



**Organization of courts operation in Ukraine in the period of martial law:
comparative and legal research**

**Organização da operação dos tribunais na Ucrânia no período da lei
marcial: pesquisa comparativa e jurídica**

Vladyslav Teremetskyi ¹

Dmitro Zhuravlov ²

Viacheslav Boiko ³

Vasyl Stratonov ⁴

Oleksandr Ilchenko ⁵

Maryna Glukh ⁶

Nataliia Chudyk ⁷

Abstract

The purpose of the article is to highlight the situation of courts operation's organization in the period of the martial law and the construction of legal framework on using modern

¹ Doctor in Law, Department of International Private and Comparative Law, Academician F.H. Burchak Scientific Research Institute of Private Law and Entrepreneurship, National Academy of Legal Sciences of Ukraine, Pushkins'ka St, 70, Kharkiv, Kharkiv Oblast, Ucrânia, 61000. E-mail: vladvokat333@ukr.net
Orcid: <https://orcid.org/0000-0002-2667-5167>

² Doctor in Law, Amnesty Issues of the Office of the President of Ukraine, A, Dehtiarivska St, 43/3, Kyiv, Ucrânia. E-mail: ndz0909@gmail.com Orcid: <https://orcid.org/0000-0002-2205-6828>

³ Ph.D. in Law, Scientific Institute of Public Law, Frometivska St, 2, Kyiv, Ucrânia, 03039.
E-mail: boikoviacheslav1@gmail.com Orcid: <https://orcid.org/0000-0002-3505-4530>

⁴ Doctor in Law, Department of National, International Law and Law Enforcement, Kherson State University, Universytets'ka St, 27, Kherson, Kherson Oblast, Ucrânia, 73000. E-mail: stratonov@ksu.ks.ua
Orcid: <https://orcid.org/0000-0002-7548-0630>

⁵ Ph.D. in Law, Department of Administrative, Economic Law and Financial and Economic Security, Sumy State University, Vulytsya Mykoly Sumtsova, 2, Sumy, Sumy Oblast, Ucrânia, 40000.
E-mail: o.ilchenko@yur.sumdu.edu.ua Orcid: <https://orcid.org/0000-0003-4885-2205>

⁶ Ph.D. in Law, Public Law Department, State Tax University, Universitetska St, 31, Irpin, Kyiv Oblast, Ucrânia, 08200. E-mail: marina_gluh@ukr.net Orcid: <https://orcid.org/0000-0002-6107-5415>

⁷ Doctor in Law Department of Theory of Law and Constitutionalism, West Ukrainian National University, L'vivs'ka St, 11, Ternopil, Ternopil Oblast, Ucrânia, 46009. E-mail: natali_ternopil@ukr.net
Orcid: <https://orcid.org/0000-0003-0649-2715>

information technologies in the administration of justice. The research has been carried out with the usage of the methods of systemic analysis and synthesis, comparative and legal, historical and legal methods. It has been clarified that Ukraine rather effectively ensures the proper organization of courts operation and administration of justice in terms of the martial law considering the level of security in each region. It has been indicated that the organization of remote work of judges and other court employees, as well as the administration of justice online through the use of video conferencing is the positive solution in war period. Such a step contributes to strengthening the security of all participants in judicial proceedings. It has been substantiated that the use of video conferencing during court hearings meets the requirements of a fair and public trial ensuring the compliance with the guarantees of access to justice. It has been emphasized that the use of information technologies within judicial proceedings should have a single approach. Therefore, it is important to develop uniform rules regarding methodological ensuring the use of modern information technologies in the administration of justice in the period of the martial law in order to improve the organization of courts operation.

Keywords: Martial Law. Access to Justice. Remote Administration of Justice. Electronic Judiciary. Information Technology. Artificial Intelligence.

Resumo

O objetivo do artigo é destacar a situação da organização do funcionamento dos tribunais no período da lei marcial e a construção do marco legal sobre o uso das modernas tecnologias de informação na administração da justiça. A pesquisa foi realizada utilizando os métodos de análise e síntese sistêmica, métodos comparativos e jurídicos, históricos e jurídicos. Foi esclarecido que a Ucrânia garante de forma bastante eficaz a organização adequada do funcionamento dos tribunais e da administração da justiça em termos da lei marcial, tendo em conta o nível de segurança em cada região. Foi indicado que a organização do trabalho remoto de juízes e outros funcionários judiciais, bem como a administração da justiça online através do uso de videoconferência é a solução positiva em período de guerra. Tal medida contribui para reforçar a segurança de todos os participantes nos processos judiciais. Foi comprovado que o uso de videoconferência durante as audiências judiciais atende aos requisitos de um julgamento justo e público, garantindo o cumprimento das garantias de acesso à justiça. Foi enfatizado que o uso de tecnologias de informação em processos judiciais deveria ter uma abordagem única. Portanto, é importante desenvolver regras uniformes em matéria metodológica que garantam a utilização de modernas tecnologias de informação na

administração da justiça no período da lei marcial, a fim de melhorar a organização do funcionamento dos tribunais.

