

# Transformation of Ukraine's criminal procedure legislation under martial law: Balancing national security and human rights guarantees

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**Abstract.** The relevance of the study is conditioned by the need to improve the criminal procedure legislation of Ukraine under martial law and adapt the mechanisms of criminal proceedings to today's security challenges. The purpose of the study was to determine the main areas of transformation of the criminal procedure legislation of Ukraine to ensure the effective functioning of the criminal justice system in the context of armed aggression. To achieve the stated objective, the study employed the system and structural, comparative legal, and formal legal methods, analysis of judicial practice, empirical generalisation, and content analysis, supplemented by elements of data-driven and risk-based approaches. Special attention was paid to the analysis of amendments to the Criminal Procedural Code of Ukraine, primarily the provisions of Article 615 of the Criminal Procedural Code of Ukraine, which established a special procedure for conducting pre-trial investigation and judicial proceedings under martial law. The features of the implementation of the procedural powers of the investigator, prosecutor, and investigating judge, and mechanisms for ensuring the continuity of criminal proceedings in conditions of limited access to courts, temporary occupation of certain territories, active military operations, and threats to the life and safety of participants in criminal proceedings were investigated. A comparative legal analysis of models of criminal proceedings in armed conflicts was carried out considering the experience of Israel, the former Yugoslavia, and the Baltic states. The specific features of investigative (search) and covert investigative (search) actions, and the procedures for recording, collecting, and using evidentiary information obtained under martial law, were analysed. Special attention was paid to the issues of ensuring procedural guarantees of human rights, in particular the right to protection, access to justice, implementation of the principle of adversarial parties, effective judicial control and compliance with the requirements of a fair trial. Based on the results of the study, the main trends and problems of the development of criminal procedural legislation of Ukraine during the period of martial law were identified, promising areas for further improvement of criminal procedure regulation were identified based on the need to ensure a proper balance between the interests of national security and human rights guarantees. The practical significance of the study lies in the potential use of its findings in law-making, judicial practice, and the work of pre-trial investigation bodies and prosecutorial authorities in criminal proceedings under martial law

**Keywords:** criminal process; pre-trial investigation; criminal proceedings; admissibility of evidence; human rights; Supreme Court; judicial practice

## Introduction

The full-scale armed aggression of the Russian Federation against Ukraine and the introduction of martial law have made it necessary to adapt the mechanisms of criminal proceedings to new socio-political conditions. Ensuring effective investigation of criminal offences, in particular war crimes, requires the use of special procedural tools that allow maintaining the functioning of the justice system even amid active hostilities. Furthermore, any changes in the criminal process must comply with the requirements of the rule of law and ensure an appropriate balance between the interests of national security and the guarantees of human rights.

At the global level, the experience of Ukraine is now considered as a unique example of the functioning of the criminal justice system in a large-scale war and simultaneously approaching the standards of the European Union and international humanitarian law. International practice demonstrates that contemporary armed conflicts generate unprecedented volumes of evidentiary information, a substantial proportion of which is digital in nature, including video recordings, satellite data, social media content, and OSINT sources. This necessitates the development of new procedural approaches to collecting, verifying, and

**Suggested Citation** — **Article's History:** Received: 23.04.2026 Revised: 28.07.2026 Accepted: 24.09.2026 Published: 30.09.2026

Movchan, A. (2026). Transformation of Ukraine's criminal procedure legislation under martial law: Balancing national security and human rights guarantees. *Social & Legal Studios*, 9(3), 30-39. doi: 10.32518/sals3.2026.30.

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evaluating evidence in criminal proceedings. Of particular importance is the standardisation of digital evidence and its compatibility with the requirements of national courts and international criminal tribunals (Pohoretsky, 2025).

The scale of war crimes presents an additional challenge. As of June 2026, the law enforcement agencies of Ukraine registered more than 200 thousand criminal proceedings on the facts of possible commission of war crimes under Article 438 Criminal Code of Ukraine (2001), which requires new organisational models of investigation and broad international cooperation (Crimes committed by the Russian..., 2026; Mettraux, 2026).

