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Features of the functioning of the institute of criminal offenses in Ukraine

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Abstract

It analyses the provisions of criminal and procedural legislation on the establishment of criminal offences, as well as the practice of their application. The application of a set of general methods and special scientific knowledge made it possible to formulate some proposals for: (1) determination of criminal liability for misdemeanours and increased penalties in the form of a fine for the commission of certain offences; 2) regulation in the Law of Ukraine to the international standard; (3) introduction by the National Police of the specialization of investigators with a clear reflection of jurisdiction in criminal procedure legislation; 4) addition of the Code of Criminal Procedure with provisions on the adoption of the relevant procedural decision by the investigating judge, in case the composition of the crime is not established and; 5) identification of the forensic doctor as the subject of the search, as well as a request for confiscation of property. It is concluded that the Code of Criminal Procedure of Ukraine must identify the coroner together with the investigator and the prosecutor as the object of the search, as well as, if necessary, request the seizure of property, mainly to temporarily seize the property during the detention of a person.

Keywords: criminal offense; release from punishment; pre-trial investigation; inquiry.

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Características del funcionamiento del instituto de delitos penales en Ucrania

Resumen

Se analiza las disposiciones de la legislación penal y procesal sobre el establecimiento de delitos penales, así como la práctica de su aplicación. La aplicación de un conjunto de métodos generales y de conocimientos científicos especiales permitió formular algunas propuestas para: 1) determinación de la responsabilidad penal para faltas y aumento de sanciones en forma de multa por la comisión de determinados delitos; 2) regulación en la Ley de Ucrania al estándar internacional; 3) introducción por parte de la Policía Nacional de la especialización de investigadores con un claro reflejo de jurisdicción en la legislación procesal penal; 4) adición del Código de Procedimiento Penal con disposiciones sobre la adopción de la decisión procesal pertinente por parte del juez de instrucción, en caso de que no se establezca la composición del delito y; 5) identificación del médico forense como sujeto de la búsqueda, así como una solicitud de confiscación de propiedad. Se concluye que el Código de Procedimiento Penal de Ucrania debe identificar al forense junto con el investigador y el fiscal como objeto del registro, así como, de ser necesario, solicitar la incautación de bienes, principalmente para incautar temporalmente los bienes durante la detención de una persona.

Palabras clave: infracción penal; infracción penal, exoneración de la pena, instrucción previa al juicio; indagación.

Introduction

Amendments to the preamble of the Constitution of Ukraine on February 7, 2019, enshrined at the level of the Basic Law the European identity of the Ukrainian people and the irreversibility of the European and Euro-Atlantic course of Ukraine (On Amendments to the Constitution of Ukraine, 2019). As a result, the Ukrainian legal system, in particular in the areas of criminal law and criminal procedure, needs to be improved and modernized as never before in order to meet the high standards of European Union law.

On July 1, 2020, the institute of criminal offenses began to operate in the legal system of Ukraine, the main precondition for the introduction of which was the country's fulfillment of international obligations, harmonization of Ukrainian legislation with the legislation of other European countries, the desire to humanize domestic criminal law and, possibly, with reduction and optimization of the burden on law enforcement agencies, courts, and penitentiaries.

The decision to separate this institution from the Criminal Code of Ukraine necessitated the harmonization of the norms of this Code with the norms of the CPC of Ukraine. This was preceded by the adoption in November 2018 of the Law of Ukraine № 2617-VIII "On Amendments to Certain Legislative Acts of Ukraine to Simplify the Pre-trial Investigation of Certain Categories of Criminal Offenses". In December 2019, the law was amended and supplemented (Law of Ukraine № 321-IX). As a result, the introduction of the new legal institution was postponed for more than six months. This difficult path is due to the complexity of the problem, the solution of which is aimed at implementing another legal novel. In particular, it took time for technical measures to implement the new rule in the Unified Register of Pre-trial Investigations, to harmonize legislation and regulations, to establish a Training Center for Prosecutors, and so on.

Despite all the difficulties of theoretical, legal, law enforcement and social nature, the introduction of the institution of criminal offenses in the Ukrainian reality was another step towards building a European criminal justice system and a new important step towards creating a civil society based on social justice and humanistic principles (Aulin, 2020).