Palavras-chave: Lei Marcial. Acesso à Justiça. Administração Remota da Justiça. Judiciário Eletrônico. Tecnologia da Informação. Inteligência Artificial.

Introduction

The proper organization of courts operation in terms of the legal regime of the martial law requires such mechanisms of legal regulation, which are able both to be procedurally sensitive to the exceptionally threatening social challenges caused by the war and to fully guarantee every person the realization of the right to fair judicial protection. The obligations of the state, which arise from the content of the Art. 6 of the Convention of Human Rights and from the norms of the Constitution of Ukraine, impose on the state the duty to develop effective procedural algorithms to ensure the realization of everyone's right to the guaranteed judicial protection in terms of war. Therefore, ensuring the administration of justice by the courts and real access to justice in terms of the legal regime of the martial law is a comprehensive, multifaceted issue that involves a wide range of measures and means, which assist every person to obligatory have a real opportunity to address the judicial authorities and to receive adequate protection of their rights. Besides, it is important to ensure the implementation of the constitutional requirement for a stable system of the legal regime in the organization of judicial authorities' operation, endowed with exclusive authoritative powers in the sphere of justice administration (Smokovych, 2022).

The issue of the organization of courts operation in Ukraine within the period of introducing the legal regime of the martial law also becomes particularly relevant because of the several reasons. First of all, it concerns the issue of national security, because the introduction of the martial law for Ukraine, which protects the borders of its territory and the rights of its citizens, is a necessary measure to ensure the national security and protect territorial integrity. At the same time, in terms of the martial law, courts play an important role in the implementation of measures to ensure security and to maintain order in the country. Second, it is important to ensure the protection of the rights and freedoms of citizens in terms of the martial law, including the right to a fair trial, which is guaranteed both by the Constitution of Ukraine and a number of international regulatory legal acts, where Ukraine is also a party. Therefore, a detailed study of the organization of courts operation in the period

of war will contribute to the development of mechanisms for the protection of the rights of citizens during the war period. Third, conducting research of the organization of courts operation in terms of war can reflect existing gaps or needs for improvement of legal norms and procedures. Therefore, special legal situations and needs may arise in terms of the martial law, which may indicate the feasibility of reforming the organization of judicial power. Fourth, the outlined problem has an international dimension, which is in the plane of studying and transferring the experience of organizing courts operation in terms of the martial law, in order to jointly develop strategies for effective justice and to strengthen cooperation in the field of justice. Fifth, it is possible to identify best practices and recommendations for ensuring the effective functioning of the judicial system in terms of the martial law by conducting comparative and legal studies of the organization of courts operation in Ukraine with the practice of other countries, in particular with the help of information technologies. Therefore, the problem of organizing courts operation in the war period can influence the academic and law-enforcement analysis of the work of judicial authorities and improve the functioning of the judicial system in terms of the martial law, while ensuring the best possible protection of human and civil rights and freedoms.

Methodology

The methodological basis of the research is such methods of scientific cognition as systemic analysis and synthesis, comparative and legal, historical and legal methods. The method of systemic analysis and synthesis was used to study legal norms regarding the organization of courts operation located in regions with different security situations. This method is aimed at ensuring the functioning of the judicial system as a single integrated system of interconnected and interacting elements. Its use contributes to the identification of existing problems in the organization of courts operation and the formulation of certain conclusions and ways of their solution. The comparative and legal method was used to identify similar and different approaches to the organization of courts operation and administration of justice in countries that were in the war status. The application of the historical and legal method makes it possible to trace the development of certain provisions of the legislation on the organization of courts operation in terms of the martial law considering the development of modern information technologies and specific security solutions.

