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Secção I

Investigação Científica*

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Tribunais da Ucrânia em tempo de guerra: Questões de funcionamento sustentável

Courts of Ukraine in Wartime: Issues of Sustainable Functioning

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RESUMO: A 24 de Fevereiro de 2022, foi imposta uma lei marcial na Ucrânia em ligação com a agressão militar da Rússia contra a Ucrânia. Isto colocou novas condições de vida para a sociedade ucraniana e as instituições do poder estatal na ordem do dia. O poder judicial está entre elas, e o seu funcionamento sustentável é uma componente da segurança do Estado, da soberania da Ucrânia e do Estado de direito. Garantir a continuidade do direito humano à protecção judicial, que não pode ser restringido mesmo em tempo de guerra, exigiu decisões rápidas e eficazes que foram tomadas numa base ad hoc e de acordo com as circunstâncias. Durante dois meses de funcionamento durante a guerra, o poder judicial da Ucrânia adquiriu uma experiência única, o que tornou possível tirar as conclusões pertinentes e aprender as lições.

Esta publicação fornece uma visão geral e análise de vários aspectos da actividade dos tribunais da Ucrânia durante a guerra lançada pela federação russa. Com base em estatísticas e experiência pessoal, os autores revelam a especificidade da organização do trabalho dos tribunais ucranianos em tempo de guerra, destacando duas questões-chave: (a) "o problema dos territórios" e (b) "o problema do pessoal". É dada especial atenção à segurança (física, humanitária, informativa) dos juízes enquanto representantes do poder judicial e à sua resistência à agressão militar.

PALAVRAS-CHAVE: acesso à justiça; justiça em tempo de guerra; tribunais em tempo de guerra; magistratura; juiz; lei marcial; Ucrânia

ABSTRACT: On 24 February 2022, a martial law was imposed in Ukraine in connection with Russia's military aggression against Ukraine. This put new living conditions for Ukrainian society and state power institutions on the agenda. The judiciary is among them, and its sustainable functioning is a component of the state security, the sovereignty of Ukraine and the rule of law. Ensuring the continuity of the human right to judicial protection, which cannot be restricted even in wartime, required swift and effective decisions that were taken on an ad hoc basis and in accordance with the circumstances. For two months of functioning during the war, the judiciary of Ukraine has gained unique experience, what made it possible to draw the relevant conclusions and learn the lessons.

This publication provides for an overview and analysis of various aspects of the activity of the courts of Ukraine during the war launched by the Russian Federation. Based on

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statistics and personal experience, the authors reveal the specificity of work arrangement of Ukrainian courts in wartime, highlighting two key issues: (a) "the problem of territories" and (b) "the problem of personnel." Particular attention is paid to the security (physical, humanitarian, informational) of judges as representatives of the judiciary and their resistance to military aggression.

KEYWORDS: access to justice; justice in war; courts in wartime; judiciary; judge; martial law; Ukraine

1. Introductory Remarks

On 24 February 2022, Russia³ launched a full-scale war against Ukraine. This day will go down in the history of mankind as the beginning of a long, courageous struggle of the Ukrainian people for their freedom, independence and sovereignty; for the right of every Ukrainian to live, express their will and develop freely; for their land, their homes and the future of their children.

The war affected all spheres of people's lives and state activities. Justice is no exception. However, the right of everyone to judicial protection guaranteed by the Constitution of Ukraine cannot be offset even by the martial law. Therefore, recovering from the first shock, justice in Ukraine found new possibilities of work in the conditions of war.

The aim of our publication is to demonstrate to the society, the legal and scientific community, colleagues the peculiarities of the work of the courts of Ukraine in wartime, which continue to operate. At the time of its preparation, at the end of the second month of the Russian war in Ukraine, it was possible to analyse the facts and events in the field of justice as a response to the challenges of wartime, to assess them in terms of consequences in the short and long run.

We must warn, dear reader, that this publication will lack scientific substantiation, arguments and scientific discussion. The reason for this is simple. In the 21st century, the leading scholars of the legal profession around the world are focusing on development of science, the state and justice. The conditions of war, as an absolute destruction in the permanent time dimension, can scarcely be attributed to the factors of the society's development, though it is possible. Therefore, the vast majority of researches already deals with the issues related to the field of transit justice⁴ or we are talking about the role of the courts in

³ Name of this country is intentionally used by the author in this form.

⁴ For example, MIHR, A. Transitional Justice and the Quality of Democracy. *International Journal of Conflict and Violence*. 2013, vol. 7, n° 2, pp. 298-313.

ensuring human rights during the war⁵. There are no modern publications on arrangement of the courts' work directly in wartime.

Our study is based on the chronological method, the method of analysis and synthesis of information, these gave us proper arguments for conclusions producing. We have also turn to statistics and empirical data, which are based on the authors' own observations and experience. We have systematically analyzed the laws that have been adopted in Ukraine since the beginning of the war, aimed at stabilizing the work of the courts, decisions and recommendations of the Council of Judges of Ukraine, interviews with judges from various judges and regions, as well as statistical data published by the UN, the State Judicial Administration of Ukraine and individual courts of Ukraine. Official information published on the websites of the Supreme Court and the Constitutional Court of Ukraine also became the subject of analysis. Statistical, structural-logical and analytical methods were used in this study of the cause-and-effect relationships of the war and its consequences for justice, as well as its influence on the behavior of judges and judicial authorities.

