

Legal Sciences**UDC 343****Preventive Measures under Martial Law:
Problematic Aspects of Application and Improvement****Volodymyr Ortynskyi**

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Abstract. The article highlights the problem of the transformation of the institution of preventive measures in criminal proceedings in Ukraine under martial law. A relevant area of study is the balance between the need for effective crime counteraction, particularly against crimes against the foundations of national security, and the state's obligation to guarantee fundamental human rights, primarily the right to liberty and personal inviolability, which, according to the Constitution of Ukraine, is not subject to restriction even under extraordinary circumstances. The article analyzes the complex system of legal norms regulating this issue, including the provisions of the Constitution of Ukraine, the Law of Ukraine "On the Legal Regime of Martial Law", special norms of the Criminal Procedure Code of Ukraine, and the state's international legal obligations, particularly the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms.

The article substantiates the need for a thorough scientific understanding of the innovations in criminal procedure legislation introduced after February 24, 2022. Special attention is given to such problematic aspects as the temporary delegation of the investigative judge's powers to the head of the prosecutor's office, the introduction of non-alternative detention for certain categories of crimes, the mechanism for the automatic extension of arrest periods, and the specifics of applying preventive measures to military personnel. The research methods included formal legal analysis of current legislation, systemic analysis of judicial practice, particularly decisions of the Constitutional Court of Ukraine and the Supreme Court, as well as a comparative analysis of national regulations with international human rights standards.

The article analyzes the practice of applying the amended norms and its impact on adherence to the fundamental principles of criminal proceedings, such as the adversarial principle and the right to judicial review. The author argues that the legislator, in responding to the challenges of war, has sometimes chosen the path of excessively expanding the powers of the prosecution, which has created threats to the fundamental rights of individuals. The key role of the Constitutional Court of Ukraine in restoring balance and declaring unconstitutional certain provisions that contradicted the principle of the rule of law and the right to liberty is emphasized.

The paper concludes that the effectiveness of criminal proceedings under martial law cannot be achieved at the expense of negating the fundamental principles of justice. Special attention is paid to the concepts of "judicial review", "proportionality of restrictions", and "non-alternativeness of a preventive measure". The

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expediency of revising certain provisions of the Criminal Procedure Code of Ukraine to strengthen guarantees of the right to defense is established. The author proposes their own suggestions for improving legislation, particularly regarding the introduction of a mechanism for deferred judicial review of prosecutor's decisions, amending the norms on non-alternative detention, improving the procedure for canceling a preventive measure for military service, and unifying judicial practice by the Supreme Court.

Keywords: preventive measures, martial law, detention, right to liberty, criminal proceedings, judicial review, Criminal Procedure Code of Ukraine, Constitution of Ukraine, human rights, non-alternative preventive measures

Introduction

The full-scale armed aggression of the Russian Federation against Ukraine, ongoing since February 24, 2022, has posed an unprecedented challenge to the entire legal system of the state. The urgent need to ensure national security, defense, and effective crime prevention under extraordinary conditions has led to a rapid and large-scale transformation of existing legislation. One of the most sensitive areas affected by these changes is the institution of measures to secure criminal proceedings—namely, preventive measures. These measures, being instruments of procedural coercion that restrict one of the fundamental human rights—the right to liberty and personal integrity have acquired particular urgency in the context of war.

The key issue lies in identifying and legally enshrining an optimal balance between two vital interests: on the one hand, the state's need for effective tools to prevent suspects and accused persons, particularly those charged with crimes against national security, war crimes, and other serious offenses—from evading justice; and on the other hand, the inviolable obligation to uphold constitutional guarantees and international human rights standards. This challenge is compounded by the fact that Article 29 of the Constitution of Ukraine, which guarantees the right to liberty, is among the rights that cannot be restricted even under martial law. This creates a complex legal conflict and requires legislators and law enforcement bodies to adopt carefully considered and legally sound decisions.