One of the main goals of the introduction of criminal offenses was to unload the investigation of minor criminal offenses to optimize resources that can be further used for better pre-trial investigation of crimes. The average workload of a National Police investigator used to be 280-300 at a time. Given that the number of investigators has decreased by 2,000 (the total number is now about 16,000) and that 50 % of criminal offenses are crimes, the burden on one investigator has fallen twice with a small error in the direction of increase, so it is about 160 criminal proceedings per person simultaneously (Regulations on the organization of activities of understanding units of the national police of Ukraine, 2020).

According to official statistics, in the period from 01.07.2020 to 31.10.2020, 50.4% of all reported criminal offenses were investigated in the form of an inquiry (130.7 thousand criminal offenses out of 259,3 thousand criminal offenses in total). These are common misdemeanors such as theft without qualifications (37 %), causing minor injuries (20%), fraud (16%), illicit drug use without the purpose of sale (9%), etc. A total of 98 criminal offenses (117 parts of the Special Part of the Criminal Code of Ukraine (hereinafter – the Criminal Code of Ukraine) (Letter of the National police №731 / 49 / 1-2020, 2020).

Even during the discussion of the draft law "On Amendments to Certain Legislative Acts of Ukraine to Simplify the Pre-trial Investigation of Certain Categories of Criminal Offenses", its main provisions have been the subject of numerous discussions by lawyers, politicians and members of the public. They still do not subside. In the framework of modern socio-political reform, the issues of responsibility for an act that does not pose a public danger,

ensuring and respecting human and civil rights and freedoms, further reform of law enforcement agencies in connection with the introduction of criminal offenses remain relevant and need to be adequately addressed.

1. Methodology of the study

In the process of writing a scientific article, a set of general and special methods of scientific knowledge is used, which are selected considering the goals and objectives set in the work, the specifics of the object and subject. They are based on the general dialectical method, i.e., the general scientific method used in the study of the theory and practice of the institute of criminal offenses. Methods of logic (analysis, synthesis, induction, deduction) are used in the study of scientific provisions, regulations and statistical materials relating to the regulation of criminal liability for criminal offenses, as well as ensuring the rights of the individual during the pre-trial investigation of this type of criminal offense. draw sound conclusions; system-structural method - in determining the optimal relationships between the processes that determine the approximation of criminal law regulation of misdemeanors and criminal proceedings of Ukraine to international standards; dogmatic method – in the interpretation of the conceptual apparatus of research; historical and legal method – in the study of the formation and development of legislation on the introduction of the institution of criminal offenses; comparative legal method – during the analysis of legislation, scientific categories, definitions and approaches; comparative method – when studying the state of ensuring the rights of the individual during the pre-trial investigation of criminal offenses; statistical method – in determining the state and dynamics of generalized results of sociological research. These methods were used during the study in their relationship and interdependence, which ensured the comprehensiveness, completeness, and objectivity of the obtained scientific results.

2. Analysis of recent research

The researched question has long been one of the most discussed in the legal literature. Some problems of reforming the legislation on administrative offenses and the introduction of the institution of criminal offenses were studied by such scientists as: O. Dudorov (Dudorov, 2013), P. Fris (Fris, 2012), V. Bozhik (Bozhik, 2020), I. Krasnytsky, O Horpynyuk (Krasnytsky and Horpynyuk, 2019), A. Voznyuk, D. Alekseyeva-Protsyuk (Voznyuk and Alekseyeva-Protsyuk, 2020), J. Núñez Grijalva (Núñez Grijalva, 2021) and other scientists. At the same time, today the implementation of the new institute in practice is accompanied by numerous discussions among both

procedural scholars and legal practitioners, has a number of legislative and organizational problems that need analysis and solution, including their relationship to the tasks, provided for in the Concept.

The purpose of the study is to analyze the national system of criminal and criminal procedure legislation, the practice of its application, development and implementation of effective guarantees of human rights during the pre-trial investigation of criminal offenses.

3. Results and discussion

An indisputable novelty of legislative changes, which are an essential component of the introduction of the institute of criminal offenses in Ukraine is the rejection of the monistic approach to defining the main object of criminal law regulation (criminal offense), which under the Criminal Code of Ukraine in 2001 recognized one object – a crime , and the introduction of a new law of a dualistic approach, according to which the object of criminal law is recognized as two types of criminal offenses – a criminal offense and a crime (Part 1 of Article 12 of the Criminal Code of Ukraine).

