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Citizens' access to justice during the introduction and implementation of the legal regime of martial law in Ukraine

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Abstract

During times of martial law, access to justice may become limited. However, there exist generally accepted principles of international humanitarian law and European standards that mandate a state embroiled in conflict to safeguard human rights and access to judicial procedures. Hence, the issue of exercising the right to access justice is relevant. The purpose of this study was to investigate the functioning of the judicial system of Ukraine under martial law and its accessibility to citizens. The methodological framework of this study included the content analysis method, analytical, systemic and structural, dialectical, formal legal, and logical methods. The study examined the issues of access to justice under martial law in Ukraine, and the observance of all human and civil rights and freedoms guaranteed by the Constitution of Ukraine and other international instruments. The study focused on various decisions made by the authorities regarding the functioning of the judicial system of Ukraine: changes in the work of courts, restrictions on procedural guarantees and the conduct of certain categories of cases, redistribution of cases to courts that are closer to the territorial location and are likely to be safe, relocation of courts from the occupied territories or combat zones. Attention was focused on electronic document management and the work of the Electronic Court subsystem, etc. The study concluded that the judicial system of Ukraine did not cease to function; although access to justice during martial law may be restricted, it depends on a particular situation, the location of courts, legislation, and international obligations. The study focused on remote justice, which will ensure the proper safety of litigants and the quality of justice. The demand for remote court proceedings will grow over time, resulting in the modernisation of access to court. The practical significance of this study lies in outlining ways to improve the effectiveness of access to court in wartime conditions

Keywords:

constitutional rights; judicial system; judicial reform; digitalisation of justice; electronic document management; online conference

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Introduction

On 24 February 2022, the Russian Federation unjustifiably and criminally invaded the sovereign and integral territory of Ukraine, and the President of Ukraine declared martial law (Decree of the President of Ukraine No. 64/2022 dated 24.02.2022 "On the Introduction of Martial Law in Ukraine"¹, Law of Ukraine "On Approval of the Decree of the President of Ukraine "On the Introduction of Martial Law in Ukraine"²). According to Article 1 of the Law of Ukraine "On the Legal Regime of Martial Law"³, martial law is a special legal regime introduced in Ukraine or in some of its regions as a result of armed aggression or threat of attack and provides state authorities, military bodies, and local self-government bodies with the powers necessary to avert the threat, repel armed aggression, and ensure national security. This paper states that it is possible to temporarily restrict constitutional rights and freedoms of a person and citizen and the rights and legitimate interests of legal entities, but the duration of these restrictions must be determined.

Therewith, the Constitution of Ukraine clearly defines the right of citizens to protect their legitimate rights, freedoms and interests by going to court, namely, parts 1, 2 of Article 55 guarantee the right of everyone to judicial protection, to appeal against decisions, actions or inaction of state authorities, local self-government bodies, officials, and employees in court⁴. That is why access to justice is a crucial factor in the exercise of this right. M. Smokovich (2022) emphasises that Ukraine's immediate obligation is to ensure these rights under any legal regime in the state (whether peaceful or martial law), and judicial protection of constitutional rights and freedoms under martial law is absolute. According to the Venice Commission's report, fair trial and access to it must be ensured by the state in all legal regimes, and the judicial system must not be compromised in any way (Alivisatos *et al.*, 2020). However, at the same time, any interference by the authorities cannot violate the basic content of the right to judicial protection, and the circumstances of martial law should make laws and judicial practice flexible according to the new requirements (Savchyn, 2018).

The guarantors of access to justice are the Constitution of Ukraine (Articles 55, 124, 129)⁵, the International Covenant on Civil and Political Rights (Article 14)⁶, the Convention for the Protection of Human Rights

and Fundamental Freedoms (Article 6)⁷, the European Court of Human Rights (ECHR), and other international instruments ratified by Ukraine. N. Shelever (2022) notes that the right of access to court is not absolute and can be limited, but at the same time it has distinctive features in terms of the requirement to comply with certain rules.

