DOI: 10.21564/2225-6555.2025.28.347037

"Non-Alternative" Detention in the Legislation and Judicial Practice of Ukraine

Andrii V. Skrypnyk*
Poltava Law Institute
of Yaroslav Mudryi National Law University
Poltava, Ukraine
**e-mail: antey.pl@gmail.com*

Ivan A. Titko
Poltava Law Institute
of Yaroslav Mudryi National Law University
Poltava, Ukraine

Abstract
The article examines problematic aspects of ensuring the right to liberty and personal inviolability under martial law in Ukraine. The topic's relevance is determined by legislative changes that provide for the de facto "non-alternative" application of detention for specific categories of criminal offenses, as well as the need to assess their compliance with constitutional guarantees of human rights. The article aims to determine the consistency between the provisions of Parts 6 and 8 of Art. 176 of the Criminal Procedure Code of Ukraine and the constitutional guarantees of the right to liberty and personal inviolability. The study employs dialectical, formal-legal, formal-logical, analytical, and synthetic methods, which enable a comprehensive assessment of legislative approaches, the position of the Constitutional Court of Ukraine, and law enforcement practice. The study's results demonstrated that the formal existence of an alternative in the form of bail does not eliminate the judicial tendency to perceive detention as the only possible preventive measure for the category of proceedings specified in Parts 6 and 8 of Art. 176 of the CPC. While recognizing that the legislative approach reflected in these provisions may be considered permissible from the standpoint of conventional standards and justified by the need for effective counteraction to armed aggression, the authors conclude that the current norms of the CPC are inconsistent with those constitutional guarantees that cannot be restricted even under martial law (Art. 29 of the Constitution of Ukraine). It seems promising to explore the development of an optimal model for striking a balance between public interest and the observance of fundamental rights in emergency legal regimes in the future.

Keywords: *preventive measures; criminal proceedings under martial law; judicial control; principles of criminal proceedings.*

«Безальтернативне» тримання під вартою у законодавстві та судовій практиці України

Андрій Володимирович Скрипник*
Полтавський юридичний інститут
Національного юридичного університету імені Ярослава Мудрого
Полтава, Україна
**e-mail: antey.pl@gmail.com*

Іван Андрійович Тітко
Полтавський юридичний інститут
Національного юридичного університету імені Ярослава Мудрого
Полтава, Україна

Анотація
У статті досліджуються проблемні аспекти забезпечення права на свободу та особисту недоторканність в умовах воєнного стану в Україні. Актуальність теми обумовлена законодавчими змінами, що передбачають фактичне «безальтернативне» застосування тримання під вартою до окремих категорій кримінальних правопорушень, а також потребою оцінки їх відповідності конституційним гарантіям прав людини. Метою статті є визначення міри узгодженості положень частин 6 і 8 ст. 176 КПК України із конституційними гарантіями права на свободу та особисту недоторканність. У дослідженні використано діалектичний, формально-юридичний, формально-логічний, аналітичний і синтетичний методи, що дозволило комплексно оцінити законодавчі підходи, позиції Конституційного Суду України і правозастосовну практику. Результати дослідження продемонстрували, що формальна наявність альтернативи у вигляді застави не усуває тенденції у судовій практиці до сприйняття тримання під вартою як єдиного можливого запобіжного заходу щодо категорії проваджень, вказаної у частинах 6 і 8 ст. 176 КПК. Одночасно із визнанням законодавчого підходу, відображеного у частинах 6 і 8 ст. 176 КПК, допустимим з точки зору конвенційних стандартів та виправданим – з точки необхідності ефективної протидії збройній агресії, автори роблять висновок про неузгодженість чинних норм КПК тим конституційним гарантіям, які не можуть бути обмежені навіть в умовах воєнного стану (ст. 29 Конституції України). Перспективним у подальшому видається пошук оптимальної моделі забезпечення балансу між публічним інтересом і дотриманням фундаментальних прав у надзвичайних правових режимах.

Ключові слова: *запобіжні заходи; кримінальне провадження в умовах воєнного стану; судовий контроль; засади кримінального провадження.*

Introduction

As it is well known, criminal procedure is a branch of law in which fundamental human rights and freedoms may be subject to significant and prolonged restrictions. One of the tasks of criminal proceedings at the national level is to ensure that no person is subjected to unjustified procedural coercion and that each participant is afforded proper legal procedure (Part 1, Art. 2 of the CPC). For this reason, in such a highly sensitive area of law from the standpoint of protecting rights and fundamental freedoms, maintaining a reasonable balance between the interests of society in combating crime and the guarantees of private participants in criminal proceedings becomes particularly important. Ensuring this balance should be a cross-cutting objective not only within the framework of legislative activity but also in the sphere of law enforcement. Therefore, analyzing certain procedural institutions may serve as a "litmus test" of how successfully legislators and practitioners maintain this balance.

