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Peculiarities of ensuring the constitutional right to a fair trial: international and national aspects

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Oleksandr Rogach *
Nataliya Shelever **
Mykhailo Herevych ***
Iryna Shulhan ****
Mariia Muzyka *****

Abstract

Using a documentary methodology combining different research techniques such as dialectics, the article conducts a scientific analysis of the implementation of the constitutional right to a fair trial in Ukraine and defines its essence and content; it also investigates the peculiarities of normative consolidation of the right in international legal acts and studies the positive experience of applying the precedent practice of the European Court of Human Rights, to solve the main problems of the implementation of this right in the national judiciary in the conditions of martial law in Ukraine. Among other things, the essence of the term "right to a fair trial" was clarified and a study of the peculiarities of the implementation of the right to a fair trial in conditions of war from the perspective of the European Court of Human Rights was conducted. It is concluded that, both in theory and in concrete reality, the right to a fair trial is complex in nature and includes the fairness and publicity of the proceedings, the reasonableness of the terms, the presumption of innocence, the independence and impartiality of the court, the existence of a dispute over rights and obligations, among other aspects.

* Doctor of Legal Sciences, Professor, Vice-Rector for Academic Policy and Research, State University «Uzhhorod National University», Uzhhorod, Ukraine, ORCID ID: https://orcid.org/0000-0001-5125-288X

** PhD in Law, Associate Professor, Associate Professor of the Department of Administrative, Financial and Informative Law, State University «Uzhhorod National University», Uzhhorod, Ukraine, ORCID ID: https://orcid.org/0000-0003-3641-4910

*** Doctor of Philosophy, teacher of the Department of Theory and History of the State and Law, State University «Uzhhorod National University», Uzhhorod, Ukraine, ORCID ID: https://orcid.org/0000-0002-0842-2828

**** Candidate of legal science, Associate Professor, Associate Professor of the Department of Administrative and Information Law, Lviv Polytechnic National University, Lviv, Ukraine, ORCID ID: https://orcid.org/0000-0002-9623-3495

***** Candidate of legal science, Associate Professor, Associate Professor of the Department of Theory of Law and Criminal Procedure Activity of National Academy, State Border Guard Service of Ukraine named after Bohdan Khmelnytskyi, Khmelnytskyi, Ukraine, ORCID ID: https://orcid.org/0000-0002-4933-7101

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Estándares internacionales para procesos penales en regímenes legales de emergencia

Resumen

Mediante una metodología documental que conjuga diferentes técnicas de investigación como la dialéctica, el artículo realiza un análisis científico de la implementación del derecho constitucional a un juicio justo en Ucrania y define su esencia y contenido; además, investiga las peculiaridades de la consolidación normativa del derecho en los actos jurídicos internacionales y estudia la experiencia positiva de aplicar la práctica precedente del Tribunal Europeo de Derechos Humanos, para resolver los principales problemas de la implementación de este derecho en el poder judicial nacional en las condiciones de la ley marcial en Ucrania. Entre otras cosas, se aclaró la esencia del término «derecho a un juicio justo» y se realizó un estudio de las peculiaridades de la implementación del derecho a un juicio justo en condiciones de guerra desde la perspectiva del Tribunal Europeo de Derechos Humanos. Se concluye que, tanto en la teoría como en la realidad concreta, el derecho a un juicio justo es de naturaleza compleja e incluye la equidad y publicidad del proceso, la razonabilidad de los términos, la presunción de inocencia, la independencia e imparcialidad del tribunal, la existencia de un litigio sobre derechos y obligaciones, entre otros aspectos.

Palabras clave: derecho a un juicio justo; poder judicial; Tribunal Europeo de Derechos Humanos; ley marcial; regímenes legales de emergencia.

Introduction

The problem of justice, as a basic value, is one of the central ones throughout the history of civilization, constitutional and legal science and practice, and the right to a fair trial is one of the fundamental human rights that the state must protect. The realization of this right enables citizens to feel protected from any offenses, and the state to be considered truly democratic and legal. Thus, in the case of "Holder v. Great Britain", the European Court of Human Rights (hereinafter - the ECHR) notes that the very model of the right to a fair trial would be pathetic and meaningless if this norm did not ensure the right to have your case considered at all (Holder v. Great Britain. Decision No. 4451/70, 1975).

However, the administration of justice in some countries sometimes does not stand up to criticism, and due to a number of organizational, technical, procedural, economic and other reasons of an objective and subjective nature, the provisions on the justice of the court are declarative and are often violated. This also applies to Ukraine, which is confirmed by the annual increase in the number of applications to the ECHR regarding violations of the right to a fair trial.