We hope that this publication will be useful for the countries with a similar model of legal system and which are at risk of military aggression, given the threats posed by russia's war against Ukraine and obvious necessity of developing plans and protocols for the organization of justice in wartime in order to ensure continuous judicial protection of the rights of individuals.

In order to understand the course of events, analyse them and draw the relevant conclusions for the future, it is important to outline the state of the judiciary in Ukraine, which developed before russian invasion. This state in many aspects has determined the peculiarities of the current state of operation of the courts during the war in Ukraine.

On 22 February 2022, two days before the war unleashed in Ukraine, due to simultaneous collective resignation of the vast majority of members, the High Council of Justice, the body responsible for ensuring independence of judges and the judiciary, ceased to exercise its powers. In terms of its status and functionality,

⁵ BANKS, William C. The Role of the Courts in Time of War. [online]. *WASH. & LEE L. REV. ONLINE*, 2014, vol. 71, n° 3, pp.169-185 [viewed date: 25 March 2022]. Available from: <<https://scholarlycommons.law.wlu.edu/wlulr-online/vol71/iss3/3>>

this body in Ukraine meets all the criteria of the Judicial Council referred to in CJEU Opinion No. 10 (2007) on the Council for the Judiciary at the service of society⁶.

Concentration of key powers at the High Council of Justice, implementation of which is a prerequisite for stable functioning of the judiciary (suspension of the work of courts, transfer of judges, change of territorial jurisdiction, etc.), necessitated legislative changes and sub-delegation of powers to other bodies and representatives of the judiciary, who could be able to quickly respond to the situation that was changing every day: the territories where the courts were located became occupied; active hostilities took place there, which made the work of the courts impossible and posed a threat to human life.

Only on 3 March 2022, a law was passed, envisaging that the powers to change the jurisdiction of cases in the event of inability of the court to administer justice during martial law should be transferred to the Chairman of the Supreme Court⁷ for the period when the High Council of Justice did not function.

Subsequently, on 15 March 2022, another law was passed, according to which the Chairman of the Supreme Court acquired a number of powers to govern the judiciary for the period of dysfunction of the High Council of Justice⁸.

However, before the head of the highest court in Ukraine's judicial system became a key figure for ensuring the work of courts in wartime, the Council of Judges of Ukraine, a body of judicial self-government, took over the coordination of all judicial bodies. This Council was the first to respond to the urgent need of the courts for information, guidance and recommendations on the ways of justice administration and improvement of their work. Its prompt respond, initiative and active role, in our opinion, have played a key role in stabilizing work of the courts

⁶ Council of Europe. *Opinion no.10(2007) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the Council for the Judiciary at the service of society*. Strasbourg: 2007-11-23 [viewed date: 25 March 2022]. Available from:

<http://www.europeanrights.eu/public/commenti/CCJEOpinion101_consiglio_dei_giudici.pdf>

⁷ Verkhovna Rada Ukrainy. Law of Ukraine `On Amendments to Part Seven of Article 147 of the Law of Ukraine on Judiciary and Status of Judges on Determining Territorial Jurisdiction of Judicial Cases`. 2022-03-03 [viewed date: 25 March 2022]. Available from: <<https://zakon.rada.gov.ua/laws/show/2112-20#n2>>

⁸ Verkhovna Rada Ukrainy. Law of Ukraine `On Amendments to Section XII" Final and Transitional Provisions of Law of Ukraine on Judiciary and Status of Judges on Ensuring Sustainable Functioning of Judiciary in Absence of Plenipotentiary of the High Council of Justice`. 2022-03-15 [viewed date: 25 March 2022]. Available from: <<https://zakon.rada.gov.ua/laws/show/2128-20#n5>>

in wartime until legislative regulation of the issue of the powers of various judicial bodies. It has also demonstrated that war mobilizes potential of the judiciary, which turned out to be able to redistribute competence to address the pressing issues in the work of the courts.

Thus, as of the day of Russia's full-scale invasion of Ukraine, its judiciary had no protocols for the courts how to operate and arrange its work in the face of military aggression, nor a functioning central body responsible for communication and ensuring independence of judges and the judiciary.

