

Digest of Justice-related challenges in the Region by Kharkiv Regional Justice Reform Council

Kharkiv Regional Justice Reform Council

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In autumn 2018, the EU Project Pravo-Justice started working actively in the regions to support the implementation of justice sector reforms on the ground. In particular, in November 2018, **Kharkiv Regional Justice Reform Council** was established in the city of Kharkiv to implement bottom-up reform by bringing region-specific challenges and decisions to the central level and organizing a better exchange of information on sector reforms from the center to the regions and interregionally. The RJRC aims to identify problematic issues that arise in the process of the judicial reform, and to prepare generalized solutions to address them. The RJRC operation should become a solid basis for establishing a permanent professional dialogue between the regions and the center. Today, there are six RJRCs across Ukraine.

These developments on problematic issues related to the legal sphere during quarantine have been prepared by members of Kharkiv Regional Justice Reform Council.

1. Justice during the quarantine.

Problem: lack of a unified approach to ensuring access to justice during the quarantine in the courts of Kharkiv region. On March 26, the High Council of Justice adopted a decision "On Access to Justice in the Context of the Pandemics of Acute Respiratory Disease COVID-19 caused by the coronavirus SARS-CoV-2". The decision set out the main recommendations for Ukrainian courts on how to work during the quarantine period and introduced a special regime of court operation for this period.

Such a regime was introduced differently not only in different jurisdictions but also within the same jurisdiction. For example, courts of general jurisdiction, which are the most numerous in the Kharkiv region, generally stopped administering justice in civil cases and cases of administrative offences since the beginning of the epidemic, while the consideration of criminal cases continued with restrictions. The administration of justice in criminal cases, especially at the beginning of the epidemic, depended a lot on the stage and on whether the accused was in custody. No criminal cases where the suspect or accused was not in custody would be considered. That situation completely changed by August 2020, and there is no problem now with administering justice in any disputes.

Instead, the courts of commercial and administrative jurisdictions from the very beginning of quarantine immediately introduced stricter measures for access to justice. A ban on visiting court premises was immediately imposed until the High Council of Justice developed and communicated to the courts the clarified rules of access to justice in the context of the COVID-19 acute respiratory pandemics, taking into account Ukraine's division into different quarantine zones.

Possible solution: The High Council of Justice should develop general recommendations for courts of different jurisdictions, taking into account the restrictions applicable in different quarantine zones.

Problem: lack of judges in some courts of general jurisdiction across the region which leads to violation of procedural deadlines, increases judicial workload, and, accordingly, may affect the quality of justice and confidence in courts. Kharkiv region is the third most populated region in Ukraine. As of December 1, 2019, 2.795 million people live in our region. The civil court system includes: 9 district courts in the city of Kharkiv

Dzerzhynskiy, Zhovtnevyi, Kyivskiy, Kominternovskiy, Leninskiy, Moskovskiy, Ordzhonikidzevskiy, Frunzenskiy, Chervonozavodskiy; 2 city courts: the city of Liubotyn and the city of Chuguiiv; 4 city-district courts: Iziumskiy, Kupianskiy, Lozivskiy, Pervomaiskiy; 22 district courts: Balakliiskiy, Barvinkivskiy, Blyzniukivskiy, Bohodukhivskiy, Borivskiy, Valkivskiy, Velykoburlutskiy, Vovchanskyy, Dvorichanskyy, Derchachivskiy, Zachepylivskiy, Zmiivskiy, Zolochivskiy, Kehichivskiy, Kolomatskiy, Krasnohradskiy, Krasnokutskiy, Novovodolazkiy, Pechenizkiy, Sakhnovshchynskiy, Kharkivskiy, Shevchenkivskiy. In total, there are 37 first instance courts of general jurisdiction in Kharkiv region with only one court of appeal – Kharkiv Appellate Court.

In the meantime, procedural deadlines are much better respected in economic and administrative courts.

Possible solution: recommend the High Council of Justice to resume temporary secondment of judges to courts with critically low number of judges or increased workload. For example, Chervonozavodskiy District Court of Kharkiv can be listed among such courts. Taking into account the terms of trials in general courts, it is necessary to prolong the secondment period. The High Council of Justice may be recommended to initiate

amendments to the existing legislation to set up an alternative split of territorial jurisdiction among general courts.

