

Note from the Field

Access to Justice Amid War in Ukraine Gateway

LEGAL CHALLENGES FOR UKRAINE UNDER MARTIAL LAW: PROTECTION OF CIVIL, PROPERTY AND LABOUR RIGHTS, RIGHT TO A FAIR TRIAL, AND ENFORCEMENT OF DECISIONS*¹

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Summary: 1. Introduction. – 2. Property Law Regulation under Martial Law in Ukraine (forcible seizure and alienation, compensation of damages). – 3. Features of the Work of the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry (UCCI) in Wartime. – 4. Ukrainian Judiciary and Litigation amid War. – 5. Enforcement of Judicial Decisions in the Occupied Territory in Ukraine. – 5.1. *Obstacles impeding commencement and termination of enforcement proceedings on the occupied territories and solutions.* – 5.2. Introduction of other restrictive measures with regard to decision enforcement. – 5.3. Prospects for reducing the number of enforcement documents and scope of work of executors. – 6. Labour Law Regulations (restrictions of rights and freedoms of citizens under martial law). – 7. Conclusions.

Keywords: martial law, property law, judiciary, enforcement of judicial decisions, labour relations

ABSTRACT

Background: On 24 February, Russia launched a military attack on the entire territory of Ukraine, in connection with which the President of Ukraine declared martial law. According to the Law of Ukraine 'On Martial Law', martial law is a special legal regime introduced in the event of armed aggression, danger to the state independence of Ukraine, or its territorial integrity and arranges for the provision of appropriate state authorities, military command, military administrations, and local authorities self-governance of the powers necessary to avert the threat, repel armed aggression and ensure national security, and eliminate the threat of danger to the state independence of Ukraine, its territorial integrity, as well as the temporary restriction of the constitutional rights and freedoms of persons and citizens and the rights and legitimate interests of legal entities within the validity period of these restrictions. This study is designed to analyse the consequences of armed aggression against Ukraine and the introduction of the appropriate legal regime in such areas as the realisation of property rights, the administration of justice, the enforcement of court decisions, and labour relations.

Methods: To achieve the goals of the research, general scientific and special methods of scientific research were applied, such as comparative-legal and semantic-structural methods and the method of grouping, analysis, synthesis, and generalization.

Results and Conclusions: The introduction of the martial law regime throughout the territory of Ukraine affected all spheres of life and, as a result, requires adaptation to modern realities. In particular, this consists of changes to the current legislation because the martial law regime involves the restriction of certain constitutional rights and freedoms of persons and the introduction of new mechanisms – for example, the suspension of labour relations, changes in the jurisdiction of courts for the possibility of justice, expanding the competence of private executors, and even making changes to the regulations of ICAC due to the impossibility of sending documents by mail, as well as allowing process participants to personally participate in meetings.

1 INTRODUCTION

The new stage of the armed aggression of the Russian Federation, which began on 24 February 2022, affected all aspects of life in Ukraine, including the exercise of ownership rights by individuals, legal entities, and non-residents.

Martial law is a special legal regime imposed in Ukraine or in certain localities in case of armed aggression or threat of attack, a threat to the state independence of Ukraine, or its territorial integrity, providing certain powers to the relevant public authorities, military command, military administrations, and local governments that are necessary to deter the threat, repel armed aggression and ensure national security, and eliminate the threat to Ukraine's independence and territorial integrity, as well as temporarily restrict constitutional rights and freedoms of persons and citizens and the rights and legitimate interests of legal entities. Pursuant to the legislation of Ukraine, martial law must be introduced by the Decree of the President of Ukraine and approved by the Parliament of Ukraine by adopting the relevant Law.⁶ Thus, on 24 February 2022, the President of Ukraine, by Decree No. 64/2022, introduced the legal regime of martial law in Ukraine, which was extended by the Presidential Decree on 17 May 2022 for 90 days until 25 August 2022.

It is also worth noting that martial law was not imposed in 2014, and the occupation of Ukrainian territories by Russian troops was marked by temporary occupation of Ukraine – about 7% of the territory (pursuant to the Law of Ukraine of 2014). This law defines the legal regime, the procedure for regulating transactions, etc.

This paper offers a wide discussion of the issues of martial law and property law regulation with a focus on forcible seizure and alienation and compensation of damages (Part 2).

The main challenges and features of the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry (UCCI) in wartime are discussed in art 3. Essential elements of the Ukrainian judiciary and litigation amid war are sketched out in Part 4. The enforcement of judicial decisions in the occupied territory in Ukraine since 2014 is described in Part 5. Labour law regulations (restrictions of rights and freedoms of citizens under martial law) are discussed in Part 6. In conclusion, the authors underline the necessity of fully implementing the idea of human rights and allowing restrictions on the exercise of the rights by individuals, legal entities, and non-residents only within the necessary limits during martial law.

2 PROPERTY LAW REGULATION UNDER MARTIAL LAW IN UKRAINE (FORCIBLE SEIZURE AND ALIENATION, COMPENSATION OF DAMAGES)

Clause 3 of the Decree of the President of Ukraine establishes that the temporary imposition of martial law in Ukraine may restrict the constitutional rights and freedoms of persons and citizens under Arts. 30-34, 38, 39, 41-44, and 53 of the Constitution of Ukraine, including, in particular, the right to inviolability of housing, the right to own, use, and dispose of property and the results of intellectual and creative activities, and the ability to introduce temporary restrictions on these rights and legitimate interests of legal entities and the possibility of introducing and implementing of the measures of a martial law regime.⁷

The legal principles of forced alienation and seizure of property shall be as follows:

Part 5 of Art. 41 of the Constitution of Ukraine decrees that forced alienation of the objects of private property may be applied only as an exception for reasons of public necessity, on the basis and in the manner prescribed by the law, and subject to prior and full reimbursement

6 Law of Ukraine No 389-VIII 'On the legal regime of martial law' of 12 May 2015 <<https://zakon.rada.gov.ua/laws/show/389-19#Text>> accessed 21 June 2022.

7 Decree of President of Ukraine No 64/2022 'On introduction of martial law' of 24 February 2022 <<https://zakon.rada.gov.ua/laws/show/64/2022#n2>> accessed 19 June 2022.

of its cost. Forced alienation of such objects with subsequent full reimbursement of its cost shall be permitted only in the conditions of martial law or state of emergency.

Art. 8 of the Law of Ukraine 'On Legal Regime of Martial Law' envisages the possibility of forced alienation of property in private or communal ownership and the seizure of property of state enterprises and state business associations for the needs of the state under the legal regime of martial law in the manner prescribed by the law. The procedure of alienation and seizure itself shall be regulated by the Law of Ukraine 'On Transfer, Forced Alienation or Seizure of Property under the Legal Regime of Martial Law or Emergency State'.⁸

'Forced alienation of property' means the deprivation of the owner of the right of ownership over a property in private or communal ownership, which becomes the property of the state for the purpose of its use under the legal regime of martial law or emergency state, subject to prior or subsequent full reimbursement of its cost.

