

The legal regime of the martial state in Ukraine and its impact on the conduct of pre-trial investigation: new challenges and their overcoming¹

El régimen jurídico del estado de guerra en Ucrania y su impacto en la conducción de la investigación preliminar: nuevos desafíos y su superación

<https://doi.org/10.15332/10671>

Artículos

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Received: 5 de marzo de 2024

Accepted: 5 de abril de 2024

1 The present manuscript is the result of the research: "The legal regime of the martial state in Ukraine and its impact on the conduct of pre-trial investigation: new challenges and their overcoming," conducted through an inter-institutional partnership between Kharkiv National University of Internal Affairs and the Federal University of the State of Rio de Janeiro (unirio) via the Human Rights and Social Transformation — Study and Debate Group (dhts-ged) and the Human Rights and Public Policies Research Group.

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Via Inveniendi Et Iudicandi

e-ISSN: 1909-0528 |  <https://doi.org/10.15332/19090528>

Vol. 19 N.º 2 | julio-diciembre de 2024

How to cite:

Sokurenko, V., Levchenko, K., Ablamskyi, S., Pereira de Lima Jr, O., Šimić, G., & Romaniuk, V. (2024). The legal regime of the martial state in Ukraine and its impact on the conduct of pre-trial investigation: new challenges and their overcoming. *Via Inveniendi Et Iudicandi*, 19(2), 92-111. <https://doi.org/10.15332/10671>



Abstract

This article examines the legal regime of the martial state in Ukraine and its impact on the conduct of pre-trial investigations. The article begins with an overview of the current political and legal situation in Ukraine and highlights the importance of studying the legal regime of the martial state. It then explores the definition, characteristics, legal basis, and framework of the martial state in Ukraine, as well as the powers and restrictions of military authorities during the martial state. The article also analyzes the impact of the martial state on pre-trial investigations, including the limitations and challenges faced by law enforcement agencies, the effects of the martial state on the rights of suspects, defendants, and victims, and judicial control over pre-trial investigations during the martial state. Furthermore, the article examines the new challenges faced by law enforcement agencies during the martial state in Ukraine and proposes possible solutions and strategies to overcome these challenges in pre-trial investigations. Finally, the article concludes with a summary of the main findings and highlights the importance of further research on the legal regime of the martial state and its impact on pre-trial investigations in Ukraine.

Keywords: criminal proceedings, pre-trial investigation, martial law, criminal procedural legislation.

Resumen

Este artículo examina el régimen jurídico del estado de guerra en Ucrania y su impacto en la conducción de la investigación previa al juicio. El artículo comienza con una visión general de la situación política y legal actual en Ucrania y destaca la importancia de estudiar el régimen jurídico del estado de guerra. Luego explora la definición, características, base legal y marco del estado de guerra en Ucrania, así como los poderes y restricciones de las autoridades militares durante el estado de guerra. El artículo también analiza el impacto del estado de guerra en la investigación previa al juicio, incluyendo las limitaciones y desafíos enfrentados por las agencias de aplicación de la ley, los efectos del estado de guerra en los derechos de los sospechosos, acusados y víctimas, y el control judicial sobre la investigación previa al juicio durante el estado de guerra. Además, el artículo examina los nuevos desafíos que enfrentan las agencias de aplicación de la ley durante el estado de guerra en Ucrania y propone posibles soluciones y estrategias para superar estos desafíos en la investigación previa al juicio. Finalmente, el artículo concluye con un resumen de los principales hallazgos y destaca la importancia de seguir investigando sobre el régimen jurídico del estado de guerra y su impacto en la investigación previa al juicio en Ucrania.

Palabras clave: procedimientos penales, investigación previa al juicio, ley marcial, legislación procesal penal.

Introduction

The problem of effectively providing protection for the rights of aggrieved persons has always existed. However, as historical events testify, the Second World War radically changed views on guarantees of world peace because humanity understood the true value of human rights and freedoms, which led to a fundamental update of the legal mechanisms for their protection. Since that time, the protection of human rights has not been a purely internal competence of states and has gained international significance, embodied in the idea of creating a new international law and order, the basis of which is respect for fundamental rights and freedoms (Ablamskyi et al., 2020; Sokurenko et al., 2023).

By Decree of the President of Ukraine No. 64/2022, dated February 24, 2022, martial law was introduced in Ukraine from 5:30 a.m. on February 24, 2022, for a period of 30 days, which was subsequently extended and is still in effect. The modern threats faced by the Ukrainian people in connection with the brutal aggression of the Russian Federation, the killings of the civilian population, and the destruction of civilian objects by the enemy led to the adoption of amendments and additions to the Criminal Procedural Code of Ukraine, so that criminal justice functions properly in these extremely difficult conditions (Hloviuk, Zavtur, 2022a, 2022b). Full-scale military operations on the territory of Ukraine and the related temporary occupation of its separate territories by the Russian Federation have challenged not only the national security of the Ukrainian state but also the ability to effectively protect and restore human rights and fundamental freedoms in terms of overcoming the consequences of the armed conflict. Such illegal actions have killed and injured many civilians and forced more than 10 million Ukrainians from illegal military incursions and temporarily occupied territories to flee their homes, leading to influxes of internally displaced persons (Ortynska et al., 2022).