The issues of organizing courts operation during the legal regime of the martial law, as well as some issues related to the introduction of modern information technologies into the

judiciary, have been studied by many scholars. In particular, Vladyslav Teremetskyi in co-authorship with other scholars studied the issue on the possibility and expediency of introducing full-fledged electronic justice in Ukraine in terms of the martial law (Teremetskyi et al., 2023). Oleksandr Muzychuk in co-authorship with other scholars studied the possibility for the organization of the judicial system, the conduct of trials and the provision of justice during martial law. They also analysed the challenges faced by courts during hostilities are analyzed, including those that negatively affect the limitation of guarantees of justice, the speed of court processings, the protection of human rights and freedoms, etc. (Muzychuk et al., 2023) Oleksandr Krupchan in co-authorship with other scholars analysed the principle of justice accessibility within the judiciary of Ukraine, its specific features in terms of the martial law and possibilities to improve it through the implementation of European standards into the legislation of Ukraine. The scholar emphasized that the reform of the judicial procedure in the resolution of administrative disputes requires the earliest introduction of digital technologies and Artificial Intelligence technologies (Krupchan et al., 2023).

Mykhailo Smokovych, Dmytro Luspenyk, Tetiana Drakokhrust, Nataliia Martsenko, Tom Perriello, Marieke Wierda, Simon Chesterman (Smokovych, 2022; Luspenyk, 2022; Drakokhrust et al., 2022; Martsenko, 2022; Perriello et al., 2006; Chesterman, 2002; Pryvydentsev, 2022; Zavydniak, 2022; Kamber et al., 2021) and many others studied the impact of the martial law on the organization of courts operation and the administration of justice, as well as the introduction of information technology into the judiciary. The impossibility to temporarily restrict the right to judicial protection of human and civil rights and freedoms for the period of the legal regime of the martial law was studied by Mykhailo Smokovych, Dmytro Luspenyk, Tom Perriello, Marieke Wierda, Simon Chesterman, Oleksandr Pryvydentsev, Alina Zavydniak (Smokovych, 2022; Luspenyk, 2022; Perriello et al., 2006; Chesterman, 2002; Pryvydentsev, 2022; Zavydniak, 2022). The issues of using modern information technologies in the administration of justice and the organization of courts operation were studied by Tetiana Drakokhrust, Nataliia Martsenko, Krešimir Kamber, Lana Kovačić Markić (Drakokhrust et al., 2022; Martsenko, 2022; Kamber et al., 2021).

However, there is a current need for a legal research of issues related to increasing the efficiency of the organization of courts operation in terms of the martial law with the help of modern technologies. Herewith, the legislation of certain EU countries regarding the use of information technologies and Artificial Intelligence has been rapidly developing in the recent years.

The purpose of the article is to highlight the situation of the organization of courts operation in terms of the martial law and the construction of legal framework for using modern information technologies in the administration of justice. To achieve this purpose, it is necessary to conduct research of the national legislation of Ukraine in the field of organizing courts operation during the legal regime of the martial law with certain elements of the mechanism of legal regulation in those countries that carried out the organization of the work of judicial authorities during the war and introduced information technologies into courts operation.

Results and Discussion

Since 2014, when the Russian Federation attacked Ukraine and occupied Donetsk and Luhansk regions and the Autonomous Republic of Crimea, the state institutions at all levels of judicial power faced previously unknown problems in the administration of justice. Hearings on war crimes cases, establishing facts of legal significance that occurred in areas under the control of the occupying power, resolving issues of compensation for injuries and destroyed property or housing, etc., were particularly difficult for the judicial system and the corresponding procedural form.

The situation with access to justice and the organization of courts operation became significantly more complicated with the beginning of the full-scale invasion on February 24, 2022, because of the numerous violations of human rights and the occupation of a large part of the territory of Ukraine, including the loss of access to court premises on the occupied territories and the actual impossibility of administering justice. It is well-known that access to justice covers a complex of human rights, an integral part of which is the right to justice through various means and forms of electronic justice that is important for certain groups of the population, who have certain restrictions, who are in special conditions or live on a territory with a special legal regime (Teremetskyi et al., 2023, p. 34).

The impossibility of organizing courts operation on the territories, where active hostilities are ongoing, prompted many state institutions to active legislative and organizational activities in order to ensure access to justice and to restore the work of judicial authorities. We would like to note that based on the provisions of Parts 1 and 2 of the Art. 124 of the Constitution of Ukraine, justice in Ukraine is exclusively administered by courts without the possibility of delegating the functions of courts to other state agencies (The Constitution of Ukraine). Besides, based on the right to judicial protection, guaranteed by

national and international legal acts, courts must function continuously even during the period of the martial law or state of emergency and must ensure the mechanism of administering justice provided by the law. The Constitution of Ukraine guarantees the absolute and imperative nature of the right to judicial protection even during the legal regime of the martial law. Therefore, it is prohibited to temporarily limit the right to judicial protection of human and civil rights and freedoms during the period of the martial law in Ukraine (Zurnadzi, 2022).

