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FEATURES OF THE CONDUCT OF INVESTIGATORS (DETECTIVES) ACTION (INTERROGATION) UNDER THE CONDITIONS OF THE STATE OF MARTIAL

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The article is devoted to the study of the peculiarities of conducting investigative actions (interrogation) caused by the introduction of martial law on the territory of Ukraine.

The article analyzes the legislative innovations that were established in connection with the full-scale invasion of the Russian Federation into the territory of the state, in particular, the possibility of using as evidence by the court the video recording of the statements that were given to the prosecutor, the investigator in the conditions of martial law, as well as recording the course and results of the interrogation of the victim, suspect or witnesses (with the participation of a defense attorney) using available technical means of video recording, which are aimed at increasing the level of protection of citizens' rights.

The significance and relevance of the question of interrogating a witness, or victim in the mode of a video conference is outlined. The need to regulate the interrogation is substantiated so that the court is empowered, in exceptional situations, with the possibility of a “departure” from the principle of immediacy of the examination of testimony during the trial, enshrined in Article 23 of the Criminal Procedure Code, under the condition of mandatory observance of due process guarantees.

The duty of the court to monitor the interrogation to prevent possible extraneous influence on the interrogated subjects is characterized.

The specific properties of the interrogation of a minor and the need, to avoid a possible psychological injury to the child, to observe all the guarantees and rights of a minor are

substantiated. The child's right to free secondary legal assistance, which provides for the protection and representation of interests in courts, other state bodies, and local self-government bodies, before other persons, as well as drafting procedural documents, is analyzed. Gaps and problematic aspects are singled out, which negatively affect both minors and the results of criminal proceedings in general.

Keywords: interrogation, investigative actions, criminal proceedings, legislative innovations, martial law, video conference mode, procedural guarantees, minor.

Formulation of the problem. With the beginning of the war and the introduction of martial law, all areas of state and social life were "reformatted". Criminal proceedings are no exception. Despite the significant number of problems caused by active hostilities and the "unavailability of territories" for law enforcement agencies where criminal offenses were committed, the judicial system continues to function and improve.

Research status. The specifics of this investigative (search) action were worked out by the following experienced scientists in the field of criminal procedural law: T. O. Loskutov, T. P. Matyushkova, Y. L. Belousov, E. P. Krapyvin, V. M. Pletenets, M. V. Popovych, T. I. Bugaets, V. V. Tyshchenko, V. M. Tertyshnyk, L. D. Udalova, M. E. Shumylo, A. V. Ishchenko, V. T. Nor, V. G. Honcharenko, V. T. Malyarenko, S. M. Stakhivskyi, M. V. Saltevskyi, O. N. Kolesnichenko, O. Yu. Kostyuchenko and others.

Despite the interest of scientists in this issue and the significant number of studies conducted by them, an important issue remains that many problems of the interrogation of participants in criminal proceedings in the conditions of a special legal situation – remain unsettled.

The purpose of the article is to attempt a fragmentary monitoring of the peculiarities of conducting investigative (search) actions (interrogation) caused by the introduction of martial law on the territory of Ukraine, as well as to highlight the peculiarities of the interrogation of minors under such circumstances. Formulation of separate generalizations and proposals, with the aim of further ensuring and protecting the rights and freedoms of citizens in criminal proceedings under martial law.

Presentation of the main research material. Within the framework of criminal proceedings, various procedural actions are performed, however, the most common among them is interrogation. It is used at various stages of criminal proceedings to obtain statements from persons acting as participants in criminal proceedings. Given that our state is characterized by imperfect legal regulation of interrogation in peacetime, with the introduction of martial law, the number of problematic issues related to the regulation of this procedural action only increased. That is why the research topic is very relevant.

It is obvious that in the conditions of armed aggression, the danger to life and health exists for everyone, and even more so in the territories located close to the conduct of hostilities. The use of the procedural order established in Article 225 of the Criminal Procedure Code of Ukraine, which regulates interrogation during a pre-trial investigation in a court session, is problematic, since the court's capabilities are limited due to the threat of physical danger, as well as due to the non-functioning of a significant number of judges under such conditions.

The legal regulation of the features of interrogation in wartime was established in Chapter IX-1 of the Criminal Procedure Code of Ukraine "Special regime of pre-trial investigation, trial in conditions of martial law". The main innovations regulated in the Law of Ukraine "On Amendments to the Criminal Procedure Code of Ukraine on Improving the Procedure for Conducting Criminal Proceedings under Martial Law" are the exclusion of the prohibition on substantiating court decisions with testimony provided to the prosecutor, investigator under martial law, as well as recording the course and results of the interrogation of the victim, suspect or witnesses (with the participation of the defense attorney) using available technical means of video

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recording. It is this recording that becomes the basis for the subsequent use of the received testimony as evidence in court [1].

