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Corruption Crimes and Peculiarities of their Investigation Procedure under Martial Law

Корупційні злочини та особливості процедури їх розслідування в умовах воєнного стану

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Abstract

The military aggression of the Russian Federation radically changed the life of every Ukrainian, the main priorities of politicians, and the court trial procedures. But even though the whole country rallied against a common enemy, corruption crimes have not disappeared and continue to be committed. With the introduction of martial law, the criminal procedural legislation and the procedure for investigating corruption crimes have changed. Therefore, it is important to analyze the innovations of corruption legislation, single out the most common crimes, and investigate the peculiarities of the procedure for investigating corruption crimes under martial law. The purpose of the work is the analysis of corruption crimes and the peculiarities of the investigation procedure of corruption crimes under martial law. The research methodology consists of the following methods: dialectical, systemic, historical-legal, comparative-legal, and formal-logical (analysis and synthesis, induction and deduction, proof and refutation, comparison, generalization). During the study of corruption crimes and their investigation in the conditions of military

Анотація

Військова агресія російської федерації кардинально змінила життя кожного українця, головні пріоритети політик, процедури розгляду справ тощо. Та незважаючи на те, що вся країна згуртувалась проти спільного ворога, корупційні злочини не зникли та далі продовжують вчинятися. З впровадженням воєнного стану продовжують змінюватися кримінально процесуальне законодавство та процедура розслідування корупційних злочинів. Тому, важливо проаналізувати новації корупційного законодавства, виокремити найбільш поширені злочини та дослідити особливості процедури розслідування корупційних злочинів в умовах воєнного стану. Метою роботи є аналіз корупційних злочинів та особливостей процедури розслідування корупційних злочинів в умовах воєнного стану. Методологію дослідження складають наступні методи: діалектичний, системний, історико-правовий, порівняльно-правовий, формально-логічний (аналіз і синтез, індукція і дедукція, доказ і спростування, порівняння, узагальнення). Під час проведеного

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aggression of the Russian Federation against Ukraine, innovations in anti-corruption legislation and changes in criminal procedural legislation were analyzed. In particular, the peculiarities of carrying out individual investigative actions during the pre-trial investigation were researched. As a result, it was concluded that these actions are necessary and timely to protect the rights of individuals and the effectiveness of criminal procedural legislation.

Keywords: corruption, corruption crime, investigation, martial law, criminal proceedings.

Introduction

Corruption is a big threat to every state that aims to develop. The problem of corruption and its elimination is especially acute during the martial law in Ukraine because the actions of each individual (including corrupt ones) are reflected in the overall result of the country and the proximity to victory.

In general, corruption (from the Latin *corrumpere* – to spoil) due to its scale, multi-level, and destructiveness has become the number one issue for Ukraine, relegating the problems of the drug trade, and arms trade, terrorism to the background. Currently, corruption primarily threatens national security, as well as the ideals of democracy, human rights, and law and order in general destroying good governance, integrity, and social justice, hindering competition and economic development, and undermining the moral foundations of society. Due to its close connection with other forms of crime, corruption also covers large amounts of assets, which can constitute a significant share of public resources and which threaten political stability, sustainable development of the state, and its national security (Burbelo, 2015).

Unfortunately, in Ukraine, after the introduction of martial law, corruption did not disappear, but on the contrary took on a new color: new "distribution schemes" of budget funds, sale of humanitarian aid, and illegal assistance to customs officials. By choosing a corrupt act, a person takes the side of the aggressor.

Anti-corruption legislation in Ukraine even in the pre-war period was difficult to call effective, although there are a large number of anti-corruption bodies: The National Anti-Corruption Bureau, the Specialized Anti-Corruption

дослідження корупційних злочинів та їх розслідування в умовах військової агресії рф проти України було проаналізовано новації антикорупційного законодавства та зміни кримінального процесуального законодавства. В тому числі було досліджено особливості проведення окремих слідчих дій під час досудового розслідування. В результаті зроблено висновки, що дані дії є необхідними та вчасними для захисту прав осіб та дієвості кримінального процесуального законодавства.

Ключові слова: корупція, корупційний злочин, розслідування, воєнний стан, кримінальне провадження.

