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Supreme
Court

The Administration of Justice Under Martial Law

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Kyiv-born Israeli Prime Minister Golda Meir once said:

“We intend to remain alive. Our neighbors want to see us dead. This is not a question that leaves much room for compromise”.





"To be Ukrainian means to be constantly able of proving right to exist," – Volodymyr Vynnychenko.



"... for the whole world the colors of our flag have now become a symbol of freedom, life, love – the highest, evangelical love, for which we lay down our lives..." – Oksana Zabuzhko



Justice in martial law

- Justice in the territory where martial law has been implemented is carried out only by courts.
- In this area courts established in accordance with the Constitution of Ukraine administrate the justice.
- Reduction or acceleration of any forms of judicial proceedings is prohibited.
- In case of impossibility to administer justice by courts operating in the territory where martial law has been enacted, the territorial jurisdiction of court cases or the location of the courts can be changed according to the procedure established by law.
- Establishing of extraordinary or special courts is not allowed.



The current situation of the judiciary and its functioning under martial law

- 88 courts of appeal and local courts do not operate justice
- 156 buildings are damaged or completely destroyed
 - 146 premises sustained damage
 - 16 premises are completely destroyed or severely damaged





December 6, 2024, Kryvyi Rih, Court of Appeal



13.04.2025



16.04.2025

April 13, 2025, Sumy, district court



The Kharkiv Court of Appeal, the Iziium City District Court of Kharkiv region, and Borodianskyi District Court of Kyiv region were completely destroyed.

At the same time, the Law of Ukraine "On the State Budget of Ukraine for 2025" provides the State Judicial Administration of Ukraine, as the main administrator of budget funds, with development expenditures from the special fund of the State Budget in the amount of only 278.3 million UAH.

Therefore, this area of financing the judiciary will require significant capital investments to ensure the capital construction, repair and reconstruction of individual court premises, including premises that are in a state of emergency, damaged or completely destroyed as a result of hostilities, as well as to provide judicial institutions with the technology and equipment necessary for their full functioning.

According to preliminary calculations by the State Judicial Administration of Ukraine, approximately over 2 billion hryvnias are needed to restore the operation of courts, including carrying out comprehensive repairs and purchasing necessary equipment and furniture.

The current situation of the judiciary and its functioning under martial law

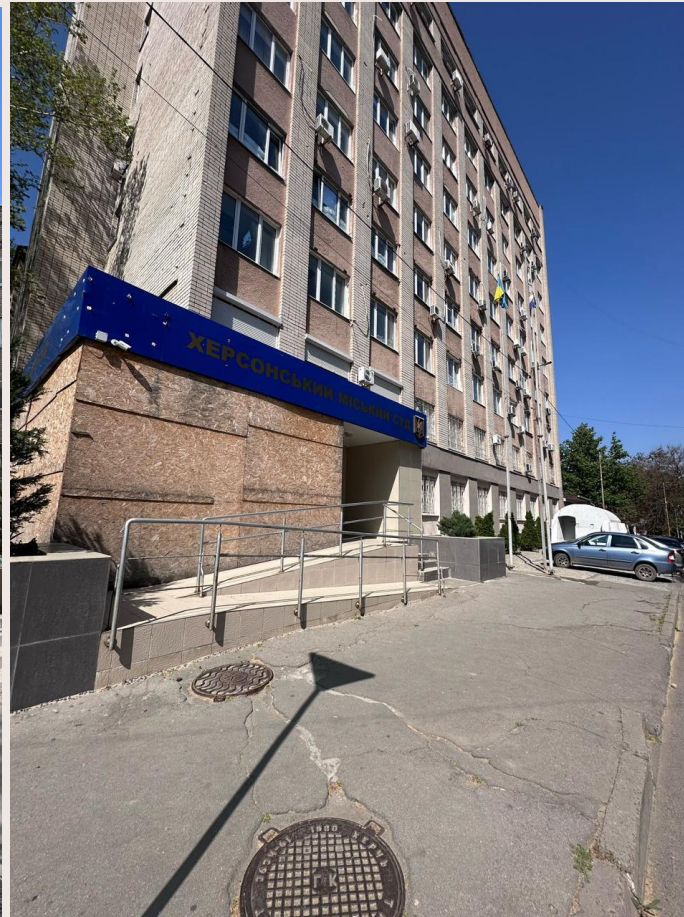
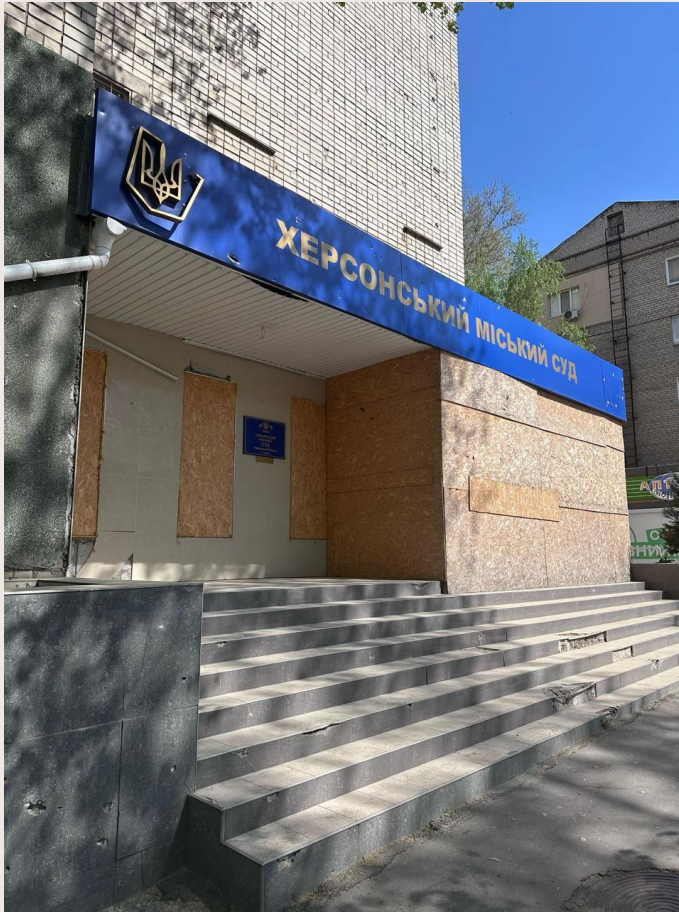
- 17% (139) of courts changed their territorial jurisdiction due to the inability
- to administer justice during martial law
- The judiciary lacks 2119 judges

