

ON THE ISSUE OF PARTICIPATION OF PARTIES AND OTHER PARTICIPANTS IN CRIMINAL PROCEEDINGS DURING THE COURT HEARING VIA VIDEOCONFERENCE, IN PARTICULAR USING PERSONAL TECHNICAL MEANS DURING MARTIAL LAW IN UKRAINE

ДО ПИТАННЯ ПРО УЧАСТЬ СТОРІН ТА ІНШИХ УЧАСНИКІВ КРИМІНАЛЬНОГО ПРОВАДЖЕННЯ ПІД ЧАС СУДОВОГО ПРОВАДЖЕННЯ У РЕЖИМІ ВІДЕОКОНФЕРЕНЦВ'ЯЗКУ, ЗОКРЕМА ІЗ ЗАСТОСУВАННЯМ ВЛАСНИХ ТЕХНІЧНИХ ЗАСОБІВ ПІД ЧАС ДІЇ ВОЄННОГО СТАНУ В УКРАЇНІ

Verkhoglyad-Gerasymenko O.V., PhD in Law, Associate Professor,
Assistant Professor at the Department of Criminal Procedure

Yaroslav Mudryi National Law University

The article is dedicated to examining the grounds and procedure for the participation of parties and other participants in criminal proceedings during court hearings via videoconference, particularly with the use of personal technical devices during the period of martial law in Ukraine. It outlines international standards for ensuring the participation of parties and other participants in criminal proceedings during court hearings via videoconference, based on the legal positions of the European Court of Human Rights and the Guidelines on Videoconferencing in Judicial Proceedings, adopted by the European Commission for the Efficiency of Justice (CEPEJ) at its 36th plenary meeting (June 16–17, 2021).

Attention is drawn to the fact that all guarantees of a fair trial provided by the Convention for the Protection of Human Rights and Fundamental Freedoms apply to remote hearings in all types of judicial proceedings. The key elements include the right to effective access to a court, fairness of the proceedings, adversarial nature of the process, equality of arms, proper handling of evidence, adequate time to prepare and access materials, the court's decision within a reasonable time, data protection, and risk management. It is emphasized that it is the court that must decide, within the framework of applicable law, whether a hearing should be held remotely to ensure overall fairness of the proceedings. The court must also ensure the party's right to effective legal assistance during all stages of the judicial process, including the confidentiality of communication with their lawyer.

The article also analyzes judicial practice of local and appellate courts, as well as the Criminal Cassation Court of the Supreme Court, regarding the grounds and procedure for the participation of parties and other participants in criminal proceedings during court hearings via videoconference, particularly with the use of personal technical devices during the period of martial law in Ukraine.

Key words: court hearing, videoconference, personal technical devices, participants in criminal proceedings, international standards, martial law.

Стаття присвячена розгляду підстав та порядку участі сторін та інших учасників кримінального провадження під час судового провадження у режимі відеоконференцв'язку, зокрема із застосуванням власних технічних засобів під час дії воєнного стану в Україні. В ній окреслені міжнародні стандарти забезпечення участі сторін та інших учасників кримінального провадження під час судового провадження у режимі відеоконференцв'язку на основі правових позицій Європейського суду з прав людини та Керівництва щодо проведення судових проваджень у режимі відеоконференції, затвердженого Європейською комісією з питань ефективності правосуддя (СЕПЕ) на 36-му пленарному засіданні (16–17 червня 2021 р.).

Звернуто увагу, що всі передбачені в Конвенції про захист прав людини та основоположних свобод гарантії справедливого суду застосовуються до дистанційних слухань у межах всіх судових проваджень. Основними елементами є право на ефективний доступ до суду, справедливість провадження, змагальний характер процесу, рівність сторін, належне поводження з доказами, час на підготовку матеріалів і доступ до них, ухвалення судом рішення протягом розумного строку, захист даних і керування ризиками. Підкреслюється, що саме суд: має вирішувати в межах чинного законодавства, чи певне слухання слід проводити в дистанційному режимі, щоб забезпечити загальну справедливість провадження; має забезпечити дотримання права сторони на ефективну допомогу адвоката під час усіх судових проваджень, у тому числі конфіденційність їхнього спілкування.

