



LAW OF UKRAINE

On amendments to the Criminal Procedure Code of Ukraine regarding the features of pre-trial investigation of criminal offenses related to the disappearance of missing persons under special circumstances during martial law

The Verkhovna Rada of Ukraine **resolves:**

I. To make the following changes to the Criminal Procedure Code of Ukraine (Vidomosti Verkhovnoi Rada of Ukraine, 2013, No. 9-13, p. 88):

1. Paragraph 9 of Part One of Article 3 shall be amended as follows:

"9) the head of the prosecutor's office - the Prosecutor General (the person performing his duties), the head of the regional prosecutor's office, the head of the district prosecutor's office and their first deputies and deputies acting within the limits of their powers."

2. In Article 36 :

1) paragraph 2 of part two shall be worded as follows:

"2) have full access to materials, documents and other information related to the pre-trial investigation.

The Prosecutor General (the person performing his duties) has the right to issue a written instruction to the head of the pre-trial investigation body, which is mandatory for execution, regarding the provision of pre-trial investigation materials to him, establishing the deadline and method of its implementation.

After obtaining access to the materials of the pre-trial investigation, the Prosecutor General (the person performing his duties) has the right to instruct another prosecutor to verify compliance with the laws during the pre-trial investigation";

2) paragraph three of part four shall be deleted;

3) paragraphs two and three of part five shall be worded as follows:

"In the event of an ineffective pre-trial investigation or in the presence of objective circumstances that make it impossible for the relevant pre-trial investigation body to function or conduct a pre-trial investigation under martial law, the Prosecutor General (the person performing his duties) has the right to entrust another pre-trial investigation body with the conduct of a pre-trial investigation of criminal offenses attributed to the jurisdiction of the Bureau of Economic Security of Ukraine, as well as to entrust the Bureau of Economic Security of Ukraine with the investigation of criminal offenses attributed to the jurisdiction of other pre-trial investigation bodies."

The Prosecutor General (the person performing his duties) has the right to entrust another pre-trial investigation body with the pre-trial investigation of criminal offenses classified as subject to the jurisdiction of the National Anti-Corruption Bureau of Ukraine, in the event of an ineffective pre-trial investigation or in the presence of objective circumstances that make it impossible for the relevant pre-trial investigation body to function or conduct a pre-trial investigation under martial law, as well as to entrust the National Anti-Corruption Bureau of Ukraine with the investigation of criminal offenses classified as subject to the jurisdiction of other pre-trial investigation bodies.

3. In Article 37 :

1) Part one shall be supplemented with a new paragraph of the following content:

"The First Deputy Prosecutor General, the Deputy Prosecutor General - Head of the Specialized Anti-Corruption Prosecutor's Office, and the Deputy Prosecutor General may be determined by prosecutors who will exercise the powers of the prosecutor in a specific proceeding, exclusively by decision of the Prosecutor General (the person performing his duties)";

2) to supplement with part four as follows:

"4. In cases provided for in parts two and three of this article, the powers of the prosecutor assigned to the First Deputy Prosecutor General, the Deputy Prosecutor General - Head of the Specialized Anti-Corruption Prosecutor's Office, and the Deputies of the Prosecutor General may be assigned to another prosecutor of the prosecutor's office bodies exclusively by decision of the Prosecutor General (the person performing his duties)."

4. Part three of Article 39 shall be amended as follows:

"3. The head of the pre-trial investigation body is obliged to carry out the instructions and instructions of the prosecutor, which are given in writing. Failure by the head of the pre-trial investigation body to comply with the lawful instructions and instructions of the prosecutor, given in accordance with the procedure provided for by this Code, entails liability provided for by law, and is also the basis for making a decision specified in part five of Article 36 of this Code."

5. Part four of Article 40 shall be amended as follows:

"4. The investigator is obliged to carry out the prosecutor's instructions and instructions, which are provided in writing. Failure by the investigator to comply with the prosecutor's lawful instructions and instructions, provided in accordance with the procedure provided for by this Code, entails liability provided for by law and is grounds for the investigator's removal from conducting a pre-trial investigation by the head of the pre-trial investigation body."