The introduction of martial law in Ukraine has shifted priorities in nearly all spheres of state and legal reality, and criminal justice has been no exception. In particular, for the duration of martial law, the legislator decided to return to the previously existing model of "non-alternative" detention for specific categories of criminal offenses – namely, crimes against the foundations of national and public security, as well as military criminal offenses – by introducing corresponding amendments, in particular to Parts 6 and 8 of Art. 176 of the CPC. This rather decisive step by the lawmaker, aimed at strengthening criminal procedural measures against such offenses, significantly shifts the balance between public and private interests in favor of the former (public interests). At the same time, restrictions on rights and freedoms, even under extreme conditions, must not undermine the very essence of the right itself. Therefore, the issue of ensuring the guarantees of the right to liberty and personal inviolability becomes especially relevant.

The scientific understanding of the observance of the right to freedom and personal integrity in Ukraine was engaged in, in particular, by: V. Pcholkin, O. Fedosova, L. Kotova, & V. Merkulova [1], O. Kaplina [2], A. Tumanyants, H. Hetman, V. Babanina & R. Dovbash [3], G. Sobko, A. Svintsytskyi, O. Pushkar, V. Butynskyi, & Y. Shvets [4]. In turn, the issue of the permissible framework for restricting human rights and freedoms in Ukraine, in particular, under martial law, was raised in their works by I. Hloviuk, V. Zavtur, I. Zinkovskyy, & L. Pavlyk [5], O. Babikov, O. Omelchenko, I. Fedorenko, D. Hurina, & O. Babikova [6], V. Krykun, I. Hanenko, & I. Bykov [7], S. Ablamskyi, V. Galagan,

I. Basysta, & Z. Udovenko [8], V. Zavhorodnii, O. Orel, G. Muliar, O. Kotlyar, & V. Zarosylo [9], H. Teteriatnyk [10]. However, despite the disclosure in scientific works of key aspects of the raised issues (observance of the right to liberty and personal integrity and ensuring the balance of rights and freedoms under martial law), there is currently no comprehensive work devoted to understanding the relevance of the restriction of the right to liberty and personal integrity introduced by the legislator in the form of "non-alternative" detention in a synthetic perspective, taking into account both norm-setting and law enforcement trends.

Therefore, the article aims to study the compliance of the amendments introduced by the legislator to Parts 6 and 8 of Art. 176 of the CPC with the guarantees of the right to liberty and personal integrity. To achieve this goal, the following research tasks must be consistently solved:

1) analysis of the criminal procedural law regarding the definition of "non-alternative" detention (in retrospect and in the current version);
2) identification of key arguments of the logic of the constitutional control body in terms of the analysis of the constitutionality of the previously introduced and currently valid amendments;
3) assessment of the state of enforcement of detention in relation to criminal offenses provided for in Parts 6 and 8 of Art. 176 of the CPC;
4) preliminary assessment of compliance with the guarantees of the right to liberty and personal integrity during the application of "non-alternative" detention under Parts 6 and 8 of Art. 176 of the CPC.

Materials and Methods

The method of scientific research serves as a tool that, on the one hand, allows for a highly reliable examination of the subject of scientific inquiry, and on the other hand, demonstrates the researcher's level of scientific competence. Considering that modern phenomena of state and legal reality are of a complex nature – being shaped not only by legal but also by political, social, and other factors – a comprehensive use of scientific methodology is a necessary precondition for the qualitative scholarly understanding of the issue under study.

The following research methods will serve as "assistants" in the study of legislation and judicial practice:

– the dialectical method, which makes it possible to comprehend the problems of ensuring the guarantees of the right to liberty and personal inviolability in their integrity and interconnection with public interests;
– the formal-legal method, which will serve as a means of understanding the content of the categories enshrined in legislation, the logic of

argumentation developed by the constitutional control body, and the formation of conclusions regarding the conformity of the degree of restriction to established guarantees of rights and freedoms;
- the formal-logical method, which will allow for a critical understanding of the arguments expressed by the constitutional control body and national judicial authorities to identify the most well-founded answers to the issues under study;
- the analytical method, which will serve as an applied tool for distinguishing the key arguments of the positions expressed by the Constitutional Court of Ukraine (hereinafter referred to as CCU) and by national courts of general jurisdiction;
- the synthetic method, through which it will be possible to formulate a preliminary assessment of the compliance of the legislative approach to "non-alternative" detention with the current guarantees of human rights and freedoms.

