



Territorial Jurisdiction of Ukrainian Courts in the Conditions of Martial Law

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ACADEMIC ARTICLE



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ABSTRACT

In connection with the armed invasion of the Russian Federation¹ into the territory of Ukraine on February 24, 2022, throughout Ukraine martial law was introduced by a decree of the President of Ukraine. For the second time, due to active hostilities and the temporary occupation of part of the state's territory, the judicial system of Ukraine faced urgent issues in ensuring individuals' rights to access to justice, material-technical and organizational support of courts' activities under conditions of increasing number of cases being filed and a shortage of judges. Administering justice under such conditions became practically impossible, endangering the right to a fair trial, guaranteed by Article 6 of the European Convention on Human Rights (ECHR). According to Article 64 of the Constitution of Ukraine, certain restrictions on rights and freedoms may be imposed under martial law or a state of emergency. However, the right to a fair trial, which encompasses access to justice, is a fundamental right guaranteed by the state that must not be restricted, although its exercise may be subject to certain specific conditions under exceptional circumstances.

Therefore, legislative measures were determined to ensure the proper functioning of judicial bodies and unhindered access to justice. One of these measures is the change of territorial jurisdiction of court cases from courts operating in temporarily occupied territories and territories where hostilities are ongoing.

KEYWORDS:

martial law in Ukraine; access to justice; change of territorial jurisdiction of court cases; destroyed courts; loss of court case materials; overloaded courts; shortage of judges in the judicial system

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The result of the research is a comprehensive analysis of the legal regulation and international cases concerning the change of territorial jurisdiction of court cases. The study identifies key legal challenges in this area and outlines potential solutions for addressing them.

1. INTRODUCTION

The preamble of the Law of Ukraine “On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine” emphasizes that the armed aggression of the Russian Federation began with undeclared and covert invasions of Ukraine’s territory by units of the armed forces and other security agencies of the Russian Federation, as well as by organizing and supporting terrorist activities. On February 24, 2022, this aggression escalated into a full-scale armed invasion of Ukraine’s sovereign territory.² The full-scale invasion of Russian troops into the territory of Ukraine has, for the second time since 2014, affected the administration of justice and the ensuring of the essential right to a fair trial, guaranteed by Article 6 of the ECHR.³

Continuous rocket attacks, the energy crisis, destroyed court buildings, and a shortage of judges hinder the proper realization of the right of access to a court, as evidenced by numerous appeals to the Ukrainian Parliament Commissioner for Human Rights (hereinafter referred to as the Human Rights Commissioner). An analysis of the 2023 annual report of the Ombudsman concludes that some of the most common complaints are regarding violations of the right to a fair trial and other procedural rights, which are often related to the aforementioned factors.⁴ Additionally, existing problems in guaranteeing right to a fair trial have been repeatedly acknowledged by the European Court of Human Rights (hereinafter referred to as the ECtHR), which has delivered 144 judgments against Ukraine, including 21 cases involving violations of Article 6 of the ECHR.⁵ In light of this, the issue of ensuring the proper realization of the right of access to justice, especially under martial law, and of adopting preventive measures to avoid its infringement requires special attention.

As of May 2023, there were 587 courts administering justice in Ukraine, while 87 courts did not operate due to active hostilities or their location in temporarily occupied territories. Another 84 courts have not administered justice since 2014, which

¹ In this article the words “Russian Federation”, “Russian”, etc. are written in lowercase under the author’s decision and should not be considered as a spelling error.

² Law of Ukraine “On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine,” No. 1207-VII (April 15, 2014), VVR 2014, no. 26, art. 892. <https://zakon.rada.gov.ua/laws/show/1207-18#Text> (accessed June 10, 2024).

³ European Convention on the Protection of Human Rights and Fundamental Freedoms. 1950. https://www.echr.coe.int/documents/d/echr/convention_ENG.

⁴ Annual Report on the State of Observance and Protection of Human and Citizen Rights and Freedoms in Ukraine in 2023, Commissioner of the Verkhovna Rada of Ukraine for Human Rights. <https://ombudsman.gov.ua/report-2023/> (accessed June 10, 2024).

⁵ Annual Report on the State of Observance and Protection of Human and Citizen Rights and Freedoms in Ukraine in 2022, Commissioner of the Verkhovna Rada of Ukraine for Human Rights. <https://ombudsman.gov.ua/report-2022/images/documents/annual-report-2022.pdf> (accessed June 10, 2024).

includes the Autonomous Republic of Crimea and the occupied territories of Donetsk and Luhansk regions before February 24, 2022.⁶ 86 courts have varying degrees of damage, with the most significant damage sustained by court buildings in the Kharkiv, Donetsk, Luhansk, Kherson, and Mykolaiv regions.⁷ The Head of the High Qualification Commission of Judges of Ukraine also noted that approximately 500 judges and their families have left the occupied territories, and the same number of judges have been seconded to other courts.

According to the World Justice Project (2024), Ukraine's rule of law Index stands at 0.49, ranking 88th out of 142 countries.⁸ This marks a decline compared to the pre-full-scale invasion figures, for instance, in 2021, Ukraine scored 0.51 and ranked 74th globally.⁹ This downward trend may reflect the increased strain on the justice system under wartime conditions, particularly the challenges in ensuring access to justice and safeguarding procedural rights.

Such a decline appears to be consistent with the broader understanding that without a strong and independent judiciary capable of safeguarding the principles of the rule of law, political rights, civil liberties, and mechanisms of accountability are undermined, placing at risk the equality and dignity of individuals and weakening democratic resilience.¹⁰

Given the above, the issue of changing territorial jurisdiction under martial law and ensuring the right to a fair trial is relevant and holds scientific value in the current realities.

The aim of this research is to provide a comprehensive analysis of the legislation governing the change of territorial jurisdiction of cases heard by courts located in temporarily occupied territories and areas of active hostilities; to examine the problems arising from such jurisdictional changes and their impact on the right to a fair trial; to assess the effectiveness of the legal regulation and the adequacy of the measures taken to ensure access to justice; to analyse statistical data related to jurisdictional changes; and to conduct a comparative study of the territorial jurisdiction shifts in 2014 and 2022, including an examination of relevant international experience.

2. METHODOLOGY

To achieve the aim of this research, the authors conducted a comprehensive study of Ukrainian legislation regarding the change of territorial jurisdiction of court cases subject to courts located in temporarily occupied territories and areas affected by

⁶ "The Head of the Council of Judges of Ukraine on the Work of Courts during the War, Competition for the High Qualification Commission, Cases on War Crimes, and Judges at the Front" Council of Judges of Ukraine, 2023. <https://rsu.gov.ua/ua/news/golova-radi-suddiv-ukraini-pro-robotu-sudiv-pid-cas-vijni-konkurs-do-vkks-spravi-sodo-voennih-zlociniv-ta-suddiv-na-fronti> (accessed June 10, 2024).

⁷ A Meeting Held in the Supreme Court on the Administration of Justice under Martial Law," Supreme Court of Ukraine, 2023. <https://supreme.court.gov.ua/supreme/pres-centr/news/1458022/> (accessed June 10, 2024).

⁸ World Justice Project. (2024), "Rule of law index Report 2024" (accessed March 15 2025). <https://worldjusticeproject.org/rule-of-law-index/downloads/WJPIndex2024.pdf>.

⁹ World Justice Project. (2021), "Rule of law index Report 2021" (accessed March 15 2025). <https://worldjusticeproject.org/sites/default/files/documents/WJP-INDEX-2021.pdf>.

¹⁰ O'Donnell, Guillermo "The Quality of Democracy: Why the Rule of Law Matters," *Journal of Democracy* 15, no. 4 (2004): 32–46. <https://doi.org/10.1353/jod.2004.0076>.

active hostilities. In particular, the study examines the issues of access to justice under martial law, the legislative developments related to changes in territorial jurisdiction and the experience of their practical implementation. A comparative analysis was carried out between the legal regulation adopted in response to the armed aggression of the Russian Federation in 2014 and the full-scale invasion in 2022.

The article also analyses the procedure for changing territorial jurisdiction, the scope of authority of entities empowered to take relevant decisions and identifies legal conflicts that have emerged within the regulation of this process. Among the challenges studied are the excessive caseloads and staff shortages in reassigned courts, the failure to consider geographical accessibility and the loss or physical inaccessibility of case materials during relocation.

Additionally, the article presents statistical data on the number of courts whose territorial jurisdiction has been reassigned or has resumed operation. Furthermore, the article examines relevant international experience concerning the administration of justice in conflict settings and highlights key decisions of the ECtHR.

