розшуку продовжує залишатися на низькому рівні щодо протидії кримінальним правопорушенням, що викликає необхідність дослідження означеної проблеми та обґрунтування положень про вдосконалення взаємодії слідчих з підрозділами карного розшуку на досудовому розслідуванні, у тому числі у світлі планованої цифровізації вітчизняного кримінального процесу.

В статті розглянуті проблемні питання присвячені щодо напрямів вдосконаленню взаємодії слідчих з підрозділами карного розшуку на досудовому розслідуванні при розслідуванні кримінальних правопорушень. Розглянуто об'єктивні і суб'єктивні чинники, якими обумовлюється необхідність взаємодії слідчих з підрозділами карного розшуку на досудовому розслідуванні. Здійснено порівняння з КПК України 1960 року та КПК України 2012 року щодо проблем взаємодії між означеними суб'єктами. Досліджено взаємозв'язок щодо ефективності взаємодії при розслідуванні кримінальних проваджень та напрямки вдосконалення взаємодії слідчих з підрозділами карного розшуку на досудовому провадженні.

На основі аналізу наукової літератури, правових актів, практики взаємодії слідчих з підрозділами карного розшуку, з метою подолання відомчих бар'єрів, забезпечення виконавчої дисципліни в цілому підвищення узгодженості та результативності здійснюваної з використанням процесуальних та непроцесуальних засобів діяльності з розкриття та розслідування кримінальних правопорушень сформульовано комплекс пропозицій про внесення змін та доповнень до п. 3 ч. 2 ст. 40 КПК України щодо граничного терміну виконання доручень оперативними підрозділами.

Ключові слова: *підрозділи карного розшуку, взаємодія, досудове провадження, слідчий, кримінальне правопорушення, розслідування, кримінальне провадження.*

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Nadiia BUBLYK©

PhD in Law, Senior lecturer
(Dnipropetrovsk state
University of Internal Affairs,
Dnipro, Ukraine)

PROCEDURAL RESPONSIBILITIES OF THE ACCUSED PERSON: LEGISLATIVE REGULATIONS AND CONDITION OF IMPLEMENTATION

Abstract. This article contains analysis of liabilities of a person under accusation process. It was defined that liabilities are imposed on such a person in the result of executing of a corresponding disclosed procedural decision exclusively. Procedural liabilities are classified depending on the type of rights, which limitation arises out of executing such liability.

The article includes a comparative analysis of procedure for summons in criminal, civil, economic and administrative procedure. Non-efficiency of summons and excessive formalism of summons receipt confirmation has been identified. Handing over summons as a ground for liability to come on-call arising and forwarding summons as a due procedure performance to provide a person's arrival at the place of a procedural action or a court hearing have been separated.

Introduction of an obligatory e-mail submission system for all citizens to receive official notifications from state and self-government bodies to provide real receipt, including summons to pre-trial investigation bodies or a court, as well as for due confirmation of summons sending have been suggested.

Keywords: *summons; person's procedural status; notification; procedural actions; liabilities imposed on a suspect or a person under accusation process by the decision on applying criminal proceedings provision means.*

ORCID iD: https://orcid.org/0000-0001-6312-667X
mail@dduvs.in.ua

Relevance of the study. Since under the term "a person under accusation process" we mean not only suspects and accused, the liabilities list is wider than the one stipulated for a suspect and accused by the Criminal Procedure Code of Ukraine in force.

These liabilities tend to be equal either for persons under accusation process, or for persons under procedural actions performed to check versions of committing a violation by another person.

It is determined that in our state a person under accusation process evades the performance of its duties having no intention to participate in proceedings. However, the Criminal Procedure Code of Ukraine contains contradictory norms establishing the summons procedure. For instance, according to Art. 135 part 2 of the Criminal Procedure Code of Ukraine, in case of temporary absence of a person under the place of registration summons shall be handed to an adult family member or another person, living together with it, house maintenance organization at the place of residence or administration at a work place against signature, however**,** notification of a called person is not the responsibility of family members or work administration. Simultaneously, the Criminal Procedure Code of Ukraine contains Art. 136, where due ways of receiving summons except for the postal means are stipulated.

