

## ENSURING THE CONTINUITY OF JUSTICE IN CRIMINAL CASES IN THE ASPECT OF STOPPING COURT PROCEEDINGS DURING MARTIAL LAW IN UKRAINE IN CONNECTION WITH THE CALL FOR MILITARY SERVICE OF THE ACCUSED DURING MOBILIZATION, FOR A SPECIAL PERIOD<sup>1</sup>

### ЗАБЕЗПЕЧЕННЯ БЕЗПЕРЕРВНОСТІ ПРАВОСУДДЯ У КРИМІНАЛЬНИХ СПРАВАХ В ЧАСТИНІ ЗУПИНЕННЯ СУДОВИХ ПРОВАДЖЕНЬ ПІД ЧАС ВОЄННОГО СТАНУ В УКРАЇНІ У ЗВ'ЯЗКУ З ПРИЗОВОМ НА ВІЙСЬКОВУ СЛУЖБУ ПІД ЧАС МОБІЛІЗАЦІЇ, НА ОСОБЛИВИЙ ПЕРІОД

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The article is devoted to consideration of the grounds and procedure for suspension of court proceedings during the martial law in Ukraine in connection with the call of the accused for military service during mobilization, for a special period. It outlines international standards for ensuring the continuity of justice in criminal cases. It is noted that the continuity of justice in criminal cases during the martial law in Ukraine is ensured by: changing the territorial jurisdiction or location of courts; participation of the parties and other participants in criminal proceedings during the trial via video conferencing, in particular with the use of their own technical means; restoration of lost materials of criminal proceedings; suspension of the trial in connection with the call of the accused for military service during mobilization, for a special period.

The judicial practice of local, appellate courts and the Supreme Court on the grounds and procedure for suspending court proceedings during martial law in Ukraine in connection with the call of the accused for military service during mobilization, for a special period, has been studied. Particular attention is paid to the consideration of the possibility of stopping court proceedings in connection with the service in the National Guard of Ukraine, a volunteer in territorial defense. The types of decisions of judges and the peculiarities of their justification based on the results of consideration of the petition of the prosecution or defense to suspend the trial in connection with the call of the accused for military service during mobilization for a special period are analyzed.

The conclusion proposes amendments to the current legislation in order to eliminate the problems described in the article and improve the institution of suspension of court proceedings by amending the criminal procedural legislation.

**Key words:** continuity of justice, international standards, reasonable terms of trial, court proceedings, martial law, military service, mobilization.

Стаття присвячена розгляду підстав та порядку зупинення судового провадження під час дії воєнного стану в Україні у зв'язку з призовом обвинуваченого для проходження військової служби під час мобілізації, на особливий період. В ній окреслені міжнародні стандарти забезпечення безперервності правосуддя у кримінальних справах. Звернуто увагу, що безперервність правосуддя у кримінальних справах під час дії воєнного стану в Україні забезпечується шляхом: зміни територіальної підсудності або місцезнаходження судів; участі сторін та інших учасників кримінального провадження під час судового розгляду у режимі відеоконференцз'язку, зокрема із застосуванням власних технічних засобів; відновлення втрачених матеріалів кримінального провадження; зупинення судового розгляду у зв'язку з призовом обвинуваченого для проходження військової служби під час мобілізації, на особливий період.

Досліджено судову практику місцевих, апеляційних судів та Верховного Суду щодо підстав та порядку зупинення судового провадження під час дії воєнного стану в Україні у зв'язку з призовом обвинуваченого для проходження військової служби під час мобілізації, на особливий період. Особливу увагу приділено розгляду можливості зупинення судового провадження у зв'язку із службою в Національній гвардії України, добровольцем в територіальній обороні. Проаналізовано види рішень суддів та особливості їх обґрунтування за результатами розгляду клопотання сторони обвинувачення або сторони захисту про зупинення судового провадження у зв'язку з призовом обвинуваченого для проходження військової служби під час мобілізації, на особливий період.

У висновку запропоновано зміни до чинного законодавства з метою усунення описаних у статті проблем та вдосконалення інституту зупинення судового провадження, шляхом внесення змін до кримінального процесуального законодавства.

**Ключові слова:** безперервність правосуддя, міжнародні стандарти, розумні строки судового розгляду, судове провадження, воєнний стан, військова служба, мобілізація.

