

*Journal
of the National Prosecution Academy of Ukraine
2(35)'2014*

Published 4 times a year

Created
on November 18, 2005

Founder
National Prosecution
Academy of Ukraine

Senior Editor
Yevgen Blazhivskyy

State Registration Certificate –
KB №13906–2879 ПП

**The journal is included to the list of scientific publications by Decree of Presidium of Higher
Attestation Commission № 1'05/2 from the 27th of May, 2009**

Index – 95295

Recommended to publishing and distribution through Internet
By Board of Studies of National Prosecution Academy of Ukraine
(Protocol № 6 from 23th of January, 2014)

Review of the articles is carried out by members of editorial board of the journal

Address of editorial staff:
Melnikova street 81–b, 04050, Kyiv, Ukraine
Tel: (+38044) 206–00–51; 206–15–61
www.ap.gp.gov.ua/ua/visnyk.html
e–mail: visnyk.napu2005@ukr.net

National Prosecution Academy of Ukraine, 2014

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CURRENTLY IMPORTANT

Vasyl KISELYCHNYK,

*The Head of the Department of Administrative and Finance Law
of National Academy of Prosecution of Ukraine,
Doctor of Legal Sciences, Associate Professor*

Olena KIIVETS,

*Professor of the Department of Civil disciplines
of National Academy of Prosecution of Ukraine,
Doctor of Legal Sciences, Professor*

REGULATIONS OF THE THE COUNCIL OF THE EUROPEAN UNION ON JURISDICTION, RECOGNITION AND ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS (IN THE CONTEXT OF HARMONIZATION OF PRIVATE LAW OF EU)

The harmonization of private law is a necessity for the functioning of the common market, which largely integrates many legal systems, i.e. perfect harmonization of these systems will be resulted in the creation of a unified private law. However, it should be clearly understood that the achievement of this ideal result is almost impossible, we speak mainly about the unification of conflict of laws.

In this context, there is an interesting report of Mario Giuliano and Paul Lagarde made them at a conference dedicated to the Convention on the law applicable to contractual obligations [1], which was the theme of opinion regarding the advisability and possibility of harmonization of conflict rules only, while the benefits are it provided the economic sphere, which would definitely simplify the functioning of the common market. Even the initial stage of harmonization – harmonization of conflict rules lays in the foundation of the further legal certainty in the regulation of economically important areas as establishing the same principles of law, regardless of the state court.

This position is reflected also in practice. For example, in paragraph 11 of the EC Council Regulation on insolvency № 1346/2000 stated inability to develop

common approaches to insolvency and bankruptcy proceedings throughout the EU [2], and in the preamble to Council Regulation EC number 44/2001 on jurisdiction and the recognition and enforcement of judgments on civil and commercial matters (hereinafter – Brussels–2001/Brussels I) indicated that some differences in national rules governing jurisdiction and recognition of judgments, hinder sustainable functioning of the internal market. It is necessary to unify the rules of conflict of laws in civil and commercial matters, as well as facilitation to accelerate and facilitate the recognition and enforcement of judgments Member States [3]. Largely Regulation repeated provisions Brussels Convention on jurisdiction and enforcement of judgments on civil and commercial litigation [4] and Lugano Convention on jurisdiction and enforcement of judgments in civil and commercial matters [5], due, primarily, the that Regulation is a result of symbiosis of the two documents (paragraph 5 of the Preamble). Like conventions, the main anchors for determining the applicable law, is home of the defendant. Shall apply only if the defendant's residence in the Member State of residence if different, the applicable national law of the defendant, except as provided for in Articles 22 (Exclusive jurisdiction) and 23 (Agreement on jurisdiction).

Continuity between the Brussels Convention and Regulation shall be provided by the introduction of the transitional provisions of the Regulations. This document applies to civil and commercial matters, regardless of whether the case is hearing in a permanent court or tribunal. However, it does not apply to resolve disputes in the field of tax, customs and administrative law.

This Regulation shall not apply with respect to cases concerning the constitutional status of a person, legal capacity of natural persons with regard to property rights arising from a family relationship, wills and inheritance, as well as bankruptcy cases and claims relating to the liquidation of insolvent companies, settlement agreements in respect of social security on arbitration.

Let us analyze some provisions of the Regulation, the provisions of which cover all major aspects relating to civil and commercial matters subject to the

availability of communication between the litigation for which it applies and the territory of the Member States.

The fundamental aim of this Document was to define the proper administration of justice and the need to minimize the possibility of parallel proceedings, which will secure legal framework from that controversial decisions in EU Member States as well as the formation of a clear and effective mechanism for handling civil and commercial transactions, as well as to address the problems arising from national differences, including the timing and terms.

The document sets out the general principles, approaches to jurisdiction, establishing that the rules on jurisdiction should be fairly predictable and founded on the principle that it is usually determined by domicile of the defendant, except in certain cases where the dispute or expression parties is the determining factor. Location entities must be defined independently so as to avoid conflicts of jurisdiction.

Terms admits that in order to facilitate the exercise of justice, in addition to being tied to the location of the defendant may be provided alternative ways of jurisdiction based on a close link between the court and this case.

However, it is still an advantage should have general rules of jurisdiction under which the Regulation applies in cases where the defendant has a domicile in one of the Member States. The defendant, who has no permanent residence in one of the countries – members of European Union, subject to national rules of jurisdiction applicable in the states – members of the EU, where the court. On defendant residing in EU Member States – which is not a member of this Regulation (for example, Denmark) apply the rules of the Brussels Convention, which was mentioned above.

Oleg LYTVAK,
*the Head of the Department of Criminology and
Criminal Executive Law
of National Academy of Prosecution of Ukraine,
State Counselor of Justice of Ukraine,
Doctor of Legal Sciences, Professor,
corresponding member of NALS of Ukraine,
Honored Jurist of Ukraine,
Honoured master of sciences and engineering of
Ukraine*

Sergiy ODNOLKO
*Researcher of the National Academy of
Prosecution of Ukraine
Senior prosecutor of
The Prosecutor's office of Samara district of
Dnepropetrovsk region
Lawyer of 1 class*

FUNCTIONS OF PROSECUTION BODIES AT THE RECENT STAGE OF REFORMATION OF LAW ENFORCEMENT BODIES

This article is devoted consideration of questions with realization of functions of office of public prosecutor on the modern stage of reformation of law enforcement authorities of Ukraine. Outlined separate problems of functional structure of activity of public prosecutor in a criminal process and legal regulation of his plenary powers.

The authors attempt to detailed clarification of the functions of the Prosecutor's office at the modern stage of creation of the state and in conditions of reforming of bodies of the Prosecutor's office. Important, they believe, is to establish the content of the concept of «function» to determine their nature and significance for the practical implementation of the entire system of prosecutorial bodies.

Under the functions of the Prosecutor's office proposed to be regulated to the sphere of activity of the prosecution bodies taking into account their socio-state purpose, tasks, rights and responsibilities within the framework of their powers.

A fundamentally important legislative warning that the Prosecutor may not be assigned to perform functions not envisaged by the Constitution of Ukraine and Law of Ukraine «On Prosecutor's office».

The article analyses the provisions of the Law of Ukraine «On Prosecutor's office», which entered into force on December 1, 2012, which clearly defined the functions of the Prosecutor's office of Ukraine: the maintenance of public prosecution in court; representation of interests of a citizen or the state in court in cases determined by law; supervision over observance of laws by bodies that conduct operative and search activity, inquiry, pre-trial investigation; supervision over observance of laws in the execution of court decisions in criminal cases and application of other measures of coercion related to the restraint of personal liberty of citizens.

Speaking about the implementation of the bodies of the Prosecutor's office of international cooperation, actually implementing the functions of the Prosecutor's office.

Are given in terms of foreign and domestic scientists about the functional structure of activity of the Prosecutor in criminal proceedings and legal regulation of its powers at the stage of pre-trial investigation.

The essence of the classification groups of functions of the Prosecutor's office, indicated their impact on the effectiveness of implementation of law enforcement tasks.

In the conclusion to this issue, the authors determine that the goal is the formation of legal state, strengthening of the priorities of public prosecution in the protection of constitutional rights and freedoms of man and citizen.

Based on the analysis of laws and regulations identified and analyzed temporary function. The supervision over observance of laws by bodies that conduct operative and search activity, inquiry and pre-trial investigation. The subject of supervision is the observance of laws by bodies that conduct operative-investigative activities.

Indicated the need for separation of the functions of the Prosecutor's office and powers of the Prosecutor, provided Art. 20 of the Law of Ukraine «On Prosecutor's office» with the latest amendments according to Law of Ukraine from 18.09.2012. № 5288-VI.

Therefore, with a certain, it is possible to define functions of the Prosecutor's office provided under the authority of the activities of the bodies of the Prosecutor's office, the purpose of which is in the formation of legal state, strengthening of the priorities of their activities in favour of the protection of constitutional rights and freedoms of man and citizen.

THEORY OF PROSECUTORIAL ACTIVITY

Ruslan BASARAB,
Senior Researcher
Studies of juvenile justice
Research Institute
National Academy of Prosecution of Ukraine
Senior Counselor of Justice

THE ACTIVITY OF THE PROSECUTION BODIES OF UKRAINE ON PROTECTION OF THE RIGHTS AND FREEDOMS OF CHILDREN

The author examines some aspects of coordination activities and interactions of organs Ukraine to protect the rights and freedoms of children. Offers the concept of coordinating the activities of the Prosecutor's Office of Ukraine in this area.

Author determined the basic criteria which distinguish the interaction as a coordinated joint activity (or inactivity) of the organization and interaction as a set of activities aimed at coordinating the efforts of related subjects. Based on the content of national and international law explains what is coordination as a practical coherence between certain institutions.

Provides analysis of the draft law «On Prosecutor's Office» № 3541 in terms of coordination of research activities of the Prosecutor's Office of Ukraine on protection of the rights and freedoms of children.

The author focuses on the fact that scientific papers in the field of complex research coordination activities of the Prosecutor of Ukraine on protection of the rights and freedoms of children based on the draft law «On Prosecutor's Office» № 3541 supported by the Verkhovna Rada of Ukraine in the first reading on 05.11.2013 at the time was not.