Recent publications review. Procedural responsibilities of the accused person: was considered in their writings by such scientists as: O. Batyuk, O. Vinokurov, O. Kaplina, O. Mazur, M. Nikonenko, O. Tatarov, O. Pharaoh and others.

The article's objective is studying liabilities of a person under accusation process and reflecting perspectives of their regulatory enhancing at the legislation level.

Discussion. According to Art. 19 part 1 of the Constitution of Ukraine legal order in Ukraine is based on the following grounds: nobody can be made do the things not stipulated by the legislation [1]. This means that a list of persons under accusation process stated in the criminal procedural law is not limited.

In general, liabilities mean the obligation to follow a particular type and extent of behavior stipulated by legal norms being the requirements fixed by the state law and society norms towards a person's behaviour [6, p. 214].

Liabilities of a person under accusation process shall include liabilities of a suspect and an accused person. 7 According to Art. 42 part 7 of the Criminal Procedure Code of Ukraine, such liabilities include the following:

1) to arrive on-call to an interrogator, prosecutor, investigating judge or court. In case of unfeasibility to arrive at an appointed date such person shall notify the mentioned persons in advance;

2) to perform responsibilities imposed by the decision on applying means to provide criminal proceedings;

3) to obey legal requirements and demands of an interrogator, prosecutor, investigating judge or court;

4) to submit true information to a representative of a probation body necessary to prepare pre-trial report [2].

We shall study these liabilities more deeply.

Liability to arrive on-call to an interrogator, prosecutor, investigating judge or court. The following criminal proceedings participants are authorized to perform summons: an interrogator, prosecutor and investigating judge in course of pre-trial investigation; court in course of litigation.

At the same time, it is worth to pay attention at the fact that the law does not stipulate an opportunity to for a summoned person to check authorities of an interrogator, prosecutor, investigating judge or court. Though it is possible to obtain data even on the results of an automated distribution of court cases via "Court Power" web-resources, the one cannot check participation of an interrogator or prosecutor. Due to this, we suggest to empower a person summoned to partake in procedural actions to make acquainted with the abstract from the Unified Pre-Trial Investigations Register with brief information on circumstances investigated and on an interrogator(s) or prosecutor(s) performing investigation and procedural management. This will allow a summoned person making sure that an authorized person leads proceedings, while evidence obtained and checked in course of proceedings are relevant for this criminal procedure.

Another aspect of summons is a number of persons, who may be summoned. According to Art. 133 part 1 of the Criminal Procedure Code of Ukraine an interrogator and a prosecutor can summon a suspect, witness, victim or another participant of criminal proceedings in course

of a pre-trial investigation. A court can summon a person to give evidence and a person, whose participation in the procedural action is obligatory (Art. 134 part 1 of the Criminal Procedure Code of Ukraine) [2].

In this case, it should be noted that summons must contain a procedural status of a person (Art. 137 part 1 para. 5 of the Criminal Procedure Code of Ukraine). We consider this formulation to become a challenge in situations, when a person has neither procedural status at the moment of summons receipt. For instance, a person, who shall be reported suspicion, does not have a procedural status of a suspect at the moment of summons receipt. Or a person summoned to clarify whether it wants to be a victim may be another example.

Thus, we consider that Art. 137 part 1 para. 5 of the Criminal Procedure Code of Ukraine shall be amended in the way that a procedural status of a summoned person shall be stated in summons when a procedural status is available.

Interrogation of a person or its obligatory participation in a procedural action is the ground for summons. This is the difference between summons and notification sent to a person, whose participation in a procedural action is not obligatory.

Criminal procedural law determines such forms of summons performance: handing over, sending by post, e-mail or facsimile, call or telephoned message.

Analyzing these forms of summons, we want to pay attention at such forms as handing over, call or telephoned message. They are connected with a receipt of a document or information on obligation to arrive on-call in another form.

Regarding other forms of sending summons, at first sight, they do not require receipt of a document by a person, but their very sending is important.

At the same time, according to Art. 136 part 1 of the Criminal-Procedure Code of Ukraine, signature of a person on summons receipt, including on a postal notification, video recording of summons handing over and any other confirmation of summons receipt or reading, is a due confirmation of summons receipt or making notified on its content by a person.

