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### Features Of The Protection Of Civil Rights And Interests Under The Conditions Of Marital State

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#### Abstract

In the article, a comprehensive study of the peculiarities of the protection of individual civil rights of individuals and legal entities in the conditions of martial law in Ukraine was carried out. The methodological basis of the scientific article is the complex application of general scientific and special methods of scientific knowledge in their relationship, chosen taking into account the purpose and tasks of the research, its object and subject. It is noted that the protection of subjective rights is the legal provision of inviolability, their inviolability, and in the event of a violation, the application of coercive state measures aimed at restoring these rights, ensuring the fulfillment of legal obligations. It has been established that the most widespread is the protection of the right in the court procedure, in connection with which the methods of court protection of civil rights and interests of individuals and legal entities under Ukrainian legislation are distinguished. The expediency of defining in the Civil Procedure Code, the Code of Administrative Procedure, and the Economic Procedure Code a number of procedural tools aimed at regulating material legal relations and protecting the rights of individuals and legal entities under special legal regimes is substantiated.

**Keywords:** civil rights, protection of rights, physical and legal entities, martial law, procedural legislation.

#### CARACTERÍSTICAS DE LA PROTECCIÓN DE LOS DERECHOS E INTERESES CIVILES BAJO LAS CONDICIONES DEL ESTADO CIVIL

Resumen. En el artículo, se llevó a cabo un estudio exhaustivo de las peculiaridades de la protección de los derechos civiles individuales de las personas físicas y jurídicas en las condiciones de la ley marcial en Ucrania. La base metodológica del artículo científico es la aplicación compleja de los métodos científicos generales y especiales del conocimiento científico en su relación, elegidos teniendo en cuenta el propósito y las tareas de la investigación, su objeto y tema. Se advierte que la protección de los derechos subjetivos es la disposición legal de la inviolabilidad, su inviolabilidad y, en caso de violación, la aplicación de medidas coercitivas estatales tendientes a restaurar estos derechos, asegurando el cumplimiento de las obligaciones legales. Se ha establecido que la más extendida es la protección del derecho en el procedimiento

judicial, en relación con la cual se distinguen los métodos de protección judicial de los derechos e intereses civiles de las personas físicas y jurídicas en la legislación ucraniana. Se fundamenta la conveniencia de definir en el Código Procesal Civil, el Código Procesal Administrativo y el Código Procesal Económico una serie de instrumentos procesales tendientes a regular las relaciones jurídicas materiales y proteger los derechos de las personas naturales y jurídicas bajo regímenes jurídicos especiales.

Palabras clave: derechos civiles, protección de derechos, personas físicas y jurídicas, ley marcial, legislación procesal.

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## Introduction

In today's world, the problem of ensuring respect and observance of human rights is of paramount importance. Ensuring human rights and freedoms is not only an internal matter, but the goal of the entire world community, for which the doctrines and standards of human rights and freedoms are a problem of a global nature. Human rights and freedoms are those universal legal values, which are characterized by the establishment of uniform international legal standards in the field of protection of individual rights, and the problem of their protection becomes especially relevant in the conditions of industrial society, globalization of the world economy with its adverse social consequences. The rights and freedoms of a person and a citizen are protected by the court. Everyone has the right to protect their rights and freedoms from violations and illegal encroachments by any means not prohibited by law (Article 55 of the Constitution of Ukraine)<sup>1</sup>.

Participants in civil legal relations in Ukraine, suffering from military actions on the territory of the country, face the impossibility of fulfilling contractual obligations due to suspension of activities or destruction of property of enterprises, institutions, organizations; due to the departure of Ukrainian citizens from their permanent places of residence due to threats to life and health; shortage or death of employees, their recognition by the court as missing; violation of logistics due to active hostilities on the territory of Ukraine<sup>2</sup>. Given the current circumstances, the study of the impact of martial law on civil legal relations requires additional attention, in particular, in terms of the possibility of protecting the civil rights of individuals and legal entities in the conditions of emergency legal regimes.

Domestic and foreign scientists have carried out many studies devoted to the protection of civil human rights, this issue of the direct impact of martial law on the participants in civil relations is practically unexplored, because in 2022, Ukraine first encountered military actions that

<sup>1</sup> *Constitution of Ukraine*: Law of Ukraine. June 28, 1996. No. 254k/96-VR, available in: <https://zakon.rada.gov.ua/laws/show/254> [consulted on November 6, 2022].

<sup>2</sup> Kochyna, Oleksandra; Boldyreva, Victoria. "The influence of martial law on civil legal relations". *New Ukrainian Law*. Issue 2, 2022, 53-58.

affected entire country.

