially redistribute the funds provided under the Law of Ukraine "On Political Parties in Ukraine" to finance parties' statutory activities, from parliamentary political parties (relatively well funded) to political parties of the second line, in particular, those represented by factions in local councils. At least, during the transition period, the requirements – for monitoring the purposes for which such funds are spent and reporting their use – need to be reduced.

Secondly, the state can use property (both funds and real estate) transferred to the state from pro-Russian political parties banned by a court to provide material support to parties in the post-war period.

Thirdly, considering the European integration perspectives of Ukraine, it is advisable to consider cancelling or lifting the ban on the receipt by political parties of financial support from related European parties during the transition period.

### 4.3. Political parties' readiness to participate in post-war elections

The termination (lifting) of martial law should lead to revitalisation of the full functioning of the state and society, including democratic processes. Among such processes are elections that were interrupted by the introduction of martial law or where grounds for a new election have arisen during or as a result of martial law.

Domestic legislation is somewhat inconsistent on the timing of such elections. Article 20 of the Election Code sets a one-month term (after the termination or lifting of martial law) when elections (national or local) which were interrupted by the introduction of martial law, should be called again. Article 19 of the Law of Ukraine "On the Legal Regime of Martial Law" obliges the Verkhovna Rada of Ukraine to call local elections within 90 days from the date of termination or lifting of martial law if the grounds for the election arose during martial law. However, after the termination of martial law, there might be a need to hold local elections based on other reasons, in particular, due to the loss of capacity of local self-government bodies during temporary occupation or military action.

These legislative provisions do not establish the terms for calling national elections, which were not held due to similar reasons. However, there are already vacant mandates in several single-mandate districts where elections should be called (and held) soon after the termination or lifting of martial law. In addition, regular elections of people's deputies of Ukraine are due to be held on the last Sunday of October 2023 (if martial law has terminated by then).

The conduct of elections (the beginning of the electoral process) may be somewhat postponed by the act of calling the election. In some communities or administrative/territorial units, the conduct of local elections may be postponed if military and civil administrations have been formed there. Nevertheless, the terms for calling elections as described above determine the approximate duration of the transition period, by the end of which political parties should be ready to participate in elections.

The ability of political parties to participate in elections is directly related to their programmatic, staff, organisational, financial and information capacity to actively engage in politics at both national and local levels, which would imply, among other things, that their problems described above have been more or less successfully solved.

Following a significant shift in public consciousness, caused by the Russian aggression and large-scale support of Ukraine by the developed democratic countries, Ukraine's EU candidate status should definitely be reflected in the programme objectives and ideological principles of parties that campaign actively in post-war Ukraine. When preparing for elections in programme and strategic aspects, after clarifying their programme goals and ideological principles, the parties will have to determine to what extent they have to compete with other political parties and whether co-ordination of positions and efforts with ideologically close partners during the elections will be needed. Such decisions can play an important role in the solution of problems related to political parties' limited human and financial resources.

The question of human resources during political parties' preparation for elections is not limited to the restoration of membership in the party and the formation of new management bodies at national and local levels. It includes some other important aspects.

The first aspect is the need to find new approaches for the selection and preparation of candidates for the forthcoming elections who will be nominated by a party. The need for revitalisation and reconstruction that will be faced by Ukraine after the war will require a responsible attitude towards selection of candidates who will be able to qualitatively respond to the actual needs of the post-war period within the framework of the party's election programme. Parties will have to focus on activists who have gained public respect through their activities in difficult wartime conditions. On the other hand, it is necessary to prevent people from standing for election if they have co-operated with the aggressor state or the occupation authorities or have disseminated pro-Russian narratives.

The second aspect of a party's human resources policy during preparation for elections stems from the power to nominate candidates to election commissions, a power that is entrusted by the electoral legislation to political parties and their local organisations. This poses a problem for the parties, primarily in the need to immediately submit proposals for the composition of permanent territorial election commissions at local elections to restore their capacity in those cases where, as a result of staff losses and demographic changes, the territorial commissions have lost their capacity. Besides that, parties should be prepared to nominate members to

temporary precinct electoral commissions, which will bear the main burden of ensuring the organisation of voting and vote counting procedures.

