

THE JUDICIAL SYSTEM OF UKRAINE UNDER WARTIME CONDITIONS: THE REGULATORY FRAMEWORK¹

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INTRODUCTION

The war unleashed against Ukraine led to the introduction of the legal regime of martial law, which had a significant impact on the functioning of all state institutions, including the judicial system. Under these extraordinary circumstances, ensuring access to court, continuity in the administration of justice, adherence to the principles of judicial independence, and the protection of human rights and fundamental freedoms have become major challenges.

The four-year experience of the functioning of Ukraine's judicial system under this regime demonstrates the importance of and need for continuous adaptation of legal regulation to new security realities as well as social and political changes. Since 2022, Ukraine has adopted a number of normative acts, decisions, and recommendations aimed not only at ensuring the operation of courts, but also at implementing measures to guarantee the effectiveness of judicial procedures in emergency conditions. This work is devoted to reviewing and systematizing the legal framework governing the functioning of the judicial system under martial law, as well as to analyzing the key changes and development trends in this area.

1. Legislative provisions for the implementation of martial law

The Constitution of Ukraine does not provide for a separate article on the legal regime of martial law; instead, several of its provisions enshrine both a list of rights that may not be restricted even under conditions of martial law and the possibility of temporarily limiting certain constitutional rights within the legal regimes of martial law or a state of emergency (in particular, Articles 41, 43, 64, 83, 92, etc.). This approach is justified by the need to ensure a balance between guaranteeing human rights and freedoms and the requirements of national security and the effective functioning of the state under extraordinary conditions.

The main normative legal act defining the rules for the introduction and operation of martial law, as well as the procedure for the functioning of public authorities and other entities during this period, is the Law of Ukraine "On the Legal Regime of Martial Law." It was adopted in 2015, at a time when an anti-terrorist operation was already being conducted in the eastern part of the country, which necessitated the updating of legislative regulation in this area. Subsequently, this Law has been amended several times in response to the evolving security situation and the practical application of martial law. In particular, the procedure for the establishment and powers of military administrations was specified, the list of martial law measures was

¹ The work was supported by Documenting Ukraine, a project of the Institute for Human Sciences, IWM Vienna

clarified (including the establishment of a curfew, compulsory labor service, and the use of property for defense needs), the specifics of the activities of law enforcement bodies and courts were regulated, and the mechanisms for the temporary restriction of certain constitutional rights and freedoms were detailed, while simultaneously preserving basic guarantees for their protection.

This Law establishes that martial law is a special legal regime introduced in the event of armed aggression or a threat to state security and provides for the expansion of the powers of public authorities and the temporary restriction of certain rights and freedoms of citizens.² In addition, this Act regulates the procedure for the introduction, extension, and termination of martial law; the activities of military command bodies and military administrations; the interaction between state authorities and local self-government bodies; the specific functioning of enterprises, institutions, and organizations; as well as guarantees for the protection of the rights and legitimate interests of individuals and legal entities during this period. Martial law is introduced upon the submission of the National Security and Defense Council of Ukraine by a decree of the President of Ukraine and enters into force after its approval by the Verkhovna Rada of Ukraine. The relevant decree is subject to immediate promulgation, and state authorities, local self-government bodies, and other institutions are obliged to ensure the uninterrupted functioning of the Verkhovna Rada of Ukraine during its consideration³.

The Presidential Decree on the introduction of martial law specifies the grounds for its imposition, the territory and duration of its application, the tasks assigned to state authorities and military command bodies, civil protection measures, as well as the list and duration of temporary restrictions on rights and freedoms.

For the first time, martial law was introduced in Ukraine by Presidential Decree No. 393/2018 “On the Introduction of Martial Law in Ukraine”⁴ in ten regions in connection with the aggression of the Russian Federation against Ukrainian border guard vessels in the Kerch Strait. Martial law was in effect from 26 November 2018 for a period of 30 days and was terminated on 26 December 2018.

On 24 February 2022, in response to the full-scale military aggression of the Russian Federation against Ukraine, upon the submission of the National Security and Defense Council of Ukraine and on the basis of the provisions of the Constitution of Ukraine and the Law of Ukraine “On the Legal Regime of Martial Law,” martial law was introduced by Presidential Decree No. 64/2022 throughout the entire territory of Ukraine for a period of 30 days⁵ and was approved by the Verkhovna Rada of Ukraine on the same day. This was preceded by the introduction of a state of emergency in certain regions of Ukraine by Presidential Decree No. 63/2022 of 23

² Про правовий режим воєнного стану : Закон України № 389-VIII від 12 травня 2015 року. Законодавство України. URL: <https://zakon.rada.gov.ua/laws/show/389-19#Text> – ст. 1

³ Там само. ст. 5.

⁴ Указ Президента України № 393/2018 «Про введення воєнного стану в Україні» від 26 листопада 2018 року. URL: <https://www.president.gov.ua/documents/3932018-25594>

⁵ Указ Президента України № 64/2022 «Про введення воєнного стану в Україні» від 24 лютого 2022 року. URL: <https://www.president.gov.ua/documents/642022-41397>

February 2022.⁶ This was prompted by the recognition on 21 February 2022 by the leadership of the Russian Federation of the so-called “LPR” and “DPR,” as well as by the decision to deploy Russian armed forces units to the temporarily occupied territories of Donetsk and Luhansk regions. At the same time, further escalation and the recognition of the scale of armed aggression led to the introduction of martial law throughout the entire territory of Ukraine on 24 February 2022.