A. Gerych (2022) focused on the problem of access to administrative justice under martial law. In this paper, the author considered the financial costs of the ECHR as an obstacle to access to justice and emphasised that courts should take all measures to ensure that the violated right to access to justice is restored. The issue of postponement and suspension of the proceedings is also an acute one. As pointed out by D. Moiseyenko (2022), the procedural codes of Ukraine do not contain particular information with special rules that would regulate these procedural relations under martial law. Therefore, the Ukrainian judicial system is forced to adapt to the current legislation. For instance, as described by A. Zavydniak (2022), to ensure the visibility and audibility of the parties to the proceedings during the court session, the Ukrainian government introduced videoconferencing during the administration of justice.

Thus, the main task during martial law is to ensure the maximum functioning of all its structures, compliance with the regulated norms and ensuring the exercise of all rights guaranteed by the Constitution of Ukraine. Therefore, investigating the issue of access to justice during martial law is extremely relevant. The purpose of this study was to analyse the effectiveness of the judicial system under martial law through the lens of accessibility for citizens and to identify some recommendations for improving its functioning under these conditions.

The objectives of this study were to systematise the opinions of experts on the effectiveness of the judicial system under the legal regime of martial law, to analyse the facts of the effectiveness and gaps in the judicial system as of 2023, and to outline the main areas for improving access to justice during martial law in Ukraine.

The methodological framework was chosen as follows. The study used the content analysis method to investigate the scientific works of scholars who have examined the issue of citizens' access to justice during the introduction and implementation of the martial law regime in Ukraine. The analytical method helped analyse

¹ Decree of the President of Ukraine No. 64/2022 "On the Introduction of Martial Law in Ukraine". (2022, February). Retrieved from <https://www.president.gov.ua/documents/642022-41397>.

² Law of Ukraine No. 2102-IX "On Approval of the Decree of the President of Ukraine "On the Introduction of Martial Law in Ukraine". (2022, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/2102-20#Text>.

³ Law of Ukraine No. 389-VIII "On the Legal Regime of Martial Law". (2015, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/389-19#Text>.

⁴ Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96%D0%B2%D1%80#Text>.

⁵ Ibidem, 1996.

⁶ International Covenant No. 995_043 "On Civil and Political Rights". (1973, October). Retrieved from https://zakon.rada.gov.ua/laws/show/995_043#Text.

⁷ Convention No. 995_004 "On the Protection of Human Rights and Fundamental Freedoms". (1997, July). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004#Text.

the problems of citizens' access to justice in Ukraine and scholars' proposals for solving these problems. The systemic and structural method was used to formulate a general approach to highlighting the problems of citizens' access to justice and to analyse the structural components of access to justice. The dialectical method was employed to examine the issue of access to justice through the lens of analysing the interconnection between absolute and relative legal relations. The formal legal method was used to analyse regulations. The author uses the logical method to determine the content and focus of the legislative provisions which regulate relations arising in the area of access to justice during martial law.

Systems for filing and storing electronic documents

Challenges to Ukrainian justice began long before 24 February 2022: the inability of courts to function in the occupied territories since 2014, quarantine restrictions since 2020. This accelerated the digitalisation of the judicial system, which was supposed to simplify the work of judges and facilitate access to justice for citizens. This is how the Unified Judicial Information and Telecommunication System (n.d.) (UJITS), the UJITS subsystem "Electronic Court", the Unified State Register of Court Decisions (n.d.), etc. came into operation. This made it possible to use secure servers to submit and store electronic documents, access the required case and decisions on it, take part in court hearings online, etc. The UJITS also automatically assigned court cases to judges. The main thing that citizens needed to register claims and supporting documents was to have a qualifying electronic signature (QES), the formation of which is regulated by the Law of Ukraine "On Electronic Trust Services"¹. Some courts took part in the Model Courts and Convenient Court pilot projects, which aimed to simplify citizens' access to justice and strengthen their trust in Ukrainian justice. Even then, the focus was on access to justice. It guarantees the right of people to go to court to claim their rights, regardless of their economic, social, political, migration, racial, or ethnic status, or their religion, gender identity, or sexual orientation. Access to justice focuses on the ability of people to seek and receive remedies through formal or informal justice institutions and according to human rights standards. The requirements for effective access to justice include a legal framework, legal protection, legal awareness, knowledge, assistance and representation, access to justice, fair

procedure and judgments, and enforceable decisions (Gutterman, 2022). I. Izarova (2022) also focused on the restoration of the judicial system in Ukraine, its modernisation and optimisation through the maximum prevention of duplication of powers between bodies and institutions and the efficient use of resources.

