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THE UKRAINIAN MODEL OF THE NATIONAL JUDICIARY REGARDING THE ESTABLISHMENT OF THE FACT OF DEATH AND BIRTH IN THE TEMPORARILY OCCUPIED TERRITORY: A RETROSPECTIVE ANALYSIS OF 2014–2022 CHANGES IN CIVIL PROCEDURE LEGISLATION

Abstract. The article is devoted to the study of peculiarities of the Ukrainian model of establishing the fact of death/birth of a person in the temporarily occupied territory of Ukraine during the Russian Federation's large-scale military aggression against Ukraine. As part of the present work, the authors carried out a detailed comparative analysis of the revisions of Article 317 of the Civil Procedure Code of Ukraine, which underwent significant changes due to the adoption by the Verkhovna Rada of Ukraine of Law of Ukraine No. 2345-IX as of July 1, 2022 "On Amendments to Certain Legislative Acts of Ukraine Regarding the Peculiarities of Proceedings" in cases of establishing the fact of birth or death of a person during martial or state of emergency in temporarily occupied territories". A legal evaluation of these changes was given, and their effectiveness was analyzed taking into account the already formed judicial practice. Peculiarities of the Georgian and Moldovan models of establishing the facts of the death/birth of a person in the temporarily occupied territory are singled out, since in the past Georgia and Moldova, like Ukraine, were "lucky" to experience the "care of a brotherly neighbor". Given the military realities in Ukraine and the prevailing circumstances, an opinion is expressed as to whether it is possible to introduce features of the Moldovan and/or Georgian models in Ukraine.

The purpose of the study is to analyze the key legislative changes to the provisions of the Civil Procedure Code in terms of simplifying the procedure for establishing the fact of birth and death of a person in the temporarily occupied territory during martial law and state of emergency; to compare the relevant versions of Article 317 of the Civil Code of Ukraine to provide a legal assessment of the effectiveness of the relevant changes; to highlight the key features of the Georgian and Moldovan models of establishing the fact of birth and death of a person in the temporarily occupied territory with the possibility of further adoption of experience and its implementation in Ukraine.

Research methodology. The methods of system analysis and comparison were used in the research.

Results prove that the problems of legal regulation of the procedure for establishing the fact of birth and death of a person in the temporarily occupied territory of Ukraine are poorly studied. However, it is worth noting the significant contribution of K.V. Husarova (Husarov, 2020), I. M. Volkova, T. A. Stoyanova, M. H. Sviderska, O. I. Ugrynovska and Pinyashka M. (Ugrynovska, Pinyashka, 2020), and other specialists in the science of civil procedure law. The empirical basis of studying a primary source is the modern legislation of Ukraine, as well as the legislation of Georgia and Moldova.

In addition, it should be noted that in her research, Maryna Basilashvili covered the comparative legal analysis of registration of civil status acts in Ukraine and Georgia.

Conclusions. The legislative changes analyzed in this study in terms of simplifying proceedings in cases of establishing the fact of birth or death of a person in the territory where martial law or state of emergency has been imposed, or in the temporarily occupied territory of Ukraine, can rightly be called progressive, appropriate and necessary, since they are dictated by the realities of wartime in our country. Moreover, they will contribute to the unification of judicial practice in establishing the fact of birth and death of a person in the territory where martial law or state of emergency has been imposed, or in the temporarily occupied territory of Ukraine. But the legislator still has much work to do in this regard. The regulation of the institution of establishing the fact of birth and death of a person in the temporarily occupied territory in Georgia and Moldova has many features and original legal norms that give grounds to conclude about the possibility of implementing specific positive points of foreign models of establishing the specified types of legal facts in Ukraine by improving Ukrainian legislation and applying in the Ukrainian legal space.

Key words: legal fact, fact of death, fact of birth, temporarily occupied territory, martial law, Georgia, Moldova.

1. Introduction

The consequence of the 2014 Russian Federation's armed aggression against Ukraine which had three phases (***the first:*** as of February 20, 2014, when it was recorded the first cases of violation by the Armed Forces of the Russian Federation contrary to the Russian Federation's international legal obligations of the procedure for crossing the state border of Ukraine in the Kerch Strait and use of its army units stationed in Crimea; ***the second*** started in April, 2014, when armed bandit groupings controlled, managed and financed by secret agencies of the Russian Federation proclaimed the "Donetsk People's Republic" (7 April, 2014) and the "Luhansk People's Republic" (27 April, 2014); ***the third*** started on August 27, 2014, with mass invasion of the territory of Donetsk and Luhansk regions by regular units of the Armed Forces of the Russian Federation), and was condemned by the world community) (Rezoliutsiia Parlamentskoi asamblei Rady Yevropy № 2122, 2016) was illegitimate military occupation and subsequent illegal annexation of the territory of the Autonomous Republic of Crimea and the city of Sevastopol – an integral part of the state territory of Ukraine, military occupation of a large part of the state territory of Ukraine in the Donetsk and Luhansk regions (Postanova Verkhovnoi Rady Ukrainy Pro Zaiavu Verkhovnoi Rady Ukrainy Pro vidsich zbroinii ahresii Rosiiskoi Federatsii ta podolannia yii naslidkiv, 2015).

The illegal occupation of part of the Ukrainian territory by the Russian Federation has caused many problems in every sphere of public life of our country. They also affected the state registration of civil status acts. It refers to those practical problems that arise in the state registration of civil status acts for citizens living in the temporarily occupied territory of Ukraine, i.e., the Autonomous Republic of Crimea, the city of Sevastopol, and some districts, cities, towns and villages of Donetsk and Luhansk regions. First of all, it is a case of the acts of birth and death in the temporarily occupied territory of Ukraine. Despite the armed aggression and occupation, the biological processes of human birth and death continued. From 2014 to 2017, about 200,000 people were born in the temporarily occupied territory, and about 270,000 people died (Analitychna zapyska blahodiinoho fondu «Pravonazakhyst» shchodo administratyvnoi protsedury reiestratsii aktiv narodzhennia ta smerti, yaki vidbulys na TOT, 2022). In addition, in the Autonomous Republic of Crimea, the number of births was as follows: in 2016 – 22,995 people, in 2017 – 9,810 people. At the same time, the number of deaths in the relevant territory was as follows: in 2016 – 28,932 people, in 2017 – 14,323 people. In turn, in the territory of the so-called "DPR", there were recorded the following data: • in 2016 – 11,771 births and 34,833 deaths; • in 2017 – 5,875 births and 17,866 deaths (Uhrynovska, Piniashko, 2020, p. 51).

The above problems were triggered by the failure to provide appropriate medical documents specified by the legislation of Ukraine, since documents issued by the occupation authorities were not considered as such in the meaning of Ukrainian legislation. Consequently, the Ukrainian authorities of the state registration of civil status acts could not register, and a person, accordingly, could not obtain a birth/death certificate of persons resided/residing in the temporarily occupied territory of Ukraine determined by the Verkhovna Rada of Ukraine.

Given the circumstances, it was obvious that it would be impossible to solve the problem concerned via administrative means through empowering the bodies of state register of civil status acts and, probably, would not be too effective at the mentioned stage.