In the conditions of military operations on the territory of the country, the following issues are of scientific and practical interest: peculiarities of conducting electronic proceedings and the use of electronic evidence; determination of the territorial jurisdiction of court cases, including the filing of lawsuits/applications based on the place of temporary stay; the procedure for transferring cases to another court and resuming lost proceedings; interrogation of the participants in the case (children), witnesses, etc., who have gone abroad or remained in the occupied territory, using their own technical means; whether failure to appear at a court session during martial law is recognized as a valid reason and how many times it is possible to postpone the consideration of the case; the possibility of renewal of procedural terms that expired during the war; exemption from payment of court costs during wartime; how to obtain court decisions from courts located in the temporarily occupied territories; the problem of access to the Unified State Register of Court Decisions; the procedure for notifying the parties to the case who remained in the occupied territory and sending them a response, etc.

In view of the requirements regarding the scope of the scientific article, we will focus on the specifics of the judicial protection of some of the civil rights listed above in the conditions of martial law in Ukraine, having previously clarified the essence, grounds and methods of protection of the civil rights of individuals and legal entities, as well as the normative and legal.

### **1. The essence, grounds and methods of protection of civil rights in Ukraine**

In legal science, there are different points of view regarding the concept and elements of subjective civil law, the existence of a separate independent right to defense, etc. However, in any case, it should be recognized that civil law, not provided with a specific legal remedy, remains unguaranteed. Taking into account this circumstance and relying on the provisions of Art. 19 of the Constitution<sup>3</sup>, Chapter 3 of the Civil Code establishes the basic principles of protection of civil law and interest<sup>4</sup>.

It is worth emphasizing that legal protection and protection are different concepts in terms of content.<sup>5</sup>; state coercive activity aimed at the implementation of "restorative" tasks - the restoration of a violated right, ensuring the fulfillment of a legal obligation<sup>6</sup>. The protection of civil rights in jurisprudence refers to the legitimate reaction of participants in civil relations, society and the state to the violation, non-recognition or challenge of civil law in order to stop the violation, renew or recognize civil law or compensate for the damage caused to the entitled person.

In today's conditions, one of the priority tasks of Ukraine is social protection, the purpose of which is to support people who have found themselves in difficult life circumstances, to raise and ensure the appropriate standard of living of both individual families and the population in general by providing social assistance, social and rehabilitation services, introduction of various benefits, compensations, establishment of guarantees, social work with families, children and youth, etc.<sup>7</sup>.

For a person, the right to protection consists in the possibility of using means of self-defense within the limits defined by law, as well as in the possibility of applying to the relevant state, self-government or public body or an authorized person for the protection of one's civil right or

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<sup>3</sup> *Constitution of Ukraine*: Law of Ukraine. June 28, 1996. No. 254k/96-VR, available in: <https://zakon.rada.gov.ua/laws/show/254> [consulted on November 6, 2022].

<sup>4</sup> *Civil Code of Ukraine*: Law of Ukraine. January 16, 2003. No. 435-IV, available in: <https://zakon.rada.gov.ua/laws/show/435-15> [consulted on November 6, 2022].

<sup>5</sup> Boyko, Valentina. "Correlation and demarcation of the concepts of protection and protection of labor rights of employees". *Private and public law: scientific journal*. Amounts: SNAU. No. 1, 2021, 26.

<sup>6</sup> Alekseev, Sergei. *General theory of law*. Moscow: Prospect Publishing House, 2008, 202.

<sup>7</sup> Burlaka, Olga. "Regarding the problem of defining the concept and features of social protection of the family, childhood, motherhood and parenthood". *Entrepreneurship, economy and law*. Issue 11, 2019, 124.

interest.<sup>8</sup>; administrative protection (Article 17 of the Civil Code)<sup>9</sup>; protection by a notary (Article 18 of the Civil Code)<sup>10</sup>; self-defense (Article 55 of the Constitution, Article 19 of the Civil Code)<sup>11</sup>; protection with the help of other public, state and international institutions (prosecution authorities - Article 121 of the Constitution)<sup>12</sup>. A subject of civil law may choose one or more methods of protection.

The methods of court protection of civil rights and interests include: 1) recognition of rights (applied in the event of a dispute regarding the existence of a civil right or civil obligation for a subject of civil law); 2) recognition of the deed as invalid (may take place in the case of concluding the contested deed); 3) an obligation to stop the action that violates the right (possible in relation to an ongoing civil offense); 4) restoration of the situation that existed before the violation (restitution). It is used in the case when it is necessary to renew the violated civil right (for example, in case of recognition of the deed as invalid); 5) coercion to perform an obligation in kind (consists in requiring the addressed obligated person to perform an action or refrain from an action). Can be applied regardless of the application of other means of protection (damages or non-pecuniary damage, collection of a fine, etc.); 6) change of legal relationship (consists of reorganization of legal relationship, transformation of one obligation into another, assignment of a new obligation to the debtor); 7) termination of the legal relationship (applies in case of non-fulfillment or improper fulfillment of duties by a person or abuse of civil law); 8) compensation for damages and other methods of compensation for property damage (can be applied in case of property damage to civil rights and interests) (Article 22 of the Civil Code)<sup>13</sup>.