2. Arrangement of Court's Work in Wartime

It should be noted that as of 24 February 2022, the judicial system in Ukraine, given the circumstances set out by us, was forced to act depending on actual cases. Absence of well-thought-out algorithms and a full-fledged body responsible for proper coordination has brought to the fore the initiatives of the Council of Judges of Ukraine, which, as stated previously, had proven essential to stabilization of the judiciary. On the same day, it made a decision⁹, focusing on the following key points:

- the work of the courts cannot be stopped;
- security of people is the primary goal;
- all judicial bodies must develop plans that include: measures to preserve the personal files and personal data of judges and employees; lists of court cases that are subject to evacuation, as well as those that are subject to destruction; places to which such documents will be evacuated and routes of such movement; issues of information technology evacuation and data preservation;
- the heads of the judicial bodies shall be responsible for arrangement of emergency measures;
- the parliament must respond quickly to the necessity of legislative support for the sustainable functioning of the judiciary;
- the authorities should ensure information security of judges and restrict public access to registers containing information about them;

⁹ Council of Judges of Ukraine. Decision n. 9 `On taking urgent measures to ensure sustainable functioning of the judiciary in Ukraine`. 2022-02-24 [viewed date: 25 March 2022]. Available from: <<http://rsu.gov.ua/ua/documents/130>>

- subjects, responsible for formation of the High Council of Justice should form its composition as soon as possible;

- the operational headquarters has been established at the Council of Judges of Ukraine.

The above information demonstrates that arrangement of the work of Ukrainian courts in wartime is based on two basic postulates for a democratic society:

1. Human, his/her life and health, inviolability and security are the highest values. The right to life is a natural and inalienable right of every human being.

2. The constitutional human right to judicial protection determines the continuity of administration of justice in the state.

Continuity of justice administration is ensured by the same network of courts that operated before the war. This is guaranteed by the constitutional ban on establishment of special and extraordinary courts.

Thus, the issue of whether it is safe for people to administer justice in a particular territory by a particular court has become decisive when making effective decisions on arrangement of the work of courts under conditions of war. After all, different intensity of hostilities in different territories has determined the heterogeneity in the ability of Ukrainian courts to administer justice.

Indeed, today it has become possible to differentiate courts by their location into those that are:

- a) in the occupied territories;
- b) in the areas where hostilities are taking place;
- c) in "frontline" territories;
- d) in conditionally safe areas.

In the first two cases, administration of justice is impossible in any form. In the case where the courts are located in the "frontline" territories, depending on the specific situation, the courts: a) work, but do not hold open court hearings; b) do not work. And in the last case, the courts operate in a regular mode.

It is expedient to demonstrate our differentiation with the help of statistics.

According to official data as of 18 April 2022:

a) + b) 141 courts do not work (63 courts are located in the occupied territories; the rest – in the area of active hostilities);

c) the premises of 4 courts located in the territory controlled by Ukraine were completely destroyed. The premises of 47 courts were critically damaged (partially destroyed buildings, damaged communications, destroyed office equipment) and they are unsuitable for the work¹⁰.

Despite the "problem of territories" and unsuitability of the premises, all courts in Ukraine were united by common problem of shortage of judicial personnel, which worsened during the war. If before its commencement there were more than 2,000 vacancies in Ukraine and there was a tendency to dismiss experienced judges¹¹, this problem aggravated during the war due to mobilization of judges to military units, as well as relocation of judges to other regions of Ukraine and abroad.

Thus, two problems became key in the organization of the work of the courts of Ukraine during the war:

- 1) "the problem of territories" – a factor of an objective nature;
- 2) "personnel problem" – a factor of subjective nature.

To understand the dynamics of their impact on the condition of justice in the state, it is necessary to consider the figures:

during the war in Ukraine, about 11,500 different judgements are entered into the Unified State Register of Judgments every day. Before the war, this figure was at the level of 30 thousand court judgements per day¹².

Thus, in quantitative terms, the scope of justice administration in the courts during the war has become three times less productive. This means that the demand for litigation has fallen.

However, the reasons for such condition lie not only in the defects of the courts. There are several of them and they relate to different aspects. First of all, due to the war in Ukraine, large-scale migration processes began. According to the UN, as of 31 March 2022, more than 5 million citizens left Ukraine; at least

¹⁰ State Judicial Administration of Ukraine. *Data on activities of courts, other bodies and institutions in the justice system*. 2022-04-18 [viewed date: 25 April 2022]. Available from: <<https://dsa.court.gov.ua/dsa/pres-centr/news/1268975/>>

¹¹ KHOTYNSKA-NOR, O., SNIDEVYCH, O. Specific issues of judgments enforcement in view of shortage of judicial officials. *Bulletin of Taras Shevchenko National University of Kyiv. Legal Studies*, 2022, vol. 1, n° 120, pp. 65-70.

¹² LANZARA, Roberta. Interview of the Chairman of the Council of Judges of Ukraine "Commencement of the war was a challenge for the judiciary, but we managed it." *Law and business*. 2022-04-06 [viewed date: 25 April 2022]. Available from: <<https://zib.com.ua/ua/151123.html>>

7.7 million people have been forced to migrate to safer regions within Ukraine; millions more cannot leave high security areas due to significant risks¹³. When migrating in search of security or staying at home for various reasons, people are focused on exercising their right to life and security. Applying to a court is not on their list of priority tasks and goals.

The processes of migration, mobilization, and logistics complicated by the war affect the possibility of court participants to appear before the court. Those courts that are capable of administering justice were advised by the Council of Judges of Ukraine to postpone hearings of the cases (except for urgent court proceedings – detention or extension of detention), and explain to the citizens the probability of postponing cases due to hostilities and possibility of considering cases by means of videoconference. At the same time, special attention shall be paid to procedural deadlines, which shall, as far as possible, be extended at least until the end of the martial law.