In this regard, the Law of Ukraine "On Amendments to the Civil Procedure Code of Ukraine concerning Establishment of Fact

of Birth or Death in the Temporarily Occupied Territory of Ukraine" dated February 4, 2016 No. 990-VIII, which entered into force on February 24, 2016 (hereinafter referred to as Law No. 990-VIII) updated the Civil Procedure Code of Ukraine by supplementing with **article 257-1 " Peculiarities of proceedings on establishing the fact of birth or death in the temporarily occupied territory of Ukraine"** (Zakon Ukrainy Pro vnesennia zmin do Tsyvilnoho protsesualnoho kodeksu Ukrainy shchodo vstanovlennia faktu narodzhennia abo smerti oby na tymaschovo ok okupi terytorii, Ukrainy, 2016). Thus, the law's provisions, for the first time in Ukraine, enshrined the institution of ***"establishing the fact of birth or death in the temporarily occupied territory of Ukraine"*** at the legislative level.

As can be seen from the explanatory note to the Law No. 990-VIII, it was adopted to optimize the process of obtaining birth/death certificates by persons residing in the temporarily occupied territory of Ukraine determined by the Verkhovna Rada of Ukraine without appropriate medical documents provided for by the legislation of Ukraine. It would contribute to ensuring the enforcement of the rights of citizens living in the temporarily occupied territory of Ukraine to obtain the certificates (Poiasniuvalna zapyska do proektu Zakonu Ukrainy Pro vnesennia zmin do Tsyvilnoho protsesualnoho kodeksu Ukrainy shchodo vstanovlennia faktu narodzhennia abo sti na tymaschovo okovi terupyii, Ukrainy, 2015).

As part of the "judicial reform", the Verkhovna Rada of Ukraine adopted the Law of Ukraine No.2147-VIII on October 3, 2017, which entered into force on December 15, 2017, "On Amendments to the Economic Procedure Code of Ukraine, the Civil Procedure Code of Ukraine, the Code of Administrative Procedure of Ukraine and other legislative acts" (hereinafter – the Law No.2147-VIII), which amended the Civil Procedure Code of Ukraine and set out its provisions in a new version. The enshrined novels allowed the scientific community to define the code in professional circles as a "new Civil Procedue Code of Ukraine". In fact, the provisions of Article 317 of the new CPC fixed the peculiarities of proceedings in cases of registering birth or death in the temporarily occupied territory of Ukraine, which will be further discussed in the present study (Zakon Ukrainy Pro vnesennia zmin do Hospodarskoho protsesualnoho kodeksu Ukrainy, Tsyvilnoho protsesualnoho kodeksu Ukrainy, Kodeksu administratyvnoho sudochynstva Ukrainy ta inshykh zakonodavchykh aktiv, 2017).

2. Legislative changes

On February 24, 2022, a new phase of the Russian Federation's armed aggression began, which was marked by a large-scale military invasion of the sovereign territory of the Ukrainian state (Rezoliutsiia Generalnoi Asamblei Orhanizatsii Obiednanykh Natsii "Ahresiia proty Ukrainy", A/RES/ES-11/1, 2022; Promizhne rishennia Mizhnarodnoho sudu OON, 2022). The "elder loving brother" called it a "special military operation". The Decree of the President of Ukraine No. 64 dated 24.02.2022, approved by the Law of Ukraine dated 24.02.2022 No. 2102-IX, imposed martial law in Ukraine from 05:30 am on February 24, 2022, in connection with the military aggression of the Russian Federation against Ukraine based on the proposal of the National Security and Defense Council of Ukraine, in accordance with paragraph 20 of part one of Article 106 of the Constitution of Ukraine, the Law of Ukraine "On the Legal Regime of Martial Law" (Ukaz Prezydenta Ukrainy "Pro vvedennia voiennoho stanu v Ukraini", 2022), which was subsequently repeatedly extended and continues at the present time.

As a result of the advance of the Russian army, part of the Ukrainian territory is or has been under the temporary control of the aggressor country's military. And some cities, for example, Mariupol, are under siege almost from the beginning of a new phase of armed aggression. All this time, the Russian army has been committing systematic and massive crimes against the civilian population, including indiscriminate shelling using artillery and air raids on objects of the private residential sector of civilian infrastructure (hospitals, libraries, shelters, etc.). Numerous cases of shooting of the civilian population in the territories temporarily controlled by Russian troops were recorded which could not be properly documented. According to the information received, mass killings and burials of civilians are happening in the territories of Ukraine temporarily occupied by the Russian military. There is also information about attempts of the Russian military to dispose of the bodies of civilians whom they killed to hide crimes. In the territories controlled or blocked by the army of the aggressor state, there are facts of the birth of children who, as a result of active hostilities or temporary control of settlements by the Russian army, cannot be properly registered (Poiasniuvalna zapyska do proektu Zakonu Ukrainy Pro vnesennia zmin do deiakykh zakonodavchykh aktiv Ukrainy shchodo osoblyvostei vstanovlennia yurydychnykh faktiv v umovakhiennoho chy nadzvychainoho stanu, 2022).

Following data posted on the website of the Ukrainian Parliament Commissioner for Human Rights as of December 2022, 15,000 people were known to be missing under special circumstances (Upovnovazhenyi Verkhovnoi Rady Ukrainy z prav liudyny, 2022).

Moreover, the Office of the United Nations High Commissioner for Human Rights confirmed 6,702 deaths and 10,479 injured civilians in Ukraine due to a full-scale Russian invasion (from February 24 to December 4). From November 1 to November 30, OHCHR recorded 162 civilian deaths and 526 injured in Ukraine. The organization emphasizes that the real number of deaths is much higher, as information from some places where intense hostilities continue is delayed, and many reports still need to be confirmed. This applies, for example, to the settlements of Mariupol (Donetsk region), Izium (Kharkiv region), Lysychansk, Popasna and Sievierodonetsk (Luhansk region), where, reportedly, there were numerous civilian deaths or injuries. In OHCHR, they point out that most of the confirmed losses were due to the use of explosives with wide area effects, including shelling via heavy artillery and multiple-launch rocket systems, as well as missile and air attacks (Upvoradas).

All the facts of birth and death occurred in the conditions and within the territory subject to martial law required a comprehensive solution and a simplified procedure for their registration by analogy with a simplified procedure for registering birth and death in the temporarily occupied territory of Ukraine.

In order to promote the exercise and protection of civil rights and maintain proper registration of births and deaths during martial law or state of emergency, the Verkhovna Rada of Ukraine adopted the Law of Ukraine No. 2345-IX as of July 1, 2022 "On Amendments to Certain Legislative Acts of Ukraine on the Specifics of Proceedings in Cases on Establishing the Fact of Birth or Death during Martial Law/ State of Emergency in Temporarily Occupied Territories", which entered into force on August 7, 2022 (hereinafter referred to as the Law No. 2345-IX) (Zakon Ukrainy Pro vnesennia zmin do deiakykh zakonodavchykh aktiv Ukrainy shchodo osoblyvostei provadzhennia u spravakh pro vstanovlennia faktu narodzhennia abo smerti osoby v umovakh voiennoho chy nadzvychainoho stanu ta na tymchasovo okupovanykh terytoriiakh, 2022). Law No. 2345-IX amended the Civil Procedure Code of Ukraine by introducing a simplified procedure for establishing the legal facts of birth and death in the territory in which martial law or state of emergency operates, and the provisions of Article 317 are restated.

