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Правові виклики сучасності: захист прав людини в умовах пандемії

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Редколегія не несе відповідальності за науковий зміст і виклад матеріалу, що подано у рукописах.

Для науковців, аспірантів та студентів.

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FEATURES OF JUDICIAL PROTECTION OF THE RIGHTS OF ECONOMIC ENTITIES DURING THE COVID-19 PANDEMIC

The Covid-19 pandemic, which shook the world in early 2020, changed the lives of each of us, dividing it into before and after. Quarantine restrictions, which have been rapidly introduced around the world, have inevitably affected the work of all of us, including the courts.

The peculiarity of resolving economic disputes is that they must be resolved as soon as possible, due to the dynamism of the economy. After all, almost every litigation in one way or another affects the economic activity of the business entity, so all participants in business relations are interested in the earliest possible resolution of cases with their participation.

At the beginning of the quarantine measures, the courts were not ready for such conditions, but given the need to consider and resolve economic disputes as soon as possible, judges had to look for new ways to deal with cases that would minimize congestion and provide the right of every participant in the proceedings to be heard and to take part in the court hearing. To this end, courts in Ukraine have begun to use special programs to conduct court hearings online.

Thus, on April 3, 2020, the Dnipropetrovsk District Administrative Court ruled to satisfy the application of the plaintiff's representative to hold a court hearing by videoconference using the Zoom application. With regard to the courts of economic jurisdiction, the leader in this matter was the Northern Economic Court of Appeal, which on April 22, 2020 also held the first video conference using the "EasyCon" system. Some courts have also practiced court hearings using Skype.

At the same time, the lack of proper legal regulation of conducting court hearings by videoconference using participants own technical means caused a number of difficulties in holding such hearings. Therefore, in order to resolve this issue, the High Council of Justice accelerated the launch of the Unified Judicial Information and Telecommunication System. Thus, on September 4, 2021, the High Council of Justice published an announcement on the start of operation of three subsystems (modules) of it – "Electronic Cabinet", "Electronic Court", video conferencing subsystems. These subsystems (modules), including the videoconferencing subsystem, mentioned in the announcement of the High Council of Justice, have been officially operational since October 5, 2021. Now all online court hearings are held using the "EasyCon" system.

In addition, the use of the "EasyCon" system causes certain problems. First of all, it requires from the participants of the process the appropriate technical means, high-speed and uninterrupted connection to the Internet. Also, registration in the system is carried out using an electronic digital signature. However, not all stakeholders have a digital signature. In addition, there is a risk of technical inability to participate in video conferencing outside the courtroom, interruption of communication, etc. There are also reasonable doubts about the confidentiality and leakage of information in the "EasyCon" system. There is also no possibility to submit documents during the court hearing, as well as problems with the demonstration of written evidence to the participants in the process, who are involved in the case remotely. It should be noted that today only about 60% of courtrooms are equipped with equipment that allows for court hearings by videoconference, which can lead to delays in court proceedings.

An important problem is a real possibility of getting acquainted with the case materials remotely. Currently, only a few courts provide access to case materials remotely, which is not enough.

It is also important to ensure the openness of the trial and the right of any person to be present at the hearing, as this is an important component of the constitutional principle of publicity of the trial. The provision on the right of the court to restrict access to hearings of persons who are not participants in the proceedings will contribute to abuse by the court. Therefore, it is correct to provide that in case the court restricts access to the court hearing of the visitors, it is necessary to provide a mandatory video broadcast of this hearing on the Internet.

Court etiquette may need to be re-evaluated accordingly for remote hearings, including appropriate dress codes and screen backgrounds for judges and other participants in order to ensure the seriousness of proceedings is upheld. Policies on how to require someone to “leave” the courtroom if necessary, may be needed, as well as how to engage individuals who are not participating sufficiently, including by picking up on non-verbal cues. Protections to ensure that participants are not excluded from hearings also need to be evaluated. There are also concerns with the illegitimate recording of hearings [1, p. 26].

In general, it should be noted that the problems and challenges facing the judiciary in Ukraine also arise in other countries around the world. Thus, in the scientific literature devoted to the study of the administration of justice in Lithuania during the Covid-19 pandemic, it is noted:

Such a ‘hybrid’ way of hearing cases could shorten time limits for court proceedings and make proceedings even more approachable for the public. Perhaps nobody could have anticipated that online court hearings would become quite normal so quickly. Many practitioners and scholars thought it would take more time to get used to the concept of online hearings [2, p. 159].

Also, the problems of judicial protection of the rights of economic entities in a pandemic include the delay of court proceedings due to the absence of participants in the process. Thus, there are frequent cases of postponement of court hearings due to the self-isolation of participants of the process or their treatment for coronavirus disease. All this does not contribute to the prompt resolution of disputes involving business entities.

Thus, the COVID-19 pandemic has posed many challenges to the judiciary in general and to commercial courts in particular. Judicial protection of the rights of economic entities under quarantine restrictions is difficult, which inevitably affects the country’s economy.

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