Returning to the issue of arrangement of the courts' work in wartime, it should be noted that the decision to suspend work of a particular court may be taken directly by the chairman of the court. And we consider this approach to be correct. Only the head of the court, but not the central bodies of the judiciary, is able, in case of danger, to quickly assess the situation and take the necessary measures, among which, in addition to evacuating judges and court, transportation of court cases is of particular importance. After all, in the future it comes to deciding how to protect the rights of the court participants. At the same time, the heads of the courts must take such a decision responsibly and not delay its adoption in the event of a real threat of seizure of the settlement and/or court.

In this regard, in March 2022, the Supreme Court issued the relevant recommendations¹⁴, which are as follows:

If appropriate, it is necessary to take the court files to the court to which the relevant jurisdiction was transferred, and in case of impossibility – to another

¹³ United Nation. Ukraine: 'Massive scale' devastation, one-quarter of population in need. 2022-04-21 [viewed date: 27 April 2022]. Available from: <<https://news.un.org/en/story/2022/04/1116612>>

¹⁴ Supreme Court. Order of the Chairman of the Supreme Court `Recommendations to the courts of first and appellate instance in case of seizure of a settlement and/or court or direct threat of its seizure`. 2022-03-13, n° 6/0/9-22 [viewed date: 27 April 2022]. Available from: <https://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/war/Recomendatsii.pdf>

court under the control of the authorities of Ukraine or to the territorial administration of the State Judicial Administration of Ukraine. The files of top priority shall be as follows:

- cases pending before judges;
- the most important (high-profile cases). These are the files of criminal proceedings in which a person was detained; proceedings against minors; proceedings for particularly serious crimes; other cases, consideration of which may be essential for the rights of the parties to the case.

If it is not possible to transport the court files, such files should be stored in safes on the court premises.

If transportation of court files threatens life or health, such files should be left in the courtroom.

Documents containing a state secret shall be subject to destruction. The files of other court cases shall not be subject to destruction.

It should be noted that Ukraine is gaining different experience in preserving court files. For example, there is a case of full preservation of court files in the basement of a completely destroyed building of Borodianka District Court of Kyiv Region. In another case, transportation of court files was heroically carried out by a judge of one of the courts, significantly endangering his life.

This shows that the algorithms for organizing work of the courts in wartime were developed situationally by different entities – the Council of Judges of Ukraine, and over time – the Supreme Court. However, despite difficult conditions, the work of the courts in Ukraine did not stop for a moment. The judiciary has been able to mobilize its potential and respond quickly to the challenges of wartime, providing a solid basis for the functioning of the judiciary in this difficult time for Ukraine.

3. Security of Judges and Court Personnel

We have listed above a number of decisions and measures that contributed to stabilizing the security of the national system of bodies and institutions of the judiciary, sustainable functioning of the judiciary in Ukraine, being the components of state security, including the level of protection of state power, sovereignty of Ukraine.

In our opinion, other important components of the national security of the judiciary, requiring urgent organizational measures and operational decisions, are physical, humanitarian and information security of the judges.

3.1. Physical and humanitarian security

Unfortunately, it should be noted that at present, the enemy can fire long-range missiles at the entire territory of Ukraine, therefore, life in Ukraine cannot be considered safe anywhere. Under martial law, it is difficult to ensure administration of justice in the same way as it was in peacetime. We have already cited several examples of destruction or damage of the court premises. Such cases are recorded and investigated as war crimes in the cities of Kharkiv, Mykolaiv, Chernihiv, Kyiv, Donetsk, Luhansk, Kyiv, Zhytomyr and Kharkiv regions. Unfortunately, there are already tragic cases of death of judges and court employees of Ukraine.

As we noted above, in a state of martial law, the courts of Ukraine, as an independent branch of government, should promptly assess the military situation, find a balance between the constitutional obligation to ensure judicial protection and preserve human life and health, which is the highest social value, recognized in Ukraine. That is why, on the first day of Russia's large-scale invasion of Ukraine – 24 February 2022, the Council of Judges of Ukraine recommended to the meeting of judges, chief magistrates and judges of Ukrainian courts, in case of threat to life, health and safety of court visitors, court personnel, judges to temporarily suspend proceedings by a certain court until elimination of the circumstances that led to the termination of the proceedings¹⁵.

Early decision-making on temporary suspension of proceedings by a certain court, without waiting for the seizure of a certain settlement, provided an opportunity to ensure the life and health of people, court personnel, evacuate them, if possible, prepare for evacuation or save court files, personnel documentation and record keeping. It should be noted that evacuation of employees of courts, bodies and institutions of the system, their families from the occupied territories and territories where hostilities took place, was carried out by

¹⁵ Council of Judges of Ukraine. Decision n. 09 `On taking urgent measures to ensure sustainable functioning of the judiciary in Ukraine`. 2022-02-24 [viewed date: 25 March 2022]. Available from: <<http://rsu.gov.ua/ua/documents/130>>

their own forces and only with the help of the judicial bodies. Other public authorities responsible for dealing with emergencies, evacuations, etc., in fact, have not provided any assistance.