Lack of judges in appeal courts – 1357 positions (763 vacant)

Sumy appeal court – only 4 judges (21 vacant)

Kharkiv Court of Appeal – 12 (48 vacant)





April 24, 2025 Kherson City Court of Kherson Region

In June 2023, the High Council of Justice resumed the procedural activities of the Kherson City Court, which at that time had not administered justice for almost a year and a half due to the full-scale invasion and overcoming the consequences of the occupation.

Today, the court employs 147 employees, of whom 21 are judges and 4 are non-executive judges.

Kherson is under massive enemy shelling every day.

The current situation of the judiciary and its functioning under martial law

- In 2024, nearly 5 million 300 thousand cases were in all courts of all instances and jurisdictions, 4 million 400 thousand cases were decided.
- The average caseload per Supreme Court judge was 605 cases in 2024.



Main forms of warfare rules violations

(Article 438 of the Criminal Code of Ukraine)



- ill-treatment of civilians in the form of premeditated murder, death threats; torture, violence, sexual violence, illegal deprivation of liberty; abduction of a person (children), forcing protected persons to serve in the armed forces of the occupying power;
- robbery of civilians;
- illegal destruction of civilian property.

Special features of procedural law application in the context of military operations

- extension of procedural deadlines as a result of the imposition of martial law throughout Ukraine and assessment of the gravity of the violation of such deadlines;
- adjournment of a hearing in connection with the announcement of an air alert (The vast majority of court premises are not equipped by shelters in which court can continue hearings during an air alarm. Court hearing are interrupted during an air alarm, the parties in such cases usually leave the court premises and the court has to postpone the trial);
- suspension of proceedings due to the fact that a party to the case is a member of the Armed Forces of Ukraine (In accordance with the Civil Procedure Code, the court must stop the proceedings in case if a party is in the Armed Forces of Ukraine during martial law);
- possibility of considering a cassation appeal in the absence of a party's representative - a lawyer who is outside Ukraine during the period of martial law in Ukraine.



The Supreme Court has formulated important legal positions in civil cases

- ✓ on the immunity of the state-aggressor and compensation for damages caused by the armed aggression;
- ✓ on the modification or termination of obligations due to war;
- ✓ on establishing the facts of birth or death during martial law, especially on the occupied territories;
- ✓ on taking into account the conditions of martial law when resolving disputes concerning the rights and interests of a child in the territory of another state.