At the same time, the current legislation should be gradually improved and adapted to the terms of the martial law in order to ensure the proper functioning of the courts. Dmytro Luspenyk, who is the judge of the Civil Court of Cassation within the Supreme Court, secretary of the Plenum of the Supreme Court, notes that there are currently no answers to many procedural questions arising when the justice is administered in terms of the martial law. Such problems can be mostly solved based on the logic of law-enforcement and the experience of a judge, not violating the requirements of the Art. 6 of the Convention on the Protection of Human Rights and Fundamental Freedoms regarding a fair trial and the basic principles of judicial proceedings (Luspenyk, 2022).

Formally, the process of administering justice should not undergo significant changes starting from February 24, 2022 and with the introduction of the martial law, based on the content of the Art. 26 of the Law of Ukraine “On the Legal Regime of the Martial Law”, which provides that the reduction or acceleration of any forms of judicial proceedings in terms of the martial law are prohibited (Law of Ukraine No. 389-VIII, 2015). However, it is extremely difficult and sometimes almost impossible to ensure in reality the continuous operation of courts during the war period. Therefore, the Council of Judges of Ukraine adopted a number of important decisions in order to ensure the organization of courts operation, which were aimed at regulating the activities of the courts in terms of the martial law. In particular, the Council of Judges of Ukraine adopted a 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 termination of the powers of the High Council of Justice and the martial law related to the armed aggression by the Russian Federation” (Decision of the Council of Judges of Ukraine, 2022). The emergency response center was created consisting of the members of the Council of Judges, the chairman of the Supreme Court, the head of the State Judicial Administration and the head of the Court Security Service in order to solve important and urgent issues. Special attention is paid to the issue of safe administration of justice. Thus, in case of a threat to the health, life, and safety of court visitors and court employees, the

execution of judicial proceedings by a certain court may be suspended until the circumstances that caused the danger are eliminated (Pryvydentsev, 2022). Besides, the Council of Judges of Ukraine adopted a decision on the expediency of developing an algorithm of actions (practical recommendations) for courts regarding the procedure for carrying out evacuation measures and transferring court case materials (Decision of the Council of Judges of Ukraine, 2022).

Subsequently, the Council of Judges of Ukraine published recommendations on courts operation in terms of the martial law fated from March 2, 2022, providing that the specifics and conditions of a particular court operation are determined on the basis of the real current (including security) situation in the relevant region (Recommendations on the work of courts under martial law, 2022). Regarding the change in the organization of courts operation, a responsible person must be appointed in each court, who must ensure up-to-date accounting of court apparatus employees and judges, considering the determined form of court functioning (remote, etc.). If possible, court employees are transferred to remote work and the minimum number of persons who must be in the court premises during the working day is clearly stipulated. In order to minimize risks, the courts have organized the shifts for judges and court apparatus staff.

Certain changes, due to the need to ensure safety for the life and health of the participants in the case, related to the terms and deadlines for hearing cases and the form of participation in the process. Therefore, all interested participants in the process are ensured with the opportunity to hear their case in video conference mode in order to improve access to justice in wartime (Zavydniak, 2022). Besides, restrictions have been introduced regarding the admission to court sessions of those persons who are not participants in court hearings. Both the participants in the case and the members of the panel of judges are allowed to participate in the case hearing by using their own technical means (including from different premises, if the proceedings are heard collegially and the panel of judges cannot meet in one room) (Recommendations on the work of courts under martial law, 2022).

Explanatory work is carried out with citizens regarding the possibility of postponing the cases in regard to the military operations. If necessary, cases can be postponed, except for urgent court proceedings. Cases that are not urgent are considered only with the written consent of all participants in the court proceedings. Such organizational decisions should contribute to focusing on urgent court proceedings (detention, extension of detention). It is important that procedural terms are extended at least until the end of the martial law.

Prolonged and active hostilities, as well as the occupation and the impossibility of administering justice in this regard, resulted in the adoption by the Verkhovna Rada of the Law of Ukraine “On Amending Part 7 of the Art. 147 of the Law of Ukraine “On the Judiciary and the Status of Judges” regarding the determination of the territorial jurisdiction of court cases”. This Law stipulates that in case of the impossibility of justice administration by the court for objective reasons during the martial law or the state of emergency, due to a natural disaster, military operations, measures to combat terrorism or other extraordinary circumstances, the territorial jurisdiction of court cases may be changed, which are heard in such a court. Such changes provide for the transfer of the case to the court that is territorially closest to the court that cannot administer justice, or to another designated court (Law of Ukraine No. 2112-IX, 2022). For example, the Chairman of the Supreme Court, in order to implement this law norm, issued a ruling, according to which the jurisdiction of cases heard in Kharkiv region (cases transferred to Poltava courts) and in Chernihiv region (cases are distributed between the courts of Cherkasy and Kyiv regions) was changed (Order of the Head of the Supreme Court, 2022).