Continuity of justice in criminal cases during martial law in Ukraine is ensured by: 1) changing the territorial jurisdiction or location of courts; 2) participation of the parties and other participants in criminal proceedings during the trial in the mode of video conferencing, in particular with the use of their own technical means; 3) restoration of lost materials of criminal proceedings; 4) suspension of the trial in connection with the call for military service of the accused during mobilization, for a special period. In this article we will pay attention exclusively to the last point.

According to paragraph 1 of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention), everyone has the right to a fair and public hearing of his case within a reasonable time by an independent and impartial court established by law, which will set the validity of any criminal charge brought against him.

The provisions of Part 1 of Art. 21 of the CPC guarantee everyone the right to a fair trial and resolution of the case within a reasonable time by an independent and impartial court established on the basis of the law. Reasonableness of terms is one of the principles of criminal proceedings under Article 7 of the CPC. In accordance with Part 1 of Art. 28 of the CPC, during criminal proceedings, each procedural action or procedural decision must be performed or taken within a reasonable time. Reasonable are the terms that are objectively necessary for the execution of procedural actions and the adoption of procedural decisions. They may not exceed the deadlines stipulated by the CPC for the execution of certain procedural actions or the adoption of certain procedural decisions.

Article 318 of the CPC defines the terms and general procedure for judicial proceedings. In accordance with the provisions of Parts 1 and 2 of this Article, the trial must be con-

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ducted and completed within a reasonable time and carried out in court session with the mandatory participation of the parties to the criminal proceedings, except the cases provided for by the CPC. The victim and other participants in the criminal proceedings are summoned to the court session. At the same time, the European Court of Human Rights has repeatedly repeated the meaning of guarantees of a reasonable period in relation to criminal proceedings, according to which: the accused, if he has not committed a criminal act, must be able to acquit himself without delay, while the accused, whose guilt has been proven, should not be subjected to additional punishment in the form of excessive delays in the consideration of his case, which may have negative consequences for his other rights guaranteed by the Convention. Thus, the accused in a criminal case should have the right to count on the implementation of proceedings in his case with special care and that the provisions of Article 6 of the Convention are designed to prevent the accused person from being too long in a state of uncertainty about his fate in criminal cases (paragraph 18 of the ECHR decision in the case “Wemhoff v. Federal Republic of Germany” dated 27.06.1968, application No. 2122/64; paragraph 5 of the ECHR decision in the case “Stogmuller v. Austria” dated 10.11.1969, application No. 1602/62; paragraph 58 of the ECHR decision in the case “H. v. France” dated 24.10.1989, application No. 10073/82; p. 71 ECHR decision in the case of “Ivanov v. Ukraine” of 07.12.2006, application No. 15007/02).

Suspension of court proceedings is caused by objectively existing inability to continue and finish the trial in connection with the absence of a real possibility of participation in the criminal proceedings of the accused (except in cases of special court proceedings) and in this regard, the temporary suspension of the main procedural activity expressed in procedural form, as a result of which measures are taken to eliminate the circumstances that became the basis for stopping the trial in order to resume and end it. Anticipating such an opportunity, the legislator proceeded from the fact that the circumstances that caused this would be eliminated. In other words, the court proceedings are stopped in order to restore it later. Its procedural significance lies in the fact that the trial has not yet been completed, the case cannot be resolved on the merits or closed, and additional measures must be taken for the purpose of the trial in accordance with the requirements of the criminal procedural law. This institute, in particular, is designed to protect the rights and legitimate interests of the accused, obliged the state bodies and officials to ensure the right of these subjects to participate in criminal proceedings [1, p. 352–353].

To make a decision on the suspension of judicial proceedings, the court must establish whether there is a necessary basis for this. The grounds for stopping the trial are the circumstances confirmed by the totality of evidence provided for in Article 335 of the CPC, the list of which is exhaustive and not subject to extended interpretation. Therefore, the suspension of court proceedings on any other grounds not provided for by the CPC is considered a significant violation of its requirements [1, p. 353].