In this regard, the authors further present comparative analysis of the peculiarities of proceedings in cases of registering birth or death during martial law or emergency state in the temporarily occupied territories, enshrined in Article 317 of the CPC of Ukraine as revised in **Law No. 2147-VIII (hereinafter for convenience – the old wording is until August 6, 2022, inclusively) and Law No. 2345-IX (hereinafter for convenience – the new version is as of August 7, 2022).**

The first particularity of the amendments enshrined by Law No. 2345-IX is the **expansion of the territorial scope of the provisions of Article 317 of the CPC of Ukraine**. In particular, this follows from the analysis of the article's title in both versions. Thus, in the older version, the provisions of Article 317 concerned proceedings in cases of registering birth or death only in **the temporarily occupied territory of Ukraine**. However, in the new version, the article regulates proceedings in cases of registering birth or death in the **territory in which martial law or emergency state was introduced, or in the temporarily occupied territory of Ukraine.**

Therefore, the scope of Article 317 of the CPC of Ukraine, in addition to the temporarily occupied territory of Ukraine, is also extended to the territory where martial law or emergency state is introduced. In addition, the revised version does not specify the definition of the temporarily occupied territory of Ukraine by the Verkhovna Rada of Ukraine.

The amendments were obviously dictated by martial law imposed throughout Ukraine on February 24, 2022, which is currently ongoing.

The explanatory note to the draft Law No. 2345-IX, when substantiating the need to extend the relevant procedure for establishing facts for the period of the emergency state, holds that the same procedure for registering birth and death should be extended during the emergency state which, in accordance with law norms, is a special legal regime that can be temporarily introduced in Ukraine or its individual areas in the case of anthropogenic or natural emergencies not lower than the national level, which have led or may lead to human and material losses, pose a threat to the life and health of citizens, or in an attempt to seize state power or change the constitutional order of Ukraine by violence and, under the Law, provides for vesting the relevant state authorities, military command and local self-government bodies with the powers necessary to avert a threat and ensure the safety and health of citizens, the normal functioning of the national economy, state authorities and local self-government bodies, and protection of the constitutional order;

it also allows for temporary, due to the threat, restrictions in exercising constitutional rights and freedoms of man and citizen and the rights and legitimate interests of legal entities with an indication of their duration (Poiasniuvalna zapyska do proektu Zakonu Ukrainy Pro vnesennia zmin do deiakykh zakonodavchykh aktiv Ukrainy shchodo osoblyvostei stanovlennia yurydychnykh faktiv v umovakh voiennoho chy nadzvychainoho stanu, 2022).

As for the specification of the territory in which martial law or a state of emergency has been imposed, or in the temporarily occupied territory of Ukraine, it should be noted the following.

Following the provisions of Article 5 of the Law of Ukraine "On the Legal Regime of Martial Law", martial law in Ukraine or in its particular areas is introduced on the proposal of the National Security and Defense Council of Ukraine by the Decree of the President of Ukraine approved by the Verkhovna Rada of Ukraine (Zakon Ukrainy Pro pravovyi rezhym voiennoho stanu, 2015).

The state of emergency in Ukraine or in its particular areas is introduced by the Decree of the President of Ukraine, which is subject to approval by the Verkhovna Rada of Ukraine within two days from the moment of the appeal of the President of Ukraine (Article 5 of the Law of Ukraine "On the Legal Regime of the State of Emergency") (Zakon Ukrainy Pro pravovyi rezhym nadzvychainoho stanu, 2000).

As for the temporarily occupied territory of Ukraine, the following should be noted.

The current legislation of Ukraine does not define the concept of "temporarily occupied territory of Ukraine". Only in Article 1 of the Law of Ukraine "On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine", which determines the legal status of the temporarily occupied territory of Ukraine, it is stated that the **territory of Ukraine temporarily occupied by the Russian Federation** (hereinafter referred to as the temporarily occupied territory) is an integral part of the territory of Ukraine, which is subject to the Constitution and laws of Ukraine, as well as international treaties, the consent to be bound by which is provided by the Verkhovna Rada of Ukraine. In addition, the article contains a note about the beginning of the temporary occupation of certain territories of Ukraine. In particular, the date of the beginning of temporary occupation by the Russian Federation of certain territories of Ukraine is February 19, 2014. The Autonomous Republic of Crimea and the city of Sevastopol have been temporarily occupied by the Russian Federation since February 20, 2014. Individual territories of Ukraine that are part of Donetsk and Luhansk regions are occupied by the Russian Federation (including the occupation administration of the Russian Federation) since April 7, 2014 (Zakon Ukrainy Pro zabezpechennia prav i svobod hromadian ta pravovyi rezhym na tymchasovo okupovanii terytorii Ukrainy, 2014).

A rather approximate definition of the concept of "**temporarily occupied territory of Luhansk and Donetsk regions**" was available in Article 1 of the Law of Ukraine "On the Peculiarities of State Policy on Ensuring Ukraine's State Sovereignty over Temporarily Occupied Territories in Donetsk and Luhansk Regions" No. 2268-VIII dated January 18, 2018, which expired on May 7, 2022, based on Law No. 2217-IX dated April 21, 2022. In particular, on the day of adoption of the Law, it was assumed that the temporarily occupied territories of Donetsk and Luhansk regions are recognized as parts of the territory of Ukraine controlled by the armed units of the Russian Federation and the occupation administration, namely: 1) the land territory and its internal waters within specific areas, cities, towns, and villages of Donetsk and Luhansk regions; 2) internal sea waters adjacent to the land territory defined by paragraph 1 of this part; 3) the subsoil under the territories defined by paragraphs 1 and 2 of this part, and the airspace over these territories.

It is not coincidence that the present study's authors characterized the above definition of the concept of "**temporarily occupied territory in Luhansk and Donetsk regions**" as approximate, since, as it does not have all those features of temporarily occupied territory that would characterize it as such. Consequently, it requires proper legislative consolidation, given the established practice.

The Resolution of the Cabinet of Ministers of Ukraine No. 1364 dated December 6, 2022 "Some issues of forming a list of territories where hostilities are (were) conducted or temporarily occupied by the Russian Federation" establishes that the list of territories where hostilities are (were) conducted or temporarily occupied by the Russian Federation (hereinafter referred to as the list) is approved by the Ministry of Reintegration of the Temporarily Occupied Territories of Ukraine under the annex and in agreement with the Ministry of Defense on the basis of suggestions from relevant regional and Kyiv city military administrations (Postanova Kabinuistriv Ukrainyiaki pytannia formuvannia pereliku terytorii, na yakykh vedia (bolysia) boutsi abiovi di tymasovo oovany Rosupiisukhu Federiiei, 2022).