A. Zavydniak (2022) also tried to define the legal mechanism of access to justice under martial law. The scientist analysed the problems associated with limited access to justice that arose due to the imposition of martial law. The researcher identified problematic issues related to the use of electronic means to ensure access to administrative justice and highlighted the role of administrative justice in ensuring the rights and freedoms of individuals during martial law.

The beginning of 2022 still caused a collapse in the judicial system for many different reasons. O. Kaplina *et al.* (2022) described in their study that the beginning of the armed aggression of the Russian Federation against Ukraine completely paralysed the work of many courts due to the lack of a clear algorithm of actions for judges in war. The authors conclude that the existence of a military justice system and military courts as its subsystem is necessary for the judicial system to function without interruption under any legal regime of the state. The researchers took a thorough approach to the possible determination of the most optimal model of military justice for Ukraine by systematising existing models of military justice in the world and analysing the case law of the European Court of Human Rights in the administration of justice by military courts.

For instance, before the start of active hostilities, the High Qualification Commission of Judges of Ukraine (HQCJU) had not been functioning for more than three years, and the High Council of Justice of Ukraine (HCJU) resigned two days before the invasion. All key decisions and responsibility for them rested with the Council of Judges and the Chairperson of the Verkhovna Rada. Notably, the new HCJU was elected only in January 2023 (Digest of events..., 2023; The 19th extraordinary..., 2023; The Supreme Council..., 2023). It should be borne in mind that the Constitution of Ukraine² also stipulates that there are public authorities whose powers cannot be delegated to others. These are the head of state (Article 106(2)), as well as other institutions of state power, including the courts (Article 124(1) and (2)). At the same time, part 6 of Article 124 of the Constitution of Ukraine³, part 4 of Article 26 of the Law of Ukraine "On the Legal Regime of Martial Law"⁴ prohibits the establishment of emergency and special courts (including

¹ Law of Ukraine No. 2155-VIII "On Electronic Trust Services". (2017, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/2155-19#Text>.

² Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96%D0%B2%D1%80#Text>.

³ Ibidem, 1996.

⁴ Law of Ukraine No. 389-VIII "On the Legal Regime of Martial Law". (2015, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/389-19#Text>.

military courts). Article 10 of the Law prohibits the termination of the functioning of any state body, including courts, while Article 2(2)¹ prohibits the reduction or acceleration of any form of legal proceedings. However, part 3 of Article 26² clearly defines the right to reallocate cases to existing courts or to relocate courts to safer locations. After all, it is the martial law justice system that allows citizens to achieve justice in a legal way (Gorbalinsky & Zadalya, 2022). O. Uhrynovska & A. Vitskar (2022) conducted a detailed analysis of the recommendations of the Council of Judges of Ukraine and the Chairman of the Verkhovna Rada regarding the specific features of the functioning of courts and the work of judges under martial law and focused on the features of civil proceedings with an emphasis on a particular procedural institution.

Despite the continuity of the judicial proceedings, the security standards for judges set out in paragraphs a, b, f, g of Article 5 of Law No. 3781-XII³ on ensuring personal protection, security of housing and property, acquisition of weapons and other means of protection, moving to safer places, ensuring confidentiality of information about protected objects must first be implemented. In such a situation, the constitutional state institutions (the President of Ukraine, state bodies of the military and defence structure, executive, legislative, judicial authorities, etc.) must be as flexible, focused, purposeful, rational, and continuously effective as possible in making relevant management decisions and taking actions. A review of the websites of various courts found in the combat zone made it possible to conclude that the work was suspended mainly due to the evacuation of judges and their families to safer regions, voluntary mobilisation, removal of key documents, etc. In general, courts began to resume their work in late April.

