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ABSTRACT

The scientific article examines some aspects of the organization of undercover investigative (search) actions (hereinafter – NSRD) in the investigation of criminal offenses. The existing problematic issues of today regarding the organization of NSRD and the possibilities of simplification and optimization for perfect investigation of criminal offenses (crimes), especially at the present time, are considered. The views of scientists regarding the specified aspect of illegal (criminal) activity in general, as well as in the conditions of modern realities in Ukraine, are considered.

The author indicated the necessity and indisputability of a certain procedural sequence in the organization of the NSRD without excluding the methodology of investigation of criminal offenses. After all, both the understanding and definition of the essence and content of both the specified and any other scientific category determine its further research and its individual components. That is, the determination of the essence of the organization of the NSRD in the investigation of criminal offenses is one way or another important for the structuring and optimization of the specified process. At the same time, an important element of the defined category is the concept of organization (that is, the organization of activities), which is the basis of any process in the investigation of criminal offenses, detection, fixation, extraction and examination of factual (evidential) material. This component exists in the structure of the methodology and tactics of the investigation, and it took the appropriate place in its structure. Therefore, its research in the context of a general scientific category is important for improving effective methods of investigating criminal offenses (crimes).

On the basis of the study of scientific opinions and conclusions of scientists, the practice of operational units of the National Police of Ukraine, the main issues, if not inhibitions, then slippage of the process of high-quality operational organization of the NSRD, have been determined.

Keywords: *organization, investigation, criminal offense, crime, investigative actions, detective actions, covert investigative (detective) actions, operational measures, operational and investigative measures.*

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FEATURES OF THE CONDUCT SEARCH UNDER THE CONDITIONS OF THE STATE OF WAR

Олена Солдатенко, Володимир Кіяниця. ОСОБЛИВОСТІ ПРОВЕДЕННЯ ОБШУКУ В УМОВАХ ВОЄННОГО СТАНУ. Збройна агресія російської федерації кардинально змінила життя кожного українця, а разом з тим призвела до ряду викликів під час здійснення кримінального провадження на території України. І тому, з метою наближення кримінальної процесуальної діяльності до воєнних реалій, Верховна Рада України прийняла низку законів, що спрямовані на регламентацію

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питань кримінального провадження в умовах воєнного стану, зокрема щодо особливостей проведення окремих процесуальних дій на підставі ухвали слідчого судді.

Наскільки оправданими є такі зміни, чи не звужується об'єм прав людей які потенційно можуть стати об'єктами кримінального переслідування, яким чином правоохоронні органи мають впливати на дотримання прав людини в умовах війни, як працювати слідчому в цілому, щоб був збережений баланс інтересів – це лише невеликий перелік питань які постають в умовах сьогодення.

В статті проведено системний аналіз норм, що регламентують процесуальний порядок проведення обшуку в умовах воєнного стану. У роботі проаналізовано законодавство України, практику застосування вітчизняного законодавства, наукові позиції вітчизняних вчених процесуалістів щодо гарантій захисту прав, свобод та законних інтересів учасників кримінального провадження під час проведення обшуку. Розроблено науково-практичні рекомендації щодо законного застосування положень, що регламентують процесуальний порядок проведення обшуку в умовах воєнного стану, які викликають питання у практичних працівників.

Ключові слова: *слідчі (розшукові) дії, обшук, досудове розслідування, кримінальне провадження, ухвала слідчого судді, воєнний стан, кримінальне процесуальне законодавство.*

Relevance of the study. One of the basic human rights enshrined in the Constitution of Ukraine is the right to inviolability of housing or other possessions. The basic law indicates that it is not allowed to enter a person's home or other possessions, conduct an inspection or search in them other than by reasoned court decision. This provision means that the state is authorized to reasonably limit the above-mentioned right. However, as evidenced by law enforcement practice, such restriction of the right to inviolability of housing or other possessions is not always justified and there is uneven and incorrect application of regulatory provisions that regulate the procedure for conducting this investigative (search) action. This, in turn, requires a comprehensive analysis of problematic issues that arise during a search and a unified approach to their solution, especially in wartime conditions.