According to the Office of the Prosecutor General, as of December 11, 2022, 52,538 crimes of aggression and war crimes were registered in Ukraine (50,829 of them under Article 438 of the Criminal Code of Ukraine), along with 18,508 crimes against the foundations of national security. The war also affected children, with a total of 1,298 victims, of whom 443 died (Website of the Prosecutor General's Office, 2022). In his report, the High Commissioner for Human Rights of the United Nations Office provided the following information:

As of 31 October 2022, OHCHR - through the United Nations Human Rights Monitoring Mission in Ukraine (HRMMU) - had documented summary executions and attacks on individual civilians in 102 villages and towns of the three regions between 24 February and 6 April 2022. The acts in question were committed by Russian armed forces in control of these areas and led to the deaths of 441 civilians (341 men, 72 women, 20 boys, and 8 girls). One hundred of those killings are analyzed in this report and its Annex, as illustrative examples of the suffering borne by civilians in these areas. (Report, 2022)

Therefore, taking into account the realities of our time, in the conditions of war, the study of the existing problems of conducting a pre-trial investigation is of particular relevance.

Theoretical Framework

The legal regime of martial law in Ukraine was reflected not only as an independent criminal procedural institution but also became the basis for scientific developments in the works of Ablamska (2022) on the need to eliminate legislative conflicts to ensure effective and unambiguous practical legal implementation of legislative norms regarding criminal proceedings under martial law.

A similar perspective on the dual nature of military justice is seen in the Colombian context, where the disciplinary regime has gradually lost prominence compared to criminal matters. Vásquez Hincapié and Gil García (2016) argue that the military disciplinary regime, which traditionally emphasized maintaining order and discipline among service members, has increasingly been overshadowed by punitive measures that criminalize military conduct. This shift highlights a broader trend in military justice systems, where the balance between discipline and criminal accountability is continually negotiated, reflecting the tension between maintaining order and upholding legal standards in times of conflict (Vásquez Hincapié y Gil García, 2016).

Dufeniuk (2022) discusses the expediency of implementing the concept of “war crimes” into Ukrainian legislation; standardizing the investigation process, algorithmizing procedural actions, taking into account foreign experience, and developing, on this basis, specialized subspecies methods for the investigation of war crimes.

The team of authors (Hloviuk et al., 2022) provides a scientific and practical commentary on Section IX-1 of the Criminal Procedural Code of Ukraine (Special regime of pre-trial investigation, trial under martial law conditions) with changes and additions that have appeared in the Code after February 24, 2022.

Hloviuk and Zavtur (2022) justify the temporary restrictions on human rights in comparison to the previous norms of the Criminal Procedure Code of Ukraine, which relate to the “delegation” of the powers of the investigating judge to the head of the prosecutor’s office.

Hloviuk and Teteriatnyk (2022) proved the need to clarify the provisions of paragraph 6, item 6 of the Procedure for Detaining Prisoners of War regarding the recognition of a person who committed a crime but was not detained as a prisoner of war, as a prisoner of war by court decision, and to define such a procedure at the regulatory level.

Romaniuk (2022) identified the problems of law enforcement that may arise if the prosecutor entrusts the pre-trial investigation of a criminal offense to a pre-trial investigation body that does not specialize in investigating this category of criminal proceedings.

Stepaniuk and Perlin (2020) considered the problems and prospects of forming a separate field of forensic technology dedicated to the issues of DNA analysis, which is conducted to fulfill the tasks that arise in criminal justice.

Tchobo (2022) demonstrated that the alleged brutal crimes observed in Bucha could not be qualified as genocide, and then exposed potential international crimes committed in Ukraine

Tishyn (2022) proves that the specificity of the prosecutor's provision of admissibility of evidence in criminal proceedings under martial law is the presence of additional groups of powers to ensure the admissibility of evidence and extensive interaction with the head of the prosecutor's office, etc.

Taking into account the topic of this article, its *goal* is, firstly, to study the impact of the legal regime of martial law in Ukraine on the conduct of a pre-trial investigation; secondly, to examine the provisions of the criminal procedural legislation of Ukraine that relate to the specifics of conducting criminal proceedings under martial law. As you can see, the outlined purpose consists of two parts that are interconnected and complement each other.

To achieve the defined goal, the following *tasks* were set:

1. to carry out a systematic analysis of legislative changes and additions made in connection with the introduction of the legal regime of martial law in Ukraine;
2. to single out legislative conflicts and contradictions, on the basis of which to formulate the author's vision regarding possible ways to eliminate them and improve the provisions of the Criminal Procedure Code of Ukraine.

Methodology

The article utilized a comprehensive approach to investigate the impact of the legal regime of martial law in Ukraine on pre-trial investigations. A variety of modern scientific methods were employed to reveal the issues raised in the article. The search and bibliographic method was utilized to explore relevant literature sources and identify scientific viewpoints on problematic issues related to the research topic. The dialectical method was employed to elucidate the regularities of changes and modifications regarding the specificities of conducting criminal proceedings under martial law. Through the comparative legal method, a systematic comparison of the provisions of the Criminal Procedure Code of Ukraine regulating the peculiarities of criminal proceedings under martial law was conducted. Additionally, legislative conflicts within these provisions were highlighted. Finally, the formal-logical method was utilized to formulate conclusions and proposals aimed at improving the current Code of Criminal Procedure of Ukraine by establishing a normalized framework for criminal procedural relations that considers the unique aspects of criminal proceedings under martial law.