'Seizure of property' means the deprivation of state-owned enterprises or state business associations of the right to manage or operatively manage the individually determined state property for the purpose of its transfer for the needs of the state under the legal regime of martial law or emergency state.

Basic principles: 1) the determination of the bodies authorised to apply seizure – military command (Commander-in-Chief of the Armed Forces of Ukraine, Commander of the Joint Forces of the Armed Forces of Ukraine, commanders of the types and certain kinds of troops (forces) of the Armed Forces of Ukraine, commanders (heads), military administration bodies, commanders of formations, military units of the Armed Forces of Ukraine and other military formations formed in accordance with the laws of Ukraine), together with military administrations (in case of their formation), with or without involvement of executive authorities, the Council of Ministers of the Autonomous Republic of Crimea, or local governments; 2) the delimitation of the categories of 'forced alienation' and 'seizure' of property on the basis of legal title – the property in private or communal ownership shall be alienated, while the property of the state-owned enterprises or state business associations shall be seized; 3) the consolidation of the principle of compensation for the damages caused during imposition of martial law.

There are three options: a) full preliminary reimbursement of the cost of the forcibly alienated property; b) subsequent full reimbursement of its cost; c) providing the owner with another property in exchange, if possible. In addition, the return of the property that was forcibly alienated from legal entities and individuals is provided for as follows: after the abolition of the legal regime of martial law, the former owner or his/her authorised person has the right to demand in court the return of such property under the terms prescribed by the law.

Forced seizure of property of the Russian Federation and its residents (in the literature, this process is called nationalisation) may be carried out on the basis of the Law of Ukraine 'On Basic Principles of Forced Seizure of Property of the Russian Federation and its Residents' of 3 March 2022.⁹ The law provides for the possibility of the nationalisation of the property of the following entities: Russia as a state and residents of Russia. This includes:

- individuals who are citizens of Russia, as well as persons who are not its citizens but have close ties with the aggressor state, in particular, those who live in Russia or are engaged in their main activities in its territory;

8 Law of Ukraine No 4765-VI 'On Transfer, Forced Alienation or Seizure of Property under the Legal Regime of Martial Law or Emergency State' of 17 May 2012 <<https://zakon.rada.gov.ua/laws/show/4765-VI#Text>> accessed 19 June 2022.

9 Law of Ukraine No 2116-IX 'On Basic Principles of Forced Seizure of Property of the Russian Federation and its Residents' of 3 March 2022 <<https://zakon.rada.gov.ua/laws/show/2116-20#Text>> 19 June 2022.

- legal entities (in particular, branches and representative offices) operating in Ukraine whose participants, shareholders, or beneficiaries directly or indirectly belong to the aggressor state or legal entities whose participant, shareholder, or beneficiary is directly or indirectly russia.

The list was expanded by the adopted Law, which was not signed by the President of Ukraine. In particular, the National Security and Defence Council or a court may, by its decision, recognise any individuals or legal entities as residents of russia, regardless of their citizenship, place of residence/location, or activity, if they simultaneously meet the following requirements: that they publicly deny or support Russia's armed aggression against Ukraine, as well as the imposition and adoption of temporary occupation of the territory of Ukraine, and did not stop or at least did not suspend their business (in particular, economic) activities in russia during martial law in Ukraine.

The property that can be nationalised is: movable and immovable property, cash, bank deposits, securities, corporate rights, and other property. The law stipulates that virtually any property (assets) that 1) is located or registered in Ukraine and 2) directly or through affiliates is owned by russia or its residents may be nationalised. Therefore, the law does not contain an exhaustive list of the objects that may be forcibly seized, and therefore any and all property belonging to russia or its residents may be subject to nationalisation.

The procedure for property nationalisation is carried out without any compensation and envisages the following sequence:

1. The Cabinet of Ministers drafts a decision on nationalisation and submits it to the National Security and Defence Council. The law requires that the draft decision contain the following data:

- a list of the property to be nationalised and its identification (location, registration, etc.);
- names of the persons whose property is subject to nationalisation;
- terms of nationalisation.

2. The National Security and Defence Council decides on nationalisation.

3. The President of Ukraine shall, by his Decree, put into effect the decision adopted by the National Security and Defence Council.

4. Within six months after the end of martial law in Ukraine, the Verkhovna Rada shall adopt a law approving the Decree of the President of Ukraine on nationalisation.

As a result of nationalisation, Ukraine will become the owner of the property. The nationalised property of russians will be temporarily or permanently transferred to a specialised, state-owned enterprise to be set up by the Cabinet. It is unknown at this time which company will be the holder of such property and how it will be managed.

Today, there is one example of nationalisation, associated with the forced seizure of corporate rights and assets of russian banks 'Sberbank of russia' and 'VEB' on the basis of the Decree of the President No. 326 'On Decision of the National Security and Defence Council of Ukraine of 11 May 2022 'On Forced Seizure in Ukraine of the Property of the Russian Federation and its residents'" of 11 May 2022, approved by the Law of Ukraine.¹⁰

10 Decree of the President No 326 'On Decision of the National Security and Defence Council of Ukraine of 11 May 2022 "On Forced Seizure in Ukraine of the Property of the Russian Federation and its residents" <<https://zakon.rada.gov.ua/laws/show/326/2022#Text>> accessed 19 June 2022.

In addition to nationalisation, the legislation of Ukraine provides criminal-procedural mechanisms for confiscation of property, which operates as follows. There are a number of examples when the Bureau of Economic Security, within the framework of the investigation of criminal proceedings, seizes material resources that were used for illegal operations on Ukrainian territory. According to the decision of the investigating judge, the seized assets are transferred for management to the Agency for Search and Management of Assets (ARMA).

The influence on the realisation of property rights of some categories of persons also regulates the introduction of mechanisms for the imposition of sanctions. In particular, on 12 May 2022, the Verkhovna Rada adopted the Law of Ukraine 'On Amendments to Certain Laws of Ukraine Regarding Increasing the Effectiveness of Sanctions Related to the Assets of Individuals' with the proposals of the President of Ukraine previously submitted as a result of the veto.¹¹

In accordance with the Law 'On Sanctions', the central executive body, which ensures the implementation of the state policy in the sphere of recovery of assets in the state income, will submit a claim to the High Anti-Corruption Court for their recovery.¹² When the court decision enters into force, the Cabinet of Ministers of Ukraine will hand over these assets for temporary management to the above-mentioned body, the State Property Fund, military administrations and/or other state authorities and economic entities of the state economy. The grounds for the application of sanctions are the possibility of significant damage to the national security, sovereignty, or territorial integrity of Ukraine; substantial facilitation of armed aggression against Ukraine or personal participation in it, its financing, and logistical support; the organisation and holding of illegal elections or referenda; participation in the creation of occupation administrations; information promotion, consisting in the implementation of public actions, in particular, on the Internet or in the mass media, that incite armed aggression against Ukraine; justifying or recognising aggression and occupation as legitimate; the glorification of the occupiers, their illegal formations, mercenaries, or representatives of the occupation administration; inciting hatred against the Ukrainian people.