Thus, in addition to the notion of «crime», a new notion of "criminal misconduct" previously unknown to the criminal legislation of Ukraine was introduced into the content of the Criminal Code of Ukraine as a type of criminal offense. In this way, the criminal legislation of Ukraine has significantly approached the criminal legislation of a number of European states: the Criminal Code of Germany, France, Austria, Switzerland, Spain, Czech Republic, Lithuania, Latvia, Estonia, etc., which adhere to a dualistic approach in the legislative definition of object of criminal law regulation.

The legal nature of the concept of «criminal offense», which was first introduced into national law in 2012, is still insufficiently defined at the level of both legal understanding and lawmaking and law enforcement. At the same time, the law enforcer (investigator, prosecutor, judge) must have clear guidelines, must establish the distinctive features of the types of offenses (because it is about human destinies) and take into account how a specific act is «dangerous» or «harmful» to society and the state.

The state does not classify administrative offenses as socially dangerous acts, and therefore responding to them does not require the involvement of a criminal law mechanism. But, of course, an administrative offense is harmful for the state and society, because it can also harm the relevant values, so the state must respond to it – not only in court, but also in a more «simplified» manner.

Given that the criminal procedure legislation provides for a special abbreviated form of pre-trial investigation of criminal offenses, as well as

the presence of numerous gaps in the legal regulation of this institution, there may be a threat of human rights and freedoms, which necessitates additional procedural guarantees (Bozhik, 2020).

During the introduction of simplified forms of criminal proceedings, it is inadmissible to limit the procedural guarantees of ensuring the rights of its participants. In addition, the inviolability of the principles of criminal proceedings must be ensured. Restrictions on human rights and freedoms must be carried out exclusively within the framework of a clear criminal procedure and meet the stated purpose of such a restriction. As rightly noted in the literature, the use of any procedural coercion in criminal proceedings for criminal offenses should be carried out with a balance between ensuring the rights of the individual, on the one hand, and the need to perform the tasks of criminal proceedings, on the other (A new stage in the development of criminal legislation of Ukraine).

The current criminal procedure legislation does not provide for restrictions on the rights of individuals in criminal proceedings, and guarantees of observance of citizens' rights must remain unchanged. The person retains the same amount of inalienable human rights, and their restriction is of an exclusive legal nature.

During the pre-trial investigation and trial of criminal offenses, the same scope of a person's rights as provided for in the general procedure must be ensured, which will ensure the proper performance of the tasks of criminal proceedings specified in Art. 2 of the Criminal Procedure Code of Ukraine. According to the provisions of the Convention, an important component of the right to a fair trial is the right of everyone to a fair and public hearing within a reasonable time by an independent and impartial tribunal. The establishment of a differentiated form of criminal proceedings for misdemeanors should facilitate the realization of this right of the person. At the same time, guarantees of ensuring the right to protection of a person in criminal proceedings are not limited.

It should also be noted that in law-making, the state has an obligation to make a clear distinction between administrative and criminal offenses. Currently, almost ten decisions of the European Court of Human Rights state that the legal nature and severity (imprisonment) of administrative penalties in the form of administrative arrest, provided by the Code of Ukraine on Administrative Offenses, indicate that administrative offenses are criminal offenses in the understanding of autonomous concepts used by an international judicial body in its activities.

The mentioned legal positions of the European Court of Human Rights indicate that when applying such norms of the Code of Administrative Offenses, the law enforcer must ensure, in particular, the right to protection at the level of criminal proceedings, as well as the requirements of such

proceedings. One of the ways to harmonize the legislation with the case law of the European Court of Human Rights is to exclude from the norms of the Code of Administrative Offenses such a penalty as administrative arrest. However, with the introduction of criminal offenses, the legislator did not solve this problem (A new stage in the development of criminal legislation of Ukraine).

3.1. Criminal legal aspect of the problem

Given the novelty of this institution in national law, we consider it necessary to examine the main updated provisions of the criminal law due to its introduction.

Ukrainian parliamentarians and lawyers followed the path of most colleagues from the European Union and made appropriate changes to the current Criminal Code of Ukraine. It is supplemented by a new fundamental and universal concept of "criminal offense", which is defined in Part 1 of Art. 11 of the Criminal Code of Ukraine as a socially dangerous criminal act (action or omission) provided by the Code, committed by a subject of a criminal offense. Based on Part 2 of Art. 1 and part 1 of Art. 50 of the Criminal Code to the content of this concept is added a sign of "criminal punishment of the act."