Reports of the Chief Justice and the Council of Judges assure citizens of the continuous operation of court proceedings in Ukraine and access to justice through the UJITS. The following steps were taken to achieve this.

Since the High Council of Justice was not functioning, Law No. 2128-IX⁴ was adopted, according to which the Chief Justice was given additional powers to appoint (without competition) and dismiss the Head of the State Judicial Administration, second judges to another court of the same level and speciality and terminate them early, as well as other decisions related to pressure on

judges, the functioning of the Armed Forces of Ukraine (AFU), the publication of necessary public information, etc. This law should be extended for another 30 days after the end of martial law (Halka, 2022). Within the framework of the above, the Supreme Court relocated 122 courts (47 courts from the occupied territories and 75 from the combat zones).

The state of justice during the war

By Decree No. 64/2022 (para. 3)⁵, the President of Ukraine determines that due to the need to introduce and implement measures of the martial law regime, some constitutional rights and freedoms of a person and citizen protected by Articles 30-34, 38, 39, 41-44, 53 of the Constitution of Ukraine, as well as some rights and legitimate interests of legal entities, may be restricted. Paragraph 7 refers to the notification of the UN Secretary-General and foreign officials of possible temporary restrictions on certain civil and political rights of individuals and citizens guaranteed by the obligations of the International Covenant on Civil and Political Rights.

Access to justice was changed pursuant to the requirements of martial law. Much attention is focused on war crimes, genocide, crimes against humanity and peace, and their recording for the purpose of compensation. It is recommended that administrative proceedings be used to document problems that threaten the continuous operation of critical infrastructure, cases that can be postponed without violating the rights of citizens, and that they be postponed, but this does not include criminal proceedings. Criminal justice is a priority even during martial law. Access to the Unified State Register of Court Decisions has been suspended.

To facilitate citizens' access to justice, it was allowed to submit and file case files electronically without the need for hard copies⁶. Participation in court hearings via videoconferencing by authenticating a person with an electronic signature (through the Unified State Demographic Register or per Articles 9 and 10 of the Law of Ukraine "On the Unified State Demographic Register and Documents Confirming Citizenship of Ukraine"⁷). At the same time, it should be remembered that the work of the court depends on the situation in the region where the court is located. Therefore, citizens should follow the updates published on court websites (Mysnyk, 2022).

¹ Law of Ukraine No. 389-VIII "On the Legal Regime of Martial Law". (2015, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/389-19#Text>.

² Ibidem, 2015.

³ Law of Ukraine No. 3781-XII "On State Protection of Court Employees and Law Enforcement Bodies". (1993, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/3781-12#Text>.

⁴ Law of Ukraine No. 2128-IX "On Amendments to Chapter XII "Final and Transitional Provisions" of the Law of Ukraine "On the Judiciary and the Status of Judges" on Ensuring the Stable Functioning of the Judiciary during the Absence of the High Council of Justice". (2022, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/2128-20#Text>.

⁵ Decree of the President of Ukraine No. 64/2022 "On the Introduction of Martial Law in Ukraine". (2022, February). Retrieved from <https://www.president.gov.ua/documents/642022-41397>.

⁶ Administrative Judicial Code of Ukraine No. 2747-IV. (2005, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/2747-15#Text>.

⁷ Law of Ukraine No. 5492-VI "On the Unified State Demographic Register and Documents Confirming Ukrainian Citizenship". (2012, November). Retrieved from <https://zakon.rada.gov.ua/laws/show/5492-17#Text>.

For instance, the Venice Commission, in its 2020 opinion on the observance of the principles of democracy, human rights and the rule of law in states of emergency (i.e., in the given case, war), defines the fundamental principles of the rule of law (e.g., how the existence of a state of emergency is based on the dichotomy between the norm (the normal state) and the exception) (Alivisatos *et al.*, 2020). In this regard, the Venice Commission stated that “the notion of a state of emergency is based precisely on the assumption that in particular political, military, or economic emergencies, the system of constitutional limitations on government must give way to an increase in executive powers”. However, even in a state of emergency, the fundamental principle of the rule of law should prevail. The Commission’s compilation of works in this area serves as a guide to the Commission’s particular findings (Alivisatos *et al.*, 2020).