Ways of the administrative procedure for the protection of civil rights are: annulment of legal acts of state bodies, their officials and employees by a higher authority; use by the state or local self-government bodies, which are endowed with jurisdictional powers, of the methods of protection of civil rights established by Art. 16 of the Civil Code<sup>14</sup>.

Self-defense as a way of protecting civil rights is characterized by the fact that a person protects his civil rights and interests by his own actions. In other words, this is protection without recourse to a court or other body that provides protection of civil law. Taking measures to protect one's property, turning to third parties who provide services to ensure the safety of property or personal safety are not recognized as self-defense. It is only the prevention of any third parties who unlawfully encroach on civil rights, harm the civil rights and interests of other persons, etc. Self-defense is allowed under the following conditions: there is a violation of a civil law or there is a danger of its violation; there is a need to stop (prevent) the violation by own means; self-defense measures are adequate to the degree of danger of the offense, i.e. harm to the offender or another person must be authorized by law and not exceed the limits of what is permitted.

Taking into account the possibility of harming the civil rights of other persons when using self-defense (damage to property, non-property goods), it is allowed under the following conditions:

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<sup>8</sup> *Constitution of Ukraine*: Law of Ukraine on June 28, 1996. No. 254k/96-VR, available in: <https://zakon.rada.gov.ua/laws/show/254> [consulted on November 6, 2022]; *Civil Code of Ukraine*: Law of Ukraine. January 16, 2003. No. 435-IV, available in: <https://zakon.rada.gov.ua/laws/show/435-15> [consulted on November 6, 2022].

<sup>9</sup> *Civil Code of Ukraine*: Law of Ukraine. January 16, 2003. No. 435-IV, available in: <https://zakon.rada.gov.ua/laws/show/435-15> [consulted on November 6, 2022].

<sup>10</sup> *Civil Code of Ukraine*: Law of Ukraine. January 16, 2003. No. 435-IV, available in: <https://zakon.rada.gov.ua/laws/show/435-15> [consulted on November 6, 2022].

<sup>11</sup> *Constitution of Ukraine*: Law of Ukraine. June 28, 1996. No. 254k/96-VR, available in: <https://zakon.rada.gov.ua/laws/show/254> [consulted on November 6, 2022]; *Civil Code of Ukraine*: Law of Ukraine. January 16, 2003. No. 435-IV, available in: <https://zakon.rada.gov.ua/laws/show/435-15> [consulted on November 6, 2022].

<sup>12</sup> *Constitution of Ukraine*: Law of Ukraine. June 28, 1996. No. 254k/96-VR, available in: <https://zakon.rada.gov.ua/laws/show/254> [consulted on November 6, 2022].

<sup>13</sup> *Civil Code of Ukraine*: Law of Ukraine. January 16, 2003. No. 435-IV, available in: <https://zakon.rada.gov.ua/laws/show/435-15> [consulted on November 6, 2022].

<sup>14</sup> *Civil Code of Ukraine*: Law of Ukraine. January 16, 2003. No. 435-IV, available in: <https://zakon.rada.gov.ua/laws/show/435-15> [consulted on November 6, 2022].

the damage caused must be less significant; the real danger that threatened the civil rights of the individual in such circumstances could not be eliminated by other means. The use of this method within the specified limits exempts from liability for damage caused to a third party who has violated or violates the rights and interests of the person being defended. The actions of the person who defends himself must be aimed exclusively at stopping the violation of his right and interest. If the goal is achieved, then further actions cannot be recognized as self-defense.

The most widespread is legal protection. The legislator in Part 1 of Art. 16 of the Civil Code established that every person has the right to apply to the court for the protection of his personal non-property or property right and interest, and in part 2 of this article he defined the methods of protection of civil cases and interests by the court<sup>15</sup>. The following subsections of the study will be devoted to the regulatory and legal prescriptions regulating the procedure for the implementation of civil rights, as well as the peculiarities of its implementation under martial law.

## **2. Normative and legal regulation of the rights of civilians in Ukraine under martial law**

On February 24, 2022, martial law was introduced in Ukraine, as a result of which the corresponding Decree of the President of Ukraine was adopted<sup>16</sup> and extended several times. This decision was made in connection with the military aggression of the Russian Federation against Ukraine, and in fact the beginning of the war on the territory of our state.

Article 1 of the Law of Ukraine "On the Legal Regime of Martial Law" declares that martial law is a special legal regime that is introduced in the country or some of its localities in the event of armed aggression or a threat of attack, a threat to the state independence of Ukraine, its territorial integrity, in addition to granting the relevant authorities state power, military command and local self-government bodies, the powers necessary to avert the threat and ensure national security, also provides for the temporary, threat-induced, restriction of the constitutional rights and freedoms of a person and citizen, as well as the rights and legal interests of legal entities, with an indication of the period of validity of these restrictions<sup>17</sup>.