Results and discussion

The ongoing conflict in Ukraine, which intensified following Russia's full-scale invasion on February 24, 2022, has brought the issue of accountability to the forefront of the international agenda. As daily reports of war crimes and mass atrocities committed in the occupied territories continue to surface, the urgent need to hold the political and military leaders of Russia accountable for their actions has become a prevalent topic in the media and public discourse. The

devastating impact of this conflict has highlighted the importance of ensuring accountability for those who commit international crimes and the role of the international community in promoting justice, peace, and security. As such, the quest for accountability in this conflict has become a matter of global significance and represents a critical challenge for the international legal system (Vasiliev, 2022, p. 894).

The criminal procedural legislation of Ukraine has undergone significant changes due to the introduction of martial law, most of which are aimed at ensuring the functioning and operation of law enforcement agencies. Along with the full-scale war, negative phenomena such as treason, collaborative activities, looting, and others have emerged. Separate categories of criminal offenses in the Criminal Code of Ukraine were introduced for the first time specifically after the full-scale invasion of the Russian Federation into Ukraine. It is established that from 24.02.2022 to 24.07.2022, 31 sanctions of the current criminal legal norms underwent changes and additions as a result of the adoption of 12 Laws of Ukraine related to the provisions of the Criminal Code of Ukraine. The most significant changes have been made to those criminal law sanctions that provide punishment in the form of deprivation of the right to hold certain positions or engage in certain activities, confiscation of property, deprivation of liberty, and life imprisonment (Matyushenko, 2022). At the same time, pre-trial investigation bodies, the prosecutor's office, and courts faced enforcement-related problems concerning the qualification of criminal offenses, the resolution of investigations, the legal status of the participants in the proceedings, and so on (Hloviuk et al., 2022; Romaniuk, 2022; Ablamska, 2022). Organizational issues regarding the investigation of war crimes in the main areas (legal, material and technical, human resources, and cooperation) arose separately (Tataryn, 2022).

Problematic aspects of legislative and practical direction affecting the effectiveness of the pre-trial investigation

The specifics of conducting criminal proceedings under martial law are outlined in a separate section of the Criminal Procedure Code of Ukraine, which does not classify it as a special order of criminal proceedings (in other words, the legislator assigned section IX-1 of the CPC of Ukraine to differentiated forms of criminal proceedings). Such legislative logic is fully justified, as the implementation of pre-trial investigation and court proceedings under martial law requires the establishment at the legislative level of certain features determined by the specifics of the legal regime of martial law (Ablamska, 2022). At the same time, the legislator's use of the terminological structure "Special regime of pre-trial investigation", trial in the title of section IX-1 of the Criminal Procedure Code of Ukraine raises certain objections. It appears that, from a procedural point of view, it is more accurate to discuss the peculiarities of pre-trial investigation and trial under martial law conditions. In particular, after conducting a systematic analysis of Section IX-1 of the Criminal Procedure Code of Ukraine, it is evident that it refers to the peculiarities (specificity) of conducting criminal proceedings under martial law, specifically the initiation of a pre-trial investigation, the implementation of procedural actions within the time

limits specified by law, the detention of a person without a decision from an investigating judge or a court, the selection of a preventive measure, etc.

It is necessary to emphasize that the issue of legislative technique, particularly the introduction of clear terminology and the construction of articles and their parts, is of great importance, as it contributes to the high-quality legal implementation of normative prescriptions. This is crucial to avoid significant violations of a person's rights, freedoms, and legitimate interests, those violations that have prevented or could have prevented the court from making a legal and well-founded decision. The introduction of martial law in the state should in no way justify ignoring the requirements of criminal procedural legislation, as the legislator emphasized. A clear confirmation of this is the addition of part three of Article 7 of the Criminal Procedure Code of Ukraine (Law of Ukraine, 2012), which stipulates that "the content and form of criminal proceedings under martial law must comply with the general principles of criminal proceedings specified in the first part of this article, taking into account the specifics of criminal proceedings determined by section IX-1 of this Code". The absence of other changes in Chapter 2 of the Criminal Procedure Code of Ukraine during this time indicates the steadfastness of guarantees ensuring the rights of participants in criminal proceedings (Romaniuk, 2022). In our opinion, these prescriptions are evidence of the fundamentality of the protection of human rights and freedoms, their inviolability, and strict compliance to avoid the court noting significant violations of human rights in the future. Furthermore, by conducting proceedings in this manner, courts and society, although dealing with the gravest crimes and their consequences, uphold their integrity and justification for taking such "extraordinary" measures required in "extraordinary" times.

It is impossible to avoid the legislative collision that arises from the amendment of Article 176 of the Criminal Procedure Code of Ukraine, which introduces new parts six and seven. Currently, we have two valid parts seven that pertain to different legal aspects. In particular, the first states: "At the request of the prosecutor, the preventive measure can be canceled by the investigating judge, the court in the cases and in the manner provided by this Code." The other concerns the application of preventive measures to military personnel during martial law, and we will express certain considerations and views regarding its content below.

