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### PROBLEM ISSUES OF INTERACTION OF OPERATIONAL UNITS WITH INVESTIGATORS, WHEN DETAINING A PERSON ON SUSPICION OF A CRIME

**Олексій Бойко. ПРОБЛЕМНІ ПИТАННЯ ВЗАЄМОДІЇ ОПЕРАТИВНИХ ПІДРОЗДІЛІВ ЗІ СЛІДЧИМИ ПРИ ЗАТРИМАННІ ОСОБИ ЗА ПІДОЗРОЮ У ВЧИНЕННІ ЗЛОЧИНУ.** Проаналізовано кримінальне процесуальне законодавство щодо взаємодії оперативних підрозділів зі слідчими при затриманні особи за підозрою у вчиненні злочину.

Розглянуто та виділено проблемні, питання взаємодії оперативних підрозділів зі слідчими при затриманні особи за підозрою у вчиненні злочину, зокрема щодо: суб'єктів, які саме уповноваженні на затримання та складання протоколу затримання у порядку ст. 208 КПК України; проведення обшуку особи під час затримання (з моменту фактичного затримання чи іншим співробітником після доставлення особи до органу досудового розслідування); необхідності складання окремого протоколу обшуку особи під час затримання; особливостей затримання особи без ухвали слідчого судді в умовах воєнного стану.

Приділено увагу повноваженням співробітників оперативних підрозділів при надходженні до органу, підрозділу поліції заяв і повідомлень про кримінальні правопорушення, реагуванні на них щодо затримання осіб підозрюваних у вчиненні злочину.

Виділені етапи затримання при взаємодії оперативних підрозділів зі слідчими щодо затримання особи за підозрою у вчиненні злочину до яких автор відносить: фактичне затримання особи; доставлення затриманої особи до органу досудового розслідування; тимчасове тримання особи під вартою.

В статті звертається увагу, що визначена в п. 6 ч. 1 ст. 615 КПК України додаткова підстава затримання особи без ухвали слідчого судді, суду уповноваженою службовою особою в умовах воєнного стану, суперечить ст. 64 Конституції України.

Автор доходить до висновку, щоб уникнути проблемні питання взаємодії оперативних підрозділів зі слідчими при затриманні особи за підозрою у вчиненні злочину необхідно чітко розподіляти та дотримуватись повноважень між оперативними підрозділами та слідчими; чітким дотриманням вимог кримінального процесуального законодавства України та його вдосконаленням.

**Ключові слова:** оперативні підрозділи, взаємодія, затримання особи, слідчий, підозра, вчинення злочину, слідчий суддя.

**Relevance of the study.** In recent years, there has been a steady trend towards a crime increase in Ukraine as a whole. A significant number of crimes, including serious and especially serious ones, remain unsolved. At the current stage the fight against crime requires not only the maximum use of all the forces of law enforcement agencies, but also a clear organization. It ensures their high efficiency, coordination of all services and divisions efforts of various law enforcement agencies to act with maximum efficiency according to the powers. Also it's very important to combine capabilities of one units with other bodies and supplement by them. This complex combination of efforts implementes by the interaction of law enforcement agencies, primarily investigators and criminal investigation units.

**Recent publications review.** The study of the problems of the interaction of

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investigators with operative units in pre-trial proceedings during investigating certain types of criminal offenses or conducted procedural actions were considered in the works of the following scientists: L. Garbovskiy, S. Ablamskiy, O. Yukhno, Yu. Lukyanenko, S. Soroka, H. Rymarchuk, V. Topchii and others [1-4]. However, problematic issues of the interaction of operative units with investigators during the detention of a person suspected of committing a crime were not resolved in the works of these scientists, although some of the scientists tried to investigate these issues in their scientific articles.

**The article's objective** is to obtain new scientific results regarding the problematic issues of interaction between operational units and investigators when detaining a person suspected in a crime. In order to achieve the goal, it is necessary to solve the following tasks: investigate the problematic issues of the interaction of operative units with investigators when detaining a person suspected of committing a crime; to propose ways to eliminate the problems by making changes to the Criminal Procedure Code of Ukraine (hereinafter – the Criminal Procedure Code of Ukraine).