In the conditions of martial law, some constitutional rights of citizens may be limited in order to more effectively mobilize state resources to counter military aggression. The decision to limit the rights and freedoms of the population is taken by the military command together with other authorities. The Constitution of Ukraine, as the main guarantor of ensuring and protecting the rights and freedoms of citizens, contains a list of rights that cannot be limited even during martial law. In particular, there can be no restrictions based on race, skin color, political, religious and other beliefs, gender, ethnic and social origin, property status, place of residence, language or other characteristics; the inalienable right to life cannot be violated; on respect for dignity, freedom and personal integrity; the right to housing, marriage and equal rights and obligations in marriage and family cannot be limited; it is unacceptable to violate the equality of children in their rights, regardless of origin; the right to protect rights and freedoms in court, to be reimbursed by the state or local self-government bodies for material and moral damage caused by illegal decisions of state authorities is not subject to limitation; the right not to be held liable twice for the same kind of legal responsibility for the same offense cannot be limited; presumption of innocence; the right to protection and refusal to testify or to give explanations or statements about oneself, family members or close relatives, whose circle is defined by law and other<sup>18</sup>.

The Convention on the Protection of Civilian Population in Time of War and its Additional Protocols establish the fundamental rights of civilians, which the participating states must ensure during

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<sup>15</sup> *Civil Code of Ukraine*: Law of Ukraine. January 16, 2003. No. 435-IV, available in: <https://zakon.rada.gov.ua/laws/show/435-15> [consulted on November 6, 2022].

<sup>16</sup> *On the introduction of martial law in Ukraine*: Decree of the President of Ukraine. February 24, 2022 No. 64/2022, available in: <https://www.president.gov.ua/documents/642022-41397> [consulted on November 6, 2022].

<sup>17</sup> *On the legal regime of martial law*: Law of Ukraine. May 12, 2015. No. 389-VIII, available in: <https://zakon.rada.gov.ua/laws/show/389-19> [consulted on November 6, 2022].

<sup>18</sup> *Constitution of Ukraine*: Law of Ukraine. June 28, 1996. No. 254k/96-VR, available in: <https://zakon.rada.gov.ua/laws/show/254> [consulted on November 6, 2022].

armed conflicts. In particular, the Convention establishes clear prohibitions that cannot have exceptions anytime and anywhere. They concern torture, violence, mutilation and humiliating treatment of civilians and persons who have laid down their arms.

The right to judicial protection is provided for in Article 55 of the Constitution of Ukraine, which states that the rights and freedoms of a person and a citizen are protected by the court. Everyone is guaranteed the protection of their rights and freedoms within the criminal, administrative, economic, civil, and constitutional justice system of Ukraine<sup>19</sup>. Also according to Art. 6 of the Law of Ukraine "On the Judiciary and the Status of Judges" all subjects of legal relations are guaranteed the protection of their rights and freedoms and legitimate interests by an independent and impartial court formed in accordance with the law<sup>20</sup>.

The right to an effective means of protection of rights and freedoms is also enshrined in Article 2 of the "International Covenant on Civil and Political Rights"<sup>21</sup>, Article 8 of the Universal Declaration of Human Rights<sup>22</sup>, in which every person has the right to redress by competent national courts in cases of violation of his fundamental rights guaranteed by the Constitution or the law.

On 26.02.2022, draft law No. 7316 was registered in the Parliament of Ukraine, which determined, among other things, that during the period of martial law or a state of emergency, the possibility of remote work is foreseen, the specifics of subpoenas and notifications for the period of martial law or a state of emergency, and other<sup>23</sup>. However, due to a number of procedural inconsistencies, the draft law was rejected, so justice under martial law is carried out according to the norms of the current procedural codes, as well as taking into account the recommendations of higher courts.

In general, analyzing the specifics of the regulatory and legal regulation of the rights of civilians in Ukraine under martial law, we can conclude that the government has not introduced any significant restrictions on rights. On the contrary, we can currently observe a tendency to simplify the procedures for the implementation of certain of them. We consider the introduction of simplified court procedures to be a correct and expedient decision that meets the principles of a democratic society.

Concluding this part of the study, we emphasize that the content and form of proceedings in civil cases under martial law must correspond to the tasks and basic principles of civil justice, but there must be peculiarities of conducting such proceedings under martial / emergency conditions. Unfortunately, today, such features are not included in the Civil Procedure Code of Ukraine, and certain point changes are not enough.

