

## **APPLICATION OF VIDEOCONFERENCE IN CRIMINAL PROCEEDINGS OF UKRAINE UNDER THE CONDITIONS OF MARTIAL LAW**

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On February 24, 2022, a full-scale war began in Ukraine. By Decree of the President of Ukraine No. 64/2022 martial law has been imposed on the entire territory of Ukraine because of the military aggression of the Russian Federation. According to Article 26 of the Law of Ukraine «On the Legal Regime of Martial Law», justice in the territory where martial law has been imposed is carried out only by the courts. Abbreviation or acceleration of any forms of judicial proceedings is prohibited.

In case of impossibility to conduct justice by the courts operating in the territory where martial law has been imposed, the territorial jurisdiction of the court cases considered in these courts may be changed, or the location of the courts may be changed in accordance with the procedure established by law [1, Art. 26]. The list of courts whose territorial jurisdiction was changed due to the impossibility of conducting justice during martial law is posted in a consolidated table on the website of the Supreme Court [2].

Even in the conditions of martial law, the work of the courts cannot be stopped, the constitutional right of a person to judicial protection cannot be limited [3]. Military events are one of the valid reasons for a person's non-appearance under a court summons (item 3 of Article 138 of the Criminal Procedure Code of Ukraine) [4, Art. 138]. Alternative to the direct participation in the trial is participation via videoconference.

Some aspects of the use of videoconference during criminal proceedings were studied by such scientists as V.V. Muradov, M.I. Pashkovskiy, K.O. Sikora, M.I. Smirnov, M.Ya. Segai, Yu.M. Chernous, V.A. Shplyuk and others. However, it is relevant to study the legal regulation and the procedure for conducting distance court hearing under the conditions of martial law.

Videoconference is one of the subsystems (modules) of the Unified Judicial Information and Telecommunication System. Videoconference is a telecommunications technology of interaction between two or more remote participants in court proceedings with the possibility of exchanging audio and video information in real time. It provides the opportunity to participate in the court session via videoconference:

- 1) outside the court premises with the help of electronic cabinet and own technical means;
- 2) in the premises of another court - with the help of technical means of the court;
- 3) in a pre-trial detention facility, a penitentiary or a medical institution - with the

help of technical means available in the relevant institution [5].

On March 2, 2022, the Council of Judges of Ukraine published Recommendations on the work of courts under martial law and emphasized the possibility of hearing cases via videoconference [6].

In the conditions of war, it is a common practice to consider requests, for example, for the application or continuation of detention via videoconference. This applies even to those regions where there are no active war actions. Thus, in connection with the military aggression of the Russian Federation against Ukraine and the introduction of martial law, the personnel of the Convoy Service are engaged in the police's powers to ensure defense and protect the safety of the population in the city of Vinnytsia. Therefore, escorting of accused is not carried out. In this regard, the accused PERSON\_1 was not brought to the court session. His participation was ensured via videoconference from Vinnytsia Penitentiary No. 1 [7].

If, due to objective circumstances, a participant in the proceedings cannot participate in a court session via videoconference using technical means specified by law, as an exception, such a participant may be allowed to participate using any other technical means, including his own.

If the proceedings are considered collegially and the panel of judges cannot meet in one room, it is permissible to consider cases from different court rooms, including using own technical means [6, item 10].

Similar provisions regarding the right of the participants in the proceedings to participate in the court session via videoconference are also stated in the Letter of the Supreme Court dated March 3, 2022 «Regarding certain issues of conducting criminal proceedings under martial law». At the same time, attention is drawn to the need to clarify the participant's procedural rights and obligations [8, item 7].

Kateryna Sikora, judge-speaker of the Higher Anti-Corruption Court of Ukraine, notes that judges are faced with forced long interruptions in court proceedings due to the stay of the accused, witnesses, experts in temporarily occupied territories, movement of persons within the country, going abroad, inability to live at the place of registration, etc. At the same time, the statute of limitations for prosecution does not stop, which will later be the reason for exemption from criminal responsibility. Therefore in the conditions of martial law, consideration of certain criminal proceedings in a reasonable time is possible only by using a videoconference, including the use of own technical means [9].

That is why criminal proceedings are carried out using the own technical means of judges, prosecutors, lawyers, witnesses and other participants. «EasyCon», «ZOOM» and other programs are used to conduct the court session [10].

The court now has the possibility to conduct distance court proceedings, even if the accused objecting to this is outside the premises of the court. Such changes were made to part 2 of Article 336 of the Criminal Procedure Code of Ukraine by the Law of April 14, 2022 «On Amendments to the Criminal Procedure Code of Ukraine on Improving the Procedure for Conducting Criminal Proceedings in Martial Law» [11]. Therefore, conducting of distance court proceedings under martial law are now at the discretion of the court.

The use of videoconference has its disadvantage. Namely: the possibility to properly establish the identity of the participant, to hand over a notice of rights and obligations, the impossibility of ensuring the confidentiality of communication between the advocate and the accused, who are in different premises, etc.

However, the advantages of conducting distance court proceedings are significant and obvious. This is the reduction of financial costs, the opportunity to hear and see the progress of the court session, to exercise the rights of participants whose direct participation is impossible for valid reasons.