In the conditions of martial law, the question of interrogating a witness, a victim in the mode of a video conference becomes extremely urgent. In such a case, it is mandatory to establish the identity, in particular, through direct presentation of the passport online or identification using an electronic digital signature. Using this format of interrogation, clarification of rights and obligations should be carried out not by the method of providing a memo on rights and obligations, but directly during a video conference [2, c. 87].

In Art. 615 of the Criminal Procedure Code of Ukraine, a significant expansion of the powers conferred on the prosecutor by delegating to him some of the powers of an investigating judge regarding the implementation of some procedural actions, namely, interrogation, identification in the form of a video conference during a pre-trial investigation, is enshrined. It is worth noting that these powers of prosecutors in the case of the impossibility of exercising the relevant powers by the investigating judge within the time limits set by the law apply to all criminal offenses without exception [3].

The conditions of martial law on the territory of our country determine the regulation of interrogation so that the court is endowed, in exceptional situations, with the possibility of deviating from the principle of the immediacy of the judicial reception of testimony while observing the proper procedural guarantees. However, it is worth noting that the criminal procedural norms that regulate the interrogation process during wartime need to be improved in terms of legislatively enshrining the ability of the court in extreme cases, in particular death, illness, threat of danger, and others, to decide on the recognition of the results of pre-trial interrogation as evidence without observing the procedural rules. guarantees [4, p. 317].

An important condition is that the court's decision to admit pre-trial testimony as evidence cannot be formally adopted exclusively in connection with the introduction of martial law. The court must assess the specific conditions of the proceedings, the level of threat to the participants in the process, and the degree of activity of hostilities in the given territory. Exceptionally after that, the court must determine the impossibility of obtaining testimony during the trial and the possibility of using testimony obtained during the pre-trial investigation.

Undoubtedly, these exceptions to the principle of direct examination of testimony, things, and documents by the court can be allowed only under the condition of observing human rights and freedoms, in particular, the right to defense, to silence, to respect for human dignity, and others. Following the provisions stipulated by the legislator in the current Code of Criminal Procedure of Ukraine, the observance of the rights of citizens is ensured by establishing the mandatory participation of a defense attorney, the participation of legal representatives of a person or witnesses during interrogation at the stage of pre-trial investigation, as well as the use of video recording devices during pre-trial interrogations [5].

In a court session, the court is required to monitor the questioning to prevent possible extraneous influence. With the help of a video recording, the judge has the opportunity to make sure that the testimony was given without illegal influence, and in case of doubt, not to use such evidence as a justification for proving guilt. If it is possible to ensure the person's presence, in certain cases the court has the right to ensure the re-examination directly during the court session.

Among scientists, there is a fairly widespread opinion about the expediency of ensuring the rules of video recording of the interrogation of witnesses, the victim, and its use as evidence even in peacetime, since it is not always possible to ensure their participation in court proceedings. The expediency of this position is confirmed by the numerous cases when persons under pressure, which cannot be proven, or due to the peculiarities of their memory, change their testimony, which was given by them during the pre-trial investigation. Cases of natural or unnatural death before the start of the trial are also not excluded. The use of such an approach to questioning a suspect is possible as an exception in the realities of martial law on the territory of our country since according to the legislation of Ukraine, the right to defense enshrines the possibility of cross-examination conducted by the opposite party, it must be ensured in the judicial body and the justice system [6].

At all times, one of the most important tasks of state policy is and will continue to be the protection and provision of the rights of minors for their proper physical, psychological, and social development and, accordingly, their formation as individuals. In today's difficult conditions, such protection does not always remain effective and the number of criminal offenses against minors does not decrease.

The effectiveness of the interrogation depends on a considerable number of factors, in particular, the fact that the interrogated person has not reached the age of majority, which determines the need for the use of specific measures by the authorized person during the preparation for this investigative action. Interrogation of a minor is characterized by a significant number of autonomous properties, to prevent the occurrence of psychological trauma in a child, all guarantees and rights granted to a minor by the provisions of current legislation must be respected. Without taking into account the specifics of the questioning of such a person, it is difficult, and often impossible, to obtain a sufficient and necessary amount of evidentiary information regarding the circumstances of the committed criminal offense and, as a result, to provide an objective legal assessment.

Although the tactics and methods of interrogating minors are defined both at the international and national level, in the practical implementation of this investigative (search) action, it is characterized by some imperfections or gaps that hurt both minors and the results of criminal proceedings. In particular, they relate to the declarativeness and inaccuracy of established provisions, which cause difficulties in the procedural practice of questioning minors during pre-trial proceedings [7, p. 92].

A great role can be played by the involvement of a psychologist when formulating questions and tactics in a form that is understandable to a minor. When questioning such persons, the following must be taken into account:

- age, psychological, intellectual, and other characteristics of the person being questioned (behavior, interests, level of development);
- the presence of third parties (parents, close relatives, teachers, persons who have high authority “in the eyes” of the interrogated person);
- time and place of this investigative action;
- if a minor is a victim or a witness, then the content of events of a sexual, tragic, or violent nature, as well as the degree of severity of the impact on his mental state [8, p. 83–84].