It is well known that procedural law answers the question of how exactly to protect subjective rights defined in substantive law. That is, it ensures the formalization and indisputability of specific subjective rights and obligations. Nowadays, the courts are constantly faced with the problems of administration of justice in the conditions of martial law, many questions arise, the

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<sup>19</sup> *Constitution of Ukraine*: Law of Ukraine. June 28, 1996. No. 254k/96-VR, available in: <https://zakon.rada.gov.ua/laws/show/254> [consulted on November 6, 2022].

<sup>20</sup> *On the judiciary and the status of judges*: Law of Ukraine. June 2, 2016, available in: <https://zakon.rada.gov.ua/laws/show/1402-19> [consulted on November 6, 2022].

<sup>21</sup> *UN International Covenant on Civil and Political Rights*: Covenant, International Document. December 16, 1966, available in: [http://zakon3.rada.gov.ua/-laws/show/995\\_043](http://zakon3.rada.gov.ua/-laws/show/995_043) [consulted on November 6, 2022].

<sup>22</sup> *Universal Declaration of Human Rights*: International Document. December 10, 1948, available in: [https://zakon.rada.gov.ua/laws/show/995\\_015](https://zakon.rada.gov.ua/laws/show/995_015) [consulted on November 6, 2022].

<sup>23</sup> *On making changes to the Code of Administrative Procedure of Ukraine, the Code of Civil Procedure of Ukraine and the Code of Economic Procedure of Ukraine (regarding the implementation of judicial procedures in conditions of martial law or state of emergency)*. Bill No. 7316. April 26, 2022, available in: <https://itd.rada.gov.ua/billInfo/Bills/Card/39489> [consulted on November 6, 2022].

answers to which are not found in the procedural legislation. It is necessary to proceed from the logic of law enforcement and the experience of the judge, while not violating the requirements of Art. 6 of the European Convention on Human Rights on a fair trial and the basic principles of judicial proceedings<sup>24</sup>.

### 3. Judicial protection of civil rights under martial law

The martial law imposed on the territory of Ukraine made adjustments to the work of the entire judicial system and the process of administration of justice. At the same time, it must be stated that the judicial system remains understaffed and morally depressed. The main reason for this state of affairs is, first of all, the incompleteness and inconsistency of the reformation processes in the sphere of administration of justice. Since the beginning of the full-scale armed Russian aggression, more than 70 judicial institutions have suffered damage of varying degrees up to their complete destruction. The damage caused by the destruction of the premises of judicial authorities is estimated at billions of hryvnias<sup>25</sup>. However, even under martial law, a person's constitutional right to judicial protection cannot be limited<sup>26</sup>.

Under such conditions, a number of questions arise regarding the possibility of adequate protection of the civil rights of individuals and legal entities, which in turn prompts the analysis of organizational, technical and procedural aspects of solving this problem.

During the period of martial law in accordance with Art. 10 of the Law of Ukraine "On the Legal Regime of Martial Law", the powers of courts cannot be suspended, and part 2 of Art. 26 of the said Law stipulates that the reduction or acceleration of any forms of judicial proceedings is prohibited<sup>27</sup>. However, this does not apply to the administration of justice in written and simplified proceedings, the application of the category "insignificant cases", which is directly provided for by the current procedural legislation.

By order of the President of the Supreme Court in connection with military operations, the work of the court may be suspended with the simultaneous determination of another court that will administer justice on the territory of the court that has ceased operations and which is territorially closest to the court whose work has been suspended. The Council of Judges of Ukraine recommended that courts focus exclusively on conducting urgent trials, and other categories of non-urgent cases are recommended to be considered only with the written consent of all participants in the court proceedings.

For the normal provision of the right to access to justice as a component of the right to a fair trial, such elements as procedural and physical possibilities of applying to the court are necessary. Thus, in the decision "Ashingdein v. United Kingdom" dated 28.05.1985, the European Court of Human Rights stated that any restrictions on access to the court are under the control of such a court, which checks whether the relevant state intervention pursued a legitimate goal and whether it is proportional and necessary in a legal and democratic state between the measures taken and the goal set<sup>28</sup>.

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<sup>24</sup> *Convention on the Protection of Human Rights and Fundamental Freedoms*: International Document of the Council of Europe. November 4, 1950, available in: [https://zakon.rada.gov.ua/laws/show/995\\_004](https://zakon.rada.gov.ua/laws/show/995_004) [consulted on November 6, 2022].

<sup>25</sup> Ognevyuk, Tatiana. *Why does Ukraine persistently not switch to remote justice?* available in: <https://zn.ua/ukr/internal/chomu-ukrajina-napolehlivo-ne-perokhidit-na-distantsijne-pravosuddja.html> [consulted on November 6, 2022].

<sup>26</sup> Tatulych, Iryna. *Peculiarities of judicial proceedings under martial law*, available in: <https://law.chnu.edu.ua/osoblyvosti-zdiisnennia-sudochynstva-v-umovakh-voiennoho-stanu> [consulted on November 6, 2022].