3. ACCESS TO JUSTICE IN THE CONDITIONS OF MARTIAL LAW

The jurisprudence of the ECtHR in many cases indicates that an integral part of the right to a fair trial, established by Article 6 of the European Convention on Human Rights and Fundamental Freedoms,¹¹ is the right to access to court, in the sense that a person must be provided with the opportunity to bring a claim before a court to resolve a particular issue, and there should be no legal or practical obstacles attributable to the state to the exercise of this right.¹² In the case of *Bellet v. France*, the ECtHR noted that Article 6 § 1 of the Convention includes guarantees of fair judicial proceedings, one aspect of which is access to court. The level of access provided by national legislation must be sufficient to ensure an individual's right of access to court, considering the principle of the rule of law in a democratic society. For access to be effective, a person must have a clear practical opportunity to challenge actions that interfere with their rights.¹³

This approach is reflected in national legislation, particularly in the Constitution of Ukraine,¹⁴ which establishes guarantees for the protection of constitutional rights and freedoms of individuals and citizens, as well as in the Law of Ukraine "On the Judiciary and the Status of Judges",¹⁵ which guarantees access to justice for everyone.

¹¹ European Convention on the Protection of Human Rights and Fundamental Freedoms. 1950.

¹² "Ministry of Justice of Ukraine". The Right to a Fair Trial: Practice of the European Court of Human Rights concerning Ukraine". https://minjust.gov.ua/m/str_7474 (accessed June 10, 2024).

¹³ Case of *Bellet v. France*, Application no. 23805/94. Judgment of 4 December 1995. [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-57952%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57952%22]}) (accessed June 10, 2024).

¹⁴ *Constitution of Ukraine* (Adopted June 28, 1996). *Vidomosti Verkhovnoi Rady Ukrainy*, 1996, no. 30, art. 141. <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text> (accessed June 10, 2024).

¹⁵ Law of Ukraine "On the Judiciary and the Status of Judges" (No. 1402-VIII, adopted June 2, 2016). *Vidomosti Verkhovnoi Rady Ukrainy*, 2016, no. 31, art. 545. <https://zakon.rada.gov.ua/laws/show/1402-19#Text> (accessed June 10, 2024).

The Council of Judges of Ukraine in its Decision No. 9, dated February 24, 2022 emphasized that even under martial law or a state of emergency, the work of the courts cannot be stopped, i.e., the constitutional right to judicial protection cannot be restricted.¹⁶ Additionally, according to Article 12 of the Law of Ukraine “On the Legal Regime of Martial Law”, the authority of courts, bodies and institutions of the justice system, as provided by the Constitution of Ukraine, cannot be limited under the legal regime of martial law.¹⁷ Furthermore, Article 26 of the same law stipulates that justice in the territory under martial law is administered only by courts established according to the Constitution of Ukraine, and any form of judicial proceedings cannot be reduced or accelerated. Thus, Ukrainian legislation clearly establishes the principle that the state ensures access to justice under martial law, which is administered only by courts.

However, the particularities of the activity of courts and the administration of justice under martial law are due to the fact that, unlike in peacetime, the capabilities of courts and court staff are limited and dictated by the realities of wartime.¹⁸ The full-scale armed invasion of Ukraine’s sovereign territory and the subsequent introduction of martial law created new challenges for the judicial system and for the proper realization of the right to access to court for individuals in temporarily occupied territories or areas of active hostilities. Moreover, the problem is compounded by the fact that the occupying authorities are establishing their judicial system in the captured territories of Ukraine. In September 2023, the Supreme Court of the Russian Federation announced the introduction of the Russian judicial system in the occupied territories of Donetsk, Luhansk, Zaporizhzhia, and Kherson regions of Ukraine. By December 31, 2023, it appointed 436 judges, most of whom are from the Russian Federation. The establishment of courts under the leadership of judges from the Russian Federation, who applied Russian legislation, led to the spread of complete Russian judicial control over the occupied territory.¹⁹

Back in 2014, the judicial system faced numerous organizational, material-technical and procedural problems that needed to be addressed to ensure proper administration of justice in all courts. The full-scale invasion in 2022 again impacted the administration of justice in Ukrainian courts.

According to the State Judicial Administration of Ukraine, as of 26 May, 2025, since the beginning of the full-scale invasion, 158 premises of 148 judicial institutions have sustained varying degree of damage. This includes cases of complete destruction and looting of property, with 139 various judicial institution buildings partially damaged and 18 courts completely destroyed. The reported damage includes broken windows,

16 Decision of the Council of Judges of Ukraine No. 13 of 24 February 2022.” <https://rsu.gov.ua/uploads/news/risenna-rsu-no9-vid-240222-2de02988e4.pdf>.

17 Law of Ukraine “On the Legal Regime of Martial Law” (No. 389-VIII, adopted May 12, 2015). *Vidomosti Verkhovnoi Rady Ukrainy*, 2015, no. 28, art. 250. <https://zakon.rada.gov.ua/laws/show/389-19#Text> (accessed June 10, 2024).

18 Uhrynovska Oksana, Vitskar Anastasiia, 2022, ‘Administration of Justice during Military Aggression against Ukraine: The “Judicial Front”’ 3 (15) *Access to Justice in Eastern Europe* 194–202. DOI: <https://doi.org/10.33327/AJEE-18-5.3-n000310>

19 Office of the UN High Commissioner for Human Rights, “The situation with human rights during the Russian occupation of the territory of Ukraine and its consequences from February 24, 2022 - December 31, 2023”, 2024. <https://www.ohchr.org/sites/default/files/documents/countries/ukraine/2023/2024-03-20-OHCHR-Report-Occupation-Aftermath-UKR.pdf> (accessed June 10, 2024).

the absence of electricity, heating, or water supply, damaged ceilings, destroyed interior doors, damaged internal partitions between offices, and severely damaged courtrooms, among other issues.²⁰

Proper functioning of courts becomes impossible under conditions of destroyed court buildings, looting and the absence of servers and technical infrastructure, which effectively deprives individuals of access to justice. Moreover, the inability of courts to operate in temporarily occupied territories and areas of active hostilities severely undermines the realisation of the right to a fair trial.

As these pressures accumulate, the rule of law may weaken, and legal standards may become less predictable. Yet, despite these serious challenges, Ukraine has succeeded in maintaining a functioning democracy and a reasonably strong rule of law.²¹ Remarkably, the Ukrainian people have continued to uphold democratic principles and constitutional governance, even under the extraordinary institutional stress imposed by war.²²

4. AMENDMENTS IN NATIONAL LEGISLATION ON TERRITORIAL JURISDICTION OF COURT CASES IN CONNECTION WITH ARMED AGGRESSION: EXPERIENCE AND COLLISIONS IN REGULATION

The Venice Commission emphasizes that even under a state of emergency, the judicial system must continue to guarantee the right to a fair trial. The functioning of the judicial system should not be restricted except in situations of absolute necessity or when such functioning is practically impossible.²³ Therefore, to ensure the realization of the right to access justice in temporarily occupied territories, in areas of active hostilities or in adjacent areas, the state must take all possible measures to ensure the accessibility of justice across the entire country and aim to remove objective obstacles to justice and ensure the continuation of court proceedings. One of such measures is the change of the jurisdiction of cases heard by courts located in these mentioned territories.

As of 2022, Ukraine already had some experience in changing the territorial jurisdiction of court cases amid armed aggression. Back in 2014, due to the armed conflict in eastern Ukraine and the occupation of part of Ukraine's territory, our state faced the necessity of ensuring the proper functioning of all government bodies, including judicial authorities, and safeguarding the rights and freedoms of individuals in the temporarily occupied territories (Donetsk, Luhansk regions, and the Autonomous Republic of Crimea).

20 State Judicial Administration of Ukraine, 2025, Analytical Report on Damaged and Destroyed Court Buildings as a Result of the Armed Aggression of the Russian Federation and the State of Their Restoration as of 26 May 2025, 2025. https://court.gov.ua/storage/portal/dsa/analit_poshkodj_prymish/Analit_26.05.25.pdf (accessed June 01, 2025).

21 Bouléque, M., and Lutsevych O, 2021, 'Resilient Ukraine: Safeguarding Society from Russian Aggression'. Technical Report. London: The Royal Institute of International Affairs.

22 Romanyshyn, I., 2023, 'Ukraine's Total Democratic Resilience in the Shadow of Russia's War'. Technical Report. Washington, DC: Carnegie Endowment for International Peace.

23 Alivizatos, N., V. Bilkova, I. Cameron, O. Kask, and K. Tuori. 2020. Report "Compliance with the Principles of Democracy, Human Rights and the Rule of Law in the State of Emergency" – Considerations. [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2020\)014-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2020)014-e) (accessed June 10, 2024).