The first stage of the study involves identifying the object and subject of the research, formulating problem questions, and selecting appropriate theoretical and empirical materials.

At the second stage, the collected materials will be analyzed using the methods listed above to form a comprehensive understanding of the legislative approach to "non-alternative" detention in both the legislative and law enforcement dimensions.

The third stage of the research involves systematizing the processed materials to formulate conclusions and outline promising directions for further study.

Results and Discussion

The CPC establishes a list of preventive measures applied by an investigating judge or a court (personal obligation, personal surety, bail, house arrest, detention – Part 1 of Art. 176 of the CPC), classifying detention as an exceptional preventive measure that may be applied only if the prosecutor proves that none of the milder preventive measures can prevent the risks specified in Art. 177 of the CPC, except in the cases provided for in Parts 6 and 8 of Art. 176 of the CPC.

At the same time, beginning in April 2022, several amendments were made to the CPC of Ukraine, according to which detention was established as the "default" preventive measure for certain criminal proceedings. Thus, pursuant to Part 6 of Art. 176 of the CPC, during the period of martial law, persons suspected or accused of committing crimes under Articles 109–114-2, 258–258-6, 260, 261, 437–442-1 of the CCU, and where the risks specified in Art. 177 of this Code are present, are subject to the

preventive measure specified in Para. 5 of Part 1 of this Art. 177 (detention). Furthermore, according to Part 8 of the same Article, during the period of martial law, military personnel suspected or accused of committing crimes under Articles 402–405, 407, 408, 429 of the CCU are subject exclusively to the preventive measure specified in Para. 5 of Part 1 of this Article (detention). Both provisions, as indicated by the phrase "during the period of martial law", are temporary and connected to the operation of an extraordinary legal regime – the legal regime of martial law. The exceptional nature of this regime and the urgent need for the state to enhance the effectiveness of all forms of its activities, including law enforcement, have justified the reintroduction of detention as the "default" preventive measure. This model was previously in effect under Part 5 of Art. 176 of the CPC from October 7, 2014, to June 25, 2019.

The purpose of introducing the exception established in Part 6 of Art. 176 of the CPC, as indicated by the legislator, is "the protection of Ukraine's national interests, the protection of Ukrainian statehood from crimes against national and public security, and the prevention of offenders evading criminal punishment for committing crimes of the specified category, as well as crimes against peace, the security of humanity, and the international legal order, and the *prevention of unfounded or unmotivated court decisions in selecting a preventive measure for this category of persons that does not involve detention*" [11]. In turn, the purpose of introducing the exception for military personnel is "to make it impossible to apply any preventive measures other than detention to military personnel who have committed certain military crimes during the period of martial law", since "a military crime committed by a serviceman during the operation of the martial law regime *indicates the highest degree of socially dangerous conduct*, and therefore the *only preventive measure that may be applied to such a serviceman is detention*" [12].

The above-mentioned objectives for adopting the respective amendments to the procedural law reflect at least two normative intentions that are particularly important for the scope of our study: a) both exceptions contain a penitentiary component, which is not inherent to the nature of preventive measures; b) both exceptions emphasize the social dangerousness of the act allegedly committed by the suspect, which likely diverts attention from other important factors relevant to the application of a preventive measure (such as the individual characteristics of the person, etc.)[1].

[1] It is worth noting that, in this context, Part 6 of Art. 176 of the CPC differs from Part 8 of the same Article: the former uses the formulation "in the presence of the risks specified in Art. 177 of this Code". However, this distinction is neutralized by the overall orientation of both provisions, which, at both the legislative and law enforcement levels, are perceived as rules establishing detention as the "default" preventive measure.

It is worth noting that the approach of legislatively limiting the choice of preventive measures had already been reflected in the procedural law: from October 7, 2014, to June 25, 2019, Part 5 of Art. 176 of the CPC was in effect, which provided that preventive measures in the form of personal obligation, personal surety, house arrest, or bail could not be applied to persons suspected or accused of committing crimes under Articles 109–114-1, 258–258-5, 260, 261 of the CPC. This provision was declared unconstitutional by the CCU in the case concerning the constitutional complaints of M.A. Kovtun, N.V. Savchenko, I.D. Kostohlodov, and V.I. Chornobuk regarding the compliance of Part 5 of Art. 176 of the CPC of Ukraine with the Constitution of Ukraine (Constitutional Court decision No. 7-r/2019 of June 25, 2019) [13].