6. Part three of Article 40¹ shall be worded as follows:

"3. The investigator is obliged to carry out the prosecutor's instructions and instructions, which are provided in writing. Failure by the investigator to comply with the prosecutor's lawful instructions and instructions, provided in accordance with the procedure provided for by this Code, entails liability provided for by law and is grounds for the investigator's removal from conducting the inquiry."

7. Part one of Article 41 shall be amended as follows:

"1. Operational units of the National Police, security agencies, the National Anti-Corruption Bureau of Ukraine, bodies of the State Bureau of Investigation, bodies of the Bureau of Economic Security of Ukraine, bodies of the State Border Service of Ukraine, bodies, institutions for the execution of sentences and pre-trial detention centers of the State Penitentiary Service of Ukraine shall carry out investigative (search) actions and covert investigative (search) actions in criminal proceedings upon a written order of an investigator, inquirer, prosecutor, and the detective unit, operational and technical unit and internal control unit of the National Anti-Corruption Bureau of Ukraine - upon a written order of a detective, prosecutor of the Specialized Anti-Corruption Prosecutor's Office or a prosecutor exercising the powers of a prosecutor in the relevant criminal proceedings."

8. In Article 216 :

1) paragraph 3 of part five shall be worded as follows:

"3) a criminal offense provided for in Article 369 , Part One^{of} Article 369-2 the Criminal Code of Ukraine, was committed against an official defined in Part Four of Article 18 of the Criminal Code of Ukraine or in Clause 1 of this Part.

The Prosecutor General (the person performing his duties) may, by his resolution, refer criminal proceedings in criminal offenses provided for in paragraph one of this part to the jurisdiction of detectives of the National Anti-Corruption Bureau of Ukraine, if the relevant criminal offense has caused or could have caused serious consequences to the freedoms and interests of an individual or legal entity protected by law, as well as to state or public interests. Serious consequences should be understood as causing harm to the vital interests of society and the state, in particular, state sovereignty, territorial integrity of Ukraine, and the exercise of constitutional rights, freedoms and obligations of three or more persons.

Detectives of the National Anti-Corruption Bureau of Ukraine, in order to prevent, detect, stop and solve criminal offenses that are included in its jurisdiction by this article, by decision of the Director of the National Anti-Corruption Bureau of Ukraine and in agreement with the Prosecutor General (the person performing his duties), may also investigate criminal offenses that are included in the jurisdiction of investigators of other bodies.

In the event that the internal control unit of the National Anti-Corruption Bureau of Ukraine establishes criminal offenses provided for in Articles 354 , 364-370 of the Criminal Code of Ukraine, which were committed by an official of the National Anti-Corruption Bureau of Ukraine (except for the Director of the National Anti-Corruption Bureau of Ukraine, his first deputy and deputy), such criminal offenses are investigated by detectives of the specified unit";

2) to supplement with part twelve as follows:

"12. Disputes about subjectivity shall be resolved by the head of the highest-level prosecutor's office. A dispute about subjectivity in criminal proceedings, which may fall under the jurisdiction of the National Anti-Corruption Bureau of Ukraine, the Bureau of Economic Security of Ukraine, shall be resolved by the Prosecutor General (a person performing his duties)."

9. Part five of Article 218 shall be deleted.

10. The first sentence of part three of Article 233 shall be worded as follows: "3. An investigator, inquirer, prosecutor shall have the right, prior to the issuance of a ruling by an investigating judge, to enter a person's home or other property only in urgent cases related to saving people's lives, preventing an immediate threat to their health, sexual freedom or personal safety, or with the direct prosecution of persons suspected of committing crimes provided for in Articles 112 , 115-119 , 121 , 122 , 124 , 127 , 129 , 135 , 136 , 146 , 147 , 149 , 152-156¹ , 258 , 258¹ , 259 of the Criminal Code of Ukraine, or in case of urgent need the seizure or preservation of evidence relating to such crimes."

11. Part five of Article 284 shall be amended as follows:

"5. The prosecutor's decision to close criminal proceedings against a suspect is not an obstacle to the continuation of the pre-trial investigation into the relevant criminal offense.