After pro-russian separatists seized key government bodies in the Donetsk and Luhansk regions in the spring of 2014, Ukraine took certain measures to evacuate the prosecutor's office and law enforcement agencies. However, the courts continued to operate even under conditions of occupation and shelling. They were disorganized because there was no established protocol for such situations, and there were no directives or recommendations from the capital.²⁴ Additionally, the issue of ensuring access to the courts became acute due to the lack of postal communication with temporarily occupied territories, difficulties in submitting documents online, challenges in restoring case materials left in uncontrolled areas (particularly in criminal proceedings), and uncertainty of the legal status of detainees in the those territories.²⁵

To prevent the issuance of illegal decisions and to protect the rights of citizens and enterprises registered in cities where the work of judicial institutions became entirely impossible (for example, in Luhansk), urgent legislative regulation was needed.²⁶

In this regard, Ukraine enacted the laws "On Ensuring the Rights and Freedoms of Citizens and the Legal Regime on the Temporarily Occupied Territory of Ukraine",²⁷ "On the Legal Regime of Martial Law",²⁸ and "On the Administration of Justice and Criminal Proceedings in Connection with the Conduct of the Anti-Terrorist Operation".²⁹

The adoption of these laws was the first attempt by the legislator to regulate the administration of justice in temporarily occupied territories and to ensure the principle of access to the courts. In particular, due to the impossibility of administering justice by the courts located in the Autonomous Republic of Crimea and the city of Sevastopol, Article 12 of the Law of Ukraine "On Ensuring the Rights and Freedoms of Citizens and the Legal Regime on the Temporarily Occupied Territory of Ukraine" (as of April 15, 2014)³⁰ specified legal measures for the temporarily occupied territory, the primary one being the change of territorial jurisdiction of court cases that are under the jurisdiction of these courts. This law, among other things, stipulated that civil cases under the jurisdiction of local general courts of the Autonomous Republic of Crimea and the city of Sevastopol were transferred to the local general courts of the city of Kyiv. The courts to which these cases were transferred were to be determined

24 Mashevskaya, O. P., and A. R. Androschuk. 2023. "Changes in the Administration of Justice in Conditions of War". <https://archive.interconf.center/index.php/conference-proceeding/article/view/3168/3199> (accessed June 10, 2024).

25 "Donbas Regional Council on Judicial Reform. "Правосуддя в умовах збройного конфлікту та карантину" (Justice in Conditions of Armed Conflict and Quarantine). 2020. https://www.pravojustice.eu/storage/app/media/4%20Donbas%20RJRC%20digest_%20Justice%20in%20conditions%20of%20armed%20conflict%20and%20quarantine_UKR.pdf. (accessed June 10, 2024).

26 Danylenko, E. 2014. "Courts from the ATO Zone: Procedure and Consequences of Changing Jurisdiction." <https://zib.com.ua/ua/98810.html> (accessed June 10, 2024).

27 Law of Ukraine "On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine" (No. 1207-VII, adopted April 15, 2014). <https://zakon.rada.gov.ua/laws/show/1207-18#Text> (accessed June 10, 2024).

28 Law of Ukraine "On the Legal Regime of Martial Law" (No. 389-VIII, adopted May 12, 2015). *Vidomosti Verkhovnoi Rady Ukrainy*, 2015, no. 28, art. 250. <https://zakon.rada.gov.ua/laws/show/389-19#Text> (accessed June 10, 2024).

29 Law of Ukraine "On the Administration of Justice and Criminal Proceedings in Connection with the Anti-Terrorist Operation" No. 1632-VIIb (August 12, 2014). <https://zakon.rada.gov.ua/laws/show/1632-18/ed20231018#Text> (accessed June 10, 2024).

30 Law of Ukraine "On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine" (No. 1207-VII, adopted April 15, 2014). <https://zakon.rada.gov.ua/laws/show/1207-18#Text> (accessed June 10, 2024).

by the relevant appellate court of the city of Kyiv (depending on jurisdiction). Cases that were in the proceedings of the courts located in the Autonomous Republic of Crimea and the city of Sevastopol and whose consideration had not been completed were to be transferred to the courts in accordance with the jurisdiction established by the specified law within ten working days from the date of its entry into force or from the date such jurisdiction was established.

However, from the citizens' appeals received after the enactment of the mentioned law, it was clear that the law did not address previously raised issues. An analysis of the report of the Commissioner for Human Rights suggests that a large number of appeals regarding the right to a fair trial in criminal proceedings were received by the ombudsman from defendants detained in pre-trial detention centers. An illustrative example concerns a complaint from a Kyiv resident on behalf of his son detained in the Simferopol pre-trial detention center. In 2014, the Court of Appeals of the Autonomous Republic of Crimea overturned a 2013 murder conviction and ordered a retrial. Subsequently, the Yalta city prosecutor was instructed to reopen the investigation. According to Ukrainian law "On Ensuring the Rights and Freedoms of Citizens and the Legal Regime on the Temporarily Occupied Territory of Ukraine", in June 2014 the Kyiv Appeals Court assigned jurisdiction over the case to a Kyiv district court. However, due to the accused's absence, this decision wasn't enforced, and the case remained unresolved as of 2015.³¹

The transfer of cases from the courts of the Autonomous Republic of Crimea to the courts of other regions and to Kyiv did not take place. Nobody attempted to evacuate the archives of such courts from the occupied territory because it would have been dangerous for the lives of court personnel. Although some judges reported attempts to evacuate case materials, vehicles with such cases were turned back at the checkpoints of pro-russian armed groups. Evacuations from temporarily uncontrolled territories were rare, as in the case of the Donetsk Appellate Administrative Court.³²

The High Specialized Court for Civil and Criminal Cases identified three issues with restoring lost proceedings. First, courts receiving transferred cases sometimes rejected applications, insisting they be filed with courts in the anti-terrorist operation zone once those resumed work. Second, courts often required proof of lost case materials, despite applicants stating the materials were left in occupied courts; higher courts mostly overturned such refusals. Third, notifying participants in occupied territories was difficult, leading courts to use media announcements or publish notices on their websites - a practice later legalized by procedural code amendments in December 2017.³³

31 Commissioner for Human Rights of the Verkhovna Rada of Ukraine, Annual report of the on the state of observance and protection of human and citizen rights and freedoms in Ukraine in 2014, (2015). <https://www.theioi.org/downloads/efpon/Parliament%20Commissioner%20-%20Annual%20Report%202014%20-%20ukr.pdf> (accessed June 10, 2024).

32 Center for Civil Liberties under the Coalition of Public Organizations and Initiatives "Justice for Peace in Donbas" (Justice in Exile: Adherence to the Right to a Fair Trial in Eastern Ukraine, Including the Territory Temporarily Uncontrolled by the Ukrainian Government). 2016. https://ccl.org.ua/wp-content/uploads/2021/09/zvit_pravosuddya-v-ekzylu_ccl.pdf (accessed June 10, 2024).

33 "Justice in the east of Ukraine in the conditions of armed aggression of the Russian Federation: Report on the results of the study of the capacity of the judicial system to provide justice in the conditions of the armed conflict in the east of Ukraine 2016-2017", 2018. https://www.irf.ua/content/files/justice_in_eastern_ukr.pdf (accessed June 10, 2024).

Later, the territorial jurisdiction of judicial cases subject to the courts in the temporarily occupied territories of Donetsk and Luhansk regions was changed by the Law,³⁴ due to the impossibility of administering justice by certain courts in the area of the anti-terrorist operation.

The consideration of civil cases, administrative offense cases under local general courts, administrative cases under administrative courts, commercial cases, and criminal cases was to be ensured by courts designated by the Chairman of the High Administrative Court, the High Specialized Court for Civil and Criminal Cases, and the High Commercial Court of Ukraine. The State Judicial Administration was tasked with compiling a list of local and appellate courts in the anti-terrorist operation zone where justice could not be administered.

Thus, by the orders of the heads of high courts, the jurisdiction of 60 courts in Donetsk and Luhansk regions was redistributed among other courts of these and even neighboring regions. Employees of these courts were offered to transfer to other judicial authorities operating in territories controlled by the Ukrainian government. However, judges could not do this because the High Qualification Commission of Judges, which was responsible for making relevant decisions, was not functioning - its members fell under lustration, and new ones were not appointed. In December 2014, the Council of Judges of Ukraine introduced a temporary mechanism for attaching judges who had moved from the occupied territories to other courts.³⁵

Another way to ensure the administration of justice by courts located in the occupied territory was to change their location. This made it possible to avoid the issue of transferring judges and staff of apparatuses. Thus, on November 12, 2014, the President of Ukraine changed the location of seven largest courts located in Donetsk and Luhansk (local and appellate commercial and administrative courts, as well as appellate general courts).^{36,37,38}

However, in implementing measures to administer justice in the temporarily occupied territories, the territorial remoteness of these courts was not considered, which significantly complicated direct access to the courts and participation in hearings.