Further, on 2 March 2022, the Council of Judges of Ukraine published recommendations on the work of courts in the martial law, which guided the courts to transfer all available employees to remote work, determine the minimum number of persons who must be present in the court during the business day, clearly assign responsibilities between them; organize rotation of judges and court personnel¹⁶.

Since the beginning of the large-scale invasion, the Council of Judges of Ukraine, with the assistance of the State Judicial Administration of Ukraine and the Judicial Protection Service, has coordinated and provided assistance in resettlement of internally displaced employees of the judiciary and their families to safer Central and Western Ukraine. It should be noted that significant assistance in migration of women with children was offered by some judicial associations, including Poland, Romania and other neighbouring countries with Ukraine. At the initiative of the Presidents of three committees of the Council of Europe – the Consultative Council of European Judges (CCJE), the Consultative Council of European Prosecutors (CCPE) and the European Commission for the Efficiency of Justice (CEPEJ), the online mutual aid platform "Basecamp: Judges and Prosecutors for Ukraine" was launched. We are grateful to our international partners for their help!

The Recommendations approved on 13 March 2022 by the President of the Supreme Court, provided to courts in case of seizure of a settlement and/or court or immediate threat of its capture turned out to be important for preservation of life and health of people, court personnel and compliance with international humanitarian law in relation to preservation of court files¹⁷.

¹⁶ Council of Judges of Ukraine. Recommendations. 2022-03-02 [viewed date: 25 March 2022]. Available from: <<http://rsu.gov.ua/ua/news/usim-sudam-ukraini-rsu-opublikovala-rekomendacii-sodo-rooti-sudiv-v-umovah-voennogo-stanu>>

¹⁷ Supreme Court. Order of the Chairman of the Supreme Court `Recommendations to the courts of first and appellate instance in case of seizure of a settlement and/or court or direct threat of its seizure`. 2022-03-13, n° 6/0/9-22 [viewed date: 27 April 2022]. Available from: <https://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/war/Recomendatsii.pdf>

The Recommendations define step-by-step actions of court chairmen, judges, and chiefs of court personnel in the event of a threat of possible seizure of a settlement or court by the occupying Russian troops. The Recommendations state that in the event of a seizure or threat of such seizure, each presiding judge and judge must act in accordance with the situation and martial law, make reasonable and effective decisions, recognizing preservation of human life and health as a priority. If settlement where the court is located is temporarily occupied and there is no possibility to leave it, judges and court personnel should expect establishment of evacuation corridors. If there is an evacuation vehicle and an evacuation plan, it is advisable for the judges and court personnel to evacuate to the places designated by state bodies. In the absence of evacuation transport to leave (if possible) the settlement independently. At the same time, it is necessary to be guided by the authorities' reports on safety of self-evacuation.

3.2. Information security

In order to ensure information security of courts, prevent threats to life and health of judges, parties to the court hearing in martial law, on 24 February 2022, the Council of Judges of Ukraine appealed to the subjects of the legislative initiative to temporarily restrict public access to declarations of judges and personnel of judicial branch of government posted on the website of the National Agency for Prevention of Corruption, to declarations of family ties and integrity of judges posted on the website of the High Qualifications Commission of Judges of Ukraine. Prior to implementation of these measures, it was decided to apply to the National Agency for Prevention of Corruption and the High Qualifications Commission of Judges of Ukraine with proposals to limit public access to these declarations, as well as data on judges` and candidates' profiles.

On the same day, the relevant bodies restricted public access to these declarations and information as a result of communication between the heads of the judiciary, and temporarily suspended access to the Unified State Register of Judgments and judiciary service portal "Status of cases consideration".

The Council of Judges of Ukraine by its Decision as of 25 March 2022 recommended the courts of Ukraine, the State Judicial Administration of Ukraine and other institutions of the judiciary to temporarily postpone answering to all requests for public information received since martial law until the end of the

martial law in Ukraine. In case of receipt of such requests, a copy shall be sent to the Security Service of Ukraine for a thorough inspection of the persons who collect such information and the purpose pursued by them¹⁸.

At the same time, many courts are now publishing certain information on their websites, and the “List of Cases to Be Tried” service has been launched, so there is no need to limit certain information about the work of courts and judicial bodies.

All of the above decisions to restrict access to public information were aimed at ensuring information security due to Russia's ongoing large-scale military aggression against Ukraine, where public information on the activity of public authorities, their employees, including courts, bodies and institutions of the judiciary may endanger their lives and health, bring to commitment of crimes and be a threat to national security, and are therefore subject to restrictions by the law. In addition, collection of the relevant information during the war by unidentified persons may have the signs of subversive activities against Ukraine, and therefore there is a need for thorough verification of the persons collecting such information and purpose thereof.