In the cases provided for in this article, when the prosecutor makes a decision to close criminal proceedings, the participants in the criminal proceedings have the right to file a corresponding petition directly with the Prosecutor General (the person performing his duties), if the pre-trial investigation in criminal proceedings is carried out regarding criminal offenses committed by:

The President of Ukraine, whose powers have been terminated, the Prime Minister of Ukraine, a member of the Cabinet of Ministers of Ukraine, the First Deputy and Deputy Minister, a member of the National Council of Ukraine on Television and Radio Broadcasting, the National Commission for State Regulation of Financial Services Markets, the National Commission on Securities and Stock Market, the Antimonopoly Committee of Ukraine, the Chairman of the State Committee for Television and Radio Broadcasting of Ukraine, the Chairman of the State Property Fund of Ukraine, his First Deputy and Deputy, a member of the Central Election Commission, a People's Deputy of Ukraine, the Commissioner of the Verkhovna Rada of Ukraine for Human Rights, the Director of the National Anti-

Corruption Bureau of Ukraine, his First Deputy and Deputy, the Director of the Bureau of Economic Security of Ukraine, his First Deputy and Deputy, the Director of the State Bureau of Investigation, his First Deputy and Deputy, the First Deputy and Deputy Prosecutor General, the Deputy Prosecutor General - Head of the Specialized Anti-Corruption Prosecutor's Office, the Chairman of the National Bank of Ukraine, his First Deputy and Deputy, Head of the National Agency for the Prevention of Corruption, his deputy, Secretary of the National Security and Defense Council of Ukraine, his first deputy and deputy, Permanent Representative of the President of Ukraine in the Autonomous Republic of Crimea, his first deputy and deputy, advisor or assistant to the President of Ukraine, head of a permanent auxiliary body established by the President of Ukraine, his deputies, advisor or assistant to the Chairman of the Verkhovna Rada of Ukraine, Prime Minister of Ukraine;

a person whose position belongs to category "A" ;

a deputy of the Supreme Council of the Autonomous Republic of Crimea, a deputy of the regional council, the city council of the cities of Kyiv and Sevastopol, a local government official whose position is classified as one of the first and second categories of positions;

judge, judge of the Constitutional Court of Ukraine, juror (during the performance of his duties in court), Chairman, Deputy Chairman, member, inspector of the High Council of Justice, Chairman, Deputy Chairman, member, inspector of the High Qualification Commission of Judges of Ukraine;

prosecutors of the prosecutor's office specified in paragraphs 2-19 of part one of Article 15 of the Law of Ukraine "On the Prosecutor's Office";

a person from the senior management of the state criminal enforcement service, civil protection bodies and units, a senior member of the National Police, a customs service official who has been awarded the special title of state advisor to the customs service of the III rank and above, an official of the state tax service bodies who has been awarded the special title of state advisor to the tax service of the III rank and above;

a serviceman of the senior officer corps of the Armed Forces of Ukraine, the Security Service of Ukraine, the State Border Service of Ukraine, the State Special Transport Service, the National Guard of Ukraine and other military formations formed in accordance with the laws of Ukraine;

the head of a large business entity, in the authorized capital of which the share of state or municipal ownership exceeds 50 percent.

Based on the results of the consideration of the petition, the Prosecutor General (the person performing his duties) issues a resolution to close the criminal proceedings against the person or refuses to grant the petition.

12. Paragraph 3 of Part Three of Article 294 shall be amended as follows:

"3) up to twelve months - by an investigating judge at the request of the investigator, agreed with the Prosecutor General (the person performing his duties)."

13. Paragraphs 4-6 of part two of Article 470 shall be amended as follows:

"4) in criminal proceedings concerning criminal misdemeanors or a non-serious crime, the pre-trial investigation of which is carried out by detectives of the National Anti-Corruption Bureau of Ukraine or which was sent to court by the prosecutor of the Specialized Anti-Corruption Prosecutor's Office, - upon agreement with the Prosecutor General (a person performing his duties), the Deputy Prosecutor General - the head of the Specialized Anti-Corruption Prosecutor's Office (a person performing his duties) or his first deputy or deputy, the head of a unit of the Specialized Anti-Corruption Prosecutor's Office;

5) in criminal proceedings concerning a serious crime, the pre-trial investigation of which is carried out by detectives of the National Anti-Corruption Bureau of Ukraine or which was sent to court by the prosecutor of the Specialized Anti-Corruption Prosecutor's Office, - upon agreement with the Prosecutor General (a person performing his duties), the Deputy Prosecutor General - the head of the Specialized Anti-Corruption Prosecutor's Office (a person performing his duties) or his first deputy or deputy;

6) in criminal proceedings concerning a particularly serious crime, the pre-trial investigation of which is carried out by detectives of the National Anti-Corruption Bureau of Ukraine or which was sent to court by the prosecutor of the Specialized Anti-Corruption Prosecutor's Office, - upon agreement with the Prosecutor General (the person performing his duties), the Deputy Prosecutor General - the head of the Specialized Anti-Corruption Prosecutor's Office (the person performing his duties)."