3 FEATURES OF THE WORK OF THE INTERNATIONAL COMMERCIAL ARBITRATION COURT AT THE UKRAINIAN CHAMBER OF COMMERCE AND INDUSTRY (UCCI) IN WARTIME

On 10 June 1992 – 30 years ago – the Presidium of the UCCI established the International Commercial Arbitration Court (ICAC) and approved its Rules of Procedure.

According to the study conducted by the Ukrainian legal publication 'Yurydychna praktyka' (Legal Practice), the main motivations for including the ICAC arbitration clause in commercial contracts are the residency of one of the parties to the contract (42%), the best ratio of efficiency, cost, and comfort of dispute settlement (33%), and the positive previous experience in litigation in the ICAC (25%). Among the main advantages of the ICAC compared to other arbitration institutions are the users call the price-quality ratio (64%), the process comfort and geographical location of the ICAC (40% each), and the low

11 Law of Ukraine No 2257-IX 'On Amendments to Certain Laws of Ukraine Regarding Increasing the Effectiveness of Sanctions Related to the Assets of Individuals' of 12 May 2022 <<https://zakon.rada.gov.ua/laws/show/2257-20#Text>> accessed 19 June 2022.

12 Law of Ukraine No 1644-VII 'On Sanctions' of 14 August 2014 <<https://zakon.rada.gov.ua/laws/show/1644-18#Text>> accessed 19 June 2022.

percentage, namely less than 1% of the abolition of decisions (28%). At the same time, 88% of the users are fully or mostly satisfied with the quality of arbitration services. The main competitors of the ICAC, according to the users, are VIAC (Vienna International Arbitral Centre) (52%), SCC (Stockholm Chamber of Commerce) (48%), and ICC (International Chamber of Commerce) (24%).¹³

From 1 January 2022, the ICAC received 71 lawsuits, of which 24 lawsuits were submitted after 18 March 2022. In April 2022, a decision was made on five cases. In May 2022, nine arbitration hearings were held. The work of the ICAC was suspended on 24 February 2022 due to the military aggression of the Russian Federation and resumed on 18 March 2022.

Under martial law, the ICAC of the UCCI has resumed receipt of statements of claim, as well as other procedural documents relating to the competence of arbitration institutions, and processes all incoming correspondence online and, if possible, directly. The ICAC Secretariat must ensure correspondence with arbitral tribunals in specific cases, parties to disputes, and other service users by electronic means and, where possible, by post. All documents and other files should be submitted electronically to the relevant e-mail addresses of the ICAC icac@icac.org.ua and IAC ddo@macom.org.ua. In addition, the most important procedural documents (statements of claim, responses to the claim, etc.) should also be sent by all types of mail or presented in person at the reception of the UCCI at 33, Velyka Zhytomyrska Str., Kyiv, Ukraine 01601.

The parties to the arbitration proceeding are offered the following options for holding arbitration hearings:

- to consider the case on the basis of the documents without holding oral hearings (Art. 46 of the ICAC Rules of Procedure);
- to conduct oral hearings using video conference systems (arbitrators and parties participate online) – the ICAC uses the ZOOM platform (Art. 47 of the Rules of Procedure);
- to conduct combined oral hearings (for example, arbitrators take part from the ICAC premises and parties participate online).

The main problem in arbitration that affects the prompt and effective settlement of disputes is forwarding documents in the course of arbitration proceedings.

Pursuant to Art. 11 of the ICAC Rules of Procedure, the main procedural documents – the statement of claim, response to the claim, summons, order, resolution, and decision of the ICAC – must be sent to the party in paper form: by courier, by regular mail, by registered letter with acknowledgement of receipt, or in person to the representative. Currently, the courier post abroad is not working; Ukraine has suspended postal services with Russia and Belarus. To ensure arbitration proceedings, the ICAC sends procedural documents to the parties from Russia and Belarus by e-mail. At the same time, there is a risk of the abolition of the ICAC decision taken in the absence of a representative of the party notified by e-mail of the date and place of the hearing in the arbitration proceeding. In order to clearly address this issue, the ICAC prepared amendments to its Rules of Procedure and adopted them on 1 July 2022.¹⁴

13 'Celebrating the 30 years of IACC foundation' <<https://pravo.ua/mkas-pry-tpp-ukrainy-vidznachaie-30-littia/>> accessed 19 June 2022.

14 <<https://icac.org.ua/novyny-ta-publikatsiyi/reglament-icac-zi-zminamy-vid-01-lypnya-2022-roku-vzhe-na-sajti/>> accessed 21 June 2022.

4 UKRAINIAN JUDICIARY AND LITIGATION AMID WAR

The right of access to justice for everyone, guaranteed by international treaties and by law,¹⁵ cannot be displaced even amid war.¹⁶ The Ukrainian government and Ukrainians are making great efforts to avoid narrowing or depriving human rights, especially access to justice. Nevertheless, the activity of the judiciary in martial law is a kind of test of strength. The courts function in the so-called 'judicial front', as it was rightly called in the literature.¹⁷

Today, courts in Ukraine perform justice under martial law with certain restrictions.¹⁸ Ukrainian courts operate only in the absence of threats to the lives and health of the participants and court staff. Only sheer impossibility led to the termination of some Ukrainian courts and changes of territorial jurisdiction. Court staff went to great lengths to preserve court archives and records. The issues of the regulation of the work of judges and court staff were also analysed. The last parts deal with litigation, e-justice, and free legal aid – an essential part of access to justice. As a result, some interim conclusions are provided on the concept of justice amid wartime.

During its independence, Ukraine has formed an independent system of the judiciary, the development of which was prompted by the war a century ago.¹⁹ At the time of the illegal invasion, more than six hundred local courts, appellate courts, and a Supreme Court as a court of cassation functioned in Ukraine.²⁰ The invasion of Ukrainian territory has inflicted losses, including courthouses and court staff. Since 24 February, justice has been paralysed in cities such as Cherniviv, Kharkiv, Kherson, Mariupol, and others.

The reasons for terminating courts activities are different, but we can sort them into two groups: the destruction of the court building (six courts have been completely destroyed or significantly damaged in Ukraine) and/or occupation by Russian troops of territories where the courts are located. These criteria are significant for further court activities and general recommendations. For example, the building of the Kharkiv Court of Appeal was totally destroyed. Therefore, there is no possibility of administering justice properly.

To prevent the collapse of justice in Ukraine, the Supreme Court began to issue orders in March to change the territorial jurisdiction of courts under martial law after the changes of the Law 'On Judiciary and the Status of Judges'²¹ by the Parliament of Ukraine.