Prosecutor's Office, the National Agency for the Prevention of Corruption, the High Anti-Corruption Court, the Bureau of Economic Security. In addition, there is also the Office of the Prosecutor General (OGPU), and the Ministry of Internal Affairs and Security Service of Ukraine (SBU). However, in the conditions of martial law, changes were made to the criminal process, which brought it closer to the realities of war.

In particular, Law No. 2201-IX "On Amendments to the Criminal Procedural Code of Ukraine on Improving the Procedure for Conducting Criminal Proceedings under Martial Law" was adopted, which amended the Criminal Procedural Code of Ukraine and determined that the content and form of criminal proceedings under martial law states must comply with the general principles of criminal proceedings specified in Part 1 of Art. 7, taking into account the specifics of criminal proceedings defined in section IX-1 of the Code. The legislator changed the title of Section IX-1 of the Criminal Procedure Code of Ukraine to "Special regime of pre-trial investigation, trial under martial law" and added art. 615 (Law No. 2113-IX, 2022).

In addition, it is proposed to adopt a draft law, according to the provisions of which corruption during martial law is proposed to be equated with high treason and to be punished either by deprivation of liberty for a term of up to 15 years or by life imprisonment in the case of particularly serious crimes (Draft of the Law No. 7348, 2022). Also, Supreme Commander-in-Chief of the Armed Forces of Ukraine Volodymyr Zelenskyy signed several laws that increase liability for crimes against national security during martial law (Armia Inform, 2022).

Because of this, it is meaningful to study the corruption crimes under martial law and to pay attention to the procedure of their investigation.

Theoretical Framework or Literature Review

Currently, in Ukraine, there is a small amount of theoretical research devoted to problematic issues and specifics of the examination of corruption crimes under martial law. At the same time, certain aspects of the of corruption crimes and the peculiarities of their investigation procedure under martial law were studied by domestic and foreign researchers.

Borovyk (2022) considered the issue of the work of anti-corruption bodies under martial law. The researcher noted that anti-corruption detectives and prosecutors currently help the Office of the Prosecutor General to collect evidence of war crimes committed by the occupiers: they record information from victims and eyewitnesses, and employees of the Department of Special Operations of the NABU, who have the skills of sappers, together with colleagues from the SBU conduct demining, search for the assets of sanctioned officials, oligarchs, and other officials abroad. The author emphasizes that such cooperation is important for the exchange of data on the property of citizens of the Russian Federation.

In his work, Burbelo (2015) considered the basics of the methodology of investigating crimes related to corruption. The article analyzes the problems of investigating corruption crimes by investigators and examines the elements of the forensic characteristics of corruption crimes, the peculiarities of planning and putting forward versions; typical investigative situations, and their corresponding sets of overt and unspoken investigative (search) actions; peculiarities of the tactics of individual investigative actions; the specifics of the use of special knowledge; peculiarities of the interaction of the investigator with other services during the investigation of corruption crimes.

Moreover, Dobrochynska (2020) investigated the pre-trial investigation of corruption and corruption-related crimes. In particular, the lawyer noted that the method of investigation differs according to the grounds for entering information about a criminal offense into the Unified State Register of Pretrial Investigations: in connection with the receipt of a complaint about a corruption crime or according to information obtained in the process of

operational investigative activities, audits, checks through mass media information.

Dunda (2022) describes the idea that corruption in war is worse than looting. The author believes that in the Ukrainian legislative field, the punishment for corruption during the war should also be equated with responsibility for cooperation with the enemy, and it is necessary to work on writing relevant bills.

The issue of the qualification of crimes and the role of martial law as a circumstance affecting the qualification of a crime and the imposition of punishment was considered by Kravchuk and Mykhaylenko (2022). Kudryavtsev (2022) analyzed the features of the detention procedure under martial law.

The object of Lazunkova's (2018) research was a special one the regime of pre-trial investigation in conditions of war, state of emergency, or in the area of an anti-terrorist operation. The researcher's work is aimed at an in-depth study of the theoretical and applied aspects of pre-trial investigation in the conditions of war, state of emergency, or in the area of anti-terrorist operation, including Lazunkova analyzed the history of the development of criminal procedural legislation under the conditions of special legal regimes and the practice of its implementation.