Досліджено судову практику місцевих, апеляційних судів та Касаційного кримінального суду Верховного Суду щодо підстав та порядку участі сторін та інших учасників кримінального провадження під час судового розгляду у режимі відеоконференцв'язку, зокрема із застосуванням власних технічних засобів під час дії воєнного стану в Україні.

Ключові слова: судовий розгляд, відеоконференцв'язок, власні технічні засоби, учасники кримінального провадження, міжнародні стандарти, воєнний стан.

At the onset of the rf's military invasion of the territory of Ukraine, the provisions of the CPC of Ukraine did not provide for the possibility of holding court sessions by videoconference using one's own technical means (Article 336, paragraph 20-5 of the Transitional Provisions of the CPC), in contrast to civil, commercial, and administrative proceedings (parts 2–4 of Article 212 of the Civil Procedure Code of Ukraine, Article 197 of the Commercial Procedure Code of Ukraine, Article 195 of the Code of Administrative Procedure of Ukraine). Meanwhile, already on March 2, 2022, the Council of Judges of Ukraine published "Recommendations on the work of courts under martial law," pursuant to paragraph 10 of which "if, for objective reasons, a participant in proceedings is unable to take part in a court session by videoconference (hereinafter – VCC) using the technical means specified by the CPC of Ukraine, as an exception, one should allow such participant to join the court session by VCC via any

other technical means, including his or her own. If the case is heard by a panel of judges and the judges cannot assemble in one courtroom, it is permissible to hear the case from different court premises, including using personal technical means" [1]. In addition, on March 3, 2022, the Supreme Court published Letter No. 1/0/2-22 "On certain issues of conducting criminal proceedings under martial law" [2], which in p. 7 reproduced the content of paragraph 10 of the CJU recommendations but exclusively regarding the right of participants in the proceedings (but not judges) to participate in a court session by videoconference, including by means not envisaged in the CPC. It appears that this partial reproduction of the CJU recommendations in the Supreme Court's letter is not accidental, given that there is an opinion that introducing remote hearings in the criminal jurisdiction should be avoided because it raises questions of trust in the court, secrecy of the deliberation room, and the perception of a decision reached remotely, etc [3]. In

turn, during regular consultations with Council of Europe experts on legislative initiatives concerning remote judicial proceedings in Ukraine under martial law or a state of emergency, members of the High Council of Justice (hereinafter – HCJ) emphasized that the HCJ supports the draft legislation aimed at promptly introducing remote justice under martial law. At the same time, the HCJ members stressed the urgent need to address this matter because the HCJ has already received several disciplinary complaints against judges who administered justice during active combat from the premises of other courts located in safer regions of Ukraine. Specifically, some participants in these cases believe that, despite resolving urgent procedural issues, judges violated ethical standards and the provisions of criminal procedural legislation.

Meanwhile, court practice on this issue was inconsistent. Thus, some judges denied motions by the defense to allow their participation in a court session by videoconference on the grounds that they: did not provide exceptional objective circumstances justifying such a hearing by videoconference outside the court premises, contrary to the provisions of Article 336 of the CPC of Ukraine [4]; did not cite circumstances from which one could conclude that it was impossible for the suspect's defense counsel to appear in person at the location of the court, simply referring to the court's territorial remoteness as a sufficient ground that prevented in-person appearance and pointing to the introduction of martial law throughout Ukraine [5]. Others, in contrast, granted such motions, relying on the above-mentioned provisions of Letter No. 2/0/2-22 of the Supreme Court of March 3, 2022, "On certain issues of conducting criminal proceedings under martial law," as well as on the need to meet the requirements of criminal procedural legislation for hearing criminal proceedings within a reasonable time [6].

This problem was resolved by Law of Ukraine No. 3604-IX of February 23, 2024, "On Amending the Criminal Procedure Code of Ukraine regarding ensuring the phased introduction of the Unified Judicial Information and Telecommunication System" [7], which amended, *inter alia*, Article 336 of the CPC. Under these revised provisions, the substantive grounds for conducting court proceedings by videoconference during transmission from another premises, including one located outside the court premises (remote court proceedings), are: (1) the inability of a participant in criminal proceedings to appear in court in person because of health issues or for other valid reasons; (2) the need to ensure participants' safety; (3) the need to examine a minor or juvenile witness or victim; (4) the need to take such measures to ensure the promptness of court proceedings; (5) the introduction of martial law or a quarantine established by the Cabinet of Ministers of Ukraine; (6) the existence of other grounds that the court deems sufficient (part 1 of Article 336 of the CPC).