**Discussion.** The process of solving crimes and investigating criminal proceedings involves close cooperation of law enforcement agencies and it is also a necessary condition for ensuring law and order in society and the state.

Scientists have always raised questions about the development of scientifically based recommendations for the interaction of operational units with investigators when detaining a person suspected of committing a crime.

The need of interaction of operational units with investigators when detaining a person on suspicion of committing a crime is determined by the requirements of criminal procedural legislation, from which various forms of interaction between operational units and investigators arise and give them different powers.

In essence, the problematic issues of the interaction of operative units with investigators remain relevant, including the cases of arresting a person on suspicion of a crime.

O. Boyko distinguishes the key issues of interaction, which can be implemented in any procedural form: 1) conduct of investigative actions and covert investigative actions on behalf of the investigator; 2) providing assistance to the investigator during individual investigative actions and covert investigative actions; 3) interaction during the application of measures to ensure criminal proceedings; 4) taking measures to establish the whereabouts of a suspect who is hiding from investigative bodies and the court to evade criminal responsibility for suspended criminal proceedings [5, p. 137].

Also, O. Boyko indicates in the scientific article, that for increasing the effectiveness of the interaction of investigators with operative units there is a need to improve the professional focus of interacting parties regarding each other's capabilities and the fullness of their use to solve the tasks of criminal proceedings [6, p. 203].

However, the issue of compliance with the law and the organization of the interaction of operative units with the investigator during the detention of a person on suspicion of a crime, on grounds provided for in Part 1 of Art. 208 of the CCP of Ukraine remain particularly relevant. A significant part of them is related to the distribution of powers regarding the procedural processing of the results of the detention of a person suspected of a crime and the transfer of temporarily seized property if it was seized.

In our opinion, based on the analysis of the Criminal Procedure Code of Ukraine and Legal acts, it is appropriate to include the following problematic issues of the interaction of operative units with the investigator when detaining a person on suspicion a crime:

- who draws up the arrest protocol (the person who actually arrested (operational officer) or the investigator to whom such a person was taken)?
- by whom and when is the person searched during detention (at the time of actual detention or by another employee after the person is brought to the pre-trial investigation body)?
- is a protocol of a search of a person drawn up during detention?
- who makes the decision on detention (operational officer or investigator)?
- who informs the relatives of the detainee about the detention (the authorized official who carried out the actual detention, or the employee of the pre-trial investigation body to which the person was transferred)?
- what are the features of detaining a person without a decision of an investigating judge in the conditions of martial law?

These issues are important, because each violation of the procedure for detaining a

person on suspicion of a crime may lead to the detention being recognized as illegal and the evidence obtained inadmissible (Part 1, Article 87 of the Criminal Procedure Code of Ukraine). It also entitles the detainee to compensation for damages, caused by the actions of the authorized official who carried out the detention (Article 130 of the Criminal Procedure Code of Ukraine).

In order to answer these questions, firstly it is necessary to determine the powers of operative units employees when receiving statements and reports of criminal offenses to the body, police unit, and responding to them regarding the detention of persons suspected of having committed a crime. The specified powers are distributed as follows.

After receiving information about the commission of a criminal offense and entering the information into the Unified register of pre-trial investigations under the leadership of the head of the body, the police unit carries out a set of priority measures and urgent investigative (search) actions, including on behalf of the investigator, aimed at identifying the person, who committed a criminal offense, and clarifying all the circumstances of the event.

Priority measures and urgent investigative (search) actions include: conducting an inspection of the scene of the incident; pursuit and detention of offenders following the traces or directions of the offender's movement indicated by victims and eyewitnesses or based on the results of the work of a service dog, organization of blocking measures, including the places where offenders may stay or appear, etc.

