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QUESTÕES PROBLEMÁTICAS DA COLETA DE PROVAS EM PROCESSOS CRIMINAIS SOB LEI MARCIAL

PROBLEMATIC ISSUES OF COLLECTING EVIDENCE IN CRIMINAL PROCEEDINGS UNDER MARTIAL LAW

OLEG PREDMESTNIKOV
Melitopol State Pedagogical University named after Bogdan Khmelnitsky, Ukraine. https://orcid.org/0000-0001-8196-647X E-mail: predmestnikov.o@ukr.net

MYKOLA VAVRYNCHUK
Khmelnytskyi National University, Ukraine. https://orcid.org/0000-0002-8401-5562 E-mail: vavrynchuk.m@ukr.net

SERHII KRUSHYNSKYI
Leonid Yuzkov Khmelnytskyi University of Management and Law, Ukraine. https://orcid.org/ 0000-0002-1583-226X E-mail: s.krushynskyi@gmail.com

SERHII MANDZII
Khmelnytskyi National University, Ukraine. https://orcid.org/0009-0001-6068-7292 E-mail: mandzii.s@ukr.net

OLHA KOHUT
Khmelnytskyi National University, Ukraine. https://orcid.org/0000-0001-9164-5477 E-mail: ivzhenkosssv@gmail.com

RESUMO

Objetivo: Este artigo examina os desafios significativos encontrados na coleta de provas durante processos criminais sob lei marcial. Tem como objetivo identificar os obstáculos na implementação de estratégias eficazes de coleta de provas durante períodos de conflito e fornecer soluções práticas para mitigar esses problemas.

Métodos: A pesquisa utiliza uma revisão abrangente da legislação existente e decisões judiciais, combinada com análise teórica e estudos de caso. Esta abordagem multidimensional ajuda a entender as complexidades da coleta de provas em um contexto de lei marcial e a formular estratégias para abordar esses desafios.

Resultados: O estudo destaca os efeitos adversos das operações militares no processo de coleta de provas, incluindo dificuldades logísticas, limitações na execução de ações investigativas e aumento dos riscos de violações dos direitos humanos. Discute a necessidade de adaptações em quadros legais e procedimentos para manter a justiça e proteger os direitos humanos em tempos de conflito.

Conclusões: Os achados sugerem que reformas são necessárias para garantir uma

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coleta de provas eficaz e salvaguardar os princípios de um julgamento justo sob a lei marcial. O artigo recomenda mudanças legislativas específicas e a implementação de padrões internacionais para melhorar a integridade dos processos criminais em ambientes tão desafiadores.

Palavras-chave: Lei marcial. Processos criminais. Coleta de provas. Julgamento justo. Direitos humanos. Reformas legislativas.

ABSTRACT

Objective: This article examines the significant challenges encountered in the collection of evidence during criminal proceedings under martial law. It aims to identify the obstacles in implementing effective evidence collection strategies during periods of conflict and provide practical solutions to mitigate these issues.

Methods: The research utilizes a comprehensive review of existing legislation and judicial decisions, combined with theoretical analysis and case studies. This multi-dimensional approach helps in understanding the complexities of evidence collection in a martial law context and formulating strategies to address these challenges.

Results: The study highlights the adverse effects of military operations on the process of evidence collection, including logistical difficulties, limitations on the execution of investigative actions, and increased risks of human rights violations. It discusses the need for adaptations in legal frameworks and procedures to maintain justice and protect human rights during times of conflict.

Conclusions: The findings suggest that reforms are necessary to ensure effective evidence collection and safeguard fair trial principles under martial law. The paper recommends specific legislative changes and the implementation of international standards to enhance the integrity of criminal proceedings in such challenging environments.