To determine the act of a criminal offense in each case it is necessary to establish the presence of all these features. The absence of at least one of them excludes the possibility of classifying the committed act as a criminal offense (criminal offenses or crimes), which, of course, excludes criminal liability for this act. An act or omission which, although formally containing the features of any act provided for by this Code, does not constitute a public danger due to insignificance, ie did not cause and could not cause significant harm to a natural or legal person, society or state, is not a criminal offense.

The concept of "criminal offense" is extremely important. It defines the content of the concepts of "criminal offense" and "crime", as well as the content (at the level of general) of the norms of the Special Part of the Criminal Code of Ukraine, which formulates the features of specific criminal offenses. Therefore, this concept actually performs the functions of the constituent and starting category of criminal law, which is important in both lawmaking and law enforcement.

"Criminal offense" is now a generic concept of "crime" and "criminal misconduct", and therefore, when qualifying an act under the Criminal Code of Ukraine in the wording of 01.07.2020, the law enforcer must finally decide what the guilty person committed: a criminal offense under part 1 of Article 185 of the Criminal Code of Ukraine, or a crime (parts 2-5 of Article 185 of the Criminal Code, respectively), as in the future it will be important for the criminal consequences of committing a criminal

offense. At the same time, the legislator actually proposes to distinguish between a criminal offense and a crime by means of the type and measure of punishment, which, in our opinion, does not seem to be the best option for such a distinction.

Although initially criminal offenses should be primarily "created" by many administrative offenses (which are "hidden" in the Code of Administrative Offenses) and some minor crimes. I. Krasnytskyi and O. Horpyniuk's remarks that the formal renaming of a crime to a criminal offense seems unjustified in a number of cases (in particular, in Article 107 of the Criminal Code of Ukraine, as parole can be applied only to juveniles who have served a certain share of the sentence in the form of imprisonment for a minor, serious or especially serious crime; the possibility of parole for a criminal offense is not provided) (Krasnytsky and Horpynyuk, 2019).

Significant changes have undergone and Art. 12 of the Criminal Code of Ukraine. Thus, Part 2 of the article now provides a legal definition of a criminal offense and states that it is an act provided by this Code (action or omission), for which the main punishment is a fine of not more than 3,000 non-taxable minimum incomes or other non-custodial punishment.

Also, the Criminal Code of Ukraine provides a scientifically sound classification of criminal offenses into criminal offenses and crimes, and the latter are divided into minor, serious and especially serious (Part 3 of Article 12 of the Criminal Code of Ukraine). This classification is based on a single scientifically sound criterion, which is reasonably recognized the severity of the criminal offense, which is determined by the nature and degree of public danger of the criminal offense (social (material) sign), which finds a specific formal and legal expression and enshrined in punishment type and measure) established in the sanction of the relevant article (part of the article) of the Special Part of the Criminal Code of Ukraine.

A significant gap seems to be the omission regarding the relevant amendments to the Law of Ukraine «On the Application of Amnesty in Ukraine» (1996), which is in force as amended on 14.05.2014, as this normative legal act still operates only with the concept of «crime» and does not use the terms "criminal offense" and "criminal offense". Although in Art. 86 of the Criminal Code of Ukraine, appropriate changes were made. That is, it can be assumed that in the event of a criminal offense, the person will not be subject to amnesty. In this case, quite logically, the question arises: if a person is fined, then perhaps an amnesty is not needed (although why for those who commit more socially dangerous encroachments (crimes) it is provided, and for those who have committed a misdemeanor – no?). But what if a person is arrested or restricted? Are there any signs of discrimination here as well?

It should be noted that there is no criminal liability for preparing for a misdemeanor. This condition is logical and in fact duplicates the approach of the previous version of the criminal law, which also provided for the absence of criminal liability for preparation for a minor crime. The scientific literature has expressed and still has a position on the need to abolish criminal liability not only for training, but also for attempting to commit a misdemeanor (Demidova, 2018). At the same time, such an approach has not been enshrined in law, perhaps due to its overly humanistic nature.

It is also worth noting the lack of a criminal record as a legal consequence of a conviction for a misdemeanor. Currently, in accordance with paragraphs 2-1 of Part 1 of Art. 89 of the Criminal Code of Ukraine, persons convicted of a criminal offense, after serving the sentence are recognized as having no criminal record. If the person who has served the sentence commits a criminal offense again before the expiration of the conviction, the course of the conviction shall be interrupted and recalculated. In these cases, the terms of repayment of the conviction are calculated separately for each criminal offense after the actual serving of the sentence (main and additional) for the last criminal offense (Part 5 of Article 90 of the Criminal Code of Ukraine) (Criminal code of Ukraine, 2001).