It means that information shall not only be sent to a person, but also received by it. On the one hand, it is logical, since it is possible to speak about imposing an obligation to arrive on-call only after making a person acquainted with an interrogator's, prosecutor's, investigating judge's or court's call requirement.

However, the Criminal-Procedure Code of Ukraine contains contradictive norms establishing the call procedure. According to Art. 135 part 2 of the Criminal-Procedure Code of Ukraine, in case of temporary absence of a person at the place of residence, summons is handed to an adult family member or another person, living together with it, house maintenance organization at the place of residence or administration at a work place against signature [2].

Thus, handing summons to an adult family member or administration at a work place is a due means of performing a call. Though it is obvious that such means is not connected with a direct bringing a summoned person to notice on its obligation to arrive on-call. Certainly, a summoned person will be notified on summons receipt by a family member or administration at a work place. Such actions are fully adequate. But family members or administration at a work place are not obliged to notify a summoned person.

The peculiarity of interaction between prosecution and a person under accusation process is that such person may evade from arrival having no intention to participate in procedural actions. Though, if a person, who had received summons, did not arrive unjustified, this will mean clear not performance of legal requirement of an interrogator, prosecutor or investigating judge, which may further become the ground to apply precautionary measure or change it to a stricter one. If a summoned person evades from summons receiving, obligation to arrive does not arise, and it is deemed to be more tactically adventurous.

It is also important to take into account that most summoned persons have registration addresses, but can reside at another address, including another city, town or settlement.

In addition, a person may be absent at the place of registration or residence, known to prosecution, due to a business trip, rest, treatment, etc., i.e. objective reasons that make it unfeasible to hand summons over may exist. However, the boarder between a person's absence at a place of residence due to particular business and with the aim of evading from investigation and prosecution is quite nominal, since a summoned person is not interested in admitting that is evades from investigation and prosecution, while absence at the place of residence is equal either at evading from arrival, or being absent due to personal matters

without evasion aim.

Criminal procedural law establishes a list of admission forms to confirm summons receipt or making acquainted with it in any other way.

However, the law does not contain a clear definition of the term "summons" admitting it as a legal fact that imposes obligation to arrive to partake in a procedural action and (in case of failure to arrive) can be the ground for taking other procedural decisions (precaution measures, pre-trial investigation suspension, wanting a person, special pre-trial investigation). In particular, there is no clear identification of how to understand summons: receipt of information about summons by a person or the very sending of such information (regardless of such information actual receipt).

This issue becomes more acute when summons is used to assure person's arrival in the first turn. If a summoned person fails to arrive, it can be a confirmation of arrival evasion. It is also necessary to establish this fact.

We consider it is wise to compare calling methods in other procedural areas.

For one, according to Art. 130 part 3 of the Commercial Procedure Code of Ukraine, in case of handing summons over to an adult family member of a summoned person, it is deemed duly notified on the time, date and place of court hearings or performing another procedural action [3]. And according to Art. 130 part 9 of the Civil Procedure Code of Ukraine, in case an addressee refuses of receiving a court summons, the courier makes a corresponding remark on the summons and returns it back to the court. A person, who refused to receive court summons, is deemed to be notified [3].

Art. 120 part 7 of the Civil Commercial Code of Ukraine states that summons is forwarded to the trial participants having no official e-mail and when it is impossible to notify them by other communication means fixing a notice or call at the latest address known to the court and is deemed to be handed over even in case a corresponding participant of court proceedings does not live at that address [4].

According to Art. 126 part 4 of the Administrative Procedure Code of Ukraine, summons is deemed also handed over in case of its receipt by an adult family member of an addressee against signature. The person received summons is obliged to notify an addressee on it immediately. At this, handing over summons to a case participant's representative is considered its handing over to this person as well (Art. 126 part 10 of the Administrative Procedure Code of Ukraine). In case of summons sent by post return, which failed to reach an addressee due to the reasons beyond a court's control, it is considered to be duly handed over (Art. 126 part 11 of the Administrative Procedure Code of Ukraine) [5]. Thus, in the Civil Commercial and Administrative Procedure litigation summons is seemed to be duly performed in case a relative or representative of a person has received summons as well as in case of refusal from summons or persons' absence at the place of summons delivery. In fact, the rules stated clearly mean that summons is duly performed not only in case of handing it over, but also in case of handing it over to another person, refusal to receive it or absence of persons to receive it. The most efficient way of calling a person is its direct notification on the obligation to arrive. Such notification may be performed during the meeting or by phone. However, a person may evade either from meeting, or from phone conversations. The challenge is that an interrogator, prosecutor, investigating judge or court may not know a place of stay or contact number of a person, or a person may be absent at the place of residence or work or not answer phone calls due to some reasons. Formally such behaviour is not a violation (if relevant obligations are not imposed through precautionary measures), since neither person is obliged to stay at a particular address or answer phone calls. This allows a person efficiently evade from receiving summons.

