

Implementation of the Principle of the Rule of Law In the Criminal Process of Ukraine under Martial Law*

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Abstract

The scientific article focuses on the theoretical and applied problem of applying the rule-of-law principle in the criminal process in Ukraine under martial law. It is stated that in such critical conditions for Ukraine, most elements of the rule of law are negatively affected in the form of relevant restrictions, the necessity of which is of an objective nature due to the need to prevent global threats to the independence and territorial integrity of the state, repel armed aggression, ensure national security, as well as real and potential threats to human rights and freedoms. It is emphasized that to prevent violations of constitutional rights and human liberties, the problem of combating crime and protecting human rights under special legal regimes should be solved through such interrelated components as: legislative establishment of permissible restrictions on rights; creation of a mechanism for monitoring the adoption of measures that provide for limitations on rights; activities of institutions that ensure the protection and restoration of violated rights. It is concluded that in connection with the military events in Ukraine and numerous facts of committing illegal acts, it is essential to ensure not only the effective investigation of criminal offenses, the preservation of evidence, and ensuring the proper quality of investigative (search) actions, but also compliance with the rule of law and other principles of criminal justice. This requires a comprehensive approach: improving criminal procedural legislation, involving international organizations, and enhancing the skills of justice and law enforcement officials. It is emphasized that, under such conditions, international cooperation in criminal proceedings is of great importance to Ukraine and helps improve both the regulatory framework and practical experience. It is summarized that to unconditionally bring to justice those responsible for committing war and other crimes on the territory of Ukraine, criminal proceedings must be conducted in accordance with the general standards, requirements, and procedures of international judicial institutions, which will testify to the rule of law in the country, even in conditions of forced restriction of the rights and freedoms of citizens.

Keywords: Principles; Rule of law; Criminal proceeding; War crimes; International cooperation; Judicial proceedings; procedural actions

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A. INTRODUCTION

The Constitution of Ukraine defined Ukraine as a sovereign and independent, democratic, social, legal state, in which a person, his life and health, honor and dignity, inviolability and security are recognized as the highest social value; human rights and freedoms and their guarantees determine the content and direction of the state's activities; the establishment and provision of human rights and freedoms is the primary duty of the state, which is responsible to man for its activities (Articles 1, 3). ([Constitution of Ukraine, 1996](#))

The development of socio-economic and socio-political relations, scientific thought, law, and state institutions contributed to the development of a firm belief in society that the construction of a democratic and legal state is not possible without ensuring effective mechanisms for the implementation, protection and defense of the rights, freedoms, and legitimate interests of individuals and legal entities in accordance with the principle of the rule of law. At the same time, understanding the natural rights and freedoms that belong to a person frees him from excessive dependence on the state, allowing him to defend his rights against any encroachments.

One of the key tasks of the rule of law is to ensure the effectiveness of the criminal justice system, thereby guaranteeing adequate protection of human and citizen rights and freedoms. Modern Ukraine, on whose territory martial law has been introduced, faces the question of whether its modern national judicial system is capable of ensuring the administration of justice and the right of citizens to a fair trial within a reasonable time, which is a fundamental and priority duty of the state. In conditions of special legal regimes, these aspects are unfortunately not always fully implemented, and the state faces some problems, the comprehensive solution of which is a priority area for a modern democratic society.

During wartime, compliance with human rights, in particular the principles of the rule of law, in criminal proceedings is of great importance for maintaining law and order and protecting the country's security. However, unfortunately, situations can often arise when, during martial law, human rights and freedoms are violated by the military, law enforcement agencies, or other entities authorized to conduct criminal proceedings. The purpose of the article is to study the essence of the principle of the rule of law in criminal proceedings, determine its legal nature and regulatory consolidation at the international and national levels, clarify the theoretical and practical aspects of compliance under martial law, and study the positive experience of applying the case law of the European Court of Human Rights to resolve the main problems of fair trial in Ukraine, in particular in the context of international cooperation.