Recent publications review. In the scientific literature, certain aspects of conducting a search of housing or other property were the subject of scientific research by such scientists as: V. Honcharenko, I. Glovyuk, V. Zaborovskiy, V. Nor, O. Kaplina, O. Komarnytska, E. Manivlets, V. Malyarenko, O. Shvidkova, M. Shumylo, L. Udalova, Yu. Chornous and others. At the same time, the development of science, the reform of legislation, as well as the formation of appropriate law enforcement practice pose new and new tasks that need to be solved, especially in the conditions of the state of war.

The article's objective is to develop the problems of regulation and ensuring the procedural activity of the investigator during the search, the ways to solve them, as well as the formulation of proposals aimed at improving the criminal procedural legislation of Ukraine regarding the regulation of the procedural activity of the investigator and the procedural order of conducting the search under the state of war.

Discussion. According to part 1 of article. 223 of the Criminal Procedure Code of Ukraine investigative (search) actions are aimed at obtaining (collecting) evidence or checking already received evidence in a specific criminal proceeding. The procedure for conducting investigative (search) actions is defined in Chapter 20 of the Criminal Procedure Code of Ukraine [1].

In order to exercise judicial control over the observance of the rights, freedoms and interests of persons in criminal proceedings during a pre-trial investigation, individual investigative (search) actions may be carried out at the request of a party only on the basis of a decision of the investigating judge. In particular, the CPC of Ukraine refers to such investigative (search) actions:

- 1) questioning of a witness, a victim during a pre-trial investigation in a court session in the presence of circumstances that may make it impossible to question them in court or affect the completeness or reliability of testimony (Article 225 of the Code of Criminal Procedure);
- 2) breaking into a person's home or other property (Article 233 of the Criminal Code);
- 3) search, including the home or other property of a person (Articles 234, 235 of the Criminal Code);
- 4) inspection, including of housing or other possessions of a person (Article 237 of the Criminal Procedure Code);
- 5) examination of a corpse, combined with an examination of a person's home or other property (Article 238 of the Criminal Code);
- 6) an investigative experiment conducted in a person's home or other property (Article 240 of the Criminal Procedure Code);
- 7) forced involvement of a person to conduct a medical or psychiatric examination (Article 242 of the Criminal Procedure Code);

8) appointment of expert examination at the request of the defense party in case of refusal of the investigator, prosecutor to satisfy such a request (Article 244 of the Criminal Procedure Code);

9) forced collection of biological samples from a person for examination (Article 245 of the Criminal Procedure Code) [2].

In connection with the introduction of martial law on the territory of Ukraine, an important role in maintaining the internal stability of the state is played by mechanisms for ensuring law and order, which the legislator forms and improves based on today's challenges. Changes were also made in the criminal procedural legislation. In particular, the legislator made changes to Section IX-1 "Special regime of pre-trial investigation, trial under the state of war" of the Criminal Procedure Code of Ukraine, which also affected the procedure for conducting investigative actions, including such investigative (search) action as a search [3].

A search is an investigative (search) action aimed at identifying and recording information about the circumstances of the commission of a criminal offense, finding the instrument of a criminal offense or property obtained as a result of its commission, as well as establishing the location of the wanted persons [1].

According to Art. 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of November 4, 1950 (Convention), everyone has the right to respect for his private and family life, his home and correspondence. State authorities may not interfere with the exercise of this right, except when the interference is carried out in accordance with the law and is necessary in a democratic society in the interests of national and public security or the economic well-being of the country, for the prevention of riots or crimes, for the protection of health or morality or to protect the rights and freedoms of other persons [4].

According to the provisions of Art. 30 of the Constitution of Ukraine, everyone is guaranteed the inviolability of their home, it is not allowed to enter a home or other possessions of a person, conduct an inspection or search in them other than by reasoned court decision [5]. The Constitution of Ukraine is one of the sources of criminal procedural law, therefore one of the principles of criminal proceedings in accordance with Art. 13 of the Criminal Code of Ukraine is the inviolability of a person's home or other property. But at the same time, the norms of the Code of Criminal Procedure of Ukraine, in Art. 233, provide for methods of breaking into a person's home or other property before a reasoned court decision is issued. In accordance with Part 1 of Art. 233 of the Criminal Procedure Code of Ukraine, no one has the right to enter a person's home or other property for any purpose, other than only with the voluntary consent of the person who owns them, or on the basis of the decision of the investigating judge. But in accordance with Clause 1, Part 2, Art. 615 of the Criminal Procedure Code of Ukraine, the legislator provides for a situation during the period of the state of war, when the investigating judge for objective reasons cannot perform his powers in accordance with Art. 233–235 of the Criminal Procedure Code of Ukraine in such a case, these powers are entrusted to the head of the relevant prosecutor's office, who in turn issues a resolution on conducting a search.