In his work, Obletov (2022) analyzed the illegal actions of police officers under martial law, as well as the features of protecting citizens from such illegal actions.

Remarks on the introduction of martial law and problematic aspects of criminal justice under martial law were analyzed in his article by Pashkovsky (2018).

Plashenko (2022) analyzed the legal consequences of the adoption of the draft law, which can equate corrupt actions during the war with treason.

Additionally, Savchenko (2016) analyzed the problematic issues of corruption crimes. The author notes that, firstly, corruption crimes are conventional, that is, their existence is recognized by the provisions of international (including European) conventions; secondly, they are criminalized in the legislation of many states of the world, including those that arose on the territory of the former USSR. In the opinion of the author, in the theoretical plan, corruption crimes should be understood as socially

dangerous and punishable intentional acts, which contain signs of corruption and are committed by special subjects, provided exclusively by the Criminal Code of Ukraine. The list of these crimes should be expanded and specified, while those crimes committed by "an official using his official position" (and not only "by abusing his official position") should be recognized as corruption.

Tatarov (2017) analyzed legislative trends in the criminal process in Ukraine. The article analyzes the changes and additions to the criminal procedural legislation since the entry into force of the Criminal Procedure Code of Ukraine in 2012, the prerequisites for their adoption, the reasons for the repeated introduction of additions, as well as the consequences of their application in the aspect of the functioning of the law enforcement system and ensuring compliance with the rights of citizens.

Further, Tsermolonsky (2022) considered the peculiarities of criminal proceedings under martial law. The author analyzed the peculiarities of entering information into the Unified Register of Pretrial Investigations under martial law, the powers of the head of the prosecutor's office during the application of Art. 615 of the Criminal Procedure Code of Ukraine, notification of the court on the prosecutor's decision and the procedure for appealing them, features of the use of testimony obtained during interrogation, features of investigative actions, and suspension of pre-trial investigation.

Finally, Chupryna (2022) also considered the peculiarities of the criminal process under martial law and the conduct of separate procedural actions.

As can be seen from the above analysis of the literature, there are currently available studies on changes in legislation under martial law, but not enough attention is paid to the specifics of the investigation of corruption crimes under martial law.

Methodology

The research methodology consists of the following methods: dialectical, systemic, historical-legal, comparative-legal, and formal-logical (analysis and synthesis, induction and deduction, proof and refutation, comparison, generalization).

The role of the dialectical method in the conducted research is that it makes it possible to find new results. Given the fact that dialectics,

studying not specific forms and types of development, but general points, connections, and regularities of any change, is not only a general theory of development but also a universal method of learning about developing objects, the use of the dialectical method made it possible to understand how martial law affects various legal phenomena, including the procedure for investigating crimes.

The use of the system method made it possible to reveal the interrelationships of the elements of the crime investigation procedure, especially in the conditions of martial law. On the one hand, this method contributed to a comprehensive analysis of the features of criminal proceedings under martial law in general, and on the other hand, the very use of the method through interrelationships contributed to the construction of a cause-and-effect relationship between the procedure and the conditions of martial law.

The historical-legal method was based on the analysis of changes in the procedure of investigation of corruption crimes in different historical conditions and periods.

The comparative legal method as a method of studying legal features by comparing legal norms, institutions, principles of the same name, and the practice of their application, made it possible to compare the procedure of investigating corruption crimes under normal conditions and martial law, analyze key differences and reveal the influence of external factors on the procedure of investigation of crimes in a comparative context.

Formal-logical methods (analysis and synthesis, induction and deduction, proof and refutation, comparison, generalization) helped to investigate the specifics of the procedure for investigating corruption crimes under martial law, as well as to establish the causes and consequences of inconsistencies in the regulation of such a procedure.

Results and Discussion

To begin with, it is worth paying attention to the debatable issues regarding the specifics of the crime investigation procedure at the current moment.