<sup>27</sup> *On the legal regime of martial law*: Law of Ukraine. May 12, 2015. No. 389-VIII, available in: <https://zakon.rada.gov.ua/laws/show/389-19> [consulted on November 6, 2022].

<sup>28</sup> *Ashingdein v United Kingdom*. Decision on May 28, 1985. *European Court of Human Rights*, available in: <http://hudoc.echr.coe.int/eng?i=001-113041> [consulted on November 6, 2022].

At the same time, such restrictions should not interfere with the exercise of the right to access to justice in such a way or to such an extent that the very essence of this right is violated. Thus, the Law of Ukraine "On Amendments to the Law of Ukraine" "On the Judiciary and the Status of Judges" stipulates that in connection with a natural disaster, military operations, measures to combat terrorism or other extraordinary circumstances, the work of the court may be suspended with a simultaneous determination of another court, which will administer justice in the territory of the court that has ceased to operate and which is territorially closest to the court whose work has been terminated<sup>29</sup>.

The remote form of justice is not provided for in the legislation, but since 2020, remote participation in the court process has been allowed in connection with covid, so the courts have had time to adapt to this online process and skillfully apply it. In accordance with Part 7 of Art. 11 of the Law of Ukraine "On the Judiciary and the Status of Judges", participants in the court process may participate in the court session by video conference on the basis of a court decision<sup>30</sup>.

If we turn to the statistics, during the period from 02/24/2022 to 05/02/2022, Ukrainian courts held 16,324 court hearings via video conference (Legislative orders and court advice). Here, however, it is worth noting that, despite the apparently convenient mode of video conferencing, it currently has certain difficulties, because the normal conduct of a court session requires a certain amount of time depending on the complexity of the case. Currently, this is not always possible due to constant bombings in certain regions of the country, which results in the interruption of the court session and its postponement.

As for the change of territorial jurisdiction during the war, in order to know which court to turn to for the protection of your rights, you can use the interactive maps that are periodically published on the web resources of the Supreme Court.

Separate attention should be paid to the observance of the principle of procedural economy (paragraphs 71, 82 of the resolution of the Supreme Court of Ukraine dated 26.01.2021 in case No. 522/1528/15-ts; paragraph 94 dated 06.04.2021 in case No. 910/10011/19)<sup>31</sup>. During the war, it must be fully engaged. The operation of this principle in civil proceedings allows to eliminate everything that is not absolutely necessary and that significantly burdens the process and can be replaced by other, more economical procedural means that sufficiently guarantee the proper administration of justice. The principle of procedural economy is implemented in the rules on timely, quick and correct consideration of the case through the rational use by the participants of the process of the procedural rights granted by law, without abusing them and on the condition of observing the basic principles of civil justice. In particular, this principle should be expanded by amending the procedural law, so that in the court of appeal, most cases are considered in written proceedings<sup>32</sup>.

In the course of civil proceedings, courts consider cases arising from civil, residential, land, family, labor relations, as well as regarding the registration of property and property rights, other registration actions from other legal relations (Article 19 of the Civil Procedure Code of

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<sup>29</sup> *On amendments to the Law of Ukraine "On the Judiciary and the Status of Judges"*. Law of Ukraine, 2022, available in: <https://zakon.rada.gov.ua/laws/show/2461-20> [consulted on November 6, 2022].

<sup>30</sup> Lytvynenko, Kateryna. *Legislative prescriptions and judicial advice*, available in: <https://ibuhgalter.net/ru/articles/1042> [consulted on November 6, 2022].

<sup>31</sup> *Resolution of the Supreme Court of Ukraine* dated January 26, 2021. Case No. 522/1528/15-ts. Proceedings No. 14-67ts20, available in: [https://verdictum.ligazakon.net/document/95509407?utm\\_source=jurliga.ligazakon.ua&utm\\_medium=news&utm\\_content=jl03](https://verdictum.ligazakon.net/document/95509407?utm_source=jurliga.ligazakon.ua&utm_medium=news&utm_content=jl03) [consulted on November 6, 2022]; *Resolution of the Supreme Court of Ukraine* dated April 6, 2021. Case No. 910/10011/19 Proceedings No. 12-84gs20, available in: <https://verdictum.ligazakon.net/document/96695006> [consulted on November 6, 2022].

<sup>32</sup> Luspenyk, Dmytro. *Civil process under martial law is the focus of attention of lawyers working in the field of Free Legal Aid*, available in: <https://supreme.court.gov.ua/supreme/pres-centr/news/1286728> [consulted on November 6, 2022].



Ukraine)<sup>33</sup>.

As a general rule, a person who has a material and legal interest in the case has the right to appeal to the court. At the same time, a case regarding the protection of a civil right or interest can be initiated not only by persons who have a material and legal interest in it, but also by other persons who are permitted by law, in order to protect the interests of other persons. In most cases, the protection of civil rights is carried out at the request of the victim, that is, it is up to him to apply for such protection or to leave the offense without legal consequences. Failure by an authorized person to take actions aimed at protecting a subjective right, as a general rule, does not lead to its loss, with exceptions provided by law (Article 853 of the Civil Code)<sup>34</sup>.