The formation of the constitutional-legal mechanism for the implementation of European standards of the right to a fair trial to the national legal system of Ukraine directly affects the problems of its effectiveness. At the same time, it is worth emphasizing that the standards of the ECHR, set out in its decisions regarding the guarantees enshrined in Art. 6 of the European Convention on Human Rights is an implementation measure that requires a series of actions, without which it is impossible for Ukraine as a state party to fulfill its obligations under the European Convention on Human Rights, or to ensure fundamental rights and freedoms in general.

One of the key issues of today's Ukraine, on the territory of which martial law has been introduced, is whether the modern national judicial system is able to ensure the administration of justice and the right of citizens to a fair trial, which is a fundamental and priority duty of the state, within a reasonable time. Issues of access to justice and public hearings are also important. In the conditions of special legal regimes, these aspects of the right to a fair trial, unfortunately, are not always fully implemented, and the state faces a number of problems, the complex solution of which is one of the priority directions of a modern democratic society.

1. Methodology of the study

The set goal and tasks of the scientific article, its object and subject, determined the methods and techniques of scientific knowledge, with the help of which an objective study of the subject was achieved.

At each stage of the research, a set of general scientific and special methods of scientific knowledge was used. Through the prism of the dialectical method of scientific knowledge of legal processes and phenomena and systematic analysis, a deepening of the conceptual apparatus was ensured, the essence of the category «justice» and «right to a fair trial», the interpretation of the ECHR of the violation of the right to a fair trial, conflicts and gaps in the legislation of Ukraine and in practice were investigated its application, specific proposals for overcoming them are formulated.

The use of the system-structural method made it possible to investigate the internal structure of the mechanism for the implementation of the right to a fair trial in the national judiciary, to establish the relationship between the constituent elements of this right. Comparative legal and analytical methods are used to study the conventional and constitutional regulation of the right to a fair trial, as well as in the process of comparing the norms of international legal acts, the practice of the ECHR and national legislation.

With the help of the inductive method and scientific pluralism, proposals were formulated to improve the domestic constitutional regulation of the right to a fair trial in the context of the provisions of the Convention and national legislation. The statistical method was used in summarizing statistical data and practice materials on the implementation of the researched law. The forecasting method was used during the development and formulation of proposals aimed at improving national legislation and the organization of the judiciary in terms of regulation and implementation of the right to a fair trial.

A comprehensive approach and the use of all the above-mentioned methods of scientific research provided reliable and objective results of scientific work, and the methods used in connection and interdependence made it possible to comprehensively consider the legal conceptual foundations of fair justice in the world and at the national level, to reveal their theoretical and practical significance in legal science.

The normative and legal basis of the scientific article is composed of provisions of the Constitution of Ukraine, international legal acts in the field of legal regulation of the right to a fair trial, national and foreign legislation, precedent practice of the ECHR, relevant decisions of the Constitutional Court of Ukraine.

The empirical basis of the study was the decisions of the ECHR concerning the right to a fair trial, the interpretive acts of the higher courts of Ukraine, which are placed in the Unified State Register of Court Decisions, and the materials of judicial practice.

2. Analysis of recent research

The principle of justice as a phenomenon and category is the subject of study in various sciences: philosophy, jurisprudence, ethics, political science, sociology, cultural studies, and economics. From the doctrinal positions of constitutional science, the importance of studying the issue of justice in its relationship with law lies in the fact that it occupies a decisive central place among the values that constitute the ontological basis of law and are derived from such a legal phenomenon as human dignity.

Justice, as a basic legal value, has a decisive role in the understanding of law, the construction of its institutions, in the formulation of requirements for the legal regulation of relations in modern society. It serves as a peculiar tool of scientific analysis, ensures the organic unity of general theoretical and branch sciences, its implementation in justice is one of the main priorities in the conditions of building a legal state (Stepanov, 2018).

The problem of ensuring the constitutional right to a fair trial has a multifaceted nature, which is why its consideration requires a comprehensive comprehensive approach, the study of various aspects, and the effective implementation of Art. 6 Convention on the protection of rights and fundamental freedoms during war is extremely necessary, since courts are obliged not only to restore the violated right in such conditions (Shelever, 2022), but the state - to ensure the comprehensive implementation of justice, as a basic legal value society.

The right to a fair trial is the subject of research by many scholars. Modern scientists such as V. Horodovenko, P. Guivan, U. Koruts, O. Lemak, T. Lukash, O. Lyoshenko, A. Medvid, G. Nechiporuk, S. Stepanova, S. Shevchuk and others devoted their works to this issue. However, a stable and universally recognized approach to determining the legal nature of the right to a fair trial among scientists and practitioners has not yet been developed due to its multifaceted nature. In today's conditions, one of the main problems of an applied nature is the problem of interpretation and application of precedent provisions of the European Court of Human Rights.