The Supreme Court has adjudged regarding

- ✓ the rights of a child of a deceased serviceman, born after his death, to receive a one-time social payment;
- ✓ confirmation of a serviceman's participation in hostilities or equivalent activities;
- ✓ the forced alienation of corporate rights and shares in favor of the state in martial law;
- ✓ the validity of the reasons for absence from work due to the introduction of martial law in Ukraine;
- ✓ the qualification of collaboration activities, high treason.



The Grand Chamber of the Supreme Court defined the criteria for the subject of a crime under Art. 437 of the Criminal Code of Ukraine (planning, preparation, initiation and conduct of an aggressive war) and formulated conclusions on the qualification of actions committed during an armed conflict [<https://so.supreme.court.gov.ua/news/424/war-crimes-in-ukraine-most-recent-legal-positions-of-supreme-court>].

The conclusions of the Supreme Court regarding the method of exercising the right of a religious community to change its canonical affiliation are also important in modern conditions.



Some legal rules



- ✓ During the period of martial law and within thirty days after its termination or cancellation shall be suspended the exercise of the mortgagee's right to acquire ownership of the mortgaged object, to sell the mortgaged object, to evict the residents;
- ✓ Suspension of an employment contract is a temporary cessation by the employer of providing the employee with work and a temporary cessation by the employee of performing work under the concluded employment contract in connection with armed aggression against Ukraine, which excludes the possibility of both parties to the employment relationship to fulfill the obligations stipulated by the employment contract.

Some legal rules



- ✓ declaring an individual deceased (Article 46 of the Civil Code of Ukraine);
- ✓ suspension of the limitation period if the plaintiff or defendant is a member of the Armed Forces of Ukraine or other military formations established in accordance with the law that are transferred to martial law (Article 263 of the Civil Code of Ukraine);
- ✓ military or alternative (non-military) service, work or service performed by a person under a sentence or other court decisions, as well as work or service in accordance with the laws on martial law and on a state of emergency are not recognized as a forced labor (Article 312 of the Civil Code of Ukraine);
- ✓ in conditions of martial law or a state of emergency property may be forcibly alienated from the owner with subsequent full compensation for its value (requisition) (Article 353 of the Civil Code of Ukraine).

The Supreme Court ruled on the limited of judicial immunity of the aggressor state

The Supreme Court formulated a conclusion on the judicial immunity of the aggressor state in the case of compensation for damage caused by the aggressor state



The Civil Cassation Court within the Supreme Court has reiterated its position on the absence of judicial immunity of the aggressor state and provided additional arguments



The immunity of the state in civil proceedings must pursue a legitimate purpose: compliance of international law, promoting civility and fair relations between states, respect sovereignty of another state.

The special Law of Ukraine provides that a compensation for damages caused as a result of temporary occupation to the state, legal entities, public associations, Ukrainian citizens, to foreigners and stateless persons, relies entirely on the state-occupant. The practical implementation of the above provisions was reflected in a number of court decisions in civil and commercial jurisdiction. However, the occupant state usually ignores such disputes (did not participate; did not appeal court decisions).



In April 2022, the Supreme Court decided that the aggressor state doesn't have judicial immunity in Ukrainian courts, whereas that state committed acts of armed aggression, violated sovereignty and territorial integrity of Ukraine, destroyed building, schools, hospitals and theaters and killed Ukrainian people (Judgment of the Grand Chamber of the Supreme Court dated April 14, 2022 in case No. 308/9708/19). The Supreme Court determined that committing such actions, the aggressor state exceeded the limits of its sovereign rights, guaranteed by Art. 2 of the UN Charter, and violated the plaintiff's (person`s) rights guaranteed by legal norms.

Supreme Court confirmed that the aggressor state has no jurisdictional immunity in Ukrainian courts. The plaintiff, a citizen of Ukraine, must have an effective access to the court to protect his rights (Judgments of the Supreme Court dated May 18, 2022 in cases No. 428/11673/19 and No. 760/17232/20).



Also, Supreme Court emphasized that immunity of the aggressor state contradicts Ukraine's international legal obligations in the sphere of combating terrorism. Having committed an act of aggression against Ukraine, violated all fundamental rules of international law, the aggressor state deprived itself of jurisdictional immunity in Ukrainian courts. It was the aggressive illegal behavior of the aggressor state, which led to horrible consequences for Ukraine and the Ukrainian people, that became the basis for the Supreme Court's conclusions about limited jurisdictional immunity of that state on the territory of Ukraine in such cases.