The procedural basis for conducting remote court proceedings is the court's decision to conduct remote proceedings, which it may adopt on its own initiative or upon the motion of a party or other participants in the proceedings (part 2 of Article 336 of the CPC). A participant in the proceedings must file a motion to participate in a hearing by videoconference outside the court premises at least five days before the hearing. A copy of the motion must be sent within the same time frame to the other participants (part 4 of Article 336 of the CPC). If a person who will participate remotely is held in a pretrial detention facility or correctional institution, the actions specified in part 4 of Article 336 of the CPC are carried out by an authorized official of such institution (part 9 of Article 336 of the CPC). If a party to the proceedings or the victim objects to remote court proceedings, the court can decide to proceed remotely only by a reasoned ruling explaining its decision. The court may not decide to conduct remote proceedings in which the accused is located outside the court premises if the accused objects to it, except in cases of remote proceedings under martial law (part 2 of Article 336 of the CPC).

Technical means and technologies used in remote proceedings must ensure adequate video and audio quality, compliance with the principle of publicity and openness of court proceedings, as well as information security. Participants in criminal proceedings must have the opportunity to hear and see the hearing in real time, to ask questions and receive answers, and to exercise all their procedural rights and obligations under the CPC (part 3 of Article 336 of the CPC).

Participants in criminal proceedings participate in a court hearing by videoconference outside the court premises using their own technical means and a qualified electronic signature according to the requirements of the Regulation on the Unified Judicial Information and Telecommunication System and/or provisions governing the operation of separate subsystems (modules) of the Unified Judicial Information and Telecommunication System (part 5 of Article 336 of the CPC). The participant who files the corresponding motion assumes the risk of any technical impossibility of participating in a videoconference outside the court premises using his or her own technical means, any interruption in communication, etc. (paragraph 1 of part 6 of Article 336 of the CPC). If a technical impossibility or a communication breakdown occurs for a participant in criminal proceedings whose presence is mandatory, the court must adjourn the hearing (paragraph 2 of part 6 of Article 336 of the CPC). If the technical impossibility or loss of communication has signs of an abuse of rights aimed at delaying the hearing, the court may, by a reasoned ruling, deprive that participant of the right to participate by videoconference using personal technical means in that criminal proceeding (paragraph 3 of part 6 of Article 336 of the CPC).

Moreover, the court may enter a ruling on the participant's involvement in the hearing by videoconference in the courtroom under the procedure prescribed by part 8 of Article 336 of the CPC. Examination of a witness, victim, or expert in a court hearing by videoconference may be conducted only in a courtroom designated by the court. As an exception, in conditions of martial law or a state of emergency, the court may examine a witness or victim by videoconference outside the court premises using personal technical means under paragraphs 4–6 of Article 336 of the CPC (paragraph 1 of part 7 of Article 336 of the CPC). If the individual who will participate in the proceedings remotely is located in premises within the territorial jurisdiction of the court or within the city where the court is located, the court bailiff or court session secretary of that court must provide that person with a memo about his or her procedural rights, verify his or her identity documents, and remain with that person until the hearing ends (paragraph 2 of part 7 of Article 336 of the CPC).

If the individual who will participate remotely is located in premises outside the court's territorial jurisdiction and outside the city where the court is located, the court, by a ruling, may instruct the court of that jurisdiction to perform the actions specified in part 7 of this article. A copy of the ruling may be transmitted by e-mail, fax, or other means of communication. The court receiving such an instruction, in coordination with the court that issued it, must, within the specified timeframe, arrange to carry out the instruction (part 8 of Article 336 of the CPC).

The course and results of procedural actions conducted by videoconference are recorded using video and audio recording equipment. The video and audio recordings of the videoconference are preserved in the materials of the criminal proceedings as provided by the Regulation on the Unified Judicial Information and Telecommunication System and/or provisions governing the operation of separate subsystems (modules) of the Unified Judicial Information and Telecommunication System (part 10 of Article 336 of the CPC). A protected person may be examined by videoconference with such changes to appearance and voice that make it impossible to identify him or her (part 11 of Article 336 of the CPC).

