

Legislative Amendments to the Criminal Code and the Criminal Procedure Code of Ukraine under Martial Law

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Abstract: *Despite the fact that military actions on the territory of Ukraine have been ongoing since year 2014, the negative consequences of which have been the destabilization of the political situation in the country and destructive processes in many spheres of life that caused the need for a complex solution including a legislative one by way of problematic issues that arise in connection with the implementation of criminal proceedings in the conditions of emergency, which drew attention in the scientific literature, the criminal and procedural legislation, unfortunately, turned out to be not ready for effective criminal proceedings in the conditions of martial law, which required prompt introduction of changes for the proper functioning of the entire criminal system of justice.*

Key Words: *Criminal Law; Criminal Procedure Law; Martial Law; War; Legislation; Criminal Code; Criminal Procedure Code; Criminal Justice; Amendments; Ukraine.*

Introduction

The Article 3 of the Constitution of Ukraine¹ declares that “A person, his/her life and health, honour and dignity, inviolability and security are recognized as the highest social value in Ukraine.” According to the Article 1 of the Law of Ukraine “On the Legal Regime of Martial Law”,² martial law is a special legal regime introduced in Ukraine or in some of its regions in the event of armed aggression or threat of attack, danger to the state independence of Ukraine, its territorial integrity, and provides for the provision of the appropriate state authorities to the military command, military administrations and local self-government bodies the powers neces-

¹ See *Constitution of Ukraine* [online]. 2023 [cit. 2023-10-06]. Available at: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>.

² See *Law of Ukraine No. 389-VIII on the Legal Regime of Martial Law* [online]. 2023 [cit. 2023-10-06]. Available at: <https://zakon.rada.gov.ua/laws/show/389-19>.

sary to avert the threat, to repulse armed aggression and to ensure national security, to eliminate the threat of danger to the state independence of Ukraine, its territorial integrity, as well as the temporary restriction of the constitutional rights and human freedoms of the citizens caused by the threats and, similarly, the temporary restriction of the rights and legal interests of the legal entities, with an indication of the period of validity of these restrictions. Martial law may be imposed on the entire territory of Ukraine or on some of its regions for the period determined by the relevant Decree of the President of Ukraine, with the possibility of further extension until the termination or cancellation of martial law.

It is necessary to take into account that in cases of martial law, the state has the right to withdraw from certain international obligations in the field of ensuring the human rights. The following two international legal documents can be mentioned among the most significant in this context: the International Covenant on Civil and Political Rights, which in Paragraph 1 of the Article 4 declares that “In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin...”³ and the Convention for the Protection of Human Rights and Fundamental Freedoms, which in Paragraph 1 of the Article 15 provides that “In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.”⁴

With the beginning of the war in year 2022, it became clear that the domestic criminal law and criminal procedure law were not ready for it either, even taking into account the significant legal amendments adopted in year 2014. As a result, in a relatively short period of time which

³ See *Resolution No. 2200A (XXI)* [International Covenant on Civil and Political Rights] [1966-12-16]. United Nations General Assembly, 1966, UN Doc. A/RES/21/2200.

⁴ See *Convention for the Protection of Human Rights and Fundamental Freedoms* [European Convention on Human Rights] [1950-11-04].

passed after the introduction of martial law, the Supreme Council of Ukraine adopted more than 10 laws in an emergency order aimed at eliminating the relevant gaps in the criminal legal regulation. Without exception, all the mentioned laws were adopted according to a shortened procedure and that is why they have certain deficiencies. In connection with the aggression of the Russian Federation, the killing of civilian population and the destruction of civilian objects by the enemy led to the adoption of several legislative amendments, so that the criminal justice in Ukraine functioned properly in these extremely difficult conditions.⁵

Now, we would like to draw attention to the main legislative amendments to the Criminal Code and the Criminal Procedure Code of Ukraine adopted under martial law.

Legislative amendments to the Criminal Code of Ukraine under martial law

Challenges of martial law, which received answers in the amendments to the Criminal Code of Ukraine, are as follows:

- I. strengthening the protection of the foundations of the national security of Ukraine;
- II. strengthening the protection of international peace, law and order;
- III. strengthening the responsibility for criminal offences in other areas;
- IV. criminal legal incitement to harm the aggressor;
- V. changes in the system of criminal legal means.