Thus, the proper organisation and conduct of elections will depend on the political parties' human resources at the local level. In many regions of Ukraine, which have suffered from military actions or occupation, the pre-war staff resource of people who had the skills to work in election commissions has been largely lost. In addition, parties should avoid giving access to work in election commissions to persons who have tarnished themselves by collaboration with the aggressor and, therefore, are not trusted by the public. Taking into consideration that members of election commissions should have knowledge of the legislative requirements and procedures to properly fulfil their duties, the parties will have to provide some minimum training for the persons they would nominate to the election commissions. The co-operation of political parties with the Centre for training of participants of election processes, established by the Central Election Commission in January 2022, can play an essential role in this regard.

Finally, groups of party activists, who will be engaged in parties' information and campaigning activities during the election process, will play an important role in parties' pre-election activities. The importance of direct contact of party activists with voters will significantly increase due to the limited financial resources of political parties in the post-war period.

The information and campaigning capacity of political parties during elections, along with the readiness of party structures for direct active campaigning through mass events and communication with voters, will depend on the access of political parties to the available traditional mass media, which will be complicated by limited financial resources. However, the role of new online media in disseminating information in society has recently been growing fast, opening new opportunities for political parties to communicate with voters. Online media give parties an opportunity to create party channels for dissemination of information. Nonetheless, political parties' official websites and their local branches' websites should still play a role by making publicly available the information about a party (in particular, the party's policies and election programme), its statutory and election activities, and candidates nominated by a party at specific elections.

Moreover, access to traditional media need not imply only the purchase of media space, advertising or campaign commercials. Many European countries have decided to ban political advertising to limit the level of expenditure by political parties, and to grant fair and free access to media to every political party. In France, for example, political parties and even trade unions can address freely their messages to people in special programmes on state media (radio and television) in electoral or non-electoral periods.

The Venice Commission mentions the allocation of free airtime on mass media as a way to guarantee political pluralism efficiently:

*the allocation of media airtime is integral to ensuring that all political parties, including small parties, are able to present their programs to the electorate, both before and in between elections. While the allocation of free airtime on public media is not mandated through international law, such a provision can be a critical means of ensuring an informed electorate.*<sup>45</sup>

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45. See *Guidelines on Political Party Regulation*, 2nd edn, Venice Commission and OSCE, December 2020, §199, pp. 55-6.

# Conclusions

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## *How the war has changed party politics*

Ukrainian national legislation does not provide any specifics of political parties' activities in extraordinary circumstances (e.g. state of emergency and martial law). Thus, although the Constitution of Ukraine allows for the restriction of certain political rights, the limits for such restrictions and, most importantly, the appropriate democratic instruments at the legislative level are not clearly provided. During the introduction of martial law on 24 February 2022, the President of Ukraine did not use such constitutional powers and did not provide for the possibility of restricting party political activities in time of war. Selective amendments to the Law of Ukraine "On Political Parties in Ukraine" were related to the ban on political parties' activities only, but they provided almost no specific regulation of party activities in extraordinary circumstances.

In the context of full-scale aggression by the Russian Federation, political parties' activities have changed dramatically. Leaders of political parties, at national and local levels, publicly announced an end to party criticism of the state leadership, and in some cases, of the leadership of a certain community. Party activity has been reduced to support for the President of Ukraine and for initiatives of the pro-Government majority in Parliament. The Verkhovna Rada of Ukraine has quite precisely organised its work during the war: Parliament meets in plenary sessions, forms the agenda, considers draft laws and adopts decisions in the vast majority of cases by seeking political consensus and compromise. Most laws are adopted with the support of all political factions and groups in the Parliament. The situation at the local level is more competitive, but there is also a clear tendency towards political consensus when making important decisions.

During the war, political parties and their local organisations have focused their activities almost entirely on ensuring the primary defence needs of society and their community. It should be emphasised that certain other restrictions are also in force under martial law. For example, peaceful assembly is prohibited, and freedom of movement is significantly restricted (curfews have been introduced, and access to certain districts is very complicated or even completely prohibited). The vast majority of party activists have focused on volunteer and humanitarian activities, a focus which is quite clearly reflected on their websites and social media. Forming public opinion, monitoring the activities of the authorities and other political activities is limited.