As a result of the imposition of this special legal regime, state authorities, military command bodies, and local self-government bodies received additional powers to organize the defense of the state and protect the population; special security measures were implemented; the civil protection system was placed on alert; and the temporary and legally defined restriction of certain constitutional rights and freedoms of individuals, as well as the legitimate interests of legal entities, was established. Subsequently, the duration of the martial law regime has been repeatedly extended and remains in effect at the time of writing this work.

2. Changes in the Legal Regulation of Court Activities During Martial Law

A key provision defining the functioning of the judiciary during the legal regime of martial law is Article 64 of the Constitution of Ukraine. This provision establishes that, under conditions of martial law or a state of emergency, certain time-limited restrictions on the rights and freedoms of individuals may be imposed. At the same time, the Constitution of Ukraine specifies a set of rights and freedoms enshrined in specific articles that may not be restricted under any circumstances. Of particular importance is Article 55 of the Constitution of Ukraine, which guarantees judicial protection of human and civil rights and freedoms, the right to challenge in court the decisions, actions, or inaction of state authorities and officials, as well as the possibility of recourse to national and international mechanisms for the protection of rights.

These provisions are consistent with Article 26 of the Law of Ukraine “On the Legal Regime of Martial Law,” which explicitly prohibits the reduction or acceleration of any forms of judicial proceedings during martial law.

According to the provisions of Article 10 of the Law of Ukraine “On the Legal Regime of Martial Law,” the suspension of the powers of state authorities and other government bodies, including courts, is not permissible during martial law.

Following the introduction of the legal regime of martial law, on the very first day of the war, the Council of Judges of Ukraine implemented a set of measures aimed at maintaining the stable functioning of the judiciary and protecting participants in judicial proceedings. The corresponding decision outlined a list of practical steps designed to ensure the proper administration of justice and the preservation of judicial protection of citizens’ rights and freedoms under crisis conditions. Priority was given to ensuring the safety of judges, court staff, and other persons involved in the administration of justice, as well as to the proactive development of clear action protocols in the event of a

⁶ Указ Президента України № 63/2022 «Про введення надзвичайного стану в окремих регіонах України» від 23 лютого 2022 року. URL: <https://www.president.gov.ua/documents/632022-41393>

deteriorating security situation, including measures for the protection of court cases, documentation, and material and technical resources⁷. The measures proposed by the Council of Judges of Ukraine allowed for the continuity of the judiciary's operations and ensured the effective exercise of the right to judicial protection even under such extraordinary conditions.

At the onset of the full-scale war, access to key electronic judicial services was temporarily restricted for security reasons, including the Unified State Register of Court Decisions and services related to information on the progress of court cases. This posed a risk to the accessibility of judicial protection and the efficiency of communication between courts and participants in proceedings. To ensure proper notification of the parties and the uninterrupted administration of justice, the use of alternative electronic communication channels was proposed, in particular the Unified State Web Portal of Electronic Services and the "Diia" mobile application, for notifying parties of hearings and delivering procedural documents in electronic form. In this context, a special law introduced amendments to the Law of Ukraine "On the Judiciary and the Status of Judges," establishing the possibility of additional electronic notification of participants in judicial proceedings regarding hearings, the receipt of court decisions and enforcement documents in electronic form, and allowing judges' meetings to be conducted remotely via videoconference during martial law, a state of emergency, or quarantine⁸.

On 2 March 2022, the Council of Judges of Ukraine issued recommendations to courts regarding the organization of their operations under martial law, taking into account the security situation in the regions.⁹ Priority was given to the protection of the life and health of judges, court staff, and participants in proceedings, which justified the possibility of temporarily suspending judicial proceedings. Courts were recommended to focus on urgent cases, widely use remote working methods, continue procedural deadlines, and adapt judicial practice to the realities of wartime.

On 4 March 2022, an order of the Head of the Supreme Court was promulgated, confirming that even under martial law, the human right to judicial protection remains guaranteed and cannot be restricted. At the same time, for security reasons, the temporary suspension of certain courts' operations was permitted in cases of threats to the life or health of judges, court staff, or participants in proceedings. Urgent hearings, in particular those concerning the imposition or extension of preventive measures such as pre-trial detention, were to be conducted without interruption, while other cases

⁷ Рішення Ради суддів України від 24 лютого 2022 року «Про невідкладні заходи щодо забезпечення сталого функціонування судової влади в Україні в умовах призупинення повноважень Вищої ради правосуддя та здійснення військової агресії Російської Федерації». URL: <https://ips.ligazakon.net/document/MUS36788?an=1>.

⁸ Закон України «Про внесення змін до Закону України "Про судоустрій і статус суддів" щодо додаткових способів інформування про судові справи та проведення зборів суддів в умовах воєнного чи надзвичайного стану» № 2461-IX від 27 липня 2022 року. Законодавство України. URL: <https://zakon.rada.gov.ua/laws/show/2461-20#n10>

⁹ Рекомендації щодо функціонування судів в умовах воєнного стану від 2 березня 2022 року. Рада суддів України. URL: <https://rsu.gov.ua/ua/news/usim-sudam-ukraini-rsu-opublikovala-rekomendacii-sodo-rooti-sudiv-v-umovah-voennogo-stanu>

could be postponed or considered remotely with the consent of the parties¹⁰. As a result, the continuous operation of the judicial system was ensured, with a focus on the safety of all participants in judicial proceedings.