As for the above-stated point I., the Article 43¹ of the Criminal Code of Ukraine entitled *Fulfilling the duty to protect the Motherland, independence and territorial integrity of Ukraine* states:⁶

⁵ See HLOVIUK, I. and V. ZAVTUR. Amendments to the Implementation of Criminal Proceedings under Martial Law: Amendments to the Criminal Procedure Code of Ukraine dated March 3, 2022, and the Supreme Court's Clarification. In: *Higher School of Advocacy NAAU* [online]. 2022-03-07 [cit. 2023-10-06]. Available at: <https://www.hsa.org.ua/blog/novely-zdijsnennya-kryminalnogo-provadhennya-v-umovah-voyennogo-stanu-zminy-do-kpk-ukrayiny-vid-03-bereznya-2022-ta-roz-yasnennya-verhovnogo-sudu/> [in the Ukrainian original ГЛОВЮК, І. і В. ЗАВТУР. Новели здійснення кримінального провадження в умовах воєнного стану: зміни до КПК України від 03 березня 2022 та Роз'яснення Верховного суду. В: *Вища школа адвокатури НААУ* [онлайн]. 2022-03-07 [цит. 2023-10-06]. Доступно на: <https://www.hsa.org.ua/blog/novely-zdijsnennya-kryminalnogo-provadhennya-v-umovah-voyennogo-stanu-zminy-do-kpk-ukrayiny-vid-03-bereznya-2022-ta-roz-yasnennya-verhovnogo-sudu/>].

⁶ The former Section VIII of the Criminal Code of Ukraine was supplemented by the Article 43¹ in accordance with Law No. 2124-IX dated on March 15, 2022; see the full text in

Paragraph 1: An act (action or inaction) committed under conditions of martial law or during an armed conflict and aimed at repelling and deterring armed aggression of the Russian Federation or aggression of another country is not a criminal offence if it caused damage to the life or health of the person who carries out such aggression, or caused damage to law-enforced interests, in the absence of signs of torture or the use of means of warfare prohibited by international law, other violations of the laws and customs of war provided for by international treaties, the binding consent of which was granted by the Supreme Council of Ukraine.

Paragraph 2: Every person has the right to protect the Motherland, independence and territorial integrity of Ukraine, regardless of the possibility of avoiding a collision, causing damage or seeking help from other persons or state authorities, the Armed Forces of Ukraine.

Paragraph 3: A person is not subject to criminal liability for using weapons (armament), ammunition or explosives against persons who commit armed aggression against Ukraine, and for damage or destruction of property in connection with this.

Paragraph 4: An act (action or inaction) aimed at repelling and deterring the armed aggression of the Russian Federation or aggression of another country, which clearly does not correspond to the danger of the aggression or the situation of repulsion and deterrence, is not considered to be the fulfilment of the duty to protect the Motherland, independence and territorial integrity of Ukraine, was not necessary to achieve a significant socially useful goal in a specific situation and created a threat to the lives of other people or the threat of an environmental disaster or the occurrence of other extraordinary events of a larger scale.

Martial law is a special legal regime, i.e. special political and economic situation 1) introduced in Ukraine or in some of its regions 2) in the case of armed aggression or threat of attack, danger to the state independence of Ukraine or its territorial integrity.

The notion “armed conflict” has a legal significance for qualification, if such a conflict 1) takes place outside the borders of a state of war – in the case of 2) the actual start of hostilities, but before the declaration of a state of war, or in general in peacetime.

Ukrainian language in *Criminal Code of Ukraine* [online]. 2023 [cit. 2023-10-06]. Available at: <https://zakon.rada.gov.ua/laws/show/2341-14>.

As we can see, Paragraph 2 of the Article 43¹ of the Criminal Code of Ukraine gives a person the opportunity (guarantee) to act decisively and offensively, while there are few restrictions (martial law has been declared; the aggressor is known; for the protection of the Motherland, independence and territorial integrity of Ukraine; regardless of whether it is possible to avoid a collision, to cause damage or to seek help from other persons or state authorities, the Armed Forces of Ukraine).

It follows from the above-mentioned that a person may be subject to criminal responsibility if the damage caused by the use of the specified tools was related to the lives or health of civilians or combatants of Ukraine (and not the aggressor), or to other legally protected interests (environment, public safety, public order, etc.), but only if there were signs of a) torture or b) violations of the laws and customs of war provided for by international treaties, the binding consent of which has been granted by the Supreme Council of Ukraine (Article 127 and Article 438 of the Criminal Code of Ukraine).