Thus, from December 6, 2022, the Ministry for Reintegration of the Temporarily Occupied

Territories is authorized to compile a list of territories temporarily occupied by the Russian Federation. According to the information posted on the Ministry's official website, the latest order approving the list of such territories is dated December 22, 2022, Order No. 309 (Nakaz Ministerstva z pytan reintehratsii tymchasovo okupovanykh terytorii Pro zatverdzhennia Pereliku terytorii, na yakykh vedutsia (velysia) boiovi dii abo tymchasovo okupovanykh Rosiiskoiu Federatsiieiu, 2022).

It should be noted that despite the consolidation in the Civil Procedure Code of Ukraine of the so-called three national procedural models of registering birth and death (sub-paras. **7-9 of Part 1 of Art. 315 of the Civil Procedure Code of Ukraine**), or so-called general procedures for establishing the relevant facts, namely: the establishment of the birth fact at a certain time in case of impossibility of registration by the state registration authority of civil status acts of birth; death at a certain time in case of impossibility of registration by the state registration authority of civil status acts of death; death of a person who went missing under circumstances that threatened them with death or give grounds to consider them dead due to anthropogenic or natural emergency accident in connection with the imposition of martial law throughout Ukraine. **Starting from February 24, 2022, the effect of sub-paras. 7-9 of Part 1 of Art. 315 of the CPC of Ukraine was suspended for the specified period, and the provisions of Article 317 of the CPC of Ukraine are exclusively subject to application**.

The second particularity of amendments introduced in the wording of Article 317 of the CPC is the expansion of the parties authorized to apply to sue for the establishment of a legal fact under Article 317 of the CPC of Ukraine.

In particular, before introduced amendments, an application for birth registration could be submitted by parents, relatives, their representatives, or other legal guardians of the child. Starting from 07.08.2022, an application for birth registration can be submitted by parents or one of them, representatives, **family members, guardian, trustee, person who maintains and brings up the child,** or other legal representatives of the child. Thus, relatives were replaced by family members, and an expanded list of legal representatives of the child was presented, indicating specific persons: **guardian, trustee, a person who maintains and brings up the child.**

According to paragraph five of clause 6 of the reasoning of the Decision of the Constitutional Court of Ukraine as of June 3, 1999 No. 5-rp/99 in the case of the official interpretation of the term "family member", family members are, in particular, persons who permanently reside with them and share a common household. Such persons involve not only close relatives (siblings, grandchildren, grandfather and grandmother) but also other relatives or persons who do not have direct familyhood with a person (brothers and sisters in law; stepsiblings; stepfather, stepmother; guardians, trustees, stepchildren, and others). Prerequisites for their recognition as family members, in addition to living together, are the following: common household maintenance, that is, common costs, a common budget, shared meals, purchase of property for common use, shared costs and housing maintenance, its repair, mutual assistance, oral or written agreements on using the premises, and other circumstances testifying family relations.

As the legislation of Ukraine does not contain an exhaustive list of family members and only determines the criteria under which persons constitute a family, the Civil Court of Cassation of the Supreme Court, in its ruling as of April 23, 2020 in case No. 686/8440/16-ц (proceeding No. 61-15699св19) and supported the legal opinion expressed by the Supreme Court in its ruling as of March 31, 2020 in case No. 205/4245/17 (proceeding No. 61-17628св19), noted that criteria for attributing to family members include cohabitation (with the exception of the separation of the spouses with a valid reason and the child with parents), common household and mutual rights and obligations of persons who have united for cohabitation (Postanova Kasatsiinoho tsyvilnoho sudu Verkhovnoho sudu u spravi № 686/8440/16-ts, 2020).

Until 07.08.2022, an application for registering death could be submitted by **relatives** of the deceased or their representatives, after 07.08.2022 – by **family members** of the deceased, their representatives or **other interested persons (if the establishment of the fact of death affects their rights, obligations, or legitimate interests).** Thus, the relatives of the deceased, as subjects of the right to apply for death registration, were replaced by family members of the deceased and a new category of applicants – other interested persons, which were specified: persons **whose rights, obligations, or legitimate interests depend** on the establishment of the death fact.

In our opinion, the expansion of the parties entitled to file a relevant petition in court is legally justified and dictated by the realities of wartime, and, most importantly, will contribute to the protection of persons **whose rights, obligations, or legitimate interests are influenced** by the registration of birth/death.

The third particularity of amendments to Article 317 of the CPC of Ukraine is the change, or rather clarification, of the rules of jurisdiction of cases on registration of death/birth in accordance with Article 317 of the CPC of Ukraine.

Before the introduced amendments, the application for registering birth was submitted to **any** court **outside such (temporarily occupied) territory of Ukraine, regardless of** the place of the applicant's residence. As from 07.08.2022, such an application is submitted to any **local court** of Ukraine **that administers justice**, regardless of the place of residence (stay) of the applicant.

Hence, clarifying the rules of jurisdiction for the consideration of applications for registering birth, the legislator focused on a court title by indicating that such a court is the local one and also indicated that it is authorized to administer justice. And this is not accidental. During a large-scale war in Ukraine and ensuing martial law, many courts, not only located in the temporarily occupied territories but also in the zone of active hostilities, are deprived of the ability to administer justice, and therefore, the relevant order of the Chairman of the Supreme Court changed the territorial jurisdiction of such courts. We believe it is appropriate that the new version has no indication of the need to apply to the court outside the relevant (temporarily occupied – in the older version) territory of Ukraine, because the territorial jurisdiction of the court located in the temporarily occupied territory, as indicated above, is changed by the specific order of the Chairman of the Supreme Court, and martial law is imposed throughout the territory of Ukraine.

Therefore, taking into account the above, it can be said that as from 07.08.2022, an application for death registration under Article 317 of CPC of Ukraine is submitted to any **local court** of Ukraine **that administers justice in the territory subjected to martial law** but **outside the temporarily occupied territory of Ukraine,** regardless of the place of residence (stay) of the applicant.

The rules of jurisdiction in cases of death registration were also changed. Thus, until 07.08.2022, an application for establishing the fact of death could be **filed in court outside such (temporarily occupied) territory of Ukraine**; as from 07.08.2022 – **to any local court of Ukraine that administers justice, regardless of the place of residence (stay) of the applicant**. In other words, the legislator, as in the rules of jurisdiction of cases on birth registration, clarified the rules of jurisdiction to consider applications for registering death by focusing on the court's jurisdiction and indicating that such a court is the local court and also indicated that it is authorized to administer justice. The reasons for such a decision of the legislator are mentioned above. In addition, unlike the rules of jurisdiction of cases on registering birth, which almost remained the same, clarifying the rules of jurisdiction of cases on registering death, the legislator noted that the **place of residence (stay) of the applicant does not affect the determination of jurisdiction rules.**

Keeping the norm on the **urgency** of consideration of the specific category of cases the same, the legislator only changed the initial moment of urgency countdown: if the old wording of the article provided that cases are considered immediately **after** receiving the relevant application by the court**, the new version provides for immediate consideration since the day** when the relevant application is received by the court. It should be noted that judicial practice did not experience a significant difference in these changes. Moreover, judicial practice has not yet developed a common approach to understanding the **urgency** of considering the specific category of cases. The analysis of the Unified State Register of Court Decisions gives grounds to assert that the consideration of specific cases takes place both on the day of application receipt (Ukhvala Halytskoho raionnoho sudu m.Lvova u spravi No. 461/6803/22, 2022) and on another day determined by the court and different from the day of application receipt (Ukhvala Lychakivskoho raionnoho sudu m.Lvova u spravi No. 463/9086/22, 2022).