Another legislative innovation was the provision of Paragraph 2 of Part 1 of Article 615 of the Criminal Procedure Code of Ukraine, according to which "if there is no objective possibility for the investigating judge to exercise the powers provided for in Articles 140, 163, 164, 170, 173, 206, 219, 232, 233, 234, 235, 245-248, 250, and 294, such powers are exercised by the head of the relevant prosecutor's office at the request of the prosecutor or at the request of the investigator agreed upon with the prosecutor". Objective impossibility is established in each specific case separately and depends directly on hostilities and the situation in the relevant region of the country (Shabelnikov, 2022). According to Mohylnyi (2022), "the legislator decided to amend Article 615 of the current Code of Criminal Procedure of Ukraine".

In this way, the legislator introduced the definition "absent objective possibility" (Paragraph 2, Part 1, Article 615 of the Criminal Procedure Code of Ukraine) without disclosing

its essence and content or citing cases of such an objective possibility, which enables the prosecutor, at his own discretion, to decide this issue. In this regard, Domina's (2022) remark is correct in noting that no law provides a list of these cases. Consequently, the function of judicial control over the observance of the rights and freedoms of individuals is nullified. According to his fully justified statement, the construction of this norm would be logical if such impossibility for the investigating judge to fulfill his powers were confirmed by an official announcement on the court's web portal (which is attached to the materials of the criminal proceedings) and if the Supreme Court did not designate another court to conduct proceedings in a certain territory.

Some clarifications regarding the legal implementation of Paragraph 2, Part 1, Article 615 of the Criminal Procedure Code of Ukraine are provided by the Supreme Court in the letter:

Regarding certain issues of criminal proceedings under martial law," dated March 3, 2022, No. 2/0/2-2022. In particular, it is stated that such a prosecutor is a prosecutor who exercises the powers of a prosecutor in specific criminal proceedings, as well as their leaders. Corresponding decisions can be made by the prosecutor in the event that criminal proceedings are carried out in relation to a set of crimes committed by the suspect, at least one of which is a crime provided for in Article 615 of the CPC of Ukraine. In other cases, namely in the absence of grounds for exercising the specified powers by the prosecutor, they can apply to the court at the place of investigative (search) actions. (Letter of the Supreme Court, 2022).

It is also important to note that the substantiation of the lack of an objective possibility for the investigating judge to exercise his powers must consist of providing factual data that confirm this, and not merely prescribing in the petition and then in the resolution of the head of the prosecutor's office that such a possibility is not available (Tishyn, 2022). Improper or insufficient substantiation may lead to the recognition of evidence as inadmissible, which has already occurred in practice and according to the wording of Article 615 of the Criminal Procedure Code of Ukraine, which was in effect until March 8, 2022. For example, regarding the conduct of covert investigative (search) actions, the following was stated in the court verdict: "Article 615 of the Criminal Procedure Code of Ukraine provides for the prosecutor to exercise the powers of the investigating judge, established by Articles 247 and 248 of the Criminal Procedure Code of Ukraine, in the locality (administrative territory) where an anti-terrorist operation is being carried out, only in case of impossibility of execution of such powers by the investigating judge himself within the time limits established by law. In the above-mentioned resolutions on conducting covert investigative (search) actions, the prosecutor does not indicate what, in his opinion, constituted the impossibility of the investigative judge of the Court of Appeals of Donetsk Region exercising his powers to consider requests for conducting covert investigative (search) actions within the time limits established by law. Another reason specified in the resolutions as "the need to quickly establish the circumstances of the case" does not, in any case, give the prosecutor the legal right to exercise the powers of the investigating judge. The provisions of Article 250 of the Criminal Procedure Code of Ukraine were also not utilized by the prosecutor. ... In pursuance of this Law, the Chairman of the High Specialized Court of

Ukraine issued an order dated September 2, 2014, No. 2710/38-14, “On determining the territorial jurisdiction of cases”, according to which the consideration of criminal proceedings within the jurisdiction of the Court of Appeal of Donetsk Region (Donetsk) is carried out by the Court of Appeal of Zaporizhzhia Region. Thus, at the time of the prosecutor’s decision to conduct the CISA from March 15-18, 2015, the consideration of petitions in accordance with Articles 247 and 248 of the Criminal Procedure Code of Ukraine could objectively be provided by the investigating judges of the Court of Appeal of Zaporizhzhia Region within the time limits established by law. In the above resolutions of the prosecutor on the conduct of covert investigative (search) actions, it is expressly stated that PERSON_5 and PERSON_52 are law enforcement officers. The court considers that, because of the above, the prosecutor in criminal proceedings had no right or grounds to arrogate the powers of the investigating judge of the appellate court regarding the granting of permission to conduct covert investigative (search) actions, and therefore, such decisions are illegal. The court holds that in this case, the investigators or the prosecutor should apply for permission to conduct covert investigative (search) actions to the investigating judge of the Court of Appeal of Zaporizhzhia Region, the Court of Appeal of Donetsk Region (Mariupol), or the Court of Appeal of Dnipropetrovsk Region, as the closest to the court of appeal within the territorial jurisdiction of which the pre-trial investigation is carried out (Verdict of Kramatorsk City Court of Donetsk Region, 2017).