Problem: usage of e-court. In the context of quarantine, the relevant subsystem of the Unified Judicial Information and Telecommunication System guarantees the timeliness of receipt of documents in cases and ensures the absence of physical contact between the participants to the process and the court. In general, it should be noted that the E-court system users experience problems with using it.

As a temporary solution during the pandemics, the courts started accepting and registering documents sent by the parties to a case to the court's official e-mail address and certified with the e-signature.

Possible solution: develop training materials for new users of the "E-Court" system. Develop a training course for system users, work with the regional bar council, legal aid system, international technical aid projects, and non-governmental organizations.

2. Practice of law and legal business

Problem: pandemic generally affected the lawyers of the region. The number of clients has decreased, the courts have not administered justice for some time, and the working routine of state authorities and local self-government bodies has changed.

In the context of pandemic, not all government agencies and officials were willing to work remotely. In particular, lawyers made extensive use of the possibility sending all correspondence by e-mail. Not all national and local authorities have reorganized the registration office procedure so that it could ensure registration and processing of incoming e-mails in a timely manner.

Possible solution: it is necessary to relaunch connecting of public authorities and local governments to the Trembita system.

It is necessary to set up the E-cabinet for lawyers which with the possibility to be connected to available government services. All correspondence could be done through such electronic cabinet using e-signature. As of today, such development is not underway. The development of E-cabinets for BTs, notaries, and PEOs can be taken as an example

The lawyer is a qualified service provider. Search of information takes much of their working time; as a result, the court has to claim the necessary information in certain cases. The absence of documents practically means increase in the time of trial.

Problem: in general, the problems faced by law firms are almost the same as the problems of enterprises in Kharkiv region. The quarantine has disrupted regular technological cycles at enterprises; some logistical problems arose; while some companies experienced solvency-relating difficulties. Many companies have exercised their right to make their employees go on unpaid leave. In general, this situation has affected the legal business as well. Some employees of the companies were forced to take unpaid leave, while others have been working remotely.

Law firms have not received any state aid. No support is provided locally to lawyers by either local authorities or local governments.

No transparency in the procurement of legal services by local governments, enterprises, institutions, and organizations of the Kharkiv region.

Possible solution: develop regional programs for attracting law firms to provide high-quality services to local governments, enterprises and institutions.

Introduce open competitive procedures for procurement of legal services without limiting the amount of such procurement. Open conditions will facilitate good competition in the market of legal services and provide support to law firms during the quarantine.

3. SEOs and PEOs

Problem: introduction of quarantine measures made it impossible for SEOs and PEOs to receive people in person. EOs have also been prohibited from going the debtor's place of residence and enforcing court decisions on evictions. Special boxes have been established to facilitate document submission to the state enforcement bodies. As a consequence, the parties' right to review the materials of the enforcement proceedings and control the EO's actions of has been limited. The automated enforcement case management system contains only EO's decisions. No other material of enforcement proceedings can be accessed remotely.

Possible solution: give the parties access to the materials of enforcement proceedings by sending scanned copies of materials by e-mail or any other convenient means; provide technical capacity and oblige the EOs to upload scanned copies of enforcement proceedings to the automated enforcement case management system; envisage the possibility for SEOs to receive in person the parties to certain urgent categories of cases (for example, collection of (child) support payments, alimony), if it is not possible to hold a reception remotely.

4. Activities of BTs during the lockdown

Problem: change in the format of the BTs' activities; changing in the way of interaction with debtors, creditors, and the court. Due to the introduction of quarantine measures, including limited circulation between settlements, ensuring security for the participants to the procedure; face-to-face meetings have been suspended or switched to the remote mode, which does not always end up as desired.

Possible solution: develop guidelines for the BTs' self-governance bodies on the way of action during the pandemic.

5. Notary

Problem: change in the format of the notaries' operation and restricted access to notarial services, especially if there is an urgent need to receive certain service. The demand for notary services has decreased due to the suspension or termination of activities of individuals and legal entities. According to the Clarification by the Ministry of Justice on the peculiarities of providing notarial services, notaries are recommended to perform only urgent notarial acts, which restricts access to notarial services that are not urgent, but the client still wants to receive them quickly.

Possible solution: expand forms and methods of remote communication with users of notarial services (reception of applications by mail, communication with clients remotely, by phone and through other means of communication). Receive persons and perform notarial acts according to a clearly defined and publicly available schedule with strict observance of the quarantine restrictions.