The relevance of this study is further reinforced by the dynamic development of judicial practice, particularly the rulings of the Constitutional Court of Ukraine, which has already assessed certain amendments to criminal procedural legislation and declared some of them unconstitutional. This indicates the presence of systemic

issues in the regulation of preventive measures during wartime and underscores the need for in-depth scholarly analysis of the enacted changes, their practical application, and the development of evidence-based recommendations for further legislative improvement in line with the principles of the rule of law.

Literature Review

The issue of applying preventive measures under martial law has been addressed in the scholarly works of numerous Ukrainian legal scholars, including Ya. L. Lutsenko, V. I. Orlenko, A. O. Taranenko, T. V. Shevchenko, V. O. Cherneniuk, S. O. Sofiyev, A. A. Teslytskyi, V. A. Zavtur, I. V. Hlovyuk, A. Shyyan, R. A. Chaika, V. Mykhailenko, D. A. Patreliuk, E. V. Dyachenko, D. I. Hunchenko, V. Matus, and others.

In particular, the general aspects of safeguarding constitutional rights and freedoms during martial law have been explored by Ya. L. Lutsenko and V. I. Orlenko, who emphasized the need for any restrictions to correspond to the severity of the national situation. The specific changes to criminal procedural legislation and their impact on the institution of preventive measures have been analyzed in the works of A. O. Taranenko, T. V. Shevchenko, and R. A. Chaika. The expansion of prosecutorial powers and the delegation of investigative judge functions to prosecutors have been critically assessed by S. O. Sofiyev, A. A. Teslytskyi, V. A. Zavtur, and I. V. Hlovyuk, who pointed to violations of the principles of adversarial proceedings and the separation of procedural functions.

The issue of non-alternative detention for certain categories of crimes has been a focal point in the works of A. Shyyan and E. V. Dyachenko, who highlighted the contradiction of this approach with previous rulings of the Constitutional Court of Ukraine. Specific aspects of applying preventive

measures to military personnel, as well as the challenges of lifting such measures to allow for military service, have been studied by D. I. Hunchenko. Procedural issues, particularly the safeguarding of the right to defense during remote hearings, were analyzed by V. Matus.

Despite the considerable number of publications, the dynamic evolution of legislation and judicial practice, especially the latest decisions of the Constitutional Court of Ukraine, necessitate further comprehensive analysis and generalization, along with the development of systematic proposals for improving legal regulation.

Purpose

The aim of this study is to conduct a comprehensive analysis of the theoretical foundations and practical challenges of applying preventive measures in criminal proceedings under martial law, to identify legal conflicts and gaps in current legislation, to summarize judicial practice, and to develop evidence-based recommendations for improving legal regulation and law enforcement practices. The ultimate goal is to ensure an optimal balance between national security interests and the protection of fundamental human rights.

Methodology

The methodology of this study is based on a system of general scientific and special methods of cognition of the objective world. In particular, dialectical, logical-semantic, formal-legal, system-functional and other methods of cognition

Results and Discussion

In the context of the full-scale armed aggression that has continued since February 24, 2022, Ukraine's legal system has faced unprecedented challenges, necessitating urgent and systemic adaptation of legislation to the realities of martial law. One of the most sensitive and critically important areas that has undergone significant transformation is the institution of measures to secure criminal proceedings, particularly preventive measures.

This institution, which in essence serves as a tool of procedural coercion aimed at ensuring the proper conduct of suspects or accused persons, acquires special significance in wartime. The state is compelled to seek a balance between the need for

effective crime prevention, including crimes against the foundations of national security and its inviolable duty to guarantee fundamental human rights, especially the right to liberty and personal integrity.

The legal basis for any restriction of human rights and freedoms in Ukraine is its Fundamental Law. Article 3 of the Constitution of Ukraine declares the individual, their life and health, honor and dignity, inviolability and security to be the highest social value, and affirms that the establishment and protection of human rights and freedoms is the primary duty of the state [1].

Article 29 of the Constitution of Ukraine enshrines the fundamental right of every individual to liberty and personal integrity, stipulating that no one may be arrested or held in custody except by a reasoned court decision and only on grounds and in accordance with procedures established by law [1].

