

Regarding derogation measures

According to the Law of Ukraine of 03.03.2022 № 2111-IX “On Amendments to the Criminal Procedure Code of Ukraine and Law of Ukraine “On Pre-trial Detention” on additional regulation of law enforcement in martial law” in the case of introduction in Ukraine or its localities (administrative territory) of martial law, state of emergency, anti-terrorist operation or measures to ensure national security and defense, repel and deter armed aggression of the Russian Federation and/or other States and the emergence of an objective impossibility and if:

1) there is no technical possibility to access the Unified Register of Pre-trial Investigations - the decision to initiate a pre-trial investigation is made by the investigator, the prosecutor, on which the relevant resolution is issued; information to be entered into the Unified Register of Pre-trial Investigations shall be entered into it as soon as possible, and procedural actions during criminal proceedings shall be recorded in the relevant procedural documents, as well as by technical means of recording criminal proceedings, except when recording by technical means is impossible for technical reasons;

2) there is no objective possibility of execution of powers provided for in Articles 140, 163, 164, 170, 173, 189, 233, 234, 235, 245, 247, 248, and 294 of this Code within the time limits established by law, as well as the power to choose a measure of restraint in the form of detention for up to 30 days to persons who are suspected of committing crimes under Articles 109-115, 121, 127, 146, 146¹, 147, 152, 153, 185, 186, 187, 189-191, 201, 258-258⁵, 260-263¹, 294, 348, 349, 365, 377-379, 402-444 of the Criminal Code of Ukraine – and, in exceptional cases, also in the commission of other serious or particularly serious crimes, if the delay in choosing a measure of restraint may lead to the loss of traces of a criminal offense or the escape of a person suspected of committing such crimes – such powers are performed by the head of the relevant prosecutor's office, taking into account the requirements of Chapter 37 of this Code, at the request of the prosecutor or investigator agreed with the prosecutor;

3) there is no objective possibility of appeal to the court with an indictment - the term of pre-trial investigation in criminal proceedings is suspended and resumed if the grounds for the suspension cease to exist. Prior to the suspension of the pre-trial investigation, the prosecutor is obliged to decide on the extension of the detention period.

2. The decision of the investigating judge on detention or the prosecutor's decision on detention taken in accordance with the requirements and taking into account the circumstances provided for this Article, may be extended up to one month by the head of the relevant prosecutor's office at the request of the prosecutor or investigator prosecutor. The term of detention may be extended several times within the pre-trial investigation period.

3. Decisions taken by the prosecutor in the cases and in accordance with the procedure provided for in this Article shall be immediately notified to the high-level prosecutor and the court as soon as possible, according to a list determined by the State Judicial Administration of Ukraine.

4. Complaints against decisions, actions or omissions of the prosecutor, taken or committed in the exercise of powers specified in part one of this article, shall be considered by the court within whose territorial jurisdiction the criminal offense was committed, after ensuring its operation in another locality or the nearest located court.

5. If it is impossible to hold a preparatory hearing, the pre-trial detention measure chosen during the pre-trial investigation shall be considered extended until the relevant issue is resolved in the preparatory hearing, but not longer than two months.

6. In case of expiration of the court ruling on detention and impossibility of court consideration of the issue of extension of detention in the manner prescribed by this Code, the chosen precautionary measure in the form of detention shall be considered extended until the court decides, but not longer than for two months.

The application of the norms of this Law necessitates deviation from Ukraine's obligations under paragraph 3 of Article 2, Articles 9, 14 of the International Covenant on Civil and Political Rights and Articles 5, 6 and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

II

Regarding the time and territory affected by the derogation

The abovementioned legislative norms came into force on March 8, 2022 and are applicable during a state of emergency and martial law.

A state of emergency in Ukraine was imposed on the territory of Vinnytsia, Volyn, Dnipropetrovsk, Zhytomyr, Zakarpattia, Zaporizhia, Ivano-Frankivsk, Kyiv, Kirovohrad, Lviv, Mykolaiv, Odesa, Poltava, Rivne, Sumy, Ternopil, Kharkiv, Kherson, Kherson, Khmelnytsky Chernivtsi, Chernihiv regions, the city of Kyiv at 00 hours 00 minutes on February 24, 2022, for a period of 30 days.

Martial law in Ukraine was imposed at 05:30 on February 24, 2022 for a period of 30 days.