Keywords: Martial law. Criminal proceedings. Evidence. Witness. Pre-trial investigation. Human rights standards. International standards. Human rights

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1 INTRODUCTION

The most important problem of evidence continues to be the collection and analysis of evidence. The study of this problem is of exceptional importance and practical significance. That is, practice shows that mistakes in the process of collecting evidence are quite common during pre-trial and investigation. They often lead to an unjust verdict, neglect of unlawful acts or omissions by the subjects of criminal proceedings. To a certain extent, this is facilitated by the lack of unified scientific understanding of the essence of evidence collection and the factors that determine the relevance of factual data in the case file.

In particular, an important aspect is to determine the optimal methods of collecting evidence, taking into account the specifics of each case. In addition, there is the problem of analyzing the evidence obtained and its weight, which is not always unambiguous. This may lead to situations where significant evidence is not given due consideration or is not sufficiently substantiated in the trial. In addition, given the rapid development of technology and the emergence of new forms of evidence (e.g., digital evidence), there is a need to constantly upgrade and adapt the methods of collecting and analyzing evidence.

Another challenge is the impact of the human factor on the evidence collection process. Anticipating and preventing errors that may arise due to the human factor (e.g., omission of certain evidence or its distortion) is an important component of effective judicial proceedings.

Thus, overcoming these problems requires a comprehensive approach that takes into account both scientific theories and practical experience, as well as the use of advanced technologies and professional development of justice professionals.

War conditions pose unique challenges for law enforcement agencies and the justice system in collecting and presenting evidence in criminal proceedings. Despite this urgent issue, previous research by domestic lawyers in this area has been limited.

The scientific and practical analysis of the problems of collecting and presenting evidence in criminal proceedings was carried out by prominent national lawyers, among whom we can mention O. M. Vasyliev, V. K. Veselskyi, A. F. Volobuiev, O. A. Kravchenko, V. S. Komarkov, V. O. Konovalova, V. S. Kuzmichev, Y. V. Lysiuk, E. D. Lukianchykov, A. V. Starushkevych, L. D. Udalova, V. Y. Shepitko, M. E. Shumylo, O. G. Yanovska and other scholars. Their research and analysis of important aspects of

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this issue contribute to the development and improvement of legal practice in Ukraine, but the topic of collecting evidence during criminal proceedings in wartime requires a specialized approach and research, which may be more complex and requires more detailed study.

2 METHODS

The methodology employed in this study aimed to address the intricate challenges associated with gathering evidence during criminal proceedings under martial law. The research utilized a multifaceted approach to explore and analyze the complexities inherent in this context. To begin with, the study employed a systematic analysis to discern the legal framework and contextualize the role of evidence collection within the broader scope of martial law regulations. This involved examining the specific provisions and principles governing criminal proceedings under martial law to understand their implications for evidence collection. Drawing from positivist methodologies, the research integrated empirical observation and analysis of factual data to elucidate patterns and establish the operational dynamics of evidence collection in martial law environments. This involved utilizing sociological, comparative-legal, and historical methods to analyze past cases and identify trends in evidence collection practices.

Furthermore, the study employed a structural-functional approach to deconstruct the components and functional objectives of evidence collection procedures under martial law. By examining the interplay between legal principles and practical implementation, the research aimed to uncover insights into the efficacy and challenges of evidence collection in this context. Additionally, the study utilized specific sociological research techniques to analyze the impact of martial law on evidence collection practices, including examining judicial precedents and evaluating the enforcement significance of evidentiary standards.

Finally, dogmatic (logical) analysis was employed to synthesize findings, formulate conclusions, and propose recommendations. This involved ensuring coherence, consistency, and validity of arguments within the broader theoretical framework of criminal law under martial law. In summary, the methodology employed in this study encompassed a comprehensive approach to investigating the problematic issues surrounding evidence collection in criminal proceedings under martial law, aiming to provide valuable insights and recommendations for legal practitioners and

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policymakers.

3 RESULTS AND DISCUSSIONS

Russia's full-scale invasion of Ukraine in February 2022 has completely transformed the lives of every Ukrainian, leading to radical changes in all aspects of social functioning. The criminal process has not been left untouched. The courts, law enforcement agencies and other state structures were unprepared to function in a war situation, and the existing legal framework did not provide opportunities for proper case management during the military conflict. In this regard, in order to adapt the criminal procedure to the conditions of war, the Parliament adopted a number of laws in "turbo mode", including those regulating the criminal procedure in the conditions of war.