In 14.04.2022, the Verkhovna Rada adopted the Law of Ukraine “On Amending the Criminal Procedure Code of Ukraine to Improve the Procedure for Conducting Criminal Proceedings under Martial Law,” paragraph 12 which amended Article 335 of the CPC, namely, the grounds for stopping the trial by conscription of the accused for military service during mobilization were expanded [2]. Thus, in accordance with Part 1 of Art. 335 of the Code of Criminal Procedure, if the accused declined to appear in court or fell ill with a mental or other serious long-term illness, which excludes his participation in the trial, or was called up for military service upon conscription during mobilization, for a special period<sup>2</sup>,

the court suspends the proceedings against such an accused until he is sought, recovery or dismissal from military service and continues judicial proceedings against other defendants, if it is carried out in relation to several persons (part 1 of article 335 of the Code of Criminal Procedure).

The analysis of the above-mentioned circumstances indicates that their common feature and, accordingly, the condition under which it is possible to speak about the suspension of judicial proceedings is the impossibility of ensuring the participation of the accused during judicial proceedings, due to objective circumstances or failure to fulfill his procedural duties. In this case, the conduct of proceedings by the court is objectively impossible, since the participation of the accused (except for cases of application of the in absentia procedure) during the trial is mandatory (part 2 of article 314, part 2 of article 318, part 1 of article 323 of the CPC).

At the same time, provided that the first two circumstances determined by Part 1 of Art. 335 of the CPC, the participation of the accused in court hearings is completely excluded and cannot be restored until their disappearance. Whereas with a prize for military service during mobilization for a special period, such an impossibility is not undeniable and unconditional. Based on the type of troops; tasks performed by the relevant military unit, its deployment; positions of the accused, etc., the court may state both the presence and absence of the accused’s ability to arrive at the hearing depending on the circumstances of a particular case.

The fact of mobilization of the accused should be the basis for stopping the trial only in cases where military service prevents the accused from participating in the trial.

Since the criminal procedure law does not use the combination of the words “the court can... stop” and “the court has the right to stop”, and the phrase “the court stops” is used to explain the will of the legislator, it can be concluded that part 1 of Article 335 of the CPC does not imply the right of the court, but its obligation to stop the proceedings in the presence of one of the circumstances given in this article. At the same time, Part 1 of Art. 335 of the CPC should be applied, taking into account not only (1) the formal correspondence of the actual situation, in connection with which the issue of making an appropriate decision is initiated, to the verbal construction of the norm, which reflects the content of the specific basis for stopping the proceedings, but also (2) the goals that the legislator sought to achieve by the results of supplementing the norm with a particular basis [5, paragraphs 6.3, 7].

This is also emphasized by the Grand Chamber of the Supreme Court, noting that the ways of interpreting the rules of law cannot be used in isolation from each other. Giving preference to the verbal and grammatical (literal) interpretation of the norms of legislation without simultaneous target (teleological) interpretation of them will not allow to establish the content, as well as the purpose and practical significance of the existence of a particular norm in legislation. This can lead to significant and unjustified compli-

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bodies, local governments, enterprises, institutions and organizations to operate in a special period, and the Armed Forces of Ukraine, other military formations, the operational and rescue civil protection service – to the organization and wartime states [3].

In accordance with the requirements of par. 13 Art. 1 of the Law of Ukraine “On the Defense of Ukraine,” a special period – the period that occurs from the moment the decision on mobilization is announced (except for the target one) or bringing it to the performers regarding hidden mobilization or since the introduction of martial law in Ukraine or in some of its localities and covering the time of mobilization, wartime and partially reconstruction period after the end of hostilities from 27.07.2022. 2462-IX [4].

Decree of the President of Ukraine of February 24, 2022 N 64/2022 “On the introduction of martial law in Ukraine” in Ukraine from 05 hours 30 minutes on February 24, 2022 introduced martial law. This Decree is approved by the Law of Ukraine of February 24, 2022 N2402IKh. In addition, by the Decree of the President of Ukraine of February 24, 2022, a general mobilization N69/2022 is announced. This Decree was approved by the Law of Ukraine of March 03, 2022 N2105-IX. Subsequently, by the Decree of the President of Ukraine of February 5, 2024, N50/2024 period for the general mobilization was extended in Ukraine from February 14, 2024 for 90 days.