14. In part one of Article 480:

1) paragraph 9 shall be worded as follows:

"9) The Director of the National Anti-Corruption Bureau of Ukraine, his first deputy and deputies, employees of the National Anti-Corruption Bureau of Ukraine";

2) to supplement with paragraphs 11-15 of the following content:

"11) the head of a permanent auxiliary body established by the President of Ukraine, his deputy;

12) Prime Minister of Ukraine, member of the Cabinet of Ministers of Ukraine, first deputy and deputy minister;

13) a civil servant whose position belongs to category "A" ;

14) Director of the State Bureau of Investigation, his first deputy and deputy;

15) Director of the Bureau of Economic Security of Ukraine, his first deputy and deputy."

15. Paragraph 2 of Part One of Article 481 shall be amended as follows:

"2) a People's Deputy of Ukraine, a candidate for President of Ukraine, the Commissioner of the Verkhovna Rada of Ukraine for Human Rights, the Chairman or another member of the Accounting Chamber, a prosecutor of the Specialized Anti-Corruption Prosecutor's Office, the Director of the

National Anti-Corruption Bureau of Ukraine, his first deputy and deputy, deputies of the Prosecutor General, the Chairman of the National Agency for the Prevention of Corruption, his deputy, the head of a permanent auxiliary body established by the President of Ukraine, his deputy, the Prime Minister of Ukraine, a member of the Cabinet of Ministers of Ukraine, the first deputy and deputy minister, the Director of the State Bureau of Investigation, his first deputy and deputy, the Director of the Bureau of Economic Security of Ukraine, his first deputy and deputy, a civil servant whose position belongs to category "A" , - the Prosecutor General (a person performing the duties of the Prosecutor General)".

16. Part one of Article 615 shall be supplemented with the fifteenth paragraph of the following content:

"During martial law, at the request of the victim, who is a close relative or family member of a person who has disappeared under special circumstances, the prosecutor may, by his motivated resolution, determine the place of pre-trial investigation of criminal offenses provided for 115 , 146-1⁴³⁸ and 442-1¹ of the Criminal Code of Ukraine, related to the disappearance of a person missing under special circumstances in connection with an armed conflict, hostilities, temporary occupation of part of the territory of Ukraine, at the place of residence (stay) of the victim, who is a close relative or family member of a person who has disappeared under such circumstances."

17. Paragraph 20⁷ of Section XI "Transitional Provisions" shall be supplemented with a new paragraph of the following content:

"The provisions of paragraph fifteen of part one of Article 615 of this Code shall also apply within three years from the date of termination or cancellation of martial law introduced by Decree of the President of Ukraine dated February 24, 2022 No. 64/2022 "On the Introduction of Martial Law in Ukraine", approved by the Law of Ukraine "On Approval of the Decree of the President of Ukraine "On the Introduction of Martial Law in Ukraine" dated February 24, 2022 No. 2102-IX ".

II. Final provisions

1. This Law shall enter into force on the day following the day of its publication.

2. To make the following changes to the Law of Ukraine "On the Prosecutor's Office" (Vidomosti Verkhovnoi Rada of Ukraine, 2015, No. 2-3, Art. 12 with subsequent amendments):

1) in Article 8¹ :

Paragraph two of part six shall be worded as follows:

"The highest-level prosecutors for the heads of departments, divisions and their deputies, prosecutors of the Specialized Anti-Corruption Prosecutor's Office are the Prosecutor General (the person performing his duties), the Deputy Prosecutor General - the head of the Specialized Anti-Corruption Prosecutor's Office, his first deputy and deputy, for the deputy and first deputy heads of the Specialized Anti-Corruption Prosecutor's Office - the Prosecutor General (the person performing his duties), the Deputy Prosecutor General - the head of the Specialized Anti-Corruption Prosecutor's Office, for the Deputy Prosecutor General - the head of the Specialized Anti-Corruption Prosecutor's Office - the Prosecutor General (the person performing his duties). The First Deputy and Deputies of the Prosecutor General do not have the right to give instructions to the prosecutors of the Specialized Anti-Corruption Prosecutor's Office and to perform other actions that directly relate to the exercise by the prosecutors of the Specialized Anti-Corruption Prosecutor's Office of their powers. Written orders of an administrative nature regarding the organization of the activities of the Specialized Anti-corruption Prosecutor's Office are issued with the mandatory approval of the Deputy Prosecutor General - Head of the Specialized Anti-corruption Prosecutor's Office (the person performing his duties)";

paragraph fifteen of part nine shall be deleted;

2) Part two of Article 41 shall be supplemented with paragraph 3 with the following content:

"3) liquidation of the prosecution body, reorganization, change in the structure or staffing of prosecutors of the prosecution body in relation to this position";

3) in Article 51 :

in part one:

point 9 to be deleted;

to supplement with paragraph 9¹ with the following content:

"9-1¹ disagreement with the appointment to a vacant or temporarily vacant position or with the transfer to such positions to another prosecutor's office in cases of

liquidation, reorganization, change in the structure or staffing of prosecutors of the prosecutor's office in which the prosecutor holds a position";

in paragraph fifteen, the numbers "1-9" shall be replaced by the numbers "1-9¹ ";

in part five, the number "9" shall be replaced by the numbers "9¹ ";

4) Article 60 shall be amended as follows:

" **Article 60.** Dismissal of a prosecutor from office in case of disagreement with appointment to a vacant or temporarily vacant position or transfer to such positions to another prosecutor's office in cases of liquidation, reorganization, change in the structure or staffing of prosecutors of the prosecutor's office in which the prosecutor holds a position

1. A prosecutor shall be dismissed from office by a person authorized by this Law to make a decision on the dismissal of a prosecutor, upon the submission of the relevant body conducting disciplinary proceedings, in cases of liquidation, reorganization, change in the structure or staffing of prosecutors of the prosecutor's office in which the prosecutor holds a position, if:

1) the prosecutor did not consent to the appointment to a vacant or temporarily vacant position or transfer to such positions to another body of the prosecutor's office within thirty days from the date of notification of the availability of vacant positions;

2) the prosecutor has unsuccessfully passed a competition for transfer to a higher-level prosecutor's office if he submits a corresponding application within thirty days.

2. When considering the issue of dismissal of a prosecutor on the grounds specified in part one of this article, the relevant body conducting disciplinary proceedings shall ensure compliance with the person's guarantees regarding participation in the meeting and involvement of a representative, providing explanations, expressing objections, motions and challenges, and receiving a copy of the relevant decision. Repeated failure of the prosecutor to appear at the meeting, regardless of the reason, shall not prevent consideration of the issue in his absence";

5) Section XIII "Transitional Provisions" shall be supplemented with paragraph 5⁴ of the following content:

⁴. "5 During the period of martial law:

1) a prosecutor of a lower-level prosecutor's office may be appointed as a prosecutor of the Office of the Prosecutor General, a regional prosecutor's office by transfer without a competition, as provided for in Article 38 of this Law, as well as a person who did not hold the position of prosecutor on the day of entry into force of the Law of Ukraine "On Amendments to the Criminal Procedure Code of Ukraine Regarding the Peculiarities of Pre-Trial Investigation of Criminal Offenses Related to the Disappearance of Persons Missing in Special Circumstances During Martial Law".

Such a person must meet the requirements for a candidate for the position of prosecutor of the prosecutor's office of the appropriate level, as provided for in Article 27 of this Law;

2) appointment to the position of prosecutor of the Office of the Prosecutor General, regional prosecutor's office is carried out on the basis of a submitted application;

3) persons who do not hold the position of prosecutor shall submit the documents provided for in Article 30 of this Law;

4) the appointment to the position of prosecutor of persons who do not hold the position of prosecutor shall be carried out after a special inspection in accordance with the procedure established by the Law of Ukraine "On Prevention of Corruption".

President of Ukraine

V. ZELENSKYI

Kyiv
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