

I

Regarding measures derogating from obligations

Article 615 of the Criminal Procedure Code of Ukraine (CPC) as amended by the Law of Ukraine of 27 July 2022 No. 2462-IX shall provide that in the event of martial law:

- in the absence of the possibility to draw up procedural documents about investigative (search) or other procedural actions, recording is carried out by technical means with subsequent drawing up the protocol no later than 72 hours after the completion of these actions (*para two of part one*);

- in the absence of the possibility for further proceeding, completion of the pre-trial investigation and submission an indictment, a request for the application of coercive measures of a medical or educational nature, a request to discharge a person from criminal responsibility to the court - the term of the pre-trial investigation in criminal proceeding is suspended on the basis of a motivated resolution of the prosecutor with a statement of the relevant circumstances and is subject to renewal if the grounds for suspension no longer exist. Before suspension of the pre-trial investigation, the prosecutor is obliged to decide on the issue of extending the term of detention (*para seven of part one*);

- in the absence of the possibility for performing procedural actions within the time limits specified by the CPC such actions are carried out immediately, where possible, but no later than 15 days after the termination or cancellation of martial law (*para nine of part one*);

- in the case of impossibility for holding a preparatory court session, the preventive measure in the form of detention selected by the investigating judge, the head of the prosecutor's office during the pre-trial investigation is considered to be extended until the relevant issue is resolved in the preparatory court session but for not longer than for 2 months (*part five*);

- in the case of the expiration of the court decision on detention and the impossibility of consideration by the court of extending the period of detention in accordance with the procedure established by the CPC, the chosen preventive measure in the form of detention is considered extended until the relevant issue is resolved by the court but not longer than for 2 months (*part six*);

- testimony obtained during the interrogation of a suspect in criminal proceedings can be used as evidence in court, if the defender participated in the interrogation, and its course and results were recorded by technical means of video recording. Video recording of witness' and victim's testimony obtained during interrogation is also allowed (*part eleven*);

- the inquiring officer, the investigator, the prosecutor shall ensure: (i) remote participation of the defender in a separate procedural action using technical means of video and audio communication if his/her appearance is impossible; (ii) participation at the earliest opportunity of an interpreter to translate explanations, statements or documents of the suspect, the victim. In the presence of circumstances that make his/her participation impossible, the inquiring officer, the investigator, the prosecutor shall have the right to personally carry out the appropriate translation, in the case of knowledge of one of the languages spoken by the suspect, the victim (*part twelve*);

The possibility of applying the above-mentioned norms provided for in Article 615 of the CPC makes it necessary to continue derogation from Ukraine's obligations under para 3 of Article 2, Articles 9, 14 and 17 of the International Covenant on Civil and Political Rights and Articles 5, 6, 8 and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms without prejudice to the fundamental principles of a fair trial and legal protection, including the principle of *ne bis in idem*.

II

Regarding the time and territory to which the derogation applies

The above-mentioned norms of the CPC can be applied during the martial law imposed on the territory of Ukraine from 05:30 on February 24, 2022.

Section IX¹

SPECIAL REGIME OF PRE-TRIAL INVESTIGATION AND COURT PROCEEDINGS UNDER MARTIAL LAW

Article 615. Special regime of criminal proceedings under martial law

1. In case of martial law and if:

1) there is no technical possibility of access to the Unified Register of Pre-trial Investigations, the decision to initiate pre-trial investigation shall be made by the inquiring officer, investigator, or prosecutor, and a respective resolution shall be issued, which shall contain the information provided for in part five of Article 214 of this Code. In urgent cases, prior to the issuance by the inquiring officer, investigator, or prosecutor of a resolution to initiate a pre-trial investigation, the scene of the incident may be inspected (the resolution shall be adopted immediately upon completion of the inspection).