We consider obligatory possession of an e-mail for receiving information from state bodies an efficient way to reform notification order. Sending summons to a stated e-mail address shall be the due form of calling a person. Thus, it can receive information regarding summons regardless its location. The mentioned changes will allow efficiently communicate with persons under accusation process as well as duly fix the fact of sending summons.

Next group of obligations is performing duties imposed on a suspect or accused by the decision on criminal proceedings measures application. The list of criminal proceedings measures contains summons as well, but (i) we have already considered obligations to arrive on-call and (ii) summons is performed in forms different from the ones stipulated for procedural decisions (order, resolution, etc.). Temporary access to personal items and documents as well as personal commitment (as a separate precautionary measure or imposition

of such obligations alone with other precautionary measures) is a decision on applying criminal proceedings measures imposing obligations on a person under accusation process.

Art. 194 part 5 of the Criminal Procedure Code of Ukraine contains the list of obligations as follows:

1) to arrive at a defined official with a stated periodicity;

2) not to leave a settlement of registration, residence or stay without interrogator's, prosecutor's or court's consent;

3) to notify an interrogator, prosecutor or court on the change of place of residence and/or working place;

4) to avoid communication with any person determined by an investigating judge (court) or communicate with it respecting the conditions stipulated by an investigating judge (court);

5) not to attend places determined by an investigating judge (court);

6) to undergo treatment from drug or alcohol addiction;

7) to find a job or to start studying;

8) to deposit a foreign passport(s) and other documents, which allow to leave or enter Ukraine, at relevant state power bodies;

9) to enter control e-means [2].

The above-mentioned obligations are the subject of separate research. At the same time, we shall pay attention at some problem aspects of these obligations application. According to Art. 179 part 2 of the Criminal Procedure Code of Ukraine, a suspect or accused is notified on imposed obligations in a written way against signature and explained in case of failure to perform them a harsher precautionary measure may be applied alone with a fine at the amount of 0.25-2 subsistence levels for able-bodied persons.

This norm is progressive on the one hand, since notification against signature attracts a person's attention at the aspects it might have missed otherwise. On the other hand, the issue on applying a precautionary measure, not connected with detention, is performed at the presence of a person in question (including obligations stipulated by Art. 194 part 5 of the Criminal Procedure Code of Ukraine). However, the requirement to notify a suspect or accused against signature as regards the imposed obligations has no accurate procedure. Firstly, it is not determined, who shall explain these obligations. According to the general rule, an investigating judge or court shall hand over a copy of a decision on the precautionary measures application to a suspect or accused. May it be deemed full clarification of obligations and warning about responsibility for failure to perform them? We consider not. Secondly, there is no determination how to act in case a person refuses of signing a relevant document, while attempts to apply analogues of singing procedural actions protocols are under discussion.

Therefore, we believe that requirement to notify against signature shall be substituted with a requirement to define these obligations in the decision on the precautionary measures application alone with responsibility for failure to perform them. Handing over of such decision (in the absence of statements to clarify judgment) shall be deemed a notification of a person on responsibility for failure to perform these obligations. Regarding the obligation to perform legal requirements of an interrogator, prosecutor, investigating judge or court, it is unspecified that may lead to procedural discussion and conflicts as for the required behavior of a suspect or accused. Such requirements and orders concern the participation of a suspect or accused in an investigation (search) during pre-trial investigation and court hearings in terms of litigation. The obligations considered are enforced with norms and sanctions for failure to perform them differently. In some cases (failure to arrive on-call or violation of precautionary measures) sanction norms are quite accurate, in other cases vice versa. We think that accurate sanctions enforce the obligations accurately described in law. As regards such obligations as performing legal requirements and orders of persons carrying out criminal proceedings, there are no grounds to determine accurate sanctions due to unfeasibility to provide an exhaustive list of such requirements and orders.