As for the above-stated point II., the Law of March 3, 2022, in fact, “strengthens” the responsibility for committing acts that were previously recognized as criminally illegal. The corresponding goal was achieved by supplementing the Article 111 (*High Treason*) and the Article 113 (*Sabotage*) of the Criminal Code of Ukraine with new parts, the sanctions of which established a more severe (compared to the corresponding unqualified acts) punishment – imprisonment for a term of 15 years or life imprisonment, with confiscation of property – for high treason committed under martial law and sabotage committed under martial law or during armed conflict.

Another new fact is the establishment by the Law of March 24, 2022,⁷ of criminal responsibility for encroachments, the majority of which were not qualified as criminal (criminalized) before the entry into force of this Law. We are talking about actions that, for the sake of convenience, we will denote by the perhaps not entirely accurate, but more concise (compared to the law) terminological phrase “unauthorized dissemination of militarily significant information”, the responsibility for which was provided for in the new Article 114² of the Criminal Code of Ukraine (the

⁷ See *Law of Ukraine No. 2149-IX on the Introduction of Amendments to the Criminal Code of Ukraine to Increase the Effectiveness of the Fight against Cybercrime in the Conditions of Martial Law* [online]. 2023 [cit. 2023-10-06]. Available at: <https://zakon.rada.gov.ua/laws/show/2149-20>.

subject of this Article is aimed at unauthorized dissemination of information about the transfer of weapons and military supplies to Ukraine, the movement, transfer or placement of the Armed Forces of Ukraine or other military formations formed in accordance with the laws of Ukraine, committed under conditions of martial law or a state of emergency).

We believe that the purpose of the Article 114² of the Criminal Code of Ukraine is a criminal legal counteraction to manifestations that do not aim to cause harm to the national security of Ukraine, and despite this, they cause it as a result of the irresponsibility of a person, his/her lack of awareness of the social danger of the relevant acts committed in conditions of martial law.

The existence of the investigated criminal legal amendment in its current version creates preconditions for unwanted competition, which will have to be overcome in favour of a special norm – that is Paragraph 3 of the Article 114² of the Criminal Code of Ukraine, the sanction of which is punishment in the form of imprisonment for a term from eight to twelve years, while the sanction of Paragraph 2 of the Article 111 of the Criminal Code of Ukraine refers to imprisonment for a term of fifteen years or life imprisonment, with confiscation of property. It turns out that, instead of the expected strengthening as a result of the adoption of the new law, there was a significant weakening (in the corresponding wording) of the responsibility for the mentioned actions.

In our opinion, the degree of social danger of each of the acts referred to in the Article 111 (*High Treason*), the Article 114 (*Spying*), the Article 114¹ (*Obstructing the Legal Activities of the Armed Forces of Ukraine and Other Military Formations*) and the Article 114² (*Unauthorized Dissemination of Information about the Sending, Movement of Weapons, Armaments and Military Supplies to Ukraine, the Movement or Placement of the Armed Forces of Ukraine or Other Military Formations Formed in Accordance with the Laws of Ukraine, Committed in Conditions of Martial Law or a State of Emergency*) of the Criminal Code of Ukraine is significantly increased when they are committed both in the conditions of martial law and in the period of armed conflict.

As for the above-stated point III., the second important legal amendment to the Criminal Code of Ukraine concerns the collaborative activity. The Article 111¹ (*Collaborative Activity*) of the Criminal Code of Ukraine provides for eight paragraphs at once, of which Paragraphs 1 – 7 provide

for the main elements of criminal offences and Paragraph 8 provides for the qualified element of criminal offences.

According to Oleksiy Kravchuk and Maryna Bondarenko, in relation to Paragraph 7 of the Article 111¹ of the Criminal Code of Ukraine, the criminal offence of “voluntarily occupying a position in illegal judicial or law enforcement bodies created in the temporarily occupied territory” will take place in the case of taking only such positions in illegal authorities that involve the presence of organizational-managing or administrative-economic functions.⁸ However, we would like to emphasize that in Paragraph 7 of the Article 111¹ of the Criminal Code of Ukraine, similar to that provided for in Paragraph 5 of the same Article, there is no indication that responsibility for it arises only for occupying positions related to the presence of the corresponding functions. The presence of this fact can be taken as a proof that, according to this norm, the occupation of any positions in illegal judicial or law enforcement bodies created in the temporarily occupied territory can be qualified, in particular, as those that are not related to the presence of organizational-managing or administrative-economic functions, however, without which the implementation of the corresponding functions would not be possible: positions of court administrator, assistant of judge, court secretary, personnel management department, accounting department, etc. At the same time, the activities of court cleaner, driver of the court chairman, etc., should be qualified as insignificant, because their functions are not related to the implementation of the functions discussed above.