Thus, on May 1, 2022, Law No. 2201-IX amending the Criminal Procedure Code of Ukraine to improve the procedure for conducting criminal investigations under martial law came into force. This law provides for amendments to the Criminal Procedure Code itself, in particular, it establishes that criminal proceedings in wartime must comply with the general principles of criminal proceedings set forth in Article 7(1), taking into account the specifics of its conduct, as set forth in Section IX-1 of the CPC.

The Parliament also amended the title of Section IX-1 of the Criminal Procedure Code of Ukraine, which should now be called "Special regime of pre-trial investigation and court proceedings under martial law", and supplemented Article 615 of the CPC of Ukraine with the following (TSERMOLONSKYI I., 2022).

In the context of war and martial law, it is important to focus on the process of collecting, verifying and evaluating evidence during the pre-trial investigation of criminal cases. Qualitatively recorded and properly preserved evidence forms the basis for bringing perpetrators to criminal liability for crimes committed in the country. In modern times, the circumstances of many crimes are usually confirmed by electronic evidence, which is a type of evidence source, such as documents. It is important to note that the evidence must meet the standards and criteria established by law to avoid doubts about its admissibility and to ensure that the court can use it in making a judgment.

In criminal proceedings conducted during military operations, testimony obtained during the interrogation of a witness, victim or during the simultaneous interrogation of two or more persons already interrogated may be admitted as evidence in court only if the course and results of such interrogation were recorded on the basis of existing

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technical means of video recording.

During the pre-trial investigation, in the absence of a defense counsel to participate in the proceedings, the inquirer, investigator or prosecutor may implement remote participation of the defense counsel using modern technical means, such as video or audio communication. It is known that the introduction of martial law can lead to violations of the constitutional rights of citizens, and this is an absolutely justified fact.

However, the legislator did not take into account the fact that in case of remote participation of the defense counsel, the suspect or accused cannot have confidential communication with his or her lawyer (VESELOVSKA N., KRUSHYNSKYI S., KRAVCHUK O., et al., 2022). This leads to a violation of both the rights of the person being prosecuted and may raise questions about the insecurity of the attorney-client privilege, especially if the suspect or accused was given the opportunity to communicate with his or her lawyer via video or audio communication before the start of the investigative action. In addition, defense counsel has no way to make sure that his client has not been subjected to psychological or physical violence, or to verify that the client's actions during the investigative actions are voluntary.

According to scholars, the factors that determine the peculiarities of criminal proceedings under martial law include: 1) danger factors; 2) lack of access to certain territories where criminal proceedings are conducted; 3) full or partial restriction of the functioning of public authorities, including law enforcement and judicial authorities of Ukraine in the territories where criminal offenses are committed; 4) peculiarities of legal regulation not only by the CPC of Ukraine, but also by emergency legislation, international legal acts that are activated under emergency legal regimes; 5) specific organizational and managerial foundations for conducting certain proceedings (HLOVIUK I., DROZDOV O., TETERIATNYK H, et al., 2022).

The differentiation of criminal proceedings is aimed at ensuring maximum efficiency and expediency of the procedure for conducting procedural actions, facilitating the fulfilment of the tasks of criminal proceedings provided for in Article 2 of the CPC of Ukraine, in particular, ensuring a prompt, complete and impartial investigation and trial. Differentiation of criminal proceedings is determined by various factors, such as the severity of the criminal offence, the presence of special characteristics of the person in respect of whom the criminal proceedings are conducted, the possibility of reaching a compromise on bringing the perpetrator to criminal liability and a number of other circumstances. However, the need to deviate