<sup>2</sup> According to par. 4 Article 1 of the Law of Ukraine “On Mobilization Training and Mobilization” mobilization – a set of measures taken to systematically transfer the national economy, the activities of state authorities, other state

cations in law enforcement practice. Therefore, in order to achieve the goal of interpreting legal norms, it is advisable to use methods of interpretation in their totality and integrated relationship. The consequence of ignoring certain ways of interpreting norms, in particular, functional, systemic, comparative, may also be the prevalence of a formal approach (form) to understanding over the content (essence) of the circumstances of criminal proceedings, which should be investigated comprehensively, fully and impartially to comply with the principles of legality provided for in Article 9 of the CPC. The system method involves the analysis of this norm in relation to other related norms, primarily with the norm of Article 2 of the CPC, which defines the tasks of criminal proceedings [6, p. 2.3].

Taking into account the fact that in the explanatory note to the draft law, which the CPC supplemented with such grounds for suspending the trial as “conscription of the accused for military service during mobilization, for a special period,” as well as in the transcripts of the meetings of the Verkhovna Rada, during which the relevant changes were discussed and adopted, there is no indication of a specific, and not a common reason (improvement of the procedure for the implementation of criminal proceedings in the conditions of the introduction of martial law or a state of emergency in Ukraine or its particular areas) [7], in connection with which the relevant provisions are made to the law, the analysis of the legislator’s goals should proceed from the tasks of criminal proceedings provided for in Article 2 of the CPC, one of which is to ensure a quick trial so that everyone who committed a criminal offense is brought to justice to the extent of his guilt, no innocent person was accused or convicted.

Compliance with this approach in relation to the grounds for suspension of judicial proceedings is observed by the Grand Chamber of the Supreme Court. In particular, this is evidenced by her decision, in which, during the analysis of norms similar to Part 1 of Art. 335 of the CPC, but in administrative proceedings (Part 1 of Article 236 of the Code of Administrative Procedure), the panel of judges noted: (1) the suspension of proceedings in the case is a temporary break in proceedings caused by the presence of one of the circumstances provided for in the law that interfere with its consideration; (2) in order to decide on the suspension of proceedings in the case, the court in each case must find out what makes it impossible to consider the case [8].

In addition, it should be emphasized that part 1 of Art. 49 of the Criminal Code provides for the possibility of exempting a person from criminal liability in connection with the expiration of the statute of limitations (two years – in the case of a criminal offense for which the punishment provided for is less severe than the restriction of liberty; three years – in the case of a criminal offense for which punishment is provided for in the form of restriction of liberty, or in the case of a minor crime for which punishment is provided for in the form of imprisonment for a term not exceeding two years; five years – in the case of a minor crime, except in the case provided for in paragraph 2 of this part; ten years – in the case of a serious crime; fifteen years – in the case of a particularly serious crime), the course of which stops in the event of a person evading the court (part 2 of article 49 of the Criminal Code), but does not stop in the case of his call for military service during mobilization, for a special period.

Thus, it is seen that judges, when deciding on the suspension of court proceedings, need to find out whether the call of the accused for military service during the mobilization, for a special period to the objective impossibility of the accused to participate in the trial. At the same time, when it comes to a trial in the court of appeal, it should also take into account whether the participation of the accused in such a trial is mandatory, since, when it is not, there are

no objective grounds for suspending the trial (part 4 of article 405 of the CPC)<sup>3</sup>.

At the same time, the analysis of judicial practice shows that the majority of judges are limited only to studying the fact of enrollment of the accused for military service in the Armed Forces of Ukraine, without taking into account the actual possibility of the accused to participate in the trial. On the basis of this position, the judges note the following provisions:... “taking into account that the call during the mobilization of the accused is an objective, valid reason that prevents his personal participation in court sessions, the court considers it necessary to satisfy the prosecutor’s request and stop the trial of this criminal proceeding until the accused is dismissed from military service” [9; 10; 11]; “Part 1 of Art. 335 of the CPC of Ukraine contains an imperative norm obliging the court to stop the judicial proceedings against the accused, who was called up for military service upon conscription during mobilization before his dismissal from military service” [12]; “since Article 335 of the CPC is an imperative norm, in the presence of a court duty to suspend proceedings, the assessment of the question of whether such an allocation will negatively affect the completeness of the trial does not affect the decision on the suspension of criminal proceedings in connection with the mobilization and subsequent allocation of these materials of criminal proceedings” [13].