The most urgent practical problem that may arise in connection with the amendment of the Criminal Code of Ukraine by the Article 111¹ is the question of distinguishing this criminal offence from that indicated in the provisions of the Article 111 of the Criminal Code of Ukraine (*High Treason*). The fact is that before the inclusion of the Article 111¹ to the Criminal Code of Ukraine, most of the acts described in it could be qualified precisely as high treason in the form of providing assistance to a foreign

⁸ See KRAVCHUK, O. and M. BONDARENKO. Article “Collaborative Activity: Analysis of the New Article 111¹ of the Criminal Code of Ukraine”. In: *Human Rights Vector* [online]. 2023 [cit. 2023-10-06]. Available at: <https://hrvector.org/podiyi/22-03-20-mbo?fbclid=IwAR0OV25FDc4IeIDAW8ft-zHXP9ky5H4-tCbSBMotpIi22GwWCx0m0MmRNhs> [in the Ukrainian original КРАВЧУК, О. і М. БОНДАРЕНКО. Стаття “Колабораційна діяльність: аналіз нової статті 111-1 Кримінального кодексу України”. В: *Вектор прав людини* [онлайн]. 2023 [цит. 2023-10-06]. Доступно на: <https://hrvector.org/podiyi/22-03-20-mbo?fbclid=IwAR0OV25FDc4IeIDAW8ft-zHXP9ky5H4-tCbSBMotpIi22GwWCx0m0MmRNhs>].

state in carrying out subversive activities against Ukraine or going over to the side of the enemy during an armed conflict, the commission of which is in martial law punishable by imprisonment for a term of 15 years or life imprisonment, with confiscation of property. Analysing the decision to supplement the Criminal Code of Ukraine by the Article 111¹, it can be noted that although the undoubted direction of this legislative step should be the establishment or strengthening of criminal responsibility for the acts described in the relevant norm, actually it was significantly reduced.

As for the above-stated point IV., strengthening the criminal responsibility for looting in the broad sense of this term (not only for looting as it is defined in the Criminal Code of Ukraine in the Article 432 (*Looting*) – theft of things found on the battlefield with the killed or wounded, but also theft outside the boundaries of the battlefield and the property of not only the killed or wounded) was achieved at the expense of: 1) prediction in the fourth paragraph of the Article 185 (*Theft*), the Article 186 (*Plundering*), the Article 187 (*Robbery*), the Article 189 (*Extortion*) and the Article 191 (*Appropriation, Waste of Property or Taking Possession of It by Abuse of Official Position*) of the Criminal Code of Ukraine of the qualifying sign of committing the specified acts “under conditions of martial law or a state of emergency”; 2) increasing the minimum punishment for looting (Article 432 of the Criminal Code of Ukraine) from 3 years of imprisonment to 5 years, while the maximum punishment has not been changed (10 years).

A lot of judges justifiably draw attention to the different terminology used by the Ukrainian legislator in connection with the formulation of the investigated feature – if in the Article 67 (*Aggravating Circumstances*) of the Criminal Code of Ukraine devoted to the circumstances that aggravate the punishment the legislator refers to “use of the conditions of martial law or a state of emergency”, then in the new qualifying features of the Articles 185, 186, 187, 189 and 191, as well as, by the way, in the Article 111 of the Criminal Code of Ukraine he refers to the commission of relevant acts “under martial law”.