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from the general procedure of criminal proceedings may also arise in connection with the introduction of certain emergency legal regimes in the territory of the state, in particular martial law. Thus, with the illegal annexation of Crimea and the occupation of part of the territory of Donetsk and Luhansk regions in 2014, the CPC of Ukraine was supplemented with a new section IX-1 "Special regime of pre-trial investigation in martial law, state of emergency or in the area of the anti-terrorist operation", which provided for the possibility of transferring the powers of the investigating judge, if they cannot be exercised within the time limits established by law in the administrative territory where the legal regime of martial law, state of emergency, anti-terrorist operation is in force, to the investigating judge. After the full-scale invasion of our country by Russian troops and the declaration of martial law in Ukraine, a number of amendments were made to this section, including the change of name to "Special regime of pre-trial investigation and court proceedings under martial law" (KRUSHYNSKYI S.A., BALOV P.O., 2022).

In the context of martial law, during the pre-trial investigation of criminal proceedings, it is important to pay great attention to the issue of collection, verification, and evaluation of evidence.In addition, by studying this issue, scholars build the structure of evidence in criminal proceedings as a whole, which includes both the pre-trial investigation stage and court proceedings. However, the process of proving during the pre-trial investigation and in court proceedings differs significantly, which is naturally due to the tasks, conditions and peculiarities of these stages of the process. While the pre-trial investigation stage of proof is characterized by practical activities aimed at actively searching for factual data, in court proceedings the emphasis is more on logical and mental activities related to their research, presenting arguments, persuasion, and justification of decisions. This prompts an attempt to consider evidence from a slightly different perspective and to express ideas on the structure of evidence in court proceedings in the first instance. Most proceduralists, analysing the structure of criminal procedural evidence, traditionally talk about its three elements, namely, collection, verification and evaluation of evidence. A similar approach is reflected in the provisions of the criminal procedural law - part 2 of Article 91 of the CPC of Ukraine states that proof consists in collecting, verifying and evaluating evidence in order to establish the circumstances relevant to criminal proceedings.

In general, scholars define evidence in criminal proceedings as a cognitive activity that takes place within the framework of a legally established procedural form. This activity is aimed at identifying the circumstances of a criminal offence that

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occurred in the past and establishing the truth in criminal proceedings. In other words, proving is a general process that includes obtaining a set of evidence and substantiating relevant procedural decisions in a criminal case.

In the scientific community, it is generally accepted that the process of proving includes activities related to the collection, verification and evaluation of evidence. This is not surprising, since the criminal procedure legislation before 1960 did not define the concept of proof in criminal proceedings, but only referred to the collection and presentation of evidence, and Article 67 referred to its evaluation. The situation is the same with the current Code of Criminal Procedure of Ukraine, which does not define the concept of proof, but rather specifies the circumstances to be proved, as well as the process of collecting and evaluating evidence.

For a long time, scholars have emphasised that there is no competition in the pre-trial investigation stage of criminal proceedings in Ukraine, especially in the field of evidence.

The current Criminal Procedure Code of Ukraine provides that evidence in criminal proceedings is factual data obtained in accordance with the procedure provided for by this Code, on the basis of which the investigator, prosecutor, investigating judge and court establish the presence or absence of facts and circumstances relevant to the criminal proceedings and subject to proof (pursuant to Article 84(1) of the CPC of Ukraine). The Code also gives the investigator and prosecutor the right to evaluate evidence (pursuant to Article 94(1) of the CPC of Ukraine), which indicates that the prosecution, as opposed to the defence, has the power to conclude whether certain information is evidence in the case. However, in adversarial proceedings, as correctly noted by L.V. Karabut, it is inadmissible to grant one of the parties the right to qualify factual data as evidence (KARABUT L.V., 2012).

A more detailed analysis of the word "evidence" itself yields more than 40 definitions in the linguistic sense. In other words, in the linguistic sense, the term "proof" has a multifunctional character and is determined by its function as a means of substantiating human reasoning in various practical situations, at different levels and in different spheres of social life. If we look back to the late nineteenth or twentieth century, there was already a doctrine of criminal procedure law and a theory of evidence, which were considered in the following aspects

1) evidence was understood as any fact that convinced the court of the existence of a circumstance that was the subject of the trial;

2) evidence was considered in two meanings - as material that can be used to

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draw a conclusion about the unknown and as a mental process by which the connection of the sought-after circumstance is established;

3) facts that, in accordance with the rules established by law, were submitted to the court to substantiate the conclusion that a crime had been committed and the responsibility of those who committed it.