B. METHODS

Achieving the goal set in the scientific article necessitated the use of a combination of general scientific and special methods of cognition. Their choice was determined by the specifics of the study's object and subject. In particular, the use of the dialectical method deepened the conceptual apparatus regarding the essence of the categories of "principles of criminal proceedings", "principle of the rule of law", and "international cooperation". The methods of analysis and synthesis, induction, and deduction were used to formulate tasks and draw conclusions throughout the study. Using the formal legal method and system analysis, problems in legislation and law enforcement were identified, and specific proposals were formulated to eliminate them. The use of the system-structural method enabled the investigation of the features of the implementation of the rule-of-law principle in Ukraine's criminal process, particularly under martial law, as well as the establishment of the relationship among its constituent elements. The comparative legal method was used to compare the provisions of international legal acts, the practice of the European Court of Human Rights, and national legislation. To obtain reliable, objective research results, all methods were used in an interconnected, interdependent manner.

C. RESULTS AND DISCUSSION

1. The essence of the principle of the rule of law

The significance of the principles of criminal proceedings as an institution lies not only in the fact that they are procedural guarantees of direct action and provide the procedural basis for the entire criminal proceedings. The guiding rules, which are enshrined in the overwhelming majority in the Constitution of Ukraine and in the current Criminal Procedure Code of Ukraine, are an indicator of the "democratic maturity" of the criminal process, their practical application reveals problematic issues and imperfections of individual criminal procedure institutions or provisions, which, in turn, determines the ways to improve criminal procedural legislation, determines the methodology of scientific research, etc.

Among the various legal categories related to the implementation of the rule-of-law principle in criminal proceedings, the principles and the system of criminal proceedings serve as the starting point. The specified category reflects the legal ideology of a particular society and the criminal procedural policy of the state, sets an algorithm for the law-making and law-enforcement process, largely determines the hierarchy of other legal categories, mediates their interrelation, interdependence, interdependence, and non-contradiction. ([Pogrebnyak, 2008](#))

Each principle of criminal proceedings has its own unique content, and some principles cannot be considered secondary, while others are the main ones, since they are interconnected; the content and form of criminal proceedings are based on them. That is why it is essential to determine the essence of the rule of law in criminal proceedings as the basis for procedural actions and procedural decisions. After all, it is on the principle of the rule of law that all procedural actions and procedural decisions in criminal proceedings, without exception, related, first of all, to the restriction of human rights and freedoms in criminal proceedings, including in conditions of special legal regimes, should be based.

According to the current criminal procedural legislation in Ukraine, the content of the principle of the rule of law is the fact of recognizing a person, his life, health, as well as other rights and freedoms as the highest values, which accordingly determine the content and direction of the state's activities ([Criminal Procedure Code of Ukraine. Law of Ukraine, 2012](#)). Indeed, human rights and freedoms can be most significantly violated in the criminal justice system. Therefore, criminal proceedings must be carried out in strict adherence to the rule of law.

The Constitutional Court of Ukraine, in its decision of 01.04.2008, noted that the "rule of law" means the rule of law in society. The law itself is not limited to laws that must be imbued with the ideas of justice, freedom, and equality, but also includes social regulators such as moral norms, traditions, and customs ([Decision of the Constitutional Court of Ukraine, 2008](#)). Thus, a violation of the rule of law principle during criminal proceedings will entail the recognition of evidence as inadmissible, obviously inadmissible, and ultimately the annulment of the court decision. ([Bespalko, 2020](#)) At the same time, the specified principle in criminal proceedings must be actually applied, taking into account the practice of the European Court of Human Rights, to minimize or eliminate the need for future appeals by citizens involved in criminal proceedings with complaints about the violation of their rights to this court.

The legislator, determining the place of the rule of law among the principles of criminal proceedings, assigned it a prominent place within the system of criminal procedural principles. The generality and universality of the specified principle allow it to extend its effect to absolutely all institutions and elements of criminal proceedings. This means that the principle of the rule of law is directly applicable at all stages of criminal proceedings, in particular during the review of court decisions. Thus, the rule of law is the basis for the implementation of procedural actions and the adoption of procedural decisions. It is on the principle of the rule of law that all procedural actions and decisions, without exception, related, first of all, to the restriction of human rights and