None of those provided for in Part 5 of Article 36 of the Criminal Procedure Code of Ukraine provides a reasoned basis for entrusting the prosecutor with conducting a pre-trial investigation of a criminal offense to another pre-trial investigation body in the absence of an established specialized body. This means that the prosecutor’s decision to conduct a pre-trial investigation in the form of a criminal misdemeanor investigation, as provided for in Parts 1-2 of Article 111-1 of the Criminal Code of Ukraine, to investigation units (including the National Police) due to the lack of a specialized investigation unit in security agencies in connection with the introduction of martial law or for other reasons is unmotivated. Obviously, during the trial, all the evidence obtained at the stage of the pre-trial investigation may be declared inadmissible. Therefore, taking into account, firstly, the specialization of the pre-trial investigation bodies of the security agencies and the National Police, and secondly, the lack of established specialized units of the Security Service of Ukraine, it would be appropriate to combine their capabilities by applying the provisions specified in Part 4 of Article 39 of the Criminal Procedure Code of Ukraine, resulting in the formation of interdepartmental investigative groups (groups of investigators and inquirers).

It is also stated that crimes against the foundations of national security (Chapter I of the Special Part of the Criminal Code of Ukraine) and criminal offenses against peace, human security, and international legal order are not fully within the competence of the investigators of the National Police of Ukraine in terms of criminal procedural legislation (in accordance with Article 216 of the Criminal Procedure Code of Ukraine). However, under the conditions of war, the large number of detected criminal offenses of this type, the presence of a system of investigative and operational groups within the National Police of Ukraine, and the provisions in

Ukrainian legislation regarding the possibility of conducting priority investigative (search) actions and making relevant procedural decisions enable the police to make every effort to document the criminal activity of the Russian Federation.

In fact, with the expansion of the prosecutor's procedural powers, the question arose: which of the grounds provided for in the Criminal Procedure Code of Ukraine for the prosecutor's change of jurisdiction is formed by the fact that the territorial unit (in this case, the security body) does not have a specialized investigation unit? This issue became urgent with the onset of military aggression from Russia and, as a result, the emergence of citizens whose actions were later classified as collaborative, since there was a gap in criminal and criminal procedural legislation for a certain period.

It deserves special attention that a significant part of the problems faced by the units of the National Police of Ukraine, including investigative and inquiry units, in areas of active hostilities is related to the real danger to the life and health of police officers during investigative (search) actions. This danger is caused by constant artillery fire, missile, and air strikes, which create obstacles both for conducting inspections of the crime scenes with the aim of documenting crimes and for carrying out further investigative (search) actions aimed at investigating war crimes. One potential solution to the challenges of conducting separate investigative (search) actions in territories where there is a real threat to the life and health of police officers would be a remote pre-trial investigation. However, another problem arises: the absence or poor quality of communication in such territories, as part of the communication infrastructure has been destroyed or damaged. Accordingly, the main way to address this issue is to significantly reduce the duration of investigative (search) actions, thereby minimizing the time spent by personnel in high-risk areas. To mitigate the risk of losing evidence due to the reduced duration of investigative (search) actions, a larger number of personnel may be involved. However, in some cases, such a measure can lead to negative consequences, as a convoy of cars, a large crowd of people, or mobile phones can attract the attention of enemy intelligence, which is often conducted remotely using various types of unmanned aerial vehicles. This aspect must be taken into account when planning investigative (search) actions, and there should be constant interaction (consultation) with the military regarding the feasibility and advisability of remaining in certain locations.

Use of special knowledge during pre-trial investigation of war crimes

Today, a problematic issue is the identification of traces of biological origin, their molecular genetic research, and the use of their results in proving the circumstances of criminal proceedings. The probative value of such studies has also been confirmed in the decisions of the European Court of Human Rights (2009). Molecular and genetic examination is one of the most modern and effective tools during the investigation of criminal cases initiated on the basis of crimes against the life, health, and sexual integrity of citizens (Butler, 2012). In particular, DNA analysis is important for solving the problems of identifying individuals by traces of biological

origin, establishing the identity of unidentified corpses, determining family ties, and confirming biological paternity.

In order to address the new tasks facing forensic expertise under modern conditions, the order of the Ministry of Justice of Ukraine dated 11.05.2022 No. 1872/5 “On Amendments to Certain Regulatory Legal Acts on Forensic Expert Activity” amended Appendix 5 “List of Types of Forensic Examinations and Expert Specialties According to Which the Qualification of a Forensic Expert is Assigned to Specialists of Scientific Research Institutions of Forensic Examinations of the Ministry of Justice of Ukraine” to the Regulation on the Central Expert Qualification Commission under the Ministry of Justice of Ukraine and the certification of judicial experts, approved by the Order of the Ministry of Justice of Ukraine dated 03.03.2015 No. 301/5. This amendment added a new expert specialty, “Molecular and Genetic Research,” as well as changes to the Scientific Methodical Recommendations on the Preparation and Appointment of Forensic Examinations and Expert Studies, approved by the Order of the Ministry of Justice of Ukraine dated 08.10.1998 No. 53/5. Additionally, the list of objects, tasks, and issues of forensic biological examination was supplemented in connection with the inclusion of this new expert specialty.