The information to be entered into the Unified Register of Pre-trial Investigations shall be entered into it as soon as possible and procedural actions during criminal proceedings shall be recorded in the relevant procedural documents, as well as by technical means of recording criminal proceedings unless recording by means of technical means is impossible for technical reasons. In the absence of the possibility of drawing up procedural documents on the course and results of investigative (detective) actions or other procedural actions, the recording is carried out by available technical means with the subsequent drawing up of the relevant protocol no later than seventy-two hours from the moment of completion of such investigative (detective) actions or relevant procedural actions.

When conducting a search or inspection of a person's home or other property, search of a person, if the involvement of witnesses is objectively impossible or is associated with a potential danger to their life or health, the relevant investigative (detective) actions are carried out without the involvement of witnesses. In this case, the course and results of a search or inspection of a person's home or other property, search of a person shall be recorded by available technical means through continuous video recording;

2) 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 of this Code, such powers shall be exercised by the head of the relevant prosecutor's office at the request of the prosecutor or at the request of the investigator agreed with the prosecutor.

The decision of the head of the prosecutor's office shall be made in the form of a resolution and shall contain a justification for the legality of exercising the powers of the investigating judge;

3) there is no objective possibility of further conducting, completing the pre-trial investigation and applying to the court with an indictment, a motion for the application of compulsory medical or educational measures, a motion for the release of a person from criminal liability - the term of pre-trial investigation in criminal proceedings is suspended on the basis of a reasoned decision of the prosecutor setting out the relevant circumstances and is subject to renewal if the grounds for suspension no longer exist. Prior to suspension of the pre-trial investigation, the prosecutor is obliged to decide on the extension of the term of detention;

4) there is no technical possibility of access to the Unified Judicial Information and Telecommunication System - the distribution of criminal proceedings among judges is ensured by the court chairman, and in his absence - by the deputy chairman of the court, in order of priority and ensuring an even workload for judges. In the absence of the court chairperson and deputy chairperson, the distribution of criminal proceedings among judges is ensured by the most senior judge;

5) there is no objective possibility of performing procedural actions within the timeframe specified in Articles 220, 221, 304, 306, 308, 376, 395, 426 of this Code, such procedural actions shall be performed immediately if possible, but no later than 15 days after the termination or lifting of martial law;

6) there are cases for detention of a person without a ruling of an investigating judge or court as defined in Article 208 of this Code, or there are reasonable circumstances giving grounds to believe that a person suspected of committing a crime may escape with the intent to evade criminal liability, an authorized official may detain such a person without a ruling of an investigating judge or court.

The term of detention of a person without the decision of the investigating judge or court may not exceed the term specified in Article 211 of this Code.

If under martial law there is no objective possibility to bring the detained person before the investigating judge or court within the period stipulated in Article 211 of this Code, consideration of the motion to impose a preventive measure on the person shall be carried out using available technical means of video communication in order to ensure remote participation of the detained person.

If the detained person cannot be brought before the investigating judge or court within the time limit provided for in Article 211 of this Code for consideration of the motion to impose a preventive measure on him/her or to ensure his/her remote participation in the consideration of the relevant motion, such person shall be immediately released.

2. The term of validity of an investigating judge's decision to keep a person in custody or a decision of the head of the prosecutor's office to keep a person in custody adopted in accordance with the requirements and taking into account the circumstances provided for in this Article may be extended up to one month by the head of the relevant prosecutor's office at the request of the prosecutor or at the request of the investigator agreed with the prosecutor. The term of detention may be extended more than once within the pre-trial investigation.

3. The decisions made by the prosecutor in cases and in the manner provided for in this Article shall be immediately notified to the higher level prosecutor as soon as possible, as well as to the court determined in accordance with the procedure provided for by law, with copies of the relevant documents provided no later than 10 days from the date of notification.

4. Complaints against any decisions, actions or inactions of the prosecutor or investigator taken or committed in the exercise of the powers defined in this Article may be filed with the court. They shall be reviewed by the investigating judge of the court within the territorial jurisdiction of which the pre-trial investigation is conducted and if for objective reasons it is impossible for the relevant court to administer justice, by the court most geographically close to it that can administer justice, or by another court determined in accordance with the procedure provided for by law.