Thus, the evidence was considered in a static way, it was considered ordinary, objectively existing facts, along with other life and social facts or factual data. However, a scientific approach was gradually developed, when evidence was given a dual character, when evidence was understood not only as facts (factual data), but also as sources from which such data were obtained.

Gradually, this approach led to the following scientific opinion: the essence of evidence is not the facts themselves, but information, factual data about the evidence. And sources of evidence were considered an integral part of this information. In other words, it was proposed to consider evidence as an organic unity of factual data and their legal sources. In this construction of evidence, its logical and other components were ignored, and the weight of the information component was exaggerated.

Currently, the most complete doctrinal construction of the concept of "evidence" is a kind of integral phenomenon, when a complex legal scheme is built, which is systemic in nature. It was most fully formulated by M.E. Shumylo ("The Concept of Evidence in Criminal Procedure: Prolegomena to Understanding the "Elusive" Phenomenon of Evidence Law"). His legal construction of "composition of procedural evidence" includes three interrelated blocks (subsystems): cognitive, informational and normative. In this form, the construction of the composition of evidence is a dynamic legal phenomenon, when the evidence is not considered in a frozen form, but rather in its gradual disclosure during criminal proceedings. This process begins at the stage of pre-trial investigation and ends in a court hearing with the participation of the parties to the proceedings, when a final conclusion is made about the evidence.

It is important to note that the defence counsel in criminal proceedings is a lawyer whose data must be entered into the Unified Register of Lawyers of Ukraine. At the same time, the prosecution in criminal proceedings is represented by the prosecutor, who has independent powers in his/her procedural activities.

When analysing Article 93 of the CPC of Ukraine, it is worth noting that the collection of evidence is carried out by the prosecution, the defence and the victim. However, it is important to note the inequality in the legal means provided to the parties to criminal proceedings for gathering evidence. For example, the prosecution has the

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opportunity to collect evidence by conducting investigative (search) actions and covert investigative (search) actions, obtaining the necessary materials from various bodies and individuals. Such actions include requesting documents, expert opinions, as well as other procedural actions provided for by the legislation on criminal procedure of Ukraine.

Testimonies of participants in criminal proceedings, along with the protocols of investigative (detective) actions, occupy a central place in the system of procedural sources of evidence. On average, testimonies account for almost 70% of the total amount of evidence available in the proceedings. Much of this evidence consists of witness testimony.

Although testimony forms the basis of criminal proceedings, there is currently no consensus in the scientific research of criminal procedure on what exactly is meant by the category of "testimony".

The Criminal Procedure Code of Ukraine, unlike the previous legislation, introduced a rule defining the category of "testimony" in criminal proceedings. According to part 1 of Article 95 of the CPC of Ukraine, testimony is information provided orally or in writing during interrogation by a suspect, accused, witness, victim, or expert regarding circumstances known to them in criminal proceedings that are relevant to that criminal proceeding. The list of types of testimony includes: suspect testimony, accused testimony, witness testimony, victim testimony and expert testimony. Based on the analysis of this provision, it can be concluded that the legislator has proposed a typology of testimony depending on the procedural status of the interrogated persons.

The Law of Ukraine "On Improvement of the Procedure of Criminal Proceedings under Martial Law" amended and supplemented the legal regulation of interrogation during martial law. This Law improves Articles 95 and 615 of the CPC of Ukraine, in particular, by removing the prohibition on substantiating court decisions by testimony given to the investigator or prosecutor under martial law.