Conclusions. A person under accusation process has the obligations imposed on persons under procedural actions. It might be a search, in course of which an interrogator or prosecutor may require to open locked premises or not to interfere in the search process. During presentation for identification a person may be required to follow a particular procedure (come in together with decoys by invitation, present him / herself, etc.). Requirement may follow sampling for expert research. However, coercion not always may enforce such requirement. These obligations are equal for persons either under accusation process, or under

procedural actions aimed at checking a version on committing criminal violation by another person. We consider this method to be the most efficient one in determining a procedural status of persons under accusation process in terms of their notification of suspicion. Thus, determination of a relevant procedural status for a separate procedural action for a person under such action to have rights and obligations necessary for a suspect or accused when being under such procedural action is a perspective way.

Conflict of Interest and other Ethics Statements
The author declares no conflict of interest.

References

1. Konstytutsiia Ukrainy vid 28.06.1996 № 254K/96-VR. URL : https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text [in Ukr.]

2. Kryminal′nyy protsesual′nyy Kodeks Ukrayiny vid 13 kvitn. 2012 r. № 4651- VIII [Criminal Procedural Code of Ukraine of April 13. 2012 № 4651- VIII]. URL: https://zakon.rada.gov.ua/laws/show/4651-17 [in Ukr.]

3. Tsyvilnyi protsesualnyi kodeks Ukrainy vid 18.03.2004 № 1618-IV. URL: https://zakon.rada.gov.ua/laws/show/1618-15#Text [in Ukr.]

4. Hryniuk V. O. Pravova rehlamentatsiia protsesualnoho poriadku povidomlennia osobi pro pidozru. *Pravove zhyttia suchasnoi Ukrainy : materialy Mizhnar. nauk.-prakt. konf., prysviach. yuvileiu akad. S. V. Kivalova* (m. Odesa, 16-17 trav. 2014 r.) : u 2-kh t. T. 1 / vidp. red. V. M. Dromin. Odesa : Yuryd. lit-ra, 2014. Pp. 663-666. [in Ukr.]

5. Kodeks administratyvnoho sudochynstva Ukrainy vid 06.07.2005 № 2747-IV. URL : https://zakon.rada.gov.ua/laws/show/2747-15#Text [in Ukr.]

6. Teoriia derzhavy i prava : navch. posib. Kyiv : MAUP. 2003. 240 p. [in Ukr.]

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Надія БУБЛИК

ПРОЦЕСУАЛЬНІ ОБОВ'ЯЗКИ ОСОБИ, ЩОДО ЯКОЇ ЗДІЙСНЮЄТЬСЯ ОБВИНУВАЛЬНА ДІЯЛЬНІСТЬ: ЗАКОНОДАВЧЕ РЕГУЛЮВАННЯ ТА УМОВИ РЕАЛІЗАЦІЇ

У статті здійснено аналіз обов'язків особи, щодо якої здійснюється обвинувальна діяльність. Встановлено, що обов'язки покладаються на вказану особу виключно в результаті виконання відповідного процесуального рішення, доведеного до її відома. Процесуальні обов'язки класифікуються залежно від типу прав, обмеження яких відбувається в результаті виконання обов'язку. У статті проведено порівняльний аналіз порядку виклику у кримінальному, цивільному, господарському та адміністративному судочинстві. Констатовано неефективність викликів та надмірна формалізованість форм підтвердження отримання виклику. Розмежовано вручення виклику як підставу виникнення обов'язку з'явитися за викликом та направлення виклику як належне виконання процедури із забезпечення прибуття особи до місця проведення процесуальної дії чи судового засідання.

Запропоновано запровадження системи надання всім громадянам обов'язкової адреси електронної пошти для отримання офіційних повідомлень від державних органів та органів місцевого самоврядування для забезпечення реального отримання, у тому числі викликів до органів досудового розслідування або суду, а також для належного підтвердження направлення виклику.

Ключові слова: *повістка про виклик; процесуальний статус особи; інформування; процесуальні дії; обов'язки, покладені на підозрюваного, обвинуваченого рішенням про застосування заходів забезпечення кримінального провадження.*