Reflecting on the question of whether these concepts are identical, we can state that 1) provided for in the Article 67 Paragraph 1 Clause 11 of the Criminal Code of Ukraine, an aggravating circumstance will not take place when committing any criminal offence during the period of martial law, but only when it was connected precisely with the use of the

relevant conditions. As an example, a situation is given when intentional domestic homicide is committed during the period of martial law, but in an area where there are no military operations. In such a case, there is no “use of martial law conditions”, and, therefore, there is no corresponding aggravating circumstance for such a crime; 2) at the same time, with regard to the incrimination of such a qualifying feature as committing “under martial law”, despite using the same wording, a differentiated approach depending on which criminal offence took place will be allowed: with regard to such crimes against the fundamentals of national security of Ukraine, as high treason and diversion, the qualifying feature of martial law is the same, regardless of the place of their commission, which is explained by the fact that they are obviously related to martial law; the qualifying feature “under martial law” should be criminalized only when the crime took place, for example, in the areas of fire damage, temporary occupation or the passage of troops, as well as outside the mentioned areas (theft of other people’s property, committed in relation to persons who move to safer regions of Ukraine or in relation to their property, in relation to the property of persons who temporarily left their housing without control to shelter in a safe place). At the same time, we are convinced that if an abduction took place even during the martial law regime, but outside the borders of the above-mentioned areas and without any use of the conditions of martial law, then there is no need to apply the relevant qualifying feature or the feature that aggravates the punishment.

Legislative amendments to the Criminal Procedure Code of Ukraine under martial law

With the Draft Law of Ukraine “On the Introduction of Amendments to the Criminal Procedure Code of Ukraine and Other Legislative Acts of Ukraine Regarding the Additional Regulation of Ensuring the Activities of Law Enforcement Agencies in Difficult Conditions of Martial Law” and the Law of Ukraine “On the Introduction of Amendments to the Criminal Procedure Code of Ukraine and the Law of Ukraine “On Pre-trial Detention” Regarding Additional Regulation of Law Enforcement Activities under Martial Law”, dated on March 3, 2022, which entered into force on March 8, 2022,⁹ a number of amendments were made to the Criminal

⁹ See *Draft Law of Ukraine No. 7118 on the Introduction of Amendments to the Criminal Procedure Code of Ukraine and Other Legislative Acts of Ukraine Regarding the Additional Regulation of Ensuring the Activities of Law Enforcement Agencies in Difficult Conditions of*

Procedure Code of Ukraine. Part of these amendments affects the Section IX¹ of the Criminal Procedure Code of Ukraine entitled *Special Regime of Pre-judicial Investigation, Judicial Proceedings under the Conditions of Martial Law*.¹⁰

Let's analyse these amendments.

Principles of criminal proceedings

The Article 7 (*General Principles of Criminal Proceedings*) of the Criminal Procedure Code of Ukraine was supplemented with Paragraph 3 as follows: "The content and form of criminal proceedings in the conditions of martial law must comply with the general principles of criminal proceedings specified in the first Paragraph of this Article, taking into account the specifics of the implementation of criminal proceedings, determined by Section IX¹ of this Code." This amendment emphasizes the extraordinary nature of the criminal proceedings' regime under martial law.

Powers of the head of the Prosecutor's Office

In this area, Paragraph 5 of the Article 36 (*Prosecutor*) of the Criminal Procedure Code of Ukraine, which regulates powers of the head of the Prosecutor's Office is to be mentioned. The Prosecutor General (or a person executing his/her duties), the head of the regional prosecutor's office, their first deputies and deputies may transfer a pre-trial investigation to another body of the pre-trial investigation, in particular a higher-level investigative unit within the hierarchy of one law enforcement body not only under the condition of ineffectiveness of the pre-trial investigation, but also in the presence of objective circumstances that make the functioning of the relevant body of a pre-trial investigation impossible under martial law. At the same time, it is established that transferring of a pre-trial investigation from the Bureau of Economic Security of Ukraine or the National Anti-Corruption Bureau of Ukraine to the other bodies can be implemented only by the order of the Prosecutor General (or

Martial Law [online]. 2023 [cit. 2023-10-06]. Available at: <https://ips.ligazakon.net/document/JI07078A>; and *Law of Ukraine No. 2111-IX on the Introduction of Amendments to the Criminal Procedure Code of Ukraine and the Law of Ukraine "On Pre-trial Detention" Regarding Additional Regulation of Law Enforcement Activities under Martial Law* [online]. 2023 [cit. 2023-10-06]. Available at: <https://zakon.rada.gov.ua/laws/show/2111-IX>.

¹⁰ See *Criminal Procedure Code of Ukraine* [online]. 2023 [cit. 2023-10-06]. Available at: <https://zakon.rada.gov.ua/laws/show/4651-17>.

a person executing his/her duties), his/her deputy or deputies, or the head of the Specialized Anti-Corruption Prosecutor's Office.

