

ORGANIZATION OF OPERATION OF COURTS AND PROSECUTOR'S OFFICE IN TERMS OF MARTIAL LAW: EXPERIENCE OF UKRAINE

ORGANIZAÇÃO DAS ATIVIDADES DO TRIBUNAL E DO MINISTÉRIO PÚBLICO SOB A LEI MARCIAL: A EXPERIÊNCIA DA UCRÂNIA

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Abstract: The issue of organizing the operation of the court and prosecutor's office in terms of the martial law is extremely urgent. Since then, Ukraine, for the first time in many years, has faced a problem related to the need to reorganize the operation of courts and prosecutor's offices in order to continue performing their functions during the armed aggression. The current situation demonstrated that the Ukrainian judicial system and the prosecutor's office were not properly prepared for war. The lack of any pre-developed clear plans or programs for the functioning of the court and prosecutor's office in terms of war or emergency situation is a bright proof. Therefore, the gained experience of the operation of courts and prosecutor's offices in terms of the acute phase of the Russian-Ukrainian war can be useful for other countries. Solving the existing problems with ensuring a fair trial in peacetime was complicated by a number of additional challenges caused by the war. Therefore, Ukraine faced a double task: first, to ensure the functioning of the judicial system in terms of the martial law, and secondly, to continue fulfilling its obligations regarding the implementation of judicial reform, which is a necessary condition for Ukraine's accession to the European Union. The authors of the article have studied the main problems of organizing the operation of courts and prosecutor's offices in terms of the martial law and have offered possible ways to solve them.

Keywords: Administrative and legal provision. Law enforcement agencies' activities. Law enforcement function. Prosecutor's office. Judicial reform. Public justice. Court.

Resumo: As questões de organização das atividades do tribunal e do Ministério Público sob a lei marcial são extremamente relevantes. Afinal de contas, pela primeira vez em muitos anos, a Ucrânia enfrentou um problema relacionado com a necessidade de reestruturar as atividades dos tribunais e do Ministério Público, a fim de continuarem a desempenhar as suas funções durante a agressão armada. A situação atual mostrou que o sistema judicial e o Ministério Público ucranianos não estavam devidamente preparados para a guerra. Prova disso foi a falta de planos ou programas claros pré-desenvolvidos para o funcionamento do tribunal e do Ministério Público em condições de lei marcial ou de estado de emergência. Portanto, a experiência adquirida no trabalho dos tribunais e procuradores na fase aguda da guerra russo-ucraniana pode ser útil para outros países. A resolução dos problemas existentes relativos à garantia de julgamentos justos em tempos de paz foi complicada por uma série de desafios adicionais causados pela guerra. Por conseguinte, a Ucrânia enfrentou uma dupla tarefa: em primeiro lugar, garantir o funcionamento do sistema judicial sob a lei marcial e, em segundo lugar, continuar a cumprir as suas obrigações de implementar a reforma judicial, que é uma condição necessária para a adesão da Ucrânia à União Europeia. O artigo examina os principais problemas de organização das atividades do tribunal e do Ministério Público sob a lei marcial, e sugere possíveis formas de resolvê-los.

Palavras-chave: Apoio administrativo e jurídico. Atividades das agências de aplicação da lei. Função de aplicação da lei. Gabinete do procurador. Reforma judicial. Justiça. Tribunal.

1. Introduction

It is a well-known fact that the martial law was introduced on the territory of Ukraine on February 24, 2022. It was related to the military aggression of the Russian Federation against Ukraine.

The judicial branch of power was affected by the war and its consequences, which made adjustments to the processes of judiciary administration. Some courts of Ukraine have currently suspended their activities due to active hostilities and temporary occupation. At the same time, courts and prosecutor's offices begin to resume their operation on the territories liberated from occupation.

The right of access to court belongs to those rights guaranteed by the Constitution and international documents, which cannot be limited even in terms of the martial law. Therefore, the courts continue to administer justice, despite the danger of shelling and bombing.