As of 2023, 587 courts administer justice in Ukraine, while 171 courts do not administer justice (87 due to active hostilities or location on the temporarily occupied territory, 84 since 2014) (Monich, 2023a). In terms of property, 13 buildings were completely destroyed, 86 have varying degrees of destruction, and servers and documents from courts under enemy occupation were also lost. Kherson region is currently an unresolved issue. The Head of the Council of Judges of Ukraine B. Monich (2023b) also announced the methods used to solve the problem of having the required number of judges (as more than 500 of them went abroad, many of them serve in the Armed Forces, so the issue of staff shortage arose): a statistical analysis of cases considered by particular courts was made, which revealed an uneven workload for some courts. Therefore, based on these statistics, the Council of Judges of Ukraine launched the so-called court optimisation process, which involved determining the maximum number of judges in courts according to the number of cases coming for consideration.

It is worth recalling here that the main position of the ECHR is access to justice as an integral element of the right to a fair trial. In this regard, P.D. Guivian (2019) notes that the Convention is not a guarantor of theoretical or illusory rights, but of rights that are practically realised. That is, access to justice and fair trial should be free of additional aggravating elements. When analysing the ECHR reporting information and comparing it with the reporting of the Ukrainian judiciary, a dissonance arises, as fully implemented access to justice cannot lead to such many recorded claims of human rights violations. Even considering the lack of electricity and the Internet, difficulties in using the E-Court subsystem, and the lack of public awareness of the digitalisation of justice, the reported cases still go beyond the above difficulties.

In 2022, the ECHR recorded about 10,400 registered applications against Ukraine, of which 144 were

accepted (Lubinets, 2022). The most common violations noted in the decisions are violations of the right to a fair trial, as well as procedural rights in pre-trial investigations; restrictions on the right to obtain proper enforcement of court decisions, as well as access to them; violations of the time limit for court hearings, and delays in them (The rule of law..., 2022). There have also been cases of abuse of power by the Chief Justice (lack of transparency in appointments, transfers, recall of judges, their certification, etc.). The judicial system in 2022 was negatively affected by the absence of the HCJU, as well as, according to O. Drozdov (2020), the HQCJU, which was ill-consideredly disbanded by the judicial reform. The head of the Committee on Free Legal Aid of the Ukrainian National Bar Association argues that the judicial reform has steered Ukrainian justice away from European standards of judicial independence, which is clearly unacceptable.

Although the High Council of Justice resumed its work in 2023, it will not be able to consider citizens’ complaints for another 6 months, and as of the end of March 2023, according to H. Usyk, there were about 9,000 of them (Mikhailov, 2023). The ECHR also draws attention to the consideration of cases of minors in temporary detention facilities who are still awaiting a court decision. There are also complaints about violations of the official duties of individual judges. The head of the High Council of Justice (HCJ), H. Usyk, also claims that the level of trust in the court and the HCJ has significantly decreased among the population, and the head believes that the main reason for this is understaffing and insufficient financial support, and non-enforcement of court decisions (Gamskyi, 2023).

As of 30.03.2023, the HCJ dismissed 105 judges on general grounds (96 judges resigned, 9 judges resigned of their own free will) (Mikhailov, 2023). These and other existing problems state the fact that the judicial system is operating and attempting to function and implement accessibility through digitalisation. Nevertheless, violations are still recorded, which are primarily related to the human factor, possibly incompetence of judicial officers, abuse of power, and gaps in Ukrainian legislation. This problem really needs to be addressed immediately.

Analysing the above information, it is worth paying special attention to the transparency of the judicial system of Ukraine to restore public confidence in it, especially considering the events currently unfolding in the Supreme Court of Ukraine. In addition, to facilitate access to justice for Ukrainian citizens, wherever they are currently located. All this can be achieved through the adoption of the necessary draft laws that would make the judicial system more flexible under martial law and comply with international standards of justice.