Additionally, at the beginning of March 2022, by Order No. 6/0/9-22 of 13 March 2022 of the Head of the Supreme Court, recommendations were approved for courts of first instance and appellate courts in the event of the occupation of a settlement and/or a court, or the emergence of an immediate threat of such occupation.¹¹ This document establishes the procedure for court actions in the event of a threat or actual occupation: judges and court staff must first ensure their own safety and evacuation, and, if possible, secure or remove court cases, servers, seals, and documents, destroy materials containing state secrets, and restrict access to court registers. At the same time, it provides for the transfer of cases to another designated court for continued consideration, notification of judicial governance bodies, and the prevention of any interaction with occupying authorities.

Another normative legal act aimed at regulating the functioning of courts during wartime was the Order of the Head of the Supreme Court of 13 March 2022, which approved recommendations for courts of first instance and appellate courts in the event of the occupation of a settlement and/or a court, or an immediate threat of such occupation. These recommendations are intended to ensure an effective and rapid response to such emergency situations and outline the actions of court presidents, judges, and court administration heads in such circumstances. In particular, it is stated that in the event of the “occupation or threat of occupation of a court, each court president and judge must act in accordance with the prevailing situation and the conditions of martial law, making reasonable and effective decisions while recognizing that the preservation of life and health of individuals is their primary responsibility”¹². It is also noted that documents containing state secrets must be destroyed. To prevent their seizure by occupying authorities, it is similarly recommended to destroy court seals and devices containing judges’ and court staff’s electronic digital signatures if they cannot be removed. Where possible, court cases should be transported, in particular those under active consideration by judges, or at least the most important (high-profile) cases, such as criminal case files involving individuals in pre-trial detention, cases concerning minors, proceedings regarding especially serious crimes, and other cases significant for the rights of participants in the proceedings.

¹⁰ Про функціонування судів України в умовах воєнного стану : наказ Голови Верховного Суду від 4 березня 2022 року. URL: <https://supreme.court.gov.ua/supreme/press-centr/news/1261727/>

¹¹ Наказ Голови Верховного Суду № 6/0/9-22 від 13 березня 2022 року «Про затвердження рекомендацій для судів першої та апеляційної інстанцій у разі окупації населеного пункту та/або суду або безпосередньої загрози такої окупації». URL: https://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/war/Recomendatsii.pdf

¹² Рекомендації для судів першої та апеляційної інстанцій у разі окупації населеного пункту та/або суду або безпосередньої загрози такої окупації : затверджені наказом Голови Верховного Суду № 6/0/9-22 від 13 березня 2022 року. URL: <https://ips.ligazakon.net/document/view/vss00828?an=14> html

If transportation is not possible, these cases should be securely stored in safes located within the court premises¹³.

One of the first laws in the field of judicial proceedings adopted after the full-scale invasion was the Law of Ukraine “On Amendments to part seven of article 147 of the Law of Ukraine ‘On the Judiciary and the Status of Judges’ regarding the determination of territorial jurisdiction of court cases”¹⁴. In its version prior to these amendments, part seven of this article provided that in the event of a natural disaster, armed conflict, anti-terrorist operations, or other emergencies, the activities of a court could be temporarily suspended based on a decision of the High Council of Justice, adopted at the initiative of the Head of the Supreme Court.¹⁵ The need for urgent legislative changes arose from the fact that existing legislation linked the possibility of suspending a court’s operations solely to a decision of the High Council of Justice, which at the time of the introduction of martial law was not authorized to act. This created a legal gap and the risk of paralysis of judicial proceedings in situations where the administration of justice became objectively impossible or dangerous. Accordingly, the proposed amendments were intended to address this problem by providing an alternative mechanism for decision-making under emergency conditions. In particular, it was established that in the event of a natural disaster, armed conflict, or other crisis situations, the temporary suspension of a court’s operations is permitted, along with the simultaneous designation of another court to continue administering justice in the relevant territory. If the High Council of Justice is unable to exercise its powers, the relevant decision may be taken by the Head of the Supreme Court¹⁶. At the same time, the established backup mechanism for decision-making in the event of the High Council of Justice’s incapacity ensures a rapid response of the system and the continuity of the judiciary’s functioning even under crisis conditions.

The prolonged nature of martial law and its repeated extensions created new challenges for the functioning of state institutions, which objectively necessitated prompt and systematic legislative responses to these circumstances. Accordingly, the Law of Ukraine “On the Legal Regime of Martial Law” was supplemented with a special provision dedicated to the functioning of judicial authorities and the administration of justice under martial law. The newly introduced Article 12-2 enshrined the principle that courts, bodies, and institutions of the justice system continue to operate exclusively on the basis of the Constitution of Ukraine and the laws

¹³ Рекомендації для судів першої та апеляційної інстанцій у разі окупації населеного пункту та/або суду або безпосередньої загрози такої окупації : затверджені наказом Голови Верховного Суду № 6/0/9-22 від 13 березня 2022 року. URL: <https://ips.ligazakon.net/document/view/vss00828?an=14> html

¹⁴ Закон України «Про внесення змін до частини сьомої статті 147 Закону України “Про судоустрій і статус суддів” щодо визначення територіальної підсудності судових справ» № 2112-IX від 3 березня 2022 року. URL: <https://zakon.rada.gov.ua/laws/show/2112-20#n5>

¹⁵ Закон України «Про судоустрій і статус суддів» № 1402-VIII від 2 червня 2016 року (редакція станом на 1 січня 2022 року). URL: <https://zakon.rada.gov.ua/laws/show/1402-19/ed20220101#Text>

¹⁶ Закон України «Про внесення змін до частини 7 статті 147 Закону України “Про судоустрій і статус суддів” щодо визначення територіальної підсудності судових справ» (2022 р.). Законодавство України. URL: <https://zakon.rada.gov.ua/laws/show/2112-20#Text>

of Ukraine, and that their constitutional powers cannot be restricted even under the legal regime of martial law.¹⁷ In practice, this means that the state ensures the stable functioning of the judicial system and the effective possibility of judicial protection of human rights and freedoms even under conditions of war. This is important because the court is the key mechanism for protecting human rights and freedoms from potential abuses of power, which are particularly likely under martial law. Maintaining, as far as possible, the full operation of courts guarantees the observance of the rule of law and prevents arbitrary restrictions on individuals' rights.