However, the possibility of the accused to participate in the trial may testify, for example, such circumstances as: personal or remote presence in other (previous) court hearings; military service in the military commissariat [14]; appointment to the post of student of retraining and advanced training courses of higher military educational institutions and the absence of objections of their leadership regarding the participation of the accused in the hearing in the mode of videoconferencing from their own technical means or from the premises of the court most geographically close to the place of its deployment [15], etc. The above facts confirm that there are no circumstances related to the call of the accused for military service, which would objectively prevent the accused from participating in the trial. At the same time, sometimes judges make decisions to suspend the trial, even if there is a request from the defense to hold a court session via video conferencing and objections to the suspension of the trial [16; 17].

Having considered the call of the accused for military service during mobilization, for a special period as a basis for the suspension of the trial, we will proceed to the analysis of the order of his suspension on this basis.

***Subjects of application for suspension of trial in connection with the call of the accused for military service during mobilization, for a special period.*** A petition to suspend the trial on this basis can be filed as representatives of the prosecution [9; 10; 11], and representatives of the defense side [18; 19]. There are also cases of consideration of this issue at the initiative of the court, in particular when: in the preparatory trial the accused could not objectively participate in court hearings even in the mode of video conferencing (the court repeatedly postponed court hearings to other dates due to the absence of the accused); in the same cases where he was able to connect, the connection with him was not stable, there were numerous technical problems with his connection to court sessions.; the accused was connected to court sessions from various places unequipped for this, for example, from the street, the zone of hostilities, etc. [10; 16; 20].

<sup>3</sup> The accused is subject to mandatory summons to the court session to participate in the appeal proceedings if the appeal raises the question of the deterioration of his situation or if the court considers his participation is mandatory, and the accused, who is detained, also if his petition was received (part 4 of article 401 of the CPC). The non-attendance of the parties or other participants in the criminal proceedings shall not preclude the conduct of the proceedings if such persons have been duly notified of the date, time and place of the appeal proceedings and have not given valid reasons for their non-attendance. If the participants of the criminal proceedings, whose participation according to the requirements of the CPC or the decision of the court of appeal is mandatory, did not come to participate in the proceedings, the appeal proceedings are postponed (part 4 of article 405 of the CPC).

***Types of applications for suspension of court proceedings in connection with the call of the accused for military service during mobilization, for a special period.*** Parties to criminal proceedings may apply for suspension of court proceedings against the accused before his dismissal from military service, and if there are several of them in criminal proceedings, then apply for the suspension of court proceedings against the accused and the allocation of materials of criminal proceedings against the latter in a separate proceeding [19]. In addition, there are petitions to suspend the trial against the accused until his dismissal from military service or until the defendant has a real opportunity to participate in court hearings [12; 13; 17; 21; 22; 23; 24].

The analysis of judicial practice shows that in confirmation of the fact of the call of the accused for military service during mobilization, the parties provide the following documents for a special period: the order of the commander of the military unit on the call of the accused for military service on the basis of Decree of the President of Ukraine of 24.02.2022 No. 69/2022; the order of the commander of the National Guard on the appointment of the commandant's squad of the special forces to the post of shooter [25]; military ID, certificate of the officer of the accused with information on his appointment to the post of commander of a mechanized platoon of a mechanized company of a mechanized battalion<sup>4</sup> [20; 26]; certificate of the military unit commander [18] or a copy of the extract from the order of the military unit commander [13; 22] on the stay of the accused in military service in a certain military unit.

In order to verify the existence of grounds for stopping the trial, some courts send requests to the Ministry of Defense of Ukraine, the relevant military units to provide up-to-date information as to the the accused's military service [10; 20]. For example, on October 17, 2023, the judge of the HAC sent a request No. 761/9536/23/30423/2023 to the military unit No. 1, in which the information was requested whether the accused was actually in the military service of the military unit No. 1. As can be seen from the response to the request of the court from the military unit No.1 of October 27, 2023 No. 15679, the junior lieutenant of the INDIVIDUAL\_8 does serve in the military unit No. 1 as commander of the 2nd mechanized platoon of the 4th mechanized company of the 2nd mechanized battalion, which is confirmed by the extract from the order of the acting commander of military unit No. 1 from 14.09.2023 No. 265 (vol. 2 AU p. 152–154) [20].

It should be noted that failure to appear at the hearing of duly notified participants does not prevent consideration of the issue of suspension of proceedings against the accused and his allocation.

Types of court decisions on the results of consideration of the petition for suspension of court proceedings in connection with the call of the accused for military service during mobilization, for a special period.