For example, cases from the Zhovtnevyi District Court of Luhansk were transferred to the Troitskyi District Court, nearly 220 km away, until March 2022. Cases from the

³⁴ Law of Ukraine "On the Administration of Justice and Criminal Proceedings in Connection with the Anti-Terrorist Operation" (No. 1632-VII, adopted August 12, 2014). <https://zakon.rada.gov.ua/laws/show/1632-18/ed20231018#Text> (accessed June 10, 2024).

³⁵ "Justice in the east of Ukraine in the conditions of armed aggression of the Russian Federation: Report on the results of the study of the capacity of the judicial system to provide justice in the conditions of the armed conflict in the east of Ukraine 2016–2017", 2018. https://www.irf.ua/content/files/justice_in_eastern_ukr.pdf (accessed June 10, 2024).

³⁶ Decree of the President of Ukraine dated November 12, 2014 No. 866/2014 "On Amendments to the Network of Administrative Courts". <https://www.president.gov.ua/documents/8662014-17991> (accessed June 10, 2024).

³⁷ Decree of the President of Ukraine dated November 12, 2014 No. 867/2014 "On Amendments to the Network of Administrative Courts". <https://www.president.gov.ua/documents/8672014-17993> (accessed June 10, 2024).

³⁸ Decree of the President of Ukraine dated November 12, 2014 No. 868/2014 "On Amendments to the Network of Administrative Courts". <https://www.president.gov.ua/documents/8682014-17992> (accessed June 10, 2024).

Lenynskiy District Court were heard by the Svatovskiy District Court, about 159 km from Luhansk. Similar transfers occurred in Donetsk Oblast.³⁹

Moreover, the mentioned law did not solve all the problems associated with the change of territorial jurisdiction of cases subject to courts located in the temporarily occupied territories. In particular, the ombudsman in the annual report of 2014 emphasized that the provisions of the Law of Ukraine “On the Implementation of Justice and Criminal Proceedings in Connection with the Anti-Terrorist Operation” regarding the transfer of criminal cases of detainees from the appellate courts of Donetsk and Luhansk regions to the appellate courts of Zaporizhzhia and Kharkiv regions, respectively, *were not being implemented*. This leads to an unjustified extension of the period of detention for detainees and violates their right to access justice. Systemic violations also occur regarding persons in custody who are unable to directly participate in court hearings. The reason for such violations was the lack of conveying them to the courts and the courts making decisions to extend the period of detention without the participation of these persons, which contradicts the Criminal Procedure Code of Ukraine.⁴⁰ Dozens of appeals were received by the Commissioner for Human Rights reporting that local courts located in the combat zone suspended the consideration of criminal cases against applicants indefinitely because these criminal cases could not be transferred to other courts as defined by the abovementioned Law.

Thus, as it is seen from the citizens’ appeals, the legal regulation measures defined by the Laws of Ukraine “On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine” dated April 15, 2014 and “On Judicial System and Criminal Proceedings in Connection with the Anti-Terrorist Operation” dated August 12, 2014 were sometimes not implemented at all.

However, in the judgement of the European Court of Human Rights in the case of “Tsezar and others v. Ukraine”,⁴¹ the ECtHR found no violation of Article 6 of the ECHR. In that judgement, the applicants complained about the suspension of their pensions and other social benefits, which were previously provided to them in Donetsk, as well as the limitation of their right to appeal to the court to challenge the suspension of benefits due to the change in the territorial jurisdiction of court cases. The ECtHR noted that it must be assessed whether Ukraine took all available measures to organize its judicial system effectively under the circumstances to ensure the applicants could effectively exercise their Article 6 rights. The ECtHR emphasized that state authorities may face difficulties in ensuring the proper functioning of the judicial system in certain regions due to hostilities therein; however, authorities must take measures to address

39 Donbas Regional Council on Judicial Reform. “Правосуддя в умовах збройного конфлікту та карантину” (Justice in Conditions of Armed Conflict and Quarantine). 2020. https://www.pravojustice.eu/storage/app/media/4%20Donbas%20RJC%20digest_%20Justice%20in%20conditions%20of%20armed%20conflict%20and%20quarantine_UKR.pdf (accessed June 10, 2024).

40 Commissioner for Human Rights of the Verkhovna Rada of Ukraine, Annual report of the on the state of observance and protection of human and citizen rights and freedoms in Ukraine in 2014, (2015). <https://www.theioi.org/downloads/efpon/Parliament%20Commissioner%20-%20Annual%20Report%202014%20-%20ukr.pdf> (accessed June 10, 2024).

41 Case of Tsezar and others v. Ukraine, Applications No. 73590/14, 73593/14, 73820/14, 4635/15, 5200/15, 5206/15 та 7289/15). 13/02/2018, Judgment of 13 February 2018. <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-180845%22%7D> (accessed June 10, 2024).

such problems, such as granting the right to file lawsuits in other localities under state control. The Court concluded that amendments to Ukrainian legislation had been made to grant courts in the controlled territories the authority to consider cases from courts in uncontrolled territories and noted that national authorities had taken measures to ensure the proper functioning of the judicial system and its accessibility.

Considering the scale of aggression that began against Ukraine in 2022 and the experience of previous legislative regulation of the administration of justice in temporarily occupied territories, different mechanism for changing the territorial jurisdiction of court cases was implemented.

Part 7 of Article 147 of the Law of Ukraine “On the Judicial System and the Status of Judges” (as amended on January 1, 2022)⁴² provided that in the event of a natural disaster, military actions, measures to combat terrorism or other extraordinary circumstances, court proceedings may be suspended by decision of the High Council of Justice (HCJ), adopted upon the proposal of the Chairman of the Supreme Court.

However, at the outset of the full-scale armed invasion, the judicial system faced the invalidity of the HCJ. According to Article 18 of the Law of Ukraine “On the High Council of Justice,” the HCJ is competent only if at least fifteen members are elected or appointed, the majority of whom must be judges (including retired judges) who have taken an oath. On February 22, 2022, ten members of the Council resigned prematurely,⁴³ meaning that at the beginning of the full-scale invasion, the HCJ was invalid, which made it impossible to ensure fair trial within the meaning of Article 6 of the ECHR. Until the relevant legislative changes were made to address this issue, chief judges took responsibility for decisions such as suspending court proceedings, evacuating judges and staff to safe locations, transferring cases, and preserving court property.⁴⁴

Therefore, on March 3, 2022, with the aim of ensuring unimpeded access to justice, the Verkhovna Rada of Ukraine adopted the Law of Ukraine “On Amendments to the Law of Ukraine ‘On the Judicial System and the Status of Judges’ Regarding the Change of Jurisdiction of Courts”.⁴⁵ This law amended part 7 of Article 147 of the Law of Ukraine “On the Judicial System and the Status of Judges” and provided that in the event of the impossibility of administering justice by the court for objective reasons during a state of war or a state of emergency, due to natural disasters, military actions, measures to combat terrorism, or other extraordinary circumstances, the territorial jurisdiction of court cases being considered in such a court may be **changed by decision of the High council of justice, adopted upon the proposal of the Chairman of the Supreme Court, by transferring them to the court closest to the court that cannot administer justice or**

42 Law of Ukraine “On the Judiciary and the Status of Judges” (No. 1402-VIII, adopted June 2, 2016). *Vidomosti Verkhovnoi Rady Ukrainy*, 2016, no. 31, art. 545. <https://zakon.rada.gov.ua/laws/show/1402-19#Text> (accessed June 10, 2024).

43 “10 members of the Supreme Council of Justice resigned prematurely of their own accord” 2022, jurliga.ligazakon.net. https://jurliga.ligazakon.net/news/209589_10-chlenov-vishcho-radi-pravosuddya-dostrokovo-sklali-povnovazhennya-za-vlasnim-bazhannyam (accessed June 10, 2024).

44 “Despite all the difficulties, courts must adhere to high standards of administration of justice - Chairman of the Supreme Court”, Supreme Court, 2023. https://supreme.court.gov.ua/supreme/prescentr/news/1457012?fbclid=IwAR0ixhuaXhNG_L3uVP7pTcqxc_GwX0T-pSdwPOCrOAUaFtjynsRNDhMGqHg (accessed June 10, 2024).