An analysis of contemporary research indicates a clear global trend towards adapting criminal justice systems to the conditions of armed conflict through the introduction of special procedural mechanisms, the digitalisation of evidence-gathering, and enhanced international cooperation. However, the dominant scientific position remains the need to observe the rule of law even under martial law. Leading researchers emphasise that the effectiveness of investigating war crimes should be combined with ensuring the right to a fair trial, the right to defence, and other fundamental guarantees of human rights. It is the search for an optimal balance between the interests of national security and human rights that is a key area of contemporary scientific discussions in the field of criminal procedure law.

In particular, I.V. Hloviuk (2023) examined the specifics of criminal proceedings on war crimes committed in the context of armed aggression against Ukraine, analysed approaches to defining the concept of war crimes and problematic aspects of their investigation through the prism of national legislation and law enforcement practice. The study by T.O. Loskutov (2023) noted that under martial law, when the criminal procedural legislation undergoes dynamic changes and contains certain gaps, the basis of reasonableness as a reference point for law enforcement and procedural decision-making is of particular importance. O.M. Mykolenko (2023) focused on the problems of ensuring the rights and legitimate interests of participants in criminal proceedings under martial law, in particular, in the context of permissible restrictions on constitutional human rights and freedoms. A significant contribution to the study of the problems of documenting international crimes was made by M.A. Pohoretsky (2025), who comprehensively analysed the features of collecting, recording, preserving, and evaluating evidence of international crimes, considering the requirements of international criminal justice, forensic approaches, and contemporary digital standards of evidence. The study by O.V. Pchelina & Ya.I. Tymchuk (2025) examined the impact of martial law on the functioning of the criminal justice system of Ukraine, and analysed the main legislative innovations introduced after the beginning of the full-scale armed aggression of the Russian Federation against Ukraine. T.Yu. Tkachuk & V.H. Onishchenko (2025) explored the challenges of ensuring the reliability of digital proof in documenting and investigating war crimes. The authors pay special attention to threats related to the use of counter-forensics technologies aimed at concealing, modifying, or destroying digital information, which may negatively affect its evidentiary value. M.S. Tsutskiridze (2026) concluded that the improvement of the methodology for investigating illegal seizure of industrial and agricultural enterprises under

martial law should be based on a comprehensive combination of forensic, procedural, and evidentiary components. V.V. Topchii (2024) noted that the conduct of military operations and the temporary occupation of certain territories of Ukraine significantly complicate the implementation of procedural measures related to the investigation of criminal offences, the collection and recording of evidence, and the proper documentation of procedural actions.

Thus, the scientific literature thoroughly covered certain aspects of the implementation of criminal proceedings under martial law, in particular, the investigation of war crimes, ensuring the rights of participants in the process, the use of special procedural mechanisms, the use of digital evidence, and international cooperation. However, the dynamic development of criminal procedure legislation, the development of new judicial practice and the need to adapt the national criminal process to the challenges of wartime determine the need for further comprehensive scientific research on this issue.

The purpose of the study was to determine the main areas of transformation of criminal procedure institutions and the application of special procedural norms under martial law, and assess their impact on the effectiveness of criminal proceedings while preserving procedural guarantees of human rights. To achieve the stated objective, the following tasks were identified: to determine the specific features of the exercise of the procedural powers of investigators, prosecutors, and investigating judges under the legal regime of martial law; to analyse the procedures for recording, collecting, and using evidentiary information, and problematic aspects of the admissibility of evidence obtained under the special conditions of martial law; to identify the main trends in the development of Ukraine's criminal procedure legislation during the period of martial law and outline prospects for its further improvement considering the need to maintain a balance between national security interests and human rights guarantees.

## Materials and methods

The material basis of the study comprised the provisions of the current legislation of Ukraine regulating criminal proceedings, the use of materials obtained through operational and investigative activities, the conduct of covert investigative (search) actions, and the specific features of the legal regime of martial law. The regulatory framework was supplemented by bylaws that define the organisation of activities of pre-trial investigation bodies and the procedure for their interaction with other subjects of criminal proceedings. The theoretical basis of the research was the theories of evidence and investigative activities, which covered the methodology of investigation of criminal offences, the specifics of the evidentiary process, the admissibility of evidence, the use of materials of operational and investigative activities, the results of secret investigative (search) actions, and the problems of using digital evidence and exercising judicial control under martial law. The empirical basis of the study consisted of data from departmental statistical reporting (Crimes committed by the Russian..., 2026), materials summarising investigative and judicial practice, official reports, and analytical references (Supreme Court, 2022; 2023; 2024a; 2024b; 2026) devoted to the investigation of criminal offences under martial law, and materials reflecting contemporary

approaches to documenting such offences, in particular, with the use of special knowledge and digital technologies.