4. Civic stance of Judges in Wartime

A judge represents a lawyer of the highest grade and presupposes that the representatives of the judiciary have a set of moral and volitional qualities, virtues that distinguish them from the rest of the population and professional communities. Belonging to the state segment of activity encourages judges to have a special attitude to the attributes of statehood. Therefore, judges have traditionally taken an active civic stance aimed at upholding the ideals of justice, protection of human rights and the rule of law.

The war became a trigger for judges, intensifying them in counteracting Russia's military aggression. This opposition has taken various forms and manifestations that require attention.

Judges individually and collectively, at the level of separate judicial institutions, have become the subject of various initiatives, which all together may

¹⁸ Council of Judges of Ukraine. Decision n. ° 11. 2022-25-03 [viewed date: 27 April 2022]. Available from: <<http://rsu.gov.ua/ua/documents/130#>>

be described with the slogan: **"everyone should do what he knows how to do best"**!

Given the diversity of these judicial initiatives, there is a need to structure them.

4.1. Participation in military defence

Pursuant to Article 56 of the Constitution of Ukraine, protection of the Motherland, independence and territorial integrity of Ukraine is the duty of the citizens of Ukraine. The President of Ukraine by Decree No.66/2022 as of 24 February 2022 "On General Mobilization" in Ukraine imposed a general mobilization. Despite the need to ensure continuity of the judiciary, judges and members of the judiciary do not stay away from participating in military formations focused on the country's defence.

According to data on mobilization issues, during the period from February 24 to April 18, 237 people were called up to the ranks of the Armed Forces and other military formations for mobilization, including 45 judges and 192 court personnel, SJA bodies of Ukraine, and state-owned enterprises falling within the competence of the State Judicial Administration of Ukraine. 73 persons became volunteers of the Territorial Defence Forces of the Armed Forces of Ukraine, including: 34 judges and 39 employees of court personnel, bodies of the SJA of Ukraine, state owned enterprises falling within the competence of the State Judicial Administration of Ukraine¹⁹.

In this context, the Council of Judges of Ukraine expressed the position that the service by a judge in the voluntary formation of the Territorial Defence Forces of the Armed Forces of Ukraine, participation of a judge in the voluntary formation of the territorial community, concluding relevant contracts is not a violation of incompatibility²⁰.

¹⁹ State Judicial Administration of Ukraine. *Data on activities of courts, other bodies and institutions in the justice system*. 2022-04-18 [viewed date: 25 April 2022]. Available from: <<https://dsa.court.gov.ua/dsa/pres-centr/news/1268975/>>

²⁰ Council of Judges of Ukraine. Decision n. ° 10. 2022-14-03 [viewed date: 25 April 2022]. Available from: <<http://rsu.gov.ua/ua/documents/130>>

In the information space, it is easy to find the stories of Ukrainian judges Ivan Mishchenko²¹, Andriy Kalarash²² and others who defended our Motherland.

4.2. Defence donations

Ukraine's defence capabilities depend on its financial support. And this support is provided in different ways by different actors. We are grateful to our international partners for their help! The citizens of Ukraine also do not remain on the margins of financing their army.

According to the data, judges actively participated in the financial support of the Armed Forces of Ukraine. The flagships were the Supreme Court and the Constitutional Court of Ukraine, which on 11 March 2022 made a formalized initiative in the relevant documents to transfer a part of the funds they receive as remuneration for their work. Thus, the Chairman of the Supreme Court by his Decision determined to transfer 60% of the remuneration of judges of the Supreme Court for the support of the Armed Forces of Ukraine on a monthly basis until the end of the martial law²³. Judges of the Constitutional Court of Ukraine have decided to transfer the funds in the amount of 50-70% of their remuneration to the needs of the Armed Forces of Ukraine, territorial defence forces, humanitarian needs and other recipients in need of assistance till the end the armed aggression of Russia against Ukraine²⁴.

On the same day, this initiative was supported by the Council of Judges of Ukraine and called on all judges, except for those who were forced to leave their homes and courts due to active hostilities in the regions, to voluntarily limit their judges' remuneration as follows: judges of appellate courts shall transfer 50% of their remuneration for the support of the Armed Forces, judges of first instance

²¹ FERGUSON, J. A Ukrainian Judge Joins the Nation's Ferocious Resistance. *The New Yorker*. [online]. April 2022 [viewed date: 25 April 2022]. Available from: <<https://bit.ly/3JzDc47>>

²² Judge of the Supreme Court joined the ranks of the Armed Forces. *Judicial and legal newspaper*. 2022-03-10 [viewed date: 25 April 2022]. Available from: <<https://sud.ua/ru/news/ukraine/231791-suddya-verkhovnogo-sudu-doluchivsyia-do-lav-zsu>>

²³ Supreme Court. Order of the Chairman of the Supreme Court. 2022-03-11, n. ° 30/0/82 [viewed date: 25 April 2022]. Available from: <<https://supreme.court.gov.ua/supreme/pres-centr/news/1262580/>>

²⁴ Constitutional Court of Ukraine. Decision of the meeting Constitutional Court of Ukraine. 2022-03-11 [viewed date: 25 April 2022]. Available from: <<https://ccu.gov.ua/novyna/rishennya-zboriv-suddiv-konstytucijnogo-sudu-ukrayiny-shchodo-groshovoyi-dopomogy-zbroynym>>

courts shall transfer 40%²⁵. It is gratifying to note that this official appeal was ended with the inspired slogan "Everything will be Ukraine!", which unites and motivates Ukrainian society.