- 15 Universal Declaration on Human Rights <<https://www.un.org/en/about-us/universal-declaration-of-human-rights>> accessed 21 June 2022; European Convention on Human Rights <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 21 June 2022.
- 16 It is important to add that Ukraine decided to derogate the Convention and Declaration <<https://tyzhden.ua/News/136871>> accessed 21 June 2022. Russia is not a member state of the Council of Europe <<https://www.coe.int/en/web/portal/war-in-ukraine>> accessed 21 June 2022; Ukraine derogation from European Convention on Human Rights in 2015 <https://www.coe.int/en/web/portal/news-2015/-/asset_publisher/9k8wkRrYhB8C/content/ukraine-derogation-from-european-convention-on-human-rights> accessed 21 June 2022.
- 17 O Uhrynovska, A Vitskar, 'Administration of Justice during Military Aggression against Ukraine: The "Judicial Front"' 2022 3 (15) Access to Justice in Eastern Europe. 1-10 DOI: <https://doi.org/10.33327/AJEE-18-5.3-n000310>
- 18 The Decree of the President of Ukraine No 64/2022 'On the imposition of martial law in Ukraine' <<https://www.president.gov.ua/documents/642022-41397>> accessed 29 March 2022. In English, see <<https://www.president.gov.ua/en/news/prezident-pidpisav-ukaz-pro-zaprovadzheniya-voyennogo-stanu-73109>> accessed 29 March 2022.
- 19 See more in I Zarovna, 'Judicial Reform of 1864 on the Territory of the Ukrainian Provinces of the Russian Empire and Its Importance for the Development of Civil Proceedings in Ukraine' (2014) 2 (4) RLJ 114-128.
- 20 <<https://court.gov.ua/sudova-vlada/sudy/>>.
- 21 Law of Ukraine No 1402-VIII 'On Judiciary and the Status of Judges' of 2 June 2016 <<https://zakon.rada.gov.ua/laws/show/1402-19#Text>> accessed 19 June 2022.

As stated by the Head of the Supreme Court in his interview,²² it was a hard decision to make: human lives are always the priority, and when considering the jurisdiction, we also had to take into account the place of the court (city or a village) and the appropriate region for appeals. During the first days of the war, 30-40 courts changed their jurisdiction.

Every year, Ukrainian courts consider approximately 4 million cases.²³ So, we have a great number of cases pending in courts, and it is easy to imagine how many of them were under consideration during the invasion. Ukraine has not yet fully implemented an e-justice system, and it is not enough to preserve the judicial decisions in the Unified State Register for the full and proper administration of justice.

Today, full access to this Register, as well as to the open services of 'Status of proceedings' and 'List of cases under consideration' on the portal of the Judiciary of Ukraine, is suspended. The reasons for this are clear: illegal access to the full court tools of this Register could provide enormous information about Ukrainian citizens, properties, state bodies, and even the military.

In March, recommendations were issued²⁴ and accordingly, each chairman and judge had to act and remove court cases, especially pending cases, or at least the most important cases (criminal cases, cases against minors, etc.) or try to place records in safes in the court. It was also recommended to digitalise records and copy the contents of the servers as soon as possible. At the same time, this procedure cannot always be applied, as, in some cases, the seizure of the territories of the courts was too fast. Court staff were simply not able to comply with these requirements in a timely manner. For example, there is a case of fully preserved court records in a destroyed building of the Borodianka District Court of the Kyiv region. In another case, the transportation of court records was heroically carried out by a judge of one of the courts, significantly endangering his life.²⁵

The efforts to stabilise the work of the entire judicial system in Ukraine were amazing. On 3 March 2022, a law was adopted by Parliament that granted the power to change jurisdiction to the Chairman of the Supreme Court.²⁶ This case showed all of us how fragile our judiciary is. The judicial community united, and the Council of Judges of Ukraine issued recommendations on the work of courts under martial law.²⁷ They advised the transfer of all available employees to remote work, determined the minimum number of persons to be present in the court building during the working day, and organised a rotation of judges and court staff.

22 The interview of the President of Supreme Court <<https://suspinne.media/222932-suddam- nebezpecnoivizdazi-gumanitarnimi-koridorami-pravosudda-v-ukraini-pid-cas-vijni/>> accessed 29 June 2022; The interview of the Office of President's staff <<https://www.dw.com/uk/yak-pratsiuie-sudova-systema-ukrainy-v-umovakh-viiny/a-61294651>> accessed 29 June 2022.

23 <https://court.gov.ua/inshe/sudova_statystyka/>.

24 The Order 'On approval of the Procedure for evacuation, storage and destruction of documents in a special period 2019' <<https://zakon.rada.gov.ua/laws/show/z1132-19#Text>> accessed 29 March 2022; The Order of the President of the Supreme Court 'Recommendations to the courts of first and appellate instance in case of seizure of the settlement and / or court or imminent threat of its seizure' of 13 March 2022 <https://ips.ligazakon.net/document/view/vss00828?utm_source=jurliga.ligazakon.net&utm_medium=news&utm_content=jl03&_ga=2.65166062.1751405986.1648305523-239448448.1648305523> accessed 29 March 2022.

25 O Khotynska-Nor, A Potapenko, 'Courts of Ukraine in Wartime: Issues of Sustainable Functioning' (2022) 31 *Revista Juridica Portucalense* 218-240 <https://revistas.rcaap.pt/juridica/article/view/27385> accessed 30 July 2022.

26 The Law of Ukraine 'On the Judiciary and the Status of Judges' <<https://zakon.rada.gov.ua/laws/show/1402-19#Text>> accessed 29 March 2022.

27 <<http://rsu.gov.ua/ua/news/usim-sudam-ukraini-rsu-opublikovala-rekomendacii-sodo-rooti-sudiv-v-umovah-voennogo-stanu>>.

According to interviews and our own data, the court staff in Ukraine gathered, and many temporarily displaced judges and their families were welcomed by our Polish and Lithuanian colleagues and by colleagues from the west of Ukraine. Exact data is still not available, but the judiciary has tried to replace judges appropriately, maintaining their guarantees and safety measures. The most incredible violation happened to a judge of the Chernigiv court when her car was stopped, and her whole family was shot after she mentioned her status as a judge.

The next challenge Ukrainian courts faced during wartime was how to continue to consider cases and perform justice. Firstly, we have to differentiate between courts that can continue to work properly, without threats of invasion, and those that are threatened or under occupation.

Many litigants are not able to participate in court hearings due to their joining the Armed Forces of Ukraine, territorial defence, or voluntary military formations and for other reasons, or may not appear in court due to danger to life. The notifications of participants during the war became a challenge, and this marks the difficulty of guaranteeing the right of a person to a fair trial.

In order to organise the judicial case law and the everyday work of courts and ensure the proper administration of justice in wartime, the Council of Judges of Ukraine issued recommendations.²⁸ According to these recommendations, the courts, if possible, should: postpone cases (except for urgent cases) and withdraw them; set or postpone deadlines, if possible, at least until the end of martial law; split cases into urgent and not, and cases that are not urgent should be considered only with the written consent of all participants in the proceedings; use videoconferences for court hearings, even if a party might attend the videoconference from outside the court.