Despite the fact that the quarantine and martial law introduced in Ukraine, although they became an impetus for the digitization of justice, the introduction of fundamentally new procedures aimed at protecting the rights, freedoms and safety of the participants in the trial (Tatulych, 2022), at the same time, significant restrictions on the rights of citizens and negative the consequences of these phenomena encourage the development of optimal ways of their protection in the realm of national justice.

The purpose of the article is a scientific analysis of the implementation of the constitutional right to a fair trial in Ukraine, the determination of its legal nature and the normative consolidation of the right in international legal and national normative acts, the study of the positive experience of applying the precedent practice of the ECHR in order to solve the main problems of the practical implementation of the said right in the national judiciary in the conditions of martial law in Ukraine.

3. Results and discussion

3.1. Doctrinal and legislative interpretation of the constitutional right to a fair trial in Ukraine

The study of the right to a fair trial is an integral part of the theoretical basis of the constitutional right to judicial protection, to an adversarial trial, to a legal and fair resolution of a legal conflict. The right to a fair trial is a person's right enshrined in Art. 6 of the Convention for the protection of human rights, which guarantees the right to a fair and public trial within a reasonable time by an independent and impartial court established by law (Convention for the protection of human rights and fundamental freedoms, 1950).

The term «justice» is interpreted not only in its legal sense, but also in its philosophical and aesthetic sense. In particular, according to the etymological origin, «justice» means impartiality of actions, judgments, recognition of someone's rightness, dignity, retribution to everyone on legal and honest grounds and, in general, compliance of human relations and actions with generally recognized moral and legal norms.

Without delving into the scientific debate about the definitions of the «right to a fair trial», we will take as a basis the interpretation of its essence by T. Lukash, as an opportunity for a person (individual and/or collegial entity), which is legally established, to protect in special state institutions (judicial system bodies and bodies in the justice system) violated rights and freedoms, the result of which is the actions of special state institutions to restore the violated right and/or an individual's ability to hold a position in the bodies of the judicial system and bodies in the justice system (Lukash, 2020).

In general, the right to a fair trial is one of the fundamental human rights, because if the legal construction of the specified provision does not apply, then the rest of the human rights remain unprotected, which excludes the guarantee of quality and impartial justice.

The right to a fair trial is guaranteed, in particular, by the provisions of the Law of Ukraine «On the Judicial System and the Status of Judges». In particular, in his art. 2 stipulates that the court, administering justice on the principles of the rule of law, ensures everyone the right to a fair trial and respect for other rights and freedoms guaranteed by the Constitution and laws of Ukraine, as well as international treaties, the binding consent of which was given by the Verkhovna Rada of Ukraine. Article 7 states that everyone is guaranteed the protection of their rights, freedoms and interests within a reasonable time by an independent, impartial and fair court established by law (On Judiciary And Status Of Judges: Law of Ukraine, 2016).

O. Lyoshenko singles out two interrelated structural elements of the right to a fair trial: 1) institutional and functional, which includes: access to justice; independence and impartiality of the court; publicity and openness of court proceedings; 2) procedural, which includes: reasonableness of terms; adversarial nature of parties to criminal proceedings; appeal of procedural decisions, actions or inaction (Lyoshenko, 2021).

T. Lukash proposed to consider the constitutional right to a fair trial as a combination of two elements, namely: 1) the right to judicial protection, which, in turn, consists of: a) the right to access to court or access to justice; b) the right to a fair trial; c) the right to the strict execution of a court decision and 2) the right to hold positions in the bodies of the judicial system and in the bodies of the justice system (Lukash, 2020).

In our opinion, the provisions of Part 2 of the Law of Ukraine «On the Judiciary and the Status of Judges». testify that in the context of the specified regulatory legal document, the term «fair court» is used both in the context of a requirement for the court as an institution (an independent, impartial, fair court, established by law), and from the position of a requirement for the procedure for the administration of justice (executing justice on the principles of supremacy rights, ensures everyone the right to a fair trial).

From the above, it can be concluded that the essence of «trial justice» is formed by the procedural and content components of justice. Procedural justice consists in the implementation of judicial proceedings in accordance with the procedural form defined by law, which in its essence meets the requirements of justice. Substantive (material) justice is characterized by the content of the decision made by the court (punishment determined by it or application/non-application of other coercive measures).