The first order of the Head of the Supreme Court regarding changes to the territorial jurisdiction of court cases under martial law was issued on 6 March 2022, which altered the jurisdiction of courts in the Donetsk, Kyiv, Luhansk, and Kherson regions. In particular, the changes affected seven courts in Donetsk region, four courts in Kyiv region, sixteen courts in Luhansk region, and twenty-one courts in Kherson region¹⁸. This order allowed courts to continue hearing cases even in regions where, due to hostilities, the operation of courts had become impossible. It ensured the continuity of justice by transferring cases to courts operating under relatively safer conditions.

From the beginning of the war until the end of 2022, more than twenty such orders were issued. At the same time, as the security situation changed and following the liberation of certain territories, the operation of courts was restored through corresponding orders. This primarily concerned courts in the Kyiv, Sumy, and Chernihiv regions.

In response to the unprecedented challenges caused by the full-scale armed aggression and the imposition of martial law, in April 2022, a draft Law of Ukraine "On Amendments to the Code of Administrative Procedure of Ukraine, the Civil Procedure Code of Ukraine, and the Commercial Procedure Code of Ukraine (regarding the administration of justice under martial law or a state of emergency)" was developed and submitted to the Verkhovna Rada of Ukraine. The purpose of the draft law was to ensure the continuity and actual accessibility of justice during wartime, when significant portions of Ukraine's territory were under occupation or in zones of active hostilities, millions of citizens were forcibly displaced, and the normal operation of courts was hindered by security risks and personnel shortages. A particular problem was the impossibility of the physical presence of court session clerks in courts due to threats to life, evacuation, or low remuneration that did not compensate for the risks of wartime conditions.

The draft law proposed a series of flexible procedural mechanisms aimed at adapting judicial proceedings to emergency conditions. In particular, it was proposed to allow the temporary delegation of the powers of a court session clerk to other court staff, as well as to introduce the possibility of performing these functions remotely

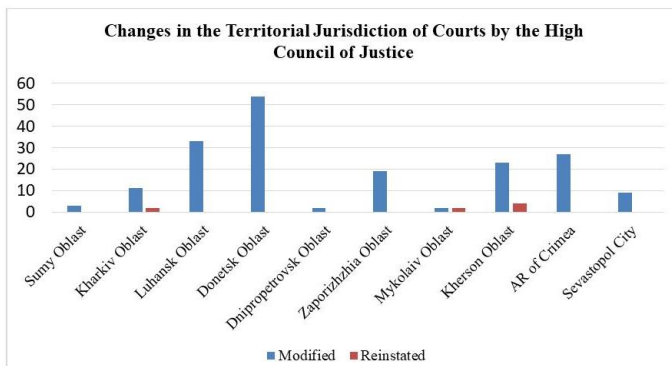
¹⁷ Про правовий режим воєнного стану. Закон України № 389-VIII від 12 травня 2015 року. Законодавство України. URL: <https://zakon.rada.gov.ua/laws/show/389-19#Text> – Art. 12-2.

¹⁸ Наказ Голови Верховного Суду № 1/0/9-22 від 06 березня 2022 року Про зміну територіальної підсудності судових справ в умовах воєнного стану. URL: https://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/war/Rozp_06_03_2022.pdf

via videoconference. A separate set of changes concerned the expansion of methods for notifying participants: the court would have the right to inform parties of hearings through any available communication channels—telephone, SMS, email, messaging applications, and the official web portal of the judiciary—provided that receipt of the notification was confirmed.

Additionally, the draft law sought to formalize the possibility of hearing cases within a “reasonable time,” taking into account the actual capacities of judges and participants to engage in proceedings, and to substantially expand the use of written procedure in courts of all jurisdictions as a safer and more efficient form of case consideration. An important component of the initiative was the extension, for the period of martial law or a state of emergency, of procedural measures that had previously been applied during the COVID-19 quarantine, which had proven effective.¹⁹ At the same time, despite the clear practical focus and relevance of the proposed amendments, this draft law did not receive the necessary support during the vote in the Verkhovna Rada of Ukraine and was subsequently officially rejected. As of today, its provisions have not entered into force as legislation.

At the beginning of 2023, in January, a fully empowered composition of the High Council of Justice was established, following which further decisions regarding changes to the territorial jurisdiction of courts were made by this body in accordance with the law. Taking into account the security situation, including the intensity of hostilities, and the occupation or liberation of certain territories, decisions were made both to alter the territorial jurisdiction of cases and to restore the operation of individual courts.