## *Banning political parties*

Public demand for banning the activities of certain political parties in Ukraine has been developing quite rapidly in recent times, although such bans have been demanded before. After the Revolution of Dignity (2013–14), a procedure to ban the activities of the Communist Party of Ukraine was initiated as part of decommunisation process in Ukraine. This process lasted several years. The war has significantly increased the public demand for a ban on the activities of pro-Russian parties. Political parties that promoted pro-Russian values and narratives in Ukrainian society in peacetime have become, in time of war, a "fifth column". To counter this phenomenon, the National Security and Defence Council of Ukraine adopted a decision on 18 March 2022 to suspend any activity of 11 political parties in Ukraine for the period of martial law. This decision did not entail legal consequences, but it stimulated the search for appropriate legislative regulation.

Adherence to due legal process and international standards is crucial here. Bans on the activities of political parties should be lawful and duly justified. A detailed analysis of the activities of the political party should be conducted, and harmful (threatening and dangerous) forms of their political activity should be distinguished. In particular, it is unacceptable to society for anyone to justify, recognise as lawful or deny the armed aggression of the Russian Federation and/or the Republic of Belarus against Ukraine, or to propagate the Russian Nazi totalitarian regime. The relevant amendments have been made to the Ukrainian legislation. Now the

constitutional grounds for banning political parties are specified by the Law of Ukraine “On Political Parties in Ukraine” with a high level of discretion.

The Constitution of Ukraine provides for a ban on political parties’ activities exclusively via court proceedings. This is a rather complex process that requires proper justification and reasoning. The Ministry of Justice of Ukraine, which has the right to file a lawsuit to ban a political party, should very carefully analyse the activities of political parties and collect proper evidence. Previous experience of such activities has shown that this is a rather complex task. Thus, the process of banning the Communist Party of Ukraine has lasted for several years. This made it necessary to adjust the relevant legislation. In May 2022, the Parliament significantly amended this part of the Law of Ukraine “On Political Parties in Ukraine” and the Code of Administrative Proceedings of Ukraine. These amendments significantly improved the court procedure for such cases and, most importantly, significantly reduced the time for consideration of the case by a court, as well as for appeal. The effectiveness and thoroughness of these procedures will need to be assessed over time, after a more extended implementation period, but in time of war targeted amendments are permissible.

After the adoption of legislative amendments with regard to the procedure for banning political parties (May 2022), the activities of the Ministry of Justice of Ukraine have significantly intensified. A number of lawsuits were filed before courts demanding to ban the activities of 16 political parties. As for all 16 political parties, court decisions have been taken banning their activities. Such court decisions have already entered into force.

### Public opinion

In wartime, parties’ activities may be limited. However, post-war reconstruction of a democratic society requires a comprehensive political process and pluralism. Political parties at both national and local levels should be able to renew their institutional capacity not only to meet basic organisational needs but also to formulate new programmes, ideas and projects for the post-war reconstruction of Ukraine in a meaningful way. The democratic nature and transparency of these processes will be the guarantee of effective public supervision and the ability of Ukrainian citizens to trust the activities of public authorities. The state must create conditions in which political competition will be possible and desirable through some unique instruments. Such actions might include the adjustment of specific legislative prescriptions and requirements for the forms of party political activities, detailing the principles of intra-party interaction of various party bodies, elaboration of additional tools for financial (material) support of certain party activities and so on. At the same time, it is important to prevent state and public authorities from excessively interfering in parties’ activities since this can flatten their distinctive characteristics that are essential to their public purpose.

It is critical for parties to have equal access to media. The information ecosystem has significantly changed its format in wartime conditions. Since the beginning of the war all media have focused on coverage of the most important events in the field of national security and defence, but also the activities of the “United News (#UArazom)” joint information telethon have become an important factor in limiting the information components. Formally, any party can be present in this information space, but in practice the percentage of time taken by such a presence varies, given the subject, role and significance of the political force and its participation in the fight against the aggressor. Therefore, to ensure free competition of political ideas and development programmes in post-war times, it is necessary to restore the competitive work of the media and ensure equal access of political parties to the media in conditions of free competition.

Manipulative information influence and propaganda from the aggressor state poses another concern in time of war and the post-war period. Social media and mobile messengers (Telegram, Viber, WhatsApp, Signal, etc.), which make it easier to disseminate such information, have become almost the primary source of information for most citizens of Ukraine. It is important to develop effective mechanisms to counter the spread of propaganda and fake news and ensure the safe use of modern technologies to prevent manipulative influences on the consciousness of Ukrainian citizens.