45 Law of Ukraine “On Amendments to the Law of Ukraine “On the Judiciary and the Status of Judges” on Changing the Jurisdiction of Courts” No. 2112-IX, adopted March 3, 2022). <https://zakon.rada.gov.ua/laws/show/2112-20#n5> (accessed June 10, 2024).

to another designated court. **In case the High council of justice is unable to exercise such authority, it is exercised by the order of the Chairman of the Supreme Court.** This provision also serves as the legal basis for transferring all cases pending before courts whose territorial jurisdiction has been changed.

It is worth noting that for the proper implementation of the right of access to justice, on April 21, 2022, the Law of Ukraine “On Amendments to Certain Laws of Ukraine Regarding the Regulation of the Legal Regime in the Temporarily Occupied Territory of Ukraine”⁴⁶ also amended the Law of Ukraine “On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine.” The new version of the law provides that in case the courts located in the temporarily occupied territories cannot administer justice, the territorial jurisdiction of court cases being considered in such courts is determined in the manner prescribed by the article of abovementioned law. *Cases pending before courts located in the temporarily occupied territories, the consideration of which has not been completed by the adoption of a court decision, are transferred to other courts within twenty working days from the date of establishment of such jurisdiction or within another reasonable period.*

According to the statistical data of the State judicial administration of Ukraine,⁴⁷ during 2022 by the order of the Chairman of the Supreme Court the territorial jurisdiction of 135 local and appellate courts was changed due to the impossibility of administering justice during a state of war, including the restoration of the territorial jurisdiction of 50 local and appellate courts. For example, by the order of the Chairman of the Supreme Court,⁴⁸ considering that courts may not always be able to administer justice during a state of war, the territorial jurisdiction of the Kherson and Luhansk appellate courts was changed (cases were transferred to the Dnipro appellate court). By the end of 2022, the territorial jurisdiction of cases of 169 local and appellate courts had been changed (taking into account the courts whose jurisdiction was transferred during the war period from 2014 to 2022 - 84 local and appellate courts of the Autonomous Republic of Crimea, Donetsk, and Luhansk regions), which amounted to more than 22%, or more than one-fifth of the total number of local and appellate courts.⁴⁹

Due to the restoration of the full composition of the High council of justice in January 2023,⁵⁰ decisions regarding the change of territorial jurisdiction and its restoration are made by the High council of justice based on the submission of the Chairman of the Supreme Court. Thus, by the decision of the High council of justice No. 399/0/15-23

46 Law of Ukraine “On Amendments to Certain Laws of Ukraine Regarding Regulation of the Legal Regime in the Temporarily Occupied Territory of Ukraine” No. 2217-IX dated April 21, 2022. <https://zakon.rada.gov.ua/laws/show/2180-20#Text> (accessed June 10, 2024).

47 Pravo.ua. 2023. “The State court administration of Ukraine summarized the state of administration of justice in 2022 under martial law”. <https://pravo.ua/dsa-ukrainy-pidbyla-pidsumky-shchodo-stanu-zdiisnennia-pravosuddia-u-2022-rotsi-v-umovakh-voiennoho-stanu/> (accessed June 10, 2024).

48 Order of the Chairman of the Supreme Court of March 6, 2022 No. 1/0/9-22 “On changing the territorial jurisdiction of court cases under martial law”. https://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/war/Rozp_06_03_2022.pdf (accessed June 10, 2024).

49 Pravo.ua. 2023. “The State court administration of Ukraine summarized the state of administration of justice in 2022 under martial law”. <https://pravo.ua/dsa-ukrainy-pidbyla-pidsumky-shchodo-stanu-zdiisnennia-pravosuddia-u-2022-rotsi-v-umovakh-voiennoho-stanu/> (accessed June 10, 2024).

50 High Council of Justice, 2023, “The authorized composition of the Supreme Council of Justice was restored”. <https://www.hcj.gov.ua/news/vidnovleno-povnovazhnyy-sklad-vyshchoyi-rady-pravosuddia> (accessed June 10, 2024).

dated April 20, 2023,⁵¹ the territorial jurisdiction of judicial cases of certain courts in the Kharkiv region was changed; by the decision No. 974/0/15-23 dated October 12, 2023,⁵² the territorial jurisdiction of some courts in the Sumy region was changed.

Therefore, as a result of the changes made, the Chairman of the Supreme Court has partially been delegated powers to change the territorial jurisdiction of judicial cases, or such changes are made by the High council of justice. At the same time, the Law “On the Legal Regime of Martial Law” provides that in the event of the impossibility of exercising jurisdiction by courts operating in the territory where martial law is imposed, the territorial jurisdiction of judicial cases being considered in these courts **may be changed by the laws of Ukraine**, or the location of courts may be changed in the manner prescribed by law.

Additionally, there is a certain collision between the provisions of Article 12 of the Law “On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine,” Article 147 of the Law of Ukraine “On the Judicial System and the Status of Judges,” and Article 31 of the Civil Procedure Code of Ukraine (hereinafter referred to as the CPC),⁵³ which regulate the grounds and procedural organization for the transfer of cases from one court to another. According to Part 1 of Article 31 of the CPC, a court transfers a case to another court if: the case falls within the territorial jurisdiction of another court; it is impossible to form a new composition of the court to consider the case after recusals (including self-recusals) or for other reasons; or the court that was originally considering the case has been liquidated or ceased its operations for reasons specified by law. At the same time, the mentioned laws contain another basis for changing the territorial jurisdiction of cases, namely, the impossibility of exercising jurisdiction by courts during martial law or a state of emergency, due to natural disasters, military actions, measures to combat terrorism, or other extraordinary circumstances.

5. INTERNATIONAL APPROACHES TO TERRITORIAL JURISDICTION IN TIMES OF WAR AND ARMED CONFLICT

It is evident that wars and armed conflicts have devastating consequences, often resulting in gross violations of human rights. One of the most disruptive effects is the collapse or serious dysfunction of state institutions in areas of active hostilities or under occupation, particularly the judiciary. This collapse severely impedes the full enjoyment of human rights, affects the normal functioning of society, and undermines both the rule of law and the effective administration of justice.

However, there is no universal mechanism or consistent practice for ensuring access to justice in territories affected by armed conflict or occupation. In the course of this study, the authors encountered a significant lack of publicly available information

51 Decision of the High Council of Justice No. 399/0/15-23 of April 20, 2023. https://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/rizne/399_20_04_2023.pdf (accessed June 10, 2024).

52 Decision of the High Council of Justice No. 974/0/15-23 of October 12, 2023. https://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/rozporjadjenya/974_12_10_2023.pdf (accessed June 10, 2024).

53 *Civil Procedural Code of Ukraine* (No. 1618-IV, adopted March 18, 2004). *Vidomosti Verkhovnoi Rady Ukrainy* (Bulletin of the Verkhovna Rada of Ukraine), 2004, nos. 40–41, 42, art. 492. <https://zakon.rada.gov.ua/laws/show/1618-15#Text>.

on how access to justice in such contexts. This suggests that the issue remains insufficiently explored in academic literature and requires further in-depth research - despite the long-standing and recurrent nature of armed conflicts.

Ensuring the proper realization of access to justice has always been a challenge. In particular, the change of territorial jurisdiction of courts during armed conflict or occupation, as a measure to safeguard the right to a fair trial, presents a unique legal and institutional challenge.

A striking historical example of disrupted judicial territorial jurisdiction is the situation in Kosovo after the 1999 armed conflict. Following the withdrawal of Serbian forces and the beginning of the UN administration over the territory, the local judicial system in Kosovo effectively ceased to function. Serbian authorities relocated entire courts from cities in Kosovo to cities within Serbia proper. For instance, the courts of Pristina were transferred to Nis, and those of Mitrovica to Kraljevo. In doing so, Serbia reasserted its jurisdiction over Kosovo, refusing to recognize any loss of sovereignty or judicial authority, even despite the sole jurisdiction of the UNMIK courts in Kosovo under UN Security Council Resolution 1244, UNMIK Regulation No. 1999/1 on the authority of the Interim Administration in Kosovo.⁵⁴

Rather than stepping aside and recognizing the jurisdiction of the UN mission-created courts over the region, Serbian courts simply resumed operation as if the conflict had not affected their territorial reach. This created a so-called “parallel” judicial system, along with other state institutions, causing legal uncertainty, and severely impeding a right to a fair trial, undermining rule of law. Even as UNMIK began to promulgate laws for Kosovo, the Serbian parallel courts continued to apply the law of Serbia, pronouncing judgment under the ostensible authority of the Serbian government. During this period, the Serbian parallel courts carried out the full range of competencies they had exercised before UNMIK, including criminal and civil cases, family matters such as marriages and divorces, and the affirmation of contracts—including, notably, contracts for the sale of real property.⁵⁵

Even years after the conflict, Serb-run courts continued to operate in parts of northern Kosovo, often outside of the formal legal framework established by the UN, continuing to claim jurisdiction over Kosovo. The OSCE Report 2006–2007⁵⁶ indicates that over the years, the parallel courts have, among other activities, presided over civil litigation, investigative and criminal proceedings, inheritance cases, certification of documents and requests for judicial assistance from Serbian or foreign courts. In 2000s the parallel district courts in Serbia proper continued to act as appellate courts for cases heard in parallel courts in Kosovo, as well as for courts of first instance handling serious criminal matters occurring in Kosovo.

