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DIRECTIONS FOR IMPROVING THE EFFICIENCY OF PROCEDURAL ACTIONS PRIOR TO ENTERING INFORMATION INTO THE UNIFIED REGISTER OF PRE-TRIAL INVESTIGATIONS

The article deals with the search and analysis of the ways to improve the efficiency of procedural actions prior to entering information into the Unified Register of Pre-trial Investigations. The author analyzes the position that the register has now acquired statistical significance, since it has become common practice to measure the quality of work of a practical unit by achieving certain indicators. The author examines the possibilities of pre-trial investigation prior to entering information into the Unified Register of Pre-trial Investigations, assesses them and presents the most rational ways to improve the efficiency of pre-trial investigation at the stage "prior to the Unified Register of Pre-trial Investigations".

Key words: *unified register of pre-trial investigations, effectiveness of pre-trial investigations, procedural actions, investigative (search) actions.*

Problem statement. Today, in modern Ukrainian science, the issue of carrying out a number of investigative (detective) actions and their specifics prior to entering information into the Unified Register of Pre-trial Investigations (hereinafter – the URPTI) is being actualized. It should be emphasized that at this stage of development of criminal justice and criminal procedural legislation, the provision that pre-trial investigation is not allowed before entering information into the URPTI contradicts the principles of efficiency and the need for a quick response when collecting evidence directly at the scene and information from persons who are there. In view of this, the issue of ensuring a prompt and impartial pre-trial investigation in order to implement the principle of inevitability of criminal liability has become much more relevant today. We have decided to conduct such a study, which will highlight ways to improve the fragmentary pre-trial investigation before entering information into the URPTI.

Analysis of recent studies and publications which cover the research issues. In the criminal procedure literature, the issue of commencement of pre-trial investigation has been studied by scholars and practitioners (Y.P. Alenin, Y.M. Groshev, L.M. Loboyko, O.Y. Tatarov, V.I. Farynnyk, V.Y. Shepitko, etc.), but the issue of improving the conduct of certain investigative (search) actions prior to entering information into the Unified Register of Pre-trial Investigations (hereinafter – the URPTI) requires clarification.

The article aims is to study the ways to improve the efficiency of procedural actions prior to entering information into the Unified Register of Pre-trial Investigations.

Summary of the main research material. This study should begin with the recognition of the fact that the URPTI functions as a statistical database, since recently, practical units have been using this database as a way to measure quantitative indicators of the work of territorial units. In order to understand this issue more thoroughly, we turned to the Regulation on the Unified

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Register of Pre-trial Investigations, the Procedure for its Maintenance and Formation No. 298 dated 30.06.2020, in which para. 3 reveals the content of key terms and concepts, including the interpretation of the concept of "register", which is considered as "an electronic information and communication system designed to collect, store, protect, process, record, search, summarize data [...] used for reporting, as well as provide information on the information entered in the Register, in compliance with the requirements of criminal procedure legislation and legislation regulating the protection of personal data and access to restricted information" [1].

According to clause 4 of the said Regulation, the register performs the following functions:

– registration of criminal offenses (proceedings) and persons who committed them, accounting of decisions made during the pre-trial investigation and the results of court proceedings;

– operational control over the observance of laws during the pre-trial investigation;

– reporting on the state of criminal unlawfulness and the results of the work of pre-trial investigation bodies;

– analysis of the state and structure of criminal offenses committed in the country;

– information and analytical support of state authorities, including law enforcement and judicial authorities in accordance with the requirements of the law [1].

Thus, the statistical functionality of the registry is enshrined at the regulatory level, since the vast majority of the functions we have outlined include record-keeping and information and analytical support. We add an argument that the URPTI has recently acquired statistical significance.