Access to courts cannot be properly provided without the right to legal aid. Free legal aid – the provision of legal services guaranteed by the state and financed from the State Budget of Ukraine – is particularly important.²⁹ In the last few years, Ukraine's free legal aid system has been constantly developed, as evidenced by the large number of state-of-the-art services that will help people contact BPD specialists and lawyers.³⁰ Among the free legal services, it is worth mentioning the apps for mobile devices. This very convenient and important service demonstrates a modern approach to solving legal problems amid the war. The WikiLegalAid legal advice platform is the fastest way to receive legal information, as it provides ready-made advice on many legal issues. Ukraine takes into account the experience of other countries that also underwent hostilities and developed their own free legal aid services.

5 ENFORCEMENT OF JUDICIAL DECISIONS ON THE OCCUPIED TERRITORY IN UKRAINE

Since 2016, Ukraine has provided a dual system of enforcement of decisions, which is represented by the bodies of the Department of State Executive Service with its bodies and private executors.

28 <<http://rsu.gov.ua/ua/news/usim-sudam-ukraini-rsu-opublikovala-rekomendacii-sodo-rooti-sudiv-v-umovah-voennogo-stanu>>.

29 Law of Ukraine No 3460-VI 'On free legal aid' of 2 June 2011 <<https://zakon.rada.gov.ua/laws/show/3460-17#Text>> accessed 19 June 2022.

In general, as of 1 January 2022, 22% of enforcement proceedings (624,287 enforcement documents) were processed by private executors, which were subject to enforcement at the beginning of this year, amounting to almost UAH 150 million, while bodies of the State Enforcement Service processed 2,177,755 enforcement documents worth UAH 345,255 million.³¹ This is the array of cases that actually existed at the time of the beginning of the war, most of which cannot be enforced today because of the occupation of the territories of Ukraine and related circumstances.

5.1 Obstacles impeding commencement and termination of enforcement proceedings on the occupied territories and solutions

As a result of the annexation in 2014 of the Autonomous Republic of Crimea, parts of the Luhansk and Donetsk regions, it was virtually impossible to enforce decisions in these administrative and territorial units. Departments of the executive service found themselves in a situation where they were forced to leave pending enforcement proceedings, where the authorities suspended their powers, and were unable to remove documents in the course of moving out of the territory not controlled by the Ukrainian authorities. Therefore, according to the Order of the Ministry of Justice of Ukraine,³² the enforcement of decisions on debtors located in the temporarily occupied territory (these were at that time Donetsk, Horlivka, Debaltseve, Dokuchaievsk, Yenakiiieve, Zhdanovka, Makiivka, Luhansk, Alchevsk, Pervomaisk and others,³³ where more than 23 departments of the state executive service were located), began to be carried out by enforcement agencies in the Kherson region. Today, after the invasion on 24 February 2022, the situation has worsened, and even more of the territory of Ukraine was annexed, including the majority of the Kherson region. As a result, no department operates in the territories temporarily out of Ukraine's control, and private executors cannot work there. Thus, there was a need for a change of approach to address both this and other issues regarding the execution of decisions in general under martial law, not only in the occupied territories but also in connection with their occupation, as executors cannot continue their activity, debtors cannot execute the decisions, and accordingly, debt collectors cannot resolve their claims.

Therefore, as a result of armed aggression, for the period until the cessation or abolition of martial law on the territory of Ukraine, the first measure that was applied immediately on 24 February prohibited enforcement proceedings and enforcement measures in administrative and territorial units temporarily occupied due to Russian aggression.³⁴ In connection with the justified introduction of this ban, a number of issues must be urgently addressed, including the optimisation of the rules for presenting enforcement documents.

Therefore, in order to enable the executors from these territories to carry out their activity, as well as to meet the claims of debt collectors against debtors residing or registered in these

31 Association of Private Executors of Ukraine, 'Official page' <<https://www.facebook.com/apvu.com.ua>> accessed 21 June 2022.

32 Order No 476/5 of the Ministry of Justice of Ukraine 'On Amendments to the Instruction on the Organization of Enforcement of Decisions' of 7 February 2020 <<https://zakon.rada.gov.ua/laws/show/z0690-20#Text>> accessed 19 June 2022.

33 Order No 1085-r of the Cabinet of Ministers of Ukraine 'On approval of the list of settlements on the territory of which public authorities temporarily do not exercise their powers, and the list of settlements located on the line of contact' of 7 November 2014 <<https://zakon.rada.gov.ua/laws/show/1085-2014-p#n8>> accessed 19 June 2022.

34 Law of Ukraine No 2129-IX 'On Amendments to Section XIII "Final and Transitional Provisions" of the Law of Ukraine on Enforcement Proceeding' of 15 March 2022 <<https://zakon.rada.gov.ua/laws/show/2129-20#Text>> accessed 19 June 2022.

territories, it is necessary to change the rules for the presentation of enforcement documents and determine the place of enforcement. To do this, the binding obligation to commence enforcement proceeding exclusively at the place of residence of the debtor or location of his/her property or work shall be cancelled, and it shall be necessary to introduce the principle of extraterritoriality so that the debt collector could choose any executor anywhere, regardless of the location of the debtor or his/her property. Moreover, after the commencement of the enforcement proceeding, the executor still has the right to perform enforcement actions in the territory under the jurisdiction of Ukraine. The problems with proving the location of the debtor or his/her property have been observed before, and now, it will be even more difficult if he/she is a 'temporarily displaced person' or may even have gone abroad but owns the property located in the occupied territories. Thus, such innovations are justified to provide enforcement of decisions and support collectors.

In addition, since the beginning of the war, in order to ensure data protection and prevent unauthorised use of registers by private and state executors and avoid the violation of rights of the parties to the enforcement proceedings, the National Information Systems have temporarily blocked access to the Automated System of Enforcement Proceedings (ASEP) – a computer program that collects, stores, records, makes searches, generalises, and provides data on enforcement proceedings and ensures the formation of the Unified Register of Debtors and protection against unauthorised access. But since 18 March 2022, the work of the Unified Register of Debtors was restored, and it became possible to obtain information on debtors against whom enforcement proceedings are registered.

However, only the Order of the Ministry of Justice of Ukraine of 4 April 2022³⁵ regulated the issue of connecting executors to the ASEP in martial law and the Unified Register of Private Executors of Ukraine in wartime at the individual request of each executor by sending a written notice to the State Executive Service of the Ministry of Justice of Ukraine. However, so far, no such permit has been issued to any private executor – on the contrary, additional requirements are being set for this, even though all state executors received such permits immediately.

Due to the lack of access to the ASEP and their offices, all private executors, as well as state executors, from the occupied territories cannot:

- 1) continue to enforce decisions, namely, to identify certain types of property, seize it, and transfer it for sale and conduct such sales;
- 2) terminate enforcement proceeding in cases of independent execution of the decision by the debtor with the removal of the restrictive measures that have been previously taken against him/her (exclude data on him/her from the Unified Register of Debtors, cancel seizures of property, cancel temporary restrictions on the right to travel abroad);
- 3) return the enforcement documents (including for re-presentation to another executor in the unoccupied territory);
- 4) interact with various bodies through ASEP.