The methodological basis of the research was a complex of general scientific and special legal methods of cognition. System and structural methods were used to identify relationships between procedural, forensic, and international legal components of proof in criminal proceedings. The comparative legal method was used to contrast national approaches to determining the admissibility of evidence with the provisions of international criminal law, the practice of the International Criminal Court and the European Court of Human Rights. The formal legal method allowed interpreting the norms of the criminal procedure legislation of Ukraine and international legal instruments governing the collection, verification, and assessment of evidence. The method of analysing judicial practice was used to identify and generalise the criteria for the admissibility of evidence formed in national and international law enforcement practice. Methods of empirical generalisation, content analysis, and data-oriented analysis elements were used in the study of the practice of documenting, preserving and using digital evidence in cases of war crimes. Elements of the risk-based approach were used to assess the impact of modern digital technologies on human rights, compliance with procedural guarantees, and maintaining a balance between the effectiveness of criminal prosecution and the requirements of a fair trial.

### Results and discussion

The introduction of martial law in Ukraine has become one of the key factors in the transformation of criminal procedure legislation and the practice of its application (Pysmenskyi, 2025; Sasko, 2025). The legal nature of martial law provides for the possibility of temporary restriction of certain human and civil rights and freedoms to ensure national security, defence of the state, and protection of its sovereignty and territorial integrity. However, such restrictions must comply with the principles of legality, necessity, and proportionality consolidated in both national legislation and international legal acts in the field of human rights protection (Babikov *et al.*, 2025; Romanchenko *et al.*, 2026). As noted by O. Dufeniuk (2022), the main challenges of the investigation of war crimes in Ukraine include limited access to crime sites, the need to establish effective international cooperation, the widespread use of digital evidence, and the need to formulate common standards for documenting such offences. These circumstances necessitate the introduction of special procedural mechanisms for conducting pre-trial investigations under martial law.

The pre-trial investigation stage has undergone significant changes in the conditions of martial law. In order to ensure the continuous functioning of the criminal justice system, the legislator has introduced a number of special procedural mechanisms that allow criminal proceedings to be conducted in conditions of limited access to certain territories, critical infrastructure facilities, sources of evidentiary information, or participants in criminal proceedings. The legal basis for these changes is Article 615 of the Criminal Procedural Code of Ukraine (2012), which sets out the specific features of pre-trial investigation and judicial proceedings under martial law (Law of Ukraine No. 2201-IX, 2022; Supreme Court, 2022). The provisions of this Article provide

for the possibility of derogation from the general procedure for conducting certain procedural actions in the presence of objective circumstances that allow complying with the established procedures. In particular, it is allowed to conduct a search without the participation of witnesses in the event of a threat to their security or inability to ensure their presence, provides for remote participation of a defence lawyer in certain procedural actions, and also simplifies the procedure for making certain procedural decisions (Law of Ukraine No. 2201-IX, 2022).

The analysis of the Supreme Court's practice showed that the application of such exceptions is not automatic and requires proper justification of the reasons for derogation from the general procedural rules. An important guarantee of respect for the rights and freedoms of participants in criminal proceedings, even under martial law, remains further judicial control over the legality and validity of relevant procedural actions and decisions (Supreme Court, 2023).

Ensuring the rights of suspects and accused persons is of particular importance under martial law. Armed conflict objectively complicates the implementation of certain procedural guarantees, in particular, timely access to legal aid, unhindered communication with the defender, and the exercise of the right to a fair trial. According to I. Hanenko (2025), even in war conditions, the state is obliged to ensure compliance with basic procedural guarantees. Furthermore, the decision on the permissibility of restricting human rights during a pre-trial investigation should be made based on the methodology of a three-part test, which provides: the existence of a legislative basis for interference, the legitimacy of its purpose, and the need for such interference in a democratic society.

Under these conditions, the standards formed by the practice of the European Court of Human Rights (Prytyka & Zahrebelna, 2026) become particularly relevant. According to them, even during emergencies, the state is obliged to ensure compliance with fundamental procedural guarantees, and any restrictions on human rights must comply with the requirements of legality, necessity, and proportionality (European Court of Human Rights, 2025). In this context, V. Stratonov (2025) focused on the need for further harmonisation of national legislation with international standards in the field of human rights protection. In particular, the results of a comprehensive analysis of legislation, judicial practice, and international reports (Council of Europe, Eurostat, UNODC, OECD) show that Ukraine is gradually approaching European standards, but key structural problems remain: limited access of defence lawyers to the case materials, an imbalance in resources between the parties, and insufficient oversight of prosecutorial activities (Krasnytskyi *et al.*, 2026).