At the same time, Part Two of Article 64 of the Constitution of Ukraine provides that, under conditions of martial law or a state of emergency, certain restrictions on rights and freedoms may be imposed, with a specified duration of such restrictions. However, even under extraordinary circumstances, the rights and freedoms guaranteed by Articles 24, 25, 27, 28, 29, 40, 47, 51, 52, 55, 56, 57, 58, 59, 60, 61, 62, and 63 of the Constitution may not be restricted [1].

The fact that the right to liberty and personal integrity (Article 29) is included among the absolute, non-derogable rights creates a key legal conflict and a challenge for lawmakers. As Ya. L. Lutsenko rightly notes, the temporary restriction of certain rights and freedoms during the legal regime of martial law, when applied by authorized entities on appropriate grounds and in accordance with international legal instruments, the Constitution, and other laws of Ukraine, aligns with the general principles of legality and legitimacy [2, p. 130].

However, the scope and limits of such restrictions must correspond to the severity of the situation in the country. Presidential Decree No. 64/2022 of February 24, 2022, "On the Introduction of Martial Law in Ukraine", specified that during the period of martial law, constitutional rights and freedoms outlined in Articles 30–34, 38, 39, 41–44, and 53 of the Constitution of Ukraine may be restricted [3]. It is important to emphasize that Article 29 was not included in this list, underscoring its fundamental nature.

At the same time, the legal regime of martial law, as defined by the Law of Ukraine “On the Legal Regime of Martial Law”, is a special legal framework that grants the relevant state authorities and military command the powers necessary to prevent threats and repel armed aggression [4]. It is within the scope of these powers that the transformation of criminal procedural legislation has taken place.

As V. I. Orlenko notes, in wartime conditions, certain rights may be restricted to maintain security and ensure the functioning of the state. However, such restrictions must be clearly regulated by law and must not violate fundamental human rights [5, p. 50].

Preventive measures, as an institution of criminal procedural law, are forms of procedural coercion that temporarily restrict a person’s rights and freedoms to ensure proper procedural conduct. Their exhaustive list is provided in Article 176 of the Criminal Procedure Code of Ukraine (hereinafter – CPC of Ukraine) and includes personal commitment, personal surety, bail, house arrest, and detention [6].

According to Article 177 of the CPC of Ukraine, the purpose of applying these measures is to ensure that the suspect or accused fulfills their procedural obligations and to prevent attempts to evade pre-trial investigation and/or court proceedings, destroy or conceal evidence, unlawfully influence participants in the proceedings, or commit another criminal offense [6].

Under martial law, these risks objectively increase. Suspects may attempt to avoid responsibility by exploiting chaos, population displacement, or even by siding with the enemy. This has necessitated legislative adaptation, reflected in the special Chapter IX-1 of the CPC of Ukraine, “Special Regime of Pre-Trial Investigation and Judicial Proceedings Under Martial Law”.

As noted by A. O. Taranenko and T. V. Shevchenko, this chapter has undergone significant changes, particularly affecting the procedures for selecting and extending preventive measures [7, p. 733].

The international legal context also plays a crucial role. Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms guarantees the right to liberty and personal integrity, allowing deprivation of liberty only in a limited number of cases and in accordance with

procedures established by law [8]. Article 15 of the Convention permits states to derogate from their obligations during war or other public emergencies threatening the life of the nation, but only “to the extent strictly required by the exigencies of the situation” [8].

Ukraine has exercised this right by notifying the Secretary General of the Council of Europe of its temporary derogation from obligations. However, as V. O. Cherniuk emphasizes, such derogation is not absolute, and the European Court of Human Rights (ECtHR) retains the authority to assess the proportionality of the measures taken [9, p. 238].

Thus, the theoretical and legal foundation for the application of preventive measures under martial law consists of a complex system of norms, including inviolable constitutional guarantees, special legislation on the legal regime of martial law, amended provisions of the Criminal Procedure Code of Ukraine, and the state’s international obligations. Further research should focus on how these theoretical principles are implemented in practice and what problematic aspects arise as legislators and law enforcement bodies attempt to strike a balance between security requirements and the protection of fundamental human rights.