An analysis of the reasoning part of the mentioned decision allows us to assert that the following arguments served as the grounds for its adoption:

(a) "By establishing in the contested provision of the Code that detention is the only preventive measure for the relevant category of persons, the legislator deprived the investigating judge and the court of the possibility to apply a milder preventive measure to such persons"; "the investigating judge or the court, after weighing the relevant risks and the circumstances of a particular case, cannot apply to the specified persons any preventive measure milder than detention, as a result of which the judge and the court are deprived of the opportunity to issue a well-reasoned judicial decision and to provide proper justification for detention, which is inconsistent with international practice";
(b) "Detention by a reasoned decision of the investigating judge or court, within the meaning of Part 2 of Art. 29 of the Constitution of Ukraine, complies with the principle of the rule of law and minimizes the risk of arbitrariness – a result that cannot be achieved by considering only the gravity of the offense without assessing the specific circumstances of the case or the real reasons justifying the need for detention and the impossibility of applying other, milder, preventive measures";
(c) "The contested provision justifies detention by the gravity of the offense, which does not ensure a balance between the purpose of its application in criminal proceedings and the individual's right to freedom and personal inviolability" [13].

Based on the considerations set out above, the body of constitutional review reached an unequivocal conclusion that "the provisions of Part 5 of Art. 176 of the Code contradict Part 2 of Art. 3, Parts 1 and 2 of Art. 8, and Parts 1 and 2 of Art. 29 of the Constitution of Ukraine, as they violate the principle

of the rule of law and restrict an individual's right to freedom and personal inviolability" [13].

A detailed analysis of the reasoning underlying the finding that the legislative approach to restricting the choice of preventive measures is inconsistent with the Constitution of Ukraine shows that a legal provision which precludes adapting the choice of an appropriate preventive measure to the specific circumstances of the proceedings (the presence of risks, the characteristics of the person) does not comply with the constitutional provisions and guarantees provided within the framework of the right to liberty and personal inviolability.

However, unlike the previously established approach in the procedural law (mandatory detention – Part 5 of Art. 176 of the Criminal Procedure Code in the version before its provisions were declared unconstitutional), the current procedural law does not formally allow detention to be considered mandatory. Thus, Para. 8 of Part 4 of Art. 183 of the CPC grants the investigating judge or the court, during martial law, the right, when issuing a ruling on the application of a preventive measure in the form of detention, taking into account the grounds and circumstances provided for in Articles 177 and 178 of this Code, not to determine the amount of bail in criminal proceedings concerning crimes provided for in Articles 109–114-2, 258–258-6, 260, 261, 402–405, 407, 408, 429, 437–442-1 of the CPC. Taking into account the overlapping lists of criminal offenses for which the rule of "mandatory detention" applies, as well as their everyday normative basis (since identical legislative acts introduced the amendments to the CPC[2]), it can be asserted that the rule granting the right not to determine bail correlates with the rule on "mandatory detention".

Thus, in the aforementioned criminal proceedings during martial law, the investigating judge or the court can apply a preventive measure to the suspect or the accused:

(a) detention with bail determined;
(b) detention without bail determined. In addition, according to part 6 of Art. 176 of the CPC, another possible outcome of considering a motion for the application of a preventive measure in the form of

[2] This refers to the Law of Ukraine "On Amendments to the Criminal Code and the Criminal Procedure Code of Ukraine to Improve Liability for Collaboration Activities and the Specifics of Applying Preventive Measures for Crimes Against the Foundations of National and Public Security" No. 2198-IX of April 14, 2022, which supplemented Art. 176 of the CPC with part six, as well as the Law of Ukraine "On Amendments to the Criminal Procedure Code of Ukraine Regarding the Selection of Preventive Measures for Military Personnel Who Committed Military Crimes During Martial Law" No. 2531-IX of August 16, 2022, which provided for the addition of part eight to Art. 176.

detention is the refusal to grant it, as emphasized by representatives of the academic community [14].

