ON THE ISSUE OF LEGAL REGULATION OF PRE-TRIAL INVESTIGATION OF CRIMINAL OFFENCES

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Abstract. Study considers topical issues of legal regulation of pre-trial investigation of criminal offences. Attention is also drawn to the fact that the legal doctrine has not yet found a definitive denominator in the substantive and procedural aspects of the implementation of the legislative provisions regulating the procedure for the investigation of criminal offences. The analysis of a number of changes in the legislation is given. The author offers some recommendations for its improvement.

The author also has highlighted problematic aspects and suggested ways to improve them from the perspective of recent changes.

Keywords: *criminal offence, inquiry, pre-trial investigation, investigator, simplified form.*

Introduction

According to current criminal procedural law, criminal offences should be investigated as an inquiry and in a simplified form. Instead, for today this form of investigation has not been put into practice yet, even though a separate chapter of the Criminal Procedure Code of Ukraine has covered the pre-trial investigation of criminal offenses. This is also noted in the Strategy of Development of Bodies of the Ministry of Internal Affairs of Ukraine for the period up to 2020, where, in particular, it is mentioned that one of the negative factors in combating crime is the low efficiency of pre-trial investigation, because of the imperfection of the relevant legal mechanisms, excessive burden on the authorities of pre-trial investigation and their incompleteness. This can be overcome by introducing a criminal offence institution and new procedural forms to increase the effectiveness of pre-trial investigation [1].

The purpose of the study is a systematic analysis of legislative innovations on pre-trial investigation of criminal offences proposed by the draft Law of Ukraine "On Amendments to Several Legislative Acts of Ukraine on Simplification of Pre-trial Investigation of Certain Categories of Criminal Offenses" dated 20.04.2018 No 7279-d (as amended on 21.11. 2018).

Introduction.

Considering seemingly rather positive changes in the distribution of pre-trial investigation, it should be noted that the legislator has not finally resolved a number of problematic issues in the investigation of criminal offences. This makes it necessary to carry out a comprehensive and systematic analysis of the legislative provisions regarding the regulation of the investigation of criminal offences.

Research results.

In the context of the problem under study, it should be noted that the chapters of legal history indicate the implementation of criminal offence as a separate category of offences that were less socially dangerous actions than crimes, even when Ukraine was the part of the Russian Empire. In particular, if one refers to Art. 4 "Criminal and Correctional Offences" 1845, he can see the separation of crime and jffence. In this article it was stated that “both the illegal act itself and non-compliance with

the injuctions of Law can be recognized as a crime or offence under criminal or corrective penalty" [2, p. 23]. According to this Regulation, criminal offences were divided into crimes and criminal offences, which included an unlawful interference to the rights on property, personal safety, honor and dignity of a person, etc. The delineation of crimes and offences was conducted by the object of the infringement, though not very clearly. Such a differentiation criterion was provided for the first time and, moreover, only corrective punishment was imposed for the offenses. Criminal offences were separated into particular type of criminal actions in Criminal Codes of 1885 and 1903. Thus, according to the Criminal Code 1903, criminal actions were divided into felonies, crimes and offences. Offences were actions punishable by fines or an arrest [3, p. 236; 4, p. 66].

After examination of the draft Law of Ukraine "On Amendments to the Criminal Code of Ukraine on the Introduction of the Institution of Criminal Offenses", which were brought before the Supreme Soviet of Ukraine in 2012, O.M. Sharmar has concluded that they need legislative drafting, since their content does not correspond the Constitution of Ukraine and the principles of criminal law doctrine laid down in the Criminal Code of Ukraine, and it will complicate the implementation of its regulations. In this regard, the scientist considers it necessary: 1) to agree the text of the draft law on offence with the Constitution of Ukraine; 2) to reform the legislation so that the administrative offence was not criminalized but retained its legal nature. In addition, taking into account historical and foreign experience, the researcher considers it appropriate: 1) to give a unified name to administrative and criminal misconduct – an anti-social misconduct, so that its existence does not contradict national criminal law doctrine; 2) to establish clear criteria according to which some of the crimes will be classified as criminal offences; 3) to define clearly the concept and subject of criminal jffense; 4) to predict, whether a complex form of complicity in the commission of such actions is possible; 5) to determine, whether there will be a recurrence of crimes and criminal offences and their legal consequences; 6) to specify, what should be the system of punishments or penalties, general principles of their sentencing for offence (offencs) or at the same time for misconduct and crime, etc. [5, p. 362].

Without analyzing the following bills on further improvement of the institution of criminal offences, it should be noted that the results of lawmaking activities during 2018 have distinguished themselves by some acceleration in its introduction into the criminal law system and improvement of the provisions regulating the form of inquiry. In this case, it is considered the draft Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Simplifying Pre-trial Investigation of Certain Categories of Criminal Offences" No 7279-d dated 20.04.2018. This bill suggests in Clause 2 of Art. 12 CC Ukraine to provide the concept of "criminal offence", which should be understood as envisaged by this Code action (omission), punishable with fine not exceeding three thousand non-taxable minimum incomes of citizens or with other punishment, not related to imprisonment [6].