Evidence and proving

In order to ensure the participants of the investigative (search) action the efficiency of its implementation in the conditions of martial law, the legislator in the Article 615 (*Special Regime of Criminal Proceedings under Martial Law*) Paragraph 1 Clause 1 of the Criminal Procedure Code of Ukraine provides for the exclusion of the drawing up of a protocol by an investigator or prosecutor who conducts a relevant procedural action during this conduct or immediately after its completion, and the possibility of technical recording of procedural actions by available technical means with further drawing up of a protocol of a procedural action no later than 72 hours from the moment of its completion in cases where it is not possible to draw up procedural documents about the course and results of investigative (search) actions or other procedural actions (from the context of the norm – directly during their implementation or immediately after it). The recommendations for recording the results of the examination of the scene in conditions of dangerous factors, due to the situation associated with martial law, include drawing up a protocol in dangerous conditions, using photo, video recording materials, plans, diagrams, drafts and notes, including using voice recorders, tools that allow for audio and video commenting on the conduct of the investigative (search) action (video-acoustic draft), which is made directly at the crime scene.¹¹

Another amendment provided for by the Law of Ukraine No. 2201-IX, dated on April 14, 2022,¹² means the possibility of conducting a search or inspection of a person's home or other property without the involvement

¹¹ See TETERIATNYK, H. K. *Criminal Proceedings under Emergency Legal Regimes: Theoretical, Methodological and Praxeological Foundations: Monograph* [online]. Odesa: Helvetica Publishing House, 2021, p. 297 [cit. 2023-10-06]. ISBN 978-966-992-604-3. Available at: <https://dspace.oduvs.edu.ua/handle/123456789/3057> [in the Ukrainian original ТЕТЕРЯТНИК, Г. К. *Кримінальне провадження в умовах надзвичайних правових режимів: теоретико-методологічні та праксеологічні основи: Монографія* [онлайн]. Оdesa: Видавничий дім «Гельветика», 2021, с. 297 [цит. 2023-10-06]. ISBN 978-966-992-604-3. Доступно на: <https://dspace.oduvs.edu.ua/handle/123456789/3057>].

¹² See *Law of Ukraine No. 2201-IX on the Introduction of Amendments to the Criminal Procedure Code of Ukraine Regarding the Improvement of the Procedure for Carrying out Criminal Proceedings under Martial Law* [online]. 2023 [cit. 2023-10-06]. Available at: <https://zakon.rada.gov.ua/laws/show/2201-20>.

of witnesses in cases where their involvement is objectively impossible or is associated with potential danger to their lives or health. At the same time, it is mandatory to record such procedural actions by available technical means in the way of continuous video recording.

Terms of criminal proceedings

In accordance with Paragraph 1 of the Article 214 (*Beginning of Pre-trial Investigation*) of the Criminal Procedure Code of Ukraine, the investigator, inquirer, prosecutor immediately, but no later than 24 hours after submitting a statement, notification of a committed criminal offence is obliged to enter relevant information in the Unified Register of Pre-trial Investigations and to start an investigation during 24 hours from the moment of entering such information. The initiation of criminal proceedings is directly related to the entry of information on a criminal offence into the Unified Register of Pre-trial Investigations, however, in the conditions of emergency legal regimes, which are referred to in the Section IX¹ of the Criminal Procedure Code of Ukraine, a number of negative factors arise that determine the specifics of criminal proceedings in general and the possibility of entering information on a criminal offence in accordance with the requirements of Paragraph 1 of the Article 214 of the Criminal Procedure Code of Ukraine. They include, for example, failure of computer and network equipment, outages with electricity, communication and access to the Internet, problems with transport, blocking and seizure of administrative buildings, lack of access to territories, etc., and can lead to the impossibility during 24 hours to enter information on a criminal offence into the Unified Register of Pre-trial Investigations. These and other objective factors, caused by the circumstances that arise in extraordinary legal regimes, determine the technical impossibility of entering relevant information into the Unified Register of Pre-trial Investigations. In such cases, the prosecutor, the investigator issues a corresponding resolution. The changes introduced by the Law of Ukraine No. 2201-IX, dated on April 14, 2022, to the first Paragraph of this Article also stipulate that before the relevant resolution is issued, only one urgent investigative (search) action can be carried out – an inspection of the crime scene.