Formally, the introduction of the martial law does not affect the process of judicial proceedings and operation of the prosecutor's office. In particular, reducing or speeding up any forms of judicial proceedings in terms of the martial law is prohibited in accordance with the Art.26 of the Law of Ukraine "On the Legal Regime of the Martial Law". At the same time, it is extremely difficult to ensure the smooth operation of courts and prosecutor's offices during the war. Herewith, there is almost no experience of managing the judicial system in terms of the martial law.

Continuous work of the judicial power and the prosecutor's office in terms of the martial law is extremely important given the tasks and challenges faced by Ukraine and the judicial system. Despite the war, the administration of justice in Ukraine did not stop, and timely measures taken by the state made it possible to ensure the continuous work of the judicial system.

It is especially important to support the operation of courts and prosecutor's offices in areas of hostilities. However, the evacuation of most of their employees must be ensured in parallel in order to achieve the minimum necessary number of personnel needed to continue the work (Lapkin, 2022, p. 1211).

On the way to ensuring the basic principle of access to justice, the judicial branch of power and the prosecutor's office faced such problems as: staffing, financing, holding contests for filling the vacancies, functioning of judicial governance agencies, etc. These problems also existed in peacetime, but wartime challenges were added to them – the destruction of court and prosecutor's office buildings, the destruction of logistics and infrastructure, court cases, the forced evacuation of judges and court employees, etc. (Annual report of the High Council of Justice, 2022, p. 4). The indicated and other problems have become a significant obstacle for ensuring the smooth operation of the entire judicial system in general and the administration of justice in Ukraine in particular. The authors of this article offer to consider the main problems among the outlined ones that faced the judiciary in terms of the martial law in Ukraine.

Therefore, the purpose of the article is to study the problems of the functioning of the judicial power and the prosecutor's office in terms of war and to develop scientifically based suggestions for their solution.

2. Analysis of recent research Literature Review

The issues of the organization and operation of the judicial power and the prosecutor's office is currently the subject of many scientific discussions in terms of the acute phase of the Russian-Ukrainian war. Some of them are related to a wide range of judicial reform, which is a necessary step both for Ukraine to become a member of the European Union, and for the development of the Ukrainian state and civil society in general (Bandurka et al., 2023; Teremetskyi, 2022a; Kurylo et al., 2020; Teremetskyi and Kosytsia, 2023). Some scholars have focused their attention on the analysis of the main

provisions of the Justice System Development Strategy and on the development of science-based suggestions for solving the problems of its further implementation (Teremetskyi, 2022b). Some scholars focused attention in their papers on researching issues related to the implementation of modern information technologies into the judiciary (Teremetskyi et al., 2023; Teremetskyi and Duliba, 2023). Other scholars focused on ensuring the implementation of human right to free secondary legal assistance, which is a guarantee of the compliance both with the basic principles of the administration of justice, and the implementation of human right to a fair trial and an effective mean of legal protection (Duliba et al., 2023; Teremetskyi et al., 2021). An important role in modern publications is given to the reform of the Judicial Security Service, which directly guards courts and other objects of the judicial system (Derevianko et al., 2023). Some scholars focused on the analysis of the existing and development of the latest judicial and extrajudicial mechanisms of legal regulation of compensation for damage caused to Ukraine as a result of the armed conflict and the formulation of general recommendations for their improvement (Onishchenko et al., 2023).

However, a small number of scientific publications are focused on resolving the problems of organizing the operation of courts and prosecutor's offices during the legal regime of the martial law (Teremetskyi et al., 2023; Lapkin, 2022, p. 202). Therefore, many scientific and practical problems in this area remain unsolved.

3. Results and discussion

The role of the Parliament and judicial self-government agencies in ensuring the operation of courts in terms of the martial law

On March 3, 2022 the Verkhovna Rada of Ukraine adopted the Law “On Amending the Law of Ukraine “On the Judiciary and the Status of Judges” in part of changing the jurisdiction of courts” (draft Law No. 7117, 2022). This law provides the possibility of ensuring the proper functioning of the judicial power in case of emergencies. Thus, because of a natural disaster, military operations, measures to combat terrorism or other extraordinary circumstances, it is provided the suspension of the court's operation with the simultaneous determination of another court that will administer justice on the territory of the court that ceased to operate and that is territorially closest to the court whose operation has been suspended.