The introduction of a special regime for criminal proceedings under martial law, although a necessary and urgent step to ensure the continuity of the criminal justice system, has generated a number of complex practical and doctrinal issues. The most intense debates center around the legislative changes concerning preventive measures, as they directly affect the individual’s right to liberty. An analysis of the amendments to the Criminal Procedure Code of Ukraine and their practical application reveals several key problematic aspects that require thorough scholarly reflection. These include the expansion of prosecutorial powers, the establishment of non-alternative detention for certain categories of crimes, the automatic extension of detention periods, and the procedural specifics of reviewing related motions.

One of the most significant innovations is the temporary delegation of investigative judge powers to the head of the relevant prosecutor’s office. According to Article 615 of the Criminal Procedure Code of Ukraine, in the absence of an objective possibility for an investigative judge to perform

their duties, the head of the prosecutor's office is authorized to impose preventive measures in the form of detention for up to 30 days against individuals suspected of committing a wide range of crimes, as well as to extend the duration of detention orders [6].

As noted by S. O. Sofiyev and A. A. Teslytskyi, such an expansion of prosecutorial powers is an exceptional measure aimed at maintaining public order in circumstances where the judiciary cannot function fully due to active hostilities [10, p. 271].

However, this approach poses significant risks to the observance of fundamental principles of criminal procedure. Assigning judicial oversight functions to the prosecutor, who represents the prosecution directly contradicts the principles of adversarial proceedings and the separation of procedural roles. V. A. Zavtur rightly points out that such a procedure undermines impartial review, as the prosecutor is inherently interested in the approval of a motion that they themselves initiated or endorsed [11, p. 209].

Critically assessing this legislative amendment, I. V. Hlovyuk points out that the review of complaints regarding unlawful deprivation of liberty by the same authority whose representative initiated the detention is incompatible with the requirements of Article 206 of the Criminal Procedure Code of Ukraine and the standards of the European Court of Human Rights (ECtHR) [12, p. 331].

Another problematic aspect is the establishment of non-alternative preventive detention for certain categories of criminal offenses. Parts 6 and 8 of Article 176 of the Criminal Procedure Code of Ukraine stipulate that, during martial law, individuals suspected of committing crimes against the foundations of national security, a range of offenses against public safety and peace, as well as military personnel accused of specific war crimes, are subject exclusively to detention [6].

As A. Shyyan notes, such an imperative provision deprives the investigative judge of the ability to consider the individual circumstances of the case and the personality of the suspect, which contradicts the very essence of judicial oversight [13, p. 731].

This approach has already been reviewed by the Constitutional Court of Ukraine. In its ruling of June 25, 2019 (No. 7-r/2019), the Court declared a similar provision unconstitutional, stating that non-alternative detention violates the principle of the

rule of law and the right to liberty, as it fails to ensure a balance between the purpose of the measure and the individual's rights [14].

Despite this, the legislature has once again adopted a similar model, justifying it by the extraordinary conditions of war. However, recent practice shows that the Constitutional Court of Ukraine, in its ruling of June 19, 2024 (No. 7-r(II)/2024), analyzing the updated Part 6 of Article 176 of the Criminal Procedure Code, concluded that the provision is not absolutely non-alternative. Its application still requires the prosecutor to prove the existence of risks outlined in Article 177 of the Code, thereby leaving room for judicial discretion and the possibility of applying bail [15].

Particular concern is raised by the mechanism of automatic extension of detention periods. Part 6 of Article 615 of the Criminal Procedure Code of Ukraine (as amended before July 18, 2024) stipulated that, in cases where the court's detention order expires and cannot be extended, the preventive measure is considered automatically prolonged, but for no more than two months [6].

As R. A. Chaika notes, the aforementioned provision contradicts international standards, particularly the case law of the European Court of Human Rights (ECtHR), which emphasizes the necessity of mandatory and periodic judicial oversight of the legality of deprivation of liberty [16, p. 71]. This provision was reviewed by the Constitutional Court of Ukraine, which, in its ruling of July 18, 2024 (No. 8-r(II)/2024), declared it unconstitutional, stressing that even during wartime, deprivation of liberty is permissible only on the basis of a reasoned decision by an independent court [17].