In performing their functions of applying the law, courts often have to carry out so-called judicial law-making related to the interpretation of national law in accordance with European standards, that is, creative activity, in particular, regarding the specification of norms on fundamental rights and freedoms. And this kind of activity is mostly based on the doctrine of judicial precedent, the content of which is the obligation for judicial authorities to implement their previous decisions (Shevchuk, 2007).

Along with the normative acts of the legislation, the law also included the judicial precedent in the part of the decisions of the ECHR in the application of procedural legal norms to the sources of Ukrainian procedural law. Individual court statements and remarks, which in themselves do not create a precedent (in the classical sense), nevertheless, given the authority of the court that adopted them, significantly influence the practice of other courts (Popov, 2010).

Actually, individual guarantees provided by the ECHR's application of the principle of legal certainty have the meaning of obiter dictum (obiter

or dicta in abbreviated version). Thus, judicial precedent, from the point of view of legal nature, is «a decision on a specific case, which is binding for courts of the same or lower instance when deciding similar cases or serves as a model of interpretation of the law, which do not have binding force» (David and Joffre-Spinoza, 1999: 31).

Applying judicial precedent as a way of regulating relations, the ECHR achieves certainty in the legal resolution of disputes by rendering decisions, the content of which (the motivational part) either does not coincide with the current legislation, or refers to those moments that were not foreseen when the laws were adopted. This is the peculiarity of the concept of European judicial law or the European judicial model (Koruts, 2015). Decisions of the ECHR, on the basis of which the interpretation and practice of applying the provisions of the Convention for the protection of human rights are provided, are a form of precedent law that expands its normative scope by establishing new universally binding rules.

Based on this, we share the point of view of S. Stepanova, that taking into account the subsidiary nature of the Convention for the protection of human rights, which is that the protection of the rights and freedoms guaranteed by this document must be carried out primarily at the national level, a key feature of the effectiveness of the judicial system is the adaptation of national standards to the standards of the ECHR in the context of precedent practice of the ECHR (Stepanova, 2018).

It should be emphasized that the structure of the right to a fair trial, provided for in clause 1 of Art. 6 of the Convention for the protection of human rights, not fully defined element by element. Therefore, precisely as a result of precedent developments and interpretation of the provisions of the specified norm, the content of not only the specified elements, but also those that are not prescribed in the relevant article, but are sufficiently significant in revealing the essence of the law, is revealed. So, along with such categories as publicity of the trial, impartiality of the court, reasonable terms of the trial, such unnamed elements as legal certainty, reasonableness of the trial, determination of jurisdiction acquire the importance of the principles of law.

Part of the specified guarantees, which constitute the content of the right to a fair trial, in Art. 6 of the Convention for the protection of human rights is not mentioned, but they are developed and interpreted by the precedent practice of the ECHR, without applying the decisions of which it is impossible to define unambiguously and outline the meaning of the specified terms.

Therefore, in addition to solving specific cases, the purpose of the ECHR is much broader and consists in ensuring that states comply with the provisions of the Convention for the protection of human rights, eliminating

systemic deficiencies that underlie the violations identified by the ECHR, eliminating grounds for new applications to be submitted to it by bringing national legislation to European criteria, adjustment of law enforcement practice, etc. (Guivan, 2019).

The national legislation tries to incorporate these principles into the Ukrainian legal system. In particular, Article 17 of the Law of Ukraine «On the Implementation of Decisions and Application of the Practice of the European Court of Human Rights» indicates the need for courts to apply the ECHR and the practice of the ECHR as a source of law, and Art. 18 of this Law determines the procedure for referring to the Convention and the practice of the Court (Law of Ukraine, 2006). As we can see, the Law refers specifically to the «practice of the Court» in its general sense, and the defining principle of a fair court is the opportunity to receive fair justice regardless of which social group a person belongs to or other personal characteristics (Horodovenko, 2012).

Summarizing the specified part of the scientific article, we note that in view of the importance of justice, as one of the fundamental values, which is filled with content in the law and determines its value essence as a whole, as well as the meaning of justice for the conceptual idea of ensuring legal foundations in a court decision, we consider it expedient to make appropriate changes to the wording of Art. 129 of the Constitution of Ukraine, enshrining in it the principle of justice as fundamental in the administration of justice.

The introduction of appropriate amendments to the Basic Law of Ukraine will enable national courts in the most difficult cases to apply justice or to restore justice violated when the relevant regulatory act was adopted. We also see the expediency of making appropriate changes to all procedural codes of Ukraine, providing in them the principle of justice as one of the general principles of proceedings.