As the judge of the Criminal Court of Cassation as part of the Supreme Court O. Yanovska noted, in each specific case the subject of proof in court and assessment by the court should be whether there really was no objective possibility, for example, to turn to the investigating judge for a decision on the application of a preventive measure, conducting a search. When applying the provisions of Art. 615 of the Criminal Procedure Code of Ukraine, the investigator and the prosecutor must indicate in the relevant documents (resolutions, petitions) why there is no objective possibility to follow the standard procedure for conducting procedural actions [6].

At the same time, in accordance with Part 3 of Art. 233 of the Criminal Procedure Code of Ukraine, the investigator, investigator, prosecutor has the right to enter the house or other property of a person before the decision of the investigating judge is issued only in urgent cases related to saving lives and property or direct prosecution of persons suspected of committing a criminal offense. In such a case, the prosecutor, investigator, investigator, in agreement with the prosecutor, is obliged to apply to the investigating judge immediately after taking such actions with a request to conduct a search. The investigating judge considers such a petition in accordance with the requirements of Art. 234 of the Criminal Procedure Code of Ukraine, checking, among other things, whether there really were grounds for breaking into a person's home or other property without a decision of the investigating judge.

However, the bodies of the pre-trial investigation do not always comply with the specified norms of the law, which entails the recognition of certain evidence (search protocols) as

inadmissible evidence. The criminal court of cassation, deciding one of these cases, referring to the provisions of Art. 30 of the Constitution of Ukraine and part 1, 3 of Art. 233 of the Criminal Procedure Code of Ukraine indicated that the right of an investigator, a prosecutor to enter a dwelling and conduct a search in it can arise in three cases:

- 1) by the decision of the investigating judge;
- 2) without issuing such a resolution on the basis of the voluntary consent of the owner of a home or other possession of a person;
- 3) before the decision of the investigating judge is issued only in urgent cases related to saving lives and property or direct prosecution of persons suspected of committing a crime.

At the same time, the urgency of conducting such a search without a decision of the investigating judge, in the opinion of the court of cassation, should be connected exclusively with saving lives and property or with the direct prosecution of persons suspected of committing a criminal offense. In all other cases, such a search should be carried out only on the basis of the decision of the investigating judge [7].

In addition, when making a decision based on the presence of the specified circumstances, the courts refer to the practice of the European Court of Human Rights regarding the application of the "fruits of the poisoned tree" doctrine, set forth, in particular, in the decision "Yaremenko v. Ukraine (No. 2)" dated 04/30/2015 [8, p. 66], according to which not only the evidence that is directly obtained as a result of the violation, but also the evidence that would not have been obtained if the former had not been obtained, are recognized as inadmissible.

A search or inspection of a person's home or other possessions, a search of a person is carried out with the mandatory participation of at least two witnesses, regardless of the use of technical means of recording the relevant investigative (search) action, except for the features established by Art. 615 of the Criminal Code of Ukraine, namely, when conducting a search or inspection of a person's home or other possessions, a search of a person, if the involvement of witnesses is objectively impossible or is associated with a potential danger to their life or health, appropriate investigative (search) actions are carried out without the involvement of witnesses. In such a case, the course and results of a search or inspection of a person's home or other possessions, a search of a person, are necessarily recorded by available technical means by means of continuous video recording. As for recording the results of the pre-trial investigation, procedural actions during criminal proceedings are recorded in relevant procedural documents, as well as using technical means of recording criminal proceedings, except for cases where recording using technical means is impossible for technical reasons. In the absence of the possibility of drawing up procedural documents about the progress and results of investigative (search) actions or other procedural actions, recording is carried out by available technical means with the subsequent drawing up of the corresponding protocol no later than seventy-two hours after the completion of such investigative (search) actions or relevant procedural actions.