freedoms in criminal proceedings should be based. In this case, it does not matter which rights are restricted: whether freedom and inviolability when choosing a preventive measure, or the right to property when imposing an arrest on property, etc. Because in criminal proceedings, especially during pre-trial investigation, there are frequent cases of violations of the constitutional rights of an individual, the attention of defense attorneys should be drawn primarily to the facts of the inadmissible use of evidence obtained as a result of a significant violation of human rights and freedoms guaranteed by the Constitution of Ukraine, including such actions as obtaining proof as a result of torture, cruel, inhuman or degrading treatment or threats of such therapy, as well as violations of a person's right to defense, obtaining testimony from a person who was not notified of his or her right to refuse to testify, as well as obtaining testimony from a witness who will later be recognized as a suspect. ([Legkikh, 2012](#))

It should be emphasized that the effect of the principle of the rule of law also extends to the judicial stages of the criminal process. In particular, in Art. 2 of the Law of Ukraine "On the Judiciary and the Status of Judges" states that the court, administering justice based on the rule of law, ensures everyone the right to a fair trial and respect for other rights and freedoms guaranteed by the Constitution and laws of Ukraine, as well as international treaties, the consent to which has been given by the Verkhovna Rada of Ukraine. Also, in accordance with Article Seven of this law, everyone is guaranteed the protection of their rights, freedoms, and interests within a reasonable time by an independent, impartial, and fair court established by law (On the Judiciary and the Status of Judges. Law of Ukraine, 2016). The functional dependence of the state and its bodies on society, their subordination to society, and their orientation to social needs should underlie the effectiveness of the mechanisms for implementing the rule of law. ([Adygezalova et al., 2022](#)) Thus, from the provisions of the Law of Ukraine "On the Judiciary and the Status of Judges", it is seen that the term "fair trial" is used both in the context of the requirement for the court as an institution (an independent, impartial, fair court established by law), and from the position of the requirement for the procedure for conducting judicial proceedings (administering justice based on the rule of law, ensuring everyone's right to a fair trial).

While simultaneously adhering to the requirements of the rule of law and legality, the basis of each procedural action should not be only the formal implementation of a legislative prescription. This is a fundamentally new attitude of the requirements of procedural legislation to the implementation by participants of procedural activities aimed at respecting human rights and freedoms, which, as a result, ensures due legal procedure. At the same time, due

process should not be influenced by any considerations of a non-legal nature, as well as any factors that do not relate to the fairness or reasonableness of legal requirements under the conditions of suspicion or indictment, even if such are put forward in defense of the right or law. ([Mykhailenko, 2019](#))

The rule of law, on the one hand, sets the vector of all other principles of criminal proceedings. On the other hand, it penetrates each of the following precisely with the slogan of the highest value of the rights and freedoms of the participants in criminal proceedings. Thus, the principle of the rule of law manifests the requirement of procedural impartiality, which is formally connected with rational and reasonable restrictions established by law. Despite all the challenges in these extraordinary conditions, it is the rule of law that ensures the necessary balance of public and private interests, the stability of the state administration system, proper judicial protection, and human rights and freedoms.

2. Theoretical and Practical Aspects of Compliance with the Rule of Law under Martial Law in Ukraine

The Constitution of Ukraine establishes the possibility of imposing certain restrictions on rights and freedoms during martial law or a state of emergency, specifying the period of validity of these restrictions and listing rights and liberties that are not subject to such restrictions under any conditions (Part 2 of Article 64). The latter include, in particular: equality before the law (Article 24), the right to life (Article 27), the right to respect for dignity (Article 28), the right to freedom and personal integrity (Article 29), the right to housing (Article 47) and some others ([Constitution of Ukraine, 1996](#)), that is, these are the so-called absolute (natural) rights that are inalienable. Other rights and freedoms for the period of martial law may be subject to corresponding restrictions.

In the context of compliance with the rule of law, it is advisable to focus on those violations of procedural issues of obtaining evidence in criminal proceedings, which, in our opinion, may indicate the inadmissibility of evidence obtained in an appropriate manner, which should be taken into account in investigative and judicial practice. According to clause 1, part 1, article 615 of the Criminal Procedure Code of Ukraine, a search or inspection of a dwelling may be carried out without the involvement of witnesses in the event of a potential danger to their life or health ([Criminal Procedure Code of Ukraine, 2012](#)). However, in such a case, it is necessary to make a continuous video recording using available technical means. ([Glovyuk et al., 2023](#)) Failure to comply with this procedure will indicate a failure to abide by the rule of law and other principles of criminal procedure.