It is also worth paying attention to public education on the use of the UJITS platform, as well as the development of applications or bots to obtain information on the territorial location of a particular court. The

existing problems can be fully resolved by being on the side of the law within the framework of martial law. The abstract level of trust of Ukrainian society in the judiciary is somewhat lower than the assessments based on the experience of interaction. In other words, 62% of citizens and 68% of internally displaced persons (IDPs) had a positive experience with the courts, but only 58% of the population and 60% of IDPs have confidence in the courts themselves. Other sources indicate that 12% are convinced that they will receive a fair decision, and 46% rather believe in it. The level of trust in courts among IDPs is similar to that of the general population, but less critical (15% believe in a fair decision, 46% rather believe in it). Distrust is observed among a third of citizens (10% do not believe in the possibility of reaching a fair decision at all, 24% rather do not believe in it) (Availability of legal..., 2023).

As of 2023, Ukraine's situation calls for unusual solutions and ideas to ensure access to court for participants. All structural elements of the judicial system should resolutely and promptly address all challenges faced by the judicial system on the way to implementing e-justice. In such circumstances, excessive formalism damages the credibility of the judiciary, which should protect the interests of citizens regardless of the circumstances (Tatulich, 2022). All necessary and comfortable conditions should be created for the parties to the litigation to ensure a high-quality and efficient dispute resolution and judicial proceedings. The martial law introduced in Ukraine, despite its limitations and negative consequences, has become an impetus for the digitalisation of justice and the introduction of completely new procedures for Ukrainian society aimed specifically at protecting the rights, freedoms and security of participants in court proceedings.

Access to justice during martial law in Ukraine

Many scholars have begun investigating the access to justice during martial law in Ukraine. V. Gorbalsky and D. Zadalya (2022) argue that the introduction of martial law in Ukraine should not have suspended the work of courts, as recent events (occupied territories since 2014, quarantine restrictions) should have already prepared them for remote work. The authors analysed the legal regulation of access to justice during martial law in Ukraine and investigated organisational problems in this area.

To identify and eliminate possible regulatory and procedural obstacles (gaps) in the justice sector, Smokovich (2022) analysed the current procedural legislation, the "draft regulatory package" on the activities of courts and judges during martial law. The participant of the Justice in the Context of Sustainable Development project also focused on the restoration of the judicial system in Ukraine, its modernisation and optimisation through the maximum prevention of duplication of

powers between bodies and institutions and the efficient use of resources (Izarova, 2022).

Yu. Prytyka *et al.* (2022) investigated the consequences of Russia's armed attack on Ukraine, the need to introduce a suitable legal regime in such areas as the exercise of property rights, administration of justice, enforcement of court decisions, and labour relations. Particular attention was paid to the legal regulation of enforcement proceedings in the occupied Ukrainian territories during 2014-2022 by researchers O. Uhrynovska & N. Slyvar (2022). D. Moiseyenko (2022), studying access to civil proceedings under martial law in Ukraine, concluded that, in general, the judicial system of Ukraine managed to maintain its functionality and administration of justice, but the researcher considers this not a successful procedural law, but a lucky break.

N. Shelever (2022) investigated access to court in the context of martial law and the COVID-19 pandemic as a constitutional right and its observance in such emergency conditions. The researcher argues that the concept "fair trial" cannot exist without ensuring equal access to it. Access to justice means both access to the court and its decisions. The restrictions imposed by the legislation on access to court during martial law are only a deterrent mechanism to protect the courts from unscrupulous plaintiffs.

O. Pryvidentsev (2022) also studied the issue of conducting civil proceedings under martial law, paying attention to theoretical, legal, organisational, and procedural features. A. Gerych (2022) focused on the problem of access to administrative justice under martial law. In this paper, the author discussed the financial costs of the ECHR as a potential impediment to access to justice and stressed the importance for courts to take all necessary steps to guarantee the restoration of the right to access to justice.

The authors are confident that in practice, the legislation will be successfully and judiciously applied, the technical support of the courts will improve, and, ultimately, the provisions of the legislation will be effectively implemented to consolidate the peculiarities of the judicial process even under martial law.