For example, some lawyers and academics note that despite changes in legislation, the anti-corruption activities of law enforcement agencies to reveal corruption crimes are currently suspended, as anti-corruption detectives and

prosecutors help the Office of the Prosecutor General to collect evidence of war crimes by the occupiers: they record information from victims and eyewitnesses. In addition, a number of specialized state bodies remain without managers, which undoubtedly affects the effectiveness of the work of such bodies. At the same time, other lawyers note that even under martial law there are significant improvements in the work of law enforcement agencies, and the appointment of managers is only a matter of time. We believe that it is undoubtedly important to ensure uninterrupted work of such state bodies, and to implement important legislative changes that will be commensurate with threats to national security from committed offenses, will ensure human rights, and will be effective in detecting corruption offenses.

Regarding the specifics of the investigation of crimes, including corruption, a number of changes have taken place. For example, during a pre-trial investigation, if the defense attorney is unable to take part in the procedural actions live, the investigator and/or the prosecutor can ensure remote participation of the defense attorney using technical means (video, audio communication). Of course, such innovations are due to the introduction of martial law, which has the consequence of violating the constitutional rights of citizens. At the same time, a number of lawyers, with whose opinion we agree, note that in the case of remote participation of the defender, the suspect, the accused do not have the opportunity to communicate confidentially with their lawyer, which violates not only the rights of the person who is brought to criminal responsibility, but also raises the question protection of lawyer's confidentiality, if before the start of the investigative action, the suspect, the accused was given the opportunity to communicate with his lawyer by means of video and audio communication. In addition, the lawyer is deprived of the opportunity to make sure that no measures of psychological or physical influence were applied to his client, to make sure of the voluntariness of the actions of the client during investigative actions. We believe that even under martial law, investigative and procedural actions should be conducted in a way that minimizes the violation of the rights of persons who are criminally liable or who are victims of a crime. The same problematic issues are related to simplified access to things and documents, temporary seizure of property. We believe that in the conditions of martial law, the restriction of rights should be commensurate with the threat to national security, and the

procedure for investigating corruption crimes should not violate human and citizen rights.

So, the main principles of preventing and countering corruption are laid down in the Law of Ukraine "On Prevention of Corruption (Law No. 1700-VII, 2014). In turn, responsibility for committing acts of corruption is determined by the Criminal Code of Ukraine (Law No. 2341-III, 2001).

As for corruption crimes, they include the following:

1. Art. 191 of the Criminal Code of Ukraine. One of the most widespread crimes in the field of corruption is appropriation, waste of property or taking possession of it through abuse of official position;
2. Art. 366-1 of the Criminal Code of Ukraine. Declaration of false information (Law No. 2341-III, 2001).

However, in the conditions of martial law, the criminal legislation regarding corruption crimes underwent changes. In particular, the Law "On Amendments to the Criminal Code of Ukraine on Strengthening Liability for Looting" was adopted.

The changes are reflected in the qualifications for committing a crime under martial law. For particularly qualified crimes, the relevant parts of the articles of the Criminal Code provide for much greater punishments. As for all other crimes, for which similar qualified compositions (commitment under martial law) are not specifically provided for in the Criminal Code, then in case of their commission, they are qualified as usual - according to the corresponding article or part. At the same time, Law No. 2117-IX "On Amendments to the Criminal Code of Ukraine on Strengthening Liability for Looting" provides (Law No. 2117-IX, 2022):

- 1) enshrining in part 4 of the 191 (appropriation, waste of property or possession of it through abuse of official position) of the Criminal Code of the Criminal Code qualifying the commission of the specified acts "under conditions of war or state of emergency";
- 2) increasing the minimum punishment for looting (Article 432 of the Criminal Code) from three years of imprisonment to five, while the maximum punishment has not changed (ten years).

Thus, the Law strengthened criminal responsibility for looting in the broadest sense of the term.

Therefore, the above-mentioned changes are aimed at establishing a fairer criminal-legal response of the state to corruption offenses under martial law.

The procedure for investigating corruption crimes is subject to general changes made to criminal procedural legislation under martial law.