Also, in accordance with Part 7 of Art. 223 of the Criminal Procedure Code of Ukraine search or inspection of housing or other possessions of a person, the search of a person turned out to involve the mandatory participation of not two smaller concepts, independent of the use of technical means of recording the relevant investigative action in addition to the features established by Art. 615 of the Criminal Code of Ukraine, namely, when conducting a search or inspection of a person's home or other possessions, a search of a person, if the involvement of witnesses is objectively impossible or is associated with negative safety for their life or health, appropriate investigative (search) actions are performed . without the involvement of witnesses. In the case of such an exit and the results of a search or inspection of a person's home or other possessions, the search of the person is necessarily recorded by available technical means by continuous video recording.

In general, a search without witnesses is an interesting and important change, which, under the conditions of proper testing, can be useful for its implementation in the future on a permanent basis. As for recording the results of the pre-trial investigation of procedural actions during criminal proceedings, they are recorded in the relevant procedural documents, as well as using technical means of recording criminal proceedings, except if recording using technical means is impossible for technical reasons. If it is possible to draw up procedural documents about the output and result of investigative (search) actions or other procedural actions, the record will be created by available technical means with subsequent drawing up of the appropriate protocol no later than seventy-two hours after the completion of such investigative (search) actions or relevant procedural actions.

Also in accordance with the requirements of Part 4 of Art. 223 of the Criminal Procedure

Code of Ukraine it is not allowed to conduct investigative (search) actions at night (from 22 years to 6 years) in inappropriate cases, which are associated with a delay in their implementation, which may lead to the loss of traces of a criminal offense or the escape of the suspect, as well as in accordance with the procedure established by Art. 615 of the CCP of Ukraine. So, referring to Art. 615 of the Criminal Procedure Code of Ukraine, the legislator provides the opportunity for investigators and prosecutors to conduct investigative (search) activities under the state of war around the clock.

Conclusions. Thus, the peculiarities of pre-trial investigation under the conditions of the state of war, provided for by Section IX-1 of the Criminal Procedure Code of Ukraine, consist in determining the separate powers of pre-trial investigation bodies, prosecutors, investigators, etc. judge, court, which differ from the usual scope and order of exercise of powers by these entities in peacetime and must comply with the general principles of criminal justice.

Conflict of Interest and other Ethics Statements

The authors declare no conflict of interest.

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ABSTRACT

The armed aggression of the Russian Federation radically changed the life of every Ukrainian, and at the same time led to a number of challenges during the implementation of criminal proceedings on the territory of Ukraine. Therefore, with the aim of bringing criminal procedural activities closer to wartime realities, the Ukrainian Parliament adopted a number of laws aimed at regulating issues of criminal proceedings under the conditions of the state of war, in particular, regarding the specifics of carrying out certain procedural actions based on the decision of the investigating judge.

To what extent are such changes justified, does the scope of rights of people who can potentially become objects of criminal prosecution narrow, how should law enforcement agencies influence the observance of human rights in war conditions, how should the investigator work as a whole, so that the balance of interests is preserved – this is just a small list of questions that arise in today's conditions.

The article provides a systematic analysis of the norms regulating the procedural order of conducting a search under the conditions of state of war. The work analyzes the legislation of Ukraine, the practice of applying domestic legislation, the scientific positions of domestic procedural scientists regarding guarantees of protection of the rights, freedoms and legitimate interests of participants in criminal proceedings during a search. Scientific and practical recommendations have been developed regarding the legal application of provisions regulating the procedural order of conducting a search under the conditions of state of war, which raise questions for practical workers.

Keywords: *investigative (search) actions, search, pre-trial investigation, criminal proceedings, decision of the investigating judge, the state of war, criminal procedural legislation.*

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METHODS, PATTERN AND CIRCUMSTANCES OF DOMESTIC VIOLENCE

Юлія Гришко. СПОСОБИ, ФОРМА ТА ОБСТАВИНИ ВЧИНЕННЯ ДОМАШНЬОГО НАСИЛЬСТВА. У статті розглянуто способи вчинення домашнього насильства; сліди, що виникають після застосування того чи іншого способу та обстановку, у якій відбувається вчинення зазначеного злочину. Окремо розглянуто способи вчинення: фізичного насильства, що полягає у нанесенні тілесних ушкоджень, які можуть призвести до смерті постраждалого, порушення фізичного чи психічного здоров'я, нанесення шкоди його честі й гідності; психологічного насильства, що пов'язано з дією на психіку людини шляхом словесних образ або погроз, переслідування, залякування, якими навмисно спричиняється емоційна невпевненість, нездатність

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