Also, according to clause 2, part 1, article 615 of the Criminal Procedure Code of Ukraine, if the investigating judge objectively does not have the opportunity to exercise his powers provided for in art. art. 140, 163, 164, 170, 173, 206, 219, 232, 233, 234, 235, 245–248, 250 and 294 of the Criminal Procedure Code of Ukraine, the head of the relevant prosecutor's office may exercise these powers at the request of the prosecutor or at the request of the investigator, agreed with the prosecutor ([Criminal Procedure Code of Ukraine, 2012](#)). The establishment of the objective impossibility of exercising these powers must be carried out in each case separately and depends on the situation on the ground, depending on the presence of active hostilities or attacks on the civilian population. Any sources can justify the lack of objective possibility to exercise powers, in particular official documents of the relevant state bodies, from the content of which it is clear that the investigating judge does not have the opportunity to exercise judicial control as of the moment of adoption of the decision (and not in conditions of martial law in general). ([Shabelnikov, 2022](#))

According to the standards of effective investigation, as determined by the practice of the ECHR, it is critical to comply with the requirements of efficiency and the reasonable speed of investigation. In particular, in the decision of the ECHR in the case “Ryzhenko v. Ukraine” (Application No. 55902/11). Despite the possible obstacles and difficulties that may arise in a particular situation, national authorities must respond promptly to them to maintain public faith in their commitment to the principles of the rule of law and their ability to prevent manifestations of facilitation of or tolerance for unlawful acts. ([European Court of Human Rights Case “Ryzhenko v. Ukraine”, 2011](#))

The course and results of investigative (search) actions must be recorded using procedural documents or technical means, except when technical reasons prevent their use. Suppose it is not possible to compile procedural documents on the results of an investigative (search) action or other procedural actions. In that case, the recording is carried out using available technical means. In this case, the protocol must be compiled no later than 72 hours after the completion of the investigative (search) action or other procedural action. ([Tetryatnik, 2021](#))

Suppose the investigating judge cannot exercise his powers and choose a preventive measure for up to 30 days due to the objective lack of such an opportunity. In that case, such powers may be exercised by the relevant head of the prosecutor's office upon the investigator's or prosecutor's request. However, this may increase the risk of bias and abuse of the head of the prosecutor's office's powers. According to Clause 2 of Article 615 of the Code of Criminal Procedure of Ukraine, the validity of a ruling of an investigating judge or the head of the

prosecutor's office may be extended for up to a month upon the request of the investigator or prosecutor. However, further extensions of the pre-trial investigation are possible. In our opinion, it is advisable to consider the possibility of introducing a procedure for further confirmation by the investigating judge of the legality of such a decision at the first opportunity or after the termination or cancellation of martial law, since otherwise there may be a risk of abuse of powers by the relevant head of the prosecutor's office. It is worth noting that such a procedure can be applied only to an exceptional list of crimes or in extraordinary circumstances involving grave crimes, if the delay in selecting a preventive measure may lead to the loss of evidence of the criminal offense or the escape of the suspect.

In addition to the detention of a person in accordance with the procedure provided for in Article 208 of the Code of Criminal Procedure of Ukraine, during martial law, such detention is permitted if there are grounds indicating the suspect's potential escape. An authorized official carries out the detention without a decision of the investigating judge or a resolution of the head of the prosecutor's office. ([Rogalska and Fomina, 2022](#))

The list of grounds for detention in martial law, compared to peacetime, is expanded, since the law establishes the possibility of detaining a person not only on the grounds specified in Article 208 of the Criminal Procedure Code of Ukraine, but also in cases where there are grounds to believe that escape is possible to evade criminal liability of a person suspected of committing virtually any type of crime. It has been proven that the application of these regulatory provisions is due to the effect of martial law and, accordingly, the moment and circumstances of the commission of the crime. Such a basis, in particular, can be put forward to justify the detention of a person suspected of collaborationist activities, violation of the laws and customs of war, the creation of paramilitary or armed formations not provided for by law, as well as "non-war crimes", etc. ([Supreme Court. Official website, 2022](#)).