In this regard, the Chairman of the Supreme Court issued a ruling on March 8,

2022, according to which the jurisdiction of the cases heard in Kharkiv and Chernihiv regions was changed. Thus, the cases heard by the courts in Kharkiv region were transferred to Poltava courts. The cases heard in Chernihiv should be divided between the courts of Cherkasy and Kyiv regions (Ruling of the Chairman of the Supreme Court No. 2/0/9-22, 2022).

To settle this issue, the Council of Judges of Ukraine (hereinafter referred to as the CJ of Ukraine) took a number of important decisions. Thus, the CJ of Ukraine adopted the decision on February 24, 2022 “Regarding the adoption of urgent measures to ensure the stable functioning of the judicial power in Ukraine in terms of the termination of the powers of the High Council of Justice and the martial law related to the armed aggression of the Russian Federation” (Decision of the Council of Judges No. 9, 2022).

According to this decision, the CJ of Ukraine adopted:

- a. to draw attention of all courts of Ukraine to the fact that the operation of courts cannot be suspended even in terms of war or emergency situation;
- b. the execution of judicial proceedings by a certain court may be suspended until the circumstances that caused the danger are eliminated in case of a threat to the health, life, and safety of court visitors and employees;
- c. to develop recommendations to the courts regarding the procedure for carrying out evacuation measures and transferring cases.

On March 2, 2022, the CJ of Ukraine published recommendations on operation of courts in terms of the martial law (Recommendations of the Council of Judges, 2022). The main ones are:

- 1) the specifics of the court’s operation are determined based on the current situation in the relevant region;
- 2) while determining the conditions of the court’s operation in wartime, it is necessary to be guided by the real current circumstances that have developed in the region;
- 3) a responsible person is determined in each court, who must ensure up-to-date accounting of the apparatus staff and judges, taking into account the determined form of court operation (remote, etc.);
- 4) all available court employees, if possible, are transferred to remote form of operation;
- 5) the minimum number of persons who must be in the court premises during the workingday is determined. The shifts for judges and court apparatus employees is

organized;

6) the possibility of postponing the hearing of cases in regard to military actions and the possibility of hearing cases in the mode of video conference are explained to citizens;

7) it is necessary to focus exclusively on conducting urgent court proceedings (detention, extension of detention);

8) if a participant in the proceedings cannot attend the court session under objective circumstances, the court may allow such a participant to participate in a mode of video conference by using any other technical means, including own means.

The Chairman of the Supreme Court issued a ruling on March 2, 2022, where a special work regime was established and appropriate organizational measures were introduced (Ruling of the Chairman of the Supreme Court No. 29/0/8-22, 2022).

Therefore, based on the regulatory acts that were adopted and are in force until now, the mode of operation of each specific court is determined separately. The operation of the court depends on the situation in the region where the court is located. Therefore, the population of Ukraine should carefully follow the updates that are published on the websites of the courts. In case of impossibility of arriving at the court session, the person has the right to submit a motion to postpone the court session or to hold it in the form of a video conference. Courts should treat such requests with respect and, if possible, grant them. The very courts should be careful about missing procedural terms, avoiding excessive formalism (Mysnyk, 2022).

Remote judiciary as a necessity in terms of the martial law

Addressing information technologies, providing access to justice through alternative means, or providing information through court websites and other means of communication (phone, e-mail, etc.) in terms of war enable judicial authorities to continue their operation.

The principles developed in the CEPEJ Declaration “Lessons learned and challenges faced by the judicial power during and after the COVID-19 pandemic” (CEPEJ, 2020) are applicable to the situation in the Ukrainian judicial system in terms of war.

