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UKRAINIAN COURTS IN CRISIS: MAINTAINING THE INTEGRITY OF THE JUDICIAL SYSTEM IN TIMES OF CONFLICT

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Abstract. *This article discusses the challenges faced by the Ukrainian judicial system during the ongoing conflict in Ukraine and the efforts being made to maintain its integrity. The author highlights the impact of the conflict on the courts, including the loss of judges and the destruction of court buildings, and examines the measures taken to address these challenges. The article also discusses the reforms that have been implemented to strengthen the independence and impartiality of the judiciary. Finally, the author emphasises the need for continued support for these efforts to ensure the integrity of the Ukrainian judicial system in times of conflict.*

On February 24, 2022, the Russian Federation launched a full-scale war against Ukraine. On the same day, the President of Ukraine issued Decree No. 64/2022, which introduced martial law [1]. The Russian invasion and the martial law affected the work of the courts. Since the work of the courts affects the level of security in the state, and the observance of the constitutional rights of every citizen, the question of the work of the courts during martial law is relevant. Everyone's right to judicial protection, guaranteed by the Constitution of Ukraine, cannot be nullified even by martial law. Therefore, the Ukrainian judiciary in Ukraine found new opportunities to work in the conditions of war. This study aims to study the peculiarities of the work of courts under martial law in the example of Ukraine.

According to Art. 10 of the Law of Ukraine "On the Legal Regime of Martial Law" during the martial law period, the courts' powers cannot be suspended. The second part of Art. 26 of the Law states that reducing or accelerating any judicial proceedings is prohibited. But, at the same time, the judicial system of Ukraine was also affected by the war and its consequences, which made adjustments to the processes of judicial administration [2].

As of February 24, 2022, the judicial system in Ukraine was forced to act depending on the real situation. The lack of well-thought-out algorithms and a full-fledged body responsible for proper coordination brought to the forefront the initiatives of the Council of Judges of Ukraine, which turned out to be important for the stabilisation of the judicial system [3]. On the same day, the Council of Judges of Ukraine made a decision, emphasising the following key points:

- the work of the courts cannot be suspended;
 - the safety of people is the primary goal;
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- an operational headquarters was created at the Council of Judges of Ukraine;
- the government should ensure the information security of judges and limit public access to public registers containing information about them;
- heads of justice bodies are responsible for organising emergency measures;
- the parliament should promptly respond to the need for legislative support for the stable functioning of the judicial system;
- all judicial bodies should develop plans that include: measures to preserve personal files and personal data of judges and employees; lists of court cases to be evacuated, as well as those to be destroyed; the places where such documents will be evacuated and the routes of such movement; issues of information technology evacuation and data preservation [4].

Due to active hostilities and the temporary occupation of some territories, some courts in the Donetsk, Zhytomyr, Zaporizhia, Kyiv, Luhansk, Mykolaiv, Sumy, Chernihiv, Kharkiv and Kherson regions have suspended their activities. As a result, by the relevant orders of the Chairman of the Supreme Court "On changing the territorial jurisdiction of courts under martial law", taking into account the impossibility of courts to administer justice during martial law, the territorial jurisdiction of court cases considered in these courts was changed [5].

The Chairman of the Supreme Court of Ukraine noted that as of October 20, 2022, 14% (94) of appellate and local courts are not working; 11% of the total number of court premises were damaged or destroyed: 75 court premises were damaged, and 10 courts were destroyed. Moreover, 9% of courts are located in territories temporarily not controlled by the Ukrainian authorities [8].

The given information shows that the organisation of the work of Ukrainian courts in wartime is based on two main postulates of a democratic society. The first is "A person, his life and health, inviolability and safety are the highest value. The right to life is every person's natural and inalienable right." The second is "The constitutional right of a person to judicial protection determines the continuity of the administration of justice in the state." Continuity of administration of justice is ensured by the same network of courts that operated before the conflict. This is guaranteed by the constitutional ban on creating special and extraordinary courts [7].

Thus, the question of whether it is safe for people to administer justice in a particular territory by a court has become decisive in making effective decisions regarding the organisation of the work of courts in wartime conditions. After all, the different intensities of hostilities in different territories led to the heterogeneity of the ability of Ukrainian courts to administer justice.

Indeed, today it has become possible to differentiate courts by location into those located: in the occupied territories; in areas where hostilities are underway; in the "front-line" territories; in conditionally safe areas. In the first two cases, justice is impossible in any form. In the case when the courts are located in the "front-line" territories, depending on the specific situation, the courts: do not work; work, but do not hold open court sessions; working normally.

Despite the "territorial problem" and the unsuitability of the premises, all courts of Ukraine were united by the common problem of a shortage of judicial personnel, which worsened during the war. Before the conflict, there were more than 2,000 vacant positions in Ukraine and there was a tendency to dismiss experienced judges. During the war, this problem worsened due to the mobilisation of judges to military units, as well as the transfer of judges to other regions of Ukraine and abroad [9].

So, there are 2 key problems in the organisation of the work of Ukrainian courts during the war: the "territory problem" and the "personnel problem". Thus, during the

period of martial law, the courts of Ukraine continue their work, but with certain features:

1. Change of territorial jurisdiction. On 03.03.2022, the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Amendments to the Law of Ukraine "On the Judiciary and the Status of Judges" on Changing the Jurisdiction of Courts" [6].

2. The specifics of the operation of the courts during martial law depend on the situation in the region where the court is located.

3. Transfer of materials of court cases. The Supreme Court of Ukraine gave recommendations to the courts located in the territory of active hostilities: if possible, the pending cases should be transferred to other courts. First of all, it concerns those cases that are pending before judges and high-profile cases: materials of criminal proceedings in which a person is kept in custody; proceedings on particularly serious crimes; other cases, the consideration of which may be important for the rights of the participants in the process.

The experience acquired by Ukraine since the beginning of Russian aggression has shown that the judicial system of any state must be ready for various scenarios. Its central bodies should develop protocols for prompt response to changes in the situation and formalise the algorithm of court work under martial law. These protocols should provide for the evacuation of courts, the preservation and transfer of court materials to other courts, and the safety of judges and court employees. According to the Ukrainian experience, during the war, it is advisable to decentralise the powers of the judicial administration and accumulate them "on the ground", namely to give such powers to the heads of specific courts, which allows for prompt response to the situation by changing conditions and needs. The judicial system in wartime must be flexible and avoid excessive formalism. There must be coordinated and operational communication with the parliament, which must quickly change the legislative framework for the judiciary according to the war's development stage.

Conclusion. Even under martial law, courts must continue to administer justice. Reduction or acceleration of any form of judicial proceedings is prohibited. After 14 months after the beginning of the full-scale aggression of the Russian Federation against Ukraine, it can be stated that the judicial system has withstood the blow and continues to work relatively stable (of course, with an adjustment for the military situation in a specific area). In any case, we must monitor the situation, do our work and hope that all the challenges of war will eventually be overcome.

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