The possibilities of forensic molecular genetic examination are utilized to address the tasks of criminal justice in war crimes proceedings, specifically during the investigation of mass murders, rapes, robberies, terrorist acts, and other offenses. It should be noted that Ukraine currently has a robust network of departmental forensic genetics laboratories within state specialized expert institutions of the Ministry of Internal Affairs of Ukraine and individual forensic medical examination bureaus of the Ministry of Health of Ukraine, which possess extensive capabilities in the application of various DNA analysis technologies. In addition to traditional methods of forensic DNA research, recent years have seen the development and implementation of new directions in this field. Technologies such as biogeographical analysis (establishing the DNA origin of a person from a specific part of the world) and phenotyping (obtaining DNA information about a person’s external features) appear to be the most promising. Furthermore, tangible results in foreign law enforcement practice demonstrate the effectiveness of technology for searching for blood family ties in open DNA profile databases (Stepaniuk, Perlin, 2020). Therefore, the continuous development and enhancement of DNA analysis in the efforts to solve and investigate crimes, including military ones, is crucial for increasing the effectiveness of crime combat.

In the difficult conditions of war, the issues of forensic ballistics and forensic explosives have become extremely relevant. The use of various types of small arms and artillery weapons, including the latest missiles, requires forensic scientists to employ innovative methods for their research, quickly search for relevant reference information, and share it. In this context, there is a need to improve the relevant fields of forensic technology and forensic examination, particularly regarding the acquisition of skills by employees of pre-trial investigation bodies to detect, record, and remove traces of such crimes.

In the practice of pre-trial investigation of war crimes, certain algorithms have been developed that provide for the appointment and conduct of a set of forensic examinations necessary to ensure the quality of the evidence process in criminal proceedings. For example, when investigating a violation of the laws and customs of war committed by shelling civilian infrastructure, there is often a need to conduct a forensic explosives examination, a forensic examination of materials, substances, and products (material science), and so on. The issue of improving organizational, tactical, and methodological aspects in the relevant areas of forensic activity is gaining special relevance.

Unfortunately, relations at the legislative level regarding the registration, accounting, storage, and use of genomic information are not sufficiently regulated in Ukraine. The strategy for ensuring state security in Ukraine, dated December 30, 2021, stipulates that among the main directions of state policy are the improvement of national legislation in the field of ensuring state security and harmonization with the legislation of the European Union and NATO documents (Decree of the President of Ukraine, 2022). It was during the war that Ukraine addressed issues related to genomic information by adopting the appropriate law (Law of Ukraine, 2022).

Therefore, the science of criminology and forensic expertise responded in a timely manner to the needs of investigative, expert, and judicial practice, constantly and effectively improving the means, methods, and techniques of investigating criminal offenses in order to ensure a full, fast, and impartial pre-trial investigation and trial of criminal proceedings. In addition, professional training and advanced training of employees of the National Police are not possible without taking into account the modern achievements of the criminal process, criminology, and forensic expertise.

On the need to improve the legislation of Ukraine regarding prisoners of war

In Ukrainian legislation, the definition of prisoners of war is contained in Paragraph 8 of the Instruction on the Procedure for the Implementation of Norms of International Humanitarian Law in the Armed Forces of Ukraine, approved by the Order of the Ministry of Defense of Ukraine dated March 23, 2017, No. 164, as amended in accordance with the Order of the Ministry of Defense No. 514 of October 10, 2018. At the level of criminal procedural law, in addition to the definition in Paragraph 28, part 1 of Article 3 of the Criminal Procedure Code of Ukraine, the concept of a person in respect of whom an authorized body has made a decision to exchange as a prisoner of war does not establish either the rights or the obligations of such a person. Paragraph 20-1 of the Procedure for Detention of Prisoners of War, approved by Resolution No. 413 of the Cabinet of Ministers of Ukraine dated April 5, 2022, states that:

A prisoner of war is guaranteed the right to legal assistance, confidential legal consultations with a defense attorney(s) in criminal proceedings, a lawyer(s), a legal representative (legal representatives), who represents (represent) a person during the consideration of cases in court, in the manner prescribed for persons who are kept in custody. If a prisoner of war is a participant in

criminal proceedings, he is guaranteed the opportunity to use the relevant rights defined by the Criminal Procedure Code of Ukraine.

This is seen as procedural uncertainty, since the Criminal Procedure Code of Ukraine does not contain relevant provisions.

Accordingly, the question arises regarding a clear definition and regulation of the status of a new participant in criminal proceedings. A prisoner of war is essentially a suspect, accused, or convicted, and therefore belongs to the defense side. However, in the changes to Paragraph 19 of Part 1 of Article 3 of the Criminal Procedure Code of Ukraine, the legislator has not established an expanded list of participants in criminal proceedings on the defense side.

From the above, the conditions for determining a person for whom an authorized body has made a decision on exchange as a prisoner of war can be seen:

1. the person must have the procedural status of suspect, accused, convicted;
2. the person is a prisoner of war;
3. a decision on exchange as a prisoner of war must be made regarding the person

There have been changes in the current criminal procedural legislation regarding the selection of preventive measures for servicemen who are suspected or accused of committing war crimes during martial law. Thus, the purpose of the Draft Law on Amendments to the Criminal Procedural Code of Ukraine (regarding the selection of preventive measures for servicemen who are suspected or accused of committing war crimes during martial law) is to make it impossible to apply any preventive measures, except detention, to servicemen who are suspected or accused of committing war crimes as provided for by Articles 402-408, 410, 420-425, 427, and 431-433 of the Criminal Code of Ukraine during martial law. This is justified by the fact that a war crime committed by a serviceman during the legal regime of martial law indicates the maximum degree of a socially dangerous act; therefore, only the preventive measure of detention can be applied to such a serviceman.