Pic. 1

¹⁹ Проект Закону про внесення змін до Кодексу адміністративного судочинства України, Цивільного процесуального кодексу України та Господарського процесуального кодексу України (щодо здійснення правосуддя в умовах воєнного стану або надзвичайного стану). Верховна Рада України. Законопроекти. URL: <https://itd.rada.gov.ua/billinfo/Bills/Card/39489>

The Graphical Representation of Changes in the Territorial Jurisdiction of Courts by Decisions of the High Council of Justice²⁰ indicates that the largest number of changes in territorial jurisdiction occurred in Donetsk and Luhansk regions, which is associated with prolonged and intense hostilities. Significant figures were also recorded in Kherson, Zaporizhzhia, and Kharkiv regions. At the same time, the restoration of operations in individual courts is primarily observed in Kharkiv, Mykolaiv, and Kherson regions, reflecting a partial stabilization of the security situation in these areas.

According to official data published on the website of the Supreme Court, as of early August 2025, the territorial jurisdiction of approximately 182 courts had been changed, while 56 courts had resumed the administration of justice. The main concentration of courts whose territorial jurisdiction was changed and which are temporarily not exercising justice is located in the eastern and southern regions of Ukraine (Autonomous Republic of Crimea and the City of Sevastopol, Donetsk Region, Luhansk Region, Kherson Region, Zaporizhzhia Region, Kharkiv Region, etc.). The restoration of court operations and judicial proceedings is occurring primarily in the northern and central regions (Chernihiv, Sumy, Kyiv, etc.)²¹.

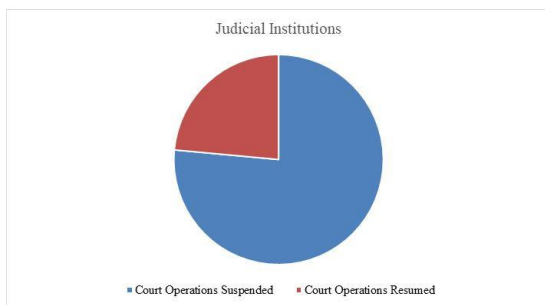


Fig. 2. Statistics on Changes and Restoration of the Territorial Jurisdiction of Courts

Specific recommendations on the organization of court and judicial work under martial law were approved by the decision of the Council of Judges of Ukraine No. 10 of 14 March 2022. This decision formulated guidelines aimed at adapting the work of courts and the status of judges to the conditions of martial law. The document defined approaches regarding judges' participation in national resistance, emphasizing that such participation is permissible provided that the priority of administering justice is maintained, and established the corresponding organizational and reporting mechanisms.

²⁰ Інтерактивна онлайн-карта судів, територіальну підсудність судових справ яких змінено. Вища рада правосуддя. URL: <https://hcj.gov.ua/pidsud-mar>

²¹ Наказ про визначення територіальної підсудності справ. Верховний Суд. URL: https://supreme.court.gov.ua/supreme/gromadyanam/terutor_pidsudnist/

The decision also regulated the issue of preserving judicial remuneration in cases of remote work, service in defense forces, temporary suspension of court operations, or the impossibility of administering justice due to reasons beyond the judge's control. In addition, the recommendations outlined the procedure for organizing employment relations with judges who were forced to leave their place of residence due to hostilities, taking into account the security situation, the possibility of return, and the permissibility of remote work strictly within the territory of Ukraine.²² These recommendations provided legal clarity regarding the actions of judges and courts during wartime and made it possible to combine the exercise of judicial powers with participation in national resistance, while creating conditions for the continuation of judicial proceedings under such circumstances.

On 27 July 2022, further amendments were made to the Law of Ukraine "On the Judiciary and the Status of Judges" regarding the introduction of additional methods for notifying participants about court cases and holding judges' meetings under martial law or a state of emergency.²³ Considering the limited capacity of postal service operators to deliver correspondence, the legislator introduced the possibility of additionally notifying participants in judicial proceedings about hearings through the Unified State Web Portal of Electronic Services, including via the mobile application of the Diia Portal. This also includes the electronic receipt, through the respective application, of court decisions, or enforcement documents issued in electronic form, by a person who is a party to the case. These amendments also introduced the possibility of holding judges' meetings remotely via videoconference during martial law or a state of emergency. The remote conduct of judges' meetings to address current operational matters of a particular court will contribute to compliance with security measures, which are critically important under such conditions.

By the decision of the Council of Judges of Ukraine No. 23 of 5 August 2022, the official position on the organization of court operations under martial law was confirmed. The decision emphasized that the right to judicial protection cannot be restricted even under extraordinary circumstances, while the life and safety of individuals are recognized as a priority. The Council of Judges of Ukraine acknowledged the recommendations on court operations during wartime, published on 2 March 2022, as having official status and applicable in the organization of court activities. The document guides courts toward flexible determination of their operational regime, the possibility of temporary suspension of judicial proceedings in the event of a real threat, and the active use of remote working methods. It also specifically highlights the duty to respond to air-raid alerts and the necessity for courts to develop contingency plans for emergencies, aimed at ensuring the safety

²² Рішення Ради суддів України (14 березня 2022 року) Про затвердження окремих рекомендацій щодо організаційних питань роботи суддів в умовах воєнного стану. URL: <https://zakon.rada.gov.ua/rada/show/v0010414-22#Text>

²³ Закон України «Про внесення змін до Закону України «Про судоустрій і статус суддів» щодо додаткових способів інформування про судові справи та проведення зборів суддів в умовах воєнного стану або надзвичайного стану» (2022 рік). Законодавство України. URL: <https://zakon.rada.gov.ua/laws/show/2461-20#Text>

and stable functioning of the judiciary under wartime conditions²⁴. In practice, the decision established the official model for court operations during wartime, oriented simultaneously toward the continuity of justice and the priority of preserving life and safety.