5. If it is impossible to hold a preliminary court hearing, the preventive measure in the form of detention chosen by the investigating judge or the head of the prosecutor's office during the pre-trial investigation shall be deemed to be extended until the relevant issue is resolved in the preliminary court hearing but not more than for two months.

6. If the court ruling on remand in custody expires and the court cannot consider the issue of extending the term of remand in custody in accordance with the procedure established by this Code, the chosen measure of restraint in the form of remand in custody shall be deemed extended until the court resolves the relevant issue but not more than for two months.

7. If there are objective circumstances that make it impossible to serve a written notice of suspicion to a detained person within the time limits established by Article 278 of this Code, if such procedural actions are carried out under martial law, the time limit for serving a written notice of suspicion to a detained person may be extended up to forty-eight hours. If a person is not served with a notice of suspicion within forty-eight hours from the moment of his/her detention, such person shall be immediately released.

9. During martial law, indictments, motions for application of compulsory medical or educational measures, motions for release of a person from criminal liability shall be sent and considered by the courts within the territorial jurisdiction of which the criminal offense was committed and if it is impossible for objective reasons to administer justice by the relevant court, it is administered by the court within the territorial jurisdiction of which the pre-trial investigation body that completed the pre-trial investigation is located, or by another court determined by the legislation.

The provisions of this part shall not apply to criminal proceedings, indictments, motions for application of compulsory medical or educational measures, motions for release of a person from criminal liability in which were sent to court before the introduction of martial law and entry into force of this part.

In criminal proceedings under the jurisdiction of the High Anti-Corruption Court in accordance with the requirements of this Code, indictments, motions for application of compulsory medical or educational measures, motions for release of a person from criminal liability shall be sent to the High Anti-Corruption Court at its location under martial law.

10. Criminal proceedings in a court of first instance concerning crimes punishable by life imprisonment shall be conducted by a collegial court consisting of three judges, except for criminal proceedings in a court where, prior to the introduction of martial law and the entry into force of this Part, the composition of the court with the participation of a jury was determined.

11. The testimony obtained during the interrogation of a witness or victim, including simultaneous interrogation of two or more persons already interrogated in criminal proceedings conducted under martial law may be used as evidence in court only if the course and results of such interrogation were recorded by means of available technical means of video recording.

Testimony obtained during the interrogation of a suspect, including simultaneous interrogation of two or more already interrogated persons, in criminal proceedings conducted under martial law may be used as evidence in court only if a defense counsel participated in such interrogation and the course and results of the interrogation were recorded using available technical means of video recording.

12. The inquiring officer, investigator, or prosecutor shall ensure the participation of the defense counsel in a separate procedural action, including in case of impossibility of the defense counsel's appearance - with the use of technical means (video, audio communication) to ensure remote participation of the defense counsel.

The inquiring officer, investigator, or prosecutor shall ensure the participation of an interpreter to translate the explanations, testimony, or documents of the suspect or victim as soon as possible. If there are circumstances that make it impossible for the interpreter to participate in the criminal proceedings, the inquiring officer, investigator, or prosecutor shall have the right to personally translate explanations, testimony or documents if he or she speaks one of the languages spoken by the suspect or victim.

13. The provisions of part two of Article 484 and part fourteen of Article 31 of this Code may not be applied under martial law if there are circumstances that make it impossible for the inquiring officer, investigator, judge specially authorized to conduct criminal proceedings against minors to participate.

The term of pre-trial investigation in criminal proceedings against minors under martial law shall be extended by the head of the prosecutor's office as defined in clause 9 of part one of Article 3 of this Code, at the request of the investigator agreed with the prosecutor or the prosecutor appropriately.

14. Copies of the materials of criminal proceedings, pre-trial investigation in which is carried out under martial law, shall be kept in electronic form by the inquirer, investigator or prosecutor.

15. In the conditions of martial law, after drawing up and signing the full text of the verdict, the court has the right to limit itself to the proclamation of its operative part with the obligatory delivery of the full text of the verdict to the participants of the court proceedings on the day of its proclamation.