

## KEY ASPECTS OF THE IMPLEMENTATION OF COMPLETE RECORDING OF COURT PROCEEDINGS THROUGH TECHNICAL MEANS

*Summary.* The article is dedicated to examination of the current state of legislative regulatory actions, introduction of full-scale recording of judicial proceedings through technical means into the law enforcement practice of Ukraine, and formulation of universal criminalistic recommendations regarding implementation of this constitutional principle of judicial proceedings based on introduction of modern information technologies designed to record both verbal and non-verbal information.

*Key words:* information technology, full-scale recording of judicial proceedings through technical means, video recording, video conference, broadcasting in real time.

**Formulation of the problem.** In accordance with Part 1 of Art. 55 of the Constitution of Ukraine, the rights and freedoms of a person and a citizen are protected by the court. In a legal state, legal proceedings are based on the principles defined by a constitution. These principles ensure the rights of the participants in the trial, guaranteeing their implementation in such a way that each interested person has a real opportunity to exercise its constitutional right to judicial protection. Consequently, in a constitutional state, the basic principles of legal proceedings have democratic

features and a general human rights orientation [1, p. 11]. The effectiveness of the implementation of the right to judicial protection directly depends on the level of real-life implementation of this principle. In particular, the publicity of the trial and its complete recording by technical means, stated among the basic principles of judicial proceedings by the Constitution of Ukraine, adopted at the fifth session of the Verkhovna Rada of Ukraine on June 28, 1996 (the Constitution of Ukraine, 1996).

Further legal regulation of the principle of transparency and openness of

the trial (proceedings) has been consolidated in the essentially identical and currently active versions of Part 3 of Art. 11 of the Law of Ukraine «On the Judiciary and Status of Judges», Part 2 of Art. 27 of the Criminal Procedure Code of Ukraine (CrimPC), Part 1 of Art. 6 of the Civil Procedural Code of Ukraine (CivPC), Part 1 of Art. 4–4 of the Economic Procedure Code of Ukraine (EPC), Part 3 of Art. 12 of the Code Of Administrative Procedure Of Ukraine (CoAP) and Part 1 of Art. 249 of the Code of Ukraine on Administrative Offenses (CoUAO). In accordance with the legislative requirements, established by these documents, the general rule is that cases in all courts are open, that is, conducted (carried out, proceeded) openly, regardless of the territoriality, specialization, and level of a court.

In post-Soviet and in many European countries, the recording of court proceedings by technical means does not stand out as an independent constitutional basis of legal proceedings and is often viewed as an integral part of such a legal basis as publicity (openness). Often, such a position is respected by Ukrainian scholars. However, the Constitutional Court of Ukraine in the case regarding the recording of the trial by technical means from December 8, 2011, No. 16-rp / 2011 [2] has decided that the complete recording of the trial by technical means is an independent principle of legal proceedings [1, p. 12].

The importance of such a principle as the recording of court proceedings by technical means, according to the Verk-

hovna Rada of Ukraine Commissioner for Human Rights, V. Lutkovska, is an important condition for the impartial resolution of the case by the court, observance of the ethics of relations between the participants in the process and the non-abuse of the procedural rights by the participants in the proceedings [3, with. 32]. However, the legislative regulation of the complete recording of the trial by technical means is still limited and inconsistent in Ukraine, as well as its practical implementation being subpar to the current state of scientific and technological progress.

**State of the research.** Separate problems of recording by technical means of court proceedings of various types were highlighted in the scientific works of V. A. Dem'ianchuk, O. V. Krykunov [4], V. M. Kampo [1], N. M. Maksymyshyn [5], M. M. Serbin, K. S. Ozerova [6], V. S. Stefaniuk [7] and other Ukrainian scientists. In our opinion, despite the significant and diverse contribution of these scientists, their work does not cover all the important aspects of the research topic.

Therefore, the purpose of this article is to study the current state of legislative regulation and the introduction into practice of Ukraine of complete recording of the trial by technical means and the formulation of universal forensic recommendations regarding the implementation of this constitutional principle of legal proceedings based on the introduction of modern information technologies designed for recording (registering) both verbal, and non-verbal information.