*Iryna EVROPINA,
Chief Science Officer
of the Department of Science support ensuring organization of activity and control
within prosecution agencies
of Science and Research Institute
of National Academy of Prosecution of Ukraine,
Senior Councilor of Justice,
Cand. Legal Sciences*

*Artem DEMIDA,
Senior prosecutor
of Prosecution office of Zavodskiy district
of Mykolaiv city,
2 class lawyer*

THE PLACE OF PROSECUTION BODIES IN THE SEPARATION OF POWERS IN UKRAINE

National scholars and lawyers-practitioners point out the necessity to determine the place of prosecution office in the government structure of Ukraine. Such attempts were made by Verkhovna Rada of Ukraine, President of Ukraine, and Cabinet of Ministers of Ukraine. We are talking about the framework measures in respect of implementation of Administrative Reform, Strategy of Economic and Social Policy, Program of Integration in European Union and other national development programs in Ukraine.

European community maintains interest in respect of this matter, which is supported by a number of expert conclusions, in particular by the Venice Commission, also in respect of prosecution, adjustment of its tasks, functions and organizational basis and activities. Currently, the commission has issued conclusion on the new draft law on the Prosecution [1], the adoption of which is one of the key preconditions for the integration of Ukraine into the European Union (EU). In our opinion, in line with the recommendations of the EU, there should be determined the place of the prosecution structure of governmental powers distribution. Discussions in this respect have been ongoing since Ukraine's independence and until today.

Mentioned problematic was thoroughly studied by L.M. Davydenko, V.V. Dolezhan, M.V. Kosiuta, V.I. Maliuga, I.E. Marochkin, O.V. Martseliak, O.I. Medvedko, N.V. Melnikov, M.I. Mychko, V.F. Pohorilko, V.V. Sukhonos, V.Y. Tatsiy, Y.M. Todyka, Y.S. Shemshuchenko, M.K. Yakymchuk, O.N. Yarmysh and other scholars. We will also try to join legal scholar and contribute our views in respect of this matter, referring to the famous doctrinal work and analyzing the existing normative-legal acts.

In independent Ukraine the first monographic study comprehensively analyzing interrelated problems determination of the prosecutors place in apparatus of the state and its interconnection with higher and local bodies of the state power authorities and local governments is considered to be thesis research of M.V. Kosiuta, proving special role of prosecution office in ensuring legality and legal order at the current stage as an independent state body in the power structure of Ukraine; the idea of separation of prosecution as an independent governmental branch of constitutional control [2, 5].

Later on the publications emerged highlighting proposals in respect of integration of the prosecution in judicial branch [3, 11–13; 4, 20–22]. Its supporters including former General Prosecutor of Ukraine O.I. Medvedko considered that placement of prosecution into the judicial brunch would be fundamental and key step in its reformation, which would provide for impartial, independent and de-political activity of prosecution and would meet modern tendencies in determining the place and role of prosecutors in democratic countries [5, 6–10].

V. Dolezhan supported scientific debate on the integration of prosecution in judicial branch, noting that such integration was a step in the right direction, especially considering the fact that the activities of the Prosecutor's Office were carried out in close cooperation with the courts and judicial control related to almost any decision and action of the prosecutors. At the same time this step is proof of Ukraine's readiness to accept the recommendations of the Parliamentary Assembly of the Council of Europe (PACE) in the part which does not contradict to its national interests [6, 117–123].

Until recently, reasonability of prosecution integration in judicial branch was also supported at the level of high public institutions of Ukraine. However the second thought were brought up by disclosed position of V.Y Tatsiy, who in the context of the constitutional reform suggested to introduce in the structure of the Constitution of Ukraine a new special chapter «Protection of the Constitution. State control «or» Bodies of Constitution protection and state control». The scholar suggests to include into this chapter the matter of functioning of such state bodies, which are designated to ensure strict compliance with constitutional norms and to monitor their observance in the state, including Prosecution of Ukraine as a system of agencies ensuring constitutional legality of the power structures, especially those engaged in the operational–investigative activity, pre-trial investigation, enforcement of court rulings etc. [7, 3–15].

This approach defines a specific place of prosecution in the power structure and deserves attention. However supporters of the idea of Prosecution to be placed within the legislative, executive and even the presidential structures prove, that the above-mentioned approach cannot not be unitary acceptable. These two proposals are embodied by the fact that none of them became legally accepted.

The solution to this relevant issue was neither provided in the draft prepared for the second reading by Verkhovna Rada of Ukraine on the Public Prosecutor's Office. Hence article 1 of the draft law stipulates that «Public Prosecutor's office of Ukraine shall be the state body being united system which in the manner foreseen herein performs established by the Constitution of Ukraine functions aiming to protect rights and liberties of a person, general interests of a society and a state» [1].

Hereinabove provides the grounds to consider that the authors of the draft law are neither agreeing to the position stated by V.Y. Tatsiy nor opposing it. The concept of this position is that Public Prosecutor's Office as controlling and supervisory body (which is regulated by the Constitution of Ukraine) should function independently rather that to be governed by other branches of power [7, 3–15]. Such approach we consider to the right one however it does not mean that Public Prosecutor's Office should be outside the community control. More over attention of legal public

organization in respect of its activity should be even closer. Having analyzed norms of Constitution of Ukraine there can be made a conclusion that reflects classical theory of Charles-Louis de Montesquieu according to which the power in the state is divided into legal, executory and judicial. However certain legal institution does not correspond to this theory, in particular structural establishments governed by the President of Ukraine as well the system of election commissions.

Suggested by the V.Y. Tatsiy direction could be considered as one of the optimal in order to solve issues with mentioned state formations in Ukraine and Public Prosecutor's office in particular.

Preservation of the status of Public Prosecutor's office as independent body of state power in any case should not be considered as maintaining its function of prosecution supervision as it was inherent during the times of former USSR. The practice of application of Criminal Procedure Code of Ukraine of 2012 (CPC of Ukraine) clearly disproves this.

The current prosecutor's supervision of pre-trial investigation is made in a form of procedural guidance, when the prosecutor acts «in close connection and together with investigator». He directly manages activity of agency of pretrial investigation concerning certain procedural or investigative actions, is actively involved in carrying out any of such actions or conducts them on his own. He is responsible for timeliness and legality of the procedural decisions adopted by pretrial investigation agency, as well as for conduct of investigative actions aimed at the establishment and verification of the evidence in criminal proceedings and whether such evidence were obtained on the grounds and in the manner prescribed by the CPC of Ukraine, observance to the rules their appropriateness and admissibility. Violation of the established by the law order on the conduct of investigative actions and obtains as the result evidence, presence of inadmissible evidence affecting the possibility of their use by the prosecutor during litigation, narrows down evidence base of prosecution as the party of criminal proceedings.

Namely the Prosecutor as the prosecuting party (with the exception – investigator upon approval of prosecutor) draws up and at the day when it was drawn

up gives to a person written notice of suspicion in the criminal offence committed. Such is followed by the prior evaluation of the available grounds for written notice of suspicion, in particular: apprehension of an individual at the scene of criminal offence or immediately after the commission of criminal offence; enforcement of a measure of restraint against an individual as prescribed in the present Code; availability of sufficient evidence to suspect a person of having committed a criminal offence (Article 276 of the CPC of Ukraine).

According to Article 283 of the CPC of Ukraine after a person has been notified of being a suspect, public prosecutor is required within the shortest possible time to do one of the following: close criminal proceedings; submit to court a motion on releasing the person from criminal liability; submit to court an indictment, motion to impose compulsory medical or educational measures. Information on completion of pre-trial investigation shall be entered in the Unified Register of Pre-Trial Investigations.

Subject to his authorities the Prosecutor provided laid down in Article 284 of the CPC of Ukraine grounds closes criminal proceeding in the course of pre-trial investigation by issuing respectful order. As the exception from this norm the investigator may resolve to close a criminal proceeding in case if absence of occurrence of criminal offence has been established; absence of elements of criminal offence in the act concerned has been established; a law took effect by which criminal liability for the action committed by the person concerned, has been abolished; concerning a criminal offence where no consent of the state that has surrendered a person has been obtained.

In any other cases subject to grounds foreseen by mentioned article of the CPC of Ukraine decision on closing criminal proceeding in respect of the suspect shall be adopted exclusively by the Prosecutor. In respect of the decisions of the investigator on closing criminal proceeding in respect of the suspect the Prosecutor within 20 days after receiving copy of such decision has the right to cancel it if it is illegal or deems to be unreasonable. Such decision of the investigator can also be canceled by the Prosecutor on the basis of the petition of the claimant, victim if such petition was

submitted within ten day after the copy the decision was received by the claimant, victim.

Thus, according to the CPC of Ukraine prosecutor has the cognitive-controlling type of authority and administrative type of authority in respect of adoption of key, principal decisions at the pre-trial stage of criminal proceedings [8]. As rightly states A.M. Larin, these authorities are of his «exclusive competence» [9, 56–57]. According to V.M. Savitskiy, V.S. Shadrin and some other legal scholars activity in the form of procedural guidance «does not eliminate prosecutor's supervision, one of the aspect of which is supervision over observance of right of a person and a citizen» [10, 194, 210; 11, 226]. In view of the above, we would like to note that this supervision significantly differs from prosecutor's supervision during former USSR times.

In respect of so called general supervision which persistently has been recommended by the European Council be the taken from Prosecution actually currently does not exist. Instead Prosecution through representation function performs legal protection activity which goal is to perform procedural and other actions directed at protection in the court of the interests of a citizen or the state in the manner prescribed by the procedural law.

This function is applied by the Prosecutor in respect of the interests of a citizen of Ukraine as well as foreign country citizen or person without citizenship if such person cannot on his own protect violated or jeopardized rights or implement procedural authorities as the underage person, incapacity or limited legal capacity as legal representatives or agencies who legally have the right to protect the rights, freedoms and interests of such persons do not perform or improperly exercising his protection.

Representation in court of the legal interests of the State Prosecutor ensures if there are present violations or threats of violation of the state interests if their defense is not done or is improperly done by body of state power, local authority or other power agency, the relevant authorities within its competence or in case of such body absence.

More over the grounds for representation function should be duly motivated and reasoned by the Prosecutor [1].

In our opinion, the prosecution should maintain its independent status of controlling and supervising agency, independently of any other branches of state power, due to the needs of Ukraine as a democratic state and its civil society regulated by the present Constitution of Ukraine. This should be the focus of Verkhovna Rada of Ukraine when adopting Law of Ukraine «On the Public Prosecutor's Office» in the new edition.

Finally, we would like to note that provided in this scientific article views are author's vision of the place of public prosecution in the structure of powers in Ukraine, including the perspective of adoption of the new Principal Law of Ukraine. We would like to invite the scientific community and anybody who is not indifferent to the future of the current Prosecution of Ukraine to join interesting and useful discussions.