It is obvious that in terms of the urgency of consideration of specific cases, it should be understood that after application receipt, the court immediately decides on initiating proceedings in the case, takes preparatory actions, convokes the persons involved in the case, and then begins the trial.

In our opinion, the legislator, setting urgent deadlines for the consideration of the category of cases concerned, thereby attached importance to such cases and pursued the goal to protect the rights and legitimate interests of the applicant effectively and within a reasonable time but not by any means of formally "fast" consideration of the case, as it sometimes appears to onlookers.

As for the provisions of Article 317 of the CPC of Ukraine, which regulate the content of the court decision on registering birth and the need to indicate the date and place of birth of a person, their parents; the urgency of execution of the judgment in cases of establishing the fact of birth or death, the possibility of appealing it, as well as the procedure for issuing the court decision to participants in the case and forwarding it to the State Register of Civil Status Acts. That is, the wording of the pro-

visions of parts 3-5 of Article 317 of the CPC of Ukraine has not changed.

In general, the Ukrainian model of establishing the fact of death/birth in the temporarily occupied territory of Ukraine, incl. the territory where martial law or a state of emergency was introduced as from 07.08.2022 also, can be described exclusively as a **judicial one**, since the establishment of such a fact is possible only by applying to the court. Moreover, according to the explanations provided by the Civil Court of Cassation as part of the Supreme Court in the letter dated April 22, 2021 No. 985/0/208-21, it is indicated that the provisions of the civil procedure law (Article 317 of the CPC of Ukraine) **do not require persons applying to the court to establish the relevant fact to file a written refusal of the civil status registration authority in a court to register such facts (**Lyst-roziasnennia Kasatsiinoho tsyvilnoho sudu u skladi Verkhovnoho Sudu No. 985/085/208-21, 2021**)**.

3. Foreign models

In the present study, the authors also consider it necessary to pay attention to the foreign experience of legal regulation of the procedure for establishing the fact of birth/death in the temporarily occupied territory. In particular, Georgia and Moldova are significant in this context as they have experienced the war and temporary occupation of their sovereign territory and developed their regulation models, which are of interest.

Moldovan model.

When we refer to the Moldovan model, we mean the procedure for recognizing the registration of births and deaths in the territory of the Pridnestrovian Moldavian Republic (hereinafter – PMR).

History brief. The Pridnestrovian Moldavian Republic (PMR or Transnistria) is an unrecognized breakaway state that is internationally recognized as part of Moldova. It occupies almost the entire Moldovan part of the left bank of the Dniester, as well as several settlements on the right bank of the river. In the northeast, it borders Ukraine (Odesa and Vinnytsia regions), and in the southwest – Moldova. The so-called "independence" of the unrecognized Transnistrian Moldovan Republic was proclaimed on August 25, 1991, after which a short-term armed conflict began between the separatists and the Russian military on the one hand and the Moldovan troops on the other, culminating in the actual victory of the separatists with the participation of the Russian army. The Russian Federation does not officially recognize the sovereignty of the Pridnestrovian Moldavian Republic but unofficially provides it with military, economic, political, and diplomatic support (Wikipedia, 2022).

Today, Moldova does not recognize PMR, but the situation remains peaceful and their relations are regulated by the relevant legislative acts.

The legal status of the Transnistrian region is directly determined by Law No. 173 "On Fundamental Regulations of the Special Legal Status of Settlements on the Left Bank of the River Nistru (Transnistria) approved by the Parliament of Moldova as of July 22, 2005 (with references to the Ukrainian plan put forward by the Ukrainian government in the early 2005 – new proposals for resolving the Transnistrian conflict – "On a settlement through democratization")" (Rishennia YeSPL "SPRAVA Katan TA INShI proti Moldovy TA ROSII", 2012). According to the Law (Article 3), an autonomous territorial entity with a special legal status is established within the Republic of Moldova – Transnistria, which may include (or withdraw from) settlements on the left bank of the Dniester River based on the results of local referendums held in accordance with the legislation of the Republic of Moldova (Fylypenko, 2022, pp.8-9). Thus, the government of the Republic of Moldova considers the Pridnestrovian Moldavian Republic an integral part of its territory with a special legal status and, hence, does not statutorily regard it as "temporarily occupied territory of the Republic of Moldova".

The provisions of Article 13-1 of the Law of the Republic of Moldova "On Civil Status Acts" stipulate that the facts of civil status that occurred and were registered in the settlements of the Left Bank of the Dniester and the municipality of Bender (Transnistria) can be certified through issuing civil status acts by the competent authorities of the Republic of Moldova, if their registration took place in a manner similar to the procedure regulated by the legislation of the Republic of Moldova.

During the registration of civil status acts, a corresponding record of a civil status act is drawn up, which is a basis for issuing a civil status act. The law specifies data to be entered in the register of births, marriages, dissolution of marriage, change of surname and/or name, death, as well as relevant certificates of registration of civil status acts (Part 4.5 of Art. 5 of the Law of the Republic of Moldova "On Civil Status Acts").

On May 16, 2001, to implement the joint statement of the leaders of the Republic of Moldova and Transnistria as of April 9, 2001, guided by the Memorandum "On the Basis for Normalization of Relations between the Republic of Moldova and Transdniestria" as of May 8, 1997, the Protocol "On Mutual Recogni-

tion of Documents Issued by the Competent Authorities of the Parties in the Territory of Transdniestria and the Republic of Moldova" was signed between the Republic of Moldova and Transdniestria. Thus, article 1 states that certificates of registration of civil status acts issued by the competent authorities of the parties (Transdniestria and the Republic of Moldova) (ProtolokProvzaiemnevyznanniadiinaterytorii) are recognized in the territory of Transdniestria and the Republic of Moldova.

The above indicates that the Republic of Moldova recognizes death/birth certificates issued by the authorities of Transnistria, without additional procedures for registering death/birth by the authorities of Moldova or establishing the facts of death/birth.

Therefore, the peculiarity of the Moldovan model of establishing the fact of birth/death on the PMR territory is the automatic recognition by the Republic of Moldova of the relevant act of death/birth occurred on the PMR territory, and the certificate of registration of such an act issued by the bodies of Transnistria.