If the party who filed the motion to suspend the trial confirmed the documentary appeal of the accused for military service on conscription during mobilization, for a special period, then the judges decide on the suspension of the trial before his dismissal from military service. Otherwise, the judges decide to refuse to satisfy the petition for the suspension of the trial. For example, in the ruling of the EAC of July 12, 2023 in case No. 991/3361/22, the court noted the following: "Martial law in Ukraine has been going on for 17 months; this criminal case is at the stage of a preparatory court hearing from 06.09.2022,

that is, for ten months; from the submitted documents, the initiative of the accused directly to mobilize him is seen, such a call was made a year after the start of a full-scale invasion before the end of the preparatory trial; a military unit in which, according to available information, the accused can serve, is located in the city of Kyiv. In such circumstances, those documents that are available to the court regarding the accused's military service, without confirming the actual information about his functional duties, place of stay and available opportunities to participate in court hearings (including through videoconference without excommunication from the place of service using his own technical means), are not enough to unconditionally suspend the trial. Therefore, the defense counsel's request should be refused" [28].

If in criminal proceedings there are several accused, and the decision to suspend the trial is made in respect of one of them, then at the same time in the ruling on the suspension of the trial the judge notes the allocation of materials of criminal proceedings against the accused, called for military service during mobilization, for a special period and continues the trial against other accused [12]. At the same time, such a decision is made only when it cannot adversely affect the completeness of the trial, but on the contrary – it will facilitate a quick and complete consideration of the criminal proceedings and ensure the observance of reasonable terms in it, since for other accused the trial of the criminal proceedings must be continued<sup>5</sup>. In addition, in accordance with the provisions of Article 7, Part 1 of Article 21 of the CPC and paragraph 1 of Article 6 of the Convention, the State guarantees everyone the right to a fair trial and resolution of the case within a reasonable time. If in one criminal proceeding there are several accused in respect of whom the court has an objective opportunity to conduct a trial, however, court hearings in connection with the non-appearance of one of them due to his conscription will be postponed, then the right of the other accused to a fair trial within a reasonable time, as provided for by Article 28 of the CPC and Article 6 of the Convention, will be violated. Observing the balance of interests of all the accused in criminal proceedings, in order to ensure the right to a fair trial and resolution of the case within a reasonable time in respect of another accused in the case, the court should suspend the criminal proceedings against the mobilized accused and allocate it to a separate proceeding, and in respect of the other to continue in the general order.

In addition, the courts decide on the suspension of court proceedings against the accused before his dismissal from military service or before the actual possibility of the accused to participate in court hearings [12; 13; 17; 21; 24].

Also, the analysis of judicial practice indicates the possibility of postponing the trial until receiving a response to the court's request to the Ministry of Defense of Ukraine,

<sup>5</sup> According to the provisions of Part 1 of Art. 334 of the CPC, the materials of criminal proceedings can be combined into one proceeding or separated into a separate proceeding by the decision of the court under consideration of which they are, in accordance with the rules provided for in Art. 217 of the CPC. In particular, Part 3, Part 4 of Article 217 of the Criminal Procedure Code provides that, if necessary, materials of pre-trial investigation on one or more criminal offenses can be allocated to a separate proceeding if one person is suspected of committing several criminal offenses or two or more persons are suspected of committing one or more criminal offenses. In the decision of August 20, 2020 in the case No. 344/20740/18 (proceedings No. 51-874 km 20), the Supreme Court pointed out that the decision to allocate materials of criminal proceedings is made by the court if there are grounds determined for this by law [29]. Such a basis in this case is the call of a person for military service, the possibility and imperative determined by the legislator of the need for such allocation, as well as the condition that the allocation is not allowed if it may adversely affect the completeness of the trial as against the accused.

In addition, in accordance with paragraph 7 and paragraph 9 of section 3 of the Instructions for office work in local and appellate courts of Ukraine, approved by order of the SSA of August 20, 2019 No. 814, if the court considered the materials of criminal proceedings against several accused, and for the rest, the proceedings are stopped, such materials are separated, formed into separate covers and are subject to mandatory registration with the ASDS with the assignment of a new single unique number, and the introduction of information about the persons for whom the proceedings are stopped. To the new case (materials of criminal proceedings), copies of procedural documents certified by the judge from the previous case that are relevant for this case [30] are filed.