In practice, purely procedural challenges also arise. In situations where courts have been evacuated and case materials partially lost, investigative judges are often forced to make decisions based on incomplete information. As stated in the information letter of the Supreme Court dated March 3, 2022, the court must rely on all available documents attached to the motion [18]. However, as V. Mykhailenko points out, this creates risks of issuing unsubstantiated decisions [19].

The possibility of conducting court hearings via videoconference, as provided for in Article 615 of the Criminal Procedure Code of Ukraine, is an important tool for ensuring the continuity of justice. However, Supreme Court practice, particularly the ruling of

October 11, 2023, in case No. 317/1524/15-k, indicates that decisions on remote hearings must be properly reasoned, and the absence of justification for why in-person participation of the accused is impossible constitutes a significant violation [20].

Another pressing issue concerns the application of preventive measures to military personnel. The specific legal status of service members and the conditions of military service require tailored approaches. For example, applying house arrest to a soldier stationed at a military base is practically impossible. At the same time, detention may remove a qualified specialist from the ranks of the Armed Forces of Ukraine for an extended period, which, in wartime, is an unaffordable luxury. Legislation, particularly the Law of Ukraine “On Amendments to the Criminal Procedure Code of Ukraine to Improve Criminal Proceedings Under Martial Law” has attempted to address these issues, but practice reveals existing gaps [21].

Attention should also be paid to the specifics of applying bail. In the context of the economic crisis caused by the war and widespread impoverishment of the population, the amount of bail set by the investigative judge may be unaffordable for the suspect and their family. This leads to a situation where the formal alternative to detention becomes practically inaccessible, undermining its humanitarian potential. More flexible approaches to determining bail amounts must be developed, taking into account not only the severity of the offense but also the actual financial status of the individual.

In my view, the analysis of the aforementioned problematic aspects indicates that, in responding to wartime challenges, the legislature has at times opted for an excessive expansion of prosecutorial powers and a limitation of judicial oversight, thereby creating risks to fundamental human rights. The ruling of the Constitutional Court of Ukraine declaring the automatic extension of detention unconstitutional serves as a crucial signal for the need to return to a balanced approach. Even under martial law, the effectiveness of criminal proceedings cannot be achieved at the expense of undermining the foundational principles of justice.

The analysis of the theoretical and legal foundations and practical challenges of applying preventive measures under martial law inevitably leads to the need for formulating concrete proposals

aimed at improving both legislative regulation and law enforcement practices. The key objective of such improvement is to find an optimal balance between national security interests, the need for effective criminal prosecution, and the inviolable guarantees of human rights protection. Given the identified conflicts and risks, reform efforts must be comprehensive, addressing both procedural aspects and strengthening oversight mechanisms to adapt the criminal justice system to the prolonged challenges of war without abandoning the principles of the rule of law.

The first priority for improvement is revising the provisions on delegating investigative judge powers to the head of the prosecutor’s office. While a complete repeal of this mechanism may be premature during active hostilities, it is necessary to establish clearer safeguards against potential abuse.

As proposed by D. A. Patreliuk, the prosecutor’s performance of judicial functions should be time-limited, and a mechanism of automatic judicial review of decisions made by the prosecutor in this role should be introduced as soon as courts are able to function [22, p. 753].

I believe it would be appropriate to supplement Article 615 of the Criminal Procedure Code of Ukraine with a provision requiring the prosecutor to submit any decision on detention or its extension to the nearest functioning investigative judge for review within, for example, 72 hours. This approach would preserve the responsiveness needed in emergency situations while ensuring the right to judicial oversight, albeit with a slight delay.

The second important area concerns the issue of non-alternative detention. Despite the position of the Constitutional Court that Part 6 of Article 176 of the Criminal Procedure Code is not absolutely non-alternative, its wording remains ambiguous. As E. V. Dyachenko notes, this legislative construction creates a risk of formalistic application, where investigative judges, citing the seriousness of the offense, disregard the possibility of applying other preventive measures [23, p. 813].

I consider it appropriate to amend Parts 6 and 8 of Article 176 of the Criminal Procedure Code to explicitly require the investigative judge to consider the possibility of applying less restrictive alternatives, such as bail, and to provide reasoning in the ruling as to why such alternatives are insufficient to

mitigate the identified risks. This would compel the prosecution to substantiate its motions more thoroughly and ensure that the court issues genuinely reasoned decisions.

