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### **SOME TOPICAL ISSUES OF APPLICATION OF PROPERTY SEIZURE DURING PRE-TRIAL INVESTIGATION UNDER MARTIAL LAW**

**Володимир Кіяниця, Олена Солдатенко. ДЕЯКІ АКТУАЛЬНІ ПИТАННЯ ЩОДО ЗАСТОСУВАННЯ АРЕШТУ МАЙНА ПІД ЧАС ДОСУДОВОГО РОЗСЛІДУВАННЯ В УМОВАХ ВОЄННОГО СТАНУ.** Арешт майна є важливим заходом забезпечення кримінального провадження, особливо під час досудового розслідування. В умовах воєнного стану актуальність цієї теми зростає з огляду на особливі обставини, що впливають на процедуру та правомірність арешту. Основні питання стосуються забезпечення балансу між необхідністю захисту національних інтересів і прав осіб, щодо яких здійснюються слідчі дії. Ця тема потребує ретельного аналізу з урахуванням міжнародних стандартів прав людини і національного законодавства, щоб запобігти зловживанням і забезпечити правовий захист громадян.

У представленому дослідженні здійснено аналіз актуальних проблем, пов'язаних із застосуванням арешту майна під час досудового розслідування в умовах воєнного стану. Розглянуто правові підстави та процедуру арешту майна, особливості його застосування в контексті воєнного стану, а також специфічні виклики, що виникають в умовах обмеженого функціонування судової системи та загроз національній безпеці. Основну увагу приділено питанням забезпечення прав і свобод осіб, майно яких арештовується, а також дотриманню принципів пропорційності та законності. Окремо розглянуто практичні аспекти арешту майна, як-от запобігання його відчуженню, використанню у злочинних цілях або виведенню за межі юрисдикції України.

**Ключові слова:** арешт майна, досудове розслідування, воєнний стан, права і свободи, пропорційність, законність, національна безпека, відчуження майна.

**Relevance of the study.** By the Decree of the President of Ukraine No. 64/2022 of 24 February 2022, martial law was introduced in Ukraine in connection with the military aggression of the Russian Federation [1]. This event caused significant changes in the regulation of almost all spheres of public life. In particular, it has become a serious challenge for the criminal justice system, which must ensure the inevitability of liability for criminal offences committed, while at the same time guaranteeing the safety of persons involved in criminal proceedings, even under martial law.

In order to adapt the current criminal procedure legislation to the new realities, the legislature adopted a number of legal acts. These acts are aimed at regulating issues arising in the course of criminal proceedings, especially under martial law. Particular attention was paid to the issues related to the choice of preventive measures, which is an important component of ensuring law and order in such unstable conditions [2, p. 382–390].

These legislative changes emphasise the relevance of studying issues related to criminal proceedings during martial law. The analysis of these innovations is becoming the subject of

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scientific discourse, since the need to improve the mechanisms of human rights protection and security in criminal proceedings remains critical for the effective functioning of the legal system in Ukraine.

**Recent publications review.** Certain issues of the application of property seizure during pre-trial investigation, including in the conditions of martial law, were considered by such scientists as: V. Ablamska, S. Ablamskyi, O. Garasymiv, T. Kotenko, V. Kyianytsia, O. Ryashko, O. Soldatenko, A. Vozniuk, O. Zakharova, etc.

**The article's objective** is to study current problems and features of the use of property seizure during pre-trial investigation under martial law, in particular legal grounds, procedural aspects, protection of individual rights and observance of the principles of legality and proportionality, as well as an analysis of international experience to improve national legislation in this area.

**Discussion.** Seizure of property is an important tool used during pre-trial investigation to prevent the possibility of its concealment, damage, deterioration, destruction, transformation, alienation [5]. It is a procedural action that allows to temporarily restrict the ownership of certain property in order to preserve evidence, ensure compensation for damages or possible confiscation. Such a measure is necessary to prevent the concealment, alienation or destruction of property that can be used as evidence or the subject of a criminal offence. The application of property seizure is governed by procedural law, in particular, the Criminal Procedure Code of Ukraine. It is important to note that the seizure of property is a restrictive measure, so its application must be proportionate and justified in accordance with the circumstances of the case, so as not to violate the rights of owners without objective necessity [3, p. 86-89].

The use of property seizure during pre-trial investigation under martial law is an important aspect that requires special attention from human rights defenders, lawyers and state authorities. In the context of military conflicts, property seizure may be applied to ensure the possibility of compensation for damages, as well as to prevent the use of property for criminal purposes. However, such measures must comply with the law and international human rights standards.

First of all, the seizure of property can be used to protect the interests of victims of criminal acts. In situations where the suspect (accused) may hide or destroy property, the pre-trial investigation involves taking measures to prevent such actions. However, this requires compliance with the principle of proportionality: the arrest should not be excessive or unreasonable, which may lead to abuse of property rights [4].

The second important aspect is the legal basis for the seizure of property under martial law. Ukraine has legislation regulating the seizure procedures, in particular, the Criminal Procedure Code.