Under Article 336 of the CPC, remote court proceedings may be conducted in the courts of first, appellate, and cassation instance during proceedings in any matters under the court's jurisdiction (part 12 of Article 336 of the CPC).

It should be noted that these provisions of Article 336 of the CPC fully conform to the ECtHR's legal positions on the accused's participation in court hearings by videoconference, namely:

- The accused's participation in proceedings by videoconference does not violate the Convention; however, the use of this measure in any particular instance must serve a legitimate purpose (*“Marcello Viola v. Italy”* (2006), § 67) (the applicant's participation in the appeal hearing by videoconference pursued legitimate objectives under the Convention: preventing disturbances and crime, as well as protecting witnesses and victims' rights to life, freedom, and security, observing the requirement for a “reasonable time” in the proceedings (§ 72)) [8].

- Measures enabling testimony must meet the requirements of due process set out in Article 6 of the Convention (*“Marcello Viola v. Italy”* (2006), § 67) [8].

- The accused must be able to follow the proceedings, be heard without technical hurdles, and have effective and confidential communication with counsel (*Grigoryevskikh v. Russia*, 2009, § 83 [9]). Poor courtroom acoustics and hearing problems may constitute grounds for finding a violation of Article 6 of the Convention (*Stanford v. the United Kingdom*, 2002, §§ 26, 29) [10].

- National authorities must provide sufficient grounds if they decide that the accused will participate in the court hearing by videoconference (*“Medvedev v. Russia”* (2017), § 30).

- An individual accused of a criminal offense should, as a general principle based on the concept of a fair trial, have the right to be present at the hearing in the first instance court (*“Sakhnovskiy v. Russia”* (GC, 2010), § 96) [11].

- The interests of justice require that for a fair hearing, applicants appearing by videoconference be represented by counsel, especially when a state prosecutor participates in the hearing (*Shulepov v. Russia*, 2008, §§ 34–36; *Slashev v. Russia*, 2012; *Grigoryevskikh v. Russia*) [11; 12]. In *“Sakhnovskiy v. Russia,”* the ECtHR stressed the need to ensure adequate time and facilities for attorney-client consultations when the accused appears by video link. The accused's right to communicate with counsel without fear of being overheard by a third party is one of the basic requirements of a fair trial under Article 6 § 3(c) of the Convention. If counsel cannot speak to his or her client unsupervised and provide confidential instructions, his or her assistance would lose much of its usefulness, whereas the purpose of the Convention is to guarantee practical and effective rights (*Sakhnovskiy v. Russia*, §§ 97, 102, 104; *Zagaria v. Italy*, 2007) [11; 13].

When applying the provisions of Article 336 of the CPC, investigating judges and judges must consider the requirements of the Guide to Videoconferencing in Judicial Proceedings [14], adopted by the European Commission for the Efficiency of Justice (CEPEJ) at its 36th plenary meeting (June 16–17, 2021), which outlines a number of key measures that states and courts should take to prevent undermining the right to a fair trial guaranteed by Article 6 of the Convention and to ensure compliance with Convention requirements for the protection of individuals in connection with the automated processing of personal data. Among them, in the context of our study, one can highlight the following: fundamental principles and procedural aspects of videoconferencing from the perspective of the right to a fair trial (the right to active participation; identification and privacy; publicity and recording; witnesses and experts; evidence; interpreters; the accused's active participation; representation), organizational aspects of videoconferencing. Let us consider each in turn.

Fundamental principles of videoconferencing from the perspective of the right to a fair trial

All the safeguards of a fair trial set out in the Convention apply to remote hearings in all judicial proceedings. Key elements are the right to effective access to the court, fairness of the proceedings, adversarial nature, equality of the parties, proper handling of evidence, adequate time to prepare materials and access to them, and a court decision within a reasonable time, along with data protection and risk management. States should establish legislation ensuring clear grounds for courts to hold remote hearings within judicial proceedings.

It is the court's role, within the bounds of current legislation, to determine whether a given hearing should be held remotely to ensure overall fairness.

The court must ensure the party's right to effective counsel in all judicial proceedings, including confidentiality of communication between counsel and client.