We note that a number of web services currently operate in Ukraine in order to provide online access to information about the judicial system:

1. The official web portal “Judiciary of Ukraine”, which contains information about the court system in Ukraine, judicial governance agencies, the status of cases, scheduled broadcasts of court sessions, a module for calculating court fees for court appeals, justice news, etc.

The portal contains explanations on how to address a court, to appeal a court decision, to get free legal assistance, as well as links to other registers and systems that may be useful to users of judicial services.

2. The Unified State Register of Court Decisions, which ensures general free 24/7 access to court decisions adopted by the courts of Ukraine.

3. The “Electronic Court” subsystem, due to which a person can submit procedural documents to the court, calculate and pay the court fee, familiarize oneself with the materials of own case and receive court decisions. This resource also contains forms of procedural documents for different categories of cases and types of proceedings.

4. Official websites of courts, which contain information about a court, news, a list of cases scheduled for hearing, the results of the automated distribution of cases between judges, forms of procedural documents for filing appeals to the court, etc.

Thus, a person in Ukraine without leaving home can get almost all the necessary information – get acquainted with legal consultations on the most common issues, calculate and pay the court fee by filling out a form, file an appeal to a court, get information about the distribution of the case to a specific judge, the status of hearing the case, as well as familiarize oneself with the adopted decisions (Annual report of the High Council of Justice, 2022, pp. 15-16).

The measures implemented in the judicial system ensure the possibility of hearing court cases with the preservation of life and health of judges, court staff and participants in the court proceedings.

However, the actual possibility to realize remote judicial proceedings depends on many factors. It is not only about the legal basis (the need to prescribe the procedure of remote judicial proceedings in details (Teremetskyi et al., 2023, p. 39), but also about the appropriate technical capacity of the courts and all involved parties. The use of information technologies should not limit the procedural guarantees of those who do not have access to modern technologies.

It is a well-known fact that many efforts in Ukraine have been recently directed at ensuring the functioning of electronic justice. To accomplish this, appropriate logistical

and technical conditions have to be created in each judicial institution. The regulatory basis and impetus for accelerating these processes was the Strategy for the Development of the Justice System and Constitutional Judiciary for 2021–2023, approved by the Decree of the President of Ukraine No. 231/2021 of June 11, 2021 (Decree of the President of Ukraine No. 231/2021, 2021). The main purpose of the indicated measures is to improve access to justice through the development and implementation of electronic judiciary, taking into account the world standards in the field of information technologies and its integration into the national infrastructure of electronic governance.

However, first the Covid-2019 pandemic and then the war in Ukraine prevented the implementation of digital technologies in the administration of justice. At the same time, such factors as air raids, internet and electricity outages, bombing and artillery shelling of a large territory of Ukraine made it much more difficult for the participants of the case, which existed in peacetime, to participate in the court session via video conference. And the lack of such basic conditions as Internet connection and data security, access of users of judicial services to computers, cameras / webcams, microphones, screens and Wi-Fi made it impossible to use IT technologies in the judiciary in general.

Despite this, the following measures have been taken in terms of the martial law and the difficult financial support of the courts:

1) the State Enterprise “Centre of Court Services” implemented a new functionality of the video conferencing subsystem from March 11, 2022, which is used during online broadcasts of court sessions and significantly simplifies this procedure;

2) as of April 8, 2022, the functionality that enables users to send documents to the electronic accounts of other participants before sending them to the court with the confirmation (receipt) of the delivery of such documents became operational;

3) also during 2022:

– connection to the “Electronic Court” and “Electronic Office” subsystems of the Grand Chamber of the Supreme Court, the Civil Court of Cassation as part of the Supreme Court and the High Anti-Corruption Court is ensured;

– electronic authorization was introduced in the “Electronic Court” subsystem by using “Dii-signature” and the integrated electronic identification system (ID.GOV.UA). It made possible for citizens who went abroad during the war to use the services of electronic judiciary, being on the territory of other countries, where it is impossible to obtain an electronic signature;

- the functionality of the video conferencing subsystem has been improved in terms of ensuring the possibility of saving court session recordings in a centralized file storage, which enables courts to completely abandon court session recordings on CDs;
- an automated service for courts to conduct online broadcasts of court hearings on the web portal of the judiciary of Ukraine, the possibility of remote review of court hearing records in the electronic offices of the participants in cases after paying the court fee, a mechanism for sending documents to other participants in the court proceedings (if they have electronic offices), etc. have been implemented.

