

5. Austrian National Agency for Violence Prevention. (2021). *Domestic Violence: Statistical and Analytical Report for 2021*.

6. Brown, E. (2023). *The Role of Crisis Intervention Centers in Austria and Collaboration with Police in Combating Domestic Violence*.

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SOME ISSUES OF CONDUCTING A SPECIAL PRE-TRIAL INVESTIGATION UNDER MARTIAL LAW

In order to ensure the effective investigation of criminal offenses in cases where full participation of the suspect in the criminal proceedings is impossible for the reasons provided by law, a new form of pre-trial investigation was introduced – a special pre-trial investigation (in absentia).

The special pre-trial investigation procedure was introduced into the national legislation by the Law of Ukraine "On Amendments to the Criminal and Criminal Procedure Codes of Ukraine regarding the inevitability of punishment for certain crimes against the foundations of national security, public safety and corruption crimes" dated October 7, 2014 [1]. The further transformation of the "in absentia" procedure took place thanks to the adoption of a number of Laws of Ukraine, the provisions of which significantly expanded the possibilities for its implementation.

We support the position of scientist O.V. Sachka that, when introducing this type of criminal proceedings, Ukraine, first of all, took into account the difficult political conditions inside the country, the ineffectiveness of the existing institutions of extradition and other forms of legal assistance in interstate relations, the presence of a proven practice of its application in European countries and the existing precedent practice of the ECHR [2].

Special pre-trial investigation is an important tool for ensuring consistent and effective investigation of criminal offenses committed under martial law. This makes it possible to prosecute guilty persons, even if they are in the temporarily occupied territory or their whereabouts are unknown.

A special pre-trial investigation is a special type of investigation that takes place in criminal proceedings as a result of a decision by the investigating judge regarding a person who is suspected of committing a criminal act and in respect of whom an authorized body has made a decision on his/her transfer for the purpose of exchange as a prisoner of war and on the condition implementation of such an exchange [3].

It would be appropriate to note that a special pre-trial investigation is carried out in relation to a specified list of criminal offenses mentioned in Part 2 of Art. 297-1 of the Criminal Procedure Code of Ukraine. Also, the specified norm establishes the circle of persons in respect of whom a special pre-trial investigation may take place, such persons are suspects who are hiding from investigative bodies and courts in the temporarily occupied territory of Ukraine, in the territory of a state recognized by the Verkhovna Rada of Ukraine as an aggressor state, with the aim of evading from criminal liability and/or declared internationally wanted [4].

Since beginning a full-scale invasion in 2022, the number of criminal proceedings in absentia has increased significantly due to the fact that a large number of suspects are in the temporarily occupied territories or in the aggressor state. According to the Unified State Register of Court Decisions, more than 250,000 decisions related to such cases were registered in 2022. In comparison, in 2020-2021 the number of such proceedings was smaller, although also significant due to the military conflict in the East of Ukraine and the annexation of the Crimea. This increase is due to the fact that suspects are physically unable to attend court proceedings due to hostilities or occupation, making it necessary to use the in absentia procedure to ensure justice.

The legal basis for carrying out a special pre-trial investigation is the decision of the investigating judge, issued at the request of the investigator, the prosecutor, to carry out a special pre-trial investigation. Thus, a request for a special pre-trial investigation regarding a suspect, in respect of whom a decision was made by the authorized body regarding the exchange as a prisoner of war and on the condition of such exchange, has a special form. In addition to general information, the content of the mentioned petition includes the following: documents that confirm the decision to exchange the suspect as a prisoner of war by the authorized body and materials on the basis of which the investigating judge can be convinced of the implementation of this exchange.

The specified petition must be considered by the investigating judge with the participation of the investigator, the prosecutor and the defence attorney. Therefore, the non-appearance of the person who filed the petition, that is, the investigator or the prosecutor, may result in the refusal to grant it. Additional confirmation of a person's stay in the temporarily occupied territory of Ukraine is the indication in open sources, particular on the Internet, of the specific location of the person in this territory [5].

It is necessary to pay attention to the peculiarities of the defence counsel's participation in such criminal proceedings. Based on the fact that the suspect cannot directly exercise his/her right to defence during a special pre-trial investigation, the participation of a defence attorney is mandatory

for the suspect to properly exercise this right in such criminal proceedings. Copies of documents to be handed over to the suspect are provided to the person who protects the rights of the suspect in a special pre-trial investigation. However, in such a case, there are specific features, namely: the defence attorney, as a rule, does not have direct contact with the suspect, which prevents him from agreeing on the legal position and timely informing about the progress of the criminal proceedings.

Moreover, the Criminal Procedure Code of Ukraine does not provide for ensuring the defence with a copy of the request for a special pre-trial investigation, as well as relevant materials with which the investigator, prosecutor substantiates the request. Therefore, we believe that the specified aspects negatively affect the provision of effective legal assistance to suspects and require appropriate regulation in the Criminal Procedure Code of Ukraine.

Therefore, martial law often requires a quick and effective response to criminal offenses, and a special pre-trial investigation allows for this need. A special pre-trial investigation is a necessary tool for fighting crime under martial law. However, it is important that it be conducted in compliance with the principles of the rule of law and respect for human rights and freedoms. The complexity of the legal regulation of a special pre-trial investigation is indicated by the fact of a significant number of changes and additions to the section that regulates it.

Список використаних джерел

1. Про внесення змін до Кримінального та Кримінального процесуального кодексів України щодо невідворотності покарання за окремі злочини проти основ національної безпеки, громадської безпеки та корупційні злочини. *Офіційний вебпортал парламенту України*. URL: <https://zakon.rada.gov.ua/laws/show/1689-18#Text>

2. Сачко О. В. Забезпечення верховенства права по застосуванні особливих форм. порядків та режимів кримінального провадження : дис. ... д-ра юрид. наук. Дніпро. 2019. С. 195.

3. Верещак О. І. Деякі аспекти спеціального досудового розслідування в умовах воєнного стану. 2022. С. 153-155.

4. Кримінальний процесуальний кодекс України : Кодекс України від 13.04.2012 р. № 4651-VI : станом на 07 вересня. 2024 р. URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> .

5. Огляд судової практики Касаційного кримінального суду https://supreme.court.gov.ua/userfiles/media/new_for_uploads/supreme/oglyady/2022_11_10_KKS_2018_08_2022pdf.