In order to ensure the rights of the participants in criminal proceedings to consider petitions, to review the materials of criminal proceedings, to appeal decisions, actions or inaction of the investigator, inquirer or prosecutor, to appeal non-compliance with reasonable deadlines, to

pronounce a court decision and related actions, to apply with the appeals and cassation complaints, in the case of the objective impossibility of performing such actions, there have been clearly defined (formalized) terms, according to which they must be carried out immediately if possible, that is, when the circumstances that made such procedural actions impossible no longer exist. But this term is also limited to 15 days after the termination or cancellation of martial law.

Preventive measures

The norms of Paragraph 2 of the Article 615 (*Special Regime of Criminal Proceedings under Martial Law*) of the Criminal Procedure Code of Ukraine authorize the authority of the head of the Prosecutor's Office to make a decision on the extension of validity period of the resolution of the investigating judge or the resolution of the head of the Prosecutor's Office on the application of a preventive measure in the form of a detention for up to one month at the request of the prosecutor or at the request of the investigator, agreed with the prosecutor. One cannot overlook the fact that the relevant legal provision of Paragraph 2 of the Article 615 of the Criminal Procedure Code of Ukraine establishes an extraordinary and exceptional procedure, according to which the authority to extend the term of validity of a court decision is granted to an entity that is not a holder of judicial power.¹³

In the case of the expiration of the court decision on detention and the impossibility of consideration by the court of the question of extend-

¹³ See HLOVIUK, I., G. TETERIATNYK, V. ROHALSKA and V. ZAVTUR. *Special Regime of Pre-trial Investigation, Trial in Conditions of Martial Law, State of Emergency or in the Area of Anti-terrorist Operation or Measures to Ensure National Security and Defense, Repel and Deter Armed Aggression of the Russian Federation and/or Other States against Ukraine: A Scientific and Practical Commentary on the Section IX¹ of the Criminal Procedure Code of Ukraine (as of March 25, 2022)* [online] Odesa: Odesa State University of Internal Affairs, 2022. 47 p. [cit. 2023-10-06]. Scientific and Practical Edition. Available at: <https://dspace.lvduvs.edu.ua/handle/1234567890/4779> [in the Ukrainian original ГЛОВЮК, І., Г. ТЕТЕРЯТНИК, В. РОГАЛЬСЬКА і В. ЗАВТУР. *Особливий режим досудового розслідування, судового розгляду в умовах воєнного, надзвичайного стану або у районі проведення антитерористичної операції чи заходів із забезпечення національної безпеки і оборони, відсічі і стримування збройної агресії Російської Федерації та/або інших держав проти України: науково-практичний коментар Розділу IX-1 Кримінального процесуального кодексу України (станом на 25 березня 2022 року)* [онлайн] Оdesa: Одеський державний університет внутрішніх справ, 2022. 47 с. [цит. 2023-10-06]. Науково-практичне видання. Доступно на: <https://dspace.lvduvs.edu.ua/handle/1234567890/4779>].

ing the period of detention in accordance with the procedure established by the Criminal Procedure Code of Ukraine, the chosen preventive measure in the form of a detention is considered extended until the relevant issue is resolved by the court, but for no more than two months.

Investigative (search) actions

The changes also affected the search and inspection of housing, other possessions and the search of a person. Under martial law, it may be dangerous or impossible to involve witnesses in investigative (search) actions. In such a situation, the search and inspection of housing, other possessions or the search of a person may take place without the participation of impartial witnesses. At the same time, it is mandatory to record the search or inspection using technical means, i.e. continuous video recording. Simplification of the procedure for conducting searches and inspections of possessions and searches of persons allows to record procedural actions in criminal proceedings with maximum compliance with the security rules under martial law. After all, the safety and life of every person is the greatest value.¹⁴

Changes have also been introduced regarding the questioning of a witness or a victim in criminal proceedings. In order to use their statements as evidence in court, it is necessary to record the process and results of the interrogations using a video recording. This innovation makes it possible to comply with the rules and norms of interrogation in conditions of martial law, as well as to avoid cases of pressure on witnesses and victims by the law enforcement officers.