International Court of Justice of the United Nations, by its decision of March 16, 2022, ordered Russia stop its invasion of Ukraine.

So Ukrainian courts should protect human rights, so have a competence to hear cases for damage caused by the armed aggression (Article 12 of the UN Convention on Jurisdictional Immunities of States and of their property (2004)).



Determining the subject of judicial immunity, the Supreme Court took into account the following:

- the subject of the claim is compensation for moral damage caused to individuals, citizens of Ukraine, as a result of the death of another citizen of Ukraine;
- the place of infliction of damage is the territory of the sovereign state of Ukraine;
- it is assumed that the damage was caused by agents of the aggressor state, who violated the principles enshrined in the UN Charter regarding the prohibition of military aggression committed against another state;
- the commission of acts of armed aggression by a foreign state is not the exercise of its sovereign rights, but indicates a violation of the obligation to respect the sovereignty and territorial integrity of another state of Ukraine, which is enshrined in the UN Charter;
- the national legislation of Ukraine proceeds that, as a general rule, damage caused in Ukraine to an individual as a result of the unlawful actions of any other person (entity) may be compensated by a decision of a court of Ukraine (according to the principle of "general tort").

The Supreme Court proceeds from the fact that in the case of application of the "tort exception", dispute that has arisen on its territory with a citizens of Ukraine under mentioned circumstances may be resolved by a court of Ukraine as an appropriate and competent court.



The state-aggressor's judicial immunity does not apply in view of customary international law codified in the UN Convention on Jurisdictional Immunities of States and Their Property (2004)

It's too difficult to inform the state-aggressor about trial. Any correspondence has been stopped. The state-aggressor denied intermediary postal services of other countries or international bodies.

Ukrainian courts use Internet resources, the national information and telecommunications system. Relevant messages are published in a special section on the page of the Civil Cassation Court (website of the Supreme Court) on the web portal "Judiciary of Ukraine" with a link to the web address of the court decisions in the Unified State Register of Court Decisions of Ukraine (https://supreme.court.gov.ua/supreme/pro_sud/info_terut_ros/ https://supreme.court.gov.ua/supreme/pro_sud/povidomlennya/)



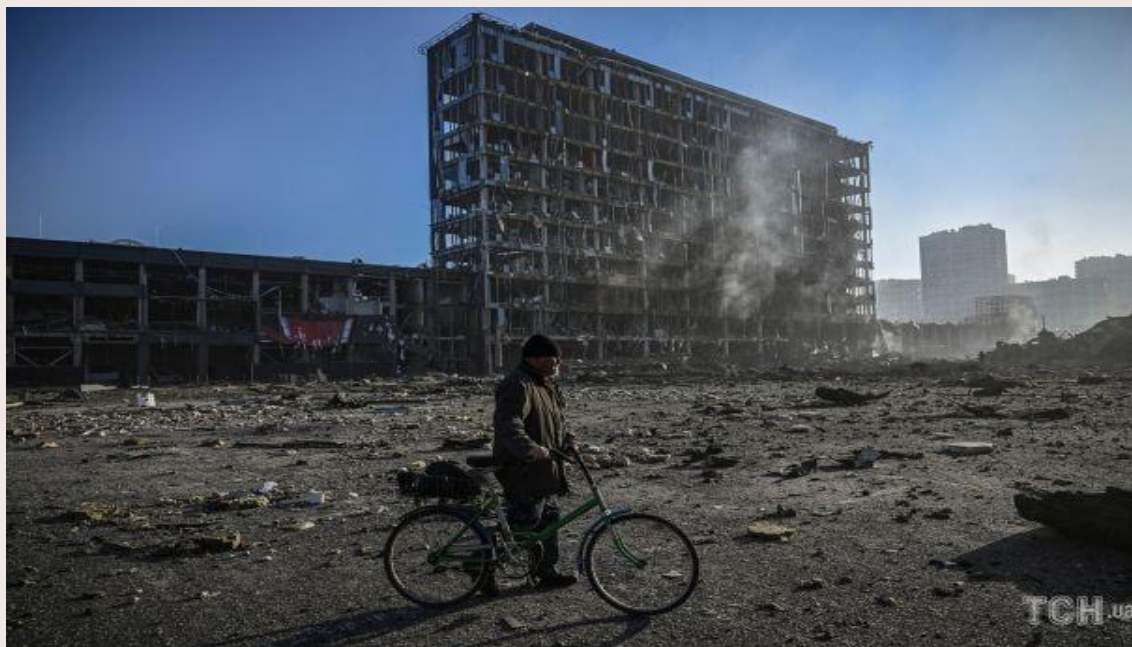
In the decision, dated 04.05.2023 in case No. 908/1955/22(908/747/23), the Commercial Court of Zaporizhzhia Region, satisfying the claims for damages caused by the expropriation of land plots owned by the plaintiff, emphasized that the RF is a subject, as a result of whose armed aggression against Ukraine and occupation of part of the territory of Ukraine, a number of rights and freedoms of individuals and legal entities, in particular, the rights of the plaintiff, have been violated. As a result of the RF 's military aggression, the plaintiff suffered damage consisting in the violation of his right of ownership of land plots and the unlawful restriction on the exercise of his rights as an owner as a result of the occupation and seizure of territories by the RF.