**Presentation of the main research material.** The systematic analysis of the provisions of corresponding acts of national law leads to the conclusion that it took domestic lawmakers almost five years from the entry into force of the 1996 Constitution of Ukraine in order to carry out the first attempt to introduce the full recording by technical means of the criminal process by adopting of the Law of Ukraine «On Amendments to the Criminal Procedure Code of Ukraine» dated June 21, 2001, No. 2533-III, which supplemented the acting 1960 CPC of Ukraine with Art. 87-1 – the recording of the trial by technical means. According to its provisions, the complete recording of the trial with the help of sound recording equipment or other technical means is carried out at the request of at least one participant in the trial of the case in the court of first instance in the consideration of the merits, either in the court of appeal or at the initiative of the court. The complete recording of the a is carried out by the secretary of the court session or another court employee under his supervision. A record of the court session specifies the fact that technical means were used to fully record a trial, as well as general information on their technical characteristics. A report is attached to the recording by the secretary of the court session, which holds information about the procedural actions executed in the court session minutely. The reproduction of a technical record of the trial is carried out at the request of the parties or at the initiative of the court. An audio cassette or other media

containing a trial recording is stored within the case.

At the same time the Law of Ukraine «On Amendments to the Civil Procedural Code of Ukraine» of 21.06.2001 No. 2540-III, amended the Chapter 21 of the acting CivPC of Ukraine of 1963, which provided for the court to enforce the complete recording of the trial by technical means (Part 1 of Article 198). The Law of Ukraine «On Amendments to the Arbitration Procedural Code of Ukraine» dated June 21, 2001, No. 2539-III stipulated that an economic court may carry out verbatim, as well as audio or video recording of a court session (p. 7, Article 81-1).

Even though it has aged, such legal regulation of court proceedings recording by technical means, despite its apparent superficiality and the lack of unified rules for such actions was, in our opinion, best suited to reflect the constitutional principles in terms of full recording of the trial by technical means compared with the current legislation, since it: 1) did not establish an exhaustive list of technical means for recording of a trial (except for the economic ones) and the list of related physical storage sources; 2) took into account the promptness of scientific and technological progress, the inevitability of modernization of existing and the creation of new technologies and means of recording and did not limit the possibility of their timely introduction into law practice without passing through the time-consuming procedure for amending the legislation. (According to the deputy head of the Presidential Admin-

istration of Ukraine D. Shymkiv, the average time it takes for a law to be adopted in Ukraine is 6 to 9 months, however, it can often reach up to one and a half years [8]).

We should note the negative practice inherent in domestic law-making, which is the implementation of effective reforms (including judicial) only under the maximum possible pressure from civil society, with the obligatory subsequent mitigation of the achieved results as the pressure on this subject is reduced and the legislators' subsequent adaptation to new socio-political conditions.

Thus, the Orange Revolution of 2004 became an impetus to:

1) The enactment of the Civil Procedural Code of Ukraine dated March 18, 2004, No. 1618-IV, which identified fair, impartial and timely consideration and resolution of civil cases to protect violated, unrecognized or challenged rights, freedoms or interests of individuals, rights and interests of legal entities, interests of the state as main tasks of civil justice in general. A set of provisions of this Code introduced the complete recording of a trial during a court hearing by means of a sound recording equipment by a secretary of a court session or another employee of the court apparatus if instructed by the chairman (Part 10 of Article 6, Clauses 3 and 4 of Part 1, Article 48, Part 1 and Part 2 of Article 197, Part 1 of Article 198), while imposing logging responsibilities on a court secretary in particular. The persons involved in the case received the right to listen to the

recording of the court session, make copies, submit written claims about its incorrectness or incompleteness (Part 1 of Article 27, Part 5 of Article 197, Article 199), the legal consequence of the non-consideration of such was the return of the case to the court of the first instance for correction (Part 4 of Article 297). A person involved or the court on its initiative was enabled to request full or partial reproduction of the technical record of the court session; obligatory inclusion of the recording on physical carrier in case materials after the court session (on cassette, floppy disk, etc.) as an annex to the log records of the court session; full or partial printing of the technical record of the court session upon the request of the person concerned provided by the chairman for a fee set by the Cabinet of Ministers of Ukraine (see Articles 3–6, Article 197).