In order to use a testimony obtained during the interrogation of the suspect, in addition to the video recording of the interrogation, the participation of a defense attorney in such interrogation is mandatory. The suspect's defense attorney can participate in the interrogation remotely – with the help of technical means (video and audio communication). Such measures during the interrogation of a suspect in criminal proceedings

¹⁴ See SANAKOEV, D. and O. SKRIABIN. Peculiarities of Conducting Criminal Proceedings under Martial Law. *Scientific Bulletin of the Dnipropetrovsk State University of Internal Affairs* [online]. 2022, no. 3, pp. 39-45 [cit. 2023-10-06]. ISSN 2078-3566. Available at: <https://doi.org/10.31733/2078-3566-2022-3-39-45> [in the Ukrainian original САНАКОЄВ, Д. і О. СКРЯБІН. Особливості здійснення кримінального провадження в умовах воєнного стану. *Науковий вісник Дніпропетровського державного університету внутрішніх справ* [онлайн]. 2022, № 3, с. 39-45 [цит. 2023-10-06]. ISSN 2078-3566. Доступно на: <https://doi.org/10.31733/2078-3566-2022-3-39-45>].

under martial law are necessary, because the remote format of the defense attorney's participation ensures compliance with the suspect's rights to defense. At the same time, ensuring the remote participation of the defense counsel is entrusted to such participants in criminal proceedings from the side of the prosecution, as are the inquirer, the investigator and the prosecutor. It remains unclear why such bodies as the investigating judge and the court were left out of the legislator's attention. Iryna Hloviuk rightly points out the participation of other participants in criminal proceedings: the rule regarding "remote participation" is in the Criminal Procedure Code of Ukraine during the period of martial law extended only to the defender; representatives (of the victim, the civil plaintiff, the civil defendant, and others) are not mentioned.¹⁵

Conclusions

In our paper stated and analysed amendments to the Criminal Code and the Criminal Procedure Code of Ukraine confirmed the general trend of limiting criminal procedural guarantees of individual rights in criminal proceedings under martial law and simplifying the procedure for criminal proceedings carried out in a special period. Some of the updated provisions of the legislation were quite expected – they are aimed at its harmonization, as well as elimination of possible gaps and significantly change the conceptual model of criminal proceedings, which was developed on the basis of the provisions of the Criminal Code and the Criminal Procedure Code of Ukraine. Now, time and law enforcement practice will show the justification and effectiveness of these innovations.

The introduction of martial law in Ukraine on February 24, 2022, and the full-scale invasion of the Russian troops became the impetus for changes to the Ukrainian criminal procedural legislation. The introduced changes relate to the beginning of the pre-trial investigation, the procedure for conducting a search and an inspection, the deadlines for the execution of procedural actions, the specifics of the interrogation of a wit-

¹⁵ See HLOVIUK, I. Separate Issues of Application of the Norms of the Constitution of Ukraine in Criminal Proceedings. In: *Higher School of Advocacy NAAU* [online]. 2023-06-27 [cit. 2023-10-06]. Available at: <https://www.hsa.org.ua/lectors/glovyuk-iryna/articles/okremi-pitannia-zastosuvannia-norm-konstituciyi-ukrayini-u-kriminalnomu-provadženni> [in the Ukrainian original ГЛОВЬЮК, І. Окремі питання застосування норм Конституції України у кримінальному провадженні. В: *Вища школа адвокатури НААУ* [онлайн]. 2023-06-27 [цит. 2023-10-06]. Доступно на: <https://www.hsa.org.ua/lectors/glovyuk-iryna/articles/okremi-pitannia-zastosuvannia-norm-konstituciyi-ukrayini-u-kriminalnomu-provadženni>].

ness and a victim, or a suspect, the conditions for admitting testimony of a witness, a victim, or a suspect obtained at the stage of a pre-trial investigation, which was carried out under the conditions of martial law, as the evidence in court, order of participation and involvement of a defense attorney in criminal proceedings, and so on.

Such changes in relevant legislation contribute to simplifying the recording of procedural actions in criminal proceedings under martial law, increasing the efficiency and ensuring the timeliness of criminal proceedings, as well as to strengthening criminal procedural guarantees of the performance of criminal proceedings. At the same time, some aspects, such as the participation and involvement of a defense attorney in criminal proceedings, need to be finalized. Prospects for further scientific research can be an analysis of the balance of private and public interests in criminal proceedings, as well as the appropriateness of the law enforcement activities in criminal proceedings under martial law.

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