The results presented in this paper reflect the opinions of most researchers that there is an insufficient legal foundation for regulating access to justice during martial law. Therewith, scholars state that the judicial system of Ukraine has not stopped functioning.

The state, as the guarantor of the rights and freedoms of citizens, must implement the main substantive aspect of the concept of access to justice. Every person is entitled to a court hearing, which provides for the following algorithm: the right to seek protection in court, the right to hear the case, and the right to receive a decision. This right should be exercised without restrictions, obstacles, or complications (Bernaziuk, 2018). Access to justice is defined as a cross-cutting right that should be understood and interpreted according to

other principles, such as equality before the law, and that secures and enhances other rights. Therefore, this situation in Ukraine requires a proper investigation of the realities and trends in the implementation of judicial proceedings, its accessibility to citizens, as this will allow for the urgent restoration or recognition of violated or unrecognised rights (Moiseyenko, 2022).

New legislative initiatives should simplify the procedural elements of legal proceedings and adapt the legal framework to any requirements and conditions (Pryvidentsev, 2022). Given the considerable opportunities of the 21st century (scientific, information and technological), access to justice and the administration of justice cannot be limited. Apart from the existing laws and amendments to them, procedural codes also need to be updated. Many researchers emphasise the need to improve procedural legislation. D. Moiseyenko (2022) proposes to supplement the procedural code with a special section that would regulate the procedure for legal proceedings in special conditions, which include both the state of emergency and martial law. When conducting civil proceedings under martial law/emergency, the author suggests considering several aspects that require attention: access to open registers is not an urgent need, i.e., the principle of openness may be somewhat limited; introduction of additional notification mechanisms for case participants and simplification of mechanisms for reopening cases.

M. Smokovich (2022) specifies design and legislative proposals for procedural codes. It is necessary to regulate the organisation and holding of meetings of judges under martial law or a state of emergency, including through remote participation. A streamlined procedure for the distribution of court cases is needed when it is objectively impossible to apply automated determination of the court composition for a particular case. It is important to develop an organisational and procedural form of participation of litigants in videoconferencing outside court premises using personal technical means and to enable judges to participate remotely in court hearings via videoconference using personal technical means.

Therewith, Qualified Electronic Signature (QES) and Electronic Digital Signature (EDS) may confirm such participation of judges, according to the Law of Ukraine "On Electronic Trust Services"¹; ensuring the possibility of considering any court cases in simplified action proceedings at the written request of all parties to the trial, etc. These legislative proposals have been thoroughly discussed by members of parliament, judges, court staff, academics, lawyers, and other stakeholders, but have so far been rejected by parliament. M. Smokovich (2022) emphasises that such a decision could cause irreparable damage to the judicial system of Ukraine.

It is also worth remembering about postponed cases or those that have missed their deadlines. In such a demanding situation, the judicial system should be on the side of the plaintiff. A. Gerych (2022) proposes to renew administrative cases automatically, without having to draw up all the documents anew. N. Shelever (2022) recommends that court fees should be waived for those plaintiffs who suffered from war. Otherwise, due to lack of funds, such applicants will be deprived of the right of access to justice, which is unacceptable.

Furthermore, the researchers' emphasis on the issue of digitalisation of judicial proceedings is important. A. Zavydniak (2022) argues that to realise the right of citizens to access justice during martial law, it is necessary to introduce elements of e-governance into the judicial system. This will help not to postpone cases until the end of martial law, but to resolve them remotely, as administrative jurisdiction must also function.

Given the above, it can be argued that access to justice in Ukraine is associated with numerous issues that need to be addressed to prevent violations of human rights. It was found that access to justice can be improved by digitalising court proceedings, regulating the organisation and holding of meetings of judges under martial law or a state of emergency, and supplementing the procedural codes with a special section that would regulate the procedure for court proceedings in special conditions, including both martial law and martial law.

Thus, all the researchers whose opinions are analysed in this paper argue that Ukraine's legal and regulatory framework needs to be amended. These changes could have fully taken place even during the state of emergency caused by the COVID-19 pandemic, and that martial law should finally transform the judicial system.