One of the key challenges for pre-trial investigation bodies under martial law is to ensure a proper evidentiary process. In accordance with Article 84 of the Criminal Procedural Code of Ukraine (2012), evidence in criminal proceedings is recognised as factual data obtained in accordance with the procedure established by law, based on which circumstances relevant to criminal proceedings are established. According to Article 86 of the Criminal Procedural Code of Ukraine (2012), evidence is considered permissible only if it is obtained in the manner provided for by the criminal procedure legislation (Hloviuk *et al.*, 2022).

The provisions of Article 99 of the Criminal Procedural Code of Ukraine (2012) are also important for the evidentiary process, according to which documents as sources of evidence can be material media containing recorded information, in particular, electronic documents, photo, video, and audio recordings (Supreme Court, 2026). The investigation of war crimes is characterised by the fact that a substantial proportion of such criminal offences are committed in temporarily occupied territories or areas of active hostilities, where conventional investigative (search) actions are significantly impeded or impossible. Destruction of infrastructure facilities, mine hazards, threats to the life and health of law enforcement officers, and the lack of timely access to the sites of events significantly limit the ability to conduct inspections, seize material evidence, and interrogate witnesses and victims.

In this context, A. Shulzhenko (2022) drew attention to the difficulties of recording evidentiary information in areas of combat operations, the problems of ensuring the admissibility and reliability of evidence, and the procedural risks that arise during the investigation of war crimes. M. Korniyenko *et al.* (2025) also focused on the need to adapt investigative (search) actions to the conditions of armed conflict and limited access to sources of evidentiary information.

Under such conditions, digital sources of information are of particular importance, which often act as the main, and sometimes the only means of fixing the circumstances of a criminal offence and forming an evidence base (Tsermolonsky, 2022). Consequently, under martial law, the role of digital evidence is significantly increasing, including photo and video recording materials, satellite images, recordings from unmanned aerial vehicles, video surveillance cameras, and information obtained from open sources (OSINT).

The experience of states that have conducted criminal proceedings under conditions of armed conflict, terrorist threats, or exceptional legal regimes demonstrates a common trend: legislators seek to ensure the continuity of criminal justice while preserving the fundamental guarantees of the right to a fair trial. Each state has developed its own model for adapting the criminal process to the conditions of security challenges. The most significant in this context is the experience of Israel, the former Yugoslavia, and the Baltic states.

In particular, Israel is one of the few states whose criminal justice system has been operating for decades under a constant military and terrorist threat. A special feature of the Israeli model is to ensure the continuity of the functioning of the judicial system. Even during military operations, the courts do not stop the administration of justice, although they can work in a reduced mode or use a remote format of judicial proceedings. The analysis confirmed that Criminal Procedure Law of Israel (1982) provides for the possibility of increasing the terms of administrative detention, limiting certain procedural rights of persons suspected of committing terrorist crimes, and postponing meetings with a defender in exceptional cases (Counter-Terrorism Law of Israel, 2016). In addition, it is allowed to use classified materials if their disclosure may pose a threat to national security. It can be stated that an important feature of the Israeli model is the widespread use of digital technologies, remote participation of participants in criminal proceedings and electronic document management. Even

in a state of emergency, decisions restricting procedural rights are subject to judicial review, which provides additional guarantees of respect for the rule of law (Basic Law: Human Dignity and Liberty of Israel, 1992; Basic Law: the Government of Israel, 2001).

The International Criminal Tribunal for the former Yugoslavia (ICTY) was a United Nations special judicial body established to deal with the most serious violations of international humanitarian law committed during armed conflicts in the former Yugoslavia since 1991. A special feature of the ICTY model was the combination of international criminal justice mechanisms with the reform of national criminal justice systems, namely: specialised units of prosecutors were introduced; special procedures for working with witnesses; programmes for the protection of victims and witnesses; extensive use of digital evidence; remote questioning of witnesses; mechanisms of international legal assistance. Following the completion of the tribunal's activities, the procedural standards developed by the tribunal were implemented in the criminal legislation of Bosnia and Herzegovina, Croatia, and Serbia, in particular, through the establishment of specialised judicial chambers and prosecutors' offices authorised to carry out criminal proceedings in cases of war crimes (Del Ponte, 2006).