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Inna KOVALCHUK,
*Assistant Professor at the Department
of Judicial and Law Enforcement Bodies System
of the National University
Odessa Law Academy,
Candidate of Law*

PROBLEMS OF IMPROVING THE REVIEW OF APPLICATIONS BY THE PROSECUTION BODIES

The applications procession by the public prosecution authorities is an important form of the prosecution activity and is aimed at maintaining the rule of law, ensuring legal order and reinforcing public order. Also it constitutes the means of interlinking the public prosecution authorities with various social circles of community, therefore important conclusions have been elaborated as concerns the implementation of rights and freedoms of citizens in certain spheres of public society activity.

Within last decades legal authors have been conducting the analysis of the issue of legislation evolution in the field of citizens' applications procession, *inter alia* the applications procession by the public prosecution authorities. Among others, we can name such legal authors as O. Banchuk [О. Банчук], L. Bila-Tiunova [Л. Біла-Тіунова], P. Beridze [П. Берідзе], I. Holosnichenko [І. Голосніченко], V. Dolezhan [В. Долежан], V. Nahrebelnyi [В. Нагребельний], V. Perepeliuk [В. Перепелюк], S. Siryk [С. Сірик], V. Tymoshchuk [В. Тимошук], V. Tsvietkov [В. Цветков], B. Shevchenko [Б. Шевченко], H. Yarmaki [Kh. Ярмакі] (Ukraine), V. Antonov [В. Антонов], D. Bakhrakh [Д. Бахрах], S. Berezovska [С. Березовська], N. Melnykov [Н. Мельников], V. Mentynskiy [В. Ментинський], K. Podiyachev [К. Подьячев], B. Remniou [В. Ремньов] (Russia), L. Minashkin [Л. Мінашкін] (Belarus), S. Kenzhaiev [С. Кенжаєв] (Tajikistan).

Yet the most recent events inside Ukrainian society urge for the revision of some traditional approaches towards the mechanisms of citizens' rights and freedoms protection, as well as the public prosecution authorities activity in mentioned field.

There are several reasons to revise, *id est*: the adherence of Ukraine to the requirements set by the bodies of Parliamentary Assembly of Council of Europe and European Union, constitutional process in Ukraine, profile activity of the Constitutional Assembly and other bodies.

According to Article 40 of the Constitution of Ukraine in force, any person shall be entitled to submit individual or collective written applications or to turn in person to the public authorities, local government authorities and officials and officers of these authorities, who in their turn shall be obliged to process the application and provide the grounded reply within period envisaged by the law. This rule seems to be incomplete. It is obvious that it won't be sufficient enough to provide the reply to the author of the application, should the real problem be confirmed in the course of procession. In our humble opinion, it is necessary to revise the abovementioned rule by adding to its text in the renewed Constitution of Ukraine the following wording: "and when reasonable take all necessary measures in order to eliminate the violation of rights and freedoms and to prosecute guilty persons".

Current version of Article 12 of the Law of Ukraine On General Prosecutor's Office [1] provides that the prosecutor shall process the applications and complaints concerning the violations of rights of citizens and legal entities with the exception of those complaints, which should be reviewed by the court. This rule is explained in details by the provisions concerning the procedure of prosecutor's personal reception of citizens, option to file an appeal of the decision on case to the prosecutor of the higher level or to the court, discontinue of complaint procession by the prosecution authorities of Ukraine after the issue of decision over it by the General Prosecutor of Ukraine.

Until recently domestic legal writers literally no doubted in the role of the prosecution authorities in application processing, actually it was regarded as an essential of the law enforcing activity of the prosecutor in the course of performance of due functions by him. According to the statistical data the greater amount of the processed applications concerning control over implementation of the laws on human

rights and freedoms protection and on protection of state interests (which is approximately 50 per cent) requested for the controlling activity beyond the scope of criminal judicial activity and judicially executive role of the prosecution authorities [2]. «Therefore, to our deep belief, – O.I. Panov mentioned, – it's not only desirable, but also kind of necessary to ensure the participation of the prosecution authorities in the system of public authorities of Ukraine in the field of human rights protection. Such approach is reasoned by the peculiarities of modern events in our state, as well as by political and legal traditions» [3, 71]. In his turn, V.S. Kovalskyi underlined that: «Prosecution authorities activity concerning the applications and complaints procession, as well as concerning control checks of mass media publications about violation of laws and other regulatory acts, imperfectness of controlling bodies in the performance of their functions, *etc.*, is of great importance for the enforcement of the legislation in this field of all and any social relationships» [4, 195].

According to Article 29 of the Law of Ukraine On Applications of Citizens [5] the control over adherence to the relevant legislative acts shall be conducted by the General Prosecutor of Ukraine and by his subordinate prosecutors. In conformity with powers given within relevant legislation they shall take measures to renew violated rights, protect legal interests of citizens, prosecute infringers. Mentioned rule remained unchanged since 1996, still this fact should not be disorienting. In the field of scope of activity of prosecution authorities concerning the applications procession there is a tendency to gradual cuttings of functions and powers, which is shown in a new version of the Law of Ukraine On General Prosecutor's Office; its draft has already been agreed upon with the Venice Commission. Mentioned draft misses the rule corresponding to Article 12 of the effective Law of Ukraine of General Prosecutor's Office at all.

We would like to comment that according to the Law of Ukraine On amending certain legislative acts of Ukraine concerning the issues of improvement from September 18, 2012 № 5288-VI [6] the list of reasons for prosecutor's control over adherence to and implementation of laws has been severely cut.

According to section 1 of Article 21 of the current version of the Law of Ukraine On General Prosecutor's Office the checks and controls in pursuance of natural and legal entities' applications, requests from deputies of any level, with the exception of applications and notifications concerning criminal violations, shall be conducted solely on condition of their previous procession by the relevant competent public authorities, local government authorities, their officials and officers or on condition of their failure to make decisions concerning those issues within period, set by relevant legislation.

«It's time for the public executive authorities and authorities in the field of state control to take the full scope of responsibility for the volume of implementation of laws at the relevant territory or in relevant branch» [7]. This is the reason why most part of citizens' complaints submitted to the prosecution office about the violation of their rights by public bodies will be inevitably filtered and won't be taken into procession by the prosecution office, while the complaining person will be given legal advice concerning his/her right to make initial application of their issue to the authorities in the sectors of execution or control.

In order to win a conduction of examinations and checks upon its application, the person needs to prove first that the issue concerns not only the violation of law, but also criminal violation of law, therefore the citizen's application has the status of notification about such infringement. In our opinion, in such cases concerned with the procession of complaints there is no need in taking a decision to open criminal proceedings only for its subsequent closing. It is necessary to act within frameworks of section 2 of paragraph 2.2 of the Statement of the procedure of keeping of the Unified register of prejudicial inquiries, [8, 224–238], according to which, when the application or notification lacks sufficient information about committed criminal violation, the requests for the provision of documents or relevant data and for sending explanations within 7 days shall be sent to the entities, organisations and bodies in order to put such information in place. This procedure looks similar to the procedure of the so-called pre-investigation check, envisaged by Article 97 (section 4) of Criminal Procedural Code of Ukraine dated 1960. With no objections against

the procedure itself, we still believe that it would be more suitable to set such procedure directly by Article 214 of the current version of Criminal Procedural Code, not by Instruction.

The final conclusions regarding the change of volumes of passing the applications to the prosecution authorities could be done upon the results of comparison and analysis of statistical data about the prosecution authorities operation in 2014 and 2015.

There might be a necessity to reject from solving the requests from the legal entities to the prosecution authorities, including the requests from controlling bodies, with the exception of cases concerned with launching criminal proceedings upon the results of their controlling activity. When the case concerns the protection of purely corporate interests, it should be taken into account, that mentioned entities in their vast majority keep legal departments and are fully able to protect their interests and rights by placing independent claims into the courts of different levels and jurisdictions.

According to the concept of new draft of Law On General Prosecution Office the prosecutor shall be able to perform examination procedures within his functions of representation of the interests of citizens or state interests, but solely in the light of using of received data with the view of finding the presence of grounds for the representation activity in the court. While reviewing the complaints from citizens he shall accept them to his processing and shall perform relevant investigatory acts solely with the view of protecting rights of persons, mentioned in the exclusive list, envisaged by the law.

Section 2 of Article 12 of the current version of the Law of Ukraine On General Prosecutor's Office provides that the prosecutor shall bear the obligation of fulfilment of control over the adherence to requirements of the legislation by all bodies, entities, enterprises, organisations and officials. It is quite reasonable that the prosecution authorities owing to the large scale of such activity could not have exercised such complex and broad control. At the same time, recurrent requirements of the high management of the prosecution authorities of Ukraine to make

controlling measures more intense mostly resulted to the increase of formal approach in the controlling procedures and to finding petty lacks in the applications procession, that could not be properly named the violations of law. Therefore it is obvious that prosecution control in this field will share the destiny of prosecution control over the adherence to and implementation of laws.

In the field of investigative activity and prejudicial inquiries procedure the prosecutor in cases defined by law shall act as person receiving and processing the applications, complaints and petitions on criminal procedural issues, and at the same time as the officer whose decisions, acts or omissions to act shall be appealed against by the interested person to the investigating judge (paragraph 1 of Title 26 of Criminal Procedural Code). Simultaneously the prosecutor shall be entitled to appeal against the decisions of the investigating judge (paragraph 2), while the complaints of the investigating officer over decisions, acts or omissions to act of the prosecutor in the course of prejudicial inquiry shall be processed by the prosecutor of the higher level (paragraph 3). These provisions give rise to a big complex of legal relationships in the field of applications procession and resolving; in some relations the prosecutor shall either act as leading participant, *id est* shall be entitled to take decisions on certain applications, or resign meaningful part of his powers in this field for the benefit of investigating judge who performs judicial control over investigation, or even act as subordinate to the investigating judge or the prosecutor of higher instance.

Notwithstanding the pressure of deep reforms of the core system of prosecution authorities the prosecution control over the adherence to the legislation remains to be of great importance in the course of court rulings execution in criminal proceedings and in the course of execution of other enforcement measures concerned with coercion of personal freedom of citizens (Chapter 4 Title III of the Law of Ukraine On General Prosecutor's Office).