Conclusions

Summarising this study, the purpose set at the beginning of the study has been fulfilled at this stage. Having systematised the opinions of scholars, it was confirmed that the judicial system of Ukraine did not cease to function under the legal regime of martial law, and judges performed their duties to the best of their ability. The primary task of the state was to preserve life, as this right is natural and indisputable. Therefore, the focus was on the safety of judges and other participants in court proceedings. Thanks to the UJITS, the E-Court subsystem, and the fact that it was not necessary to attach paper copies to the case, individuals and legal entities were able to file electronic documents and take part in online hearings, if technical capabilities and martial law conditions allowed. At the same time, the right to justice was somewhat limited due to the martial law regime. This is evidenced by numerous claims filed by Ukrainian citizens with the ECHR. The postponement of the consideration of cases

¹ Law of Ukraine No. 2155-VIII "On Electronic Trust Services". (2017, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/2155-19#Text>.

until the end of martial law is unfavourable for the plaintiffs unless these cases are on the list of urgent cases. Some violations by members of the judiciary and lack of awareness on the part of citizens were also revealed. It was stated that, on the one hand, the judicial system of Ukraine needs to be reformed to acquire soft skills, flexibility, and accessibility for all citizens of Ukraine. On the other hand, justice operates within the framework of the current legislation of the state, and therefore the latter needs to be immediately reviewed and amended.

In the future, it is important to develop particular areas of improving access to justice that will yield results when applied in practice. This study should be continued with an overview of changes in access to justice as of 2023, and a comparative analysis with 2022.

In addition, an indicator of a positive or negative variable should be derived, according to which new recommendations can be given on the observance of the right of access to justice regardless of any state of the country.

This study is the first to systematise all studies and generalisations of a large body of information and scholarly opinions on the accessibility of justice during martial law in Ukraine and to identify the main areas for its improvement.

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Conflict of interest

The authors of this study declare no conflict of interest.

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Доступ громадян до правосуддя під час запровадження та здійснення правового режиму воєнного стану в Україні

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Анотація

Під час воєнного стану доступ до правосуддя може бути обмежений, однак є загальноприйняті принципи міжнародного гуманітарного права, європейські стандарти, які покладають обов'язок на державу, що знаходиться в конфлікті, забезпечувати захист прав людини й доступ до судових процедур, тому актуальним є питання реалізації права на доступ до судочинства. Метою роботи є дослідження питання функціонування судової системи України в умовах воєнного стану, її доступності для громадян. Методологічне підґрунтя статті становлять метод контент-аналізу, аналітичний, системно-структурний, діалектичний, формально-юридичний та логічний методи. У статті розглянуто питання доступності до правосуддя в умовах воєнного стану в Україні, дотримання всіх прав і свобод людини та громадянина, гарантованих Конституцією України й іншими міжнародними актами. У дослідженні акцентовано на прийнятті владою різних рішень щодо функціонування судової системи України: зміна в роботі судів, обмеження в процесуальних гарантіях і провадженні деяких категорій справ, перерозподіл справ у ближні територіально суди, що знаходяться у ймовірній безпеці, перенесення судів з окупованих територій або зон бойових дій; увагу зосереджено на електронному документообігу та роботі підсистеми «Електронний суд» тощо. Сформульовано висновки, що судова система України не припиняла функціонувати; попри те, що доступ до правосуддя під час воєнного стану може бути обмежений, однак усе залежить від конкретної ситуації, місця розташування судів, законодавства й міжнародних зобов'язань. У дослідженні акцентовано на дистанційному правосудді, яке забезпечить належну безпеку учасників судового процесу та якість ведення правосуддя. Попит на дистанційне судочинство буде зростати з плином часу, унаслідок чого відбудеться модернізація доступу до суду. Практична значущість цього дослідження полягає в окресленні шляхів підвищення ефективності доступу до суду в умовах війни

Ключові слова:

конституційні права; судова система; судова реформа; цифровізація судочинства; електронний документообіг; онлайн-конференція