Continuing to investigate the peculiarities of the investigation of criminal offences, we'll refer to Clause 1 of Art. 298 of the CPC of Ukraine, stating that it is carried out in accordance with general rules of pre-trial investigation provided for by the CPC of Ukraine, taking into account the provisions of Chapter 25. Therefore, the legislator establishes the procedure for conducting a pre-trial investigation, identical to the procedure for conducting a pre-trial investigation (filing information in the EDDR, reporting, familiarization with criminal cases, etc.). At the same time, the general procedure for pre-trial investigation of criminal offences has certain peculiarities of restriction of human rights and freedoms, which is caused by the lesser importance of the public danger of criminal offense. Thus, on the basis of the requirements of Clause 1 of Art. 299 of the Criminal Procedure Code of Ukraine, during pre-trial investigation of criminal offences it is not allowed to use preventive measures in the form of house arrest, bail or detention. In this case, it is clearly logical that the person who is suspected in committing a criminal offense, given the humanization of the development of criminal justice, is inappropriate to lift restraining orders. The rationale for this is the fact that most crimes, based on the concept of the institution of criminal offences, should be investigated in the form of inquiry, without providing for punishment in the form of imprisonment, that indicates the unlawfulness of

preventive measures such as detention or domestic arrest, because they significantly limit a person's right to liberty and security of person.

Currently, there are no any provisions in Chapter 25 of the CPC of Ukraine regulating the procedure and grounds for detention of a person for committing a criminal offence. An attempt to overcome such a gap was made in the aforementioned Bill No 7279-d, which proposes to amend the current CPC of Ukraine with Article 298-2, where to provide that an authorized officer has the right, without the order of an investigating judge, to detain a person suspected of committing a criminal offense in the cases provided for in paragraphs 1, 2 of Clause 1 of Art. 208 of the CPC of Ukraine, and only if this person: 1) refuses to comply with the lawful demand of the authorized official to stop the criminal offense or resists; 2) tries to leave the place of criminal offence; 3) during direct prosecution after committing a criminal offence, fails to comply with the lawful demands of an authorized officer; 4) being under the influence of alcohol, drugs or another intoxication hurts himself or others. At the same time, Clause 2 of this article states that the detention of the person, who committed the criminal offence, shall be carried out not more than three hours from the moment of actual detention.

Apparently, the term of detention of a person for committing a criminal offence of three hours is similar to the term of administrative detention, which allows to make a conclusion about the proportionality of the public danger of a criminal offence and an administrative offense. However, given the fact that the legal nature of criminal offence lies in the reassessment (humanization) of certain types of crimes, as well as their further categorization of criminal offences, they are inherently more socially dangerous than administrative offences. In this regard, in our opinion, it is not sufficiently unreasonable to set such short period of detention for a criminal offence. Moreover, the exercise of procedural rights and the observance of legal procedures during the pre-trial investigation requires considerable time for the establishment of the grounds, including the commission of a criminal offence. For example, if a person detained when committing criminal offence wants to involve a lawyer, or when the actual detention has taken place in a remote settlement, it will take some time for police for arriving at the place of detention, clarifying the circumstances of such detention, waiting for a lawyer, conducting personal searches and drawing up a protocol. Such a list of necessary actions may not be covered by a period of three hours, and if law enforcement officers have enough time to carry out the aforementioned, the actions will be implemented hastily, which in future will affect negatively the knowledge at all. Otherwise, law enforcement officials will be required to note in the report the time of the detention, which does not clearly coincide with the actual detention, but it is necessary to find out the details of the criminal offence, identification and so on.

Based on the foregoing, we conclude that the proposed changes to the regulation of the period of detention of the person, who committed the criminal offence, for no more than three hours from the moment of actual detention, do not correspond to the basis of reasonable terms. We believe that the proposed legislative provisions may adversely affect the performance of pre-trial investigations in general and the proving of a person's guilt in particular, since an authorized officer will be deprived of the opportunity to carry out a quality detention of a person during which, as practice shows, the means or instrument of committing a criminal offence are also removed, as well as stolen property, etc.

On the basis of the conducted analysis, we consider it expedient to exclude Clause 4 of the draft law proposed in the Bill No 7279-e of Article 298-2 of the CPC of Ukraine, and set out the second part of this article in the following wording:

«2. Detention of a person, who has committed a criminal offence, shall be for no more than twenty-four hours from the moment of actual detention".

It should be noted that an important feature of the realization of the inquiry as a form of pre-trial investigation is the presence of specific participants in the criminal proceedings, authorized to conduct it. We draw this conclusion on the basis of an analysis of the provisions of Clause 3 of Art. 38 of the CPC of Ukraine, which states that during the pre-trial investigation of criminal offences in statutory cases, pre-trial inquiry shall be carried out by a body of inquiry that covers such participants in criminal proceedings as the head of the body of inquiry and the investigator.

Conclusions

Hus, summarizing the study, it can be stated that, despite a number of positive points regarding the introduction of the institution of criminal offences and simplified form of pre-trial investigation – inquiry, the legislator still did not take into account the problematic issues that may arise during the investigation of criminal offences. In our opinion, the draft Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Simplifying the Pre-trial Investigation of Certain Categories of Criminal Offences" dated April 20, 2018 No 7279-d (as of November 21, 2018) requires further improvement.

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