Procedural aspects of videoconferencing from the perspective of the right to a fair trial

Decision to hold a remote hearing

(1) States should ensure that the law provides courts with sufficiently broad grounds in each individual case to decide whether a hearing may or should be held remotely; (2) drawing on the country's legislation, the court must determine whether a remote hearing is justified and appropriate based on the specific circumstances of the case and explain its decision; (3) parties should have an opportunity to discuss with the court such issues as whether a hearing can or should be held remotely, what specific measures are required to organize it, concerns about safety, and the possibility of requesting an in-person hearing with reasons; (4) the decision should be subject to appeal before a competent authority as per national law.

Right to active participation

(5) The court should allow participants to verify audio and video quality either before the hearing (for example, through a self-test) or at the beginning so each participant can familiarize themselves with the videoconferencing platform features.

(6) During the remote hearing, the court must continuously monitor video and audio quality to minimize technical malfunctions that could affect the parties' right to active participation.

(7) The court must ensure that everyone involved, including members of the public if the hearing is open, can see and hear the remote proceedings.

(8) When deciding on remote proceedings and their practical aspects, the court must consider the circumstances and difficulties of vulnerable individuals such as children, migrants, or persons with disabilities.

(9) The court must suspend the hearing in the event of a technical malfunction until it is resolved, depending on its nature. Such suspension should be documented in the record of the remote hearing.

Identification and privacy

(10) All participants in a remote hearing must be identified by the court. Means of identification must clearly comply with current law and not be overly intrusive or burdensome.

(11) Participants' privacy must be properly safeguarded, and the court should take measures to mitigate any risks to it. All necessary measures to eliminate privacy violations must be adopted.

Publicity and recording

(12) The court must preserve the hearing's openness when holding it remotely by having a consistent procedure for public attendance. An open remote hearing might be achieved by letting the public join live or by posting recordings on the court's website.

(13) Without prior court authorization, no photography, recording, broadcast, or other distribution of any part of the remote hearing (including audio recordings) may be permitted.

Witnesses and experts

(14) Within the limits permitted by national law, the examination of witnesses and experts at remote hearings should be conducted as closely as possible to the way it is done in open court.

(15) Appropriate organizational measures should be carefully considered to ensure the integrity of remote hearings and to prevent pressure or influence on witnesses or experts.

Evidence

(16) The court must provide instructions on the procedure participants should follow to submit documents or other materials during a remote hearing.

(17) Organizational measures should be taken to allow all participants to see and/or hear materials presented during the remote hearing.

(18) The submission of new motions, arguments, and/or evidence during a remote hearing must respect the adversarial principle, and the court must ensure the right to counterevidence.

Interpreters

(19) If an interpreter is needed for a remote hearing, preference should be given to the interpreter being physically next to the participant who does not speak the court's language.

(20) The interpreter must maintain proper visual contact with the individual whose speech he or she is interpreting throughout the hearing.

Legitimate purpose

(21) If the law does not require obtaining the defendant's free and informed consent, the court's decision that he or she participate in a remote hearing must serve a legitimate purpose.

(22) In criminal proceedings, a legitimate purpose of a remote hearing should be based on values such as maintaining public order, protecting health, preventing crimes, and safeguarding the right to life and freedom of witnesses and victims of crimes. The court may consider meeting the requirement for a hearing within a reasonable time, including in stages after the first instance.

Active participation of the accused

(23) The video link must enable the accused to see and hear the remote hearing, including the other parties, judges, witnesses, and experts. The participants must be able to see and hear the accused.

(24) The court must respond to any technical defects reported by the accused. Before the hearing, the accused should be informed how to alert the presiding judge about a technical issue (e.g., designating an official representative stationed near the accused or using a button in the videoconferencing software).

(25) In the event of ongoing unacceptable behavior by the accused, the court must first warn him about the right of the court to mute, interrupt, or suspend his video feed before deciding to do so.

(26) If the accused is muted, the court must ensure that his representative can continue to provide legal assistance during the remote hearing and proceedings as a whole.

Representation

(27) The accused must have effective access to representation before and during the remote hearing, including the right to consult privately with counsel before the hearing.

(28) If the defense attorney is absent, the court must adjourn or suspend the remote hearing. The court must take all necessary steps to protect the accused's right to a defense, including appointing counsel ex officio if needed.

(29) The accused must be able to communicate with counsel and exchange confidential instructions without oversight. No other persons may be present in the room where the accused is located during such exchanges.