The decision of the chairman of the Supreme Court on the possibility of establishing a special mode of operation of certain courts also affected the organization of court functioning. For example, the Sixth Administrative Court of Appeal adopted the order on March 7, 2022 “On the establishment of a special regime of work in terms of the martial law”, which provided the temporary suspension of cases in open court sessions with the participation of court proceedings participants until the circumstances that in terms of the military aggression against Ukraine cause a threat to the life, health and safety of judges, visitors and court apparatus staff of the Sixth Administrative Court of Appeal. Judges of the Sixth Administrative Court of Appeal are allowed to exercise their powers remotely in a place accessible to them in Ukraine, which makes it possible to exercise the powers of a judge of this court. A judge informs the chairman of this court about the place of remote work, as well as about the means of communication (phone number, e-mail address, other necessary data) or about the impossibility of exercising the powers. In order to ensure the safety of the organization of court operation, the said order also prohibited the entry and independent movement of visitors into the court and its premises. Besides, the involvement of judges and court apparatus staff to work in the premises of this court should be carried out only in case of extreme necessity and under guaranteeing safe working conditions. To receive incoming correspondence, other correspondence or documents, the following are used: court email

address, Ukrposhta AT services, “Electronic Court” subsystem (Order of the Chairman of the Sixth Administrative Court of Appeal, 2022).

A similar practice of organizing courts operation and making decisions on establishing a special regime of work in terms of the martial law indicates that the regime of work of each specific court is determined separately, taking into account the situation in the region where a court is located. M. Smokovych notes that the degree of threat and danger on the territory of Ukraine due to the military actions of the Russian occupiers is not the same. Therefore, the territory of Ukraine can be conditionally divided into territorial zones, where: a) active hostilities are taking place or such activities have taken place; b) the temporary or permanent occupation of Ukrainian territories is ongoing; c) there are necessary material conditions and physical opportunities for courts operation (premises, computer equipment, electricity, the Internet, etc.) or there are no such conditions and opportunities, etc. (Smokovych, 2022). It is obvious that the legislator precisely considering this, did not establish a mandatory rule on territorial jurisdiction during the martial law, but referred the decision of this issue to the discretion of the Chairman of the Supreme Court.

It should be noted that online justice through the active use of video conferencing during wartime pursues primarily a number of legitimate goals, with an emphasis on strengthening the security component for all participants in the judicial proceedings. In addition, based on the practice of the ECHR regarding the use of video conferencing during court hearings, the specified form of participation in the proceedings as such is not incompatible with the concept of fair and public proceedings, because guarantees of access to justice must be provided to the same extent both in online and offline modes (“Marcello Viola v. Italy”, 2019, §67; “Asciutto v. Italy”, 2007, §64).

Another problematic issue faced by the domestic judiciary during the wartime is the ability of the judge(s) and the secretary to participate in the hearing outside the court, that is, remotely. Obviously, remote participation of judges and court clerks can increase the mobility of the justice system, regardless of geographic location, and be more cost-effective for the state (Kamber et al., 2021). However, it is important to preserve the public nature of remote hearings while implementing this possibility for the organization of court operation. It should be also emphasized that the remote administration of justice corresponds to the main purpose of the Art. 6 of the Convention (European Convention on Human Rights), since the physical presence of judges in the courtroom has never been considered a strict requirement in accordance with the provisions of the Art. 6. Therefore, given that Ukraine is undergoing active bombings by Russia, there are good objective reasons for judges, court clerks, defense

attorneys and other parties to act not from courtrooms, but rather from a virtual, decentralized courtroom. At the same time, the use of modern information technologies should not reduce procedural guarantees for those who do not have access to new technologies, which imposes additional obligations on the state in the context of ensuring everyone with the access to them.

Different practices were developed on this issue even during the COVID-19 pandemic, because European states applied various approaches to the issue of remote participation of judges (online court proceedings in Germany require the mandatory presence of judges in the courtroom during online hearings, and judges in Ireland, Great Britain and Australia could conduct proceedings without mandatory presence in the court premises). Finland adopted the practice of remote hearings due to long distances and population dispersion. However, the reasons for Ukraine, which is in the status of unprovoked war by Russia, when judges and others may wish to participate remotely from scattered private locations, are understandable and justifiable. Therefore, approving the remote participation of judges during the martial law and later its reviewing considering the assessment of the policy and security factors is currently a requirement of the time, not a choice at will.