<sup>4</sup> Military service by conscription during mobilization, for a special period refers to the types of military service provided for in Part 6 of Art. 2 of the Law of Ukraine "On Military Duty and Military Service." In accordance with paragraph 1 of the Regulation on the military ID of ordinary, sergeant and foreman personnel, approved by Decree of the President of Ukraine No. 582/2016 of December 30, 2016, the military ID of ordinary, sergeant and foreman personnel (hereinafter – military ID card) is a document proving the identity of a serviceman (liable for military service) and determines the affiliation of its owner to the performance of military duty, and therefore is appropriate evidence that confirms the fact of conscription [27].

the command of the military unit, which includes the service of the accused, regarding the availability of his ability to participate in court hearings via videoconference using his own technical means at the place of his direct location or from the premises of any court most geographically close to his location [31].

Separately, consideration should be given to such grounds for stopping the trial in connection with the call of the accused for military service on conscription during mobilization, for a special period, as service in the national guard and volunteer in territorial defense.

Service as a volunteer in territorial defense as a basis for stopping court proceedings in connection with the call of the accused for military service on conscription during mobilization, for a special period. In accordance with the Law of Ukraine “On Military Duty and Military Service” of July 18, 1992 [32] military service is defined as a state service of a special nature, which consists in the professional activities of citizens of Ukraine (except for cases determined by law), foreigners and stateless persons related to the defense of Ukraine, its independence and territorial integrity (part 1 of article 2 of the Law of Ukraine “On military duty and military service”). Part 6 of Article 2 of this law provides for such types of military service as: urgent military service; military service by conscription during mobilization, for a special period; military service under the contract of ordinary personnel; military service under the contract of sergeants and foremen; military service (training) of cadets of higher military educational institutions and institutions of higher education, which include military institutes, faculties of military training, departments of military training, military training departments (hereinafter – higher military educational institutions and military educational units of higher education institutions), as well as institutions of professional pre-higher military education; military service under the contract of officers; military service by conscription of officers; military service by conscription of persons from among reservists in a special period. Therefore, service in territorial defense units is not a type of military service.

Territorial defense units consist of a military and military-civilian component. The civil component of territorial defense includes state bodies, local self-government bodies involved in territorial defense (part 3 of Article 2 of the Law of Ukraine “On the Basis of National Resistance” [33]), and the civil-military component includes the headquarters of territorial defense zones (districts) and volunteer formations of territorial communities involved in territorial defense (part 4 of Article 2 of the Law of Ukraine “On the Basis of National Resistance”).

The volunteer formation of a territorial community is a militarized unit formed on a voluntary basis from citizens of Ukraine living within the territory of the relevant territorial community, which is intended to participate in the preparation and implementation of territorial defense tasks (paragraph 2 of part 1 of article 2 of the Law of Ukraine “On the basis of national resistance”). They are based on citizens of Ukraine who have completed military service in the Armed Forces of Ukraine and/or service in other military formations and law enforcement agencies (part 6 of article 10 of the Law of Ukraine “On the basis of national resistance”). Citizens of Ukraine who have not performed military service in the Armed Forces of Ukraine and/or service in other military formations and law enforcement agencies are enrolled in volunteer formations of territorial communities after taking the oath of a territorial defense volunteer ((part 7 of article 10 of the Law of Ukraine “On the basis of national resistance”).

The territorial defense volunteer contract is concluded between the commander of the volunteer formation and the person who applied for membership in the volunteer formation. Such persons enter into a contract of a territorial defense volunteer for a period of three years. (par. 1 p. 21 “Regula-

tions on volunteer formations of the territorial community,” approved by the Decree of the Cabinet of Ministers of Ukraine of December 29, 2021 № 1449) [34].

The grounds for terminating the contract of a territorial defense volunteer are, among other things, conscription (acceptance) for military service (paragraph 23 of the “Regulation on Volunteer Formations of the Territorial Community,” approved by the Decree of the Cabinet of Ministers of Ukraine of December 29, 2021 № 1449 ).

At the time of martial law, by decision of the Commander-in-Chief of the Armed Forces of Ukraine, volunteer formations of territorial communities may be fully or partially involved in the performance of territorial defense tasks outside the designated zone of territorial defense, as well as sent to the areas of military (combat) operations (par. 6 part 2 of article 8 of the Law of Ukraine “On the basis of national resistance”).