However, it should be noted that the Moldovan model of automatic recognition of the relevant act is not absolute, since in the presence of specific circumstances and features of a particular case, the issue of registering death/birth and establishing the fact of death/birth in the PMR territory may be subject to judicial review. These conclusions are confirmed by the provisions of Article 281 of the Civil Procedure Code of Moldova as of May 30, 2003. According to subparagraphs "c, e" of paragraph 2, it is provided that the court considers cases on establishing facts of legal significance, namely: the fact of birth/death registration; the fact of death at a certain time under certain circumstances (Tsyvilnyi protsesualnyi kodeks Moldovy, 2003). It is obvious that the provisions of Article 281 of the Civil Procedure Code of Moldova also apply to cases on establishing the facts of death/birth registration and the fact of death/birth in the PMR territory, since, as stated above, PMR is an integral part of the territory – an autonomous territorial entity with a special legal status, under the legislation of the Republic of Moldova.

The Georgian model.

It is commonly known that in August 2008, the Russian Federation unleashed military aggression against Georgia, which caused the occupation of part of its territory – Abkhazia and South Ossetia. The territories are still under the control of the aggressor state and are not recognized by the international community as independent states.

In this regard, on January 21, 2021, the ECHR adopted a decision in the case of Georgia v. Russia (Georgia v. Russia, application No.38263/08). The ECHR officially recognized that Russia exercised control over the territory of Abkhazia and South Ossetia from August 12 to October 10, 2008. In addition, the Court recognized the exercise of effective control by the Russian Federation in these territories even after the mentioned period, as evidenced by the cooperation and assistance agreements signed between the Russian Federation, South Ossetia and Abkhazia (Rishennia YeSPL "Hruziia proty Rosii", 2021).

Consequently, it can be argued that Georgia also had to settle the issue of registration of civil status acts and recognition of documents issued in non-government-controlled territories.

It is worth mentioning that the regulation of the status of the occupied territories of Georgia is currently regulated by the provisions of the Law of Georgia "On Occupied Territories" as of October 23, 2008. The provisions of the enacting clause declare that Georgia is a sovereign, unified, and indivisible state, and the presence of the armed forces of any other state on its territory without an explicit and voluntary consent of the State of Georgia is an illegal military occupation of the territory of a sovereign state according to the Hague Regulations of 1907, Fourth Geneva Convention of 1949 and the norms of customary international law. Following the provisions of Article 1 of the Law, the main purpose is to define the status of territories that have been occupied as a result of military aggression by the Russian Federation, and to establish a special legal regime for these territories (ZakonHruziiProokupovaniterytorii, 2008).

Particular attention should be paid to the fact that the relevant Law did not omit the legal status of illegal bodies (officials) established and operating in the occupied territories of Georgia. Thus, the Article 8 of the Law, which is called "Illegal Bodies (Officials)", stipulates that a body (official) shall be illegal if it is not established (appointed/elected) under the procedures determined by the legislation of Georgia, and/or if in any form it actually performs legislative, executive, or judicial functions or other activity in the occupied territories that fall within functions of the State or local self-government bodies of Georgia. Any act issued by such bodies (officials) shall be deemed void and shall have no legal implications, except for cases when the said act is considered in the manner prescribed by the legislation of Georgia to establish the citizenship of Georgia, issue a neutral identity card and/or neutral travel document, register birth, marriage, divorce, death, legal residence of a person in the Abkhaz Autonomous Republic or

the Tskhinvali region (the former South Ossetian Autonomous Region). At the same time, part three of Article 8 states that in the occupied territories, the possibility of establishing facts of legal significance is maintained under the Law of Georgia "On Civil Acts".

An analysis of the provisions of Article 8 of the Law of Georgia "On the Occupied Territories" gives grounds to assert that it enshrines in Georgia, formed in international practice, the **principle of "Namibia exceptions"**, according to which documents issued by the occupation authorities can be recognized only if their non-recognition entails serious violations or restrictions of fundamental human rights. As a rule, the principle is used to recognize acts of registration of births, deaths, and marriages.

Moreover, as stated in the information note on the Law of Georgia "On the Occupied Territories" drafted by the Parliament of Georgia for the Venice Commission, the relevant procedures were included in the legislation of Georgia that allow civil registration authorities to recognize such facts that affect the legal status of a person, including one living in the occupied territories. It refers to documents confirming the birth, death, and credentials of a person necessary for the realization of the rights and legal interests of residents of occupied territory (Informatsiina dovidka shchodo Zakonu Hruzii Pro okupovani terytorii, 2022).

In particular, part four of Article 11 of the Law of Georgia "On Civil Status Acts" provides that acts issued by illegal bodies (officials) located in the occupied territories may be submitted to the body that registers civil acts for the purposes provided for by paragraph 2 of Article 8 of the Law of Georgia "On Occupied Territories" (Zakon Hruzii Pro tsyvilni akty, 2011).

The analysis of the provisions of the Law of Georgia "On Civil Status Acts" allows asserting that the normative act enshrines an administrative procedure, that is, the establishment by the civil status registration authority of the relevant facts of legal significance, in particular: the facts of a person's birth and death at a certain time and in certain circumstances and the facts of registration of births and deaths (part one of Article 90). The procedure is conducted administratively (according to Chapters VI and VIII of the General Administrative Code of Georgia) and requires only a written application and the presence of the applicant, other interested persons and witnesses (testimony and explanations of these persons are used as evidence) in the territorial civil status registration authority for oral hearing. It can be applied only in cases upon which the receipt or restoration of documents certifying the relevant fact is impossible in another order or is associated with inappropriate costs and efforts.

Paragraph four of Article 94 of the Law of Georgia "On Civil Status Acts" states that the decision establishing or refusing to establish a fact of legal significance shall be made no later than one month after the submission of the relevant application. However, the civil status registration authority may make a decision extending time limit if a longer time limit than defined in this Law is required for the establishment of essential circumstances of the case. At the same time, the entire time limit for making a decision shall not exceed two months. The decision shall also contain the information necessary for drafting the respective civil status record and its registration.

In some cases, any failure to establish the data necessary for civil status registration may not serve as unconditional grounds for the refusal to establish the fact of legal significance. The civil status registration authority shall be authorised to make a decision establishing a fact of legal significance without a certain piece of information if it cannot be established due to the lack of sufficient evidence or for other reasons (part three of Article 95 of the Law of Georgia "On Civil Status Acts").

Despite the availability in Georgia of an administrative procedure for establishing the facts of birth and death by the civil status registration authority at a certain time and under certain circumstances and facts of registration of births and deaths, these facts can be established in court, that is, based on a court decision. The above conclusion follows from the data below.

According to the Civil Procedure Code of Georgia as of November 14, 1997, a court shall hear non-contentious matters on the establishment of facts of legal significance (Article 310) (TsyvilnyiprotsesualnyikodeksHruzii, 1997).

Indeed, the provisions of Article 312 of the Code, which provides for a list of facts of legal significance and subject to judicial establishment, do not enshrine the possibility of establishing the facts of birth and death at a certain time and in certain circumstances and facts of registration of births and deaths.

However, Article 422-1 of the Civil Procedure Code of Georgia "Annulment of a court decision on establishment of some facts of legal significance" stipulates that court decisions on facts of legal significance relating to the birth or death of a person at a certain time and under certain circumstance, or the registration of birth or death may be annulled based on an action brought by an interested person, if at the time of bringing the action for annulment there are two different civil records

and wrong data have been established under the decision appealed.