Since the beginning of the Russian aggression against Ukraine in 2014, and especially after the full-scale invasion in 2022, the Baltic states (Estonia, Latvia, and Lithuania) have stepped up the reform of criminal justice and related legislation to increase the resilience of judicial and law enforcement institutions to military and hybrid threats. The reform was carried out in compliance with the standards of the rule of law and procedural guarantees of human rights. The key areas of the reform were ensuring the continuity of criminal proceedings by expanding the possibilities of remote court sessions, introducing electronic document management, using video communication during the interrogation of participants in criminal proceedings, and wider use of digital evidence. It can be stated that the legislation of the Baltic states was adapted for the operational use of secret investigative (search) actions, electronic surveillance tools, mechanisms for the international exchange of evidence, and special procedural tools for countering sabotage activities. The legislator paid special attention to improving the legal regulation of handling information constituting a state secret and ensuring the protection of personal data. The experience of the Baltic states shows the active use of international cooperation mechanisms in the field of criminal justice, in particular, the European Arrest Warrant, Eurojust instruments, Joint Investigation Teams, and digital platforms for the exchange of evidentiary information. Unlike the Israeli model, the approach of the Baltic states is based primarily on the digital transformation of criminal proceedings, improving the effectiveness of international cooperation, and maintaining the proper level of procedural guarantees for participants in criminal proceedings (Nevera *et al.*, 2022; Ernits *et al.*, 2022; Buciunas, 2024).

The comparative legal analysis of models of criminal proceedings under conditions of armed conflict and other exceptional legal regimes demonstrates that, despite differences in legal systems and the nature of security threats, states have developed a common approach to the administration of criminal proceedings during armed conflict. Its

essence is to ensure the continuity of criminal proceedings by adapting procedural mechanisms to emergency conditions without giving up the fundamental guarantees of the right to a fair trial. This goal is achieved through digitalisation of criminal proceedings, expansion of opportunities for remote participation in procedural actions, improvement of the procedure for using electronic and secret evidence, development of international cooperation, and strengthening of judicial control over the restriction of the rights of participants in criminal proceedings.

Israel's experience confirms the effectiveness of criminal justice in the face of constant military and terrorist threats, provided that effective judicial control is maintained. The practice of ICTY demonstrates the importance of specialised mechanisms for documenting international crimes, protecting witnesses, and digitally managing evidence. In contrast, the Baltic states have formed a model focused on digital transformation of criminal proceedings, strengthening international cooperation, and ensuring the resilience of criminal justice to contemporary hybrid threats (Table 1).

**Table 1.** Comparative analysis of models of criminal proceedings in conditions of military conflicts or other emergency legal regimes

| Criteria                       | Israel                                 | Former Yugoslavia states                   | Baltic states                                         | Ukraine                         |
|--------------------------------|----------------------------------------|--------------------------------------------|-------------------------------------------------------|---------------------------------|
| Main threat                    | Terrorism, war                         | Armed conflict, war crimes                 | Hybrid threats, potential aggression                  | War, war crimes                 |
| Main goal of the reforms       | Continuity of legal proceedings        | Investigation of international crimes      | Improvement of the sustainability of criminal justice | Continuity of legal proceedings |
| Remote proceedings             | Yes                                    | Partially                                  | Widely used                                           | Partially                       |
| Special evidentiary procedures | Classified materials, special evidence | Witness protection, international evidence | Digital evidence                                      | Digital evidence                |
| Judicial control               | Very high                              | High                                       | High                                                  | High                            |
| International cooperation      | Limited by security specifics          | Maximally developed                        | Integrated with EU mechanisms                         | Developed                       |

Source: compiled by the author

In this regard, the comprehensive application of these approaches is of particular value for Ukraine, including the statutory consolidation of the principle of continuity of criminal proceedings under martial law, further development of remote procedural forms, improvement of the legal framework governing digital evidence, special procedures for the protection of participants in criminal proceedings, and international cooperation mechanisms for the investigation of war crimes and the crime of aggression. The implementation of these areas will contribute to the improvement of the effectiveness of the criminal procedure legislation of Ukraine and its harmonisation with current European and international standards.