Certain isolation of the institutions of penitentiary system and weakness of extradepartmental control over the activity of penitentiary system bring to the violation of the rights of prisoners. To prevent any potential negative events in this

connection in the mentioned environment it is highly important to conduct the analysis of the results of convicts' complaints procession. With the view of getting necessary information the prosecutor has the opportunity to interview the prisoners kept inside the institutions of the enforcement measures execution, including individual hearing of their applications and complaints. Such steps help to timely take necessary measures aimed at keeping order in mentioned institutions and preventing the hazard of mass riot provoked by discontent of some part of convicts in connection with the decisions and acts of officials towards them. Timely measures are really important, so that there was no need in depressing the riots via severe methods involving additional resources of legal enforcement authorities.

In our opinion, also there is need in taking certain additional measures aimed at improvement of ways and methods of applications processing, including by the prosecutor authorities.

The Law of Ukraine On Applications of Citizens lacks the list of principles for such activity. It would be appropriate to fix the list of mentioned principles in the Law of Ukraine On Application of Citizens along with the condition of their mandatory use by all bodies covered by mentioned law, including the prosecution authorities. The list should be opened with the principle of the supremacy of law; the essence of the supremacy of law is described in Article 3 of the Constitution of Ukraine as the acknowledgement of human, his/her rights and freedoms as highest social values, which define the content and orientation of the activity of state. The supremacy of law is tightly interlinked with the following principles: accessibility for applications, humanism and justice, completeness, comprehensiveness and impartiality of investigation and some others.

For the more specific ensuring of the guarantees of rights of applicants it might be worth putting more precise definition for some provisions of the current Guideline on the procedure of applications procession and solving and on procedure of personal reception by the prosecution authorities of Ukraine [9].

1. The list of repetitive application features is not sufficiently comprehensive (paragraph 1.4 of the Guideline). It should be supplemented with wording «failure to

take measures aimed at actual restoration of rights of person whose initial application was satisfied».

2. According to paragraph 3.2 any prosecution offices of all instances for each application can perform one of the following options:

- taken for the consideration;
- transferred for the revision by the subordinated prosecution authority;
- transferred to the other authority;
- attached to the complaint that was submitted earlier or to the files of criminal case.

Then there is the question: what shall one specifically understand as the «consideration of application»? Inasmuch as the application was sent for resolving by the subordinate prosecution authority it means that it had been previously reviewed, *id est* its text had been read and undergone analysis. Therefore, it is necessary to make a difference between consideration of the application in mentioned meaning and its resolution, *id est* performance of investigation on application, elaboration of relevant decision and provision of decision to the applicant. It is reasonable to offer the wording «taken into procession by this prosecutor's office» instead of «taken for the consideration» for the first option from the abovementioned list.

In this connection it is also desirable to add the definitions of terms «application procession» and «resolution of application» in paragraph 1.3 of the Guideline.

3. According to Part 4 of Article 7 of the Law of Ukraine On Applications of Citizen it is prohibited to transfer the complaints of citizens for the revision to the authorities or officials whose actions or decisions are being at issue of the complaint. We'd rather agree with point of view of V. Dolezhan, according to which this rule should also concern acts of omission from activity being at issue of the complaint [10, 56]. It would be reasonable to fix this provision in Title 3 of the Guideline.

4. There is a logical connection of previous provision with part 2 of paragraph 4.4 of the Guideline according to which «under no conditions can the decision of application be taken upon the conclusions of the subordinate prosecutors

whose actions are at issue of the application». This provision concerns the cases when the application is being processed by the prosecutor's office of higher level and the subordinated prosecutor is requested for his opinion regarding reasonability of application and for relevant pleas, which is quite natural. However there is a possibility of cases when the conclusion of subordinated prosecutor contradicts itself the law, therefore meets with criticism. Due to this, it is reasonable to make the wording of mentioned abstract more precise: «under no conditions can the decision of application be taken solely upon the conclusions of the subordinate prosecutors without proper estimation of their legal reasoning and additional check».

5. Also it is necessary to take additional measures in order to ensure applications procession by the prosecution authorities within reasonable terms which should not injure the comprehensiveness and neutrality of such procession. According to paragraph 5.1 of the Guideline the citizens' applications shall be resolved within 30 days starting from the date of it's submission to the prosecutor's office, while «... those applications not requiring any additional review and investigation shall be processed within 15 days, unless other is stipulated by law». This rule is copied from Part 1 of Article 20 of the Law of Ukraine On Applications of Citizens, with the exception that the law provides for one month term, not 30 days term. There is another question: when the application does not require any additional review and investigation and thus the reply on it can be issued on the basis of the analysis of its text, why wait 15 days before issuing relevant decision? According to the reasons set in paragraph 3.2. of the Guideline the applications shall be transferred to the subordinate prosecutor's offices or to other authorities within 5 days along with written notification about such transfer to the applicants. Then why not envisage the same term for resolving of mentioned application by Law and eventually by the Guideline?

6. Paragraph 4.14 of the Guideline provides the option of giving an interpretation to the author of application, when the application «contains no requests for any demands or claims satisfaction»; in such cases only interpretations of legal issues shall be provided. However in the majority of cases the need in interpretations

appear when citizen hopes for the prosecutor's interference should the disputable legal issue fall under judicial proceedings. Particularly such cases require the issue of interpretation or advice to turn the case to the court; possibly it's reasonable even to specify the jurisdiction of the court. The definition of the term «interpretation of the legal issues» envisaged by the Guideline is far too inexplicit, thus requires to be specified more correctly.

All considerations and comments here fail to cover all burning issues of the improvement of the procedure of application processing and elaborating decisions on them by the prosecution authorities, therefore in our opinion these issues require further, more detailed discussion.

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CRIMINAL LAW AND CRIMINOLOGY

*Mykhailo VYTIJAZ,
Prosecutor of Kyiv region,
State Counselor of Justice of 2 class*

CRIMINAL LEGAL CHARACTERISTICS OF WILLFUL NEGLECT OF PLEA AGREEMENT (ARTICLE 389-1 OF THE CRIMINAL CODE OF UKRAINE)

Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine in connection with the adoption of the Criminal Procedural Code of Ukraine» dated 13 April 2012 Chapter XVIII of the Special Part of the Criminal Code of Ukraine (hereinafter – CC of Ukraine) «Crimes against justice» was amended Article 389-1, which establishes criminal penalties for the two crimes: willful failure of the settlement and willful failure plea of guilt.

Subject of consideration in this paper is the composition of the second of the above offenses. The emergence of a new law in criminal legal prohibition necessitates scientific studies aimed at clarifying the first objective and subjective elements of the prohibited act. Later, with the advent of the investigation, litigation, may be a question of efficacy respective criminal law and problems of its application. Given the novelty of the composition of deliberate non plea of guilt, attempts to carry out his criminal legal description confined to several scientific and practical comments Article 389-1 of the Criminal Code of Ukraine and a number of articles of the author of these lines. Lack of scientific publications on this topic available for their needs on the part of law enforcement, research and teaching practices and determine the relevance and appropriateness of the proposed articles of its publication.

The purpose of publishing the proposed explanation of the result is the author of the criminal legal description of the composition of the offense, the structure of which form the object, object, objective and subjective aspects and subject of his commission.

Crime under Art. 381-1 Criminal Code of Ukraine, and infringes on the judiciary as the work of the court of justice and the specified object are the main

direct part in the crime. But in default of agreement on the recognition of guilt disrupted normal activities and other bodies that promote justice. This activity should be considered as an additional subject as part of the crime.

The subject of the crime defined in the law immediately said agreement. It fully meets the physical, social and legal features of the object of the crime. It is through the unlawful conduct of the agreement – intentional incompliance of conditions – can cause harm to justice as the main direct object of the crime.

Based on the text of the dispositions of Article 389-1 of the Criminal Code of Ukraine, the *corpus delicti* construed as formal. In the article there is no direct reference to what are the consequences have come as a result of failure of the Criminal Procedure Agreement, and its content is not seen obligatory occurrence of any consequences. Therefore, the consequences of failure plea of guilt is not included in the offense as a mandatory feature.

Content plea of guilt is determined by a list of the rights and obligations of the parties, which it fixed. Used legislator term – «non-compliance agreement» is always associated with the presence of a specific duty that has to be agreement on one of the sides. You can not talk about failure or breach an agreement at all – regardless of the specific duty unfulfilled. To set the attributes of the objective side of the crime under Article 389-1 of the Criminal Code of Ukraine, the actions of the perpetrator must establish a violation of one of the obligations that are imposed on him plea of guilt.

As to the subjective side failure plea of guilt should be noted that it is characterized by extremely deliberate fault, because this question as the title of the article 389-1 of the Criminal Code of Ukraine, and in the text of this article. This does not mean that not fulfill the agreement on the recognition of guilt can not be reckless. This can happen, but it does not constitute a crime forms, and therefore criminal liability for negligent failure to comply with the agreement does not occur.

To economic willful failure plea of guilt – a special, and at present has the following features: individual, sane person, a person who has attained 16 years of age, the person against whom the judgment came into force, which approved the agreement on recognition of guilt.

Andriy ORLEAN
Chair of state prosecution's maintenance, professor
National Prosecution Academy
of Ukraine, counsellor of justice,
candidate of legal sciences, docent

FRAUD AND BREACH OF TRUST AS A FORM OF INFLUENCE ON A PERSON FOR THE PURPOSE OF HIS EXPLOITATION

Use of fraud and betrayal of trust are among the most common forms of influence on a person for the purpose of his exploitation. About 80% of interviewed law enforcement officers (operatives, investigators and prosecutors) have mentioned that these forms of influence on a person are the most probable and another 20% – that these forms are common.

Basing on the scientific works of other authors, practical examples and own concerns the publication describes fraud and betrayal of trust in the structure of the main forms of influence on a person for the purpose of his exploitation.

Fraud is considered as a form of influence on a person, aimed primarily at the use of person's «fraudulent» will. Getting of such «fraudulent» will is provided through non-violent psychological pressure on the person, which is the subject of crime. Information actions are executed in connection to him (person). They appear in the illegal influence on his mentality. Such influence is aimed at transferring of corresponding (in this case false) information. Through fraud an accused is aimed to cause to a person the misrepresentation of the objective circumstances and persuade him to a certain behavior. For example, he announces to a person false information regarding employment opportunities abroad, working conditions, the amount of income and possibilities to return home at any time.

Given the above, fraud is defined as a non-violent psychological impact on a person who acts as a subject of the crime, connected with falsification of his will by deliberate fraud or maintaining an existing deceptive imagination, committed to persuade the person to a certain behavior.