According to the 2022 Activity Report of the State Judicial Administration of Ukraine, at the beginning of 2022, 674 local and appellate courts were administering justice in Ukraine. However, 85 courts became temporarily inoperative due to occupation or active hostilities, of which 54 suspended operations after 24 February 2022. As of 1 January 2023, the territorial jurisdiction of these 85 local and appellate courts had been adjusted, with 50 of them resuming operations, although some courts continued to operate outside their primary premises.²⁵ During the first year of the war, the judicial system operated under significant restrictions, with the temporary suspension of some courts and widespread changes in territorial jurisdiction, which required rapid organizational adaptation.

Considering the need to ensure effective communication among participants in judicial proceedings and the difficulties arising from postal correspondence, on 23 January 2023, the State Judicial Administration of Ukraine issued Order No. 28, which approved the Procedure for Sending Court Summonses, Notices, and Calls to Participants in Judicial Proceedings in Electronic Form. This act established the legal and organizational framework for sending court summonses, notices, and calls to participants in electronic form based on the provisions of procedural codes and the Law “On the Judiciary and the Status of Judges.” It introduced a mechanism for notifying participants via messaging applications or SMS using the court’s automated document management system, provided that the participant submits the corresponding request and the technical capabilities exist.²⁶ The practical benefit of these legislative changes was that courts were able to quickly and reliably notify participants in proceedings without relying on paper correspondence, ensuring timely participation in cases, saving budgetary resources, and maintaining the continuity of justice.

At the beginning of 2023, a new draft law was developed and registered in the Verkhovna Rada of Ukraine – “On Amendments to the Code of Administrative Procedure of Ukraine, the Civil Procedure Code of Ukraine, the Commercial Procedure Code of Ukraine, and Other Legislative Acts Regarding the Administration of Justice During Martial Law or a State of Emergency and the Resolution of Disputes with the Participation of a Judge.” The draft law aimed at comprehensively regulating the specifics of judicial proceedings under martial law or a state of emergency, taking into account security risks, staffing issues in courts, and the limited ability of participants to attend court hearings. The document proposed the introduction of remote work for court

²⁴ Про рекомендації щодо організаційних питань роботи суддів в умовах воєнного стану. Рішення Ради суддів України від 5 серпня 2022 року. URL: <https://zakon.rada.gov.ua/rada/show/v0023414-22#Text>

²⁵ Звіт про діяльність Державної судової адміністрації України за 2022 рік. URL: [https://dsa.court.gov.ua/userfiles/media/new_folder_for_uploads/dsa/ZVIT_DSA_UKRAYNA_2022_compressed%20\(1\)_compressed_compressed.pdf](https://dsa.court.gov.ua/userfiles/media/new_folder_for_uploads/dsa/ZVIT_DSA_UKRAYNA_2022_compressed%20(1)_compressed_compressed.pdf)

²⁶ Про затвердження Порядку надсилання судових повісток, повідомлень і викликів учасникам судового процесу в електронній формі. Наказ Державної судової адміністрації України № 28 від 23 січня 2023 року. URL: <https://zakon.rada.gov.ua/rada/show/v0028750-23#Text>

clerks, the possibility of delegating their powers to other court staff, expanded methods for notifying participants in judicial proceedings, broader application of written proceedings, remote access for judges to the automated document management system, and improvements to the procedure for resolving disputes with the participation of a judge as an alternative to a full judicial hearing.²⁷ The draft law was included in the agenda of the Verkhovna Rada of Ukraine on 23 May 2024; however, as of today, there is no publicly available information regarding its consideration in the plenary session, voting, or further legislative progress.

The adoption of the Law of Ukraine on 29 June 2023, “On Amendments to Certain Legislative Acts of Ukraine Regarding Mandatory Registration and Use of Electronic Cabinets in the Unified Judicial Information and Telecommunication System or Its Separate Subsystem (Modules) Ensuring Document Exchange,” became a logical continuation of the state policy on the digitalization of justice and a response to systemic problems related to the low level of use of the USITS by subjects for whom such registration was formally mandatory.²⁸ Under martial law, when physical access to courts, stable postal services, and in-person participation in proceedings were often impossible, electronic justice effectively became the primary mechanism for ensuring access to justice. The introduction of mandatory electronic cabinets enabled effective electronic communication between courts and participants in proceedings and contributed to the continuation of court operations under the prevailing conditions.

According to the 2023 report of the European Commission, prepared following the assessment of Ukraine’s readiness to begin negotiations for accession to the European Union, the Russian Federation’s military aggression against Ukraine caused systemic disruptions in the functioning of the judicial system. As of the end of April 2023, 12 judicial system employees had been killed, 114 court buildings were destroyed or damaged (approximately 15% of the total number), and material losses to courts were estimated at around €47 million. At the same time, the prosecutorial authorities suffered losses including 6 staff deaths, 64 destroyed or damaged buildings, 173 offices located in temporarily occupied territories, and material damages exceeding €22 million. Combined with mass internal and external displacement of participants in judicial proceedings, regular air-raid alerts, shelling, and power outages, these factors significantly complicated the administration of justice.²⁹ These indicators demonstrate that the war inflicted substantial human,

²⁷ Проект Закону України «Про внесення змін до Кодексу адміністративного судочинства України, Цивільного процесуального кодексу України, Господарського процесуального кодексу України та інших законодавчих актів щодо здійснення правосуддя в умовах воєнного стану або надзвичайного стану та врегулювання спорів за участю судді». Верховна Рада України. Законопроекти. URL: <https://itd.rada.gov.ua/billinfo/Bills/Card/41130>

²⁸ Про внесення змін до деяких законодавчих актів України щодо обов’язкової реєстрації та використання електронних кабінетів в Єдиній судовій інформаційно-телекомунікаційній системі або її окремій підсистемі (модулі), що забезпечує обмін документами. Закон України № 3200-IX від 29 червня 2023 року. URL: <https://zakon.rada.gov.ua/laws/show/3200-20#n403>

²⁹ Commission Staff Working Document. Ukraine 2023 Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2023 Communication on EU Enlargement policy. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52023SC0699>. – P. 20.

material, and organizational losses on Ukraine's judicial system: a significant portion of judicial infrastructure was destroyed, personnel were killed, cases were lost, and court operations were continually complicated by security risks, power outages, and population displacement.