The international practice of documenting war crimes demonstrates the increasing use of digital evidence in the activities of international criminal justice bodies. Although the Rome Statute of the International Criminal Court contains no specific provisions on digital evidence, such evidence may be used provided that the relevance, authenticity, and reliability of the information concerned are established, as follows from the general principles governing the collection, examination, and assessment of evidence (Rome Statute of the International Criminal Court, 1998; Supreme Court, 2024b). The development of digital technologies and their active introduction into the practice of investigating criminal offences create additional opportunities for effective documentation of crimes committed under martial law and actualising the issues of ensuring the ownership, admissibility and reliability of digital evidence (Tsutskiridze, 2026).

An important international benchmark in the use of digital evidence is the Berkeley Protocol on Digital Open Source Investigations (2022), which sets standards for the collection, verification, storage, and presentation of digital information as evidence. The protocol focuses on the need to properly document the origin of materials, preserve metadata, ensure a continuous chain of custody, and implement

their geolocation and chronological verification. The practical significance of these approaches is confirmed by the activities of the International Criminal Court to investigate crimes committed on the territory of Ukraine. The Office of the Prosecutor of the ICC actively uses digital materials and information from open sources to build its evidentiary case, emphasising the need to comply with contemporary standards for handling digital evidence (Pohoretskyi, 2025).

The use of digital evidence is accompanied by a number of challenges related to the possibility of falsification, modification of metadata, the use of artificial intelligence technologies to create manipulative content, and the spread of misinformation. In this regard, the need for further improvement of the criminal procedure legislation of Ukraine regarding the procedure for obtaining, verifying, and evaluating digital evidence in accordance with national and international evidentiary standards is being updated.

Special attention should be paid to the admissibility of evidence obtained during a pre-trial investigation under martial law. According to Part 11 of Article 615 of the Criminal Procedural Code of Ukraine (2012), testimony can be used as evidence only if the procedural action is properly videotaped, and during the interrogation of a suspect – with the mandatory participation of a defence lawyer. Such procedural guarantees are aimed at ensuring the right to defence, preventing violations of the rights of participants in criminal proceedings and compliance with the minimum standards of fair trial (Office of the Prosecutor & International Criminal Court, 2023).

Thus, the development of digital technologies and their widespread use in criminal proceedings open up new opportunities for documenting and investigating crimes committed under martial law. The effectiveness of using digital evidence directly depends on compliance with established procedural guarantees, international evidentiary standards, and proper verification of the accuracy of the information received.

Specific features of the application of Article 615 of the Criminal Procedural Code of Ukraine (2012) are also revealed during searches. The legislation allows conducting a search without the participation of witnesses, provided that the relevant procedural action is continuously recorded. The Supreme Court emphasises that derogation from the general procedure for conducting a search must be properly justified, and the legality of such derogation is subject to further judicial review (Tsermolonsky, 2022; Supreme Court, 2024a).

The analysis of judicial practice shows that the assessment of the admissibility of evidence under martial law is carried out not formally, but considering the nature, essence, and consequences of the procedural violations committed. Thus, the Judgment of the Criminal Cassation Court of the Supreme Court of Ukraine in Case No. 164/431/20 (2024) states that the absence of video recording of the search is not in itself an unconditional basis for declaring the evidence obtained inadmissible. It is crucial to establish whether such a violation affected the reliability of the evidentiary information obtained and whether it led to restrictions on the procedural rights of participants in criminal proceedings (Tsermolonsky, 2022; Judgment of the Criminal Cassation Court of the Supreme Court of Ukraine in Case No. 164/431/20, 2024). Thus, the practice of the Supreme Court testifies to the development of an approach according to which the admissibility of evidence is assessed not only from the standpoint of formal compliance with procedural requirements, but primarily through the prism of the materiality of the procedural violations committed and their impact on ensuring the fairness of criminal proceedings and respect for the rights of its participants.