It is also worth noting that, in accordance with Part 4 of Article 95 of the Criminal Procedure Code of Ukraine, the court may base its conclusions only on the testimony it directly received during the court session or obtained in accordance with the procedure provided for in Article 225 of the Criminal Procedure Code. The court is not entitled to substantiate court decisions with testimonies provided to the investigator or prosecutor, or to refer to them, except for the procedure for obtaining testimonies specified in Article 615 of the Code of Criminal Procedure of Ukraine ([Code of Criminal Procedure of Ukraine, 2012](#)). That is, if pre-trial testimonies not deposited were obtained in criminal

proceedings during the period of martial law, they may be used as a source of evidence in court proceedings, only if the conditions stipulated in Part 11 of Article 615 of the Code of Criminal Procedure of Ukraine are met and if the restrictions arising from the content of Article 87 of the Code of Criminal Procedure of Ukraine are not violated. This concerns compliance with the conditions for recording the interrogation using available technical means of video recording, as well as with the requirement that the interrogation of the suspect be conducted with the participation of a defense attorney. We believe that failure to comply with the specified conditions violates the principle of the rule of law and constitutes grounds for recognizing such testimonies as inadmissible, thereby rendering them unusable in criminal proceedings.

In our opinion, the testimony should also be recorded in the protocol in compliance with the rules of Art. 104 of the Code of Criminal Procedure of Ukraine, based on the provisions of Clause 1, Part 1, Article 615 of the Code of Criminal Procedure of Ukraine, that procedural actions during criminal proceedings are recorded in the relevant procedural documents, as well as using technical means of recording criminal proceedings, except in cases where recording using technical means is impossible for technical reasons. In the absence of the possibility of compiling procedural documents on the progress and results of investigative (search) actions or other procedural actions, recording is carried out by available technical means with subsequent compilation of the relevant protocol no later than seventy-two hours from the moment of completion of such investigative (search) actions or relevant procedural actions. In addition, according to the reasonable remark of I. Glovyuk, the mechanism provided for in Part 2 of Art. 104 of the Code of Criminal Procedure of Ukraine: if the interrogation is recorded using technical means, the text of the testimony may not be entered into the relevant protocol, provided that none of the participants in the procedural action insists on this. In such a case, the protocol shall state that the testimony is recorded on the information carrier attached to it. ([Glovyuk, 2022](#))

Suppose the authorized person does not take such measures when obtaining testimony under martial law, in our opinion. In that case, the court should recognize the testimony obtained in this way as clearly inadmissible evidence in criminal proceedings at the stage of trial. A similar decision should be made during the study and assessment, specifically during the trial, in cases where, in accordance with Part 11 of Article 615 of the Code of Criminal Procedure of Ukraine, testimony obtained before the entry into force of the specified norm is assessed.

The issue of compliance with the terms of the pre-trial investigation in criminal proceedings concerns the proper organization of the pre-trial investigation by the investigator and proper prosecutorial supervision over it. At the time of writing this scientific article, the Verkhovna Rada is considering draft laws that propose amending the Code of Criminal Procedure and abolishing the ground for closing criminal proceedings—the expiration of the pre-trial investigation term after the person is notified of the suspicion. It is also proposed that prosecutors, without judicial oversight, decide how long to continue investigating criminal offenses.

According to some experts, such changes to the Criminal Procedure Code of Ukraine create risks of violating the rule of law, the presumption of innocence, the principle of adversarial proceedings, and placing the burden of proof on the defense, which significantly affects the business environment of Ukraine ([Mamchenko, 2024](#)). The proposed changes introduce even greater uncertainty into criminal proceedings, paralyzing and blocking their economic and commercial activities through investigative (search) actions and delaying deadlines.

Compliance with human rights, in particular the principles of the rule of law, in criminal proceedings during martial law is a significant and urgent problem that requires finding ways to address it. One possible way to solve this problem is to increase the legal literacy of employees of justice and law enforcement agencies involved in documenting and investigating criminal offenses by conducting specialized courses and training on applying the provisions of international and national legislation in conditions of special legal regimes.

