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GROUNDINGS AND PROCEDURAL ORDER OF APPLYING PREVENTIVE MEASURES UNDER MARTIAL LAW

Володимир Кіяниця. ПІДСТАВИ ТА ПОРЯДОК ЗАСТОСУВАННЯ ЗАХОДІВ ПРОФІЛАКТИКИ В ПЕРІОД ВОЄННОГО СТАНУ. Указом Президента України № 64/2022 від 24.02.2022 року, у зв'язку з військовою агресією російської федерації в Україні, було введено воєнний стан. Введення режиму воєнного стану створило потребу ввести певні зміни до Кримінального процесуального кодексу України. Ці зміни стосувалися глави 18 розділу II, що регулює питання запобіжних заходів та затримання осіб, а також розділу IXI, який регламентує спеціальний режим досудового розслідування та судового розгляду умов воєнного стану. Ця ситуація призвела до змін у регулюванні практично всіх аспектів суспільного життя, включаючи кримінальну юстицію. Вона стала викликом для забезпечення обов'язковості відповідальності за вчинені кримінальні правопорушення, при цьому забезпечуючи безпеку осіб, які залучені до кримінального провадження. З метою пристосування чинного кримінального процесуального законодавства до поточних вимог законодавцем були прийняті деякі закони, які стосувалися різних аспектів кримінального провадження, включаючи питання вжиття запобіжних заходів. Це робить тему дослідження актуальною та обговорюваною у науковому співтоваристві. Дана стаття присвячена аналізу таких аспектів: умов, за яких держава може відмовити у гарантуванні прав та свобод особи згідно з Конвенцією про захист прав людини та основоположних свобод під час воєнного стану; змін, внесених до Кримінального процесуального кодексу України щодо вживання запобіжних заходів під час воєнного стану. Система запобіжних заходів, яка визначена в пункті 1 статті 176 Кримінального процесуального кодексу, включає в себе такі заходи, як особиста порука, застава, тримання під вартою та домашній арешт. Основною метою вживання цих запобіжних заходів є забезпечення дотримання підозрюваним або обвинуваченим вимог, які ставляться до них в рамках кримінального процесу, а також запобігання можливому непропорційному впливу на розслідування.

Ключові слова: запобіжні заходи, тримання під вартою, затримання, воєнний стан, домашній арешт.

Relevance of the study. After the declaration of a state of war, numerous legislative changes were introduced that impacted the application of preventive measures in criminal proceedings. Laws such as "On Amendments to the Criminal Procedure Code of Ukraine regarding the procedure for lifting a preventive measure for military service by conscription during mobilization, for a special period, or its changes for other reasons", "On Amendments to the Criminal Code and CPC of Ukraine to improve responsibility for collaboration activities and peculiarities of applying preventive measures for crimes against the foundations of national and public security", "On Amendments to the CPC of Ukraine to improve the procedure for conducting criminal proceedings in conditions of a state of war", and "On Amendments to the CPC of Ukraine regarding the improvement of certain provisions of pre-trial investigation in conditions of a state of war" [1] established a series of peculiarities related to pre-trial investigation, judicial consideration, procedural actions, powers of the investigating judge and prosecutor's office, deadlines for pre-trial investigation, application of preventive measures, the procedure for concluding pre-trial investigation, and the possibility of restoring lost materials of criminal proceedings in conditions of a state of war.

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Recent publications review. The state of study of this issue is the subject of a wide range of scientific research. The specified topic has been explored by V. Horbachovskyi, V. Kiiantse, A. Tumanyanu, M. Kalinovska, O. Herasymov, O. Riashko, V. Mikhaylenko, and many others [1-9]. However, to date, a significant number of questions regarding the application of preventive measures by police officers in conditions of a state of war remain unresolved.

The article's objective. The aim of the article is to examine the grounds and procedural order for the application of preventive measures in conditions of a state of war.

Discussion. The list of Ukrainian laws mentioned contains a significant number of changes related to the application of preventive measures in criminal proceedings. The volume of changes in this area is so extensive that their complete description and analysis within the confines of one article are impossible. However, some interesting aspects can be highlighted.

Currently, there are two different procedures for amending and canceling preventive measures:

1. The general procedure established by Articles 200-201 of the Criminal Procedure Code of Ukraine.
2. The special procedure applied during criminal proceedings in conditions of a state of war and regulated by Article 616 of the Criminal Procedure Code of Ukraine.