The use of institutions of detention and preventive measures also has its own characteristics under martial law. Despite the fact that the provisions of articles 207-209 of the Criminal Procedural Code of Ukraine (2012) continue to operate in the general order, their practical implementation is carried out considering the specifics of wartime. In particular, detention without a decision of the investigating judge is allowed as an urgent measure in cases provided for by law, and the period of detention is calculated from the moment of actual restriction of a person's freedom. However, in criminal proceedings concerning crimes against the foundations of national security of Ukraine, the legislator actually gives priority to the use of detention as a preventive measure. In its Judgment of the Criminal Cassation Court of the Supreme Court of Ukraine in case No. 497/2392/22 (2026) confirmed the legality of detaining a person without prior judicial permission in the presence of urgent circumstances. The court also noted that the absence of a defence lawyer directly during detention does not automatically indicate a violation of the right to defence, unless procedural actions related to obtaining statements or other information from the detained person were carried out during that period.

An important tool for ensuring the continuity of criminal proceedings under martial law has become the electronic form of procedural documents and remote participation of a defence lawyer in conducting certain procedural actions. The introduction of such mechanisms contributes to maintaining the proper level of effectiveness of criminal proceedings even in conditions of active military operations, limited transport accessibility, and the impossibility of personal presence of individual participants in the process

(Judgment of the Criminal Cassation Court of the Supreme Court of Ukraine in case No. 318/2921/18, 2020). In general, the specific features of the application of institutions of detention, preventive measures, and remote procedural mechanisms during martial law reflect the desire of the legislator to ensure the effectiveness of criminal proceedings in emergency conditions, while maintaining the necessary level of guarantees of human rights and judicial control over the restriction of constitutional rights and freedoms.

This approach is based on the provisions of the Constitution of Ukraine, first of all on the principle of the rule of law and the constitutional requirement that even under martial law, human rights, and freedoms can be restricted only to the extent necessary to achieve a legitimate goal, but cannot be arbitrarily revoked. In this regard, special provisions of the Criminal Procedural Code of Ukraine are aimed at ensuring the continuous functioning of the criminal justice system in war conditions without levelling its fundamental procedural guarantees. The full-scale armed aggression of the Russian Federation against Ukraine has led to a significant expansion of international cooperation in the field of documentation and investigation of war crimes and crimes against humanity. Ukraine's interaction with the International Criminal Court, Eurojust, Europol, the European Union Advisory Mission in Ukraine, and law enforcement agencies of partner states plays an important role in this process.

Such cooperation contributes to the introduction of contemporary standards for collecting, recording, and evaluating evidence, improving mechanisms for international legal assistance, and expanding the practice of using digital evidence in the investigation of international crimes. In addition, Ukraine's participation in international criminal justice mechanisms encourages the harmonisation of national criminal procedure legislation with international and European standards. Under current conditions, such harmonisation is an important prerequisite for improving the efficiency of criminal proceedings, ensuring proper documentation of international crimes, strengthening the protection of human rights, and implementing the principle of the inevitability of criminal liability for the most serious violations of international humanitarian law and international criminal law.

The analysis of criminal procedural legislation, judicial practice, and scientific sources gives grounds to highlight the following main trends in the development of criminal proceedings under martial law: ensuring procedural flexibility while maintaining effective judicial control; reorienting approaches to assessing evidence from formal compliance with procedural requirements to establishing the impact of violations on the rights of participants in proceedings and the fairness of judicial proceedings; strengthening the role of technical fixation of procedural actions as an important guarantee of the admissibility and reliability of evidence; expanding the use of electronic documents, digital evidence, and remote procedural mechanisms; increasing the importance of judicial practice as a tool for ensuring a balance between the interests of national security and the protection of human rights; intensifying international cooperation in the field of documentation, investigation, and prosecution of war crimes and crimes against humanity; gradual harmonisation of Ukraine's criminal procedure legislation with international and European criminal justice standards.

## Conclusions

The results of the study showed that the introduction of martial law led to the establishment of a special procedural regime of criminal proceedings in Ukraine, which is exclusive and temporary in nature. Legislative changes, primarily provided for in Article 615 of the Criminal Procedural Code of Ukraine, are aimed at ensuring the continuity of pre-trial investigation and judicial proceedings in the context of armed aggression, while their application should be carried out in compliance with judicial control and procedural guarantees of human rights.

The study showed that special procedural mechanisms allow conducting criminal proceedings in conditions of limited access to certain territories, critical infrastructure facilities, sources of evidentiary information, and participants in the process. According to the practice of the European Court of Human Rights, even in extraordinary circumstances, any restrictions on human rights must comply with the principles of legality, necessity, and proportionality.