An alternative in the form of bail served as the basis for the constitutional oversight body to recognize the provisions of Part 6 of Art. 176 of the CPC as consistent with the Constitution of Ukraine (constitutional). Thus, in the decision of the Constitutional Court of Ukraine in the case based on the constitutional complaints of S.A. Bychkov and A.A. Bai regarding the constitutionality of part six of Art. 176 of the Criminal Procedure Code of Ukraine, dated June 19, 2024, No. 7-r(II)/2024, the updated legislative approach was found to comply with the Constitution of Ukraine (constitutional) based on the following arguments:

(a) the purpose "for which the legislator supplemented Art. 176 of the Code with part six is legitimate, as the legislator intended to strengthen the protection of the sovereignty, territorial integrity, inviolability, defense capability, and the state, economic, and information security of Ukraine by establishing, through the mentioned provision of the Code, a *temporary (for the duration of martial law)* special procedure for applying a preventive measure in the form of detention to persons suspected or accused of committing crimes that, by their gravity and nature, are extremely dangerous under the conditions of martial law" (Para. 6.1 of the reasoning part);

(b) "the application, under part six of Art. 176 of the Code, during martial law, of a preventive measure in the form of detention to a person suspected or accused of committing crimes against the foundations of national security of Ukraine, public safety, peace, security of humankind, and international legal order, where risks defined in Art. 177 of the Code are present, is a necessary means to ensure the effectiveness of the investigation of such crimes and the fulfillment of the tasks of criminal proceedings under martial law, which is determined by the need for enhanced protection of the sovereignty, territorial integrity, inviolability, defense capability, and the state, economic, and information security of Ukraine" (Para. 6.2 of the reasoning part);

(c) "under part six of Art. 176 of the Code, the preventive measure in the form of detention is not defined as an exclusive, non-alternative preventive measure". Therefore, "part six of Art. 176 of the Code does not contradict Articles 3 and 8, Parts 1 and 2 of Art. 29, Part 1 of Art. 55, Part 1 of Art. 62, or Part 1 of Art. 64 of the Constitution of Ukraine, since this provision of the Code ensures enhanced guarantees for the protection of the constitutional right to liberty and personal inviolability of the individual against arbitrary interference,

as defined by Part two of Art. 29 of the Constitution of Ukraine" (Paras. 6.3, 7 of the reasoning part of the decision) [15].

Thus, the body of constitutional jurisdiction has recognized the current version of Part 6 of Art. 176 of the CPC as consistent with the Constitution of Ukraine. However, does this allow us to assert the constitutionality of the legislative approach to the normative restriction of the choice of preventive measures depending on the category of the criminal offense being investigated or considered? We shall attempt to clarify this further.

Despite the formal existence of an alternative to detention, law enforcement practice demonstrates a prevailing perception of this preventive measure as mandatory. This is illustrated by examples from case law, where detention was treated as the sole option in criminal proceedings falling under the lists provided in Parts 6 or 8 of Art. 176 of the CPC. For instance, in the ruling of the investigating judge of the Ordzhonikidzevskyi District Court of Kharkiv dated October 24, 2024 (case No. 644/8120/23), it is stated: "In accordance with Part 6 of Art. 176 of the CPC of Ukraine, during martial law, for persons suspected or accused of committing crimes under Articles 109–114-2, 258–258-6, 260, 261, 437–442 of the Criminal Code of Ukraine, and in the presence of the risks specified in Art. 177 of this Code, the preventive measure provided for in Para. 5 of part one of this Article applies, i.e., exclusively detention, which currently excludes the possibility of changing the preventive measure to 24-hour house arrest or bail" [16]. In case law, other examples can also be found where a similar legal interpretation is applied: prohibiting preventive measures other than detention [17; 18; 19; 20]. In contrast, a substantial body of judicial decisions reflects a different interpretation, where detention with the possibility of posting bail is considered a possible and permissible option under Parts 6 and 8 of Art. 176 of the CPC [see: 21-23].

Moreover, both representatives of the academic community [3, pp. 166-167] and the legal profession in Ukraine [24] have highlighted specific concerns regarding the respect for legal guarantees when applying the legislative approach to restricting the choice of preventive measures. For instance, academic community members noted, "The approach outlined in Parts 6 and 7 of Art. 176 of the CPC of Ukraine essentially does not take into account the idea of individualizing the application of preventive measures, as it eliminates the possibility of choosing any milder preventive measure, in particular in the case when the risks (escape, obstructing the investigation, etc.) are significantly reduced, taking into account the individual characteristics of the suspect or the accused. Suspicion in itself, the accusation of committing even a grave crime without taking into

account the identity of the suspect or the accused, the way the crime was committed, the evidence confirming his guilt, and other circumstances cannot be the basis for 'automatic' detention of the suspect or accused" [3, pp. 166-167].

