

2. On the legal regime of martial law: Law of Ukraine of May 12, 2015 № 28 Art. 250. The Verkhovna Rada of Ukraine.

3. On Amendments to the Laws of Ukraine "On the National Police" and "On the Disciplinary Statute of the National Police of Ukraine" in order to optimize the activities of the police, including during martial law: Draft Law of Ukraine of 15.03.2022. № 7147.

4. Ковбаса В. Діяльність національної поліції в умовах воєнного стану: окремі проблемні питання. *Юридичний науковий електронний журнал*. 2022. № 6. С. 245–248.

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ACTUAL PROBLEMS OF CONDUCTING COVERT INVESTIGATIVE ACTIONS UNDER THE LEGAL REGIME OF MARTIAL LAW IN UKRAINE

On February 24, 2022, in connection with the military aggression of the Russian Federation against Ukraine, pursuant to Presidential Decree No. 64/2022, martial law was introduced from 05:30 a.m. on February 24, 2022 for a period of 30 days. As of today, according to Presidential Decree No. 451/2023 of 26.07.2023, the martial law in Ukraine has been extended from 05:30 a.m. on August 18, 2023 for a period of 90 days [1; 2].

By its very nature, martial law is a special legal regime that may be introduced under certain conditions throughout Ukraine or in certain areas.

Under the legal regime of martial law, it is also possible to temporarily restrict the constitutional rights and freedoms of a person and a citizen, as well as the rights and legitimate interests of legal entities.

Let us consider each of the issues in detail:

1) Investigators and operatives make the most mistakes when conducting the following types of SIDA: audio and video monitoring of a person and removal of information from electronic information systems.

With regard to audio and video monitoring of a person, this covert investigative (detective) action must be carried out by an investigator who carries out his or her work in a passive state. This means that this procedural action must be carried out by the

investigator without any active actions aimed at creating conditions under which a person may commit a criminal offense. Thus, a person is only monitored and his/her actions, conversations with other persons, actions and movements indicating that he/she has committed a criminal offense are recorded, without provoking or inducing him/her to commit a criminal offense, without creating conditions for committing a criminal offense [3].

Thus, if during the covert investigative (detective) action – audio or video monitoring of a person – the investigator involves a person who, by his actions or conversations with the person in respect of whom the covert investigative (detective) action is being conducted, creates conditions for that person to commit a criminal offense, the investigator is obliged to inform the person conducting such action.

Only after the prosecutor makes a decision in the form of a resolution on the implementation of the SIDA – control over the commission of a criminal offense in the form of a special investigative (detective) action – the investigator has the right to install technical means on a person, enter into confidential cooperation and interact with the person in respect of whom the SIDA is being conducted [3].

If, prior to the decision of the prosecutor's office to commit a criminal offense in the form of a special investigative (detective) action, audio and video recording devices are installed at the applicant's place of residence and sent to the person subject to the SIA to record his/her conversations about the commission of a criminal offense, such actions constitute a provocation of a criminal offense and fall under the signs provided for in Article 370 of the CSU – provocation of bribery [4].

2) The study of criminal proceedings shows that officials of investigative units at the initial stage of pre-trial investigation have information about minor crimes that are being prepared or committed, which, in turn, in accordance with the current regulations, does not allow them to conduct SIDA, since they are possible only if there is information about serious and especially serious crimes. Prohibiting the application of the above-mentioned SIDA to minor crimes may result in the loss of the possibility to document criminal activity of a person, investigate other crimes committed by him/her, including serious crimes, and bring him/her to criminal liability.

In view of the above, we propose to amend part 2 of Article 246 of the CPS of Ukraine, providing that the CIDA provided for in Articles 260–264 (in terms of measures carried out on the basis

of a decision of the investigating judge), 267, 269–272, 274 of the CPS are conducted in criminal proceedings for minor crimes, as well as for serious or especially serious crimes [5].

3) Persons whose constitutional rights have been temporarily restricted during covert investigative (detective) actions, as well as the suspect and his defense counsel, must be notified in writing by the prosecutor or, on his behalf, by the investigator of such restriction.

The specific time of notification is determined taking into account the presence or absence of threats to the achievement of the pre-trial investigation goal, public safety, life or health of persons involved in covert investigative (detective) actions. The respective notification of the fact and results of covert investigative (detective) actions must be made within twelve months from the date of termination of such actions, but not later than the filing of an indictment with the court.

In view of the introduction of martial law in Ukraine and the impossibility of making a written notification in some cases, we propose to amend part 1 of Article 253 of the CPC to state that the notification may be made by: a) sending it by mail; b) using electronic resources or messengers; c) summoning a person and delivering the notification in person.

The prosecutor or, on his/her behalf, the investigator is obliged to take all possible measures to notify persons of the temporary restriction of their constitutional rights during covert investigative (detective) actions.

Список використаних джерел

1. Про введення воєнного стану в Україні: Указ Президента України від 24.02.2022 № 64/2022. URL: <https://zakon.rada.gov.ua/laws/main/64/2022?msclkid=Text>.

2. Про продовження строку дії воєнного стану в Україні: Указ Президента України від 26.07.2023 № 451/2023. URL: <https://zakon.rada.gov.ua/laws/show/451/2023#n5>.

3. Закон і Бізнес. А. Леонов. Особливості проведення негласних слідчих (розшукових) дій під час досудового розслідування кримінальних проваджень. URL: https://zib.com.ua/ua/136530osoblivosti_provedennya_nsr_d_v_kriminalnomu_provadzheni.html.

4. Кримінальний кодекс України: Кодекс від 05.04.2001 № 2341-III URL: <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

5. Кримінальний процесуальний кодекс України: Кодекс від 13.04.2012 № 4651-VI URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.