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## **PECULIARITIES OF COURT PROCEEDINGS UNDER MARTIAL LAW: REMOTE PARTICIPATION IN COURT PROCEEDINGS**

**Introduction of the issue.** On 24 February 2022, in connection with the invasion of Ukraine by the occupiers of the Russian Federation, martial law was introduced throughout the territory of our country. The judiciary, like other legal institutions in our country, was affected by the war, and this impact made adjustments to the process of judicial proceedings. The war in the country cannot but affect the administration of justice. However, even in a full-scale invasion, the constitutional right to judicial protection cannot be restricted under any circumstances.

According to Article 26 of the Law of Ukraine "On the Legal Regime of Martial Law", the reduction or acceleration of any form of judicial proceedings under martial law is prohibited. [2] At the time, it is not always possible to ensure the continuous operation of the court during the war. Even today, some courts do not carry out legal proceedings at all or work without holding court hearings, as according to the Supreme Court, 20% of courts are under occupation or in the territory where hostilities are taking place. To resolve this issue, the Council of Judges of Ukraine passed a series of significant and pertinent resolutions on 24.02.2022, titled "On urgent measures to ensure the sustainable functioning of the judiciary in Ukraine in the context of the termination of the powers of the HCJ and martial law due to the armed aggression by the Russian Federation". Therefore, referring to these decisions, I believe this topic is subject to discussion and is most relevant in our time. [8]

**Objective.** To learn and analyse the activities of the courts during martial law. To get acquainted with the examples of the impact of the full-scale invasion of Russia on the activities of the judiciary and other legal institutions, as well as to discuss remote participation in court hearings.

**Summary of the main material.** The concept of "remote participation in a court hearing" did not gain its greatest popularity after 24.02.2022. It happened back in March 2020, when questions and issues related to COVID-19 arose in the world. And already at that time, in the spring, the Verkhovna Rada of Ukraine adopted the relevant laws that provided the opportunity for participants in various cases to participate in court hearings remotely, thereby realizing their right to a fair trial, as mentioned earlier, in a remote format.

At that time, the State Judicial Administration of Ukraine created a procedure for video communication during court hearings involving the parties outside the court premises. At that time, the State Judicial Administration provided for using specific systems (for example, the EasyCon system) or other means available to the court and participants in the trial to ensure that court hearings were held online. [3]

Accordingly, this mechanism of holding court hearings remotely, without the presence of a party to the case directly in the courtroom, has really helped to stabilise the administration of justice under quarantine. And, of course, remote participation in court hearings may have become more convenient and accessible for other cases that did not

even involve quarantine conditions. The current Law of Ukraine "On the Judiciary and the Status of Judges", in part eight of Article 11, contains a mandatory requirement that court hearings are held exclusively in a specially equipped courtroom which is suitable for accommodating the parties and other participants in the trial and allows them to exercise their procedural rights and perform procedural duties. [4]

As of today, there is a war going on in our country. And if in 2020 it was enough to protect ourselves with masks, gloves, etc., and be confident that we are safe, then today, as practice shows, the conditions of martial law prevent people from realization of individuals' rights to have their cases heard by the court even in such a manner. Unfortunately, there is no absolutely safe place in our country today, and sirens sound almost every day in every part of our country, which, in turn, requires a person (judge, participants in the case or court staff) to move to a shelter.

In this regard, reasoned proposals were made to supplement Article 11 of the Law of Ukraine "On the Judiciary and the Status of Judges" with a provision stating that if it is impossible for a court to administer justice for objective reasons during martial law or a state of emergency, due to military actions, court hearings may be held in courtrooms of other courts, as well as via videoconference outside the premises of the court (courtrooms), including by a judge, using his or her own technical means. [5, p. 30]

Ignoring the instructions regarding actions during air alerts can have tragic consequences, which unfortunately occurred in Mykolaiv region when a Russian missile hit the Mykolaiv Regional State Administration, where the Economic Court of Mykolaiv region was located. As it became known later, court employees were killed. [6]

Therefore, the question arises that during air raid alerts, the court session should be temporarily suspended until the air raid alert is cancelled. The number of alarms per day may vary, as well as their duration, so this problem needs to be further studied and resolved, taking into account the principles of judicial proceedings and ensuring the safety of court employees and participants in the case. Of course, the initiative groups are working on this issue to ensure that not only the parties to the case, but also the judges can participate in court hearings remotely. While this issue is still being resolved, it is worth using certain e-court resources, i.e. a party to a case or its representative can register via a specific link and submit an application to join the case. After registration, each person will have their own electronic personal account where they can submit documents to the court, receive documents, get acquainted with the case file, etc.

However, it should be borne in mind that not all courts in Ukraine have joined the E-Court subsystem, which in turn slows down the full use of the capabilities and resources of this subsystem. [8]

In the spring of 2022, the Verkhovna Rada of Ukraine registered the draft law "On Amendments to the Code of Administrative Procedure of Ukraine, the Civil Procedure Code of Ukraine and the Commercial Procedure Code of Ukraine". The purpose of this draft law is to introduce certain effective mechanisms for conducting court proceedings under martial law or a state of emergency, in particular, by allowing other court staff to exercise the powers of, for example, a court reporter, the possibility to perform the powers of a court reporter remotely, etc. [8]

To date, this draft law has not been adopted, rejected and withdrawn from consideration. Many courts do not always have the technical capability to hold court hearings online, and it is necessary to clarify the relevant information in advance with the court. In summary, it can be said that the martial law in Ukraine has made adjustments to

the court proceedings. Nevertheless, the judicial system has withstood the blow and continues to operate at a professional level.

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