The analysis of legislation, judicial practice, and international reports has shown Ukraine's gradual alignment with European standards of criminal justice. However, the problems of ensuring equality of the parties, timely access of the defence to the materials of criminal proceedings, and effective control over the procedural activities of the prosecutor's office remain relevant. Generalisation of the international experience of states that functioned in conditions of armed conflicts and emergency legal regimes indicates the expediency of further development of remote procedural forms, improvement of legal regulation of digital evidence, mechanisms of international cooperation, and special procedures for the protection of participants in criminal proceedings. An important international reference point in the use of digital evidence is the Berkeley Protocol on Digital Open Source Investigations, whose standards are already finding practical

application in the investigation of international crimes, in particular by the International Criminal Court.

The analysis of judicial practice showed that the admissibility of evidence obtained under martial law is assessed considering the nature of the procedural violations committed, their impact on the reliability of evidentiary information, and ensuring the procedural rights of participants in criminal proceedings. The specific features of the application of detention and preventive measures, the use of electronic procedural documents, and the remote participation of defence counsel as instruments for ensuring the continuity of criminal proceedings were also established.

The results obtained give grounds to assert that the contemporary criminal process of Ukraine demonstrates a high level of adaptability to the conditions of martial law. Its further development should be based on the principles of the rule of law, legality, proportionality, and fair trial. Priority areas for improving the legislation remain the settlement of issues of admissibility of evidence obtained under special conditions, strengthening procedural guarantees of the right to defence, ensuring real adversarial nature of the parties, effective judicial control, and the development of international cooperation. The implementation of these tasks will contribute to achieving an appropriate balance between the interests of national security, the protection of human rights, and the effectiveness of criminal justice.

## Acknowledgements

None.

## Funding

The study was not funded.

## Conflict of interest

None.

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## Трансформація кримінального процесуального законодавства України в умовах воєнного стану: баланс між національною безпекою та гарантіями прав людини

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**Анотація.** Актуальність дослідження зумовлена необхідністю вдосконалення кримінального процесуального законодавства України в умовах воєнного стану та адаптації механізмів кримінального провадження до сучасних безпекових викликів. Метою статті є визначення основних напрямів трансформації кримінального процесуального законодавства України для забезпечення ефективного функціонування системи кримінальної юстиції в умовах збройної агресії. Для досягнення поставленої мети було використано системно-структурний, порівняльно-правовий, формально-юридичний методи, аналіз судової практики, емпіричного узагальнення, контент-аналізу, а також елементи даних- та ризик-орієнтованого підходів. Особливу увагу було приділено аналізу змін до Кримінального процесуального кодексу України, насамперед положень статті 615 Кримінального процесуального кодексу України, що встановлюють спеціальний порядок здійснення досудового розслідування та судового провадження в умовах воєнного стану. Було досліджено особливості реалізації процесуальних повноважень слідчого, прокурора та слідчого судді, а також механізми забезпечення безперервності кримінального провадження в умовах обмеженого доступу до судів, тимчасової окупації окремих територій, активних бойових дій і загроз життю та безпеці учасників кримінального провадження. Було проведено порівняльно-правовий аналіз моделей здійснення кримінального провадження в умовах збройних конфліктів з урахуванням досвіду Ізраїлю, держав колишньої Югославії та країн Балтії. Було проаналізовано специфіку проведення слідчих (розшукових) і негласних слідчих (розшукових) дій, порядок фіксації, збирання та використання доказової інформації, отриманих в умовах воєнного стану. Окрему увагу було приділено питанням забезпечення процесуальних гарантій прав людини, зокрема права на захист, доступу до правосуддя, реалізації принципу змагальності сторін, здійснення ефективного судового контролю та дотримання вимог справедливого судового розгляду. За результатами дослідження було визначено основні тенденції та проблеми розвитку кримінального процесуального законодавства України в період дії воєнного стану, окреслено перспективні напрями подальшого вдосконалення кримінального процесуального регулювання з урахуванням необхідності забезпечення належного балансу між інтересами національної безпеки та гарантіями прав людини. Практичне значення дослідження полягає в можливості використання його висновків у нормотворчій діяльності, судовій практиці та роботі органів досудового розслідування і прокуратури під час кримінального провадження в умовах воєнного стану.

**Ключові слова:** кримінальний процес; досудове розслідування; кримінальне провадження; допустимість доказів; права людини; Верховний Суд; судова практика