It is worth noting that the rules for the use of testimony in evidence have been changed by the new wording of part 4 of Article 95 of the CPC of Ukraine:

"The court may base its conclusions only on the testimony that it directly perceived during the court hearing or obtained in accordance with the procedure provided for in Article 225 of this Code. The court is not entitled to substantiate court decisions by testimony given to the investigator, prosecutor or refer to them, except for the procedure for obtaining testimony set out in Article 615 of this Code."

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Part 11 of Article 615 of the CPC of Ukraine provides that:

"Testimony obtained during the interrogation of a witness or victim, including simultaneous interrogation of two or more persons already interrogated, in criminal proceedings conducted 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 (LIMONGI, R., 2024). The testimony obtained during the interrogation of a suspect, including 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 defence counsel participated in such interrogation and the course and results of the interrogation were recorded using available technical means of video recording."

Thus, this provision significantly modifies the rules for the use of testimony in evidence, but applies only to testimony obtained under martial law. In addition, it establishes that pre-trial testimony of a witness, victim and suspect (with the participation of a defence counsel) is equivalent to testimony obtained in accordance with Article 225 of the CPC of Ukraine, provided that the course and results of the relevant interrogation (simultaneous interrogation of two or more already interrogated persons) were recorded using available technical means of video recording. In other words, the said Law of Ukraine proposes to limit the effect of the general principle of direct examination of testimony, things and documents under martial law, which is regulated by Article 23 of the CPC of Ukraine.

Considering the topic of interrogations under martial law, E. Krapyvin, Y. Belousov and A. Orleans point out that Ukraine banned the use of extrajudicial testimony in 2012, which is a very high standard compared to the world. However, they note that for the last ten years, the testimony obtained during interrogation has not been of independent value, as it is re-examined in court proceedings, where the judge directly perceives all the evidence (KRAPYVIN E., BELOUSOV Y., ORLEANS A ., 2022).

The authors agree that the current CPC of Ukraine has established a non-alternative rule regarding the immediacy of judicial examination of evidence, in particular personal testimony. For this decade, participants in criminal proceedings have been required to give evidence directly in the presence of a judge or court. However, the regulation in the current procedural rules of the requirement to draw up complex written interrogation protocols in order to obtain personal data during the pre-trial investigation, as well as to inform about criminal liability, creates preconditions for

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limiting and violating the principle of "immediacy" in the practice of criminal proceedings.

S.L. Lysachenko notes that interrogation at the stage of pre-trial investigation is not an effective means of obtaining information from a person. He notes that the results of the interrogation conducted by the investigator or prosecutor are irrelevant to the court. This leads to repeated interrogation of persons during the court hearing both at the pre-trial investigation stage and during the trial. The author comes to the conclusion that it is necessary to change the content of legal regulation of interrogation by investigators and prosecutors at the pre-trial investigation stage, in particular, to exclude the provision on warning of criminal liability and to simplify the procedure for conducting and recording interrogation. The position of S.L. Lysachenko should be supported. In the context of legislative regulation of the principle of "immediacy", the legal regulation of complex written interrogation protocols at the pre-trial investigation stage with warnings of criminal liability of individual participants in criminal proceedings is quite controversial.

L.M. Loboyko is right to point out that there is no alternative to the principle of "directness". The court must independently determine what is evidence and what is not. Even if the person who was to be interrogated died before the interrogation, the court may still use his or her testimony given to the investigator in person. Thus, it is important that the court does not limit itself to the inadmissible factual data and that all other data is "entitled" to be considered as evidence (LOBOYKO L.M., 2012). However, taking into account the principles of fairness and efficiency, possible changes in legislation aimed at simplifying interrogation procedures and improving its effectiveness must be justified and take into account all aspects of criminal proceedings.

This position of the scholar is particularly relevant during martial law, since the active phase of hostilities may make it difficult for participants to appear or be brought to testify in criminal proceedings. In particular, as a result of hostilities, some subjects of criminal procedural relations may be injured or killed, which will make it impossible to obtain their personal testimony in court (PEREIRA, L. de M.; GEWEHR, M. A.; ALVES, M. F., 2020).