The third area involves improving the procedure for lifting preventive measures to allow military service, as outlined in Article 616 of the Criminal Procedure Code. The current mechanism, which requires the motion to be submitted through the prosecutor, limits the initiative of the defense. As D. I. Hunchenko notes, in practice, there are cases where prosecutors unjustifiably delay consideration of such motions or refuse to submit them to the court [24, p. 187]. To address this issue, it would be appropriate to grant the suspect, accused, or their defense counsel the right to submit the motion directly to the investigative judge or court. The prosecutor would then provide an opinion on the appropriateness of lifting the preventive measure, but the final decision would rest with the court, in line with the principle of adversarial proceedings.

The fourth area concerns strengthening guarantees of the right to defense during remote hearings. While videoconferencing is an important tool, it is essential to ensure meaningful not merely formal participation of the defense counsel. As V. Matus emphasizes, it is crucial to guarantee the possibility of confidential communication between the defense counsel and the accused during such hearings [25, p. 146]. I believe it is necessary to establish, at the normative level, the court's obligation to provide technical means for such confidential consultations (e.g., through separate virtual rooms or breaks in the hearing), and to clearly stipulate that the absence of such an opportunity constitutes a significant violation of the right to defense.

The fifth area of focus concerns the need to unify judicial practice. An analysis of Supreme Court rulings reveals inconsistent approaches to the application of wartime amendments to the Criminal Procedure Code of Ukraine [20]. The Supreme Court must play a leading role in establishing uniform standards by issuing general clarifications on the application of Articles 176, 615, and 616 of the Code. This would help avoid divergent interpretations and ensure the predictability of justice, which is a core component of the principle of legal certainty.

Special attention should also be given to improving the bail mechanism under martial law. It is necessary to develop and legally codify a system that allows investigative judges to consider not only the suspect's financial status but also the broader economic realities caused by the war. One possible solution is the introduction of differentiated coefficients or granting judges the right, in exceptional and properly justified cases, to set bail amounts below the statutory minimum, particularly in cases not involving violence or threats to national security.

Furthermore, it is worth considering the introduction of new, alternative preventive measures better suited to wartime conditions. For individuals who do not pose a significant public threat but present certain risks, electronic monitoring (e. g., wearing an ankle bracelet) could be applied as a standalone preventive measure, rather than merely as an additional obligation under house arrest. This would allow for effective monitoring of a person's movements without fully isolating them from society.

Thus, the study has not only revealed the theoretical and practical dimensions of applying preventive measures under martial law but also identified a range of systemic issues requiring urgent resolution. Based on the analysis, the following key problematic areas can be outlined:

1. Excessive expansion of prosecutorial powers and violation of the principle of separation of procedural functions. The temporary delegation of investigative judge powers to the head of the prosecutor's office (Article 615 of the CPC of Ukraine) creates a direct conflict of interest. As a party to the prosecution, the prosecutor cannot ensure impartial and objective consideration of motions, which contradicts the principle of adversarial proceedings and the right to a fair trial. The absence of an immediate judicial review mechanism for such decisions poses significant risks to human rights.

2. The problem of non-alternative detention. The statutory imposition of detention as the sole preventive measure for a wide range of offenses (Parts 6 and 8 of Article 176 of the CPC of Ukraine) deprives investigative judges of the ability to apply an individualized approach. This imperative provision undermines the court's role in assessing the suspect's personality, actual risks, and the possibility of applying less severe measures, potentially leading to disproportionate restrictions on liberty despite clarifications from the Constitutional Court of Ukraine.

3. Flaws in the procedure for lifting preventive measures to allow military service. The current mechanism under Article 616 of the CPC of Ukraine, which requires motions to be submitted exclusively through the prosecutor, places the defense in a dependent position. In practice, this leads to delays or unjustified refusals by prosecutors, limiting the individual's right to defend the homeland and hindering the effective mobilization of individuals who do not pose a significant public threat.