Due to military action, the temporary occupation of certain territories and displacement of a large number of people to other regions or abroad, the normal activities of political parties are impossible. Therefore, if political parties are to effectively resume their activities in the post-war period, it will be advisable to amend the legislation on political parties in aspects related to their key internal issues, taking into account the problems caused by the war, in particular: to provide mechanisms for restoring full (internal organisational, socio-political and electoral) party activity in the post-war period; to provide a transition period for



revitalisation of normal functioning of the entire structure of political parties; to consolidate the mechanisms of interaction and monitoring, not only checks by central bodies of local organisations but also checks by local organisations on the activities of central bodies; to ensure the public nature of the programmes and charters of political parties and their structure (the presence of local organisations and branches, their leaders) and other issues. The corresponding amendments should, on the one hand, ensure effective state supervision of parties' activities and, on the other hand, avoid making political parties utterly dependent on the will of public officials and regulatory bodies.

### Post-war party politics

The challenges of the war cannot but affect public sentiment in the country, which will be different from public sentiment in pre-war times. It is quite natural that political parties respond to these changes, show flexibility and stay as close as possible to the needs of society in a specific period. Considering this, the composition of political parties, their statutory tasks, programme objectives and political plans will need to be adjusted to take into account the consequences of the war and the prospects for post-war reconstruction. This will require considerable efforts and the time needed to develop a political position, an algorithm of actions and appropriate amendments to the party's charter and programme. Organisational and personnel changes in a party and its local organisations require registration (legalisation). This means their recognition by the state. In the post-war period, provision of the fastest and most accessible ways to register such changes will be important. So it is necessary to improve the procedure and terms of state registration, as well as the requirements for documentation of changes, focused on the specifics of the functioning of political parties in the post-war period, to ensure the proper functioning of the Unified Register of Public Organizations and the completeness and relevance of its information.

Specific problems will accompany revitalising the organisation of party activity during the transition period. These problems are primarily human resources issues related to the mass departure of citizens, including party activists, either abroad or in mobilisation, but they also include persons banned from being members of political parties and persons affected by temporary occupation of certain territories or repression of political activists. To restore full activity, political parties need to find out their real personnel capacity at both central and local levels, restore the full numbers on the management bodies of the party and its local organisations, hold local conferences, meetings of management bodies and party congresses, and bring the structure of the party into line with the new administrative set-up. As a result of active hostilities on large parts of the territory of Ukraine, political parties will face property problems related to revitalising their premises and equipment, with compensation for losses caused by military action and activities of the occupation regime.

The ability of political parties to actively participate in elections will be directly related to their personnel, financial and information capacity both nationally and locally. The personnel component includes both the opportunity to nominate candidates in elections (their public selection) and the formation of groups of party activists who will be able to ensure the participation of the party in elections at various levels. The ability of a party to select and prepare candidates for election commissions is also very important.

As for financing parties, in the post-war period many of them (probably the vast majority) may face problems in finding sources of finance. Under these conditions, the possibility of state support of parties, particularly of their statutory activities, becomes especially important. At present, public funding is provided to parliamentary political parties only. Moreover, its suspension or even termination is being actively discussed.

Finally, the information capacity of political parties will depend on the readiness of party structures for active campaigning, which in turn will depend on ensuring political parties' access to existing traditional mass media and new electronic media, which bring the possibility of creating party channels for dissemination of information or functioning as political parties' official websites.



The 2022 full-scale military aggression of the Russian Federation against Ukraine has created extremely harsh conditions for democratic institutions in Ukraine. The needs of national security, defence, evacuation of residents from areas affected by hostilities and provision of humanitarian aid to the population have been prioritised on the public and political agenda. Therefore, since 24 February 2022, political environment and activities of political actors in Ukraine have been entirely conditioned by and focused on war related challenges and needs. Herewith, the level of transparency and openness of the work of public authorities, including local self-government bodies, has been affected due to the fully-fledged war. Under such conditions, political parties had to significantly transform their role and forms of activities in the society.

This report attempts to present a comprehensive overview of problems and challenges for the democratic processes in Ukraine seen through the prism of political parties' activities during the war time, as well as perspectives for the full restoration of political parties' functioning in the post-war period.

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