Consequently, it is possible to invalidate a court decision on the establishment of the facts of birth or death of a person at a certain time and under certain circumstances, as well as registration of births and deaths based on Article 422-1 of the Civil Procedure Code of Georgia subject to a preliminary court decision on the establishment of the relevant fact and its inconsistency with the available records of the civil status act.

The coverage in this study of the peculiarities of the Ukrainian, Georgian, and Moldovan models of establishing the facts of birth/death in the temporarily occupied territory and in the territory in which martial law or a state of emergency has been introduced (applies exclusively to Ukraine since August 7, 2022) raises a rather interesting question in a practical aspect: is it possible under the legislation of Ukraine, including by applying Article 317 of the Civil Procedure Code of Ukraine by analogy with the law, to establish in court the fact of death/birth of a citizen of Ukraine on the territory of a foreign state (occupied part of its territory), e.g., the fact of death of a citizen of Ukraine on the territory of Abkhazia?

Moreover, it is essential to mark that, for example, the legislation of Georgia has a clear and unambiguous position in this regard. Thus, the provisions of Part 3 of Article 90 of the Law of Georgia "On Civil Status Acts" stipulate that the civil status registration authority shall establish any fact of legal significance that occurred abroad only with respect to a citizen of Georgia, an underage child of a citizen of Georgia, a stateless person having the status in Georgia, and a person having the status of refugee or the humanitarian status in Georgia.

Let's go back to Ukraine. At first glance, without delving into the issue concerned, you can definitely answer "No", since allegedly the current procedural legislation does not provide for the possibility of establishing a legal fact, including death/birth, on the territory of a foreign state, and the provisions of Article 317 of the Civil Procedure Code of Ukraine provide for the possibility of establishing the fact of death/birth on the temporarily occupied territory of Ukraine, not a foreign state. However, it is not all as easy as it sounds.

The Supreme Court gave an unequivocal and substantiated answer to the question, considering the cassation appeal in case No. 367/2656/20.

The case sparks interest as the trial subject was the requirement of the wife to ESTABLISH THE FACT of the DEATH of her husband – CITIZEN OF UKRAINE on the TERRITORY of the **"TURKISH REPUBLIC OF NORTHERN CYPRUS" (hereinafter** – "TRNC"**),** WHICH is the OCCUPIED TERRITORY OF THE REPUBLIC OF CYPRUS, CONVICTED by the WORLD COMMUNITY, DECLARED ILLEGAL and RECOGNIZED ONLY BY TÜRKIYE. The applicant required to establish the specific fact to obtain her ex-husband's death certificate to obtain a pension in connection with the loss of a breadwinner in the interests of her minor daughter.

By the decision of the Irpin City Court of Kyiv region as of May 7, 2020, which was not changed by the decision of the Kyiv Court of Appeal as of September 24, 2020, the initiation of proceedings was refused be relying that the CPC of Ukraine does not provide for the possibility of establishing the fact of death of a person in the territory of a foreign state by the court (Ukhvala Irpinskoho miskoho sudu Kyivskoi oblasti u spravi No. 367/2656/20, 2020; Postanova Kyivskoho apeliatsiinoho sudu urav spi No. 367/2656/20, 2020).

However, in a decision dated September 15, 2021, the Civil Court of Cassation of the Supreme Court, reviewing the above-mentioned court decisions of the first and appellate jurisdictions in cassation, summarized, emphasizing the erroneousness of the conclusions of the court of the first and appellate jurisdictions, that the CPC of Ukraine does not provide for the possibility of establishing the fact of the death of a person in the territory of a foreign state by the court. The erroneousness of such conclusions is that the uncertainty of procedural law rules cannot be interpreted against the applicants and limit their right to judicial protection, including in cases of separate proceedings, since the jurisdiction of Ukrainian courts extends to any legal dispute. Therefore, the courts of first and appellate jurisdiction made premature conclusions about the refusal to initiate proceedings in the case that caused a violation of procedural law. As a result, the decision of the first-instance court and the decision of the court of appeal were canceled, and the case was forwarded to the former court to settle the initiation of proceedings in the case (Postanova Kasatsiinoho tsyvilnoho suduVerkhovnoho Suduu spravi No. 367/2656/20, 2021).

It is also worth paying attention to the conclusions of the court of first instance, formulated following the consideration of the case upon retrial. Thus, the Irpin City Court of the Kyiv region, in its decision as of November 25, 2021, satisfying the application and establishing the fact of death of a citizen of Ukraine in the territory of TRNC, noted that it was impossible to perform the corresponding

consular action: it could not register the death of a citizen of Ukraine in the specified territory by the Embassy of Ukraine in the Republic of Cyprus in accordance with the "Instruction on the procedure for registering civil status acts in diplomatic missions and consular institutions of Ukraine", approved by the Order of the Ministry of Justice of Ukraine, the Ministry of Foreign Affairs of Ukraine as of May 23, 2001 No. 32/5/101 (as amended by the Order of MJU, MFA of Ukraine as of August 25, 2004 No. 90/5/191 (r 1066-04), registered with MJU as of 01.06.2001 under No. 473/5664), since the so-called TRNC was convicted by the world community and declared illegal. With the exception of Türkiye, no state or international organization recognizes the relevant territory. Non-recognition of the territory by the world community and Ukraine, in particular, makes it impossible to protect Ukrainian citizens by diplomatic institutions of Ukraine, and all documents issued in this territory are not recognized by Ukraine. Legalization of documents (affixing an apostille) by the competent authorities of Cyprus is impossible. Hence, the court of first instance, applying the "Namibia exceptions", satisfied the application (Rishennia Irpinskoho miskoho sudu Kyivskoi oblasti u spraviNo. 367/2656/20, 2021).

By its decision in one case, the Supreme Court resolved an array of conflicts that may arise in this regard and thereby shaped an appropriate legal position that will contribute to ensuring and establishing the unity and sustainability of the specific judicial practice.

Conclusions

The war continues. The fighting lasts in Kharkiv, Donbas, and southern Ukraine. The Russian army is bombing every minute, shelling residential neighborhoods of cities, destroying civilian infrastructure, hospitals, schools, and kindergartens, and killing civilians regardless of age...But even during the full-scale war – at this time especially – all the forces of society and the state should be focused on the protection of the borders of our state, territorial integrity and, most importantly, the rights, freedoms, and legitimate interests of our fellow citizens. State duty is now highly enhanced. People who have remained in the temporarily occupied territory and cannot leave it for specific causes and those who live in the frontline regions and areas of active hostilities need our support and protection badly, including legal. Therefore, even in such a tough time – the war, the state must follow the current realities and dictate of the times, and thus adjust its legislation and adopt a novel one that could "overcome" modern military challenges.