The parallel courts presented a transitional justice issue, reflecting the ongoing political dispute over sovereignty, deeply rooted in political and ethnic division. Finally, the lack of any recognition of judgments between these systems has created legal

⁵⁴ OSCE “PARALLEL STRUCTURES IN KOSOVO” October 2003. <https://www.osce.org/files/f/documents/9/1/42584.pdf>.

⁵⁵ Ibid.

⁵⁶ OSCE “PARALLEL STRUCTURES IN KOSOVO” 2006–2007. <https://www.osce.org/kosovo/24618>.

chaos for the people who depend on those judgments. Conflicting judgments have been issued in civil cases, and criminal defendants were subject to prosecution and punishment in both systems.⁵⁷

This example does not demonstrate an effective model of ensuring access to justice in occupied or conflict-affected territories; on the contrary, it highlights the consequences of politically motivated jurisdictional claims, which resulted in legal fragmentation, jurisdictional confusion, and lack of remedies for those affected by the conflict.

While the context of Ukraine differs—since, despite the establishment of the Russian court system in the occupied territories, these newly created entities are considered illegal under public international law.⁵⁸ This example illustrates that armed conflicts often give rise to contested or redefined judicial jurisdictions, creating serious risks for the proper functioning of the justice system. It also highlights how external influence and parallel legal institutions can undermine the rule of law and obstruct access to impartial and effective justice.

Similarly, Georgia has faced challenges in its occupied territories of Abkhazia and South Ossetia. Following the Russian-Georgian war and the recognition by Russia of Georgia's two occupied regions as independent entities, Georgia has adopted the law on occupied territories in 2008.⁵⁹

This law reaffirms that Georgian legislation in force in the occupied territories of Abkhazia and South Ossetia and the Russian Federation is recognized as the occupying power in these regions. All United Nations Security Council resolutions, as well as the official positions of the majority of member states, unequivocally support the territorial integrity of Georgia. Accordingly, no form of legitimization of the self-proclaimed entities of Abkhazia and South Ossetia can be accepted without the explicit consent of the Georgian state.⁶⁰ In *Georgia v Russia*, the Court further emphasized that 'it is evident that the overwhelming majority of the international community (including all members of the Council of Europe) recognises Abkhazia and South Ossetia as an integral part of Georgia and supports its territorial integrity according to the principles of international law'.⁶¹

57 Baylis, Elena. 2007. "Parallel Courts in Post-Conflict Kosovo." *Yale Journal of International Law*, Vol. 32, p. 1, 2007. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=956368.

58 UN resolution 68/262 of 27 March 2014 on the territorial integrity of Ukraine, in which it affirmed its commitment to the sovereignty, political independence, unity and territorial integrity of Ukraine within its internationally recognized borders and called upon all States, international organizations and specialized agencies not to recognize any alteration to the status of the Autonomous Republic of Crimea and the city of Sevastopol and to refrain from any action or dealing that might be interpreted as recognizing any such altered status; <https://docs.un.org/en/A/RES/68/262> also Resolution No. 78/221 of 19 December 2023, which acknowledges that organs and officials of the Russian Federation established in the temporarily occupied territories of Ukraine are illegitimate and should be referred to as "occupying authorities of the Russian Federation". <https://digitallibrary.un.org/record/4033013?v=pdf>.

59 Law of Georgia on Occupied Territories, No. 431, adopted on 23 October 2008, Parliament of Georgia, published in *Legislative Herald of Georgia* (LHG), No. 28, 30 October 2008. <https://www.matsne.gov.ge/en/document/view/19132?publication=6>.

60 Zürcher, Christoph, 2006, 'The Abkhazia and South Ossetia Cases: Spoilers in a Nearly Collapsed Peace Process' in Edward Newman, Roland Paris and Oliver P Richmond (eds), *Challenges to Peacebuilding: Managing Spoilers During Conflict Resolution* (United Nations University Press 2006) 282–300. <https://doi.org/10.18356/9789211066593c015>.

61 Case of *Georgia v Russia*, Application No. 39611/18, Judgment of April 9, 2024. <https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2239611/18%22%5D,%22itemid%22:%5B%22001-232000%22%5D%7D>.

It is evident that the functioning of Georgian state institutions, including the judiciary, was disrupted in these territories. The European Court of Human Rights has confirmed that Russia exercised effective control over the territories of Abkhazia and South Ossetia (see O.J. and J.O. v. Georgia and Russia, paras. 61–62; Matkava, para. 96).⁶² Therefore, in light of the ECtHR's findings, it can be presumed that despite Russian effective control over these territories, Georgian state institutions, including the courts, were either relocated or the territorial jurisdiction was modified.

Although there is limited publicly available information on this matter, it can be inferred from relevant case law, that Georgia has taken measures to ensure the right of access to justice. In *Taganova and Others v. Georgia and Russia*,⁶³ Georgia asserted that it maintains legitimate courts for Abkhazia in Tbilisi and Zugdidi, ensuring jurisdiction over internally displaced persons and residents of Abkhazia. These courts were granted the authority to hear cases that should have been adjudicated by the courts of Abkhazia. According to the Government, the maintenance of these legitimate courts provides internally displaced persons with a guarantee of unimpeded access to judicial mechanisms for the effective protection of their rights.

In this case, despite limitations in publicly available information, we can conclude that Georgia has similarly attempted to address the consequences of the occupation of its territory by modifying the territorial jurisdiction of cases. However, we have no information about the situation in South Ossetia or the state of access to justice there, nor whether Georgia has taken any specific measures regarding this region. Nevertheless, this situation highlights the complexity of ensuring access to justice in territories affected by occupation and underscores the need for further research regarding legal measures in disputed regions.

In this regard, it is crucial to highlight the European Court of Human Rights' interpretation of a State's obligations under Article 1 of the ECHR in cases where the State has lost effective control over part of its territory due to armed conflict or occupation. The ECtHR has firmly established that the mere loss of effective control over part of its territory does not release the State from its legal responsibilities. The Court has consistently held that *de facto* occupation does not nullify *de jure* jurisdiction, and thus the State remains under an obligation to "secure to everyone within their jurisdiction the rights and freedoms" guaranteed by the Convention.

As the Court stated: "Where a Contracting State is prevented from exercising its authority over the whole of its territory by a constraining *de facto* situation, such as obtains when a separatist regime is set up, whether or not this is accompanied by military occupation by another State, it does not thereby cease to have jurisdiction within the meaning of Article 1 of the Convention over that part of its territory temporarily subject to a local authority sustained by rebel forces or by another State...

62 Miklasová, Júlia. 2024. "The Conflation of Jurisdiction and Attribution Tests, the 'Law,' and the International Legal Status of Abkhazia and South Ossetia: A Review of Recent ECtHR Case Law" *Strasbourg Observers*, 23 August 2024. <https://strasbourgobservers.com/2024/08/23/the-conflation-of-jurisdiction-and-attribution-tests-the-law-and-the-international-legal-status-of-abkhazia-and-south-ossetia-a-review-of-recent-ecthr-case-law/>.

63 Case of *Taganova and others v. Georgia and Russia*, Application No. 18102/04, Judgment of January 21, 2025. <https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2218102%2F04%22%5D,%22itemid%22:%5B%22001-238515%22%5D%7D>.

[T]he undertaking given by the State under Article 1 must be considered by the Court only in the light of the Contracting State's positive obligations towards persons within its territory."⁶⁴

In this context, an injured or occupied State is not fully absolved of its duty to protect rights merely due to the occupation.⁶⁵ Rather, it retains a positive obligation to take all appropriate measures still within its power to uphold human rights, including diplomatic, economic, judicial, or other actions that are consistent with international law: "A positive obligation to take the diplomatic, economic, judicial or other measures that were both in its power to take and in accordance with international law."⁶⁶

Nevertheless, this position has been subject to criticism in academic literature. Some scholars argue that such judgments by the Court "*blur rather than clarify the notion of jurisdiction*" and that "*the concept of positive obligations is brought about in a way that causes puzzlement*."⁶⁷ Despite these criticisms, the Court has repeatedly reaffirmed the principle that *de jure* sovereignty entails ongoing legal responsibilities under the Convention.