The interrogation is conducted at the place of the pre-trial investigation or in another place as agreed with the person who will be interrogated. Each witness must be questioned separately, other witnesses cannot be present. That is why the place for the interrogation of a minor should be chosen in such a way as to minimize the risk of psychological trauma to the child. Interrogation of such a person can be carried out both at the place of residence and at the place where the child studies.

Interrogation of a minor is characterized by time limits, since, without a break, the interrogation cannot continue for more than one hour, and in general – more than two hours a day [5]. However, the current legislation does not stipulate the duration of the break. The investigator must determine it based on his inner conviction and experience. It is necessary to take into account the age of the interrogated person, his procedural status, mental health, ability to concentrate, etc.

It is also important when interrogating a minor that this investigative action is carried out in the presence of a legal representative of the person, a teacher or a psychologist, and if necessary, a doctor (usually, the presence of a doctor is necessary in the case of retardation in the physical or mental development of the child) [9].

Ukrainian children experience significant stress due to the war and the terrible consequences it causes, therefore, the need to provide proper legal assistance to children necessitates the development of effective measures that will contribute to this. By the provisions laid down in the Law of Ukraine “On Free Legal Aid”, minors have the right to receive free secondary legal aid, which provides for the protection and representation of interests in courts and other state bodies, as well as the drafting of procedural documents [10].

It is also appropriate to mention the “Barnachus” program, which is aimed at organizing a place where a team, which includes representatives of law enforcement agencies, child protection services, juvenile justice, criminal justice, as well as medical professionals, to provide minor victims or witnesses violence – organized effective protection, justice. It is obvious that in the conditions of martial law on the territory of our country, there is a need to involve professional psychologists during interrogations, to develop recommendations with their participation that would have a beneficial effect on improving the functioning of pre-trial investigation bodies, to properly realize the interests of minors and awareness. that the tasks of criminal proceedings cannot be solved at the expense of questioning minor victims, if there is a risk of harming the moral condition of the interrogated by such actions [11, p. 6].

Conclusions. Interrogation in wartime is carried out taking into account procedural features and innovations in criminal procedural legislation. Modern realities determine the regulation of interrogation so that the court is empowered to “depart” from the principle of immediacy of judicial obtaining of testimony, in exceptional cases, with mandatory observance of procedural guarantees of the parties. Innovations related to recording the progress and results of the interrogation of the victim, suspect, or witnesses (with the participation of the defense attorney) using available technical means of video recording, guarantee the interrogation of the participants even in difficult conditions of martial law, as well as the prevention of possible outside influence on the interrogated.

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ОСОБЛИВОСТІ ПРОВЕДЕННЯ СЛІДЧИХ (РОЗШУКОВИХ) ДІЙ (ДОПИТУ) В УМОВАХ ВОЄННОГО СТАНУ

Стаття присвячена дослідженню особливостей проведення слідчих дій (допиту), що зумовлені введенням воєнного стану на території України.

У статті аналізуються законодавчі нововведення, що були закріплені у зв'язку із повномасштабним вторгненням РФ на територію держави, зокрема, можливість використання судом як доказу відеозапису показань, що були надані прокурору, слідчому в умовах воєнного стану, а також фіксування ходу та результатів допиту потерпілого, підозрюваного чи свідків (за участю захисника) за допомогою доступних технічних засобів відеофіксації, що своєю метою мають підвищення рівня захисту прав громадян.

Окреслено значення та актуальність питання проведення допиту свідка, потерпілого у режимі відеоконференції. Обґрунтовується потреба регулювання допиту так, щоб суд мав у виняткових ситуаціях можливість “відступу” від засади безпосередності дослідження показань під час судового розгляду, закріпленої у ст. 23 КПК, за умови обов'язкового дотримання належних процесуальних гарантій.

Охарактеризовано обов'язок суду здійснювати контроль за допитом з метою запобігання можливому сторонньому впливу на допитуваних суб'єктів.

Обґрунтовано специфічні властивості допиту неповнолітньої особи і необхідність, з метою уникнення у дитини можливої психологічної травми, дотримання всіх гарантій та прав неповнолітньої особи. Проаналізовано право дитини на безоплатну вторинну правову допомогу, яка передбачає захист та представництво інтересів у судах, інших державних органах, органах місцевого самоврядування, перед іншими особами, а також складення документів процесуального характеру. Виокремлюються прогалини та проблемні аспекти, які негативно впливають як на неповнолітніх, так і на результати кримінального провадження загалом.

Ключові слова: допит, слідчі дії, кримінальне провадження, законодавчі нововведення, воєнний стан, режим відеоконференції, процесуальні гарантії, неповнолітня особа.