According to the 2023 activity report of the State Judicial Administration of Ukraine, despite the conditions of martial law, it, together with its territorial offices, ensured the proper financial and organizational functioning of the judiciary. This was aimed at upholding the constitutional right to a fair trial and ensuring adequate working conditions for courts. The report also notes that, as of 31 December 2023, territorial jurisdiction had been temporarily changed for 76 local and appellate courts. Of these, 59 courts restored their jurisdiction and returned to their premises, provided they were intact. At the same time, 83 courts temporarily did not administer justice in occupied areas or zones of active hostilities. Overall, the judicial system comprised 674 local and appellate courts.³⁰ These facts indicate that during the second year of the war, the primary objective was to maintain the functioning of the judicial system at least at a basic level under wartime conditions, when some courts were non-operational or had to change their territorial jurisdiction, and ensuring the administration of justice required continuous organizational decisions.

To regulate remote participation in judicial proceedings, in April 2024 a draft law was prepared aimed at improving participation in court hearings via videoconference. The need for its development was dictated by the provisions of the Strategy for the Development of the Judicial System and Constitutional Proceedings for 2021–2023, which envisaged the development of electronic justice and the expansion of electronic forms of interaction between the court and participants in proceedings. Under martial law, such participation gained additional significance, as it contributes not only to access to justice but also to the safety of participants in judicial proceedings.

At the same time, existing procedural legislation contains shortcomings that complicate the organization of videoconferences, especially in appellate and cassation courts. In particular, deciding on motions for participation in a hearing via videoconference requires a decision by the full bench, which leads to delays and inefficient use of judicial resources. The draft law aims to address these issues by granting the reporting judge the authority to unilaterally decide on the conduct of videoconferences, as well as by formally establishing the right of party representatives to participate in hearings remotely. Special attention is given to enabling witnesses, experts, translators, and specialists to participate via videoconference outside the court premises during martial law or a state of emergency when safety risks are present.³¹ The significance of this draft law lies in the fact that its provisions genuinely simplify and expedite access to justice.

³⁰ Звіт про діяльність Державної судової адміністрації України за 2023 рік. URL: https://dsa.court.gov.ua/dsa/pokazniki-diyalnosti/1233/zvit_dsa_23 С. 2.

³¹ Проект Закону про внесення змін до Господарського процесуального кодексу України, Цивільного процесуального кодексу України та Кодексу адміністративного судочинства України щодо вдосконалення участі в судових засіданнях у режимі відеоконференції. Верховна Рада України. Законопроекти. URL: <https://itd.rada.gov.ua/billinfo/Bills/Card/44035>

Related to the aforementioned changes is the draft Law of Ukraine “On Amendments to Certain Legislative Acts to Simplify Participation in Court Hearings via Videoconference,” which was registered in the Verkhovna Rada of Ukraine on 26 April 2022.³² Its introduction was driven by the further development of electronic justice and the need to remove procedural barriers that complicate the remote participation of individuals in court hearings.

The changes proposed in the aforementioned draft laws were reflected in the Law of Ukraine “On Amendments to the Commercial Procedure Code of Ukraine, the Civil Procedure Code of Ukraine, and the Code of Administrative Procedure of Ukraine Regarding the Improvement of Participation in Court Hearings via Videoconference,” which was adopted on 23 May 2024. The adoption of this law addressed practical challenges associated with the widespread use of videoconferencing in judicial proceedings, particularly in the context of the digitalization of justice, pandemic-related restrictions, and the imposition of martial law.

The legislator aimed to unify and clarify the relevant provisions of the three procedural codes, eliminating ambiguities in their application and ensuring a consistent approach to organizing court hearings remotely. The law establishes the right of parties and their representatives to participate in hearings via videoconference, both from another court’s premises and from outside the court using their own technical devices. It also defines the procedural rules for submitting a corresponding application, the deadlines for submission, and the obligation to notify other participants in the proceedings.

A significant innovation is the delegation of authority to decide on conducting a videoconference to a single judge, or, in the case of a collegiate hearing, to the reporting judge. The law pays special attention to the electronic identification of participants in court hearings, requiring them to use electronic identification means with a high level of trust in accordance with legal requirements. Additionally, it establishes that any technical failures during participation in a videoconference outside the court premises are the responsibility of the person who initiated that form of participation.³³ Thus, the aforementioned law has a systemic character and is aimed at enhancing access to justice, procedural efficiency, and the effectiveness of court proceedings, while simultaneously ensuring an adequate level of procedural guarantees and information security. It has significantly simplified and expedited the adoption of technical procedural decisions that do not affect the substantive resolution of cases but are important for the organization of the judicial process.