As one of the options, the community of private executors submitted a proposal to transfer initiated proceedings in the occupied territories to executors from other executive districts who are ready to start work, which necessitates the procedure for suspension of the activity with subsequent replacement of the private executor, even in the presence of pending enforcement proceedings.

35 Order No 1310/5 of the Ministry of Justice of Ukraine, 'Some issues of access to the automated system of enforcement proceedings and the Unified Register of Private Executors of Ukraine during martial law' of 4 April 2022 <<https://zakon.rada.gov.ua/laws/show/z0381-22#Text>> accessed 19 June 2022.

For example, a mechanism for settling such cases to continue the interaction of debtors from the temporarily occupied territories with other state executive services at their new location is already being worked out. Thus, despite the fact that according to the law, enforcement proceedings are not subject to transfer or closure by any other district, it is considered permissible for such a debtor to apply to the state executive service from another area to enforce the decision³⁶ and, accordingly, such enforcement proceedings will be closed if the debt is paid, and coercive measures will be lifted (as the restriction on the right to travel abroad).

It is also worth considering the possibility of a private executor from the occupied territories to change the location of the office, as well as the executive district, in a simplified manner, even in the presence of pending enforcement proceedings. Prior to the war, the issue of proportionality of the number of private executors in a region was acute. So, when authorising their relocation to another region, it is possible to introduce quotas for their number in order to evenly provide such specialists in all areas.

5.2 Introduction of other restrictive measures with regard to decision enforcement

Almost immediately after the invasion, in order to ensure the protection of national interests in future lawsuits of Ukraine, a moratorium (ban) was established on the enforcement of, *inter alia*, compulsory, monetary, and other obligations, the creditors (collectors) for which are the Russian Federation or persons associated with the aggressor state.³⁷

According to another amendment by this Law in the field of enforcement, for the period until the cessation or abolition of martial law in Ukraine:

- Individuals may carry out expenditure transactions from accounts seized by the state executive service or private executors without taking into account its seizure, provided that the amount of recovery under the enforcement document for such a person does not exceed 100 thousand hryvnias; and for legal entities – debtors may carry out such transactions exclusively for payment of wages in the amount of not more than five minimum wages per month per employee, as well as payment of taxes, fees, and a single contribution to the obligatory state social insurance;
- Application of recovery on wages, pensions, scholarships, and other income of the debtor shall be terminated (except for decisions on the recovery of alimony and decisions for debtors that are citizens of the Russian Federation).

Subsequently, Bill No. 7317 'On Amendments in Enforcement of Decisions during Martial Law' of 26 April 2022³⁸ was already adopted on 12 May 2022 but was vetoed by the President of Ukraine to ensure the country's defence capability. The Bill envisaged a ban

36 Order No 2297/5 of the Ministry of Justice of Ukraine 'On amendments to some normative legal acts of the Ministry of Justice of Ukraine' of 9 June 2022 <http://search.ligazakon.ua/l_doc2.nsf/link1/RE37957.html> accessed 19 June 2022.

37 Law of Ukraine No 2129-IX 'On Amendments to Section XIII "Final and Transitional Provisions" of the Law of Ukraine on Enforcement Proceeding' of 15 March 2022 <<https://zakon.rada.gov.ua/laws/show/2129-20#Text>> accessed 19 June 2022.

38 Draft Law No 7317 'On Amendments to Certain Laws of Ukraine on Enforcement of Judicial Decisions, Decisions of Other Bodies (Officials) during Martial Law' of 26 April 2022 <<https://itd.rada.gov.ua/billInfo/Bills/pubFile/12809>> accessed 19 June 2022.

on enforcement of decisions on certain critical areas such as electricity, water supply, crop production, animal husbandry, food production, Internet access, vaccine production, space activities, defence industry, military administration, connections, military units, higher military educational institutions, military educational subdivisions of higher education institutions, establishments, and organisations as part of the Armed Forces of Ukraine, and railway transport enterprises.

However, due to the threat of artificial inclusion of business entities in the cohort of such debtors and the lack of clear criteria for identifying such debtors, the President of Ukraine vetoed this law and stressed the lack of a mechanism of establishment by the executor of the actual activity of the business entity. The record of some type of activity in the state classifier of economic activity may be formal, and the person may not actually be engaged in it, but it enables such a person to evade enforcement of the decision. Therefore, the President of Ukraine reduced the list of such persons exclusively to those debtors who are related to the defence complex and accordingly issued a warning not to extend such a moratorium on enforcement of decisions in the above cases.

The Law of Ukraine No. 7317 of 12 May 2022 also provides for the introduction of a ban on enforcement of decisions with regard to recovery of debts from individuals for housing and communal services. However, during three months of the war, Ukrainians accumulated more than 100 billion in debt for utilities. As a result, the utilities sector is in danger of collapsing, so these restrictions have not yet been introduced, and they are unlikely to be in force for a long time in all territories of Ukraine, in particular where there are no active hostilities.

5.3 Prospects for reducing the number of enforcement documents and scope of work of executors

On 28 February 2022, the Cabinet of Ministers of Ukraine settled some issues of notaries under martial law in its Resolution,³⁹ prohibiting the execution of writs of execution (notarial deeds that have a dual legal character and are also enforcement documents) under loan agreements that are not notarised, which previously often served as the basis for the initiation of enforcement proceedings. This situation is complicated by the proposals of Bill No. 7317,⁴⁰ which prohibits the enforcement of any writs of execution of notaries and only by private executors, which puts them at a disadvantage compared to the state – thus, the President of Ukraine proposed to extend such a ban to all executors. However, the number of non-executed writs of execution of notaries today, namely, 652,652, speaks to how common this way of meeting claims among debt collectors is. Therefore, such innovations are due to the risks of forgery of such enforcement documents, violations of procedures, and incorrect determinations of the amount of debt or its indisputability in order to protect the rights of the debtor, but will lead to a lack of work for executors.

In addition, today, the number of appeals to the court has decreased by 90% compared to the pre-war period, and the number of enforcement documents in this sphere will decrease accordingly. It is also expected that the first court decisions will be enforced no earlier

39 Resolution No 164 of the Cabinet of Ministers of Ukraine, 'Some issues of notary in martial law' of 28 April 2022 <https://zakon.rada.gov.ua/laws/show/164-2022-%D0%BF#Text> accessed 19 June 2022.

40 Draft Law No 7317 'On Amendments to Certain Laws of Ukraine on Enforcement of Judicial Decisions, Decisions of Other Bodies (Officials) during Martial Law' of 26 April 2022 <https://itd.rada.gov.ua/billInfo/Bills/pubFile/12809> accessed 19 June 2022.

than six months, and the number of cases will be ten times less than the executors had in peacetime. And if we subtract from this number of cases a certain percentage of companies that fall under the moratorium introduced by Law No. 7317 and the category of cases under writs of execution, then it will not be economically profitable to engage in the enforcement of decisions in the near future.⁴¹

Due to the current state of affairs and future prospects, the community of private executors is now forced to look for alternative ways to generate income, in particular, by extending their powers, proposing to include in the list of their permitted types of activity the imposition of fines in favour of the state, the collection of fines, the establishment of facts, especially of damage or destruction of property as a result of military aggression of the Russian Federation, and determination of the scope of damages. Thus, private executors need proper assistance and parity on the part of the regulator, along with state executors, by providing them with equal conditions of access to procedural means of enforcement and development of additional areas of professional activity to support them and restore Ukraine's economy.