In order to achieve the goal of the mentioned provisions of the Draft Law, the authors proposed making a number of changes to the Criminal Procedure Code of Ukraine, to supplement Article 176 of the Criminal Procedure Code of Ukraine, part seven, with the following content: “During martial law, servicemen who are suspected or accused of committing crimes provided for by Articles 402-408, 410, 420-425, 427, 431-433 of the Criminal Code of Ukraine shall be subject exclusively to preventive measures defined in Paragraph 5, Part 1, Article 176”.

— secondly, in Part 1 of Article 183 of the CPC of Ukraine after the word “fifth” put a comma and add “*seventh*”;

of the Criminal Procedure Code of Ukraine should be amended to add a new paragraph in the following wording: “The term of validity of the decision of the investigating judge the

court on detention, or the extension of the detention period may not exceed thirty days in the case provided for in Part 7 of this Code”.

It can be seen from the above that we are discussing the application during martial law to servicemen who are suspected or accused of committing crimes specified in Articles 402-408, 410, 420-425, 427, 431-433 of the Criminal Code of Ukraine, with a preventive measure in the form of detention. However, the question arises: can a serviceman or his defender apply for a change of preventive measure in the event of the termination of martial law? There is no answer to this question in the current CPC of Ukraine. We consider it necessary to provide, in the event of the end of the legal regime of martial law, the possibility for servicemen who are suspected or accused of committing crimes specified in Articles 402-408, 410, 420-425, 427, 431-433 of the Criminal Code of Ukraine, or their defenders, to appeal to an investigating judge or the court with a request to choose a more “soft” (alternative) preventive measure—personal commitment, personal surety, house arrest, or bail. For this purpose, it is proposed (Ablamska, 2022, p. 144) to supplement Article 176 of the Criminal Procedure Code of Ukraine, part eight, with the following content:

8. In the event of the end of martial law, the persons specified in part seven of this article or their defenders have the right to apply to the investigating judge the court with a request to change the preventive measure.

The institution of the suspension of pre-trial investigation in the Criminal Procedure Code of Ukraine has also undergone changes. The new reason is "... the decision by the authorized body to transfer the suspect for exchange as a prisoner of war, and the suspect was given written consent for such an exchange." Accordingly, the suspended pre-trial investigation is resumed by the decision of the investigator or the prosecutor if the exchange of the suspect as a prisoner of war has been carried out or if such an exchange has not taken place. Regarding these norms, a certain remark was made in the literature (Hloviuk, Teteriatnyk, 2022) about the need to stop if the use of a special pre-trial investigation is possible. The updated special pre-trial investigation is carried out on the basis of the decision of the investigating judge in the criminal proceedings regarding the crime committed by the suspect, in relation to whom the authorized body made a decision to hand him over for exchange as a prisoner of war and for which such an exchange took place. At the same time, according to the wording of Articles 297-1 and 297-2 of the Criminal Procedure Code of Ukraine, this type of special pre-trial investigation is subject to the restrictions established by the first paragraph of Part 2 of Article 297-1 of the Criminal Procedure Code of Ukraine, which do not apply, including regarding the exhaustive list of crimes.

As for the questioning of a prisoner of war, each such individual is obliged to report only his surname, first name, rank, date of birth, and personal number, or, in the absence of such, other equivalent information (Order of the Ministry of Defense of Ukraine, 2017). An important issue is the use of specialized knowledge in the field of psychology during the interrogation of

prisoners of war, which allows for the establishment of psychological contact with the interrogated individual and the acquisition of truthful testimony. Therefore, it is important, *firstly*, to improve the level of professional training of employees in pre-trial investigation bodies, particularly in mastering knowledge in the field of legal psychology, and *secondly*, to ensure timely and effective cooperation between the pre-trial investigation body and informed individuals at all stages of the interrogation of a prisoner of war.

Public Safety as a Critical Component of Public Policy in Wartime

In addition to the legal and procedural challenges, the conflict has underscored the critical importance of public safety as a key component of wartime public policy. The introduction of martial law necessitates a procedural approach capable of maintaining public order while simultaneously protecting civilians amidst the chaos of war. Public safety measures during these periods are important for mitigating the risks posed by increased violence, disruptions in social order, and the targeting of civilian populations.

It is important to consider that public policies in times of war serve as crucial instruments for the recognition, protection, and expansion of human rights. As highlighted by Cortes Zambrano (2016), the interdependence between fundamental rights, human rights, and public policies remains a pressing concern at both regional and national levels. While the formal recognition of these rights has been achieved, their actual implementation through effective public policies is still lacking. Continuous and widespread violations of these rights lead to violent social movements, undermining human dignity and peaceful coexistence. Inadequate fulfillment of governmental duties in planning, budgeting, and executing essential public policies can provoke conflict and hinder peacebuilding efforts.

Another highlighted issue is the forced displacement of people in a war context. Countries like Colombia, which have faced similar issues, have recognized the importance of considering this a public security policy problem, understanding these individuals as "...victims of displacement who are in constant violation of their fundamental rights. In addressing this vulnerability, it falls upon the Colombian State to guarantee these citizens protection, care, and socioeconomic consolidation" (Moreno Hurtado and Alvarez Sierra, 2017). This underscores the necessity of adopting a comprehensive approach to addressing the displacement and protection of civilians in conflict zones.