At the same time, within the academic discussion, there are also positive assessments of the legislative approach to restricting the choice of preventive measures [14; 3, pp. 170-171]. Based on the arguments and positions reviewed above, it is entirely reasonable to offer an authorial perspective on the essence of the issue under study. In our view, the legislative approach to the normative restriction of the choice of preventive measures, while justified under martial law conditions, still leaves room for discussion regarding its consistency with the provisions of the Constitution, for the following reasons.

Firstly, the provisions introduced in Parts 6 and 8 of Art. 176 of the CPC restrict the right to liberty and personal inviolability, as they reduce the range of preventive measures that can be applied and, consequently, the degree of reasoning in the court's decision. Undoubtedly, such a restriction on a right that is not absolute is permissible under conventional standards, especially during extraordinary circumstances, as researchers of this issue have rightly emphasized [3, p. 164; 25; 26]. However, permissibility under conventional standards does not automatically imply compliance with constitutional standards, as will be discussed further.

Secondly, introducing the martial law regime in Ukraine, under the Constitution of Ukraine, can serve as a basis for limiting not all legal guarantees. According to Part 2 of Art. 64 of the Constitution of Ukraine, in conditions of martial law or a state of emergency, the rights and freedoms set out in Articles 24, 25, 27, 28, 29, 40, 47, 51, 52, 55, 56, 57, 58, 59, 60, 61, 62, and 63 of the Constitution cannot be restricted. The right to liberty and personal inviolability (Art. 29 of the Constitution of Ukraine) belongs to those rights whose restrictions, even partial, are impermissible under martial law or a state of emergency. In this context, it is also noteworthy that Art. 29 of the Constitution was not mentioned in Para. 3 of the Decree of the President of Ukraine "On the Introduction of Martial Law in Ukraine" No. 64/2022 of February 24, 2022, among the list of constitutional rights and freedoms that may be temporarily restricted during the period of martial law [27].

Conclusions

The above allows us to conclude:

– *On one hand*, there is a debatable issue regarding the compliance of the provisions introduced in the procedural law during the period of martial

law – restricting the choice of preventive measures for specific categories of criminal proceedings – with constitutional standards for the protection of the right to liberty and personal inviolability (the restriction of which is not permitted under martial law);

– *On the other hand,* such a deviation is permissible under conventional standards (pursuant to Art. 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms) and can be considered appropriate from the perspective of the state-legal reality in conditions of threats to territorial integrity and sovereignty.

Thus, the scholarly pursuit of a solution capable of ensuring a constitutionally defined balance between the public interest and protecting the right to liberty and personal inviolability under extraordinary conditions, associated with threats to Ukraine's territorial integrity and sovereignty, remains relevant. We hope the above considerations will serve as a helpful starting point for a professional discussion on this issue, to prevent the restriction of fundamental constitutional provisions even in extreme circumstances, in order to preserve civilizational values.

References

[1] Pcholkin, V., Fedosova, O., & Kotova, L. (2020). International Standards for Ensuring the Right to Liberty and Personal Security in Criminal Proceedings in Ukraine. http://dx.doi.org/10.34069/AI/2020.29.05.28.

[2] Kaplina, O., & Tumanyants, A. (2021). ECtHR Decisions that Influenced the Criminal Procedure of Ukraine. *Access to Justice in Eastern Europe, 1*(9), 102-121. http://dx.doi.org/10.33327/AJEE-18-4.1-a000048.

[3] Tumanyants, A., Hetmann, H., Babanina, V., & Doybash, R. (2023). Features of Ensuring the Right to Liberty and Personal Integrity in Criminal Proceedings Under the Conditions of Martial Law: Precedent Practice of the European Court of Human Rights and Ukrainian Realities. *Access to Justice in Eastern Europe, 2*(19), 153-171. https://doi.org/10.33327/AJEE-18-6.2-n000226.

[4] Sobko, G., Svintsytskyi, A., Pushkar, O., & Butynskyi, V. (2025). Reforming Ukraine's Pre-Trial Custody Measures: an International Law Perspective. *Khazanah Hukum, 7*(1), 17-32. https://doi.org/10.15575/kh.v7i1.37796.

