

Legal challenges in Lviv region during quarantine

Lviv Regional Justice Reform Council

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In autumn 2018, EU Project "Pravo-Justice" started active work in regions to support implementation of reforms in justice sector locally. In particular, in November 2018, **Lviv Regional Justice Reform Council** was established in Lviv to implement the bottom-up reform by bringing region-specific challenges and decisions across to central authorities and organizing a better exchange of information on sector reforms from center to regions and at the interregional level. The task of the Council is to identify challenges arising in the process of judicial reform and to prepare generalized proposals for their solution. The functioning of the Regional Council should become a solid basis for establishing a permanent professional dialogue between the regions and the center. Currently, Regional Justice Reform Councils function in six regions of Ukraine.

These developments on challenges related to legal field during quarantine were prepared by members of Lviv Regional Justice Reform Council.

1. Justice during quarantine.

Challenge: differing approach in courts of Lviv region as to ensuring access to justice, including to court premises, obtaining consultations of court staff, information on court proceedings, participation in court hearings, adjournment of court proceedings, familiarization with case materials. Special working arrangements of the court, as a rule, are determined by the order of court president and differing working arrangements were formed in courts of the region during quarantine restrictions. Participants in court proceedings, including attorneys involved in court proceedings in various courts in the region have and constantly monitor situation in specific courts. In some cases, participants in court proceedings experienced difficulties in exercising their procedural rights, in particular, familiarization with a case file.

Solution option: forming similar working arrangements of courts is possible if courts in the region apply in uniform manner recommendations of the of Council of Judges of Ukraine concerning special working arrangements of courts taking into account cases of COVID-19 in a particular court.

Challenge: in some cases, communication of court staff with service users is not arranged or is not effective enough, which manifested, among other things, in challenges for parties to the case as to receiving information about postponement of court hearings, receiving copies of court decisions and using other court services.

Solution option: elaboration of general rules of communication of court staff with service users, informing about these rules on electronic court resources and supervision on the part of court management over their observance. Ensuring timely notifying litigants about the adjournment of the court hearing is important for personal safety of these individuals.

Challenge: "staff shortage" in some courts in the region leads to failures to meet procedural deadlines in cases, overloading judges and, accordingly, it may affect the quality of justice and the level of trust to court. Quarantine restrictions have exacerbated the challenge of staff shortage in courts because of illness of some judges as well as personal safety of judges and court staff during pandemic.

Solution option: the appointment of persons who have been duly selected on a competitive basis to the positions of judges, primarily in those courts in the region where the challenge of staff shortage is critical and the workload on judges is particularly high. The High Council of Justice and the President of Ukraine should take into account the peculiarities of courts functioning during quarantine when policy-making as to appointing new judges and employing court staff members.

Challenge: According to the results of the survey of bar community of Lviv region, there were difficulties with functioning of "E-court" system, in particular, with the connection and use of certain features of the system. The relevance and demand of the "E-court" system has been increased significantly during quarantine; however, system users report technical problems in using it, restrictions on certain components of the system, lack of proper technical support. During pandemic, e-court system remains the main safe and therefore well-suited way to use justice services. Thus, the increasing demand for this system has revealed some of its shortcomings.

Solution option: eliminating technical problems of "E-court" system functioning, providing proper technical support, training and drafting clear detailed instructions for system users. Using quarantine restrictions to

stimulate the expansion of "E-court" system usage in order to form practice of using this system after the quarantine.

2. Free legal aid amidst quarantine restrictions

Challenge: restriction of access to free legal aid for persons who have difficulties in using the remote communication format because of full transfer of free legal aid system in Lviv region to the remote format of services as of March 23, 2020. This form of operation of regional centers providing free secondary legal aid is due to the fact that the majority of free legal aid clients belong to groups at risk of severe consequences in case of infection with COVID-19. In the conditions of quarantine there is no possibility to receive face-to-face consultation within the system of free legal aid.

Solution option: continue and develop a mixed form of free legal aid which will combine face-to-face counseling and counseling through a variety of means of communication, including by telephone and through widely used messengers. With in-person counseling, strict adherence to quarantine restrictions should be ensured. These working arrangements should be adapted to changes in the epidemiological situation in the region and take into account the client's risk group. However, if it is impossible to provide free legal aid remotely or there is a threat that the quality of such a service will be reduced because of its remote format, with the consent of the client, the consultation should be conducted in person. This requires individual decisions based on case-by-case assessment.

3. Attorneys' activities and mediation during pandemic.

Challenge: quarantine restrictions necessitated a change in the tactics of litigation and provision of other services by an attorney, necessitated the formation of a new approach to communication with clients and maintaining the quality of attorneys' activities when providing services remotely. The issue of communication between attorneys and clients, courts and other public authorities was particularly important during the pandemic. For a long time, public authorities did not receive citizens in person, the remote format of interaction was often not effective enough, and the institute of attorneys' inquiries did not fully resolve this situation. Many attorneys in the region noted that during the quarantine period, they had difficulty attracting new clients. The issue of attorneys' personal safety has become particularly important in the provision of legal assistance in criminal proceedings.

In addition, attorneys in the region report cases of violation of their rights in case of refusal to participate in court hearings for reasons of personal safety, including if the attorney belongs to a risk group. Difficulties arise due to differing working arrangements of the courts and different approaches of judges as to adjournment of court hearings. Challenge is exacerbated if the client objects to remote format of legal services.

Solution option: forming methodological recommendations at the level of bar self-government of the region as to bar activities during the pandemic, interaction of bar self-government bodies with judicial self-government bodies to develop common framework for solving typical difficulties in communication between attorneys and courts because of quarantine restrictions. The Ukrainian National Bar Association of Ukraine conducts remote events in the format of webinars, discussions, etc. on certain issues of attorneys' activities during quarantine. Creating opportunities for attorneys in the region to receive advice from the bar self-government body if necessary.

Mediation seems to be particularly relevant in the context of quarantine because of difficulties in the administration of justice it is an alternative to litigation. Lviv region has a well-developed mediation system, mediation services are often provided by lawyers-mediators and online mediation resource in criminal proceedings has recently been introduced in the region. That is why the period of quarantine restrictions can contribute to forming a culture and expanding the practice of using mediation as opposed to litigation.

4. Notaries' services

Challenge: changing the format of work of notaries and restricting access to notarial services, especially if such a service is urgently needed. Notaries in the region have seen a decline in demand for notarial services due to the suspension of certain entities' activities. According to the Explanation of the Ministry of Justice on the peculiarities of the provision of notarial services, notaries are recommended to perform only urgent notarial acts which restricts access to notarial services that are not urgent, but the client feels the need to receive them quickly.

Solution option: expanding the practice of remote communication with notarial services users (receiving applications by mail, communication with clients remotely, by phone and through other means of communication). Reception of persons and performance of notarial acts according to a clearly defined and published schedule with strict observance of quarantine restrictions.

5. Legal business

Challenge: some representatives of legal business in the region were forced to temporarily suspend or limit their activities. Legal business is faced with the challenge of ensuring personal safety of employees and clients, especially in cases where provision of certain legal services remotely is not possible. Quarantine restrictions have affected legal services sector as clients needed to get law services on issues that did not arise before (such as the remuneration of employees during quarantine, legal aspects of employee testing, etc.). Attracting new customers proved to be problematic. In some cases, result of certain legal services, timing of their provision were unpredictable due to changes in the epidemiological situation, restrictions on transport (if the service is provided in another region).

Solution option: Representatives of legal business can move away from classic format of their activities, develop new rules of operation, develop adaptive practices of communication and provision of legal services, interact with each other and legal business of other regions to get mutual support.