At the same time, the provision of the Criminal Procedure Code of Ukraine (hereinafter – the CPC of Ukraine), namely Article 214 of the CPC of Ukraine, remains unchanged. According to part 1 of Art. 214 of the CPC of Ukraine, "an investigator, detective, prosecutor shall immediately, but not later than 24 hours after filing a statement or report of a criminal offense or after independently discovering from any source circumstances that may indicate the commission of a criminal offense, enter the relevant information into the Unified Register of Pre-trial Investigations, initiate an investigation and, within 24 hours from the moment of entering such information, provide the applicant with an extract from the Unified Register of Pre-trial Investigations. The investigator who will conduct the pre-trial investigation is appointed by the head of the pre-trial investigation body, and the coroner – by the head of the coroner's office, and in the absence of an inquiry unit – by the head of the pre-trial investigation body" [2]. It is also necessary to pay attention to part 2 of the above rule, which states that "pre-trial investigation begins from the moment of entering information into the Unified Register of Pre-trial Investigations" [2]. Instead, we would like to draw attention to the existence of a mandatory rule that the pre-trial investigation before entering information into the register or without such entry is not allowed and entails liability established by law. In urgent cases, prior to entering information into the Unified Register of Pre-trial Investigations, the scene of the incident may be inspected (information is entered immediately after the inspection is completed). In order to clarify the circumstances of the criminal offense, prior to entering information into the Unified Register of Pre-trial Investigations:

– may be taken an explanation;

– may be conducted a medical examination;

– a specialist's opinion is obtained and readings are taken from technical devices and technical means that have the functions of photo and film shooting, video recording, or photo and film shooting, video recording means;

– tools and means of committing a criminal offense, things and documents that are the direct subject of the criminal offense, or that were found during the detention of a person, personal search or inspection of things, were seized [2].

At the same time, it is worth noting some contradictions in the procedural legislation, which emphasizes the need for an effective pre-trial investigation, but, despite this, introduces

such a mandatory rule that may even result in liability for any actions before entering information into the URPTI. This means that the effectiveness of the pre-trial investigation is out of the question in principle. The same goes for taking explanations at the stage "before the URPTI", since both judicial practice and criminal procedural law indicate that explanations cannot be used as evidence in criminal proceedings. A logical and expected question arises as to whether it is appropriate to take explanations from individuals if they are not relevant as evidence in the future, as they are considered primary material. However, it should be emphasized that there are cases when a person changes their testimony in the future and it is strikingly different from the one provided in the explanation. Accordingly, the investigator cannot refer to the person's previous explanations, bring him or her to any responsibility, since the explanations were selected before the information was entered into the URPTI and, accordingly, are outside the scope of the pre-trial investigation, which further complicates the proof of the person's guilt in providing false testimony [3].

The Criminal Code of Ukraine (hereinafter – the CC of Ukraine) contains a provision that provides for criminal liability for knowingly false testimony under Article 384 of the CC of Ukraine. The name of this provision is quite correct from the legal point of view, as it sounds like "misleading a court or other authorized body". The legislator's understanding of perjury as misleading should be recognized as correct. According to part 1 of Art. 384 of the Criminal Code of Ukraine, "knowingly false testimony of a witness, victim, knowingly false expert or specialist opinion drawn up for submission or submitted to the body conducting pre-trial investigation, enforcement proceedings, court, High Council of Justice a temporary investigative or special temporary investigative commission of the Verkhovna Rada of Ukraine, submission of knowingly false or forged evidence, a knowingly false appraiser's report on property valuation, as well as a knowingly incorrect translation made by a translator in the same cases" [4]. However, the topic of criminal liability for perjury is trivial and has been repeatedly covered in scientific studies by both Ukrainian and foreign scholars. In practice, Article 384 is "dead" and there are many reasons for this, including:

– It is difficult to prove that a person deliberately gave false testimony, and not just remembered what happened differently than it actually happened;

– the investigator interrogates the witness and warns him or her of criminal liability for perjury. However, in reality, no one needs the evidence collected by the investigator during the pre-trial investigation, because the witness will be questioned separately by the judge during the hearing [5, p. 248].