The introduction of remote operation of courts in terms of the martial law required a wider usage of electronic document circulation and access to court cases in electronic form, which has been already foreseen in recent years during the development of EUITTS modules, but has never been implemented.

At the same time, the following measures were taken in order to prevent the loss or destruction of electronic information resources of the judicial power of Ukraine:

- reserve copies of local databases of courts have been implemented, which ensured the preservation of materials of court cases of courts located in temporarily occupied territories or destroyed courts in electronic form;
- reserve copies of existing software products of the judicial power have been implemented, as well as preservation of copies of the software samples have been ensured on additional physical media and in cloud storage;
- relocation of the reserve Data Center processing (together with server equipment) to a territory with a lower risk of its physical seizure or destruction has been ensured;
- numerous cyberattacks on the information resources of judicial authorities have been repelled;
- the technical possibility of remote access to the court's automated document managementsystem for judges and court staff has been organized;
- recommendations on the organization of remote work have been prepared and provided to the courts;
- limited access to certain information and court decisions has been provided in the Unified State Register of Court Decisions;
- the acquisition of Starlink satellite communication equipment by the territorial administrations of the State Court Administration of Ukraine has been organized for the

operational organization of access to the Internet network of courts that suffered from the armed aggression of the Russian Federation.

Therefore, remote judiciary allows citizens to access justice, despite the difficult circumstances of the present time, and its application is possible in all forms of proceedings. According to information from the State Court Administration of Ukraine, the number of sessions held in 2022 in video conference mode is 350,406, of which: 141,565 – with technical recording; 208,841 – in video conference mode (Letter of the State Court Administration of Ukraine No. 2375/0/8-23, 2023).

At the same time, innovations should be approached constructively and always with respect for basic rights, including those guaranteed by the Convention. Excessive and hasty use of remote judiciary in any form of court proceedings can lead to negative consequences. This was repeatedly emphasized by Ukrainian scholars in their publications (Teremetskyi et al., 2023, p. 40). Therefore, it is currently considered expedient to expand the practice of written proceedings in appellate and cassation instances based on court decisions.

Therefore, the issue of introducing remote forms of court operation, transition to an electronic form of judicial proceedings, access to the judge's electronic office are relevant even in terms of the martial law. The specificity of administering justice in terms of war intensified discussions about the administration of justice remotely, and also became the reason for the introduction of an innovative procedure of actions within emergency situations.

At the same time, it should be taken into account that online services, remote court sessions and video conferences, as well as further development of digital justice, must always be carried out with respect for fundamental rights and in accordance with the principles of a fair trial.

Specific features of organizing the operation of the prosecutor's office in terms of the martial law

One of the most significant consequences of the constitutional reform of 2016 regarding the organization of state power in Ukraine is the fact that the prosecutor's office lost its separate status in the structure of state power. Instead, according to the new Ukrainian constitutional legal order, the prosecutor's office as an institution performing the function of criminal prosecution is structurally embedded in the general justice system. It is indicated, in particular, by the Art.131-1 of the Constitution of Ukraine

(Law of Ukraine No. 1697-VII, 2022), which defines the new place of the prosecutor's office in the system of state power of Ukraine (Decision of the Constitutional Court of Ukraine No. 5-p(II)/2020, 2020: paragraph 1, item 2.3 of clause 2 of the motivational part).

The affiliation of the prosecutor's office to the Ukrainian justice system also indirectly follows from the provisions of Part 10 of the Art. 131 of the Constitution of Ukraine, according to which agencies and institutions conducting selection, professional training, evaluation and consideration of cases regarding disciplinary responsibility of both judges and prosecutors are created and operate within the justice system according to the law (Decision of the Constitutional Court of Ukraine No. 5-p(II)/2020, 2020: paragraphs 1-2, item 2.3 of clause 2 of the motivational part).