Under the current criminal procedure legislation of Ukraine, the legal basis for restricting property rights when applying a measure to secure criminal proceedings in the form of seizure of property is primarily a decision of an investigating judge or court. According to Part 1 of Art. 170 of the Criminal Procedure Code of Ukraine, a property seizure order is a prerequisite for the seizure of property, which ensures the legality and fairness of criminal proceedings. The case law requires that the decision be made on the basis of substantiated evidence that demonstrates the need for seizure [5].

Another important ground is the decision of the Director of the National Anti-Corruption Bureau of Ukraine or his deputy to impose a preliminary seizure of property or funds on the accounts of individuals or legal entities in financial institutions. This decision must be approved by the prosecutor and is based on the principle of the need to ensure the investigation of corruption-related cases. An important feature is that in such cases, procedural actions should be as transparent as possible and comply with the requirements of the law.

At the same time, in accordance with Part 3 of Art. 233 of the Criminal Procedure Code of Ukraine, the investigator, investigator, prosecutor has the right to enter the house or other property of a person before the decision of the investigating judge is issued only in urgent cases related to saving lives and property or direct prosecution of persons suspected of committing a criminal offense. In such a case, the prosecutor, investigator, investigator, in agreement with the prosecutor, is obliged to apply to the investigating judge immediately after taking such actions with a request to conduct a search. The investigating judge considers such a petition in accordance with the requirements of Art. 234 of the Criminal Procedure Code of Ukraine, checking, among other things, whether there really were grounds for breaking into a person's home or other property without a decision of the investigating judge [6, p.283].

The third legal basis for the seizure of property under martial law includes a resolution of the head of the prosecutor's office. This norm, enshrined in Part 2 of Art. 615 of the Criminal Procedure Code of Ukraine, provides that if the investigating judge is unable to exercise his powers related to the imposition of an arrest, this may be carried out directly by the prosecutor's office. This ensures promptness in responding to changes in circumstances that may threaten the proper investigation and helps to preserve property that may be the subject of criminal acts. In order to effectively apply the seizure of property, the peculiarities of martial law and the possibility of convenient mechanisms for responding to changes in the situation should be taken into account [7].

The third aspect is the role of the judiciary in the seizure process. The court hearing the case must take into account both the interests of the victims and the rights of the property owners. This implies a proper assessment of the situation in which the owner may find himself or herself and the justification for the decision to seize. The court must also adhere to the principle of independence and impartiality, ensuring a balance between the rights of all parties. The last aspect is the need to monitor and control the application of property seizure during pre-trial investigation under martial law. This involves the participation of independent observers, human rights defenders and lawyers who can ensure that human rights and the legality of the processes are respected. In the context of armed conflict, it is important to maintain a balance between the security of the state and the rights of citizens, which is a guarantee of democratic values and the rule of law.

The use of property seizure during pre-trial investigation under martial law in Ukraine faces a number of contemporary issues that require serious analysis and resolution. Firstly, martial law poses special challenges for the observance of human rights. There are often situations when prompt decisions on seizure may lead to violations of the rights of property owners, especially if there are no clear criteria or justifications for such actions. This can cause public discontent and undermine trust in law enforcement agencies [8, p. 197–201].

Secondly, instability and lack of clarity in the legal framework may facilitate abuse by the authorities. Under martial law, when procedural procedures can be simplified, there is a risk that property seizures will be used as a tool to exert pressure on entrepreneurs or citizens who may be dissatisfied with the actions of the authorities. This threatens to undermine the rule of law and can lead to serious social consequences.

The third aspect is limited access to the courts. Under martial law, some courts may be inaccessible or their work may be restricted. This complicates the process of obtaining property seizure orders, which, in turn, can lead to delays in the investigation of cases and create obstacles to the legitimate protection of property owners' rights. As a result, the legality and transparency of the seizure process may be jeopardised [9, p. 107–109].

The fourth problem is the lack of legal awareness of citizens regarding their rights in cases of property seizure. Many people do not know how to protect their interests in the event of misconduct by law enforcement officers or judges. This can lead to situations where citizens do not appeal against illegal actions, which in turn undermines the justice and human rights system in the country.

Last but not least, there is a need to integrate international standards into national legislation on property seizure. In the context of martial law, it is important to take into account the best international practices and human rights mechanisms that can help improve the property seizure procedure. This implies the development and implementation of new rules that would strike a balance between the need for state security and the observance of citizens' rights, which is critical for building a state governed by the rule of law in Ukraine.

To address the problems associated with the use of property seizure during pre-trial investigations under martial law in Ukraine, a comprehensive approach should be implemented, which includes reforming the existing legal system. The first step should be to improve the procedural rules governing the seizure of property. This would involve establishing clear criteria and standards by which courts and investigators should make decisions on the seizure of property, as well as strengthening the requirements for justifying such decisions. The involvement of independent experts in the development of these rules will help ensure transparency and objectivity in decision-making [10, p. 302–307].

