

HISTORICAL AND THEORETICAL ISSUES OF IMPLEMENTATION OF PRE-TRIAL INVESTIGATION PROVISIONS

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Annotation. The article highlights the main definitions of pre-trial investigation with a view to solving and suppressing crimes by the competent authorities. It is comprehensively argued that the truth of criminal proceedings is manifested in the disclosure of a crime and ensuring that the perpetrators are brought to criminal liability. The author analyzes the main aspects of adoption of the agreement on cooperation between Ukraine and the Republic of Poland in criminal proceedings.

The article highlights the theoretical foundations of the pre-trial investigation stage of criminal proceedings, the issues of implementing the entry of relevant information into the Unified Register of Pre-trial Investigations, and describes the events when the first action is completed and the next action occurs.

The author has formed a stable opinion that the innovations introduced in pre-trial investigation are based on rapid response to crimes and their appropriate implementation in the course of crime investigation, which affects the recording of the crime in full. The author characterizes how the application of Article 214 of the Criminal Procedure Code of Ukraine affects the commencement of an investigation and reveals the legal basis for consolidation of legal acts regulating procedural actions.

The article contains the technology of filing a crime report. The author analyzes (notification) and provision of other information containing data on a criminal offense. The legal basis for the adoption of the agreement between Ukraine and the Republic of Poland on cooperation in recording crimes is revealed.

The article contains recommendations for improving the legislation and analyzes the current state of criminal proceedings in Ukraine, with regard to fulfillment of the tasks of criminal procedure and provides for protection of an individual, society and the State from criminal offenses, protection of rights, freedoms and legitimate interests of participants to criminal proceedings to ensure a prompt, complete and impartial pre-trial investigation. The author provides recommendations for the implementation of international provisions and means of verification at the initial stage of the basic information containing data on criminal offenses in order to identify the circumstances of the crime.

Key words: theory of state and law, inquiry, criminal proceedings, criminal procedure, pre-trial investigation, investigative (search) actions Unified Register of Pre-trial Investigations.

1. Problem statement.

As a general rule, the provisions on pre-trial investigation reflect the peculiarities of pre-trial investigation and general provisions on pre-trial investigation of their peculiarities of investigation and criminal proceedings and determine the most essential requirements for procedural actions for decision-making.

These rules set forth the following legal requirements for compliance with the principles of criminal proceedings and the realization of its tasks.

Disclosure of the content of the pre-trial investigation is impossible without clarifying a number of general provisions (conditions) that ensure a uniform and mandatory procedural procedure for all criminal cases.

A guarantee of the commencement of a pre-trial investigation is compliance with the procedure for accepting statements (reports) of a criminal offense and entering relevant information into the Unified Register of Pre-trial Investigations (hereinafter – the URPTI).

Despite the existence of a large number of legal acts regulating the peculiarities of opening and initiating a pre-trial investigation, the main one being the Criminal Procedure Code (hereinafter – the CPC of Ukraine), both in general and in relation to certain categories of persons, there are still problematic issues regarding the legal norms for opening a pre-trial investigation and the proper conduct of criminal proceedings.

The basic procedure of criminal procedural norms aimed at prompt investigation is theoretically aimed at protecting human values and rights in the content of legal norms enshrined by the state [3, p. 795].

In general, the main state document, the Constitution of Ukraine, in its Article 55, contains provisions on the system of human and civil rights and freedoms: “Everyone is guaranteed the right to appeal in court against decisions, actions or inaction of state authorities, local self-government bodies, officials and officers. Anyone whose rights have been violated is authorized to apply to the Ukrainian Parliament Commissioner for Human Rights for protection of their rights.”[1]

If all legal remedies have been exhausted, individuals are guaranteed the right to file a “constitutional complaint with the Constitutional Court of Ukraine on the grounds established by the Constitution and in the manner prescribed by law” [1].

The change in the legal framework for the agencies’ activities is preceded by the state’s obligation to conduct proper investigations of crimes and implement projects to support the investigation of crimes in the first direction, which is related to recording crimes and minimizing the humanitarian consequences of the Russian attack. During the Russian invasion of Ukraine, many legal and humanitarian consequences arose, which are also relevant to the introduction of a new stage in the investigation. Thus, the specifics of the implementation of the EU provisions include the principles of the state’s compliance with the judgments of the European Court of Human Rights and the requirements of the European Union related to the granting of candidate country status and accession to the EU to Ukraine.

The article uses the methods of modern methods of comparison and analysis of the provisions of pre-trial investigation, which is the conduct of investigation in criminal proceedings.

The purpose of the article. To analyze the scientific methods of crime detection in accordance with the provisions of the Criminal Procedure Law.

The empirical part of the article includes an analysis of current legislation with a view to implementing an effective investigation and a basic study of the pre-trial investigation stage in the area of data provision for information support of criminal proceedings.