The RF recovered UAH 439,243,988.76 (USD15,152,772,00) from the state of the Private Joint-Stock Company "Asset Management Company "Slavutich-Invest" within the framework of case No. 908/1955/22

The court noted that the military aggression of the RF, occupation, and illegal extension of the defendant's jurisdiction in certain territories of Ukraine, which led to interference in established economic and legal relations, are in a direct causal relationship with the plaintiff's deprivation of access to land plots, making it impossible to exercise control over property, as a result, depriving the plaintiff of the opportunity to exercise the rights to own, use and dispose of property, which caused losses to the plaintiff.

The court decision was not appealed. The party filed a petition with the Dutch court for the enforcement of this decision.





The Commercial Court of Kyiv settled the claim of owner of the partially destroyed mall "RETROVILLE" in the city of Kyiv to the state-aggressor for 21,561,390.70 EUR damages (the judgment dated December 22, 2022, No. 910/10517/22). It was proved a direct involvement of the defendant represented by the Ministry of defense of the aggressor state in launching the missile and its attack and impact on the mall. This fact, by the way, was admitted at the briefing of the Ministry of Defense of the RF.



The Commercial Court of Kyiv satisfied the claim of the entrepreneur as the owner of the equipment that remained on the territory of Ukraine temporarily occupied, which deprived him of the opportunity to realize the right of ownership, the possibility of access to one's property, opportunities to take it away and keep it undamaged. as a result, the plaintiff suffered damages 634,395.30 UAH. In this case, guided by the principles of greater probability, of reasonableness and taking into account the evidences court decided that the plaintiff's property was stolen when the city Kherson was under occupation until 11/11/2022 (256 days), (the judgment dated December 06, 2022, No. 914/1552/22).

Enforcement of Ukrainian court decisions - compensation from the aggressor country:

1. Recognition of the Ukrainian court decision by applying the procedure of recognition and admission to its enforcement in a foreign country where there is property of the aggressor country or legal entities and individuals participating in financing the war on the side of the aggressor.
2. Enforcement of court decisions in Ukraine by applying general enforcement procedures within the country - within the framework of joint enforcement proceedings by the Ministry of Justice of Ukraine.
3. Using the International Register of Damages Caused by the aggressor state, the Ukrainian court decisions will be considered as one of the evidences of damage and its amount.



Верховний
Суд



Слава Україні!
Героям Слава!

The Supreme Court
3 judges and **25** staff members
serve or served in the Armed
Forces of Ukraine

The judicial system
54 judges and **353** staff members
serve or served in the Armed
Forces of Ukraine

As a result of the fighting **7**
judges and court staff were
killed and **9** were injured.

From March 2022 and until the end of martial law, judges have donated and will be donating **20-60%** of their judicial remuneration to the needs of the Armed Forces of Ukraine



Верховний
Суд



Optimal and effective mechanisms for resolving current problems of protecting the rights of military personnel, their family members, and internally displaced persons both under martial law and in the post-war period.

The Supreme Court

The Administration of Justice Under Martial Law

The judiciary, despite all the challenges, including those I have already mentioned, remains a key guarantor of the rule of law. It provides reliable protection of human rights and freedoms, acting as a guarantee of justice in these difficult times.

There is still a lot of work ahead, but we are ready for new challenges, because we have a clear goal, strong and dedicated people, and a common desire to live in a democratic and legal state (President of the Supreme Court – Stanislav Kravchenko).





Supreme
Court

Thank you for your attention!