The vast majority of courts located in relatively calm regions of Ukraine responded to the call and made appropriate decisions on the sites. To illustrate the scale of financial support, here are some examples. Thus, the judges of the Seventh Administrative Court of Appeal transferred the funds in the amount of UAH 2,166,377,00²⁶ or approximately USD 72,000,00 to the Armed Forces in just one month (from 23 March 2022 to 22 April 2022). According to the State Judicial Administration of Ukraine, the amount of voluntary transfers of the funds by the judiciary to support the state's defence capabilities in March amounted to more than 64 million hryvnias²⁷ (approximately more than 2.13 million US dollars).

These data characterize only the official, public aspect of financial support of the state defence by judges. At the same time, judges also privately transfer the funds to the army without disclosing their professional status.

In addition, judges independently initiate fundraising to ensure functioning of specific parts of the Armed Forces. Such financial support is targeted. As a rule, information about this is not public. The channels for disseminating such initiatives are corporate closed groups created by judges in popular messengers in Ukraine (Viber, WhatsApp, Telegram). According to the authors of this article, preference for targeted financial support to certain units of the Armed Forces is given, in particular, by judges of local courts, because many of their relatives, friends and colleagues serve in these units.

Thus, judges' donations to the state defence are made officially (by making appropriate decisions in the courts) and privately. Financial assistance provided by judges to the Armed Forces of Ukraine may be targeted or not targeted.

²⁵ Council of Judges of Ukraine. Statement of the Chairman of the Council of Judges of Ukraine n. ° 9rs-76/22-vykh. 2022-03-11 [viewed date: 25 April 2022]. Available from: <<http://rsu.gov.ua/uploads/news/listrsu-80e9dc6e47.pdf>>

²⁶ Judges of the Seventh Administrative Court of Appeal transferred more than UAH 2 million from their salaries to the Armed Forces. *Judicial and legal newspaper*. 2022-04-22 [viewed date: 27 April 2022]. Available from: <<https://sud.ua/ru/news/publication/235637-suddi-somogo-apelyatsynogo-adminsudu-pererakhuvai-zi-svoyeyi-zarplati-bilshe-2-mln-grn-na-zsu>>

²⁷ State Judicial Administration of Ukraine. 2022-04-14 [viewed date: 27 April 2022]. Available from: <<https://dsa.court.gov.ua/dsa/pres-centr/news/1268529/>>

4.3. Appeals of judges to international judicial communities and institutions

Protection of Ukraine's sovereignty and independence, fighting for peace and democratic values require the use of a wide arsenal of tools. Not the least among them are information and communication, which corresponds to the level of modern social development.

In this regard, first of all, it should be noted that the Ukrainian courts have disconnected all partner relations with the courts of the aggressor state (Russia) and the aiding state (Belarus).

The judiciary of Ukraine has also initiated a number of appeals to its international colleagues, judicial associations and international bodies to end Russian aggression against Ukraine. The leaders in this were the Supreme Court and the Constitutional Court of Ukraine.

Thus, the Supreme Court initiated Joint Statement of Courts, Bodies of Justice and Enforcement of Judgments, Professional Judicial Associations, Arbitration Institutions, Legal Communities to Suspend Enforcement of Judgments in Favour of the Russian Federation in Order to Stop Aggression Against Ukraine²⁸.

Numerous statements concerning isolation of Russian judges in the international arena have taken a special place. Representing an aggressor state that terrorizes and commits crimes against humanity in Ukraine, choosing silence and inaction, Russian judges have no moral right to be the members of professional associations that profess the rule of law and protection of human rights.

Thus, at the initiative of the Supreme Court, the issue of excluding the Russian Federation from all judicial associations was raised, so that it could not vote and decide on standards of the rule of law, human rights, and was not included in any governing body of judicial or legal associations.

²⁸ Joint Statement of Courts, Bodies of Justice and Enforcement of Judgments, Professional Judicial Associations, Arbitration Institutions, Legal Communities to Suspend Enforcement of Judgments in Favour of the Russian Federation in Order to Stop Aggression Against [viewed date: 27 April 2022]. Available from: <Ukrainehttps://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/war/Enforcement_Suspension_Joint_Statement_07032022_EN.pdf>

In addition, the President of the Supreme Court appealed to the Institute of Central and Eastern European Law Initiative (CEELI) to suspend the Supreme Court of the Russian Federation from participating in the Conference of Presidents of the Supreme Courts of Central and Eastern Europe.

In turn, the Constitutional Court of Ukraine initiated termination of membership of the Constitutional Court of Russia and Constitutional Court of Belarus in the World Conference on Constitutional Justice (WCCJ). It also appealed to the Conference of European Constitutional Courts to revoke the membership of the Constitutional Court of Russia.

