

SAZONOVA Larysa Serhiivna,

*senior lecturer of the department of foreign languages of faculty No. 4
Kharkiv National University of Internal Affairs*

ORCID: <https://orcid.org/0000-0002-3722-2593>;

LISOVOL Volodymyr Stanislavovych,

second-year cadet of faculty No. 4

Kharkiv National University of Internal Affairs

ORCID: <https://orcid.org/0000-0003-3289-091>

AMENDMENTS TO CRIMINAL LEGISLATION DURING MARTIAL LAW

During the wartime, it is impossible to ensure compliance of pre-trial investigation bodies, prosecutors and courts with the deadlines set by the Criminal Procedure Code (CPC) of Ukraine. As a result of it, the rights of participants in criminal proceedings and the procedure of calculation of the terms of the pre-trial investigation may be violated.

Under the martial law, conducting investigative search and other procedural actions both before and after notifying a person of suspicion can be significantly complicated, and in some cases it is impossible. If the pre-trial investigation body is unable to investigate in due course, it shall not be possible to justify the waste of procedural time.

However, the CPC of Ukraine does not stipulate a solution to be applied when it deems impossible to perform the relevant actions within the timeframe specified by law. This is about the terms of performing the following procedural actions:

- consideration of petitions during the pre-trial investigation (Article 220 of the CPC);

- reviewing the materials of the pre-trial investigation before its completion (Article 221 of the CPC);

- filing and reviewing a complaint against the decision, action or inaction of the investigator, coroner or prosecutor (Articles 304, 306 of the CPC);

- appeal against non-compliance with reasonable time limits (Article 308 of the CPC);

- proclamation of a court decision (Article 376 of the CPC);

- appeal and cassation appeal (Articles 395, 426 of the CPC).

Experts suggest amending Article 615 of the CPC of Ukraine which establishes a special regime of pre-trial investigation under martial law, to add provisions that:

- establish the possibility of extending the term of pre-trial

investigation for the period of martial law or state of emergency, in the whole of Ukraine or its separate localities;

introduce the possibility of committing certain procedural actions, the commission of which is objectively impossible under martial law or state of emergency, as soon as possible, but no later than 15 days after the termination or abolition of martial law or state of emergency [1].

To servicemen suspected of committing certain crimes during martial law shall only be applied custody as a measure of restraint.

On September 10, 2022, the Law of Ukraine on Amendments to the Criminal Procedure Code of Ukraine on precautionary measures for servicemen who committed war crimes during martial law came into force. This applies to the servicemen suspected of the following crimes under Section XIX of the Criminal Code of Ukraine:

disobedience (Art. 402 of the Criminal Code of Ukraine);

failure to comply with orders (Art.403 of the Criminal Code of Ukraine);

resistance to commander or coercion of a commander into breaching the official duties (Art. 404 of the Criminal Code of Ukraine);

threats or violence against a commander (Art. 405 of the Criminal Code of Ukraine);

absence without leave from a military unit or place of service (Art. 407 of the Criminal Code of Ukraine);

desertion (Art. 408 of the Criminal Code of Ukraine);

unauthorized leaving of a battlefield or refusal to use weapons (Art. 429 of the Criminal Code of Ukraine) [1].

The procedure for the exchange of a suspect, accused, or convict as a prisoner of war has been established. On August 19, 2022, the Law on Amendments to the Criminal Code of Ukraine and the Criminal Procedure Code of Ukraine to establish the procedure for the exchange of persons as prisoners of war came into force. For the exchange of a person as a prisoner of war, the authorized body decides on his/her transfer for exchange.

This decision is the basis for the cancellation of the measure of restraint applied to a person. In this case, the person is immediately released and transferred under the supervision of the authorized body. Further detention and measures for the treatment of a released suspect, accused or convict are conducted under the procedure established by the Cabinet of Ministers of Ukraine for prisoners of war.

The decision to transfer the suspect for exchange as a prisoner of war is the basis for suspending the pre-trial investigation in criminal proceedings. The decision to suspend the pre-trial investigation on these

grounds cannot be challenged. If the exchange of a person as a prisoner of war has taken place, a special pre-trial investigation may be conducted in respect of such a person. If the authorized body decides to transfer the accused for exchange as a prisoner of war during the trial and the accused gives his written consent to the exchange, the court shall suspend the court proceedings against such an accused. At the same time, the court continues the proceedings against the other accused, if it is conducted against several persons. If the exchange takes place, the trial against such accused may be conducted in his/her absence.

There is also a new ground for the discharge of a convict from punishment and from serving it. It is the decision of the authorized body to transfer the convict for exchange as a prisoner of war. However, if the exchange of such a convict does not occur, the court at the request of the public prosecutor decides to send the convict discharged from punishment due to his exchange as a prisoner of war for further serving the sentence [2].

Article 29 of the Constitution of Ukraine prohibits detention for more than 72 hours without judicial approval, but martial law has extended it to 260 hours, in the face of objections raised by the National Bar Association [3].

References: 1. Amendments to Criminal Law and Procedure during martial law from July to October 2022. URL: <https://golaw.ua/insights/publication/zmini-v-kriminalnomu-pravita-proczeci-za-chas-voyennogo-stanu=lipen-zhovt-2022-roku/>. 2. Amendments to the Criminal Code of Ukraine, the Code of Ukraine on Administrative Offenses, and other legislative acts of Ukraine related to special aspects of military service in the context of martial law or combat environment. Analysis of the Law of Ukraine. URL: [https://nako/org.ua/storage/pdf/2023-02-06--09:23:29-2022-16--09_20_29-Аналіз%208271%20\(1\)\(en\).docx.pdf](https://nako/org.ua/storage/pdf/2023-02-06--09:23:29-2022-16--09_20_29-Аналіз%208271%20(1)(en).docx.pdf) 3. The rule of law in Ukraine during martial law: review of changes to the criminal process URL: <https://golaw.ua/insights/publication/the-rule-of-law-in-ukraine-martial-law-review-of-changes-to-the-criminal-process/>.