Betrayal of trust is executed only by non-violent psychological influence, but continued usage of the powers granted by the principal may be in the form of both physical and mental effects. Executed physical effect without the consent of the individual can be seen as violent.

Thus, the betrayal of trust should be interpreted as violent or non-violent physical or mental influence on a person who acts as the subject of crime, connected with the usage of granted powers by accused to the detriment of such person (and third parties).

*Mykola ARMANOV,
Associate Professor of the Criminal Law Department of
National Academy of Prosecution of Ukraine
Class Two Lawyer, PhD in Law*

APPLICATION AND IMPROVEMENT OF CRIMINAL LAW IN COMBATING CORRUPTION

Today combating corruption in Ukraine is one of the most urgent problems that we are trying to solve on scientific as well practical levels. However, it seems that the anti-corruption activity at each of these levels demonstrates the opposite vectors, which negates the efforts to improve anti-corruption legislation and practice. Reforming of this law has recently gained bizarre shapes. April «improvements» of the legislative support against corruption conducted in 2013 is a bright example.

The Amendments to the Criminal Code conducted per this Act contradict scientific views of the battle against corruption by means of the criminal law. The main disadvantage of most criminal law norms is its incomprehensibility to a citizen following the law. The complexity of the law that needs an interpretation for each provision is a negative phenomenon, which should be avoided in lawmaking process. Unfortunately, the law that is being analyzed is not devoid of this feature. For example, the dispositions of its articles are overwhelming on a terminology level and difficult to understand.

In particular, the objective evidence of the crimes set forth in Part 2 of Art. 369 and Part 1 of Art. 369² of the Code are almost identical, which greatly complicates or even prevents their differentiation. The feature of objective side as «activity» is identical in both crimes – the active conduct of a person associated with the provision (transfer) of the subject of crime to another person in the form of undue advantage. The circle of people that convey such advantage is not limited in any element of the crime. The circle of recipients is also unlimited in both cases. The only distinguishing feature of both crimes is so-called «influence». However, neither the legislator nor the criminal law theory reveals the specified concept, which prevents its use as a dividing feature.

Production of prohibitive regulations is not the only reason to be surprised. Significant changes to the norms may prevent the detection of corruption offenses, significantly increasing their latency, and maybe even prevent the effective opposition to most dangerous corruption activities. Combining two separate grounds for exemption from criminal liability for corruption offenses will inherently lead to increased level of latency of these crimes. Persons who were not subject to undue advantage will have no interest in exposing the criminal acts of officials – corruptors. As a result, the most socially dangerous corruption – the corruption activities of authorities and other officials would not show up at all.

It is also important to pay attention to the inconsistency of the legislator regarding cases of exemption from criminal liability. Incentive norms are present in almost all articles that establish criminal liability for giving undue advantage, namely in Part 5 of Art. 354, Part 5 of Art. 368³, Part 5 of Art. 368⁴, Part 6 of Art. 369. However, for unknown reasons, the legislators decided that it is impossible to release a person from criminal responsibility, that gives undue advantage for abusing the power, and did not include the incentive norms to Article 369². This drawback is also subject to removal.

The mentioned facts illustrate existing non-systematic concept of legislative regulation of criminal liability for corruption offenses. The necessity to streamline the regulatory material is urgent. As possible direction of this coordination we can propose the construction of a separate article in Chapter XVII of the Criminal Code, which should systematically include all terminology section. Including the separate explication of the concept of authorities in the public and private sectors and those who provide public services. Clarification of concepts such as «bribery», «abuse of power», «overuse of power», «undue advantage», «large scale», «very large scale», «substantial harm», «serious consequences» and so on. These terms are cross-cutting for the entire section and must be used in a general sense. And separation of certain types of corruption offenses should be done through adding to the general term of required attributes. With the introduction of such a norm the need for the notes to individual article sections determining their removal would be eliminated. The

systematic approach is also necessary to apply incentive norms and to separate a single current reason for exemption from criminal liability to two separate grounds that was described in a previous editorial section.

Clarification of described chaos in a unified source of the criminal law of Ukraine is the most urgent task of the legislator. The doctrine of criminal law can only direct lawmaking stylus through guidance, advice, tried and tested concepts.

Alan TSKHOVREBOV
Zhovti Vody City Public Prosecutor,
Dnipropetrovsk Oblast,
Counsellor in Justice

THE OBJECTIVE PARTY OF INTERVENTION IN A LAW ENFORCEMENT OFFICER'S ACTIVITY

Act in the objective aspect of crime in question, is defined by the legislator as «impact of any kind on a law enforcement officer ...». Available doctrinal and judicial interpretation leaves out in the cold identification of correlation of such phenomena as «interference with activities» and «impact on officer». In my opinion, the definition of «interference» as an act, and «impact» as a way of its committing would be more perfect.

In addition, it would be reasonable to point to the illegality of the act committing in this crime. According to my calculations, the articles of the Special Part of the valid Criminal Code of Ukraine point to illegality of the act in the objective aspect of crime 185 times. In addition, the legislator used the term «illegal» 4 times and «lawless» – 8 times. It is interesting that 344th article following the 343rd article of the Criminal Code of Ukraine refers to «illegal» impact.

Impact is the process and outcome of psychological pressure on the subject. The above definition of illegal impact allows to determine accurately the moment of crime completion provided by p. 1, art. 343 of the Criminal Code of Ukraine, namely *the moment of victim's understanding of the nature of criminal impact* aimed at changing official activities performed by him.

Today, the law states that interference occurs «in activity» of the officer. However, the term «activity» should cover only a system of actions conditioned by a sole motive and subjected to one goal. So, instead of the term «activity» the text of art. 343 of the Criminal Code of Ukraine should contain the phrase «exercise of powers».

Part 2 of art. 343 of the Criminal Code of Ukraine provides for criminal responsibility for interference with the law enforcement officer activities in the presence of aggravating circumstances, in particular if it interfered with the prevention of crime or the apprehension of the person who had committed it. Whereas, in accordance with art. 62 of the Basic Law the crime is an act of human behavior, for committing of which a person was found guilty by a guilty verdict of court, which came into force instead of the term «crime», it is reasonable to operate the phrase «act bearing the elements of a crime».

CRIMINAL PROCEDURE AND CRIMINALISTICS

Oleksandr TOLOCHKO,
Vice Rector for Academic Affairs
at National Academy of Prosecution of Ukraine,
State Counselor of the Third Rank
Candidate of Law, Associate
Honored Lawyer of Ukraine

THE PRINCIPLE OF ADVERSARIAL SYSTEM DURING THE PRELIMINARY INVESTIGATION

This paper analyzes the activities of the prosecution and defense in pre-trial criminal proceedings, their procedural equality in the provision of court evidence.

Competitiveness as a principle and method of criminal procedure reflects its conceptual nature, is an instrument of protection of rights, guarantee justice and characterizes its type.

In the theory of criminal process the different going is offered near classification of principles of criminal realization.

The new Criminal Procedure Code consolidated list of the basic principles of criminal proceedings, which, in particular, carried and competitiveness.

The essence of the principle of competition and equality of the parties, the law laid down in the rules of CCP, is the distribution of important criminal procedure functions of prosecution and defense functions of the court, they distinguish between them and giving the prosecution and defense equal procedural rights.

The important element of contentionness during pre-trial investigation and judicial trial is a requirement of judicial activity of public authorities and them public servants that carry out criminal realization.

The sides of the criminal proceedings have equal rights in the collection and submission to court things, documents and other evidence, petitions, complaints, as well as the implementation of other procedural rights.

The increase of guarantees of rights suspected and defendants the improvement of procedure of judicial trial, transformation of court will assist also on the independent and objective participant of criminal process, abolition of institute of return of business on additional investigation.

Nature of publicly-contention criminal process envisages the features of realization of contentionness during realization of pre-trial realization.

Realization of principle of contentionness must provide all logic of construction and normative adjusting of criminal process.

Oleksandr BONDARENKO,

Deputy Head of the Main Department of Supervision over law observance in criminal proceeding – Head of the Department of Supervision over law observance by the tax authorities of General Prosecution of Ukraine, Senior Counselor of Justice

PERSONAL LIABILITY AS A FORM OF PROCEDURAL PROVISION OF PERSONS PARTICIPATION IN CRIMINAL PROCEEDINGS

The current criminogenic situation in Ukraine is characterized by an increase in the number of criminal offenses against life and health of citizens and their property interests, organized groups and criminal organizations as well as a significant aggravation of the situation in some regions. Crime became one of the factors that threaten the national security of Ukraine. These and other criminal developments require decisive actions from the state, for example in the form of limitation of the rights of citizens and organizations through application of legal measures of procedural coercion.

An important matter in the practice of pre-trial investigation and court hearing is application of preventive measures as a form of criminal procedural coercion of preventive nature related to the ruling of the investigating judge, the court to temporary restrict or derivate the persons right to liberty and personal inviolability. With the adoption of the Criminal Procedure Code of Ukraine of 2012 (the CPC of Ukraine) in the system of preventive measures there was established personal liability of a suspect, accused namely the duty to fulfill obligations imposed on him by the investigating judge [1, 26]. According to the monitoring report «Implementation of the new CPC: first results», made by the Centre of Political and Legal Reforms, the number of cases when personal liability was applied has increase – each month this preventive measure was applied in respect of about 2100 people [2].

Therefore the issue of conceptual matter, legal nature and application of personal liability will continue to be relevant and resonant, as on the one hand, this preventive measure insures compliance and performance of requirements of the law, and the second hand it is related to restriction of the basic rights of a person and a citizen.

Within different periods of time above mentioned problematic was researched by scholars-processualist, including: I.M. Gutkin, I.L. Petrukhin, Z.F. Kovryga, Z.D. Ienykieiev, V.M. Kornukov, F.M. Kudin, Z.Z. Zinatullin, A.P. Ryzhakov, V.O. Mykhailov, I.L. Trunov. Today the issue of the preventive measures and their place within coercion measures in criminal proceedings is studied among others by such researchers of criminal justice as: T.V. Danchenko, G.Y. Matskiv, K.G. Gorelkina, M.G. Shavkun, A.V. Zakharko, V.O. Popelusko, D.A. Chukhraiev. Personal liability as a procedural measure to ensure participation of the individuals in criminal proceedings has specific characteristic. In theory the mechanism of criminal procedural regulation can function without the use of coercive measures. Subjects of criminal process have certain rights and responsibilities and the stated has obliged them to performance such considering civic awareness of the subjects.