The legislative approach to the absence of a criminal record for misconduct has been widely criticized, in particular, L.Ostapchuk and D. Klyuchai are convinced that leaving a criminal offense without a criminal record contradicts both administrative and criminal law (Ostapchuk and Klochay, 2020).

One of the most difficult and controversial issues for law enforcement officers is the recurrence of criminal offenses. Thus, on the one hand, Art. 32 of the Criminal Code of Ukraine has undergone a mechanical replacement of the concept of crime with the concept of criminal offense. However, if, as a general rule, for the presence of recidivism, the stage of the criminal offenses that are included in the recidivism is still irrelevant.

So now there is no recidivism if it includes preparation for a criminal offense or a crime for which the article of the Special Part of the Criminal Code provides for imprisonment for up to two years or other milder punishment. In such cases, in accordance with Part 1 of Art. 14 of the Criminal Code, a person is not prosecuted, and therefore, this is not taken into account when determining the recurrence of criminal offenses. And, as I. Zinchenko rightly emphasizes, at least two criminal offenses that constitute it must retain their criminal-legal significance in case of repetition (Zinchenko, 2019). But, on the other hand, it should be borne in mind that some crimes, even of medium gravity, are now criminal offenses. That is, in the situation of detection, for example, preparation for theft and attempted fraud, there is no recurrence. Time will tell how correct this is.

In addition, it should be borne in mind that recidivism is very common in practice and can be considered either as a qualifying (especially qualifying) feature of a criminal offense, or as a circumstance that aggravates punishment. In this regard, T. Mykhaylichenko points to another shortcoming: the relevant changes were not made in paragraph 1, part 1 of Art. 67 of the Criminal Code of Ukraine, so there is only a recurrence and recurrence of crimes. That is, the commission of a criminal offense at a time when a person, for example, has not yet served a previous sentence for a crime or other misdemeanor will not aggravate the punishment (Mykhaylichenko, 2020).

Attention should also be paid to sanctions for criminal offenses. Interestingly, the fines for certain administrative offenses are much higher. Can such a small amount of fine somehow affect the perpetrator? Probably not, the only thing that can affect him in such situations is his "participation" in criminal proceedings and his conviction. In addition, as some scholars rightly point out, in the absence of appropriate punishment commensurate with the nature of the act, the purpose of such punishment will not be achieved, as the current fine can neither punish nor correct, prevent new crimes and especially (Voznyuk and Alekseyeva-Protsyuk, 2020).

In general, the analysis of the provisions of criminal law allows to state their unsystematic nature, the presence of some unfounded provisions that need to be corrected as soon as possible, as well as violations of fundamental legal principles. Given that a long time has passed since the introduction of the institute of criminal offenses in Ukraine, it seems unclear the legislator's approach to amending the Criminal Code of Ukraine, the Law of Ukraine "On Amnesty in Ukraine" and other legal documents.

3.2. Criminal legal aspect of the problem

The CPC of Ukraine provides for the features of pre-trial investigation and trial of criminal offenses, and evidence in criminal proceedings is a specific complex area of procedural activities of the parties to criminal proceedings, aimed at ensuring full and objective clarification of all circumstances to be established in criminal proceedings. misdemeanor proceedings, in order to effectively perform its tasks in a shortened inquiry procedure and taking into account the possibility of considering an indictment in summary proceedings (Bozhko, 2020). Despite the adoption of numerous amendments to the legislation of Ukraine by several laws, the current CPC of Ukraine has technical problems of a procedural nature, which are pointed out by theorists and practitioners. Let's carry out their detailed analysis for the purpose of working out of ways of the decision or elimination.

First of all, it is necessary to pay attention to certain problems of realization of procedural powers by the persons who carry out investigation of criminal offenses in the form of inquiry.

Pre-trial investigation of criminal offenses is investigated by conducting an inquiry (paragraph 4, part 1 of Article 3 and Article 215 of the CPC of Ukraine), which can be carried out only by officers of the National Police, Security Service, Tax Police and the State Bureau of Investigation (paragraph 41 part 1 Article 3 of the CPC of Ukraine) (Criminal procedural code of Ukraine, 2012).