However, securing the rights and freedoms guaranteed by the Convention, including the right to a fair trial, extends far beyond the period of active hostilities, where States are required to rebuild judicial infrastructure and restore access to justice as part of their continuing human rights responsibilities and transitional justice commitments. In addition to the immediate danger during conflict, the large-scale destruction of court infrastructure presents long-term challenges for post-war recovery and transitional justice efforts. The devastating consequences of war and armed conflict often include the widespread destruction and looting of judicial institutions, which significantly undermines access to justice. As mentioned above, numerous premises of Ukrainian courts are suffering from structural damage and the loss of essential utilities. The large-scale destruction of judicial infrastructure has also been observed in other conflict-affected countries, such as Iraq. For example, following the 2003 war in Iraq, the justice system was left in a state of complete disarray: courts were looted, vandalized, and rendered inoperable, severely limiting access to justice. Nevertheless, within six months, the Coalition Provisional Authority succeeded in reopening most courtrooms and resuming proceedings — a testament to the importance of timely and coordinated transitional justice measures.⁶⁸

The analysis of foreign experience confirms that Ukraine is not the only country that has faced the challenge of ensuring access to justice in territories affected by armed conflict or war. Similar efforts have been undertaken, for instance, by

64 Case of *Ilașcu and Others v Moldova and Russia*, Application 48787/99, Judgment of July 8, 2004. <https://hudoc.echr.coe.int/eng#%7B%22fulltext%22%3A%5B%5C%22Ila%20and%20Others%20v%20Moldova%20and%20Russia%22%2C%22itemid%22%3A%22001-5948%22%7D>.

65 Yudkivska, Ganna, 2016, Territorial Jurisdiction and Positive Obligations of an Occupied State: Some Reflections on Evolving Issues Under Article 1 of the European Convention. <https://ssrn.com/abstract=2825208>.

66 Case of *Mozer v. the Republic of Moldova and Russia*, Application no. 11138/10, Judgement of February 23, 2016. <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-161055%22%7D>.

67 Gondek, M. 2005. "Extraterritorial Application of the European Convention on Human Rights: Territorial Focus in the Age of Globalization?" *Netherlands International Law Review* 52: 349–368.

68 Leonard J. "Rule of Law in Iraq: Transitional Justice under Occupation", Monograph, 2004.

Georgia, which relocated the jurisdiction of courts to address the consequences of occupation. However, reliable information on identical situations, where state courts cease operating due to conflict and jurisdiction is reassigned, is extremely limited. In the Georgian case, our conclusions are based primarily on the statements of the Government as reflected in ECtHR judgments, highlighting the scarcity of comprehensive research on this issue.

This underlines the particular importance of the Ukrainian experience, which illustrates the complexity of ensuring access to justice during wartime. The consequences of conflict affect not only civilians but also judicial infrastructure and institutional continuity. Furthermore, this issue remains relevant beyond the conflict period, as post-war reconstruction must also address destroyed court buildings and disrupted legal systems. Thus, Ukraine's case provides a valuable example of institutional flexibility and commitment to upholding international standards in the face of systemic challenges - an experience that deserves further attention and study.

Given the scale and scope of damage to courts in Ukraine, as well as limited global research on comparable situations (with Georgia being one rare example), Ukraine's experience may serve as a critical case study for developing international standards and best practices in ensuring access to justice in post-conflict environments.

6. PROBLEMS ARISING FROM CHANGES IN TERRITORIAL JURISDICTION OF COURT CASES

The burden of considering cases falling within the jurisdiction of courts located in temporarily occupied territories and in areas of active hostilities was placed on the courts closest in proximity to those areas (frontline courts). Despite the justification for transferring cases to frontline courts due to their proximity, it would also be advisable to consider the current military situation and the actual possibility of administering justice by these courts in the near future.⁶⁹

However, it should be noted that often, when changing territorial jurisdiction, significant distances from the courts to which the jurisdiction of cases is assigned are not taken into account. This can result in the inability of case participants to reach the court due to significant distances or ongoing hostilities, leading to delays in case proceedings and the need for re-notifying parties and summoning them to court. By orders of the Chairman of the Supreme Court the territorial jurisdiction of judicial cases of courts in the city of Kharkiv and Kharkiv region was changed.⁷⁰ Later, as conditions for administering justice improved, the territorial jurisdiction of judicial cases of some courts in the Kharkiv region was restored. As of April 12, 2023, eleven local courts in the Kharkiv region were temporarily unable to administer justice, and their jurisdiction remained assigned to courts in the Poltava and Dnipropetrovsk regions. In its decision, the High Council of Justice, acting on the submission of the Chairman of the Supreme Court, noted that the courts to which jurisdiction had been assigned were located at

69 Paskar A.L., 2023, "Change of territorial jurisdiction (jurisdiction) of court cases - a tool for ensuring accessibility of administrative proceedings". <https://doi.org/10.21564/2414-990X.161.278568> (accessed June 10, 2024).

70 Order of the Chairman of the Supreme Court No. 2/0/9-22 dated 08.03.2022, No. 4/0/9-22 dated 10.03.2022, No. 7/0/9-22 dated 14.03.2022, No. 10/0/9-22 dated 03/16/2022, No. 11/0/9-22 dated 03/18/2022, No. 14/0/9-22 dated 03/25/2022, No. 16/0/9-22 dated 04/06/2022 of the year, No. 17/0/9-22 dated 04/08/2022. Available at: https://supreme.court.gov.ua/supreme/gromadyanam/terutor_pidsudnist/ (accessed June 10, 2024).

a significant distance from the areas of the Kharkiv region where the majority of the proceedings' participants reside, and therefore the territorial jurisdiction was adjusted accordingly.⁷¹ This complicates access to justice, hinders compliance with procedural deadlines and delays case proceedings. The High Council of Justice, taking into account the proposals of the Chairman of the Supreme Court, as well as the appeals of the State Judicial Administration of Ukraine and its Territorial Administration in the Kharkiv region, determined by the aforementioned decision that the jurisdiction of local courts in the Kharkiv region would be assigned to the courts within the same region.

It is worth mentioning the significant workload and personnel shortage in the judicial system - in recent years, there has been a shortage of judges in the judiciary, approaching a critical level. The HCJ, in an "emergency" manner, resolves personnel issues by temporarily transferring judges from one court to those courts where there is a particularly acute shortage of judges. There is no other way to ensure the functioning of the courts.⁷² Considering the shortage of competent judges and the change in the territorial jurisdiction of judicial cases, the workload of frontline courts has increased several times, leading to violations of the established guarantees of ensuring reasonable timeframes for resolving judicial disputes, as provided for in Article 6 of the ECHR. In particular, due to the change in the territorial jurisdiction of cases of several courts of Kharkiv on March 14, 2022, *more than 5,000 cases of various categories were transferred to the District Court of Poltava*,⁷³ which were not registered in the court's office, and their automated distribution was not carried out. Court meetings mostly made decisions on the registration and automated distribution only of those judicial cases, that required urgent consideration. In view of this, the Council of judges of Ukraine recommended in such situations to register the specified cases, carry out their automated distribution among judges, and ensure their further proper judicial consideration.⁷⁴ 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. 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 non-urgent, 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.⁷⁵

71 Decision of the High Council of Justice No. 399/0/15-23, April 20, 2023. https://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/rizne/399_20_04_2023.pdf (accessed June 10, 2024).

72 High council of justice, "HCJ urgently solves the problem of personnel shortage in the courts - Hryhorii Usyk" 2023. <https://hcj.gov.ua/news/vrp-nadterminovo-vyrishuye-problemu-kadrovogo-golodu-v-sudah-grygoriy-usyk> (accessed June 10, 2024).

73 Order of the Chairman of the Supreme Court No. 7/0/9-22, March 14, 2022. https://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/war/temp/test/Rozp_14_03_2022.pdf (accessed June 10, 2024).

74 Decision of the Council of Judges of Ukraine No. 5 of 03 February 2023. <https://rsu.gov.ua/uploads/article/risenna-rsu-no-5-vid-03022023-so-6be2bf8fbc.pdf> (accessed June 10, 2024).

75 Prytyka, Yu, Izarova I, Maliarchuk L, Terekh O, 2022, 'Legal Challenges for Ukraine under Martial Law: Protection of Civil, Property and Labour Rights, Right to a Fair Trial, and Enforcement of Decisions' 2022. <https://doi.org/10.33327/AJEE-18-5.2-n000329>.