As you know, a fair trial is a world heritage as a manifestation of honest and impartial timely consideration of each person's case. In the Ukrainian legal system, there is still an insufficient awareness of judges with the basic principles of a fair trial in the sense of the Convention for the protection of human rights and the decisions of the ECHR. Even when applying the precedent practice of the ECHR, the courts do not always clearly and unambiguously understand the legal content of the application of the relevant provisions.

We see one of the ways to solve this issue in increasing the level of responsibility of judges and introducing their systematic training. This issue has become especially relevant in the conditions of martial law in Ukraine, when numerous changes are made to specific and other laws, the consequence of which is a change in law enforcement practice, in particular, in terms of the organization and implementation of judicial proceedings.

3.2. Implementation of individual provisions of a person's right to a fair trial in Ukraine

Along with other legal institutions, the judicial branch of government in Ukraine has been affected by the war, which has made adjustments to the process of administration of justice, and the domestic judicial system remains understaffed and morally depressed. The main reason for this state of affairs is, first and foremost, the incompleteness and controversy of the reformation processes in the sphere of administration of justice.

According to the latest data, since the beginning of the full-scale armed Russian aggression, more than 70 judicial institutions have suffered damage of varying degrees up to their complete destruction. The damage caused by the destruction of the premises of judicial authorities is estimated at billions of hryvnias (Ognevyuk, 2022). However, even under martial law, a person's constitutional right to judicial protection cannot be limited (Tatulych, 2022).

As the Constitutional Court of Ukraine notes, no one can be limited in the right to access to justice, which includes the ability of a person to initiate a court proceeding and take direct part in the legal process, or be deprived of such a right (paragraph seven of subparagraph 2.2 of point 2 of the motivational part of the Decision of the Constitutional Court of Ukraine in the case of the constitutional appeal of citizen Troyan Anton Pavlovich regarding the official interpretation of the provisions of Article 24 of the Constitution of Ukraine dated April 12, 2012 No. 9-рп/2012 (Decision Of The Constitutional Court Of Ukraine, 2012).

Adequate awareness of the participants in the court process about court decisions, court hearings, and information about cases under consideration by the court is a necessary prerequisite for the realization of the right to access to justice. It is obvious that under the conditions of mass movement of citizens to other places of stay and limited possibilities of the postal operator to deliver correspondence in the conditions of martial law, the administration of justice by the courts in general and the right of access to justice of specific citizens in particular are endangered (Medvedev, 2022).

According to Art. 26 of the Law of Ukraine «On the Legal Regime of Martial Law» shortening or speeding up any forms of judicial proceedings under martial law is prohibited (Law of Ukraine, 2006). However, it is not always possible to ensure the continuous operation of the court during the war, and some courts do not conduct justice at all, since according to the Supreme Court of Ukraine, 20% of the courts were under occupation or in the war zone (Tatulych, 2022).

In the case «Andrenko v. Ukraine» (ECHR Decision No. 50138/07, 2011), the ECHR came to the conclusion that the main responsibility for

the excessive duration of the proceedings in this case lies with the state bodies in connection with the violation of Article 1. 6 of the Constitution of Ukraine. The behavior of the parties does not exempt the respondent state from responsibility, since the organization of the proceedings must be done in such a way that it is fast and efficient, which is the task of national courts (9, paragraph 43).

In the conditions of martial law, the courts continue to work in the territory controlled by Ukraine, because in accordance with Art. 10 of the Law of Ukraine «On the Legal Regime of Martial Law» during the period of martial law, the powers of the courts cannot be suspended. And according to Art. 12-2 of this Law, in the conditions of the legal regime of martial law, courts act exclusively on the basis, within the limits of their powers and in the manner determined by the Constitution of Ukraine and the laws of Ukraine, and their powers are provided for by the Constitution of Ukraine, in the conditions of the legal regime of martial law, they cannot be limited (Law of Ukraine, 2006).

At the level of the Basic Law of Ukraine (Article 124), it is established that justice in Ukraine is exclusively carried out by courts, and the delegation of court functions, as well as the appropriation of these functions by other bodies or officials, are not allowed (Constitution Of Ukraine, 1996). These regulations oblige the courts to work and administer justice even under the conditions of an extraordinary legal regime. At the same time, the new conditions make it necessary for the state to take decisions aimed at ensuring the proper performance by the courts of the functions assigned to them.