On May 20, 2020, the Ministry of Internal Affairs of Ukraine approved the Regulations on the Organization of Activities of Inquiry Units of the National Police of Ukraine (Regulations on organization of activities of Units of national institutional bodies, 2020). It determines that the inquiry subdivisions are structural subdivisions of the central police administration body, its territorial bodies - the main departments of the National Police in oblasts, territorial (separate) subdivisions of the Main Directorates of the National Police. Thus, they are subordinated vertically to the heads of the Main Departments in the region, which is a classic management model for police investigative units (as opposed to the vertical management of interregional territorial bodies, such as patrol police, which are directly subordinated to the Kyiv headquarters outside the regional leadership).

The powers of the head of the department (sector) of inquiry of the territorial police body include the management of investigators, constant monitoring of the operational situation in the service area, etc. That is, this link performs the daily work of the head of the inquiry body. Its tasks include the establishment of specialization of investigators in the investigation of criminal offenses of certain categories, ie at the regulatory level provides for the specialization of investigators. In particular, the Regulations on the Organization of Activities of Inquiry Units of the National Police of Ukraine provide for a separate inquirer regarding misdemeanors committed by minors.

It should be noted that in practice there is no such specialization. All investigators in accordance with the bylaws investigate all criminal offenses, are universal experts. However, this does not mean that informal units cannot develop informal practices to determine the specialization of a particular investigator, for example based on his experience or special knowledge of the subject or just skills, such as the ability to better establish psychological contact with victims of violent crime. As specialization is necessary to increase the efficiency of inquiry, the introduction of specialization of investigators by the National Police of Ukraine would be a step in the right direction.

The powers of investigators are defined by separate articles of the CPC of Ukraine (Articles 401, 214, 298-1). Unlike investigators, who can only inspect the scene before entering information into the Unified Register of Pre-trial Investigations, investigators have the right to: select explanations; to conduct a medical examination; obtain the opinion of a specialist and take readings of means of photography and filming, video recording or technical devices with such functions; to seize tools and means of committing a criminal offense, things and documents that are the direct subject of a criminal offense, or which are found during the detention of a person, personal search or inspection of things (Criminal procedural code of Ukraine, 2012).

Prior to entering information into the Unified Register of Pre-trial Investigations, the scene may be inspected, explanations selected, a medical examination performed, a specialist's opinion obtained and readings of technical devices and technical means having photo and filming, video recording, or photo and filming means, video recordings, as well as seized tools and means of committing a criminal offense, things and documents that are the direct subject of the criminal offense, or which were found during the detention of a person, personal search or inspection of things.

Procedural sources of evidence in criminal proceedings concerning criminal offenses are determined by explanations, results of examination, expert opinion, photo and video materials in accordance with Art. 298-1 of the CPC of Ukraine. However, the study of the provisions of the CPC of Ukraine showed the absence of provisions on the adoption of the relevant procedural decision by the coroner, if as a result of the information entered into the Unified Register of pre-trial investigations of procedural actions he does not establish a criminal offense.

During the pre-trial investigation of criminal offenses it is allowed to carry out all investigative (search) actions provided by the CPC of Ukraine, as well as covert investigative (search), but only to obtain information from electronic information systems or parts thereof, access to which is not restricted by their owner or holder. or not related to overcoming the system of logical protection and to establish the location of the electronic means (Part 2 of Article 264 and Article 268 of the CPC of Ukraine) (Criminal procedural code of Ukraine, 2012).

It is not without reason that the introduction of the institution of misdemeanors is defined as the humanization of criminal law, as the corresponding changes strengthen the provision of human rights during the investigation. For example, a person who has committed a misdemeanor can be detained only in exceptional cases: if a citizen refuses to stop the misdemeanor or resists a police officer; tries to escape from the scene; refuses to comply with the lawful demands of the police during the pursuit; is in a state of alcohol or drug intoxication and may harm himself or others;

evades the bodies of pre-trial investigation or court. Detention of a person who drove a vehicle in a state of alcohol, drugs or other intoxication or under the influence of drugs that reduce attention and speed of reaction, is carried out for no more than three hours with mandatory delivery of such person to a medical institution to ensure passage appropriate medical examination.

In addition, only two types of precautionary measures can be applied to a person suspected of committing a misdemeanor – a personal obligation and a personal guarantee.

The current CPC of Ukraine does not refer the investigator to the subjects of petition for seizure of property (Article 171 of the CPC of Ukraine) along with the investigator and prosecutor, although such a need constantly arises, primarily for seizure of temporarily seized property during detention.