However, the personal initiatives of judges in this area deserve special mentioning and support. After all, this is the personification of the judiciary in society. The judiciary acquires a "human face", which helps to legitimize it. As an example that evokes deep respect and admiration of the authors, we would like to cite the initiative of the Supreme Court judge, Professor Oleksandra Yanovska. She sent a letter to the European Court of Human Rights, requesting for the removal of the Russian judge. She noted in the letter that the judiciary cannot remain on the margins of Russia's large-scale war against Ukraine and the most serious international crimes. "In this situation, silence of the ECtHR judge from Russia is criminal. Such behaviour shows the lack of high moral qualities in the judge of the European Court of Human Rights from Russia, which is an integral condition for the exercise of his powers in the highest judicial body"²⁹.

These examples are not unique, but illustrative. They demonstrate that the judiciary and judges of Ukraine have acted as a single information front in the struggle for peace, statehood and for the values of Ukrainian democratic society.

4.4. Educational activities of judges

The information means of judicial opposition to the war are also associated with educational activities, in which they were actively involved. Education, as one of the functions of the transparency of the judiciary³⁰, and wide coverage by

²⁹ Judge of the Supreme Court demands removal of a judge of the European Court of Human Rights from Russia. *Judicial and legal newspaper*. 2022-03-10 [viewed date: 27 April 2022]. Available from: <<https://sud.ua/ru/news/publication/231818-sudya-verkhovnogo-suda-potrebovala-otstraneniya-sudi-espch-ot-ros-sii>>

³⁰ KHOTYNSKA-NOR, O. Judicial Transparency: Towards Sustainable Development in Post-Soviet Civil Society. *AJEE - Access to Justice in Eastern Europe*. 2022, vol. 2, n. 14, pp. 1-13.

judges of topical issues of law enforcement during the war became in demand by the population of Ukraine. Judges intensified their publications in the press and blogs on social networks. Judges' explanations on provision of temporary protection to Ukrainians in various countries have become popular; adoption and custody of children who have lost their parents; compensation for damage caused by Russian war criminals; taxation of business in wartime and many others.

Judges initiated educational projects, delivering lectures and discussing issues of the right to life, the state language, etc., which became especially important during the war in Ukraine.

The results of our monitoring of the educational activity of judges during the war point out to the leading role of judges of the Supreme Court. 8 analytical materials published by judges in one of Ukraine's leading legal publications since the beginning of the war and related to it, belong to the judges of the Supreme Court³¹. We assume that such activity of judges of the Supreme Court is due to the status of the Supreme Court as the highest court in the judicial system of Ukraine.

4.5. Volunteering

Many members of the judiciary are active in volunteering. One of the illustrative examples of volunteering is the initiative of judges of the Constitutional Court of Ukraine to forward official vehicles used by the Constitutional Court of Ukraine for defence purposes³².

The State Judicial Administration has introduced a free assistance service in finding temporary housing to help and unite the employees of the judicial bodies.

Numerous cases of personal and financial involvement of judges and court personnel in receiving and delivering humanitarian aid are known.

Also, noteworthy are the volunteer initiatives of judges aimed at supporting their colleagues who were evacuated from the occupied territories and those

³¹ Judicial and legal newspaper [viewed date: 23 April 2022]. Available from: <<https://sud.ua/ru/blog>>

³² Constitutional Court of Ukraine. Resolution. 2022-03-02, n. 4-п/2022 [viewed date: 23 April 2022]. Available from: <<https://ccu.gov.ua/novyna/postanova-konstytucijnogo-sudu-ukrayiny-pro-peredannya-sluzhbovogo-avtotransportu-shcho>>

where active hostilities are taking place. Such assistance is targeted and takes various forms (financial support, accommodation, transportation, etc.).

5. Conclusions

The experience gained by Ukraine since the beginning of the Russian aggression has shown that the judiciary of any state must be ready for different scenarios. Its central bodies should develop protocols for rapid response to changes in the situation and formalize the algorithm of the work of the courts in martial law. These protocols should include evacuation of courts, preservation and transfer of court files to other courts, and security of judges and court personnel.

At the same time, it became possible to draw the following theoretical conclusions: 1. Judiciary, like any socially open system, is capable of reflection and redistribution of functions between their bodies (for the period of dysfunction of the one court its functions are temporarily performed by another). 2. During the war, it is advisable to decentralize the powers of court administration and accumulate them "on the sites", namely such powers shall be given to the heads of specific courts, which allows to respond quickly to the situation in accordance with changing conditions and needs. 3. The judiciary in wartime must be flexible and avoid excessive formalism. 4. There must be coordinated and prompt communication with the parliament, which must quickly change the legal framework for the judiciary in accordance with the stage of development of the war. 5. Ukrainian judges demonstrate a wide arsenal of means of resisting Russian aggression in wartime, including their intellectual, physical, financial resources. 6. Active participation of judges in countering the Russian aggressor is one of the means of expanding defence capabilities of the state.

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