In order to settle this issue, the Council of Judges of Ukraine adopted a number of important and relevant decisions «Regarding the adoption of urgent measures to ensure the stable functioning of the judiciary in Ukraine in the conditions of the termination of the powers of the Ukrainian People's Liberation Army and martial law in connection with armed aggression by the Russian Federation» 24.02.2022 (Decision of the Council of Judges of Ukraine, 2022). In particular, it published recommendations on the work of courts under martial law, the main ones of which are as follows:

1. to postpone the consideration of the case (with the exception of urgent court proceedings) and remove them from consideration, since a large number of participants in court proceedings are not always able to submit an application for postponement of the consideration cases cannot come to court due to danger to life;
2. cases that are not urgent should be considered only with the written consent of all participants in the court proceedings;
3. to explain to citizens the possibility of postponing the consideration of cases in connection with military actions and the possibility of

considering cases in the mode of video conference; for this, the participants in the case must declare their participation in the court session via video conference. In case of impossibility to participate in the court session, it is recommended to submit a petition to the court for:

- postponing the consideration of the case and consideration of the case with the participation of a representative;
- participation in a court session via video conference (Decision of the Council of Judges of Ukraine, 2022). It is possible to send relevant petitions to the court by mail or through the «Electronic Court» system.

The implementation of European standards of the right to a fair trial in Ukraine is reduced not only to the law-making activity of the state in the person of its bodies on the adoption of the norms of European law by domestic legislation, but also involves the implementation of a complex of systemic measures of a law enforcement nature, which ensure the actual implementation of the prescriptions of international legal norms. In this sense, when talking about the observance of judicial principles that correspond to the practice of the ECHR, special attention should be paid to the organizational and technical issues of changing the territorial jurisdiction of cases, observing reasonable investigation deadlines, as well as remote participation in court hearings.

- **Change of territorial jurisdiction of cases**

For the normal provision of the right to access to justice as a component of the right to a fair trial, such elements as procedural and physical possibilities of applying to the court are necessary. In its decisions, the ECHR has repeatedly emphasized that the right of access to the court cannot be considered as something absolute. Thus, in the decision «De Geoffre de la Pradelle v. France» (Geouffre de la Pradelle v. France), dated December 16, 1992, the ECHR stated that «the right to go to court may be limited, but these limitations must not complicate or limit the access of a person so or to such an extent that it damages the very essence of this right» (Geouffre de la Pradelle v. France. Decision, 1992).

In turn, in the Ashingdean v. United Kingdom decision of May 28, 1985, the ECHR stated that any restrictions on access to the court are under the control of the ECHR, which checks whether such state intervention pursued a legitimate aim and whether it is proportionate and necessary in a legal and democratic state between the measures taken and the goal set (Ashingdane v. United Kingdom. Decision, 1985). However, these restrictions should not, however, interfere with the exercise of the right to access to justice in such a way or to such an extent that the very essence of this right is violated.

The adopted Law of Ukraine «On Amendments to the Law of Ukraine «On the Judiciary and the Status of Judges» stipulates that in connection with a natural disaster, military operations, measures to combat terrorism or other extraordinary circumstances, the work of the court may be suspended with the simultaneous determination of another the court that will administer justice on the territory of the court that has ceased operations and that is territorially closest to the court whose work has been terminated (Law of Ukraine, 2022).

As a result of the full-scale invasion of the Russian Federation on the territory of Ukraine, the conduct of active hostilities and the temporary occupation of certain territories, a number of courts by the relevant orders of the Chairman of the Supreme Court «On changing the territorial jurisdiction of court cases under martial law», taking into account the impossibility of courts to administer justice during martial law, territorial jurisdiction the court cases considered in these courts were changed.

The implementation of such powers became possible thanks to the adopted changes to the wording of Part 7 of Article 147 of the Law of Ukraine «On the Judiciary and the Status of Judges», according to which in the event of the impossibility of administering justice by a court for objective reasons during a state of war or emergency, in connection with a natural disaster, military operations, measures to combat terrorism or other in extraordinary circumstances, the territorial jurisdiction of court cases considered in such a court may be changed by a decision of the High Council of Justice, which is adopted at the request of the Chairman of the Supreme Court, by transferring it to the court that is territorially closest to the court that cannot administer justice, or another specified court.

In the event that the High Council of Justice is unable to exercise such authority, it is exercised by order of the Chairman of the Supreme Court. The corresponding decision is also the basis for the transfer of all cases pending before the court whose territorial jurisdiction changes (Law of Ukraine, 2016).

The resumption of work in some courts, in particular in the de-occupied territories of Ukraine, is accompanied by a large number of organizational and technical problems, because a significant number of court premises were damaged or completely destroyed, and computer equipment and other material assets were stolen. Therefore, regardless of the fact that the court that was supposed to consider the case has ceased its activity, the consideration of the case should be carried out by another court that is territorially closest. Information on the change of territorial jurisdiction of court cases can be found directly on the website of a particular court.