(30) The accused must be able to communicate with counsel through a secure system. Confidentiality of these communications must be guaranteed. The secure line of communication, separate from the court video link, must be protected by attorney-client privilege.

tion, separate from the court video link, must be protected by attorney-client privilege.

(31) Specific organizational measures should be taken to protect the confidentiality of communications between the accused and counsel if an interpreter is used.

Organizational aspects of videoconferencing

(36) The court must promptly notify participants of the technical requirements, including the date, time (taking into account different time zones), location, and conditions for the remote hearing.

(37) The court must ask participants to ensure they have a reliable video connection of adequate quality, as well as suitable lighting for effective remote participation.

(38) If possible and necessary, the court should schedule a test videoconference before the remote hearing to explain how it will be conducted, what technology will be used, and other relevant questions.

(39) The court and participants must join the videoconference in advance of the hearing to address any technical problems.

(40) The court must inform everyone about potential technical and other difficulties that may arise and remind them not to speak too much and to mute their microphones when not speaking.

(41) Depending on national legislation requirements, participants may join remote hearings from courthouses, places of detention, law firms' premises, or other secure locations. The hearing environment and equipment must guarantee the integrity of the statements of all participants, particularly those in vulnerable circumstances.

Additionally, the Cassation Criminal Court of the Supreme Court of Ukraine has formulated a number of legal positions on the grounds and procedure for hearing criminal proceedings by videoconference. The main ones are as follows:

1. Holding a court session by videoconference is one of the forms of personal participation in a court session, as the individual can, in real time, follow the hearing, respond to statements or actions, express his or her position, ask questions, and use all the rights provided by law [15].

2. A court decision to hold remote proceedings is rendered in the form of a ruling. Holding a court session by telephone with a defense attorney whose presence is mandatory is not provided for in the CPC and prevents the court from properly verifying the participant's identity, explaining his or her rights and obligations, and violates the accused's right to a defense [16].

3. When deciding on remote proceedings under martial law if the accused objects (part 2 of Article 336 of the CPC), the court must issue a reasoned ruling giving justification and motives, specifically regarding the circumstances obstructing the accused's in-person participation in court. A systematic interpretation of Article 336 of the CPC indicates imperative provisions concerning the accused's right to appear in court in person, which cannot be restricted except for remote proceedings under martial law and the resulting obstacles [17].

4. A court's decision to hold remote proceedings in which the accused is located outside the court if he has requested personal appearance, other than in instances of martial law, constitutes a material breach of the requirements of criminal procedure law under Article 412 of the CPC. If an accused's health condition prevents him from attending in person or poses a threat or danger to the health of others, measures should be taken to postpone the hearing for as long as is objectively necessary to resolve these issues. If the threats cannot be overcome, under Article 336 of the CPC, the court must render a reasoned ruling explaining the need to hold the hearing by videoconference [18].

5. Under martial law in Ukraine, an appellate court's holding a hearing with the accused participating by videoconference, even if the accused asked to attend in person, does not violate his right to defense and is consistent with part 2 of Article 336 of the CPC [19].

An analysis of judicial practice shows that after amendments to the CPC, the majority of requests by the defense, prosecution, victims (or their representatives), and witnesses to participate in court sessions via videoconference using personal technical means in the EasyCon subsystem are granted by judges. Among the circumstances evidencing grounds for such decisions are:

- The prosecutor's workplace is far from the court, and it is impossible to arrive timely for the hearing [20].

- Advanced age of a witness, and the introduction of martial law in Ukraine starting on February 24, 2022, due to the armed aggression by the rf [21].

- The defense attorney or accused being abroad for family reasons, preventing their personal appearance in court (including for videoconferencing at another courthouse) while needing to meet the requirement of a reasonable time for consideration and ensuring the accused's right to a defense (the defense attorney explained that his wife's treatment is ongoing in Sweden, thus preventing personal attendance; the accused indicated that due to martial law, he evacuated to the UK with a minor child) [22].

- The defense attorney or accused is located outside the city where the court sits or outside Ukraine on the day of the hearing [23].

- The place of witnesses' residence is far from the court; martial law has been introduced by Presidential Decree No. 64/2022 of February 24, 2022, to ensure the safety of persons and the reasonable duration of proceedings [24].