It is worth emphasizing the importance of ensuring access to legal aid and the protection of human rights by developing a system of free legal aid and involving human rights organizations (Lukyanenko, 2016), increasing the number of independent observers and international organizations that monitor the observance of human rights in criminal proceedings during martial law, in particular the Organization for Security and Cooperation in Europe, the Office of the UN High Commissioner for Human Rights, and the European Court of Human Rights.

One important way to improve the process of observing human rights in criminal proceedings during martial law is to revise the Criminal Procedure Code of Ukraine. An important component of ensuring the rule of law is the accessibility of the court for citizens, which requires additional efforts to organize open and safe court sessions. It is also advisable to provide systematic, advanced

training for judges, prosecutors, investigators, and lawyers to study the specifics of criminal proceedings under special legal regimes.

3. Implementation of the Rule of Law During International Cooperation in Criminal Proceedings

The principles of international cooperation in criminal proceedings include the rule of international law on the protection of human rights and fundamental freedoms (absolute prohibition of torture, humanism, etc.). According to the political component of the Association Agreement between Ukraine and the European Union, the purpose of the association is, in particular, to strengthen cooperation in the field of justice, freedom and security in order to ensure the rule of law and respect for human rights and fundamental freedoms (paragraph "e" of part 2 of Article 1) (Association Agreement between Ukraine and the European Union, 2014). The document defines general principles of activity and specific areas of cooperation. The Parties agreed to cooperate at the bilateral, regional, and international levels to prevent and combat terrorism in accordance with international law, international human rights law, humanitarian law, and the law governing the status of refugees (Article 13). It is envisaged that efforts will focus on preventing and combating money laundering and the financing of terrorism.

It is worth emphasizing that not only the specifics of the legislative regulation of international cooperation between investigative bodies, the prosecutor's office, and the court, but also its practical aspects, because without them it is impossible to investigate and further bring the guilty to justice, the degree of compliance with the rule of law in the conditions of martial law introduced in Ukraine. In addition, in addition to those mentioned above, amendments and additions were made to the CPC of Ukraine to Article 615 of the CPC of Ukraine, which relate to such aspects of criminal proceedings as: the possibility of stopping the pre-trial investigation due to the lack of an objective possibility of applying to the court with an indictment; the possibility of automatically extending the term of the decision on the application of a preventive measure in the form of detention in the preparatory court proceedings and at the stage of trial in the event of the impossibility of considering this issue by the court.

Section IX "International Cooperation in Criminal Proceedings" of the Criminal Procedure Code of Ukraine defines the concept of "international legal assistance", which means the conduct by the competent authorities of one state of procedural actions, the performance of which is necessary for a pre-trial

investigation, trial or for the execution of a sentence passed by a court of another state or an international judicial institution. ([Criminal Procedure Code of Ukraine, 2012](#))

In accordance with Article 24 of the Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity, War Crimes and Other International Crimes, the main areas of mutual legal assistance are indicated, in particular, obtaining testimony or statements from persons, including, to the extent that it complies with the domestic legislation of the requested State Party, by means of videoconference; inspection of objects and places; provision of information, evidence and expert opinions; conducting searches, seizures and confiscations; service of judicial documents; providing originals or certified copies of relevant documents, records and computer data, including official, banking, financial, corporate or business records; facilitating the voluntary departure of persons and the temporary transfer of detained persons to the requesting State Party; using special investigative techniques; conducting cross-border surveillance; establishing joint investigation teams; taking measures to ensure the appropriate protection of victims and witnesses and their rights; providing any other type of assistance that is not contrary to the domestic law of the requested State Party. ([Glovyuk, 2023](#))

One of the key areas of international cooperation of the Office of the Prosecutor General is the creation of a Joint Investigation Team to investigate the aggression of the Russian Federation and its war crimes on the territory of Ukraine (Joint Investigation Team), which includes Ukraine, Lithuania, Poland, Estonia, Latvia, Slovakia, Romania and the Office of the Prosecutor of the International Criminal Court. ([International Cooperation of the Office of the Prosecutor General, 2024](#))