6 LABOR LAW REGULATIONS (RESTRICTIONS OF RIGHTS AND FREEDOMS OF CITIZENS UNDER THE MARTIAL LAW)

The issue of legislative regulation of labour relations during the period of martial law became a real challenge for Ukraine, as it is necessary to solve many problems related to the regulation of employer-employee relations in such a troubled period.

Ukraine has faced many difficulties in the field of labour relations due to martial law. The current crisis in the labour market is the worst in the history of independent Ukraine. The war caused new trends in the labour market and changes in the behaviour of both employers and job seekers. Russia's full-scale invasion has already destroyed approximately half of the labour market in Ukraine. According to the International Labor Organization, Ukraine has lost 4.8 million jobs since the beginning of the war, and the continuation of hostilities could increase this number to 7 million.⁴² The State Employment Service indicates that in April, 283,356 unemployed people applied for 25,326 vacancies. That means there were almost 12 people applying for each job.⁴³

According to the survey, the number of victims of reduced business activity and unemployment in Ukraine included 52% of respondents. In fact, every second Ukrainian either lost his/her job or was left partially or completely without his/her monthly income. The survey showed that 29.7% of respondents indicated that their company is currently not working at all, and 62% said that they were fired and do not receive a salary. Accordingly, 63.8% noted that they are currently unemployed and actively looking for work, and 71.4% of respondents stated that their income has changed for the worse since the beginning of the war.⁴⁴

Data on the number of people who were forced to leave their homes due to active hostilities and seek shelter in safer regions of the country or abroad are also shocking. Statistics show that 5.4 million people went abroad and another 8 million are internally displaced persons.

41 Association of Private Executors of Ukraine, 'Official page' <<https://www.facebook.com/apvu.com.ua>> accessed 19 June 2022.

42 <https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_844625/lang--en/index.htm>.

43 <<https://glavcom.ua/economics/finances/robova-pid-chas-viyni-na-yaki-profesiji-je-popit-846229.html>>.

44 <<https://budni.rabota.ua/resume-job-search/pro-zvilnennya-zarplaty-ta-volonterstvo-rezultaty-opytuvannya-poshukachiv>>.

And although many Ukrainians are returning home, the number of internally displaced persons is increasing due to the active bombing of the eastern and southern regions of the country.⁴⁵ These statistical indicators confirm the critical situation of the labour market in Ukraine. This situation required the state leadership to take certain measures. So, changes were made to the legislation as a matter of priority.

Restrictions on the constitutional rights and freedoms of citizens in the field of labour relations were introduced during the period of martial law, in particular, Arts. 43 and 44, which determine that everyone has the right to labour, including the possibility to earn one's living by labour that he or she freely chooses or to which he or she freely agrees. The employment of women and minors for work that is hazardous to their health is prohibited. Citizens are guaranteed protection from unlawful dismissal. The right to timely payment for labour is protected by law (Art. 43). Those who are employed have the right to strike for the protection of their economic and social interests (Art. 44).⁴⁶ Such constitutional restrictions were introduced on the basis of the Law of Ukraine 'On Organizing Labor Relations under Martial Law', adopted on 15 March 2022.⁴⁷ This act clarifies relevant restrictions of constitutional rights and freedoms and sets out special rules applicable to labour relations to replace the 'normal' rules of the Labor Code of Ukraine. Thereby, during the period of martial law, norms of labour legislation shall not apply in the relations regulated by this law.

This regulatory act introduces changes to the following provisions.

1) Conclusion of an employment contract in martial law

Probation can be set for all employees. However, in accordance with the provisions of the pre-war legislation, probation was not established when hiring: persons who have not reached the age of eighteen; young workers after graduating from professional educational institutions; young specialists after graduating from higher education institutions; persons released from military or alternative (non-military) service; persons with disabilities sent to work in accordance with the recommendation of the medical and social examination; persons elected to the position; winners of competitive selection to fill a vacant position; persons who have completed an internship while being hired away from their main job; pregnant women; single mothers who have a child under the age of fourteen or a child with a disability; persons with whom a fixed-term employment contract is concluded for a term of up to 12 months; persons for temporary and seasonal jobs; internally displaced persons. Probation was also not established when hiring in another area and when transferring to work to another enterprise, institution, or organisation, as well as in other cases provided for by law.

Employers may enter into fixed-term employment agreements with new employees for the duration of martial law or the period of replacement of the temporarily absent employee. This provision may cause a practical problem in the future when two persons apply for the same position: one who worked in the relevant position before the war and another person who performed the relevant work during the martial law period. At the same time, it is not known who the employer will prefer to continue the employment relationship.

2) Transfer and change of significant working conditions under martial law

Transfer to another job at the same enterprise, institution, or organisation, as well as transfer

45 <<https://data.unhcr.org/en/situations/ukraine>>.

46 Constitution of Ukraine <<https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>> accessed 19 June 2022.

47 Law of Ukraine No 2631-IX 'On Organizing Labor Relations under Martial Law' of 15 March 2022 <<https://zakon.rada.gov.ua/laws/show/2136-20#Text>> accessed 19 June 2022.

to another enterprise, institution, or organisation, or to another location together with the enterprise, institution, or organisation was allowed only with the consent of the employee. But according to the Law of Ukraine 'On Organizing Labor Relations under Martial Law', during martial law, the employer has the right to transfer the employee to another job not stipulated in the employment contract without his/her consent (except for transfer to another location where active hostilities continue), if such work is not contraindicated for the employee's health, to prevent or eliminate the consequences of hostilities, or other circumstances that threaten or may threaten the lives or normal living conditions of people, with wages for work performed not lower than the average salary for previous work. Labour laws on the notification of an employee about a change in significant working conditions also do not apply. It should be pointed out that in pre-war legislation, two months' notification was required.

3) Termination of the employment contract at the initiative of the employee

In accordance with Art. 38 of the Labor Code of Ukraine, the employee had the right to terminate the employment contract, concluded for an indefinite period, by notifying the employer two weeks in advance. The Law of Ukraine 'On Organizing Labor Relations under Martial Law' establishes that in connection with hostilities in the area of the employer's location, the employee may terminate employment agreements on their own without a two-week notice period.

4) Termination of the employment contract at the initiative of the employer

Art. 43 of the Constitution of Ukraine guaranteed citizens protection from unlawful dismissal. At the same time, in accordance with the Labor Code, the dismissal of a person during the period of temporary incapacity for work, as well as during the period of the employee's leave, was considered illegal. In addition, the termination of the employment contract at the initiative of the employer was allowed for certain reasons (for example, due to absenteeism, incompatibility of the employee to the position held, etc.) exclusively with the prior consent of the trade union organisation of which the employee was a member. Under the current conditions, these warranties are void. Dismissal at the initiative of the employer during the period of his/her temporary incapacity for work, as well as during the period of the employee's leave, is allowed. The trade union's consent to dismissal of employees is only needed for dismissal of members of the trade union's elective bodies (rather than for all trade union members).