- The accused's defense attorney or victim's representative is occupied with other hearings [25].

- Active combat in certain regions where martial law is introduced in Ukraine [26].

- Martial law in Ukraine, requiring the right to access to justice and equality of participants before the law and court, ensuring promptness of criminal proceedings [27].

Courts sometimes issue decisions on combined forms of remote proceedings, for example: the defense attorney takes part by videoconference using personal technical means in the VCC service, while the accused participates from a guardhouse [28]; the defense attorney participates by videoconference with personal technical means, while the accused joins by videoconference with another court [29]; the prosecutor joins by videoconference using personal technical means, whereas the suspect and attorney do so from another court [30]. The latter arrangement is likely to provide effective implementation of the suspect's or accused's right to a defense.

In this context, it seems correct to support the practice of those judges who, in the operative part of the ruling on conducting a remote hearing:

- Caution the accused's defense attorney that the participant who filed the motion assumes all risks of technical impossibility, loss of connection, etc. when participating by videoconference outside the court.

- Specify that the videoconference will be held via the EasyCon application, which can be installed via a specific link; that for participation in a court hearing by videoconference outside the court premises, computer or smartphone equipment with internet access must be used, enabling audio and video; that the participant must pre-register using a personal electronic signature on the official website of the judiciary at a specified address and check his or her technical means to confirm they meet system requirements; that the participant must log in 10 minutes before the hearing, turn on devices (mi-

crophone, headphones, camera), and test them via the system, then await the court session secretary's invitation. They also explain that the participant's identity is verified by authorizing in the system with an electronic signature [31].

- Judges (investigating judges) also render rulings partially granting the motion to participate by videoconference using personal technical means in the EasyCon subsystem, in particular when:

- The prosecutor, at the hearing, moves to hold the criminal proceedings remotely for himself and witnesses because of active combat in Ukraine, but the witnesses themselves do not formally request participation by videoconference [32]. At the same time, there are opposite rulings granting these motions without direct witness requests [33], and witnesses may remotely attend from different courthouses [34].

- A witness files an unsubstantiated motion for a hearing by videoconference outside the court premises, using personal technical means, yet the investigating judge or court, accommodating the witness, schedules the hearing by videoconference from another court.

If a suspect or accused person is held in a pre-trial detention facility or a penal institution, they may also submit a motion for a court hearing to be conducted via video conference. As a rule, such motions are granted by investigative judges or judges [35]. The individual can participate from the institution with its technical means and a personal qualified electronic signature [36]. If the individual lacks a personal qualified electronic signature, he or she may take part in the hearing by videoconference using the institution's electronic account or that of an authorized official. The institution provides technical feasibility, good image and audio quality, information security, etc. In doing so, the judge instructs an authorized individual at the correctional facility to ensure the suitable quality of equipment and technology used for remote proceedings, present the accused with a memo of his procedural rights, verify his identification documents, and remain with him until the preparatory hearing ends.

Courts deny motions to appear by videoconference using personal technical means in the EasyCon subsystem when:

- According to the "Web Program for Booking Videoconferencing Systems," there is no technical possibility to hold a videoconference with another court at the hearing time because that court starts its working day later.

- The accused or attorney has submitted an unsubstantiated motion to participate by videoconference outside the court solely citing the accused's presence outside Ukraine and the introduction of martial law, without providing evidence of objective circumstances making attendance impossible.

It appears that deciding whether to hold a hearing by videoconference is a right, not an obligation, of the court. Part 2 of Article 336 of the CPC does not require a court session by videoconference whenever a party files a motion. Moreover, the law does not define an exhaustive list of cases in which the court may permit an individual to participate by videoconference, so the need for it is determined in each instance, considering the circumstances of the case, its complexity, and the necessity for statements from participants who cannot attend due to health or other reasons beyond their control, but whose participation is mandatory. Scheduling a court session by videoconference should be a measure of last resort, used when objective reasons prevent a participant from appearing in person but his or her attendance is needed to establish all the facts of the case.