In the matter of choosing preventive measures, the legislator, in Chapter IX-1 of the Criminal Procedure Code (CPC), provided for peculiarities in choosing a preventive measure in the form of detention and making a decision to permit detention during a state of war. The implementation of such measures is assigned to an investigating judge, differing from the regulated procedure for choosing other preventive measures.

This provision of the law may cause some confusion, as, while respecting the prosecutor's right to choose an exclusive preventive measure, the authority to apply less severe preventive measures remains with the investigating judge. The underlying purpose of these provisions remains somewhat unclear.

Judicial practice indicates that when considering issues related to preventive measures during a state of war, certain problematic aspects often arise, associated with the physical absence of materials from criminal proceedings [2].

According to the analysis of judicial practice, investigating judges and courts, when considering the issue of canceling a preventive measure, examine criteria such as the type of crime the person is suspected or accused of, the person's ability to defend the state, military obligations, and the absence of restrictions on military service, among other factors.

Overall, it is considered that even in the case of offenses committed during a state of war, the decision to apply a preventive measure to a suspected or accused person must be justified and motivated. Such a decision should take into account all circumstances of the criminal proceedings.

In the current conditions of a state of war, the legislator has provided peculiarities regarding the modification of preventive measures according to Part 5 and 6 of Article 616 of the CPC. For example, the possibility of changing a bail preventive measure to a personal obligation or changing house arrest to a personal obligation is envisaged.

Examining the issue of changing the preventive measure of house arrest to a preventive measure in the form of a personal obligation during a state of war (according to Part 6 of Article 616 of the CPC), it is interesting that such a decision is made by the investigating judge or the court upon the motion of the suspect or accused. It should be noted that the change of a preventive measure is possible only in the territory where active combat operations are taking place. This legislative provision has a consistent and logical character [3].

There are two ways to change the preventive measure in the form of bail. The first method is to change the bail to a personal obligation. The law establishes a condition that allows making a relevant decision – using the funds transferred as bail (in whole or in part) to deposit them into special accounts of the National Bank of Ukraine for the country's defense needs. The second method involves changing the preventive measure in the form of bail by reducing the amount that must be transferred for the needs of the Armed Forces of Ukraine.

Let's consider an example when Sychivsky District Court of Lviv satisfied the defender's motion to change the preventive measure for the accused. In this case, the preventive measure, which previously included bail, was changed to a personal obligation. It is crucial to note that the prosecutor did not raise objections during the court hearing regarding the satisfaction of this motion. This decision was justified by the desire to use the funds, which

were transferred as bail in the amount of 148,860 hryvnias, to redirect them to a special account of the National Bank of Ukraine to support Ukraine's defense [4].

The necessity of verifying and confirming the person providing bail's willingness should be taken into account by using the original statement provided by them, which is included in the documentation of the criminal proceedings.

"It is worth noting the shortcomings associated with the definition of grounds for canceling a preventive measure, which are ambiguously formulated in the law (according to Part 2 of Article 616 of the Criminal Procedure Code)" [5]. The legislator uses the formulation "in the presence of sufficient grounds", which has an evaluative character. Such a formalized definition may lead to ambiguous interpretations.

In the event of the introduction of martial law in Ukraine or in its specific territories, measures for national security and defense, as well as to prevent armed aggression by the Russian Federation or other states against Ukraine, a person who is in custody during pre-trial investigation or court proceedings has the right to apply to the prosecutor with a motion to cancel this preventive measure in order to enter military service during mobilization. This rule does not apply to persons suspected of committing crimes against the national security of Ukraine, as well as specific crimes listed in the law.

According to judicial practice, difficulties often arise in the consideration of issues related to preventive measures during a state of war, which are due to the lack of physical materials of the criminal proceedings.

The analysis of judicial practice shows that investigative judges and courts, when considering issues of canceling a preventive measure, examine various criteria, such as the nature of the committed crime, the person's ability to assume the function of defending the state, their military duty, the absence of restrictions on military service, and other factors.

Legislative amendments related to the application of preventive measures in conditions of martial law have a significant impact on the course of criminal proceedings. In particular, there is an expansion of the prosecution's powers, which can affect procedural guarantees of the person's rights in criminal proceedings. In these conditions, the legislator must carefully ensure the possibility of realizing the right to defense, especially when applying the most severe preventive measure – detention [3].

In the studied research, V. Kiyanytsya noted the existence of a special regime of pre-trial investigation, which operates in conditions of war, a state of emergency, or in the area of anti-terrorism operations. This institution is relatively new in the modern criminal procedural system and gained popularity after events unfolded in the occupied territories [6, p. 274].