The Ukrainian government has implemented several strategic measures to enhance public safety under martial law (Fremer, 2022). These measures include curfews, evacuation protocols, and strict regulations on movement within conflict zones to protect civilians from the immediate dangers of military operations. Adherence to and proper execution of these actions can be decisive in preventing further casualties and ensuring the safe relocation of affected populations.

Moreover, coordination between various state agencies, such as the National Police, the Security Service, and local authorities, strengthens both the intent and the actual capacity for the

effective implementation of public safety policies. An adequate level of coordination ensures that resources are utilized efficiently and that there is a unified response to evolving security threats.

International cooperation and support are also fundamental in bolstering Ukraine's public safety efforts. Humanitarian organizations and international bodies provide critical assistance in areas such as medical care, food distribution, and the protection of internally displaced persons (OECD, 2023).

Another important public concern regarding public safety policies in wartime is the management of evidence in investigations, particularly those involving war crimes and other atrocities. Proper evidence management is necessary to preserve the integrity of evidence and support judicial processes. According to the UN Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL (UNITAD), robust evidence management practices are uniquely important in conflict zones, as they can ensure that collected evidence remains intact and admissible in court (UNITAD, 2023).

In the context of Ukraine, adopting UNITAD's best practices in evidence management can significantly enhance the effectiveness of investigations conducted under martial law. This involves training security forces and military personnel in proper evidence-handling techniques, as well as creating and maintaining secure facilities for evidence storage. Implementing these practices helps authorities face challenges imposed by the conflict, such as the destruction of evidence and the difficulty of accessing crime scenes. By following these guidelines, Ukraine can strengthen its legal processes and contribute to holding perpetrators of war crimes accountable (UNITAD, 2023), which is an important part of public safety as state policy.

Conclusions

The conducted research made it possible to single out a far-from-complete list of existing problems that occur when conducting a pre-trial investigation in wartime conditions. However, the authors arrived at the following conclusions:

From the very first days of military aggression, the legislator of Ukraine responded appropriately to the challenges, which was reflected in systemic changes to the current legislation. In particular, as of December 23, 2022, 15 amendments and additions were made to the Law of Ukraine on Criminal Responsibility. During the same period, 18 changes and additions were made to the Criminal Procedure Code of Ukraine (including the updated title of Section IX-1, "Special Regime of Pre-Trial Investigation and Court Proceedings under Martial Law," and the addition of Section IX-2, "Peculiarities of Cooperation with the International Criminal Court"). The sectoral legislation was also updated.

Units of the National Police, under conditions of martial law, in addition to their inherent functions, began to perform not only humanitarian tasks but also to investigate criminal proceedings, which, in accordance with Article 216 of the CPC of Ukraine, are not within their

competence. Sub-units of pre-trial investigation bodies are the first to go to the scene in the event of suspicion regarding the commission of criminal offenses on the grounds of war crimes, where they conduct appropriate inspections, register criminal proceedings, and only then, after conducting urgent investigative (search) actions, hand them over to the Security Service of Ukraine for further investigation. The investigation units of the National Police, for the implementation of the decisions of the prosecutor's office (Part 5 of Article 36 of the Criminal Procedure Code of Ukraine), have gained experience in conducting full-fledged investigations in the form of investigating criminal misdemeanors under Parts 1-2 of Article 111-1 of the Criminal Code of Ukraine.

At the same time, the rationale behind the prosecutor's assignment of the pre-trial investigation of a criminal offense to another pre-trial investigation body, in the absence of a specialized investigation unit within the security agencies, has been criticized. It is stated that it is obvious all the evidence obtained at the stage of the pre-trial investigation in this manner may be declared inadmissible during the trial. It is proposed to combine the procedural capabilities of the units of the National Police and security agencies by applying the provisions specified in Part 4 of Article 39 of the Criminal Procedure Code of Ukraine, which provides for the formation of interdepartmental investigative groups (groups of investigators and inquirers).

3. The length of stay of the pre-trial investigation bodies located in the zone of active hostilities, in order to document war crimes, must be associated with the security component. One of the ways to solve this problem could be the use of remote pre-trial investigation. However, the absence of, or low-quality, communication in such territories due to the destroyed or damaged communication infrastructure does not allow this to be done in full. Accordingly, it is proposed that the main way to solve this problem is to reduce the time for conducting investigative (search) actions, the period for which is established in the Criminal Procedure Code of Ukraine.

4. The execution of the tasks of criminal proceedings is impossible without full-fledged forensic support. It was during the war that forensic molecular genetic examination received further development and application. The experts' conclusions are such that they make it possible to establish the circumstances of a criminal offense during the investigation of mass murders, rapes, robberies, terrorist acts, etc.

5. With the beginning of a full-scale war, the question arose regarding the clear definition and normalization of the status of a new participant in criminal proceedings: a person in respect of whom an authorized body has made a decision to exchange as a prisoner of war, as well as military personnel who are suspected or accused of committing crimes provided for in Articles 402-408, 410, 420-425, 427, and 431-433 of the Criminal Code of Ukraine. Individual provisions of the Draft Law of Ukraine "On Amendments to the Criminal Procedure Code of Ukraine (regarding the selection of preventive measures for military personnel who committed war crimes during martial law) have been characterized".

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