Also, the investigator is not referred to the subjects of the request for such an investigative (search) action as a search, although it is common in criminal proceedings. In practice, this is solved by the fact that such requests are filed by prosecutors, which creates an additional burden on them, because the investigator can not participate in the consideration of such a request by the investigating judge as a relevant participant in criminal proceedings. In our opinion, such a problem should be solved by making appropriate changes to the CPC of Ukraine. It also seems possible in which such requests will still be accepted from experts with reference to Art. 40-1 of the CPC of Ukraine, which stipulates that the investigator is endowed with the powers of an investigator during the inquiry, so he is identified with such a subject of appeal as an investigator (Criminal procedural code of Ukraine, 2012). However, such case law is not being developed at the moment, as the courts, according to the inquiry management and prosecutors voiced during the focus groups, simply do not accept petitions from what they consider to be inappropriate subjects of appeal.

At the end of October 2020, the Inquiry Department of the National Police of Ukraine asked the Supreme Court for clarification on this issue. Although the explanations of the Supreme Court, unlike the legal positions formulated as a result of the case in the cassation instance, are not binding on the courts of first and second instance, they are usually guided by judges. Therefore, before making changes to the legislation, the problem can be solved in this way.

At present, the practice of non-acceptance by investigating judges of motions to seize property or conduct a search by investigators with reference to their absence among the subjects of appeal to the court in the CPC of Ukraine is not widespread. At the same time, there is an assumption that such requests may be accepted, given that the investigator in the exercise of powers is endowed with the powers of the investigator. Therefore, this issue may not require legislative changes to be resolved, which will depend, inter alia, on the future clarification of the Supreme Court.

Compared to the investigation of crimes, the terms of pre-trial investigation of criminal offenses have been shortened. The pre-trial investigation must be completed within 72 hours from the date of notification of the suspect; within 20 days – if the suspect does not plead guilty or if it is necessary to conduct additional investigative (search) actions, or if the criminal offense was committed by a minor; or within one month – if the person has applied for an examination.

If additional investigative and search actions are required, the inquiry period may be extended up to 30 days. In exceptional cases, the pre-trial investigation may be extended for up to two months. In addition, the terms of the trial, which must be set within five days of receiving the indictment, have been shortened. And if a person is detained, a trial must be ordered immediately.

The institute of criminal offenses has accelerated the average time for pre-trial investigation and trial of minor criminal offenses, especially in proceedings where the suspect pleads guilty. Compared with the term of pre-trial investigation in 2 months with the possibility of extension to 6 months (but not more), provided by Articles 219, 294 of the CPC of Ukraine, for similar criminal offenses of crimes of small gravity and part of medium gravity, the terms of investigation were accelerated, in particular due to the reduction of the upper limit. The available data give grounds to claim that the term of pre-trial investigation of criminal offenses has been doubled by normative restrictions of the term of inquiry (Krapivin, 2021).

We believe that the CPC of Ukraine does not clearly define the terms of inquiry, the countdown of which begins from the date of notification of the person of suspicion. The legislator missed the indication of the term of inquiry from the moment of entering the information into the Unified Register of Pre-trial Investigations and until the person is notified of the suspicion. If in respect of minor, serious and especially serious crimes, the legislator specifies such deadlines in Part 2 of Art. 219 of the Criminal Procedure Code of Ukraine, there is no such norm in relation to criminal offenses in the specified code. The interrogators have rather short terms of completion of the inquiry from the moment of notifying the person of the suspicion of committing a criminal offense: 72 hours, 20 days and 1 month, depending on the circumstances specified in Art. 219 of the Criminal Procedure Code of Ukraine (Criminal procedural code of Ukraine, 2012).

With the amendments to the CPC of Ukraine regarding criminal offenses, the legislator allowed quite frequent duplication of identical legal relations in different articles of the CPC of Ukraine, which complicates the understanding and application of these norms. In particular, the procedure for extending the terms of inquiry is duplicated in paragraph 1, part 4 of Art. 219 and in Art. 294 of the CPC of Ukraine and leads to a misunderstanding of the general term of inquiry, for which the prosecutor has the right to extend it.

The legislator, having established restrictions on the possibility of extending the terms of inquiry in Art. 219 of the CPC of Ukraine (the term of inquiry may be extended only for criminal offenses referred to in paragraphs 1 and 2 of Part 4 of Article 219), in Art. 294 of the CPC of Ukraine did not specify these restrictions, which in practice may lead to confusion in the application of this provision.