One of the urgent issues is clarifying the prospects of cases, the consideration of which was started before the introduction of martial law. The vast majority of cases considered in civil, administrative and commercial proceedings are not urgent. According to Art. 26 of the Law of Ukraine "On the Legal Regime of Martial Law" shortening or speeding up any forms of judicial proceedings in the conditions of martial law is prohibited<sup>35</sup>. In view of this legal guarantee, consideration by courts of cases that are not urgent courts is currently postponed or withdrawn from consideration. Usually, the courts postpone the consideration of the case regardless of the receipt of the petition for the postponement of the case from the parties, since a large number of participants in court proceedings are not always able to submit an application for the postponement of the consideration of the case or cannot come to the court due to danger to life. However, if the trial does not pose a threat to the life and safety of the parties, and the parties wish to conduct a trial, they have the right to apply to the court with a written request for a trial. In the absence of requests from the parties to consider the case during the martial law, it is expected that the consideration of the withdrawn cases will be resumed after the end of the martial law on the territory of Ukraine.

As evidenced by the analysis of the practice of the European Court of Human Rights, when determining the reasonableness of the trial period, not only such criteria as the importance of the case for the applicant, the complexity of the case, the behavior of the parties, the number of stages of the proceedings, but also the peculiarities of the political or social situation in the state, etc. are taken into account<sup>36</sup>.

Martial law does not affect the course of procedural terms, but may be a valid reason for renewing or extending the procedural term; the procedural term established by the court is not subject to renewal, but can only be extended at the request of the party to the dispute; during the period of martial law, the general and special statute of limitations provided for by the norms of civil and economic legislation are extended.

Undoubtedly, the introduction of martial law made it impossible for many people to submit the relevant documents to judicial institutions on time. If at the beginning of the war it was a popular opinion that martial law is a valid reason for recognizing the reasons for missing procedural terms as valid, now every court is based on the current situation in the respective region<sup>37</sup>. Under such conditions, the courts should carefully approach the issues related to the return of procedural documents, leaving them without movement, establishing various types of time

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<sup>33</sup> *Civil Procedure Code of Ukraine*: Law of Ukraine. March 18, 2004. No. 1618-IV, available in: <https://zakon.rada.gov.ua/laws/show/1618-15> [consulted on November 6, 2022].

<sup>34</sup> *Civil Code of Ukraine*: Law of Ukraine. January 16, 2003. No. 435-IV, available in: <https://zakon.rada.gov.ua/laws/show/435-15> [consulted on November 6, 2022].

<sup>35</sup> *On the legal regime of martial law*: Law of Ukraine. May 12, 2015. No. 389-VIII, available in: <https://zakon.rada.gov.ua/laws/show/389-19> [consulted on November 6, 2022].

<sup>36</sup> Tregubov, Yevgeny. *The right to a fair trial in the practice of the European Court of Human Rights*. 2010, available in: <http://www.nbu.gov.ua/e-journals/FP/2010-1/10telzpl.pdf>. [consulted on November 6, 2022].

<sup>37</sup> Chernilevska, Kateryna. *Peculiarities of judicial proceedings under martial law*, available in: [https://jurliga.ligazakon.net/news/211140\\_osoblivost-zdysnennya-sudochinstva-v-umovakh-vonnogo-stanu](https://jurliga.ligazakon.net/news/211140_osoblivost-zdysnennya-sudochinstva-v-umovakh-vonnogo-stanu) [consulted on November 6, 2022].

limits, and, if possible, extending them at least until the end of martial law.

A similar principle will be applied in the case of a person filing a civil lawsuit. In the conditions of martial law, it is possible to apply to the court with a new lawsuit. The Law "On the Legal Regime of Martial Law" guarantees that the powers of courts, bodies and institutions of the justice system, provided for by the Constitution of Ukraine, cannot be limited under the conditions of the legal regime of martial law<sup>38</sup>. Everyone has the right to protect their rights and freedoms from violations and illegal encroachments by any means not prohibited by law, and the court cannot refuse to accept a claim on the basis of martial law on the territory of Ukraine. It is expected that in the absence of requests from the parties to consider the case under martial law, the procedural terms and the consideration itself will be conducted after the end of martial law in Ukraine.

When considering the possibility of filing a lawsuit after the end of martial law, attention should be paid to the statute of limitations. The general statute of limitations is set at three years (Article 257 of the Civil Code)<sup>39</sup>.