2) To the enactment of the Code Of Administrative Procedure Of Ukraine of July 6, 2005 No. 2747-IV, which proclaimed the protection of the rights, freedoms and interests of individuals, the rights and interests of legal persons in the field of public-legal relations from violations by state authorities, bodies of local self-government, their officials and other subjects in the exercise of their power and administrative functions provided by the legislation (and delegated ones) as its main tasks and priorities (Part 1 of Article 2). Even though both codes came into force simultaneously (on September 1, 2005), the latter became the most progressive among the existing codes at the time in Ukraine on the issues of regulation

of trial recording by technical means. In addition to the verbatim reflection of the overwhelming majority of the aforementioned norms of the CivPC in the provisions of Part 6 of Art. 12, parts 1 and 2 of Art. 41, part 1 of Art. 42, arts. 43, 44, 63, etc., this Code also contained a number of innovations. In particular: only the technical record, carried out by the court in accordance with the procedure established by this Code (Part 7 Article 12) can be identified as official; persons present in the courtroom may use the portable audio equipment. Conducting photographic and cinematographic works in the courtroom, video and audio recording with the use of stationary equipment, as well as broadcasting of court sessions on radio and television, shall be allowed on the basis of a court order, subject to the consent of the persons involved in the case, except those who are subjects of authority (part 8 of Article 12); the court secretary announces the fact of the ongoing recording of the court session, as well as the necessary technical information (the location of microphones and the need for a speaker to speak into a microphone, the inadmissibility of simultaneous speeches of participants in the administrative process, observance of silence in the courtroom) (Part 1, Article 126); the carrier of information, which can be used to store a technical record of the court session may be not only a cassette or a diskette, but also a CD, etc. (Part 3 of Article 41).

However, a week after the aforementioned legislative requirements came into force, the legislator acknowl-

edged the lack of readiness for the introduction of such progressive norms and showed backsliding, amending in accordance with the Law of Ukraine «On Amending Certain Legislative Acts of Ukraine» of 08.09.2005 No 2875-IV Section XI of the Civil Procedure Code and Section VII of the CoAP with paragraph 2–1, according to which, until January 1, 2008, the full recording of the court session with the help of a sound recording equipment should be carried out by a court only on the request of the person involved in the case or by the court initiative. In all other cases, the course of the court session was subject to traditional registration in the court session log (protocol).

However, the Law also introduced certain progressive changes to other active procedural codes. In particular, the Law amends arts. 87 and 87–1 of the CrimPC of 1960, which specify that the main means of recording the trial of a case is in session minutes, which is formed during each court hearing of the court of the first, appellate and cassation instances, as well as at each separate procedural action, committed outside the permanent seat of the court of the first instance. At the same time, in the criminal proceedings, the complete recording of the trial by means of a sound recording device is carried out at the request of at least one participant in the trial or on the initiative of the court in the court of the first or appellate instance, indicating, in the protocol of the court session, the technical characteristics of the recording equipment and media, as well as the inclusion of the carrier of in-

formation, which holds the recording of the trial, within the case. New edition of Art. 88–2 of the CrimPC of 1960 regulated the playback of a technical record of a trial by a court of the first instance, in appellate and cassation proceedings, as well as a necessity while considering the observations on the minutes of the court session at the request of the parties or at the initiative of the court. The extraordinary nature of the issuance of a copy of a technical record to a party or its reproduction outside the court session was evidenced by the fact that these issues were authorized by the chairman separately in each case. At the same time, art. 81–1 of the EPC was supplemented with identical provisions.