4. Insufficient guarantees of the right to defense during remote hearings. While videoconferencing is justified under wartime conditions, current regulations do not adequately ensure the right to confidential communication between the defense counsel and the accused during such hearings. The lack of clear procedural safeguards may render the defense's participation merely formal and significantly undermine the right to effective legal assistance.

5. Ineffectiveness of bail as a genuine alternative to detention. Given the severe deterioration of the population's economic situation, the bail amounts set by law are often unaffordable for suspects and their families. As a result, the formally available alternative to detention becomes practically inaccessible, undermining its humanitarian potential and reinforcing the repressive tilt of criminal proceedings.

Resolving the identified issues requires a comprehensive and systemic approach. In my opinion, the most appropriate and effective directions for improvement are as follows:

1. Establishing a mechanism for deferred judicial oversight. Article 615 of the Criminal Procedure Code of Ukraine should be supplemented with a provision obliging the prosecutor who has imposed a preventive measure in the form of detention to immediately, but no later than within 72 hours, submit the decision along with case materials to the nearest territorially accessible investigative judge for review of its legality and justification. This mechanism would preserve responsiveness in emergency situations while guaranteeing the right to judicial oversight.

2. Humanizing the provisions on non-alternative preventive measures. Parts 6 and 8 of Article 176 of the Criminal Procedure Code should be

amended to remove the imperative wording "a preventive measure in the form of detention shall be applied". Instead, it should be explicitly stated that when considering motions regarding individuals suspected of committing the specified offenses, the investigative judge is obliged to assess the possibility of applying bail and must provide detailed reasoning in the ruling as to why less restrictive measures are insufficient to mitigate the proven risks.

3. Expanding procedural rights of the defense. Article 616 of the Criminal Procedure Code should be amended to grant the suspect, accused, and their defense counsel the right to submit a motion for lifting a preventive measure to allow military service directly to the investigative judge or court. The prosecutor should provide an opinion in such proceedings but must not be the sole initiator of the procedure. This would restore the balance between the parties and uphold the principle of adversarial proceedings.

4. Legally enshrining guarantees for remote defense. The Criminal Procedure Code should be supplemented with a provision clearly regulating the procedure for conducting court hearings via videoconference, including:

- Establishing the court's obligation to ensure technical means for confidential communication between the defense counsel and the accused before and during the hearing (e. g., through secure private channels or scheduled breaks upon the defense's request);

- Stating that violation of this right constitutes a significant breach of procedural law and grounds for annulment of the court's decision.

5. Unifying judicial practice and developing new approaches. The Supreme Court should generalize the practice of applying preventive measures under martial law and issue clarifications on the interpretation of the most problematic provisions. Additionally, consideration should be given to introducing new, more flexible preventive measures, such as electronic monitoring as a standalone measure, and developing a methodology for determining bail amounts that reflects the individual's actual financial status and the country's economic conditions.

I firmly believe that the proposed changes would not only eliminate the most glaring legislative conflicts and gaps but also strengthen the

resilience of the criminal justice system in the face of prolonged wartime challenges. Improving procedural mechanisms and enhancing judicial oversight are essential to ensuring that, even under martial law, Ukraine remains a rule-of-law state where human rights are the highest value and justice is administered on the principles of fairness and the supremacy of law.

Conclusions

In summary, the functioning of the institution of preventive measures under martial law is a complex and multifaceted process that requires ongoing scholarly analysis and legislative refinement. This study has established that the legal basis for applying such measures consists of a comprehensive system of norms, including inviolable constitutional guarantees, special legislation on martial law, amended provisions of the Criminal Procedure Code of Ukraine, and international human rights standards. At the same time, in responding to the challenges of full-scale aggression, the legislature has at times adopted decisions that disrupted the balance between security interests and the protection of fundamental rights, particularly through the excessive expansion of prosecutorial powers and the limitation of judicial oversight.

The key issues identified during the research include violations of the principle of separation of procedural functions due to the delegation of investigative judge powers to prosecutors, ambiguity and risks associated with non-alternative detention, and procedural shortcomings, especially regarding the lifting of preventive measures for mobilization and the protection of the right to defense during remote hearings. The Constitutional Court of Ukraine has played a crucial role in correcting these imbalances, with its rulings reaffirming the inviolability of the right to liberty and judicial oversight, even under extraordinary circumstances.