During the full-scale war against Ukraine, a situation arose in certain courts where not only judges but also court staff were absent. As a general rule, the organizational activities of a court are ensured by its administrative office headed by the head of the court staff, whose appointment procedure is defined by Article 155 of

³² Проект Закону про внесення змін до деяких законодавчих актів щодо спрощення участі в судових засіданнях у режимі відеоконференції. Верховна Рада України. Законопроекти. URL: <https://itd.rada.gov.ua/billinfo/Bills/Card/43911>

³³ Про внесення змін до Господарського процесуального кодексу України, Цивільного процесуального кодексу України та Кодексу адміністративного судочинства України щодо вдосконалення участі в судових засіданнях у режимі відеоконференції. Закон України № 3755-IX від 23 травня 2024 року. URL: <https://zakon.rada.gov.ua/laws/show/3755-20#Text>

the Law of Ukraine “On the Judiciary and the Status of Judges”. Current legal provisions also allow for the temporary performance of the duties of the head of the court staff; however, these provisions are based on the assumption that judges or court staff members are present in the court and able to initiate the relevant personnel decisions. In the absence of such persons, the statutory mechanism effectively ceases to function. This creates a gap in legal regulation and a risk of suspension of the court’s organizational activities, indicating the need to adapt legislation to the conditions of martial law.

In order to eliminate the identified legal uncertainty and ensure the continuous functioning of courts, the State Judicial Administration of Ukraine initiated the Draft Law of Ukraine “On Amendments to Article 155 of the Law of Ukraine ‘On the Judiciary and the Status of Judges’ Regarding the Organization of Court Activities”. In particular, the draft law proposed establishing a special procedure for organizing court activities in cases where a court lacks judges authorized to administer justice. It provided for the introduction of a mechanism for appointing an acting head of the court staff under such conditions, as well as for vesting that person with the administrative powers of the court president in terms of representing the court as a state authority. This included, inter alia, the exercise of representative functions in relations with other state authorities, local self-government bodies, and natural and legal persons.³⁴ Subsequently, this legislative initiative of the State Judicial Administration of Ukraine was supported by the Verkhovna Rada Committee on Legal Policy and implemented through the adoption of the Law of Ukraine of 18 July 2024 No. 3889-IX “On Amendments to Article 155 of the Law of Ukraine ‘On the Judiciary and the Status of Judges’ Regarding the Organization of Court Activities”, which formally закрепило the relevant provisions in legislation.

Overall, according to the 2024 activity report of the State Judicial Administration of Ukraine, as of 31 December 2024, the administration of justice was carried out by 596 local and appellate courts. At the same time, the territorial jurisdiction of court cases was temporarily changed for 161 courts (155 local and 6 appellate courts)³⁵.

CONCLUSIONS

The functioning of Ukraine’s judicial system under martial law has demonstrated its ability to adapt to extraordinary circumstances through flexible legal and regulatory measures. The adoption and development of legislation aimed at modifying territorial jurisdiction, ensuring remote participation in court hearings, and simplifying procedural rules proved to be a key instrument in maintaining access to justice and the continuity of judicial proceedings.

Significant importance was attached to changes that allowed for broader use of videoconferencing and simplified the procedures for scheduling such hearings. This enabled the avoidance of delays in case consideration, reduced the organizational

³⁴ Проект Закону про внесення змін до статті 155 Закону України «Про судоустрій і статус суддів» щодо організації діяльності судів № 11283 від 22 травня 2024 року. Верховна Рада України. Законопроекти. URL: <https://itd.rada.gov.ua/billinfo/Bills/CardByRn?regNum=11283&conv=9>

³⁵ Звіт про діяльність Державної судової адміністрації України за 2024 рік. URL: https://dsa.court.gov.ua/dsa/pokazniki-diyalnosti/1233/zvit_dsa_24

burden on courts, and ensured the participation of parties in proceedings regardless of their location.

At the same time, the implemented changes highlighted that the judicial system had to operate in a mode of compromise between procedural formalities and practical possibilities. Priority was given to the continuity of justice and the safety of participants, even if this required deviations from traditional procedures.

Overall, the legal and regulatory changes enacted during the war allowed for the preservation of the functioning of Ukraine's judicial system. Simultaneously, they laid the groundwork for the further development of electronic justice, which, after the conclusion of martial law, will require reassessment and systematic refinement based on the practical experience gained.

SUMMARY

The author analyzes the functioning of Ukraine's judicial system under the legal regime of martial law, with a focus on its regulatory and legal features and their impact on the administration of justice. The concept of martial law is examined as a special legal regime that allows for temporary restrictions on certain rights and freedoms and introduces specific mechanisms of public governance, which directly affect the organization of judicial proceedings. The author explores how martial law influences the exercise of the right to judicial protection, access to justice, and compliance with the principle of a fair trial in the context of armed aggression. Particular attention is paid to procedural changes aimed at adapting the judicial system to wartime challenges, including the temporary change of territorial jurisdiction, the use of remote forms of participation in court hearings, and the simplification of certain procedural issues. It is shown that these changes have a compensatory nature and are intended not to limit the substance of the right to justice, but to ensure its practical realization under extraordinary conditions. In conclusion, it is substantiated that the legal regime of martial law significantly transforms the conditions under which the judiciary operates, while not abolishing its constitutional role as a guarantor of the protection of human rights and freedoms. The regulatory solutions introduced have made it possible to maintain the continuity of judicial proceedings and to ensure a minimum necessary level of access to court, which demonstrates the adaptability of Ukraine's judicial system and its ability to function even in times of war.

Key words: martial law, judicial system of Ukraine, administration of justice, access to justice, judicial proceedings, legal regulation, wartime conditions, rule of law

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