In this regard, during the period of martial law, it is advisable to consider an exception to the rule of direct examination of personal testimony by the court. However, it remains important to preserve the legal regulation of written interrogation protocols at the pre-trial investigation stage with warning of criminal liability for individual

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participants.

The practical implementation of such proposals should be carried out through the exercise of judicial discretion, taking into account the specific circumstances of criminal proceedings under martial law. If the testimony of a participant in criminal proceedings is duly obtained and recorded during the pre-trial investigation, and it is impossible or difficult to provide it in court, the court may recognise it as evidence and use it to justify the procedural decision (KRUSHYNSKYI S., PUNDA O., DOBRIANSKA O., 2023). However, in case of violation of the legal procedure for obtaining pre-trial testimony or if there are doubts about the observance of human rights and freedoms during interrogation during the pre-trial investigation, the court has no right to recognise personal testimony recorded in written protocols as evidence without meeting the "directness" requirement.

This approach is in line with international standards for ensuring human rights and freedoms in criminal proceedings, ensuring a balance between the efficiency of justice and the protection of the rights and freedoms of participants in criminal proceedings under martial law. In particular, with such documents as the European Convention on Human Rights (ECHR) and the International Covenant on Civil and Political Rights (ICCPR). According to these standards:

The European Convention on Human Rights (ECHR) guarantees the right to a fair trial (Article 6), including the right to equal access to a court and the right to the presumption of innocence. The Convention also calls on States parties to provide an effective remedy and an opportunity for review in criminal cases.

The International Covenant on Civil and Political Rights (ICCPR) also guarantees the right to a fair trial (Article 14), including the right to equal access to a court, the right to presumption of innocence and the right to a public trial.

V. Tochylovskyi, referring to the first verdict of the International Criminal Court in the Lubanga case, notes that court decisions should be based only on evidence that meets the following criteria

- the evidence must be "presented" to the court, which means that it must be included in the court file and have the appropriate legal form;

- the evidence must be "discussed in court", i.e., part of the court record, which includes oral evidence given during court hearings as well as written materials considered in court;

- the evidence must be declared admissible by the court, meaning that the court decides whether the evidence can be used in making a decision.

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In the Trial Chamber's view, the phrase "discussed at the hearing" covers not only oral evidence, but also other materials that were "discussed" in the parties' written motions at any stage of the proceedings, such as documents submitted by a party with a motion to join. This practice is known in the International Tribunals and courts of the Anglo-Saxon system as "admission of evidence through the bar table motions" (TOCHILOVSKY V., 2012).

V. Tochylovskyi makes an important point about international tribunals, pointing out that their Rules of Procedure contain provisions that allow a tribunal to accept written testimony of a witness in place of oral testimony. According to Article 92 of these Rules, the court may accept written evidence from persons who fail to appear at trial due to threats, violence or bribery. In addition, Article 92 quater allows the court to accept written statements from persons who are deceased or unable to testify due to physical or mental illness, as well as persons whose whereabouts cannot be established. Additionally, in December 2009, the International Criminal Tribunal added Article 92 to its Rules of Procedure, which expanded the possibility of admitting written statements from persons who fail to appear in court due to threats, violence or bribery.

These international standards recognise the importance of pre-trial statements recorded in the interrogation reports at the pre-trial investigation stage, which may be admitted as evidence in extreme situations where participants in criminal proceedings are unable to appear at the trial due to danger or other circumstances.

In the case of Huseyn and Others v. Azerbaijan, the European Court of Human Rights noted that a fair and competitive trial implies that the court should give more weight to the testimony of a witness given during a court hearing than to the protocol of his pre-trial interrogation conducted by the prosecution, unless there are good reasons to find otherwise. In other words, if there are good reasons, the European Court of Human Rights allows for the possibility of recognising as evidence pre-trial testimony recorded in the interrogation protocols at the pre-trial investigation stage.

According to these international standards, the judicial process must be fair, efficient and unhindered, and the rights and freedoms of participants in criminal proceedings must be respected and protected in all circumstances, including during martial law.