The territorial defense units also include military units of the territorial defense forces of the Armed Forces of Ukraine and the resistance movement. Resistance movement is a system of military, information and special measures, the organization, planning, preparation and support of which is carried out in order to restore state sovereignty and territorial integrity during the rebuff of armed aggression against Ukraine (paragraph 12 of part 1 of article 1 of the Law of Ukraine “On the basis of national resistance”). The forces and means of the resistance movement are defined the forces and means of the security forces and the defense forces involved in the implementation of measures to organize, prepare and perform the tasks of the resistance movement, as well as individuals who, on a voluntary and confidential basis, are involved in the tasks of the resistance movement (paragraph 14 of part 1 of article 1 of the Law of Ukraine “On the basis of national resistance”).

The Territorial Defense Forces of the Armed Forces of Ukraine is a separate branch of the Armed Forces of Ukraine, which is entrusted with the organization, preparation and execution of territorial defense tasks (paragraph 15 of Part 1 of Article 1 of the Law of Ukraine “On the Basis of National Resistance”).

Consequently, a systematic analysis of all the above provisions gives grounds for concluding that, if a person is part of the territorial defense forces of the Armed Forces of Ukraine, then he is subject to such a reason for stopping the trial as a call for military service during mobilization, for a special period. However, if a person belongs to a resistance movement or a volunteer formation of a territorial community, then he is not covered by this ground for suspending judicial proceedings.

Analysis of judicial practice shows that judges differently assess volunteer service in territorial defense. Thus, some consider it as a basis for granting the request to suspend the trial [35]. Others, on the contrary, are refused to be satisfied, noting that the volunteer formation of the territorial community is not subordinate to any military unit, and there is no information on the execution of combat orders of the commander and finding the accused at the place of service [36]. It seems that the latter approach deserves support.

Service in the National Guard of Ukraine as a basis for stopping court proceedings in connection with the call of the accused for military service on conscription during mobilization, for a special period. According to Article 1 of the Law of Ukraine “On the National Guard of Ukraine” [37] the National Guard of Ukraine is a military formation with law enforcement functions, included in the system of the Ministry of Internal Affairs of Ukraine and designed to perform tasks for the protection and protection of life, rights, freedoms and legitimate interests of citizens, society and the state from criminal and other unlawful encroachments, protecting public safety and order and ensuring public safety, as well as in cooperation with law enforcement agencies – ensuring state security and protection of the state border, stopping terrorist activities, activities

of illegal paramilitary or armed formations (groups), terrorist organizations, organized groups and criminal organizations. In accordance with the law, it participates in cooperation with the Armed Forces of Ukraine in repelling armed aggression against Ukraine and eliminating the armed conflict by conducting military (combat) operations, as well as in performing territorial defense tasks. The National Guard of Ukraine includes, in particular, military units (units) (paragraph 3 of part 1 of article 5 of the Law of Ukraine "On the National Guard of Ukraine"). Therefore, the practice of those courts that recognize service in the National Guard of Ukraine as a reason for stopping the trial is considered correct [38; 39].

From the above it seems that in connection with the suspension of court proceedings for an indefinite period of time, which can last not only months, but also years, the accused will remain in a state of uncertainty about his fate. Thus, if the accused has the opportunity to participate in the trial, including using video conferencing, it is not advisable to stop the trial, since the consequence of this will be a violation of paragraph 1 of Article 6 of the Convention, Articles 2 and 21 of the CPC.

**Conclusion.** Applying Part 1 of Art. 335 of the CPC, judges must proceed from its intended interpretation, considering whether the suspension of court proceedings will not lead to the inability to fulfill the tasks of criminal proceedings provided for in Article 2 of the CPC. In order to ensure that the judges make a reasoned decision to suspend court proceedings in connection with the call of the accused for military service during mobilization, for a special period it is necessary to put part 1 of Art. 335 CPC in the following wording: "In the event that the accused has declined to appear in court or falls ill with a mental or other serious long-term illness, which excludes his participation in the trial, or was called up for military service upon conscription during mobilization, for a special period, the court suspends proceedings against such an accused, if this makes it impossible for the accused to participate in the hearing before his search, recovery, dismissal from military service or the occurrence of a real opportunity for the accused to participate in court hearings and continues judicial proceedings against other accused if it is carried out in relation to several persons. The search for the accused who evaded the court is announced by a court ruling, the organization of which is entrusted to the investigator and/or prosecutor".

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