However such system can only work in the ideal society. From the practical perspective measures of procedural coercion are effective and significant guarantee for execution of the norms of law by the all subjects of criminal process.

To ensure execution by such subjects of criminal procedural activities as witnesses, victims, suspects, defendants, experts, etc., of procedural obligations as well as to ensure provision of evidence, conduct of civil claim and possible confiscation of the property, agencies of pre-trial investigation, investigators, prosecutors and courts apply foreseen by the CPC of Ukraine measures ensuring criminal proceedings, including personal liability.

Personal liability should be understood as obligation of suspect, accused to fulfill certain responsibilities imposed on him by investigating judge. The suspect or accused shall be informed in writing against his own signature about the duties imposed on him advising that in the event of failure to fulfill them stricter preventive measure could be applied in his respect [1, 23]. Personal liability as a preventive measure shall be applied on the basis of the ruling of the investigating judge, court in respect of the reasoned motion of the Prosecutor, investigator upon approval of Prosecutor and as the result the suspect, accused is obliged to perform a number of duties specified in part 5 Article 194 of the CPC of Ukraine namely:

- 1) appear before the official specified with periodicity established;
- 2) not to leave the locality where he is registered, resides or stays, without permission of the investigator, public prosecutor or court;
- 3) inform the investigator, public prosecutor or court on the change of place of residence and/or employment;
- 4) abstain from communicating with any individual specified by investigating judge, court or communicate with such person on conditions imposed by investigating judge, court;
- 5) do not visit places specified by investigating judge or court;
- 6) undergo treatment from narcotic or alcohol addiction;
- 7) make efforts to find a job or to enter an educational institution;
- 8) surrender his internal ID, foreign travel passport(s) or other documents authorizing leaving and coming to Ukraine;
- 9) carry an electronic monitor.

It should be mentioned that stated procedural obligations of the suspect, accused to the large extent relate to the restriction of the foreseen in Article 33 of the Constitution of Ukraine right to freedom of movement, free choice of place of residence or temporary stay, and the right to freely leave the territory of Ukraine [3, 4].

Hence, the place of temporary stay shall be defined as the place where the person stays due to travel, business trip, treatment, vacation, education etc. It could be a hotel, sanatorium, rest home or similar premises as well as residential premises which is not a permanent place of residence of a citizen.

Temporal relocation of a people from one district to another within the premises of a city divided into districts is not considered as a violation of personal liabilities. However, it should considered prohibition of the investigating judge, of the court to attend specified place, if such a prohibition is foreseen in personal liability.

Place of permanent residence is determined on the basis of its official record by the passport service of the internal affair agencies.

A place of the permanent residence should be understood as residential building, apartment, corporate housing, specialized buildings (dormitory, hotel-shelter, a special home for the lonely elderly, nursing homes for disabled, veterans, etc.), and any another residential premise in which a citizen lives according to a lease contract (sublease), rental or otherwise as specified by the Law of Ukraine [4, 134].

According to the CPC of Ukraine for the matter of explanation of the duties imposed on the suspect, accused the protocol on explanation to the suspect (accused) of the duties foreseen by part 2 Article 179 and part 5 Article 194 of the CPC of Ukraine shall be obligatory drawn up [1, 37].

In case of non-fulfilment of the imposed on the suspect, accused procedural obligations there should be considered the matter of imposition of more stringent preventive measures. Moreover, unlike the Criminal Procedural Code of Ukraine of 1960, the legislator also foresees for non-fulfilment of the duty imposition of pecuniary penalty ranging from 0.25 to 2 minimum wages. In compliance to provision 16 part 1 article 3 of the CPC of Ukraine Minimum wage is the sum of money equal to the monthly minimum wage as provided for by law as of the 1st day of January of the calendar year during which a procedural decision is taken or a procedural action, conducted. In the Code of Laws on Labor in Ukraine as well as in the Law of Ukraine On remuneration for labor state that minimum wage in Ukraine is legally set amount of wage for simple, unqualified labor which is the lowest possible rate of payment to workers for monthly volume of work [5; 6].

As of 1 September 2013 minimum wage comprises 1 218 UAH, thus for the breach of personal liability there shall be set payable amount from 304,5 till 2 436 UAH.

It should be noted that the legislation clearly defines powers in respect of monitoring the compliance of performance of personal liability: suspect is controlled by the investigator, the accused – by the prosecutor. They have the right to engage to the monitoring of the execution of the term of the preventive measure officers of other units of internal affairs agencies, security agencies, and bodies entrusted with the control over compliance with tax laws. If such officers detect violations they

should inform the investigator or prosecutor. In our opinion, execution of personal liability is an important process thus it has to be controlled by an investigator or prosecutor rather than transferring these functions to other departments.

In the Criminal Procedure Code of 1960 instead of personal liability was used was written undertaking not to leave the place. This preventive measure was the most common and used when the suspect or accused could evade investigation, but the likelihood of this was low. Person in respect of whom such preventive measure was applied, was not entitle to leave without the permission of the investigator his permanent (city/tow/locality where such person has a permanent and long-term accommodation) or temporary (city/tow/locality where such person was staying in connection with travel, holiday, treatment, schooling etc.) place of residence.

When applying written undertaking not to leave the place, a person was mandatory losing for certain period of time freedom of movement and travel. However freedom of movement within the area of city/tow/locality was not restricted. Any other restriction in respect of a person with written undertaking not to leave the place, were not foreseen by the Law.

Considering herein stated it becomes clear that legislator in the course of adoption of current CPC of Ukraine has tried to modernize such preventive measure as written undertaking not to leave the place. In particular Article 151 of Criminal Procedure Code of 1960 «Written undertaking not to leave the place» foreseeing any obligation not to leave the place of residence/registration was combined with Article 149-1 Obligations that may be imposed on a person when choosing preventing measure not related to custody where the possibility of imposition of additional obligations on a person, non-fulfilment of which was informed to a person against his own signature.

Notwithstanding positive effect from personal liability it has its own imperfections. Article 194 of the CPC of Ukraine stipulates that accused must abstain from communicating with any individual specified by investigating judge, court or communicate with such person on conditions imposed by investigating judge, court. In our opinion such violates the freedom of communication laid down by Article 34

of the Constitution of Ukraine. At the legislative level there are no established criteria for determination of the circle of persons communication with whom of the accused can be restricted by the court or investigating judge, as it is not clear from the content of Article 194 of the CPC of Ukraine which person fall within the scope of this regulation.

Another regulation that has to be reviewed is provision on carrying an electronic monitor. Current CPC of Ukraine foresees use of electronic monitoring equipment which means fastening on the body of accused of an electronic device enables monitoring and tracking his location. Electronic monitors may be used by investigators on the basis of the decision of the court or the investigating judge on appliance in respect of the accused of any preventive measure, not connected with imprisonment and by the officers of internal affairs agencies – on the same basis when a preventive measure in the form of house arrest was used.

I.G. Golub believes that this issue is not fully studied and requires deeper analysis [7]. Practice shows that the control over the person who wears an electronic bracelet is done by an authorized police officer using computer technologies (tracking the movement of people in a particular area) [8].

Provision 7 part 5 Article 194 of the CPC of Ukraine states the make efforts to find a job or to enter an educational institution. This provision is very relevant however it is not clear from its content how the person should be employed or enrolled in educational establishment, as any specific action is not stipulated by make efforts to find a job or to enter an educational institution Article 194 of the CPC of Ukraine.

In conclusion we would like to note that today there is the need for legal regulation of personal liability in the CPC of Ukraine, definition of the terms, classification and particularities of application of regulation of criminal procedure law in accordance with the fundamental principles of law, human rights and freedoms, compliance with the international norms and rules in this respect. Considering the newness and the lack of adequate legal framework and practice in respect of the personal liabilities in the theory of criminal process, this matter needs

to be further developed. The use of personal liability is a relevant issue of criminal procedural law. General rules of personal liability should be based on the provisions of the Constitution of Ukraine and provision of ratified by Ukraine international legal instruments. When applying personal commitment there should avoided violations of the rights of not only suspects or the accused, but also the rights and freedoms of others, including family members of the suspect or accused.

Vladimir PRYADKO,
*public prosecutor of department of acceptance,
working and analysis of operative information
of office of public prosecutor
of the Kievan area, senior adviser of justice*

Oksana KOMARNICKA,
*professor of department of supervision
after inhibition of laws by organs which
prosecute a pre-trial inquiry,
National academy of prosecutor of Ukraine,
lawyer of 2 classes, candidate of legal sciences*

DETERMINATION OF THE LOCATION OF RADIO-ELECTRONIC MEAN OF COMMUNICATION: PREPARATION AND CONDUCT OF TACIT INVESTIGATIVE ACTIONS

The problem questions of co-operation of public prosecutor are considered, as a judicial leader, with an investigator and authorized operative subsection during establishment of locat.

Analyzed the origin of the grounds, conditions and processual order of this institute in particular.

In accordance with modern views, theoretical conceptions of criminal procedural Law, current Constitution of Ukraine, departmental normative acts analyzed new approaches to solving the problems, which do not provide requirements of theory and practice.

Formulated and other suggestions for improvement of current criminal procedural legislation and court practice, that are relevant to this problem.

Based on the conducted complex research was formed a number of conceptual positions, that differs by scientific novelty and demonstrate achievement of goal of the study, are important for science and the practice of criminal process.

It should be noted that in Ukraine, as well as in the most world countries, large attention to the judicial rights for the subjects of the criminal rule-making was always spared.

At the same time, it is needed to remember, that any excessive grant of advantage one of parties of criminal realization can inflict serious harm and result in deviation of person that accomplished offence from responsibility, and consequently, to violation of legal rights for suffering personality and compensation of the harm inflicted by a crime.

The article is devoted to systematic analysis of institute. The powers of a judicial investigator in criminal proceeding of Ukraine to exercise judicial control during pre-court inquiry are studied and classified in the article. Attention is attracted to the necessity of enforcing human rights, freedoms and interests in criminal proceeding.

The history of development of the legislation on features of criminal proceedings concerning separate categories of persons is investigated. Historically settled existence of the block of laws parallel to the criminally-remedial legislation which establish a special order of bringing to criminal liability enough wide range of persons is established. The offer on separate standard settlement of this legal institute is supported. Offered in the new Criminal procedural code of Ukraine model of standard settlement of a special order of criminal legal proceedings concerning separate categories of persons it is recognized far from perfect (first of all, in questions of a circle of people on which the exclusive rights established by the corresponding chapter) extend, such that demands completion. At the same time it is noted that such special order is directed on creation of system of guarantees of activity of persons which carry out public activity, carry out special functions in the state.