Following the Revolution of Dignity 2013–2014, in order to increase the national standards of the judiciary and legal proceedings and to ensure the right to a fair trial, the Law of Ukraine «On ensuring the right to a fair trial» of 12.02.2015, No. 192-VIII, introduced the new wording of the Law of Ukraine «On the Judiciary and Status of Judges» dated 07.07.2010, No. 2453-VI. In this regard, par. 2 of part 3, part 5 and part 6 of the art. 11 of the latter specified that during the consideration of cases the trial process is recorded by technical means in accordance with the procedure established by the law, as well as established new progressive provisions according to which the participants of the trial, other persons present in the courtroom, representatives of the mass media may hold a photo, video and audio recording in the courtroom with the use of portable video and audio equip-

ment without a separate court authorization, but such actions are still subject to restrictions by the law. Broadcast of the court session is carried out with the permission of the court. Conducting in the courtroom of photography, video recording, as well as the broadcasting of a court session, must be carried out without impeding the conduct of the meeting and the implementation of their procedural rights by the participants in the court proceedings. Participants in the court proceedings, based on a court decision, shall have the opportunity to participate in the court session via video conference in the manner prescribed by law. The duty to ensure the holding of a video conference rests with the court that received the decision on the holding of a video conference, regardless of the specialization and the tier of the court that made the decision.

However, one and a half years after the entry into force of this Law, driven by the above-mentioned regressive tradition the legislator adopted the new Law of Ukraine «On the Judiciary and Status of Judges» of 02.06.2016, No. 1402-VIII, par. 2 of part 4 of art. 11 of which, against the background of verbatim preservation of the above progressive norms, established the provision that the court may determine the place in the courtroom from which a video or photo recording can be managed. In our opinion, in this way, additional restrictions were imposed on holding photographs and video recordings in the courtroom by persons present in the courtroom and media representatives.

According to Part 1 of Art. 18 of the currently valid Law of Ukraine «On the Judiciary and Status of Judges», the courts specialize in the consideration of civil, criminal, economic, administrative cases, as well as cases of administrative offenses. Note that in accordance with clause 1 of Part 4 of Art. 17 of this Law, the unity of the judicial system is ensured by the unified principles of the organization and activity of courts. However, systematic analysis of the current legislation allows us to reach the unequivocal conclusion that there are no uniform principles for the organization and activity of courts in the part of the complete recording of the trial by technical means that would not depend on the territoriality, specialization and instance of a particular court, as well as the place of conducting of certain procedural actions (in the meeting room or outside it). This is confirmed by the following.

1. Contrary to the fact that among the important tasks of the current CoUAO are: the protection of the rights and freedoms of citizens, property, the constitutional system of Ukraine, the rights and legitimate interests of enterprises, institutions and organizations, the established law and order, strengthening of the rule of law, prevention of offenses, education of citizens in the spirit of accurate and steady observance of the Constitution and the laws of Ukraine, respect for the rights, honor and dignity of other citizens, to the rules of cohabitation, diligent performance of their duties, responsibility to society, the provisions of this Code

fail to recognize recording by technical means cases of administrative offenses at all. Despite the fact that this category of cases is dealt with by the same courts that deal with civil cases and criminal proceedings and are fully equipped with systems for the technical recording of the court sessions, in many cases the absence of appropriate special rules in the CoUAP makes it impossible for the court to record cases of administrative violations by technical means in the light of the provisions of Art. 19 of the Constitution of Ukraine, according to which the legal order in Ukraine is based on the principles under which no one can be compelled to do what is not provided for by law. Also, bodies of state power and their officials are obliged to act only on the basis, within the limits of powers and in the manner provided for by the Constitution and laws of Ukraine.

2. In accordance with Part 4 of Art. 55, part 1 of the article. 147, art. 151–1 of the Constitution of Ukraine, everyone is guaranteed the right to file a constitutional complaint to the Constitutional Court of Ukraine on the grounds established by this Constitution and in the manner prescribed by law. The Constitutional Court of Ukraine shall decide on the compliance of the laws of Ukraine with the Constitution of Ukraine and in cases of other acts provided for by this Constitution, shall carry out an official interpretation of the Constitution of Ukraine, as well as other powers in accordance with this Constitution. The Constitutional Court of Ukraine decides on the compliance

of the Constitution of Ukraine (constitutionality) with the law of Ukraine on the constitutional complaint of a person who believes that the law of Ukraine used in the final decision in this case contradicts the Constitution of Ukraine. A constitutional complaint may be filed if all other national remedies have been exhausted. Provisions of Part 2 of Art. 147 of the Constitution of Ukraine and Art. 4 of the Law of Ukraine «On the Constitutional Court of Ukraine» one of the main principles of the Constitutional Court of Ukraine is the principle of publicity. As explained above, this principle is inextricably linked with the principle of the complete recording of the trial by technical means. However, there is no provision for the constitutional complaint to be fully documented by the technical means of the consideration of the Constitutional Court of Ukraine.