Therefore, the authors of the article fully support the position of the Constitutional Court of Ukraine that the prosecutor's office is institutionally an element of the general justice system since September 30, 2016 (Decision of the Constitutional Court of Ukraine No. 5-p(II)/2020, 2020: paragraphs 2-4, of clause 3 of the motivational part).

Based on this, the problems faced by the courts and prosecutor's offices during the war are similar. They can be divided into two groups: organizational and functional.

Organizational problems are related to the proper organization of the judicial system and the prosecutor's office, their effective management, the resolution of personnel issues among prosecutors and judges. Instead, functional problems are related to ensuring the coordinated and continuous performance of the tasks and functions assigned to them by courts and prosecutor's offices, as well as the timely, complete and comprehensive performance of their official duties by judges and prosecutors (Lapkin, 2022, p. 1208).

The specified in combination with the military aggression against Ukraine and the lack of any provisions in the Law of Ukraine "On the Prosecutor's Office" (Law of Ukraine No.1697-VII, 2022) regarding the organization and operation of the prosecutor's office in terms of the martial law became the reason for making amendments to certain provisions of the Criminal Procedural Code of Ukraine. It is about the Law of Ukraine "On Amending the Criminal Procedural Code of Ukraine and the Law of Ukraine "On Preliminary Detention" regarding additional regulation of ensuring the activities of law enforcement agencies in terms of the martial law" (Law of Ukraine No. 2111-IX, 2022).

Thus, the specified Law significantly amended the Art. 615 of the Criminal

Procedural Code of Ukraine, where we should highlight:

- the possibility of starting a pre-trial investigation by issuing a resolution on the initiation of a pre-trial investigation, without entering data into the URPTI, including by a prosecutor, provided that they are entered into the Unified Register of Pre-Trial Investigations at the earliest opportunity;

- performance of certain functions of judicial control by the head of the prosecutor's office. When determining the prosecutor who will perform the function of the investigating judge, the legislator rightly assumed that entrusting the relevant powers to the prosecutor who conducts the procedural guidance of the pre-trial investigation would be inappropriate due to his possible bias. That is why the exercise of certain powers of the investigating judge was entrusted to the head of the prosecutor's office, who, although administratively and organizationally, has a connection with the prosecutor, who administratively and organizationally has relationship with the prosecutor who carries out procedural guidance at the pre-trial investigation, but does not personally participate in the investigation, which eliminates his possible bias (Khimchenko, 2023, p. 381);

- the prosecutor's obligation to resolve issues related to the continuation of detention in case of stopping the pre-trial investigation, if there is no objective possibility of going to court with an indictment. The obligation in this context indicates the presence of powers regarding the adoption of a resolution on detention by the prosecutor;

- the prosecutor of the highest level is among the subjects whom the prosecutor need to inform about the taken decisions, which constitute his additional / extraordinary powers (Law of Ukraine No. 2111-IX, 2022).

O.S. Khimchenko points out that the specified amendments to the criminal procedural legislation changed the normative regulation of the provisions of the Art. 615 of the Criminal Procedural Code of Ukraine, expanding the possibilities and powers of law enforcement agencies (Khimchenko, 2023, p. 381). Thus, a new separate form of pre-trial investigation (the so-called special regime) was formed. However, despite the presence of certain inquisitorial signs; such a legislator's action was caused by possible problems in the field of criminal justice, which, due to the lack of efficiency in the implementation of the investigator, inquirer, prosecutor's powers at the stage of pre-trial investigation, would lead to a clear failure to fulfill the tasks of criminal proceedings.