*Valeriy FASTOVETS,
Deputy head of the department of criminology
National Academy of Security Service of Ukraine*

PARITY OF CONCEPTS «TESTIMONY» AND «EXPLANATION» IN THE CRIMINAL PROCEDURE CODE OF UKRAINE

With the adoption of April 13, 2012 the Verkhovna Rada of Ukraine of the Criminal Procedural Code of Ukraine has changed quite significantly institutes a system of domestic criminal proceedings, the procedure of criminal proceedings, the procedural status of the subjects. In this regard, the domestic criminal proceedings were such new terms as «criminal proceedings», «investigating judge», «indictment», «criminal offense», «criminal offense», «measures of criminal proceedings», etc. At the same time, it changed the content of such concepts as «suspect», «accused», «prosecutor» and others.

It should be noted that some of the terms used in the new Criminal Procedural Code of Ukraine is not always clearly defined and consistent with each other. In particular, the legislator rather extensive use in the above legal act such terms as «evidence» and «explanation», the definition of value content which in some cases raises many questions on the part of scientists and researchers, and by the practical law enforcement and judicial authorities.

The article analyzes the specific provisions of the new Criminal Procedure Code of Ukraine, which regulates the procedure for obtaining evidence and explanations in order to determine their relationship. During the implementation of this analysis, the author identified some problems in the legal regulation of evidence and obtaining explanations and suggested its proposals for their solution through amendments to the Criminal Procedure Code of Ukraine.

Thus, the author proved the feasibility completion of Part 1 of Article 3 of the Criminal Procedural Code of Ukraine, paragraph 27: «explanation – a form of obtaining counsel for the defense or victims of participants in criminal proceedings and other persons with their consent information known to them regarding the

circumstances of the criminal proceedings that are relevant to the criminal proceedings, this supplement, comments, explanations or objections set out in writing the participants in the minutes of proceedings appropriate proceedings or in the annexes to this protocol».

Also, in order to consolidate the rights of specialist to give evidence suggested in paragraph 2 of Part 5 of Article 71 of the Criminal Procedural Code of Ukraine to replace the word «explanation» for «evidence».

In turn, the author proved the feasibility deprivation of the prosecution (other than the victim) the rights to receive an explanation as said information they may receive in the course of interrogation.

In addition, it is proposed to make the following amendments to Article 95 of the Criminal Procedure Code of Ukraine, in particular,

- present paragraph 1 as follows: «Evidence – is information provided orally or in writing during the interrogation of suspects, defendants, witnesses, victims, experts and other actors of the criminal proceedings against them known circumstances relevant to the criminal proceedings.»

- present paragraph 8 of article as follows «The representatives of the parties of the criminal proceedings are entitled to receive from the members of the criminal proceedings and other persons with their consent explanation, which is not a source of evidence. Given the received explanations sides of criminal proceedings and the victim have the right to petition to conduct investigation or court hearings of those people».

In order to avoid recognition the protocol of proceedings inadmissible, the author suggested fix in Criminal Procedural Code of Ukraine duty investigator to explain such action participants of their right to protection and the right not to give evidence or explanation that may be grounds for suspicion, accusations that person or her relatives or members of his family with a criminal offense.

The author proved the feasibility of repeal of paragraph 6 of Part 2 of Article 87 of the Criminal Procedural Code of Ukraine.

Furthermore, the author proposed the following edition of paragraph 1 of Part 2 of Article 459 of the Criminal Procedural Code of Ukraine «artificial creation or falsification of evidence, incorrect translation of expert opinion, testimony subjects of criminal proceedings, as well as false statements of these entities on which the sentence».

*Alla SLOBODZIAN,
Senior Research Fellow
Research Department
of the National Prosecution
Academy of Ukraine,
Jurist, 3d class*

LEGISLATIVE REGULATION OF TACIT INVESTIGATIVE ACTIONS

With the adoption of the CPC of Ukraine expanded range of investigation activities, which by their nature are very different than others that stipulates by secrecy of their conduct.

Proposed article examines subjects of the undercover investigations and procedural functions that they are authorized to perform during such actions under the law.

The basis of undercover investigations in Ukraine is the body of law, which are governing a special kind of law enforcement, including the specific legal and social relations that occur between the subjects, participants and other objects of investigation, and also between subjects and other individuals and legal entities, involved in the process of this work to ensure the safety of the individual and society through the implementation of appropriate investigative measures.

Subjects of undercover investigations, and therefore the order of their activity, defines a set of laws and by-laws that regulate the relations arising in the action. During the undercover investigations regulations governed the relationship between the state (its representatives – law enforcement agencies) and individuals in order to protect the state and society from the grave or especially grave crimes.

Accordingly, the subjects of undercover investigations are: the investigating judge (except in cases provided by law (Articles 271, 272 of the CPC of Ukraine), the investigator, conducting pre-trial investigation, the prosecutor, who has to provide procedural guidance of the pre-trial investigation, the head of the criminal investigation, the operational unit that executes instructions from investigator to carrying out the appropriate action.

The present article details the content of the specified procedural function that subject is authorized to perform during the undercover investigations.

Thus, subjects of undercover investigations during the tasks, defined by legislative acts, perform the criminal procedural functions that ensure: observance of the constitutional rights and legitimate interests of members and other persons of the pre-trial investigation; the fast, complete and impartial investigation of crimes; adhere to the secrecy; protection of individuals, society and the state by the truth, exposing the perpetrator, using organizational and practical techniques, including hardware, allowing to obtain information about the crime or the person who committed it, without their consent, according to the procedure stipulated by Criminal Procedural Code of Ukraine.

Therefore, the subjects of organization and conduct of undercover investigative (detective actions) are performers to whom the law assigned this function, the relevant tasks and responsibilities, and endowed with the rights to the application of specific measures and using special hardware for obtaining information.

HISTORY OF STATE AND LAW

Oksana BLAZHIVSKA

RIGHT OF INHERITANCE ACCORDING TO THE GALICIAN CIVIL CODE 1797: HISTORICAL AND LEGAL ISSUES

The article deals with the historical and legal issues of inheritance according to the Galician Civil Code, 1797. The author indicates different types of inheritance (succession): by the last will of the testator, by agreement, by law. Special attention was paid to the testament and codicil as expressions of the testators' last will. Also the researcher characterizes the principle (conception) of the freedom of disposition by his will and the problems with the conclusion and implementation of inheritance contract. She analyses the order of hereditary succession on the principles of the specified order and equity shares. And one more question is discussed in this very paper – inheritance by right of representation.

The conclusion is that modern civil law of Ukraine reflects the main ideas of inheritance according to the Galician Civil Code, cause to their common legal basis – Roman private law.

*Evgeniy SHEVCHENKO,
Prosecutor of department of training
of personnels and connections
with educational establishments
of the General prosecution of Ukraine*

*Evgeniy BEZKROVNYI,
Graduate student of department
of organization of work but
a management is in the organs
of office of public prosecutor
to the National academy
of Office prosecutor of Ukraine*

THE HISTORICAL DEVELOPMENT OF THE INSTITUTION OF THE PERSON'S RIGHT TO REFER TO ON THE TERRITORY OF MODERN UKRAINE

In the scientific article the author has studied the pressing issue concerning the scientific definition of the concept of «recourse of a person», as the guarantee of the realization of inalienable human and citizen rights. This question has always attracted the attention of scientists, rights advocates, statesmen since a person's right to recourse is a working and effective instrument of realization of all his/her constitutional rights and freedoms. The institute of recourse plays a substantial role in society and nation life.

Citizens constantly recourse to different public authorities and their officers for resolving concrete questions related to the realization and defence of the rights freedoms and legally protected interests granted to them. Therefore the mechanism of co-operation of public authorities and citizens needs a clear legislative control. The legal basis for the existence of the institute of recourse is the Constitution of Ukraine, which settles in article 40 the right of all people to send individual or collective writing recourse or personally to recourse to public authorities, as well as the Law of Ukraine dated 2 October 1996 «On recourses of citizens» that states that under recourses of citizens it shall be understood the proposals (remarks), statements (petitions) and complaints made in written or oral form

In order to understand the nature of the concept of recourse, during research, the historical development of the institute of the right of recourse on the territory of modern Ukraine has been examined. During Kievan Rus period the function of examination of recourses was carried out by the prince and corresponding public servants, following the «Rus true» norms. In connection with the annexation of a considerable part of Ukrainian lands earths to the Russian Empire on the territory of the modern Ukraine the system of petitions functions. In 1763 Empress Catherine II issues the Proclamation on the order of consideration of complaints and petitions addressed to the greatest name, which establishes the procedure of submitting recourses to the emperor's name by his citizens. For the first time at constitutional level the right of a person to recourse was enshrined by the Constitution of the USSR dated 7 October 1977.

Taking into account the process of formation and historical development of the institute of recourses of citizens on the territory of the modern Ukraine, the author comes to the conclusion that this institute has a historical tradition in our country and is an integral element of social relationships. Nowadays recourse is a method of realization of constitutional rights and legal interests of a person, as well as a mechanism of interaction between an individual and the state.

By analysing Ukrainian legislation and theoretical researches of national and foreign scientists, the author of the article comes to the conclusion that recourse is a certain message of an individual or group of persons, in a written or oral form, to a statutory entity, aimed to originate certain legal character consequences.

TRIBUNE OF YOUNG SCIENTIST

*Nazar KHOLODNYTSKYI,
Senior Public Prosecutor of the Kiev–Sviatoshyn
Raion Prosecution
Office in Kyiv oblast,
Junior Counsellor in Justice,
Postgraduate student at the Department of the
History of the State and Law and of the Political
and Legal Studies, Ivan Franko National
University of Lviv*

THE HISTORY OF ORGANIZATION AND ACTIVITY OF THE PROSECUTOR GENERALS OF STATES OF USA

Ensuring the rule of law depends on many factors and, first, on the quality of the regulatory framework of law enforcing bodies and the prosecutor's office as well. Even more, reforming the legislation about prosecutor's office is one of the conditions of Ukraine's accession to the European Union. From this point of view, it is useful to appeal to the legal experience of both European countries and leading states of other continents in the sphere of the structure of prosecutor's office. The United States of America having rich and interesting history of public prosecution bodies' origin and development is of particular interest in this aspect.