3. Complete recording by technical means of the economic process, unlike civil, administrative and criminal, has not become obligatory. After all, against the background of the provisions of Part 3 of Art. 4–4 of the Economic Procedure Code of Ukraine (EPC) that the trial is recorded by technical means and is reflected in the minutes of the court session in accordance with the procedure established by this Code (Part 3, Clauses 4–4), provisions of Part 7 of Art. 81–1 of the EPC stipulates that recording of a court proceeding with the help of a sound recording equipment shall be carried out only upon the demand of at least one participant in the court proceedings in the

court of the first or appellate instance in the course of consideration of the case on the merits or at the initiative of the court. In addition, the Supreme Economic Court of Ukraine as a court of cassation, literally guided by the provisions of Part 7 of Art. 81–1 of the EPC does not provide for the recording of court proceedings by technical means because in accordance with these provisions, the recording of a trial by means of a sound recording device is carried out in the merits of the case only in the court of the first or appellate instance. The aforesaid caused the need for official interpretation of the provisions of paragraph 7 of Part 3 of Art. 129 (now Clause 6 Part 2 Article 129) of the Constitution of Ukraine. The systemic analysis of the corresponding provisions of the EPC allowed the Constitutional Court of Ukraine to conclude that these provisions did not regulate the issue of recording the trial by technical means in the cassation instance. In this regard, in the decision of the Constitutional Court of Ukraine dated 08.12.2011 № 16-rp / 2011 [2] it is noted that based on Part 3 of Art. 8 of the Constitution, provisions of par. 7 of Part 3 of Art. 129 of the Constitution of Ukraine regarding the complete recording of the trial by technical means is a direct-action rule and should be applied directly. Thus, complete recording of court sessions by technical means in the Supreme Economic Court of Ukraine should be ensured directly on the basis of clause 7 of Part 3 of Art. 129 of the Constitution of Ukraine.

4. Proclaimed by clause 6 of Part 2 of Art. 129 of the Constitution of

Ukraine, the completeness of recorded court proceedings by technical means in practice is ensured only in one separate characteristic of the court process – the length of separate court sessions or procedural actions. After all, as the above-mentioned legislative requirements provide, the documenting process begins «from the moment the court hearing is opened, or the start of a procedural act conducted by an investigating judge during a pre-trial investigation in a criminal proceeding and ends by the time of the termination of that hearing or procedural action». In this regard, it should be noted that the meaning of the adjective «complete» in paragraph 6 part 2 of Art. 129 of the Constitution of Ukraine is not limited to «submitted in full, not reduced; ended; intact». It is much broader and covers: «taken in full volume; whole, all; which consists of everything necessary, contains all the required elements, detailed, exhaustive; turns out completely; not partly; complete; not limited; final; fully developed, is the highest degree of something; maximum» [9, p. 1000].

5. It should also be emphasized that in all the cases listed above, obligatory recording by technical means concerns only court sessions or procedural actions that take place in specially equipped premises of the court – meeting rooms. At the same time, the recording of the review of evidence by photographing, sound and video recording in the civil process (Part 3 of Article 140 of the Civil Procedure Code) or the on-site inspection by technical means in a criminal proceeding (Part 5 of Article

361 of the CrimPC) are not obligatory. This contributes to the complete lack of realism in the clause 6 of Part 2 of Art. 129 of the Constitution of Ukraine on complete recording by technical means of the trial, rather than separate court sessions or procedural actions.