An attempt to regulate the specifics of the organization and operation of the prosecutor's office in terms of the martial law was made in the draft Law of Ukraine "On

Amending Certain Legislative Acts on Improving the Activities of Prosecutor's Offices in Terms of Armed Aggression Against Ukraine" (draft Law of Ukraine No. 7058, 2022). This draft Law provided the possibility of staffing certain prosecutor's offices with servicemen of the Armed Forces of Ukraine who are seconded for military service to the prosecutor's office, as well as the involvement of prosecutor's offices staffed with military personnel to ensure national security and defense, repel and deter the armed aggression of the Russian Federation in Donetsk and Luhansk regions.

This draft Law was adopted by the Verkhovna Rada of Ukraine on April 1, 2022 (draft Law of Ukraine No. 7058, 2022). However, it was vetoed by the President of Ukraine due to conceptual shortcomings, in particular, because it did not comply with the principles of activity and functions of the prosecutor's office defined by the Constitution of Ukraine, as well as with the status of the prosecutor defined by the Law of Ukraine "On the Prosecutor's Office" (Law of Ukraine No. 1697-VII. 2014).

Thus, the problem of legislative regulation of the specifics of the prosecutor's office's functioning in terms of the martial law still remains unresolved.

The resolution of issues of the organization and operation of the prosecutor's office in terms of war at the departmental level is unsatisfactory. Thus, it should be stated that there are no Orders of the Prosecutor General that would be related to the specifics of the prosecutor's office's operation in terms of the martial law. Therefore, such specific issues as the functioning of the prosecutor's office on temporarily occupied territories, territories of hostilities, ensuring the safety of personnel, etc. are decided in the prosecutor's office not in a regulatory manner, but by issuing certain acts (instructions, rulings or orders) by the management personnel of the Office of the Prosecutor General on these issues (Lapkin, 2022, p. 1210).

At the same time, we note that if a prosecutor is unable to carry out the mandate to consider the appeal for objective reasons during the introduction of the martial law or an emergency situation, it is carried out as soon as possible, and the person who has applied the mandate is informed about it (Order of the Prosecutor General of Ukraine No. 363, 2020).

It is also possible to regulate the specifics of the operation of the prosecutor's office in terms of the martial law at the local level. However, there are fears in this case of creating risks of legal uncertainty, different practical approaches and disorganization of work on certain territories. Therefore, we believe that such important and urgent issues

should have been regulated by a separate order of the Prosecutor General in the form of a departmental act of a regulatory nature, designed for permanent application in terms of the martial law, brought to the attention of all employees of the prosecutor's office in advance.

Therefore, the operation of courts and prosecutor's offices depends on the situation in the area where they are located. Depending on this, we may distinguish three options for the organization of their operation: 1) suspension of the operation of courts and prosecutor's offices (certain courts and prosecutor's offices have ceased to function, in particular those located on territories not controlled by Ukraine); 2) limitation of the operation of courts and prosecutor's offices (it concerns the organization of the work of courts and prosecutor's offices on the territories that are in the zone of hostilities: on the territories of Donetsk, Zaporizhzhia, Luhansk, Mykolaiv, Kharkiv, Kherson regions); 3) continuation of the functioning of the courts and the prosecutor's office in the usual mode (Lapkin, 2022, p. 1211).

The issue of the continuation of the work of the employees of the prosecutor's office who are internally displaced persons is resolved in different ways. Thus, prosecutors continue to work in those prosecutor's offices within whose territorial jurisdiction they found themselves. However, the greatest need for prosecutors exists precisely in those areas where various war crimes took place, in order to ensure the recording and pre-trial investigation of the latter. However, the largest outflow of personnel from those prosecutor's offices has taken place since the beginning of the war.

Besides, the internal displacement of judges and prosecutors, which is not centralized, but solely at their own discretion and with the help of certain capabilities of these persons, creates a disproportionality in the personnel potential of the prosecutor's office and courts in different regions. In this regard, there should be mechanisms for the prompt transfer of judges and prosecutors from one agency to another one, as well as their secondment with the aim of as much mobile movement within Ukraine as possible due to official necessity.

4. Conclusion

Ukraine's confrontation with full-scale military aggression requires a rethinking of approaches to the organization and functioning of the judicial power, prosecutor's office

and other state agencies.