These facts indicate that taking explanations before entering information into the URPTI does not carry any meaningful load, except for filling in the materials, demonstrating the work of the investigative team on daily duty and highlighting the fact of a criminal offense for the management to properly qualify it. Our study does not aim to deny the expediency of selecting such explanations at the stage "to the URPTI", since the investigator may have many calls processed per day, so there is a need to record the circumstances of the criminal offense in detail in order to ensure proper qualification in the future. Thus, we formulated the thesis that there is still a need to take explanations from eyewitnesses, participants of the event, since in the future they are potential witnesses and, accordingly, will participate in the pre-trial investigation [5, p. 243–247].

Based on this and the topic of this study, we are of the opinion that it is necessary to recognize the testimony contained in the explanation as evidence of a certain position of the person who provided such explanation. Given the presence of international standards within the framework of modern criminal procedural legislation, it should be said that the legislator will not take into account the recognition of the explanation as evidence before entering information into the URPTI, as this will directly contradict the mandatory provisions cited earlier. Nevertheless, we propose to recommend that judges analyze the explanations provided by persons directly at the scene of the event. According to the current legislation, judges examine evidence in court

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directly, i.e., summon participants and listen to them in court, but today, practice has formed the need to follow the position of a person from the stage "before the URPTI" to the delivery of an indictment to a person suspected of committing a criminal offense. Our position can be explained by the fact that during the pre-trial investigation and subsequent court proceedings, few people take into account the psychological aspects and behavioral characteristics of a person at the scene of a criminal offense. Suffice it to emphasize that the moment of committing a criminal offense is a stressful situation for all participants in the process: witnesses, victims and even the person committing the criminal offense. That is why there is a need to study the psychological component, namely, what factors the person was exposed to, what he or she remembers, what he or she saw, and what he or she can explain about a particular situation. It should be emphasized that in a state of psychological stress, the person's brain can work faster and better in order to provide complete information about the circumstances of the criminal offense and the person who committed it. Investigative practice knows of cases when, during interrogation after the event, a person giving evidence may slightly distort or misrepresent facts, and this happens unintentionally. And in this case, the pre-trial investigation comes to a standstill, since the legislator restricts the investigator with a mandatory rule in the form of a ban on conducting a pre-trial investigation before entering information into the URPTI. Thus, the investigator cannot use the explanation as evidence, since it was taken before the information was entered and cannot serve as evidence, as evidenced by the case law, and cannot bring to criminal liability the person who gives the testimony, since he understands that at the time of the criminal offense the person was in a state of shock and after this state the brain was relaxed, and therefore lost important information. As we noted earlier, misleading a court or other law enforcement agency is only intentional, so the failure to provide the necessary information as a result of a change in the psychological state of the observer cannot be held criminally liable [6].

Thus, among the areas of improvement of the pre-trial investigation prior to entering information into the URPTI, it is necessary to emphasize the recognition of the data set forth in the explanation as confirmation of the position of a participant in criminal proceedings. The need for this is justified by the fact that the witness perceives the facts directly at the scene of the criminal offense and it is his or her initial position that affects the implementation of such an important principle of pre-trial investigation as efficiency.

In addition, we have formulated the position that the legislator needs to simplify some procedures that can be carried out within the framework of the pre-trial investigation and at the stage "before the URPTI". The point is that prior to entering information into the URPTI, in case of a criminal offense, it is allowed to conduct a medical examination, remove information from technical recording devices and seize tools and means of a criminal offense. The legislator's position in this case is quite interesting, as it has taken the position that, given the sanction in criminal misdemeanors, a person's rights will not be significantly restricted, as, for example, during pre-trial investigation of crimes and sentencing. However, given the need to ensure the effectiveness of the pre-trial investigation, its quick and efficient implementation, the legislator should pay attention to the departure from the position of differentiating between the capabilities of the investigator and the detective before entering information into the URPTI. In particular, to allow investigators to not only inspect and take explanations, but also to take audio and video recordings, conduct a medical examination of a person, seize tools and means of committing a criminal offense, but this action can be performed as part of the inspection before entering information into the URPTI [7, p. 171–172].