6. The recording of court proceedings by technical means is successfully used in many foreign countries, whose experience reveals the following means used: 1) stenographic equipment with further decoding, registration of the contents of transcripts in the protocol; 2) special stenographic and computer technology, which provides interpretation of transcripts content in real time; 3) audio recording of the court session; 4) video recording of the court session; 5) others, including combined means of mechanical or electronic recording of the course of a court session [6, p. 145]. However, in Ukraine, in the applicable court proceedings, the list of these means is limited only to sound recording equipment (Part 5 of Article 27 of the CrimPC, Part 1 of Article 197 of the CivPC, Part 7 of Article 81–1 EPK, Part 6 Article 12, Part 1 Article 41 CoAP). The only procedure for working with sound recording equipment for court session recordings, storing, copying, duplicating and using information that reflects the course of the court session in the courts of general jurisdiction (except for the Supreme Court of Ukraine and the higher specialized courts) is regulated by the «Instruction on the procedure for working with technical means for recording the court session», approved by the decree of the State Ju-

dicial Administration of Ukraine dated 09/22/2012, No. 108. This Instruction establishes: a court session as a procedural form of consideration of a case by a court in the order of civil, administrative, criminal, economic justice; recording a court session by technical means, as a technical record of a court hearing by means of a sound recording equipment, which includes the creation of a phonogram of the court hearing; recording procedural action by technical means, as a technical record of procedural action with the help of a sound recording equipment, which includes the creation of a phonogram; sound recording equipment (sound recording complex) – a set of software and hardware devices that ensure proper recording, storing, copying (duplication) and using information that reflects the course of the trial («Triton», «Reyestrator», «Oberih», «SRS Femida» [10], «Cameron» [11, p. 117]); a phonogram of the court session (phonogram), as a sound recording, which is formed during the direct recording of the court session with the help of sound recording complexes and transformed into an electronic data form.

The critical analysis of the foregoing suggests that current provisions of law provide for the recording of solely audio (verbal) information. There is no doubt that a sound recording opposed to a protocol more precisely reproduces the peculiarities of the process of obtaining factual data in the form of testimony during interrogation in the court, it captures not only the content of the testimony but also the general condi-

tions in which the trial is conducted, the tempo, the voice features and emotional color of the language. Unlike the protocol, which contains a transformed, that is, compiled by the secretary of the court hearing, the message of the interviewee, a sound recording directly captures exactly what the interviewee said in the same expressions and sequences. Therefore, along with the content of the testimony, other sound attributes (intonation, accents, pauses) become significant and substantially complement their content [12, p. 109–110].

However, there remains a wide range of non-verbal communication tools: facial expressions, gesticulation, posture, articulation of participants in the hearing – all hidden beyond the scope of sound recording equipment for objective reasons. O. P. Vashchuk devoted many scientific works to the research of the high forensic significance of these [13–16]. The urgency of recording non-verbal information is caused by the rapid development of technology used in criminal proceedings and its current capabilities [14, p. 298], and according to our belief, the possibility of a comprehensive recording of verbal and non-verbal manifestations of all parties of the hearing can only be provided using technical means of video recording.

Cases of compulsory use in the trial of technical means of video recording by the current legislation of Ukraine were established only to record the progress and results of procedural actions conducted in the video conferencing mode (Part 7 of Article 336, Part 5 of Article 567 of the Criminal Procedure

Code, part 7 of Art. 158 CivPC, Part 7 of Article 74–1 of the EPC, Part 7 of Article 122 CoAP). The only procedure for working with the technical means of video recording of the course and the results of procedural actions conducted in the video conferencing mode during the court session (criminal proceedings) was established by the «Instruction on the procedure for working with the technical means of video recording of the course and the results of procedural actions conducted in the video conferencing mode during the judicial session (criminal proceedings)», approved by the decree of the State Judicial Administration of Ukraine dated November 15, 2012 No. 155. This Instruction defines: *videoconference* as a telecommunication technology of interactive interaction between two or more remote participants in court proceedings with the possibility of exchanging audio and video information in real time with the account of data management; *technical means of video recording of the course and the results of procedural actions (technical means of video recording)* as a set of software hardware and devices that ensure proper recording, storing, copying (duplication) and usage of the information that reflects the video conferencing process; *a video phonogram*, as a video and audio recording, created directly during a videoconference and recorded using technical means of video recording and acting as a source material for making working and archive copies.