[5] Hloviuk, I., Zavtur, V., Zinkovskyy, I., & Pavlyk, L. (2024). Substantiating the Legality of Human Rights Restrictions in Ukraine in Pre-Trial Investigation. *Social and Legal Studios, 7*(2), 130-139. https://doi.org/10.32518/sals2.2024.130.

[6] Babikov, O., Omelchenko, O., Fedorenko, I., & Hurina, D. (2025). Limits of Human Rights Restrictions in Criminal Proceedings under Martial Law in Ukraine. *Cadernos de Direito Actual, 27*, 1-16. Retrieved fromhttps://www.cadernosdedereitoactual.es/index.php/cadernos/article/view/1315/609.

[7] Krykun, V., Hanenko, I., & Bykov, I. (2023). Criminal Procedural Protection of Human Rights in Conditions of an Armed Conflict. *Revista Justiça do Direito, 37*, 146-156. https://doi.org/10.5335/rjd.v37i3.15361.

[8] Ablamskyi, S., Galagan, V., Basysta, I., & Udovenko, Z. (2023). Detention of a Person Suspected of Committing a Criminal Offense During Martial Law in Ukraine. *Revista Brasileira de Políticas Públicas, 13*(3), 452-467. https://doi.org/10.5102/rbpp.v13i3.9129.

[9] Zavhorodnii, V., Orel, O., Muliar, G., & Kotlyar, O. (2022). Application of Article 5 of the ECHR to the Detention of a Person who has Committed a Criminal Offense. *Revista de Direito Internacional, 19*(1). https://doi.org/10.5102/rdi.v19i1.7757.

[10] Teteriatnyk, H.K. (2021). *Criminal Proceedings under Emergency Legal Regimes: Theoretical, Methodological and Praxeological Foundations*. Odesa: Helvetica Publishing House.

[11] Explanatory Note No. 2198-IX to the Draft Law of Ukraine "On Amendments to the Criminal and Criminal Procedure Codes of Ukraine Regarding The Improvement Of Liability For Collaborative Activities and the Features of the Application of Preventive Measures for Committing Crimes Against the Foundations of National and Public Security" dated April 14, 2022. Retrieved from https://itd.rada.gov.ua/billInfo/Bills/CardByRn?regNum=7186&conv=9.

[12] Explanatory Note No. 7431 to the Draft Law of Ukraine "On Amendments to the Criminal Procedure Code of Ukraine (Regarding Selecting a Preventive Measure for Military Personnel who Committed War Crimes During Martial Law)" dated June 2, 2022. Retrieved from https://itd.rada.gov.ua/billInfo/Bills/CardByRn?regNum=7431&conv=9.

[13] Decision of the Constitutional Court of Ukraine No. 7-r/2019 in the case on Constitutional Complaints of Kovtun Maryna Anatoliivna, Savchenko Nadiia Viktorivna, Kostohlodov Ihor Dmytrovych, Chornobuk Valerii Ivanovych on the Compliance with the Constitution of Ukraine (constitutionality) of the Provisions of Part 5 of Article 176 of the Criminal Procedure Code of Ukraine dated June 25, 2019, case No. 3-68/2018 (3846/17, 2452/18, 3657/18, 347/19). Retrieved from https://zakon.rada.gov.ua/laws/show/v007p710-19#Text.

[14] Farynnyk, V. (2025). Detention without Alternative: Does Such a Provision Comply with the Principle of the Rule of Law? Retrieved from https://jurliga.ligazakon.net/analitycs/235051_bezalternativne-trimannya-pd-vartoyu-chi-vdpovda-take-polozhennya-zasad-verkhovenstva-prava.

[15] Decision of the Constitutional Court of Ukraine No. 7-r(II)/2024 in the case on Constitutional Complaints of Bychkov Serhii Andriiovych, Bei Anatolii Anatoliiovych Regarding the Compliance with the Constitution of Ukraine (constitutionality) of Part 6 of Article 176 of the Criminal Procedure Code of Ukraine dated June 19, 2024, case No. 3-111/2023(207/23, 315/23). Retrieved from https://zakon.rada.gov.ua/laws/show/v007p710-24#Text.

[16] Decision of Ordzhonikidzevskyi District Court of Kharkiv dated October 24, 2024, case No. 644/8120/23. Retrieved from https://reyestr.court.gov.ua/Review/122532957.

[17] Decision of Kamianets-Podilskyi City District Court of Khmelnytskyi Region dated March 27, 2025, case No. 676/1131/25. Retrieved from https://reyestr.court.gov.ua/Review/126295416.