It is important for the state to ensure the reliability of communication channels while implementing electronic justice, therefore technical means should be provided by law to avoid situations when judges or court employees connect using their own means. It is important to ensure that the used technology is reliable and ensures the compliance with the procedure and human rights in accordance with the norms of national and international law (Analysis of Legislative Initiatives to Improve the Legislation of Ukraine on the Conduct of Legal Proceedings in Remote (Online) Mode in the Conditions of Martial Law or State of Emergency, 2022).

Actualization of the issue on implementing the best practices of electronic judiciary for Ukraine in terms of the martial law is of particular importance. Moreover, the experience of many countries that were able to introduce modern technologies of Artificial Intelligence into the work of courts is positive, especially with regard to solving cases that are not complicated and were heard at the level of courts of the first instance (Drakokhrust et al., 2022). Besides, the introduction of the practice of online dispute resolution with the help of various information technology tools, which are actively used to resolve disputes between sellers and consumers in Canada and Great Britain, is also noteworthy (Martsenko, 2022). Understanding the importance of introducing these technologies into the practice of court functioning, Ukraine clearly outlined the importance of the development and implementation of the best practices of electronic judiciary in the Strategy for the Development of the Justice

System and Constitutional Judiciary for 2021-2023. The Strategy is currently the legal basis for judicial reform in Ukraine, where the main purpose is to improve access to justice due to the development of electronic judicial system, considering the world standards in the field of information technology. Clause 4.1 of the Strategy stipulates the introduction of the possibility of online hearing of certain categories of cases, regardless of the location of the parties and the court and other electronic judicial services (Decree of the President of Ukraine No. 231/2021, 2021).

It should be generally noted that electronic judiciary was largely determined by special legal regimes established by the state in view of the security situation. Since Russia's war against Ukraine is the largest since the Second World War, it is quite difficult to talk about borrowing positive foreign experience in organizing courts operation during the introduction of the martial law. Most of the armed conflicts lasted a fairly short period of time. Therefore, there was no special transformation of the organization of courts operation (the changes mainly related to territorial jurisdiction). Moreover, there were situations known in the history when the prosecution for war crimes was relied on international justice system. For example, the 1998-1999 conflict in Kosovo, which arose as a result of the breakup of Yugoslavia and was accompanied by high fighting intensity and mass violations, provided the jurisdiction of the International Criminal Tribunal for the former Yugoslavia already in 1998 for war crimes in Kosovo (Perriello et al., 2006). The Kosovo case was one of the few cases where international criminal tribunal was established and operated when the conflict was being escalated and war crimes were piling up. At that time, it was not possible to provide adequate justice in Kosovo due to the destruction of court buildings, a shortage of judges and court personnel, as well as uncertainty about the applicable law (Kosovo Judicial Assessment Mission Report, 2000; Chesterman, 2002).

The Russian-Georgian war, provoked by Russian-backed separatist forces in Abkhazia and South Ossetia, lasted from August 7 to August 15, 2008 and resulted in numerous crimes (eviction of ethnic Georgians from the occupied territories, ethnic cleansing and mass killings, destruction of property and civilian infrastructure of Georgia, etc.). After the end of hostilities, Georgian courts investigated numerous human rights violations, but they made little progress, largely due to Georgia's lack of access to South Ossetia. Instead, Russia announced the investigation into alleged violations by the Georgian soldiers, rejecting reports of human rights abuses by the Russian soldiers and inviting alleged victims of human rights violations to go to court (Forsberg et al., 2011). Many years after the aggression against Georgia, the European Court of Human Rights ruled in 2021 that Russia maintains "direct control" over

the separatist regions and is responsible for the deaths and violations of the rights occurring there (Strasbourg court rules Russia has 'direct control' ' over Abkhazia, South Ossetia, 2021).

According to the experience of unrecognized territories, such as Pridnestrovian or the so-called DNR and LNR, as well as the experience of such countries as Afghanistan or East Timor, the organization of courts operation and the administration of justice in case of occupation or active hostilities are different. For example, the occupying power in case of occupation fully controls the organization of courts operation and ensures the administration of justice by applying its legal framework (Martsenko, 2019, p. 225). However, it is practically impossible to ensure the implementation of justice that would meet the standards and rules provided by international law in the situation when active hostilities go on (Chesterman, 2002). Nowadays, when various information technologies are actively developed, it is more realistic to achieve certain progress in ensuring the organization of courts functioning and to improve access to justice than when such technologies were not used. Besides, there is a practice of using such technologies to organize courts functioning mainly due to the introduction of a state of emergency in the country, the introduction of quarantine restrictions or improving access to justice in remote regions. It is the war and the introduction of the martial law that prompts us to actively use various modern information technologies to organize courts operation in modern Ukrainian realities.