The Prosecutors General of Ukraine and the United States also signed a Memorandum of Understanding, which established the official framework for cooperation between the two countries to ensure that those responsible for war crimes are brought to justice. This Memorandum will help eliminate obstacles to the effective exchange of necessary and timely information, to proper documentation and preservation of evidence, and to the expansion of the base of logistical cooperation. ([The Attorneys General of the United States and Ukraine Signed a Memorandum of Understanding, 2022](#))

Even though currently investigations of war crimes against Ukraine are being conducted in more than 20 countries around the world and with the support of various international organizations, in particular, the International

Criminal Court, almost all of these crimes will be investigated by national law enforcement agencies, and judicial decisions will be made by Ukrainian courts. Therefore, it is absolutely justified and necessary to attract international assistance in the investigation of war crimes, in particular to provide expert consultations, receive advice on technical and procedural aspects of conducting investigative (search) actions, conduct examinations and research using modern equipment. The implementation of these initiatives is important not only to improve the quality of documentation and the investigation of such socially dangerous acts, but also to prevent violations of the fundamental rights and interests of participants in the criminal process.

In summary, we note that despite several novelties regarding the recording of war crimes, the situations regarding the establishment of the process of recording and seizing material evidence, conducting examinations, exhuming the bodies of victims, establishing the whereabouts of witnesses, conducting investigative experiments under the threat of shelling, mining and combat situations remain insufficiently regulated, which may result in a violation of the fundamental rights and freedoms of participants in the criminal process, in particular, a violation of the principle of the rule of law.

At present, there is still some legislative uncertainty regarding the regulation of the investigation of international war crimes. The main problematic aspects are, in particular, the selection, recording, and preservation of the evidence base to ensure it is admissible in the future when cases are considered by international judicial institutions or national courts of Ukraine. This calls into question compliance with the conceptual principle of the rule of law.

D. CONCLUSIONS

To prevent violations of constitutional rights and human freedoms, the problem of combating crime and protecting human rights under special legal regimes, in particular under martial law, should be solved through such interrelated components as: legislative establishment of permissible restrictions on rights; creation of a mechanism for monitoring the adoption of measures that provide for restrictions on rights; activities of institutions that ensure the protection and restoration of violated rights. Passivity and inaction can lead to socially dangerous consequences, including mass restrictions and violations of rights and freedoms, the decline of universal human values, and the growth of legal nihilism — the main components of the rule of law.

Under martial law introduced in Ukraine, most elements of the rule of law are negatively affected in the form of relevant restrictions, the necessity of which

is objective due to the need to prevent global threats to the independence and territorial integrity of the state, repel armed aggression, ensure national security, as well as real and potential threats to human rights and freedoms. In the context of respecting the rights of participants in criminal proceedings, the aforementioned restrictions in such special conditions must relate to absolute human rights and freedoms, have proper justification, and be character.

In connection with military events in Ukraine and numerous facts of committing unlawful acts, it is important to ensure not only the effective investigation of criminal offenses, the preservation of evidence, and ensuring the proper quality of investigative (search) actions, but also compliance with the principle of the rule of law and other principles of criminal justice. This requires a comprehensive approach: improving criminal procedural legislation, involving international organizations, and enhancing the qualifications of justice and law enforcement officers.

National doctrine and law enforcement practice have only just begun developing recommendations and instructions for documenting and investigating war crimes. The adaptation of the Ukrainian regulatory framework in this area under martial law is at an early stage, which may cast doubt on the adequacy of responding to current challenges in the field of criminal justice. Therefore, international cooperation in criminal proceedings is of great importance for Ukraine and helps to improve both the regulatory framework and practical developments. In order to unconditionally bring to justice those responsible for committing war and other crimes on the territory of Ukraine, criminal proceedings must be conducted in accordance with the general standards, requirements, and procedures of international judicial institutions, which will demonstrate the rule of law in the country even under special legal regimes. Within the framework of criminal proceedings, the following needs to be further developed: cooperation with competent institutions of international organizations and governments of foreign states; contractual framework for cooperation procedures and mechanisms, improving the procedure for providing legal assistance - concluding interdepartmental agreements with the governments of partner countries regarding the competence of prosecutors and investigative bodies; involving foreign specialists in conducting consultations and trainings for Ukrainian specialists, etc.

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