According to clause 19 of the section "Final and transitional provisions" of the Civil Code during the period of martial law and state of emergency in Ukraine, the terms specified in Articles 257-259, 362, 559, 681, 728, 786, 1293 of the Civil Code are extended for the duration of its validity<sup>40</sup>. That is, in a specific case, according to the general rule of limitation of action, such limitation of action is extended for the duration of martial law, and the plaintiff can file such a claim even after the end of martial law. However, if the claim is subject to a special statute of limitations provided for by other legislation, it is worth checking whether the law provides for the extension of such a statute of limitations due to the effect of martial law. For example, Part 8 of Art. 269 of the Economic Code of Ukraine provides for a six-month period for filing claims arising from the delivery of goods of inadequate quality<sup>41</sup>.

The Commercial Code of Ukraine does not contain a rule by which such a period would be automatically extended for the period of martial law, and therefore the plaintiff should take all actions dependent on it in order to exercise his right to sue during the period of martial law. However, if the party missed such a period, it is not deprived of the right to apply to the court after the end of the martial law, justifying its inability to apply to the court within the period established by law, due to the circumstances that occurred in connection with the introduction of martial law.

In administrative proceedings disputes, the term of filing a claim with the court is determined by the Code of Administrative Proceedings of Ukraine or another regulatory legal act. The rules of administrative proceedings do not provide for an extension of the deadline for applying to the court in connection with the effect of martial law. If the term was stipulated by another law, it is worth checking whether such a term is extended in connection with the introduction of martial law. However, in any case, under such conditions, the party is not deprived of the right to request an extension of the terms for valid reasons.

Thus, if the dispute is subject to the statute of limitations, provided for in Art. 257-259, 362, 559, 681, 728, 786, 1293 of the Civil Code of Ukraine (including the general statute of limitations), a person can apply for their protection both during and after the end of martial law. Extension of the statute of limitations is guaranteed by law<sup>42</sup>. In other cases, if the legislation

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<sup>38</sup> *On the legal regime of martial law*: Law of Ukraine. May 12, 2015. No. 389-VIII, available in: <https://zakon.rada.gov.ua/laws/show/389-19> [consulted on November 6, 2022].

<sup>39</sup> *Civil Code of Ukraine*: Law of Ukraine. January 16, 2003. No. 435-IV, available in: <https://zakon.rada.gov.ua/laws/show/435-15> [consulted on November 6, 2022].

<sup>40</sup> *Civil Code of Ukraine*: Law of Ukraine. January 16, 2003. No. 435-IV, available in: <https://zakon.rada.gov.ua/laws/show/435-15> [consulted on November 6, 2022].

<sup>41</sup> *Economic Code of Ukraine*: Law of Ukraine. January 16, 2003. No. 436-IV, available in: <https://zakon.rada.gov.ua/laws/show/436-15> [consulted on November 6, 2022].

<sup>42</sup> *Civil Code of Ukraine*: Law of Ukraine. January 16, 2003. No. 435-IV, available in: <https://zakon.rada.gov.ua/laws/show/435-15> [consulted on November 6, 2022].

does not expressly provide for the extension of the special limitation period, it is expedient for the plaintiff to take all necessary actions in order to exercise his right to sue within the period established by law, so that the decision on the existence of reasonable grounds for the protection of his right after the end of martial law is not transferred to discretion of the court.

Finally, we note that the content and form of proceedings in civil cases under martial law must meet the tasks and basic principles of civil justice, taking into account the specifics of conducting such proceedings under emergency legal regimes. Given the fact that procedural law determines the mechanisms of protection of the subjective rights of individuals and legal entities, ensuring their formalization and indisputability and obligations, the legislator should make appropriate changes to the Civil Procedure Code in order to normalize legal relations in view of the special legal regime.

## Conclusions

The protection of subjective rights is the legal provision of inviolability, their inviolability, and in case of violation, the application of measures of a state coercive nature aimed at restoring these rights, ensuring the fulfillment of legal obligations. The most widespread is legal protection.

Methods of court protection of civil rights and interests of individuals and legal entities under Ukrainian law include: recognition of rights (applied in the event of a dispute regarding the existence of a civil right or civil obligation for a subject of civil law); recognition of the deed as invalid; the obligation to stop the action that violates the right; restitution; coercion to perform a duty in kind; change of legal relationship; termination of the legal relationship; compensation for damages and other methods of compensation for property damage.

Despite certain initiatives to standardize certain provisions of national procedural legislation in the conditions of special legal regimes, a number of procedural tools should be provided for in the Code of Administrative Procedure, the Civil Procedure Code, the Economic Procedure Code, including: improving the procedure for notifying trial participants about the time and place of the first court session ; consideration of appeals against decisions of the court of first instance in the order of written proceedings; notification of the adoption of a court decision by posting information on the official web portal of the judiciary with a link to the web address of such a court decision in the Unified State Register of Court Decisions; provision of immediate implementation of procedural actions within the time limits specified by the relevant code, in case of introduction of martial law or state of emergency, etc.

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