Conclusion

Based on the above, it can be concluded that Ukraine rather effectively ensures the proper organization of courts operation and the implementation of judicial proceedings in terms of the martial law considering the level of security in each region. The organization of remote work of judges and other court employees, as well as the administration of justice online through the use of video conferencing is the positive solution in the war period. It contributes to strengthening the security of all participants of court proceedings. The use of video conferencing during court hearings meets the requirements of a fair and public trial, because it fully guarantees the access to justice.

Regardless of the war, it is important for Ukraine to implement the best world practices of electronic justice and Artificial Intelligence technologies that are able to decrease the burden of the judicial system and promote better protection of human rights and freedoms, especially in simple categories of cases. The use of information technologies in judicial proceedings should have a single approach. Therefore, it is important to develop uniform rules

in regard to methodological ensuring of the usage of modern information technologies in the administration of justice in terms of the martial law in order to improve the organization of courts operation. The war of Russia against Ukraine is taking place during the active technological development. Therefore, in contrast to the possibility of organizing courts operation by countries that were in the war status several decades ago, Ukraine is currently able to ensure both courts operation and effective administration of justice with the help of various technologies in accordance with the norms of national and international law.

References

- Analysis of Legislative Initiatives to Improve the Legislation of Ukraine on the Conduct of Legal Proceedings in Remote (Online) Mode in the Conditions of Martial Law or State of Emergency. (2022). <https://rm.coe.int/analysis-of-legislative-initiatives-regarding-judicial-proceedings-in-/1680a99fbf>
- Asciutto v. Italy – 35795/02. Judgment 27.11.2007. § 64. <https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2235795/02%22%5D,%22itemid%22:%5B%22001-83510%22%5D%7D>
- Chesterman, S. (2002). Justice Under International Administration: Kosovo, East Timor and Afghanistan. https://www.ipinst.org/wp-content/uploads/publications/justice_under_intl.pdf
- Decision of the Council of Judges of Ukraine "On Taking Urgent Measures to Ensure Sustainable Functioning of the Judiciary in Ukraine in the Context of Termination of Powers of the High Council of Justice and Martial Law in Connection with the Armed Aggression by the Russian Federation". (2022). <https://rsu.gov.ua/ua/news/opublikovano-risenna-rsu-sodo-vzitta-nevidkladnih-zahodiv-dla-zabezpecenna-stalogo-funkcionuvanna-sudovoi-vladi-v-ukraini>
- Decree of the President of Ukraine No. 231/2021 (June 11, 2021) On the Strategy for the Development of the Justice System and Constitutional Justice for 2021-2023. <https://zakon.rada.gov.ua/laws/show/231/2021#Text>
- Drakokhrust, T., & Martsenko, N. (2022). Artificial Intelligence in the Modern Judicial System. *J Mod Educ Res*, 1(5), 1-7, <https://doi.org/10.53964/jmer.2022005>. <http://image.innovationforever.com/file/20220729/fc737341e40044b185604d35781db60b/JMER20220107.pdf>
- European Convention on Human Rights. https://www.echr.coe.int/documents/d/echr/convention_ENG
- Forsberg, T., & Antti, S. (2011). The Russo-Georgian War and EU mediation. In: R. E. Kanet, ed. *Russian foreign policy in the 21st century*. London: Palgrave Macmillan, 121–137.
- Kamber, K, Markić, L. K. (2021). Administration of Justice During the Covid-19 Pandemic and the Right to a Fair Trial. *EU and Comparative Law Issues and Challenges Series (ECLIC)*, 5, 1049-1083. <https://doi.org/10.25234/eclic/18363>