On February 26, 2022, the Verkhovna Rada of Ukraine registered a draft law on amendments to the Code of Administrative Procedure of Ukraine,

the Civil Procedure Code of Ukraine, and the Economic Procedure Code of Ukraine (regarding the implementation of judicial procedures in conditions of martial law or a state of emergency) No. 7316, which provides: during the period of martial law whether a state of emergency provides for the possibility of remote work of the secretary and the granting of his powers to other employees of the court apparatus; features of court summonses and notices during the period of martial law or state of emergency; that the preliminary proceedings and/or trial must be conducted within a reasonable time, taking into account the possibility of the parties to the case to participate in the proceedings; to expand the scope of application of written proceedings in courts of all jurisdictions; to extend the features of consideration of court cases, which were applied in connection with the introduction of quarantine due to COVID-19, also to the period of martial law or state of emergency; peculiarities of serving a copy of a court decision during the period of martial law or state of emergency (Project Law No. 7316, 2022).

- **Procedural terms**

One of the elements of the requirements of Art. 6 of the Constitution of Ukraine there is a requirement that the case must be considered within a reasonable time. Its improper application in Ukraine is also recorded in the practice of the ECHR, which has repeatedly established a violation of Clause 1 of Art. 6 of the Constitution of Ukraine in cases related to temporal issues of unreasonableness of judicial terms, namely: «Vashchenko v. Ukraine» (paragraph 50), «Popilin v. Ukraine» (paragraphs 24–31), «Pavlyulynets v. Ukraine» (paragraph 53).

Also, the analysis of the practice of the ECHR proves that when determining the reasonableness of the trial period, not only such criteria as the importance of the case for the applicant, the complexity of the case, the behavior of the parties, the number of stages of the proceedings, but also the peculiarities of the political or social situation in the state, etc. are taken into account» (Tregubov, 2010).

Martial law does not affect the course of procedural terms, but may be a valid reason for renewing or extending the procedural term; the procedural term established by the court is not subject to renewal, but can only be extended at the request of the party to the dispute; during the period of martial law, the general and special statute of limitations provided for by the norms of civil and economic legislation are extended.

Undoubtedly, the introduction of martial law made it impossible for many people to submit the relevant documents to judicial institutions on time. If at the beginning of the war it was popular to think that martial law is a valid reason for recognizing the reasons for missing procedural terms

as valid, now every court is based on the current situation in the respective region (Chernilevska, 2022).

One should not forget about the discretionary powers of the court and the absence of a general rule that martial law is a valid reason for extending the terms, therefore one should not neglect the defined procedural terms. At the same time, it is necessary to realistically assess each specific situation and respond to it promptly and advocated.

Of course, the format of the activity of courts and judges has undergone changes, adapted to the peculiarities of the legal regime caused by the martial law, but under such, even temporary conditions, judicial proceedings must be carried out in all cases and cannot be suspended in order to prevent the limitation of a person's constitutional right to judicial protection.

- **Remote participation in the court session**

Provisions regarding the administration of justice in a specially equipped room - a courtroom are contained in every procedural law. This places an obligation on judges and court staff who, being faithful to their oath and acting in accordance with the Constitution, are physically present at their workplaces so that justice continues to be administered.

Under such conditions, a completely logical question arises among scientists and law enforcement officers: Is the condition that obliges judges and court employees to be physically present in court adequate during martial law, chronic underfunding, and a colossal personnel crisis? After all, if every participant in the case can fully exercise his right to participate in the video conference mode, being in a safe place, then why expose court employees to danger and force them to go to work under the enemy's crosshairs (Ognevyuk, 2022)?

The only adequate and balanced solution to these problems is the introduction of remote justice in Ukraine, which gained popularity in the world during the coronavirus pandemic. Of course, for remote hearings, people must be able to prove their identity if they are not physically present in court. For this, countries allowed the use of electronic signatures, making changes, in particular, to the criminal and civil procedural codes (Ognevyuk, 2022).

The issue of providing the possibility of remote justice gained wide popularity in 2022 due to the spread of the coronavirus pandemic. Countries where video conferencing is used in civil and criminal proceedings include: United States of America, United Kingdom, Austria, Sweden, Ireland, Croatia, Hungary, Kazakhstan, Portugal, Serbia, Slovenia, France (hearings also take place by telephone), North Macedonia (only during the state of emergency).

In 2020, the Verkhovna Rada of Ukraine adopted laws that made it possible for litigants to exercise their right to participate in court hearings remotely, thus exercising their right to a fair trial. Instead, the State Judicial Administration of Ukraine has developed a procedure for video conferencing during the court session with the participation of the parties outside the court premises.