In particular, there are peculiarities of entering information into the Unified Register of Pretrial Investigations. The provisions of clause 1. part 1 of Art. 615 of the Criminal Procedure Code of Ukraine establishes that in the absence of a technical possibility of access to the EDPR, the decision to start a pre-trial investigation is made by the investigator or prosecutor, which is issued by a resolution (Law No. 4651-VII, 2012). Information to be entered into the EDPR is entered into it as soon as possible. This rule applies to all crimes, including corruption. Clause 2 part 1 of Art. 615 of the Criminal Procedure Code of Ukraine provides for the expansion of the powers of the prosecutor by delegating to him the separate powers of the investigating judge to resolve a number of issues, namely: implementation of the pretext (Article 140 of the Criminal Procedure Code of Ukraine); temporary access to things and documents (Articles 163, 164 of the Criminal Procedure Code of Ukraine); seizure of property (articles 170, 173 of the Criminal Procedure Code of Ukraine); application or change of preventive measure (Article 186 of the Criminal Code of Ukraine); application of a preventive measure (Article 187 of the Criminal Procedure Code of Ukraine); permission to detain a suspect, accused for the purpose of incitement (Articles 189, 190 of the Criminal Procedure Code of Ukraine); terms of pretrial investigation (Articles 219, 249 of the Criminal Procedure Code of Ukraine); conducting interrogation, identification by video conference during the pretrial investigation (Article 232 of the Criminal Procedure Code of Ukraine); conducting investigative (search) actions related to the restriction of the constitutional rights of participants in criminal proceedings (intrusion into a person's home or other property (Article 233 of the Criminal Code of Ukraine), search (Articles 234, 235 of the Criminal Code of Ukraine), obtaining samples for conducting an examination (Article 245 of the Criminal Code of Ukraine); permission to search a person's home or other property (Articles 233-

235 of the Criminal Code of Ukraine); taking samples for examination (Article 245 of the Criminal Code of Ukraine); granting permission to conduct secret investigative (search) actions (articles 246–248 and 250 of the Criminal Procedure Code of Ukraine); selection of a preventive measure in the form of detention for a period of up to 30 days for persons suspected of committing crimes provided for in Articles 109–115, 121, 127, 146, 146-1, 147, 152–156-1, 185, 186, 187, 189–191, 201, 255–255-2, 258–258-5, 260–263-1, 294, 348, 349, 365, 377–379, 402–444 of the Criminal Code of Ukraine, and in exceptional cases also in committing other serious or particularly serious crimes, if the delay in choosing a preventive measure may lead to the loss of traces of a criminal offense or the escape of a person suspected of committing such a crime (Law No. 4651-VII, 2012). The above-mentioned powers of the head of the prosecutor's office in case of impossibility of execution of the relevant powers by the investigating judge within the terms established by law apply to all crimes without exception. At the same time, the list contained in Art. 615 of the Criminal Procedure Code of Ukraine, refers exclusively to the powers of the prosecutor to choose a preventive measure in the form of detention for up to 30 days (Law No. 4651-VII, 2012). Part 3 of Art. 615 of the Criminal Procedure Code of Ukraine states that the decisions made by the prosecutor in the cases and in the manner provided for in this article shall be immediately notified at the earliest opportunity to the prosecutor of a higher level, as well as to the court determined in accordance with the procedure provided for by the legislation, with the provision of copies of relevant documents no later than 10 days from day of notification. Therefore, prosecutors in accordance with Art. 615 of the Criminal Procedure Code of Ukraine must report on their decisions and submit copies of relevant documents to local courts within whose territorial jurisdiction the criminal offense was committed (Law No. 4651-VII, 2012). The calculation of the deadline for providing copies of relevant decisions of the prosecutor should be carried out taking into account the provisions of part. 3, 5, 6, 7 art. 115 of the CPC of Ukraine.

The procedure for using testimony obtained during interrogation has not remained unchanged. In the conditions of martial law, the court can base its conclusions only on the testimony that it directly perceived during the court session, or obtained in the manner prescribed by Article 225 of this Code. The court is not entitled to substantiate court decisions with testimony provided to the investigator,

prosecutor, or to refer to them, except for the procedure for obtaining testimony, determined by Article 615 of this Code. Testimony obtained during the interrogation of a witness, victim, including the simultaneous interrogation of two or more already interrogated persons, in criminal proceedings carried out under martial law, may be used as evidence in court only if the course and results of such interrogation were recorded using available technical means of video recording. Testimony obtained during the interrogation of a suspect, including the simultaneous interrogation of two or more already interrogated persons, in criminal proceedings conducted under martial law, may be used as evidence in court only if a defense attorney participated in such interrogation, and the course and results of the interrogation were recorded using available technical means of video recording (Law No. 4651-VII, 2012).