The criminal procedural law provides the principle of reasonableness of terms, which means that every procedural action or procedural decision must be performed or made within a reasonable time. Everyone has the right to have the accusation against him or her considered in court as soon as possible, or to have the relevant criminal proceedings closed. A full-scale war has been going on in Ukraine for 10 months, the territorial jurisdiction of certain courts has been changed due to the impossibility of conducting justice. Considering the above, the changes made to the legislation regarding participation in a court session via videoconference are progressive and necessary. However, the implementation of distance court proceedings must be carried out with mandatory observance of procedural guarantees of the participants rights and general principles of criminal proceedings.

### **References:**

1. Pro pravovyy rezhym voyennoho stanu : Zakon Ukrainy vid 12. 05. 2015 r. № 389-VIII [On the legal regime of martial law: Law of Ukraine dated May 12, 2015, No. 389-VIII]. URL: <https://zakon.rada.gov.ua/laws/show/389-19#Text> [in Ukrainian].
2. Rozporyadzhennya pro vyznachennya terytorial'noyi pidsudnosti sprav [Order on determination of territorial jurisdiction of cases]. URL: [https://supreme.court.gov.ua/supreme/gromadyanam/terutor\\_pidsudnist/](https://supreme.court.gov.ua/supreme/gromadyanam/terutor_pidsudnist/) [in Ukrainian].
3. Rishennya Rady suddiv Ukrayiny vid 24. 04. 2022 r. № 9 [Decision of the Council of Judges of Ukraine dated April 24, 2022, No. 9]. URL: <http://rsu.gov.ua/ua/documents?id=130&page=4&per-page=8> [in Ukrainian].
4. Kryminal'nyy protsesual'nyy kodeks Ukrayiny vid 13. 04. 2012 r. № 4651-VI [Criminal Procedure Code of Ukraine dated April 13, 2012 No. 4651-VI]. URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> [in Ukrainian].
5. Polozhennya pro poryadok funktsionuvannya okremykh pidsystem (moduliv) Yedynoyi sudovoyi informatsiyno-telekomunikatsiynoyi systemy : Rishennya Vysshchoyi rady pravosuddya vid 17. 08. 2021 r. № 1845/0/15-21 [Regulations on the procedure for the functioning of certain subsystems (modules) of the Unified Judicial Information and Telecommunication System: Decision of the High Council of Justice of August 17, 2021, No. 1845/0/15-21]. URL: [https://zakon.rada.gov.ua/rada/show/v1845910-21?find=1&text=%D0%B2%D1%96%D0%B4%D0%B5%D0%BE%D0%BA%D0%BE%D0%BD%D1%84#w1\\_1](https://zakon.rada.gov.ua/rada/show/v1845910-21?find=1&text=%D0%B2%D1%96%D0%B4%D0%B5%D0%BE%D0%BA%D0%BE%D0%BD%D1%84#w1_1) [in Ukrainian].
6. Rekomendatsiyi Rady suddiv Ukrayiny shchodo roboty sudiv v umovakh voyennoho stanu vid 02. 03. 2022 r. [Recommendations of the Council of Judges of Ukraine regarding the work of courts under martial law dated March 2, 2022]. URL:

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

7. Ukhvala Kalynivs'koho rayonnoho sudu Vinnyts'koyi oblasti vid 17. 05. 2022 r. Nomer sudovoho provadzhennya: 1-kp/132/59/22. Sprava № 133/636/21 [Resolution of the Kaliniv District Court of the Vinnytsia Region dated May 17, 2022. Court proceedings number: 1-kp/132/59/22. Case No. 133/636/21]. URL: <https://reyestr.court.gov.ua/Review/104417838> [in Ukrainian].

8. Shchodo okremykh pytan' zdiysnennya kryminal'noho provadzhennya v umovakh voyennoho stanu : Lyst Verkhovnoho sudu vid 03. 03. 2022 r. № 1/0/2-22 [Regarding certain issues of conducting criminal proceedings under martial law: Letter of the Supreme Court dated March 3, 2022 No. 1/0/2-22]. URL: <https://ips.ligazakon.net/document/VSS00820?an=9> [in Ukrainian].

9. Sikora K. VKZ u kryminal'nomu protsesi i voyenny stan - yak tse pratsyuye, problemni pytannya, chym korysna praktyka? [Videoconference in criminal proceedings and martial law - how it works, problematic issues, how useful is the practice?]. URL: <https://sud.ua/uk/news/blog/247392-vkz-u-kryminalnomu-protsesi-i-voyennyi-stand-yak-tse-pratsyuye-problemni-pytannya-chim-korysna-praktika> [in Ukrainian].

10. Hlushko I. Dystantsiyne kryminal'ne provadzhennya pid chas voyennoho stanu [Distance criminal proceedings during martial law]. URL: <https://golaw.ua/ua/insights/publication/distanczijne-kryminalne-provadzhennya-pid-chas-voyennogo-stanu/> [in Ukrainian].

11. Pro vnesennya zmin do Kryminal'noho protsesual'noho kodeksu Ukrayiny shchodo udoskonalennya poryadku zdiysnennya kryminal'noho provadzhennya v umovakh voyennoho stanu : Zakon Ukrayiny vid 14. 04. 2022 r. № 2201-IX [On amendments to the Criminal Procedure Code of Ukraine regarding the improvement of the procedure for conducting criminal proceedings under martial law: Law of Ukraine dated April 14, 2022, No. 2201-IX]. URL: <https://zakon.rada.gov.ua/laws/show/2201-20#Text> [in Ukrainian].