▲ **2. The purpose of the article** is to consider the generally recognized issues, to formulate scientific knowledge in the field of criminal proceedings and to develop practical recommendations for their application in the proceedings.

▲ **3. The article analyzes the publications** which initiated the solution of this issue. Historically, the institution of pre-trial investigation functioned by attracting society to the system of regulation of criminal offenses, by adopting the current CPC of Ukraine, so on July 1, 2021. There has been little

research, and most scholars are inclined to believe that for a long time after the adoption of the current CPC, the inquiry was only mentioned as a form of investigation.

But it is worth mentioning and highlighting the practical adoption of the law on the system of criminal misdemeanors on July 1, 2020. For many years, it was hoped that its introduction would improve the efficiency of pre-trial investigation and trial of non-serious crimes. Despite the fact that pre-trial investigation (inquiry) of criminal misdemeanors is carried out in accordance with the general rules of pre-trial investigation (part 2 of Article 298 of the CPC), Law No. 70428 also establishes certain specifics. They relate to the beginning of the investigation, the main conditions under which the investigation is carried out, the means of collecting information to clarify the circumstances of the offense, the procedure for conducting the investigation and the form of its completion, which have not been unambiguously interpreted by scholars.

Investigation is ironically related to and is considered one of the functions of the body (police) to ensure the protection of rights and public order and the corresponding fight against crime. In order to fulfill these tasks, the police take operational and administrative measures, as well as inquiries as a type of criminal investigation.

The period of introduction of the criminal procedure in 1864 was marked by the introduction of legislative norms concerning a new stage in the development of pre-trial investigation bodies – inquiries as a form of pre-trial investigation of criminal offenses.

Thus, the process of implementing the provisions of the CPC of Ukraine regarding the settlement of issues of specially created units for the investigation of misdemeanors requires further special research and generalization of the practice of applying the rules in the activity with the appropriate formulation of legal proposals of legislation.

Thus, a significant contribution to the activities on pre-trial investigation was made by the authors Drozd V. G., Alenin Y. P., Pozhar V. G., Shylin D. V., Voloshyna V. K., Zavtur V. A. and others. I would like to emphasize that the form of pre-trial investigation as an inquiry is necessary for the study of procedural means in the field of evidence.

It should be emphasized that in the early stages of development of the investigator's institution, the inquiry process is conducted in accordance with the procedures established by law.

The principles established by the state must comply with the provisions of the Constitution of Ukraine and determine the procedure when laws are adopted. At that time, the norms of legislation did not correspond to customary law, its procedural form was not regulated, and the collected materials were not recognized as evidence.

The further development of the next stage of investigation is characterized by the allocation of two types of targeted misdemeanors containing signs of a crime according to their gravity. The content of the pre-trial investigation is actually a component of the criminal proceedings stage. The legislator defines the entry of data on a criminal offense into the Unified Register of Pre-trial Investigations as the beginning of proceedings that end with the submission of an indictment to the court or the application of compulsory medical or educational measures, or a petition for the release of a person from criminal liability.

A full investigation is carried out by the investigative authorities in accordance with the requirements of the criminal procedure legislation, their duty is to verify the evidence base and take measures to prevent and expose criminal acts, establish objective facts, ensure the correct application of criminal procedural rules in accordance with the law, and protect the rights and interests of individuals and legal entities. I would like to draw your attention to the fact that the absence of such a procedural decision as a resolution in the criminal proceedings results in the inadmissibility of the evidence collected during the pre-trial investigation and its recognition as collected by an unauthorized person.

A practical decision of the CCU Court of the Supreme Court recognized that cases related to entering data into the Unified State Register of Pre-trial Investigations cannot contain provisions on

determining the group of investigators in criminal proceedings, it does not give rise to a change in the procedural decision “since the extract from the URPTI is not a procedural decision, and therefore does not create legal consequences regarding the determination of the group of investigators who will conduct the pre-trial investigation”.

Procedurally, the Criminal Procedure Code singles out Article 380, which contains a list of authorized bodies and units to conduct an investigation [2]:

- a) bodies of the National Police
 - b) security agencies
 - d) bodies of the State Bureau of Investigation;
- 2) detective units, internal control units of the National Anti-Corruption Bureau of Ukraine;
 - 3) detective units of the Bureau of Economic Security of Ukraine.

The pre-trial investigation is carried out in the prescribed form by a single investigator or an investigative team. Based on the decision to appoint a senior investigative team, actions are taken to direct the actions of other investigators. The form of the decision adopted must meet certain criminal law standards set forth in the law and the procedural decision in the form of a resolution. The central aspect is that the procedural decision must be attached to the pre-trial investigation materials, and it confirms the existence of the powers of the investigators conducting the pre-trial investigation. In court proceedings, it is an important basis for conducting investigative actions and identifying the authorized subject of the investigation.

It is worth noting that the CPC of Ukraine contains a complete list of investigative (detective) actions that can be carried out by investigators and inquirers at the pre-trial investigation stage.