The higher level of the state prosecutor's systems is Attorneys General of states who have different procedure of appointment (election). Attorneys General are elected by population in 43 states; they are appointed by the Governor in 5 states; they are elected by the state parliament in one state (state of Maine); Attorney General is appointed by the Supreme Court of the state (state of Tennessee). Despite the pluralism of Attorneys General functions in different states, we can single out three main functions inherent in a particular state: legal advice to the executive branch, representation of its interests in the court, law enforcement (including criminal prosecution).

State Attorneys General's offices were direct successors of Attorneys General's offices of former colonies that did not change radically in the early years of independence. The exception for this tendency was the state of Pennsylvania; Swedish law had influenced its prosecutor's office before declaring the independence. Because of that, several Attorneys General acted on its territory whose main function was the legal protection of property. The adoption of the Pennsylvania Constitution gave the possibility to harmonize prosecutor's institution with other states.

On August 26, 1818 at the meeting of the Constitutional Convention in Kaskaskia it was adopted the Constitution of the state that entrusted the General Assembly to appoint Attorney General of the state and determine his functions. In 1846, a large-scale reorganization of the prosecutor's office occurred in the state of Ohio. The result was that Attorney General's office got the constant basis and fixed salary. In 1850, the Constitution of the state of California was adopted; it provided for establishing Attorney General's office. On August 8, 1870, a new Constitution of the state of Illinois came into force; it secured the election of the state Attorney General's office on the constitutional level. In 1879, the Constitution of the state of California granted the Attorney General a wide range of powers. Due to it, he headed the law enforcement system of the state. In 1889, the state of Washington was established. However, the President of the USA appointed the first Attorney General of the state G. Metcalf in 1887.

The federal government of the USA realizing that the state prosecutors systems developed during XIX century so independently that it could threaten the legal unity of the state policy; it did the best to provide their interaction and cooperation. Therefore, the National Association of Attorneys General was established in 1907. During XX century Attorneys General of all states and Puerto Rico as well as the heads of departments of justice of District Columbia, American Samoa, Guam, Northern Marian Islands and Virginia Islands. The main task of this public organization (professional association) was to provide prosecutors' interaction during

common investigations and campaigns and promote unification of state legislation in the sphere of regulating prosecutors' activity.

Therefore, the structure of each state Attorney General's office according to the principle of federalism has its features. These distinctions can be explained by historical conditions in which state prosecutors' systems were formed: some of them emerged on the basis of the prosecutors' offices of former colonies others were formed simultaneously with the formation of the state. Consequently, Attorneys General in some states have a wide range of powers and manage local prosecutors but in some states their powers are limited and local prosecutors are independent of them. The long-term evolution of Attorney General Institution of the state predetermined the convergence of prosecutors' systems, crystalized the common principles of activity and developed common framework of their cooperation. The experience of forming and developing Attorney General's offices in the states demonstrates that complete unification of prosecutors systems in conditions of various parts of the same state is unpractical, however, common standards of law enforcement, common values of democracy and human rights provided the unity of the prosecutor's office of the USA although it is decentralized on the level of states.

*Ivan SAVKO,
Senior Prosecutor of Procedure
management of pre-trial investigation
criminal investigative investigator
prosecution of Transcarpathia
Researcher of the Department of Criminology and
Criminal law courses
Transcarpathian State University*

CRIMINOLOGICAL CHARACTERISTICS OF THE NEGATIVE EFFECTS OF CRIMINALITY IN PUBLIC PROCUREMENT SPHERE

Criminal process in public procurement is a major factor that hinders the economic development of our country. Despite the lack of objective information about the real state of crime in that area, you can definitely assert that those abuses are large-scale, and the majority of these crimes does not enter the field of law enforcement. Thanks to the media today few people are amazing facts spending budget money for goods and services at prices several times higher than their real value. This population is witnessing how massively enriched officials illegally assigning budget.

Law enforcement agencies regularly report their progress related to crime in public procurement. Thus, for the period from January to October 2011 the results of the audits in this area prosecutors initiated 300 criminal cases, made 1.2 thousand documents the prosecutor's response, on the consideration to which charges were brought against 848 officers, including 67 – supervisory authorities recovered about 700 thousand, claimed 49 claims amounting to 6.8 million. [5]. During the first half of 2012 instituted 184 criminal cases, the results of control and verification measures in public procurement budget recovered almost 40 million [3]. Despite the given parameters, we can confidently assert that they represent only a fraction of the actual number of violations that occur in the proposed area, and the state reimbursed losses compared to actually inflicted, it is insignificant.

It should be emphasized that, instead take concrete steps to address the causes and conditions of abuse in procurement, state the contrary creates new corruption

opportunities that only exacerbates the situation. So, as you know, six months after the entry into force of amendments to the Law of Ukraine «On Public Procurement» level of openness of public tenders decreased significantly since the new legislation does not oblige to disclose information about those who made their own expense of state enterprises. According to experts, conducted on the basis of «Bulletin procurement» in the shadow got about half procurement, if in January–February 2012 amounted to 133 volumes tenders billion. Over the same period in 2013 – 66 billion. [4]. Here, in our opinion, the main problems to be found. Grey procurement bias means any official information concerning progress in combating the respective violation.

In this context it should consider existing and potential threats and consequences for our state associated with large-scale embezzlement of budget funds for public procurement, pay attention to the problems that are taking place today, and who will play a negative role in the near future.

REVIEWS

Oksana KNYZHENKO,
*The Head of the Department of Anti-Crime Research
of Science and Research Institute
of National Academy of Prosecution of Ukraine,
Counselor of Justice
Doctor of Law, Associate Professor*

ACTUAL RESEARCH OF THEORETICAL AND APPLIED PRINCIPLES OF IMPLEMENTATION OF PROBATION IN UKRAINE *

Reformation of the criminal justice system currently taking place in Ukraine motivates practitioners as well as theoreticians for the search of its optimal model. Especially relevant becomes the issue of the agencies and the establishments executing punishments aiming to ensure observance of the rights and liberties of those sentenced to imprisonment, achievement of their re-socialization, increase of preventive measures efficiency etc.

Considering such the matter of introduction of effective measures of criminal legal influence in respect of persons committing crimes and establishment of an effective system of agencies supervising and controlling behavior of the prisoners becomes especially relevant. In the course of the analysis of the issue of establishment of a national probation model is important to pay attention both to the development of the concept of probation theory as well as to the practical problems of implementation of this type of the penitentiary system of Ukraine reformation.

In the scholarly literature proposals on the introduction of probation in Ukraine began to appear in 2003. According to the Criminal Justice Reform, approved by the Decree of the President of Ukraine on April 8, 2008 № 311/2008, probation should be considered in two aspects – as a type of punishment and as a special agency.

There still is ongoing discussion in respect of the nature of probation, its purpose, objectives and efficiency. In view of foreign experience in particular, in some cases an institute of probation is defined as a form of punishment while in

others – as a kind of release from serving the punishment with probation. Of course some scientists considering probation as a type of punishment, which includes certain restriction of the possibilities of convicted to exercise their rights and freedoms, establishment of special supervision over their behavior, note that it has a strong punitive, corrective and preventive nature. However, there exists an opposite opinion of probation as conventional non-execution of the imposed sentence or conditional non-imposition of the sentence with placement of a convicted for a specified period under the supervision of the specially assigned officer. Considering such the concept of probation is to test the person committed a crime, thereby to determine the possibility (or impossibility) to reclaim him without imposition of criminal punishment. Coercive measures applied to a person are only means of achieving such goal rather than probation. There also exists a view whereby the probation should be considered as an alternative punishment with trial period when certain liabilities are imposed on the person. Thereby it deems to be a certain kind of test determining the ability of the convicted to change without serving a sentence imposed by a court verdict. It is noted that probation should be understood as a system of supervision and support of convicted in their desire to return to normal life as soon as possible.

Introduction of probation in Ukraine was suggested in several draft laws. However considering number of the objective reasons such institute was not formalized in legislation, criminal and criminally executory in particular. Legal literature indicates that legislator clearly lacks knowledge in the area of probation, namely in respect of the history of probation development and reasons due to which the concept of probation was significantly transformed in European countries starting from the end of XIX century.

Having analyzed scientific works for the matter of issues of probation institute, we come to the conclusion that monographic research of O.I. Bogatyriova Theoretical and legal grounds of probation introduction in Ukraine is the first study comprehensively developing theoretical and practical, legal and methodological grounds for probation introduction in Ukraine.

Chosen research methodology is very appealing as it provides for complete and comprehensive solutions to the tasks set forth by a researcher. Of course A.I. Bogatyriova highlights the social and legal component of the institute of probation, researches social and legal preconditions of its establishment not only in Ukraine but also abroad. In particular, there was analyzed legislation of near 20 countries, which helped to identify the recent tendencies in this institute development. Comparative analysis of foreign probation systems as well as its historical and legal analysis became the basis for development of the own concept of implementation of probation in Ukraine.

Not only applied research methodology but also the amount of studied material shows a thorough analyzes of the outlined problematic. Besides national doctrine the author has studied foreign literature, analyzed draft laws on introduction of probation in Ukraine.

Proper use of the number of the scientific methods of enquiry enabled A.I. Bogatyriova to generalize analyzed material and to obtain new knowledge, which together contributes to development of theoretical and practical principles of implementation of probation in Ukraine.

In particular A.I. Bogatyriova proved the need for the introduction of foreign model of probation institute in Ukraine due to the fact that any existing in Ukraine criminal institution does not solve the tasks assigned to it. The author argues the possibility of introducing probation in the criminal justice system in Ukraine and the creation of specialized probation agency governed by the Ministry of Justice of Ukraine on the basis of the current system of penal inspections with simultaneous optimization and centralization of the functions of the state bodies in this sector.

Quite true is author's opinion that currently establishment of a probation service in Ukraine will promote achieving important results, including the reduction of recurrence of crime.

Based on a thorough study of the problematic stated in the monograph there was formed author's view not only in respect of the introduction of a probation system in Ukraine, but also reformation of the penitentiary system in general, and this

enhances the overall positive impression of the work.

Undoubtedly, this work is a significant contribution to the doctrine of criminal and criminal executive law and can serve as a scientific basis for further improvement of the state penitentiary policy.

Prepared monographic study «Theoretical and legal grounds of probation introduction in Ukraine» will be useful not only for those interested in the problems of criminal and criminal executive law, and will serve as the scientific basis for legislators in the course of the reformation of law enforcement agencies in general and penitentiary system in particular.