We may distinguish the following problems of organizing the operation of courts and prosecutor's offices in terms of the martial law, which arose during the military aggression and need to be resolved:

1. Insufficient personnel, financial and technical support for the functioning of the judicial branch of power in general and the minimally critical level of financial support for the remuneration of court staff in particular. This issue has been repeatedly debated among scholars and experts (Teremetskyi and Kutsenko, 2021), but still remains unresolved, given the following factors related to war:

– a large part of the population are currently refugees or internally displaced persons who, fearing for their safety and the safety of their families, were forced to leave their places of permanent residence. Therefore, the state of staffing of courts and prosecutor's offices is critical in terms of a full-scale military invasion of the Russian Federation in Ukraine, which affects the provision of access to justice;

– optimization of the state budget, especially its expenditure part, the vast majority of which is aimed at ensuring Ukraine's defense capabilities in the war with the Russian Federation. At the same time, each state must allocate sufficient resources, premises and equipment to the courts so that they can function in accordance with the standards set out in the Art. 6 of the European Convention on Human Rights, as well as that judges can work effectively (Recommendation CM/Rec (2010) 12, 2010).

2. Immediate allocation of new or reconstruction of destroyed / damaged court buildings, as a prerequisite for the earliest restoration of their operation. The State Court Administration of Ukraine must enter relevant data on damaged or destroyed buildings (premises) of the agencies and institutions of the judicial system into the State Register of Property Damaged and Destroyed as a result of hostilities, acts of terrorism, and sabotage caused by the armed aggression of the Russian Federation against Ukraine. It is necessary for further compensation for material damage, including damages caused as a result of damage or destruction of such property.

3. The need to resume court cases. Court files contain not only documents related to legal proceedings, but also a variety of personal and / or commercial documents necessary in everyday life. Part of those documents was destroyed or removed from court buildings during hostilities. Another part remained on the territory, which is now temporarily controlled by Russian troops. Some of the documents were preserved by

judges and court employees, and some exist in digital format.

Taking into account the challenges of wartime, the existing experience of the functioning of courts under the specified conditions, reservations regarding the possible further occupation of certain territories of Ukraine, which may require the urgent implementation of safe evacuation of computers and other equipment, court cases and materials, we consider it urgent and necessary to create a centralized archiving of court cases (of the national level) with defining the categories of cases that will be stored. The creation of an electronic (centralized) archive will contribute to the unloading of court premises, the development of digitalization of court cases and the creation of a system for their preservation.

4. Slowing down the processes of digitization and openness of Ukrainian justice. It is due to the war and the resulting lack of investment into IT technologies in the judiciary. We believe that these processes must be restored in the post-war period in order to further ensure online public access to court decisions of all instances and in all categories of disputes.

Quarantine and martial law introduced in Ukraine, despite significant restrictions and negative consequences, became an impetus for the digitalization of justice, the introduction of fundamentally new procedures aimed at protecting the rights, freedoms and keeping safety of the participants in the trial. Therefore, it is necessary to provide a clear regulatory framework for remote judiciary in order to take into account its features in various forms of judiciary. It is also necessary to assess the compatibility of the use of new technologies with the state's obligations in the field of human rights.

5. The need to ensure the safety of judges and prosecutors, participants in the legal process, employees of the court apparatus, other employees of the judicial system, defining a clear algorithm of actions in case of an aggravation of the situation in order to preserve court cases, material and technical values and documents. Safe and impartial justice is a factor in the proper functioning of the rule of law country. Therefore, the issues of guaranteeing safe conditions for the administration of justice in terms of war become of primary importance.

At the same time, the remote work of most prosecutors and judges, from a safe place and using telecommunication networks, is important. Such measures contribute to the minimization of the number of employees who are in the premises of the court and the prosecutor's office at the same time, as well as the dispersion of judges and

prosecutors, which reduces the risks of experiencing human losses critical to the functioning of any agency.

Therefore, the constitutional rights of a person to judicial protection cannot be limited even in terms of war or the emergency situation.

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