To address the identified problems, a comprehensive approach has been proposed, including the introduction of a deferred judicial review mechanism for prosecutorial decisions, the humanization of provisions on non-alternative preventive measures, the expansion of defense rights, the legal codification of guarantees during remote hearings, and the unification of judicial practice. Implementing these proposals would help align national legislation with the principles of the rule of law and international standards, while strengthening the resilience of the criminal justice system in the face of prolonged wartime challenges and ensuring adequate protection of human rights.

Future research in this area may focus on evaluating the effectiveness of alternative preventive measures under martial law, developing risk assessment criteria specific to wartime conditions, and analyzing international experiences of criminal justice systems in countries affected by armed conflict.

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**ЗАПОБІЖНІ ЗАХОДИ В УМОВАХ ВОЄННОГО СТАНУ: ПРОБЛЕМНІ АСПЕКТИ
ЗАСТОСУВАННЯ ТА УДОСКОНАЛЕННЯ**

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Анотація. Стаття висвітлює проблему трансформації інституту запобіжних заходів у кримінальному провадженні України в умовах воєнного стану. Актуальним є дослідження балансу між необхідністю ефективної протидії злочинності, зокрема злочинам проти основ національної безпеки, та обов’язком держави гарантувати фундаментальні права людини, передусім право на свободу та особисту недоторканність, яке, згідно з Конституцією України, не підлягає обмеженню навіть за екстраординарних обставин. Аналізується складна система правових норм, що регулюють це питання, з-поміж них: положення Конституції України, Закону України “Про правовий режим воєнного стану”, спеціальні норми Кримінального процесуального кодексу України та міжнародно-правові зобов’язання держави, зокрема положення Конвенції про захист прав людини і основоположних свобод.

У статті обґрунтовується необхідність глибокого наукового осмислення новел кримінального процесуального законодавства, запроваджених після 24 лютого 2022 року. Особливу увагу автор надає таким проблемним аспектам, як тимчасове делегування повноважень слідчого судді керівнику органу прокуратури, запровадження безальтернативного тримання під вартою для певних категорій злочинів, механізм автоматичного продовження строків арешту та специфіка застосування запобіжних заходів до військовослужбовців. Методами дослідження були формально-юридичний аналіз норм чинного законодавства, системний аналіз судової практики, зокрема рішень Конституційного Суду України та Верховного Суду, а також порівняльний аналіз національного регулювання з міжнародними стандартами у сфері прав людини.

У статті аналізується практика застосування змінених норм та її вплив на дотримання основоположних засад кримінального провадження, таких як змагальність сторін та право на судовий контроль. Автор статті вважає, що законодавець, реагуючи на виклики війни, подекуди обрав шлях надмірного розширення повноважень сторони обвинувачення, що створило загрози для фундаментальних прав особи. Наголошується на ключовій ролі Конституційного Суду України у відновленні балансу та визнанні неконституційними окремих положень, що суперечили принципу верховенства права та праву на свободу.

У роботі зроблено висновок, що ефективність кримінального провадження в умовах воєнного стану не може досягатися за допомогою нівелювання засадничих принципів правосуддя. Особлива увага надається поняттям “судовий контроль”, “пропорційність обмежень” та “безальтернативність запобіжного заходу”. Встановлено доцільність перегляду окремих положень КПК України для посилення гарантій права на захист. Автор пропонує власні пропозиції щодо вдосконалення законодавства, зокрема щодо запровадження механізму відтермінованого судового контролю за рішеннями прокурора, зміни редакції норм про безальтернативне тримання під вартою, вдосконалення процедури скасування запобіжного заходу для проходження військової служби та уніфікації судової практики Верховним Судом.

Ключові слова: запобіжні заходи, воєнний стан, тримання під вартою, право на свободу, кримінальне провадження, судовий контроль, Кримінальний процесуальний кодекс України, Конституція України, права людини, безальтернативні запобіжні заходи.