REFERENCES

1. Рекомендації Ради суддів України щодо роботи судів в умовах воєнного стану від 2.03.2022 року. URL: <https://rsu.gov.ua/ua/news/view/usim-sudam-ukraini-rsu-opublikuvala-rekomendacii-sodo-rooti-sudiv-v-umovah-voennogo-stanu>
2. Лист Верховного Суду «Щодо окремих питань здійснення кримінального провадження в умовах воєнного стану» від 03.03.2022 року № 1/0/2-22. URL: <https://ips.ligazakon.net/document/VSS00820>
3. Сікора К. ВКЗ у кримінальному процесі і воєнний стан – як це працює, проблемні питання, чим корисна практика? URL: <https://sh.te.court.gov.ua/sud1917/pres-centr/news/1311800/>

Б. Умови отримати авто: Ринкова оцінка купівельної суми за 30.09.2023 роком отримати № 004/6244/23. Статус: зареєстрований, реєстр авто

10.10.2020 10:10:33

[illegible]

8. Рішення Сараєвського суду є брехів'ям, у справі «Marcello Viola v. Italy» від 5.01.2006 року, справа № 15106/01. URL:

0. Рішення Європейського суду з прав людини у справі «Grigoriyenko і інші v. Russia» від 0.04.2009 року, судова № 20/03. URL:

10. DIMENSIONAL CORRELATIONSHIP BETWEEN THE FIRST AND SECOND STAGES OF STAFFORD'S UNITED KINGDOM, 22.05.2002 YEAR, CODES: No 16225/00, URL:

14. Рішенням Службово-судового органу з трьох підписаних у строку «Службовий» у Державі під 2.14.10. року застро № 21232/02. URL:

13. **Датум:** _____ **Оформлен:** _____ **Число:** _____ **Подпись:** _____ **Должность:** _____ **Итого:** _____ **№:** _____ **Итого:** _____

[illegible]

14. Komentujte, na čemto prejavujú sa najmä rozdiely medzi vnútornými a vonkajšími faktormi? (3 body)

15 Постановою колегії суддів Другої судової палати Касаційного кримінального суду Верховного Суду від 14.11.2023 року у справі

16 Постанови колегії суддів Першої судової палати Касаційного кримінального суду Верховного Суду від 12.06.2022 року у справі

17. Постановою колегії суддів Третьої судової палати Касаційного кримінального суду Верховного Суду від 11.10.2023 року у справі:

18 Постановка Об'єднаної палати Казенного кримінального суду Варшавського Суду від 31.11.2022 року у справі № 415/1608/12 к

[illegible]

20) Указом Президента міста Крайності згідно Меморандуму від 20.05.2024 року, вказівка № 492/156/24. Стиний державний

21. Урядово-Адміністративного районного суду м. Кременчука Полтавської області від 17.05.2024 року у справі № 524/6052/21. Службовий

22. Указом Президента, изданным 17.05.2024, приказом от 17.05.2024 № 643/16076/16 и Службый дзяржаўнай аховы з'ява

22. Указом Вишого антикорупційного суду від 11.03.2024 року у справі № 001/1870/22. Стиний державний реєстр судових рішень

24.1/4-квартал Римського антиквентунального сучасні - 24.04.2024 року в строці № 353/160002/13 у Службі державної реєстрації судових рішень

[illegible]

DOI: 10.1002/for

Судебная коллегия по уголовным делам Верховного суда Республики Беларусь от 11.06.2021 г. № 02/2000/21 в отношении: Беларусь, Республика

2023/04/10/10:00

20.05.2024 № 270/510/24

реєстр судових рішень: ОКС: <https://sudebi.coat.gov.ua/review/119155666>

Российский судья: Сергей Сидоркин, sergey.sidorov@kzr.ru, +7 812 309 10 00

ресурс судебной власти. URL: <http://www.sudoblog.ru/2011/06/06/116661676>

ний державний реєстр судових рішень. URL: <https://reestr.court.gov.ua/ks-67146672>

резолюції судових рішень: <http://www.uscourts.gov.uk/uk/en/1101002000>, ухвала слідчого судді Новоукраїнського районного суду №19

da/REVIEW/115120004

Решено: ОКЕ: <https://reposit.gosudr.gov.ua/review/11914766/>

ORF: <https://ecysta.court.gov/da/review/116566446>

судових рішень. UKR. <https://scjsa.court.gov.ua/review/115154657>

ORF: <https://ojs.estrada.gov.ua/review/116541661>

судових рішень: www.pjsust.com.ua.gov.ua/KOVIEW/110070020