- Kosovo Judicial Assessment Mission Report. (2000). [https://1997-2001.state.gov/global/human rights/kosovoii/042000 kosovo rpt.pdf](https://1997-2001.state.gov/global/human%20rights/kosovoii/042000%20kosovo%20rpt.pdf);
- Krupchan, O., Salmanova, O., Makarenko, N., Paskar, A., & Yatskovyna, V. (2023). Access to Justice within Administrative Proceedings of Ukraine: Modern Realities and European Experience: Acceso a la justicia dentro de los procedimientos administrativos de Ucrania: realidades modernas y experiencia europea. *Political Questions*, 41(77), 103-115. <https://doi.org/10.46398/cuestpol.4177.07>
- Law of Ukraine No. 2112-IX (March 3, 2022) On Amendments to Part Seven of Article 147 of the Law of Ukraine "On the Judicial System and Status of Judges" regarding the determination of territorial jurisdiction of court cases. <https://zakon.rada.gov.ua/laws/show/2112-20#Text>
- Law of Ukraine No. 389-VIII (May 12, 2015). On the legal regime of martial law. <https://zakon.rada.gov.ua/laws/show/389-19#Text>
- Luspenyk, D. (2022). Civil procedure under martial law is in the focus of attention of lawyers working in the field of free legal aid. Supreme Court. <https://supreme.court.gov.ua/supreme/pres-centr/news/1286728/>
- Marcello Viola v. Italy (no. 2) – 77633/16. Judgment 13.6.2019 [Section I]. § 67. <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22002-12494%22%5D%7D>
- Martsenko, N. (2019). Peculiarities of Recognition of Judgments and other Acts Issued by Unrecognized Authorities – The Example of the Autonomous Republic of Crimea, and Luhansk and Donetsk Oblasts. *Osteuropa recht*, 2, 223-237.
- Martsenko, N. (2022). Using digital technology to improve civil justice outcomes: international experience. *New Ukrainian Law*, 6(2), 58-63. <http://newukrainianlaw.in.ua/index.php/journal/article/view/392>
- Muzychuk, O., Shopina, I., Syadristaya, I., & Myroshnychenko, Y. (2023). Judiciary and Legal Proceedings Under Martial Law. *Lex Humana*, 15(4), 364-375. <https://seer.ucp.br/seer/index.php/LexHumana/article/view/2791>
- Order of the Chairman of the Sixth Administrative Court of Appeal on Establishment of a Special Regime of Work under Martial Law dated March 7, 2022. <https://6aas.gov.ua/ua/media-kaas/news/4939-pro-vstanovlennya-osoblivogo-rezhimu-roboti-shostogo-apelyatsijnogoadministrativnogo-sudu-v-umovakh-voennogo-stanu.html>
- Order of the Head of the Supreme Court of March 8, 2022, No. 2/0/9-22. https://supreme.court.gov.ua/userfiles/media/new folder for uploads/supreme/Rozp_08_03_2022.pdf
- Perriello, T., & Wierda, M. (2006). Lessons from the Deployment of International Judges and Prosecutors in Kosovo. https://www.ictj.org/sites/default/files/ICTJ-FormerYugoslavia-Courts-Study-2006-English_0.pdf
- Pryvydentsev, O. (2022). Features of civil court proceedings in martial law. *Prykarpattya legal bulletin*, 1(42), 54-57. http://pjuv.nuoua.od.ua/v1_2022/12.pdf

- Recommendations on the work of courts under martial law. (2022). <https://rsu.gov.ua/ua/news/usim-sudam-ukraini-rsu-opublikovala-rekomendacii-sodo-rooti-sudiv-v-umovah-voennogo-stanu>
- Smokovych, M. I. (2022). Execution of justice in martial law: to the question of legislative changes. *Scientific Bulletin of Uzhhorod National University, Series PRAVO*, 70, 450-455. <https://visnyk-juris-uzhnu.com/wp-content/uploads/2022/05/74.pdf>
- Strasbourg court rules Russia has ‘direct control’ over Abkhazia, South Ossetia. 21 January 2021. <https://www.euractiv.com/section/europe-s-east/news/strasbourg-court-rules-russia-has-direct-control-over-abkhazia-south-ossetia/>
- Teremetskyi, V., Boiko, V., Malyshev, O., Seleznova, O., & Kelbia, S. (2023). Electronic judiciary in Ukraine: Problems of implementation and possible solutions. *Amazonia Investiga*, 12(68), 33-42. <https://doi.org/10.34069/AI/2023.68.08.3>
- The Constitution of Ukraine. Information of the of the Verkhovna Rada of Ukraine. 1996. No. 30. P. 141. <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>
- Zavydniak, A. (2022). Access to administrative justice in martial law. Electronic scientific publication "Analytical and Comparative Jurisprudence". <http://app-journal.in.ua/wp-content/uploads/2022/05/43.pdf>
- Zurnadzhi, E. (2022). Protection of human rights by state authorities in the conditions of martial law. Human rights in the period of armed conflicts: Collection. materials of the International scientific and practical conference dedicated. On the 25th anniversary of the National University "Odesa Law Academy" (Odesa, November 18, 2022): in 2 vol. Odesa. P. 223-226. <https://hdl.handle.net/11300/23748>

Submetido em: 29.09.2023

Aceito em: 30.10.2023