The need to level the statistical work of the police necessitates the invention of fundamentally new models and levers in the work of the investigator. For example, expanding the powers of the investigative team to enter information into the URPTI with unconditional observance of human rights and freedoms may have a positive impact on the course of further pre-trial investigation, bringing perpetrators to criminal liability, etc.

In writing this article, we emphasize the lack of research in the field of pre-trial investigation prior to entering information into the URPTI, and even more so, scientific proposals for improving pre-trial investigation prior to entering information into the Unified Register of Pre-trial Investigations. Again, we should not lose sight of the fact that for the period of martial law, the processes carried out within the pre-trial investigation should be somewhat modernized and simplified, since in the zone of direct threat, and such zones should be called the places of arrival, it is sometimes impossible to enter information, register and carry out other technical measures. In this case, there is a justified need for the legislator to revise the position on pre-trial investigation before entering information into the URPTI, especially in the situation that this database has recently become statistical in nature [8, p. 15].

Conclusions. We have analyzed the legal acts regulating the procedure for using the URPTI in practice and entering information into it. It should also be emphasized that the statistical functionality of the register is enshrined at the regulatory level, since the vast majority of the functions we have outlined include record keeping and information and analytical support. We add the argument that the URPTI has recently acquired statistical significance. This study emphasizes the lack of research in the field of pre-trial investigation before entering information into the URPTI, and even more so, scientific proposals for improving pre-trial investigation before entering information into the Unified Register of Pre-trial Investigations. Again, we should not lose sight of the fact that for the period of martial law, the processes carried out within the framework of pre-trial investigation should be somewhat modernized and simplified. In this case, there is a justified need for the legislator to reconsider the position on pre-trial investigation prior to entering information into the URPTI, especially in the situation when this database has recently become statistical in nature.

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АНОТАЦІЯ

Олексій Кесарійський. Напрями підвищення ефективності проведення процесуальних дій до внесення відомостей до Єдиного реєстру досудових розслідувань.

У науковій статті здійснено пошук та аналіз напрямів підвищення ефективності проведення процесуальних дій до внесення відомостей до Єдиного реєстру досудових розслідувань. Автор проаналізував позицію, згідно з якою реєстр сьогодні набув статистичного значення, оскільки розповсюдженою стала практика вимірювання якості роботи практичного підрозділу шляхом досягнення визначених показників. Досліджено можливості досудового розслідування до внесення відомостей до Єдиного реєстру досудових розслідувань, надано їм оцінку та представлено найбільш раціональні способи підвищення ефективності досудового розслідування на етапі «до Єдиного реєстру досудових розслідувань».

Ключові слова: *Єдиний реєстр досудових розслідувань, ефективність досудового розслідування, процесуальні дії, слідчі (розшукові) дії.*

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ОКРЕМІ АСПЕКТИ ВИЗНАЧЕННЯ ПОНЯТЬ ПРИ КВАЛІФІКАЦІЇ КРИМІНАЛЬНИХ ПРАВОПОРУШЕНЬ ПРОТИ ЖИТТЯ ТА ЗДОРОВ'Я ОСОБИ

5 квітня 2001 року Верховною Радою України був прийнятий Кримінальний кодекс України. Станом на 2024 рік суттєві помилки, допущені законодавцем, не були виправлені. Розглянуто та проаналізовано проблеми визначення понять кримінальних правопорушень проти життя та здоров'я особи, які суперечать основам теорії кримінального права. Законодавець надає визначення поняття «вбивство» в ст. 115 Кримінального кодексу України. Це призводить до тавтології в певному переліку статей цього кодексу. Водночас ст. 119 цього кодексу містить дві форми вини одночасно щодо одного об'єкта посягань. Запропоновано зміни до Кримінального кодексу України з метою його удосконалення.

Ключові слова: *вбивство, вбивство через необережність, вина, умисел, необережність, злочин, життя та здоров'я.*

Постановка проблеми. Помилкова інтерпретація кримінального закону призводить до неправильного розуміння та застосування цього закону. У кримінальній галузі права розуміння та визначення понять має вирішальне значення для долі людини, яка підозрюється

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