Analysis of appeals submitted to the Human Rights Commissioner revealed that, during the change of territorial jurisdiction and the transfer of judicial cases to designated courts located in areas free from hostilities, citizens' right to access justice was sometimes violated due to improper performance of duties by court personnel. In addition, restrictions on access to justice due to improper organization of the change in the territorial jurisdiction of courts are carried out due to the loss of court cases, the inability to find materials of court cases, or certain procedural documents.⁷⁶

Instances of loss of case materials or the impossibility of their physical transfer to the designated court are not uncommon. Compared to 2014, the situation of preserving case materials that were under the jurisdiction of the court has improved. On March 14, 2022, the court staff managed to evacuate all equipment and servers from Bakhmut to the Khmelnytskyi Court of Appeals. The cases remained under the jurisdiction of those judges who heard them before the evacuation. However, the cases from Mariupol were not transferred in time.⁷⁷

By the order of the Chairman of the Supreme Court recommendations were provided to courts of the first and appellate instances in the event of the seizure of the administrative unit and/or a court or a direct threat of its seizure.⁷⁸ Evacuation of cases takes place if such an opportunity exists, in particular, this concerns cases that are under the jurisdiction of judges or at least to evacuate the most important (high-profile) cases, materials of criminal proceedings where a person is held in custody; proceedings concerning minors; proceedings regarding particularly serious crimes; and other cases, the consideration of which may be of significant importance to the rights of the parties involved in the process. If such an opportunity is not available, the storage of cases in safes in the court premises is ensured.

Therefore, the existence of a mechanism for preserving and transferring court cases, as defined in the order of the Chairman of the Supreme Court, is justified; however, such a mechanism is not perfect, and the absence of regulatory control over this process leads to violations of the right of access to justice. At the same time, national procedural legislation provides only the procedure of restoration of lost proceedings in a case (Chapter X of the Civil Procedure Code of Ukraine,⁷⁹ Chapter V of the Code of Administrative Court Procedure of Ukraine,⁸⁰ Chapter VIII of the Commercial Procedure

⁷⁶ Commissioner of the Verkhovna Rada of Ukraine for human rights, Annual report on the state of observance and protection of human and citizen rights and freedoms in Ukraine in 2022. <https://ombudsman.gov.ua/report-2022/images/documents/annual-report-2022.pdf> (accessed June 10, 2024).

⁷⁷ "Courts in evacuation: how the war changed the map of Ukrainian courts" (2023), [Mipl.org.ua](https://mipl.org.ua). <https://mipl.org.ua/sudy-v-evakuacziyi-yak-vijna-zminylo-kartu-sudiv-ukrayiny-infografika/> (accessed June 10, 2024).

⁷⁸ Recommendations to the courts of the first and appellate instance in the case of the seizure of a settlement and/or court or the immediate threat of its seizure, approved by the order of the Chairman of the Supreme Court No. 6/0/9-22, March 13, 2022. <https://rsu.gov.ua/uploads/news/rozp6vc130322-95d9ee902a.pdf> (accessed June 10, 2024).

⁷⁹ *Civil Procedural Code of Ukraine* (No. 1618-IV, adopted March 18, 2004). *Vidomosti Verkhovnoi Rady Ukrainy* (Bulletin of the Verkhovna Rada of Ukraine), 2004, nos. 40–41, 42, art. 492. <https://zakon.rada.gov.ua/laws/show/1618-15#Text> (accessed June 10, 2024).

⁸⁰ Code on Administrative Procedure of Ukraine, No. 2747-IV dated 06.07.2005, VVR 2005, No. 35–36, No. 37, Article 446). <https://zakon.rada.gov.ua/laws/show/2747-15#Text> (accessed June 10, 2024).

Code of Ukraine,⁸¹ Chapter VII of the Criminal Procedure Code of Ukraine⁸²). In the presence of a court decision of the first instance, the case can be restored in accordance with procedural norms. If there has not yet been a court decision in the case, this is grounds for the party to file a new lawsuit. Accordingly, the consideration of a court case starts from the beginning. Also, the Law of Ukraine “On the Administration of Justice and Criminal Proceedings in connection with the Conduct of an Anti-Terrorist Operation” provides that in case of impossibility of transferring case materials according to the procedure established by this Law, jurisdiction to perform necessary procedural actions is exercised based on *documents and materials submitted by the participants in the judicial process, provided that such documents and materials are sufficient for the adoption of the relevant court decision* (part 3 of Article 1).

To address most of the above-mentioned problems, it is necessary to make appropriate changes to national legislation. The Human Rights Commissioner also highlighted this issue, recommending that the State Judicial Administration of Ukraine develop a draft regulatory legal act to establish clear procedures for transferring court cases from courts located in areas of active hostilities, whose territorial jurisdiction has been changed. From the content of the annual report of the ombudsman “On the observance and protection of the rights and freedoms of individuals and citizens in Ukraine in 2023”, it can be inferred that this recommendation has been taken into account and is in the process of being implemented.

7. CONCLUSIONS

Ukraine has taken significant and commendable steps to uphold access to justice during the ongoing armed conflict, demonstrating institutional resilience and a strong commitment to international human rights standards. Despite the large-scale destruction of judicial infrastructure and the loss of effective control over parts of its territory, Ukrainian authorities have preserved the continuity of judicial functions through the relocation of courts, reassignment of territorial jurisdiction and the adoption of special procedural mechanisms. The European Court of Human Rights found that Ukraine had taken all available measures to organise its judicial system effectively under the circumstances, ensuring applicants could exercise their rights under Article 6 of the Convention in practice. These efforts reflect the fulfilment of positive obligations under Article 1 of the ECHR, as interpreted by the European Court of Human Rights.

At the same time, international experience in this area remains fragmented and insufficiently studied. While there are notable examples, such as the Kosovo case and Georgia’s response to the occupation of Abkhazia and South Ossetia, there is no unified or widely researched framework for how states should ensure access to justice under conditions of occupation or armed conflict. This is despite the fact that such mechanisms are essential not only for the protection of individual rights, but also for the broader functioning of the rule of law and transitional justice. Therefore, Ukraine’s model of addressing these issues stands out as a promising and relatively structured approach that could serve as a useful reference point for other conflict-affected countries.

⁸¹ *Commercial Procedure Code of Ukraine*, No. 1798-XII, adopted November 6, 1991. *Vidomosti Verkhovnoi Rady Ukrainy*, 1992, no. 6, art. 56. <https://zakon.rada.gov.ua/laws/show/1798-12#Text> (accessed June 10, 2024).

⁸² *Criminal Procedure Code of Ukraine* (No. 4651-VI, adopted April 13, 2012). <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (accessed June 10, 2024).

Despite the progress made, Ukraine faces a number of serious and urgent challenges. Courts near the frontlines are overburdened due to the reassignment of cases, there is a shortage of qualified personnel, significant damage to or destruction of court buildings, and in many cases, loss of case files or difficulties in accessing them. Furthermore, gaps and inconsistencies in domestic legislation hamper the timely and efficient transfer of cases when courts cease to function.

Considering the abovementioned, it would be appropriate to establish regulatory legal norms regarding the transfer of court cases from courts located in occupied territories or areas of active hostilities, whose territorial jurisdiction has changed. This would serve as a preventive measure to safeguard the right to access to justice, as provided for in Article 6 of the European Convention on Human Rights, and would eliminate the contradictions and gaps in regulation mentioned in the article.

Therefore, to resolve the collision of norms defined in the Law of Ukraine “On the Legal Regime of Martial Law” and the Law of Ukraine “On Judicial System and Status of Judges” regarding the procedure for changing jurisdiction of court cases through the adoption of a law or by decision of the High council of justice or by order of the Chairman of the Supreme Court, *it is necessary to leave the authority to change territorial jurisdiction during the period of martial law to the High council of justice, and in case of impossibility for it to exercise such authority, to the Chairman of the Supreme Court.* As practice shows, such a mechanism is the fastest and most effective.

To eliminate gaps in Article 31 of the Civil Procedure Code of Ukraine, *a new ground should be provided for the transfer of a case from one court to another if it is impossible to administer justice by the court that heard the case during wartime or a state of emergency, in connection with a natural disaster, military actions, counter-terrorism measures, or other extraordinary circumstances.* Additionally, Article 31 of the Civil Procedure Code should be supplemented with a new paragraph: *“In case it is impossible to administer justice by the court during wartime or a state of emergency, in connection with a natural disaster, military actions, counter-terrorism measures, or other extraordinary circumstances, cases pending before such a court, the consideration of which has not been completed by the adoption of a court decision, shall be transferred to other courts in accordance with the jurisdiction established by law, taking into account the provisions of Part 7 of Article 147 of the Law of Ukraine “On Judicial System and Status of Judges”, within twenty working days from the day of establishing such jurisdiction or within a reasonable time frame.”*

COMPETING INTERESTS

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