We also consider the legal regulation of the terms of detention of a person who has committed a criminal offense to be not entirely successful. In particular, in Part 2 of Art. 298-2 of the CPC of Ukraine specifies one term of detention of a person – three hours from the moment of actual detention, and in Part 4 of the same article – other terms of detention of a person: 72 hours and 24 hours. Officials with the right to detain a suspect in a criminal offense are in accordance with Part 3 of Art. 298-2 of the CPC of Ukraine «authorized persons» and "coroner".

An investigator is an official of an inquiry unit of the National Police, a security body, a body that monitors compliance with tax legislation, the National Anti-Corruption Bureau of Ukraine, the State Bureau of Investigation, or an authorized person of another unit of these bodies within its competence. However, which official – the «authorized person» or the «investigator» – has the right to detain a person for 3 hours, 72 hours and 24 hours, as well as whether the 3-hour detention period is included in the 24 and 72-hour detention periods or whether separate term of detention - the legislator did not provide an answer, which may lead to different interpretations of these terms by the participants in the criminal proceedings.

In accordance with paragraph 4 of Part 3 of Art. 214 of the CPC of Ukraine to clarify the circumstances of a criminal offense before entering information into the Unified Register of pre-trial investigations may be seized tools and means of committing a criminal offense, things and documents that are the direct subject of a criminal offense or found during the detention of a person or reviewing things. Similar instructions are duplicated in Art. 298-3 of the Criminal Procedure Code of Ukraine.

From the standpoint of elementary logic, this rule is incomprehensible. The question arises: how can objects and things be removed before entering information into the Unified Register of Pre-trial Investigations, if their detection is possible during procedural actions (detention, personal search, or inspection of things), which the investigator can carry out only after entering information into the Unified Register of Pre-trial Investigations; investigations?

The most controversial in terms of compliance with Art. 129 of the Constitution of Ukraine and the general principles of criminal proceedings (Chapter 2 of the CPC of Ukraine) is the possibility of using the court as

evidence in criminal offenses written explanations, testimony of witnesses, victims, specialists and material evidence without participants in criminal proceedings in a simplified manner court, when a person unequivocally admits his guilt in the presence of a lawyer and does not want to participate in the trial. In this case, the person is deprived of the right to appeal the sentence. It is obvious that such a "simplified procedure" contradicts the principles of adversarial proceedings, proving before the court the persuasiveness of evidence, publicity of the trial to ensure unconditional (see Article 129 of the Constitution of Ukraine) appellate review, as well as the presumption of innocence, guilt, right to defense, immediacy of research of indications, things and documents, publicity, dispositiveness, etc.

The Ukrainian legislator must ensure the avoidance of violations of human and civil rights and freedoms by law enforcement agencies, which may be caused by shortened investigation, duplication of certain provisions of the CPC of Ukraine, lack and vagueness of regulations governing the investigation of criminal offenses. After all, these problems are abusing their powers, interpreting the uncertainty of the law in favor of the prosecution.

Conclusions

The analysis of the provisions of the criminal and procedural legislation concerning the institute of criminal offenses introduced in Ukraine, as well as the practice of their application, allowed to draw the following conclusions.

In order to avoid restriction of a person's rights and strict observance of the amnesty dismissal procedure in the event of a criminal offense, the Law of Ukraine «On the Application of Amnesty in Ukraine» needs to be streamlined. It operates only with the concept of «crime» and does not use the terms «criminal offense» and «criminal offense» offense».

The criminal law is subject to streamlining in terms of determining criminal liability for preparing for a misdemeanor, as well as increasing sanctions in the form of fines for committing criminal offenses that are more socially dangerous than certain administrative offenses.

In order to increase the efficiency of the investigation of criminal offenses in the form of an inquiry, it is expedient for the National Police of Ukraine to introduce specialization of investigators with a clear reflection of jurisdiction in the criminal procedure legislation.

The Criminal Procedure Code of Ukraine needs to supplement the provision on the relevant procedural decision by the coroner, if as a result of the information conducted before entering information into the Unified Register of pre-trial investigations of procedural actions, he does not establish the composition of the criminal offense.

The Criminal Procedure Code of Ukraine should identify the coroner along with the investigator and prosecutor as the subject of the search, as well as request the seizure of property, primarily to seize temporarily seized property during the detention of a person.

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