7. The above-mentioned Instructions establishes the following defini-

tions: **phonogram of the court (phonogram)** – a sound recording, which is formed during the process of direct recording of the court session with the help of a sound recording complex and transformed into an electronic data form. **Video phonogram** is a video and audio recording created directly during a video conference and recorded using technical means of video recording and serves as a source material to produce working and archive copies. **Archive copy of the phonogram** – recording of a copy of the phonogram from the built-in carrier of the audio recording system to a compact disc (media carrier), which has the status of the original and is intended for long-term storage in the archive. **An archive copy of a video phonogram** is a recording of a copy of a video phonogram from hardware on a video recorder preserving the original status and intended for long-term storage. An archive copy can be used to create working copies in case of their insufficiency, damage, destruction, etc. **Working copy of the phonogram** – recording a copy of a phonogram from the integrated sound recording system to a compact disc (media) used to reproduce or make copies of the technical record of the trial for to the judges and parties (participants) of the court session, etc. **Working copy of a video phonogram** (hereinafter referred to as a working copy) – transferring a copy of a video phonogram from technical means of video recording to a video-holding carrier.

Thus, as carriers of information in all cases: 1) of both audio and video re-

cording; 2) for the preservation of both working and archival copies of phonograms and video phonograms, current regulatory acts only provide discs for laser reading systems, which record the corresponding audio or video phonograms. The use of such carriers for storing audio and video information, in our opinion, poses a serious risk of irreversible loss of the results of the recording of the trial by technical means. At the same time, in no way does it answer the question of what copy should the court use to reproduce the records in the case of simultaneous reduction of the quality of reading data from both archival and working copies? How to identify information and software contained on computer media, without examination of computer hardware and software products? How to restore completely or partly the video record (phonogram) from the removable media without conducting video recording expertise?

**Conclusions.** All of the foregoing allows us to conclude that the actual, and not the declarative fullness of the recording of the trial by technical means, should not consist in recording solely audio information related to separate court sessions or procedural actions of a certain court, but in the continuous video recording of all the actions held without exception during the court meetings and any court procedural actions, irrespective of the territoriality, specialization and judicial nature of the court, as well as the location where certain procedural actions are being held (meeting room etc.) longed from the very first meeting in the court of first

instance and ending with the consideration of the constitutional complaint after exhausting all other domestic remedies. The primary technical basis for this can be the existing components of stationary video conferencing systems for holding court sessions in a video conference mode, which were provided for by the State Judicial Administration of Ukraine. Thus, according to the data of the High Qualification Commission of Judges of Ukraine, the State Judicial Administration of Ukraine, the Supreme Administrative Court of Ukraine, the Supreme Economic Court of Ukraine and the Supreme Court of Ukraine, received on our official request, by the beginning of 2017, the network of courts in Ukraine consisted of 765. For conducting court sessions in accordance with the requirements of Part 8 of Art. 11 Law of Ukraine «On the Judiciary and Status of Judges» the premises of appellate and local courts are provided with 2879 courtrooms (324 – in appeals and 2555 – in local courts). Thirty-nine percent of these, 1134 courtrooms, are equipped with stationary video conferencing systems for conducting court sessions in a video conferencing mode. The number of courtrooms specially equipped for conducting court hearings in the Supreme Administrative Court of Ukraine is 6, in the Supreme Economic Court of Ukraine – 10, in the Supreme Court of Ukraine – 6. Of these, the video conferencing system for holding court sessions in the mode of video conference is installed in 2 courtrooms of the Higher Administrative Court (33%), 5 courtrooms of the Supreme Economic

Court of Ukraine (50%) and 5 court-rooms of the Supreme Court of Ukraine (83%).

Modern cloud services can serve as the basis for automated collection, storage, protection, recording, search and provision of electronic copies of video phonograms for relevant cases, which are appropriate to the realities of

the XXI century. For example, the Unified State Register of Court Decisions, which is supported by the State Judicial Administration of Ukraine in accordance with p. 1 of Article 3 of the Law of Ukraine «On Access to Court Decisions» and p. 10 of part 1 of the Article 152 of the Law of Ukraine «On the Judiciary and Status of Judges».

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