Regarding the specifics of conducting individual investigative actions, in accordance with Clause 1, Part 1, Art. 615 of the Criminal Procedure Code of Ukraine, in urgent cases, an inspection of the scene of the incident may be conducted before the inquiry officer, investigator, or prosecutor issues a resolution on the initiation of a pre-trial investigation (the resolution is adopted immediately after the inspection is completed). In turn, the legislator in paragraph 2 of clause 1 of part 1 of Art. 615 of the Criminal Procedure Code of Ukraine provides for removal from Part 1 of Art. 106 of the Criminal Procedure Code of Ukraine of obligation of the investigator or prosecutor who conducts the relevant procedural action to draw up a protocol during its conduct or immediately after its completion, and provides the possibility of technical recording of procedural actions by available technical means, with further drawing up of a protocol of procedural action no later than 72 hours from the moment of its completion, in cases where it is not possible to draw up procedural documents about the progress and results of investigative actions or other procedural actions. According to Clause 4 of Art. 223 of the Criminal Procedure Code of Ukraine, conducting investigative (search) actions at night (from 10 p.m. to 6 a.m.) is not allowed, except in urgent cases, when a delay in conducting them may lead to the loss of traces of a criminal offense or the escape of a suspect, as well as except implementation of criminal proceedings in accordance with the procedure established by Art. 615 of this Code. Thus, with the introduced changes, the legislator provided the opportunity for investigators and prosecutors to conduct investigative actions 24 hours a day under martial law conditions. In addition, during

a search or inspection of a person's home or other property, a search of a person, if it is objectively impossible to involve witnesses or the connection but with a potential danger to their life or health, relevant investigative (search) actions are carried out without the involvement of witnesses. In such a case, the course and results of a search or inspection of a person's home or other possessions, a search of a person, shall be recorded by available technical means through continuous video recording. This practice is dangerous for the protection of individuals.

Also, it is worth noting the specifics of suspending the terms of pre-trial investigation during the investigation of corruption crimes. According to the rule of Clause 3, Part 1, Art. 615 of the Criminal Procedure Code of Ukraine, in the absence of an objective possibility of further conduct, completion of the pre-trial investigation and an appeal to the court with an indictment, a request for the application of coercive measures of a medical or educational nature, a request for the release of a person from criminal responsibility – the term of the pre-trial investigation in criminal proceedings is suspended on the basis of a reasoned resolution of the prosecutor with a description of the relevant circumstances and is subject to renewal if the grounds for suspension no longer exist. Thus, during the martial law, a number of changes were made to the criminal procedural legislation, which are reflected in the investigation of corruption crimes.

Conclusions

The peculiarities of the procedure for investigating corruption crimes under martial law were analyzed and the following conclusions were made:

1. Despite the introduction of martial law, the phenomenon of corruption has not disappeared in Ukraine, but on the contrary has taken on new forms, which in their essence and social danger can be equated to treason.
2. Corruption legislation has undergone changes. Thus, the criminal liability for looting in the broadest sense of the term (appropriation, waste of property or taking possession of it by abusing an official position in conditions of martial law or state of emergency) has been strengthened in order to establish a fairer criminal-legal response of the state to corruption offenses in conditions of martial law.

3. During the martial law, changes were made to criminal procedural legislation and Law No. 2201-IX "On Amendments to the Criminal Procedural Code of Ukraine regarding the improvement of the procedure for conducting criminal proceedings under martial law" was adopted, which changed the procedure for entering information about criminal proceedings in the USSR, the procedure, powers of law enforcement officers, the procedure for conducting separate investigative actions, the use of testimony and other procedures for the purpose of effective pretrial investigation and ensuring national security.

As for further scientific research, it is important to pay attention to the peculiarities and problematic issues of conducting separate investigative actions during the investigation of corruption crimes under martial law.

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