The second important area is ensuring access to justice for citizens. It is necessary to create conditions for property owners to be able to promptly appeal against arrest decisions in court. During the period of martial law, it is particularly important to protect the rights and freedoms of persons suspected or accused of committing criminal offences. The Code of

Criminal Procedure of Ukraine contains a separate provision that provides for the mandatory participation of a defence counsel in criminal proceedings.

In addition, the mandatory participation of a defence counsel is also provided for in cases where a special pre-trial investigation or court proceedings are conducted in relation to a person. If a plea agreement is concluded between the prosecutor and the suspect or accused, the defence counsel's participation is mandatory from the moment the process of concluding such an agreement begins. The list of these grounds is exhaustive [11, p. 468].

Access to justice can be achieved through the introduction of mechanisms for simplified consideration of cases, as well as raising public awareness of their rights. Educational programmes, seminars and information campaigns can help citizens understand how to act in the event of an unlawful seizure of property, as well as provide them with knowledge of legal mechanisms of protection.

The third area is the integration of international standards into national legislation. Ukraine should learn from international experience to adapt best practices in the area of property seizure while respecting human rights principles. This could include holding international conferences, exchanging experience with other countries, and cooperating with international human rights organisations. Such an approach will help to strengthen public confidence in justice and create a fairer and more effective system of human rights protection in Ukraine, even in the difficult conditions of martial law.

International experience in the area of seizure of property during pre-trial investigations, especially under martial law, demonstrates the importance of respecting human rights and the rule of law. One of the key aspects is the recognition of the need to ensure clear legal grounds for seizure. Many countries, such as Germany and Canada, have clearly defined criteria and procedures for seizing property, which helps to avoid abuse and ensure fairness. In particular, the requirement to justify the need for seizure is important, which helps to reduce the risks of unlawful interference with property rights [12, p. 134–139].

The experience of countries that have faced crises or military conflicts also highlights the importance of access to justice. For example, in Iraq and Afghanistan, special commissions were set up to review cases related to the seizure of property, which simplified the appeal process. This demonstrates that adapting the legal system to emergency conditions can improve the mechanisms for protecting the rights of citizens, enabling them to respond quickly to possible abuses. Establishing mechanisms for simplified case processing and increasing the availability of legal resources are important elements that can be implemented in Ukraine.

In addition, international human rights standards, in particular the provisions enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms, can serve as a basis for improving national legislation. These standards require that seizure of property be used only in exceptional circumstances and in strict accordance with the law. Ukraine should introduce systems for monitoring and assessing the human rights impact of property seizure, as well as ensure independent control over the implementation of procedural rules. Integration of international practices and standards will help Ukraine create a fairer and more sustainable legal system under martial law.

It should also be noted that according to Part 4 of Art. 132 of the Criminal Procedure Code of Ukraine [5], the decision of the investigating judge or court to apply measures to ensure criminal proceedings ceases to be valid upon expiry of its validity, cancellation of the preventive measure, acquittal or closure of criminal proceedings in accordance with the procedure provided for by the Criminal Procedure Code of Ukraine. For example, when a suspect or accused person dies, in accordance with Paragraph 5, Part 1, Art. 284 of the Criminal Procedure Code of Ukraine, the criminal proceedings are closed and the interim measure in the form of property seizure is cancelled.

**Conclusions.** Thus, the use of property seizure during pre-trial investigation under martial law in Ukraine raises a number of pressing issues that need to be addressed comprehensively. These challenges require urgent measures to ensure a balance between the security of the state and the protection of property rights.

Integrating international standards into law enforcement in Ukraine will be an important step in creating a fairer and more transparent system. This involves raising awareness of citizens about their rights, engaging independent observers to monitor the situation, and actively cooperating with international organisations. Thus, ensuring a balance between state security and human rights under martial law will be possible thanks to the efforts of all stakeholders.

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#### ABSTRACT

Seizure of property is an important measure to ensure criminal proceedings, especially during pre-trial investigation. In the context of martial law, the relevance of this topic increases due to the special circumstances affecting the procedure and legality of arrest. The main issues relate to striking a balance between the need to protect national interests and the rights of persons subject to investigative actions. This topic requires careful analysis, taking into account international human rights standards and national legislation, in order to prevent abuses and ensure legal protection of citizens.

The article is devoted to the analysis of topical issues related to the application of property seizure during pre-trial investigation under martial law. The author examines the legal grounds and procedure for seizure of property, peculiarities of its application in the context of martial law, as well as specific challenges arising in the context of limited functioning of the judicial system and threats to national security. The article focuses on the issues of ensuring the rights and freedoms of persons whose property is seized, as well as compliance with the principles of proportionality and legality. Practical aspects of property seizure are also considered, in particular, prevention of its alienation, use for criminal purposes or transfer outside the jurisdiction of Ukraine.

**Keywords:** *seizure of property, pre-trial investigation, martial law, rights and freedoms, proportionality, legality, national security, alienation of property.*