This format of holding court hearings helped to normalize the administration of justice in quarantine conditions. However, practice confirms that the conditions of martial law prevent the realization of the rights of individuals to have their case heard by a court, even in this way, due to the risk of becoming a target of chaotic shelling and bombing.

We believe that the problem of interrupting court sessions in connection with frequent cases of air alert announcements needs to be further worked out and resolved, taking into account the imperative principles of judicial proceedings and the need to ensure the safety of court session participants and other court employees. Further steps to expand the possibilities of remote judicial proceedings also require a technical and regulatory basis in order to ensure the possibility for participants in the proceedings and judges to participate in court sessions remotely.

While the expansion of the use of online court proceedings is pending, it is worth actively using the resources of the «Electronic Court» subsystem, which, after registering in their own electronic account, allows the participants in the case and their representatives to submit documents to the court, receive documents, get acquainted with case materials, etc. However, there are reasons that today, mostly for objective reasons, not all Ukrainian courts have joined the «Electronic Court» subsystem, and this, in turn, slows down the full use of the capabilities and resources of this subsystem and encourages the use of alternative ways of participating in adversarial litigation.

The situation that has developed in Ukraine today requires quick and decisive steps to establish the participants' access to the court, without excessive formalism, which will harm the authority of the judiciary, which must protect the interests of citizens under any conditions. Necessary and at the same time comfortable conditions for high-quality and effective resolution of the dispute must be created for the participants in the legal process. For this purpose, it is necessary to ensure the successful and balanced application of the legislation, which, of course, will require the appropriate technical support of the courts.

All the elements considered in the specified part of the article (territorial jurisdiction of cases, compliance with reasonable investigation deadlines, remote court proceedings) are integral components of the right to a fair trial within the meaning of Part 1 of Article 6 European Convention on human

rights and serve as guarantees established by the European Convention on human rights and the practice of the ECHR as the most effective regional international human rights protection system at the moment (Lemak, 2014).

At the same time, analyzing the current state of the practice of national implementation of the European Convention on Human Rights, as well as the precedent practice of the ECHR in modern conditions, we can characterize the latter as not yet systematic, and the mechanism of appeal to the precedent practice of the ECHR is still undeveloped. In this context, as well as taking into account the legislative, organizational and economic difficulties caused by the state of war on the territory of Ukraine, we consider it appropriate to provide advisory clarifications of higher judicial institutions on the issues of forming approaches to the application of the practice of the ECHR in conditions of emergency legal regimes.

Conclusions

Justice is one of the fundamental values, which is filled with content in the law, determines the value nature of the law as a whole and is of essential importance for the idea of ensuring legal foundations in a court decision. In view of this, Art. 129 of the Constitution of Ukraine, which enshrines the basic principles of the judiciary, should be supplemented with a provision on the principle of justice, as fundamental in the administration of justice. The introduction of appropriate legislative changes to the Basic Law and to the criminal procedural codes will help in the most difficult cases (primarily, in the conditions of a special legal regime) to carry out judicial proceedings, based on the fundamental principle of justice, established at the constitutional and branch level.

The right to a fair trial is one of the elements of the rule of law and a fundamental right of every person, enshrined in national legislation and in the provisions of the European Convention on human rights, which are clarified and detailed in the decisions of the ECHR. Based on the provisions of Art. 6 of the European Convention on human rights and the practices of the ECHR, the state must ensure guarantees for every person regarding access to justice, which will be fair and legal, and the independence and objectivity of the court is a significant sign of the rule of law and the justice of the court. However, even in spite of this, in the conditions of judicial reform and the martial law introduced in Ukraine, there are not enough legal means of its implementation at the legislative level, which prompts the improvement of national legislation in terms of developing effective mechanisms for the implementation by a person of the fundamental principle of access to justice.

The right to a fair trial is complex in nature and includes fairness and publicity of the proceedings, reasonableness of terms, presumption of innocence, independence and impartiality of the court, existence of a dispute regarding rights and obligations, etc. Such elements of the right to a fair trial, such as territorial jurisdiction of cases, compliance with reasonable investigation deadlines, remote court proceedings in the conditions of martial law introduced in Ukraine, require an immediate and at the same time comprehensive approach in order to create the necessary and at the same time comfortable conditions for a high-quality and effective resolution of the dispute, ensuring continuous functioning of the judicial system.

In this case, the following should be identified as priorities: provision of advisory clarifications of higher judicial institutions on issues of forming approaches to the application of the practice of the ECHR in conditions of emergency legal regimes; introducing systematic training of judges and increasing their level of responsibility; proper organizational and technical support of courts.

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