It should be noted that citizens of Ukraine have inalienable rights and freedoms that cannot be restricted under any circumstances in criminal proceedings [7, p. 8].

In criminal proceedings, unlike many other legislative acts, human rights can be severely restricted. Therefore, the study of the evolution of various aspects of criminal procedural legislation in conditions of martial law has significant prospects for further scientific research [9].

Conclusions. Thus, the conditions of martial law require the introduction of special procedures to continue criminal proceedings based on legal practice. This practice has revealed the need to regulate many issues that have arisen in this area since the beginning of hostilities in Ukraine. After a thorough analysis of changes in legislation and a deep study of Articles 615 and 616 of the Criminal Procedure Code, it can be concluded that the legislator did not take into account several important aspects. For example, a clear structure and content of motions submitted by suspects and accused persons to the prosecutor were not defined. Also, clear grounds were not established, in the presence of which the prosecutor should apply to the investigative judge or court, or grounds under which the investigative judge or court could cancel the preventive measure (Part 2 of Article 616 of the Criminal Procedure Code uses evaluative concepts such as "in the presence of sufficient grounds", etc.). Overall, the analysis shows that some of the innovations in criminal procedural legislation regarding the application of preventive measures are logical and necessary, while others have serious shortcomings that require further scientific research and practical analysis".

Conflict of Interest and other Ethics Statements

The author declares no conflict of interest.

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ABSTRACT

By the Decree of the President of Ukraine No. 64/2022 dated February 24, 2022, in connection with the military aggression of the Russian Federation in Ukraine, a state of war was declared. The imposition of a state of war necessitated certain amendments to the Criminal Procedure Code of Ukraine. These changes pertained to Chapter 18 of Section II, regulating issues of preventive measures and detention of individuals, as well as Section IXI, which governs the special regime of pre-trial investigation and judicial consideration during a state of war. This situation led to changes in the regulation of virtually all aspects of societal life, including criminal justice. It posed a challenge to ensuring the enforceability of responsibility for committed criminal offenses while ensuring the safety of individuals involved in criminal proceedings. In order to adapt the current criminal procedural legislation to the current legislative requirements, several laws were enacted, addressing various aspects of criminal proceedings, including the issue of taking preventive measures. This makes the research topic relevant and discussed in the academic community.

This article is dedicated to the analysis of such aspects: conditions under which the state can refuse to guarantee the rights and freedoms of a person under the Convention for the Protection of Human Rights and Fundamental Freedoms during a state of war; changes introduced to the Criminal Procedure Code of Ukraine regarding the use of preventive measures during a state of war. The system of preventive measures defined in Article 176, paragraph 1 of the Criminal Procedure Code, includes measures such as personal recognizance, bail, detention, and house arrest. The main purpose of implementing these preventive measures is to ensure compliance by suspects or accused individuals with the requirements placed upon them within the framework of criminal proceedings, as well as to prevent possible unlawful influence on the investigation.

Keywords: *preventive measures, detention, arrest, state of war, house arrest.*

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FEATURES OF EXAMINATION OF A CORPSE DURING THE INVESTIGATION OF MALICIOUS FAILURE TO FULFILL DUTIES OF CARE FOR A CHILD OR A PERSON UNDER GUARDIANSHIP OR CARE ESTABLISHED

Олександр Кривопуск, Ольга Олійник (Хлинцева). ОСОБЛИВОСТІ ПРОВЕДЕННЯ ОГЛЯДУ ТРУПА ПІД ЧАС РОЗСЛІДУВАННЯ ЗЛІСНОГО НЕВИКОНАННЯ ОБОВ'ЯЗКІВ ПО ДОГЛЯДУ ЗА ДИТИНОЮ АБО ОСОБОЮ, ЩОДО ЯКОЇ ВСТАНОВЛЕНА ОПІКА ЧИ ПІКЛУВАННЯ. Стаття присвячена дослідженню тактичних особливостей проведення огляду трупа під час досудового розслідування злісного невиконання обов'язків по догляду за дитиною або особою, щодо якої встановлена опіка чи піклування. Автором детально розглянуто та конкретизовано цілі і завдання проведення слідчої (розшукової) дії в контексті розслідування злісного невиконання обов'язків по догляду за дитиною або особою, щодо якої встановлена опіка чи піклування. Розкрито питання взаємодії слідчого та інших учасників проведення огляду, зокрема судово-медичного експерта. В роботі обґрунтовано наголошується на необхідності

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