It is worth noting that the decision to recognise pre-trial testimony as evidence cannot be made formally by the court only because of the introduction of martial law throughout the state. The court must assess the specific circumstances of the court proceedings, the intensity of hostilities in a particular territory, the level of danger to the

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participants in the criminal proceedings and other factors. Only with such an approach can the court determine the "impossibility" of obtaining testimony during the trial and the possibility of using testimony obtained at the pre-trial investigation stage as evidence.

In addition, exceptions to the principle of immediacy of judicial examination of testimony may be allowed only if fundamental human rights and freedoms are respected. These rights include the right to respect for human dignity (prohibition of torture), the right to freedom from self-incrimination (right to silence), the right to defence, the right to cross-examination, etc. These and other important human rights and freedoms are ensured through the mandatory participation of a defence counsel and the use of technical means of video recording of pre-trial interrogations, as provided for by law. Also, procedural guarantees of human rights and freedoms may include: participation of a person's understanders or legal representatives during interrogation at the stage of pre-trial investigation, etc.

E. Krapyvin, Y. Belousov and A. Orleans correctly point out the possibility of using extrajudicial testimony in situations of martial law, if appropriate procedural guarantees are provided and the interrogation is fully video recorded. Such testimony can be used by the court to substantiate its conclusions even without direct presentation of it at a court hearing in front of the participants of criminal proceedings (KRAPYVIN E., BELOUSOV Y., ORLEANS A., 2022). However, in extraordinary circumstances of criminal proceedings, such as illness, death, threat of danger, etc., the results of pre-trial interrogations may be recognised by the court as evidence even without observing all procedural guarantees. Such a decision may be made in exceptional circumstances, when it is impossible to ensure a full trial due to objective circumstances that impede or complicate a fair trial.

Thus, during the legal regime of martial law, it is necessary to ensure that the legal regulation of interrogation is carried out in such a way that in exceptional cases the court has the opportunity to deviate from the principle of direct examination of testimony. As a general rule, such cases should provide for the observance of due process guarantees of human rights and freedoms in the course of obtaining and recording testimony at the pre-trial investigation stage. However, in the most extreme situations of criminal proceedings, such as illness, death, threat of danger, etc., the court should be able to recognise the results of pre-trial interrogations as evidence even without observing procedural guarantees.

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4 CONCLUSIONS

In the context of criminal proceedings under martial law, numerous difficulties and challenges arise in gathering evidence. The most important aspects are to ensure fairness, respect for fundamental human rights and freedoms, and compliance with international standards of justice. Analysing trial practice and international standards, it can be concluded that exceptional circumstances, such as armed conflict, require that evidence gathering issues be addressed with particular care. It is important to ensure that interrogations and other procedural actions are carried out in compliance with all legal requirements and international standards.

In the light of the analysis of the legal regulation of interrogation under martial law and the international standards governing this area, it becomes clear that exceptional circumstances, such as armed conflict, threaten the administration of justice and fair criminal proceedings. Even in such circumstances, it is important to preserve and protect the basic principles of the rule of law and ensure compliance with international standards of justice. One of the key issues is the use of pre-trial testimony in court proceedings. According to international standards, written statements of witnesses or persons who cannot be present in court due to objective circumstances may be admitted as evidence. However, it is important that this happens only if due process guarantees are provided and fundamental human rights and freedoms are respected.

It is clear that in some cases, when access to court is limited or impossible due to extraordinary circumstances, the judiciary may be forced to take into account evidence obtained at the pre-trial investigation stage. However, this should be done within the framework of clearly defined procedures that ensure the protection of the rights and interests of all participants in criminal proceedings.

Thus, to ensure fair proceedings under martial law, it is important to develop a balanced approach that takes into account the specifics of the conflict and international standards of justice. Preserving the basic principles of the rule of law and protecting human rights is an integral part of such an approach that will ensure the observance of justice and the rule of law in the context of a military conflict.

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