Every day in Ukraine, in its controlled and temporarily occupied territory, in basements, bomb shelters, hospitals, houses, and the streets, people are dying and being born – our people. However, modern reality sometimes hinders properly registering birth/death hence obtaining a Ukraine-recognized document confirming the relevant fact. It refers to cases when the fact of birth or death happen in the temporarily occupied territory, and the documents issued by the occupying authorities have no legal force and, accordingly, civil status register authorities in the controlled territory cannot certify the relevant act of civil status by relying on such documents; or cases when the fact of birth/death took place in the controlled territory of Ukraine subject to martial law, but due to active hostilities or other circumstances (death/birth in the basement, hospital that was bombed, etc.), it is impossible to obtain appropriate medical documents to confirm the relevant fact to further submit it to the civil status register authorities. To solve the above problems, the institute of establishing the fact of death and birth of a person in the territory under martial law or a state of emergency, or in the temporarily occupied territory of Ukraine, provided for by Article 317 of the CPC of Ukraine, given the amendments made.

In addition, it is essential to realize the obvious: the institution of establishing the facts of birth and death in the temporarily occupied territory of Ukraine is not absolute and shall not be used for abuse and manipulation. As a result, the act of birth or death in the temporarily occupied territory of Ukraine will be subject to establishment in court in the following cases: 1) it gives rise to legal consequences, i.e., it affects the emergence, change, or termination of personal or property rights of citizens; 2) the current legislation does not provide for any other procedure for its establishment; 3) the applicant has no other opportunity to obtain or restore a lost or destroyed document certifying a fact of legal significance; 4) the establishment of a fact is not related to the subsequent settlement of a right dispute. The court is authorized check the availability of the specific conditions in every specific case to avoid abuses and speculations.

For this reason, it is probably too early to speak of changing the entirely judicial Ukrainian model of establishing the fact of death/birth in the temporarily occupied territory to an administrative or mixed one. It is apparent that only the judicial authorities, given their powers and practical experience in the relevant area gained for almost 9 years of war, currently can overcome these challenges.

Maybe in the future, after the war ended,

when new challenges will raise, the Ukrainian legal system will be ready to change its entirely judicial model of establishing the fact of death/birth in the occupied territory to an administrative one, as in Moldova or Georgia. However, it is now not on time, as our country has another scenario than Moldova and Georgia.

At the same time, it is worth pointing out that the Unified State Register of Court Decisions contains **138 185 decisions (from February 24, 2016 to February 23, 2022)** according to the category of cases: civil cases (before/from January 01, 2019); cases of separate proceedings; cases on establishing facts of legal significance, of which: the fact of birth/death; of which: **138,185 decisions are made** in the temporarily occupied territory of Ukraine; **from February 24, 2022 to January 04, 2023** – **18,343 decisions**.

The main goal of the relevant Ukrainian model, whether a judicial or administrative one, should be the efficient protection of the rights of our fellow citizens and the avoidance of excessive formalism and bureaucracy, not a banal simplification of the procedure without clarifying all the circumstances.

However, it would be more desirable if the outlined Ukrainian model of establishing legal facts became dead and the memory of it remained only on the pages of scientific works.

The country cannot survive without those living its rights.
Adam Mickiewicz

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УКРАЇНСЬКА МОДЕЛЬ НАЦІОНАЛЬНОГО СУДОЧИНСТВА ЩОДО ВСТАНОВЛЕННЯ ФАКТУ СМЕРТІ І НАРОДЖЕННЯ НА ТИМЧАСОВО ОКУПОВАНІЙ ТЕРИТОРІЇ: РЕТРОСПЕКТИВНИЙ АНАЛІЗ ЗМІН ЦИВІЛЬНОГО ПРОЦЕСУАЛЬНОГО ЗАКОНОДАВСТВА 2014–2022 РР.

Анотація. Стаття присвячена дослідженню особливостей української моделі встановлення факту смерті/народження особи на тимчасово окупованій території України в умовах широкомасштабної військової агресії російської федерації проти України. Авторами в межах цієї роботи здійснено детальний порівняльний аналіз редакцій статті 317 ЦПК України, яка зазнала суттєвих змін у зв'язку із прийняттям Верховною Радою України 01 липня 2022 року Закону України № 2345-IX«Про внесення змін до деяких законодавчих актів України щодо особливостей провадження у справах про встановлення факту народження або смерті особи в умовах воєнного чи надзвичайного стану та на тимчасово окупованих територіях». Надано правову оцінку цим змінам та проаналізовано їх ефективність з урахуванням уже сформованої судової практики. Виокремлено особливості грузинської та молдовської моделей встановлення фактів смерті/народження особи на тимчасово окупованій території, так як Грузії і Молдові в минулому також, як і Україні, «пощастило» відчути на собі «турботу братнього сусіда». З урахуванням військових реалій в Україні та обставин, що склалися, висловлено думку про те, чи можливе запровадження особливостей молдавської та/або грузинської моделей в Україні.

Мета. Метоюдослідження є аналіз ключових законодавчих змін, внесених до положень Цивільного процесуального кодексу в частині спрощення процедури встановлення факту народження та смерті особи на тимчасово окупованій території, в умовах воєнного та надзвичайного стану. А також порівняння відповідних редакцій статті 317 ЦПК України для надання правової оцінки ефективності внесених змін. Висвітлення ключових особливостей грузинської та молдовської моделей встановлення факту народження та смерті особи на тимчасово окупованій території з можливістю подальшого запозичення та перейняття досвіду, а також впровадження таких в Україні.

Методологія дослідження. Під час дослідження використано метод системного аналізу та порівняння.

Результати засвідчують не в повній мірі вивчення проблем правового регулювання процедури встановлення факту народження та смерті особи на тимчасово окупованій території України. Хоча варто зауважити значний внесок у дослідження цієї сфери Гусарова К.В. (Гусаров, 2020), Волкової І.М., Стоянової Т.А., Свідерської М.Г., Угриновської О.І. та Піняшка М.(Угриновська, Піняшко, 2020), а також інших фахівців науки цивільного процесуального права. Емпіричним підґрунтям дослідження першоджерела є сучасне законодавство України, а також законодавство Грузії та Молдови.

Крім того, слід зазначити, що висвітлення питання порівняльно-правового аналізу реєстрації актів цивільного стану в Україні та Грузії в своєму дослідженні здійснила Марина Басілашвілі (Басілашвілі, 2019).

Висновки. Проаналізовані в даному дослідженні законодавчі зміни в частині спрощення провадження у справах про встановлення факту народження або смерті особи на території, на якій введено воєнний чи надзвичайний стан, або на тимчасово окупованій території України, по праву можна назвати прогресивними, доречними та необхідними, оскільки такі є продиктовані реаліями військового часу в нашій державі. Більше того, такі сприятимуть уніфікації судової практики в питанні встановлення факту народження та смерті особи на території, на якій введено воєнний чи надзвичайний стан, або на тимчасово окупованій території України. Але законодавцю є ще над чим працювати в цьому питанні. Регулювання інституту встановлення факту народження та смерті особи на тимчасово окупованій території в Грузії та Молдові має багато особливостей, оригінальних правових норм, які дають підстави зробити висновок про можливість впровадження конкретних позитивних моментів іноземних моделей встановлення зазначених видів юридичних фактів в Україні шляхом удосконалення українського законодавства та застосування в українському правовому просторі.

Ключові слова: юридичний факт, факт смерті, факт народження, тимчасово окупована територія, воєнний стан, Грузія, Молдова.

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