The stages of pre-trial investigation include measures such as: inspection, search, identification, investigative experiments, covert investigative search actions. I would like to draw your attention to the fact that crimes are solved through international cooperation by obtaining information from the requested party that is widely recognized and used to solve serious crimes.

In this regard, the recommendations to adopt amendments to the provisions of the CPC of Ukraine contain provisions that are worth paying attention to. Ukraine has committed itself to joining the European Union and implementing the provisions of European standards, which means the regulation of special EU procedures at the international level, the Council of Europe has created a mechanism for the period 2023-2026 that contains the provisions of the “resilience, recovery and reconstruction” action plan, which precedes the gradual implementation of projects on recording “war” crimes, which, in my opinion, will have a positive impact on the process of investigating crimes.

The application of the international cooperation agreement should be recognized in practical terms, as the Polish side provided a substantive justification for the impossibility of accepting the amendments by the Ukrainian side and the expediency of returning to the wording of certain provisions of the draft agreement proposed earlier by the Polish side.

The basic agreement contains provisions that reveal the meaning of the concepts of “crime in all its manifestations and forms is growing and there is a threat to international peace in terms of security, political, economic and social stability” in the state.

The specification of the main provisions includes recognition of the obligation to cooperate in the prevention, detection, suppression and combating of criminal offenses, as well as the prosecution of persons involved in a crime, taking into account the national legislation of the member states of the agreement.

The separation of the main parts contains provisions on the mutual consent of the parties, which makes it possible to take measures in the field of investigation to:

- 1) search for missing persons or persons hiding from law enforcement or justice;

- 2) conducting activities related to the identification of unknown persons and unidentified corpses; taking measures to identify persons who are unable to provide information about themselves due to health, age or other circumstances, and to identify unidentified corpses;
- 3) search for items obtained by criminal means or used to commit criminal offenses;
- 4) detection and identification of the proceeds of crime and other property obtained as a result of a criminal offense or used to commit a criminal offense;
- 5) ensuring the safety of persons involved in the detection, prevention, termination, disclosure or investigation of criminal offenses, as well as in the judicial review of criminal proceedings.

It is absolutely necessary to distinguish the main criteria for crimes in which cooperation in detecting offenses is carried out, such as:

- 1) theft or misappropriation
- 2) damage or destruction of property;
- 3) endangering road safety; offenses in the field of road safety;
- 4) driving a vehicle without a proper permit; by a person who does not have the appropriate documents for the right to drive a vehicle;
- 5) driving a vehicle by persons who are under the influence of alcohol, drugs or other intoxicants or under the influence of drugs that reduce their attention and reaction time;
- 6) illegal crossing of the state border;
- 7) stay of foreigners and stateless persons on the territory of the state of the party without legal grounds;
- 8) failure by foreigners and stateless persons to leave the territory of the state of the party.

According to the agreement, the main recommendations are to carry out work that precedes the investigation of crimes through the process of submitting requests to the authorized party. The contents of the request must include: "a description of the subject matter of the request and its justification, indicating the expected method of its execution, including the measures to be taken to fulfill it, as well as the estimated timeframe for its execution". The information in the request must relate to the purpose of the request with a justification for the use of information for the consideration of criminal proceedings. If the information is provided to the requested party, it must contain the details of the supporting documents.

Based on the legal provisions, Article 4 of the agreement contains the conditions under which proper cooperation is carried out, which corresponds to the conditions of the investigation of the crime and the collection of information regarding the identity of witnesses, etc.

4. Results and discussion.

Accordingly, the pre-trial investigation stage is regulated by a number of normative legal acts that contain provisions regulating theoretical issues of the process of implementing the stage of criminal proceedings. Undoubtedly, the beginning of the pre-trial investigation is a special stage for further criminal proceedings, since it is important to comply with the legal norms at the initial stage of the pre-trial investigation, it affects the further success and consideration of the case, which precedes the evidence obtained from the crime and the sentence in criminal proceedings. The pre-trial investigation stage contains elements of further consideration of criminal proceedings.

The essential features of a criminal offense are clarified to provide objective grounds for making a procedural decision in criminal proceedings "without doubt as to their legality".

At the same time, it should be noted that the peculiarity of cooperation is based on the principles defined by the Protocol of the European Convention on Mutual Assistance in Criminal Matters, which determines at the stage of criminal proceedings, the protocol that is applied in the trial does not contradict the assumptions made for the purposes of this Agreement, that is, regulates close cooperation at the non-judicial (operational) level [6].

Thus, in my opinion, international cooperation has a fruitful effect on the investigation process as a whole, shows us that criminal proceedings within the framework of international cooperation are possible and allows us to obtain valuable information in order to gain experience and take appropriate operational measures in the fight against crime, in particular, the practice of applying criminal analysis, research of modern systems and methods, technical means and the latest technologies in preventing and combating crime is becoming advanced in this area.

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