[18] Decision of Zhytomyr District Court of Zhytomyr Region dated January 15, 2024, case No. 276/1975/23. Retrieved from https://reyestr.court.gov.ua/Review/116308385.

[19] Decision of Mykolaiv Court of Appeal dated August 6, 2025, case No. 484/5921/24. Retrieved from https://reyestr.court.gov.ua/Review/129438127.

[20] Decision of Zhytomyr District Court of Zhytomyr Region dated July 9, 2025, case No. 278/2917/25. Retrieved from https://reyestr.court.gov.ua/Review/128717005

[21] Decision of Bohunskyi District Court of Zhytomyr dated October 3, 2024, case No. 295/14807/24. Retrieved from https://reyestr.court.gov.ua/Review/122055579.

[22] Decision of Vinnytsia Court of Appeal Decision dated May 2, 2025, case No. 127/32328/24. Retrieved from https://reyestr.court.gov.ua/Review/127047426.

[23] Decision of Dnipropetrovsk District Court of Dnipropetrovsk Region dated April 1, 2025. Retrieved from https://reyestr.court.gov.ua/Review/126266258.
[24] Comments and Proposals of the NAAU to the Draft Law on Amendments to the Criminal Procedure Code of Ukraine Regarding the Features of the Application of Security Measures in Corruption and Corruption-Related Criminal Proceedings During Martial Law (reg. No. 11466 dated August 7, 2024). Retrieved from https://unba.org.ua/assets/uploads/publications/11466.pdf.
[25] Titko, I.A. (2019). Detention as an Alternative Preventive Measure: Evolution of Perception from Local to Constitutional Court. In *Criminal Process: Modern Dimensions and Prospective Trends: II Kharkiv Criminal Procedural Polylogue, 2* (pp. 61-65). Kharkiv: Pravo. Retrieved from https://dspace.nlu.edu.ua/bitstream/123456789/18217/3/Titko_Trymannia.pdf.
[26] Titko, I.A. (December 9, 2022). The Vicious Circle of Detention as an Alternative Preventive Measure. In *Doctrinal and Law Enforcement Problems of Criminal Proceedings, Detective and Operational-Search Activities: materials of the International Scientific and Practical Conference Dedicated to the 10th Anniversary of the Entry into Force of the Criminal Procedure Code of Ukraine*. Odesa (pp. 10-15). Odessa: National University "Odessa Law Academy".
[27] Decree of the President of Ukraine No. 64/2022 "On the Introduction of Martial Law in Ukraine". (February 24, 2022). Retrieved from https://www.president.gov.ua/documents/642022-41397.

Andrii V. Skrypnyk
Ph.D. in Law
Assistant Professor of the Department of Criminal Law and Criminal Law Disciplines
Poltava Law Institute of Yaroslav Mudryi National Law University
36000, 5 Vitaliia Hrytsaienka ave., Poltava, Ukraine
e-mail: antey.pl@gmail.com
ORCID 0000-0003-4979-2152

Ivan A. Titko
Doctor of Law, Professor
Head of the Department of Criminal Law and Criminal Law Disciplines
Poltava Law Institute of Yaroslav Mudryi National Law University
36000, 5 Vitaliia Hrytsaienka ave., Poltava, Ukraine
e-mail: titko.iv@gmail.com
ORCID 0000-0003-4126-6967

Андрій Володимирович Скрипник
доктор філософії в галузі права
асистент кафедри кримінального права та кримінально-правових дисциплін
Полтавський юридичний інститут Національного юридичного університету імені Ярослава Мудрого
36000, просп. Віталія Грицаєнка, 5, м. Полтава, Україна
e-mail: antey.pl@gmail.com
ORCID 0000-0003-4979-2152

Іван Андрійович Тітко
доктор юридичних наук, професор
завідувач кафедри кримінального права та кримінально-правових дисциплін
Полтавський юридичний інститут Національного юридичного університету імені Ярослава Мудрого
36000, просп. Віталія Грицаєнка, 5, м. Полтава, Україна
e-mail: titko.iv@gmail.com
ORCID 0000-0003-4126-6967

Suggested Citation: Skrypnyk, A.V., & Titko, I.A. (2025). "Non-Alternative" Detention in the Legislation and Judicial Practice of Ukraine. *Theory and Practice of Jurisprudence, 2*(28), 101-115. https://doi.org/10.21564/2225-6555.2025.28.347037.

Submitted: 16.10.2025
Revised: 27.11.2025
Approved: 18.12.2025
Published online: 25.12.2025