5) Involvement of certain categories of workers

Art. 43 of the Constitution establishes that the employment of women and minors for work that is hazardous to their health is prohibited. Now, it is allowed to use women's labour (except for pregnant women and women with a child under one year of age) with their consent in heavy work and work with harmful or dangerous working conditions, as well as underground work.

6) Establishment and accounting of working time and rest time; leaves

Current legislation states that a normal working week is 60 hours or 50 hours for employees with reduced working hours. The beginning and the end of daily work (shift) shall be determined by the employer only. Previously, a work week was 40 hours or 36 hours, respectively. Basic paid leave is granted for only 24 calendar days for all categories of employees. For example, for pedagogical workers, it used to be 56 days. Herewith, employers may refuse to grant leave to critical infrastructure employees. On the other hand, unpaid leave may be granted for the entire period of wartime (it used to be 15 days of unpaid leave per year).

7) Salary

Again, Art. 43 of the Constitution provided the right to timely payment for labour is protected by law. By the laws of wartime, salaries must be paid on the terms of the employment agreement, though such payment may be delayed if the employer is unable to pay salary due to hostilities. The relevant provision of the current legislation can cause significant abuse by the employer. Since martial law has been imposed on the entire territory of Ukraine, employers can delay or refuse to pay salaries at all, citing difficulties caused by martial law. At the same time, from the point of view of the legislation, this will not be considered a violation and will exempt such dishonest employers from liability.

8) Suspension of the employment agreement

Suspension of the employment agreement is a novel amendment to the current legislation introduced by the Law of Ukraine 'On Organizing Labor Relations under Martial Law'. Suspension of an employment agreement is defined as a temporary termination by the employer of providing the employee with work and a temporary termination of the employee's performance of work under the concluded employment contract. The employment contract may be suspended due to military aggression against Ukraine that excludes the possibility of providing and performing work. Termination of the employment contract does not entail termination of employment. The practical problem today is the lack of clear recommendations regarding the mechanism for implementing this procedure, as well as in the future regarding the process of restoring such legal relations.

Amending the current legislation is not the only step taken by the government to stabilise and improve the sphere of labour relations. Such stabilisation measures also include the following:

- the relocation of business (400 companies have been relocated, 216 of them have already resumed work, and 500 companies have been selected for relocation and started the process);⁴⁸
- a one-time payment to all citizens affected by hostilities, monthly payments to internally displaced persons, and compensatory payments to persons receiving internally displaced persons;
- reducing the tax burden on business;
- compensation payments to entrepreneurs who hire internally displaced persons;
- changes to the legislation in accordance with the requirements of the time (for example, the Law of Ukraine 'On making changes to some legislative acts of Ukraine on strengthening the protection of workers' rights').

7 CONCLUSIONS

Martial law has affected the exercise of ownership rights by individuals, legal entities, and non-residents. During the period of martial law, the constitutional rights and freedoms of persons and citizens may be restricted, in particular, the right to inviolability of housing and the right to own, use, and dispose of property and the results of intellectual and creative activities, temporary restrictions on the rights and legitimate interests of legal entities may

⁴⁸ <<https://www.dw.com/uk/relokatsiia-na-zakhid-ukrainy-yak-biznes-riatuie-vyrobnystvo-vid-viiny/a-61669236>>

be introduced, measures of the martial law regime may be introduced and implemented. The law also provides the possibility of forced alienation of property for reasons of public necessity. Additionally, martial law made significant adjustments to the work of the ICAC. In particular, changes to the regulations of ICAC were adopted on 1 July 2022 in order to regulate the activities of arbitration during martial law.

Access to justice is an integral element of a contemporary democratic state governed by the rule of law. Though the idea of balance of state power provides less possibility to implement the right to a fair trial properly amid war and a pandemic, some of the current challenges make the proper administration of justice amid these obstacles almost impossible. Nevertheless, challenges of access to justice cannot replace the very concept of human rights protection. Therefore, the idea of a more flexible approach and wider discretion of judicial power should give us grounds for changes and full human rights protection.

It should also be noted that for the period of introduction of martial law from 24 February 2022, it was prohibited to initiate enforcement proceedings and take measures to enforce decisions in the territory of administrative and territorial units that are temporarily occupied due to military aggression. Therefore, in order to enable executors from these territories to carry out their activity, as well as to meet the claims of debt collectors against debtors residing or registered in these territories, it is necessary to simplify the rules for presenting enforcement documents all over the country.

Due to the lack of access to the Automated System of Enforcement Proceedings (ASEP) and their offices, private executors and state executors from the occupied territories also cannot: 1) continue to enforce decisions; 2) terminate enforcement proceedings in case of independent execution of the decision by the debtor with the removal of the restrictive measures; 3) return the enforcement documents. Settling this problem may be possible after connecting private executors to the ASEP and by distributing pending enforcement proceedings between private executors and allowing the transfer of open enforcement proceedings in the occupied territories to private executors from other executive districts ready to start working. It is also necessary to envisage the right of private executors from the occupied territories to change the location of the office and executive district in a simplified manner, as is already allowed for State Executive Service bodies. Due to the prospect of introducing a moratorium on enforcement of some decisions, a ban on execution of notaries' writs of execution, and forecasts of a decrease in the number of enforcement documents, the issue of extending powers of private executors is also relevant.

Russia's military aggression against Ukraine has also caused significant changes and restrictions on labour rights and guarantees. Thus, the Law of Ukraine of 15 March 2022 'On the Organization of Labor Relations in Martial Law' introduces restrictions on the constitutional rights and freedoms of man and citizen under Arts. 43-44 of the Constitution of Ukraine. In particular, such restrictions concerned the conclusion of employment contracts (the employer may enter into fixed-term employment contracts with new employees for the period of martial law or for the period of replacement of a temporarily absent employee); the transfer and change of significant working conditions (the employer also has the right to transfer the employee to another job without his/her consent the possibility of using women's labour with their consent in heavy work and work with harmful or dangerous working conditions, as well as underground work); the termination of employment contracts (the employee may terminate the employment contract on his/her own initiative without two weeks' notice); the establishment and accounting of working hours and rest time (an increase in working hours to 60 hours per week (50 hours per week with reduced duration)); the reduction of annual paid leave to 24 calendar days for all categories of workers (the employer is released from liability for violation of the terms of payment of wages if it happened as a result of hostilities); and other issues. A novelty for the current labour legislation was the possibility of suspending the employment contract. It should be noted that suspension of the

employment contract does not entail the termination of employment. The current labour legislation provides labour guarantees for persons drafted into the Armed Forces of Ukraine, as well as for persons who have joined the ranks of territorial defence.

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