The powers of employees of operative units when receiving statements and reports about criminal offenses and responding to them when working as part of the National Security Service regarding detention include:

1) establishes the time, place and circumstances of the commission of a criminal offense; the number of persons who committed it, their signs; the presence of weapons, vehicles, traces on their clothes or body, which could have remained due to the resistance of the victims or when overcoming obstacles; individual signs of stolen things; the direction of movement of persons who have committed a criminal offense, other information necessary for their identification; uses available sources of operational information for the purpose of revealing a criminal offense;

2) immediately informs the investigator about the received data regarding the circumstances of the commission of the criminal offense and the persons who committed it, for their further fixation by conducting investigative (search) actions or covert investigative (search) actions.

The powers of the investigator when receiving statements and reports about criminal offenses and responding to them when working as part of the National Security Service regarding detention, include:

1) directs the actions of other members of the Investigative and operational group;  
2) provides written orders to the employees of operational units to conduct investigative (search) actions in criminal proceedings [7].

As a result of analyzing the powers of operational units and investigators, the authors think that the lack of investigator's powers to give an order to the operative unit to detain a person suspected of a crime is an unsettled issues, when receiving statements and reports about criminal offenses and responding to them when working as a part of the Investigative-operational group regarding detention to the body and police unit.

The process of detention includes the following stages:

- 1) actual detention of a person;
- 2) delivery of the detained person to the pre-trial investigation body;
- 3) temporary detention of a person in custody.

In accordance with Part 5 of Art. 208 of the Criminal Procedure Code of Ukraine an authorized official who has detained a person suspected of committing a crime is obliged to draw up a detention report. It specifies the place, date and exact time (hour and minutes) of detention in accordance with the provisions of Art. 209 of the CPC of Ukraine; grounds for detention; personal search results; petitions, statements or complaints of the detainee, if such were received; a complete list of procedural rights and obligations of the detainee. At the same time, as stated above, a personal search must be conducted upon actual arrest. This means that a separate personal search protocol is not drawn up, but the time of the personal search and its results (removed objects) are noted directly in the arrest protocol. Next, the arrest protocol is announced to the suspect by the authorized official who carried out the arrest, that is, the person who drew up the arrest protocol, and the detainee is also explained his rights and

obligations provided for by the Criminal Code of Ukraine [8].

It should be noted that the circumstances stated in the detention protocol indicate the legality of the detention. The detention report contains the grounds for detention, the recorded time of actual detention, which is not only the beginning of the calculation of the term of detention, but is also later included by the court in the term of punishment. For this reason, the protocol of detention must be drawn up by the authorized official who carried out the actual detention and has full knowledge of all the circumstances of the detention.

There is another problem that may be during the interaction of operative units with investigators regarding the detention of a person suspected of committing a crime when the last name, first name, and patronymic of the detainee are unknown.

In this case, based on the analysis of the CPC of Ukraine, the CPC of Germany and the opinions of scientists, O. Boyko thinks, that the part 5 of Art. 208 of the Criminal Procedure Code of Ukraine must be read as follows: "If at the time of detention the surname, first name, and patronymic of the detained person are not known, a detailed description with measurements of such a person must be noted in the protocol and his photograph with fingerprints must be attached [9, p. 243].

Also taking into account that martial law has been introduced throughout the territory of Ukraine since February 24, 2022 in accordance with Presidential Decree No. 64/2022 of February 24, 2024 "On the introduction of martial law in Ukraine" [10], the legislator in the CPC of Ukraine provided for certain features of the detention of a person without the decision of the investigating judge.

In particular, in accordance with Clause 6, Part 1 of Art. 615 of the Criminal Procedure Code of Ukraine, the legislator provided an additional basis for detaining a person without a decision of an investigating judge or a court-authorized official in conditions of martial law, in the event of reasonable circumstances that give grounds to believe that a person suspected of committing a crime may flee for the purpose of evading criminal responsibility [8].

We believe that the legislator's attempt to add grounds for detention under martial law contradicts Art. 64 of the Constitution of Ukraine, which states that the rights and freedoms, provided for in Art. 29 of the Constitution of Ukraine, cannot be limited even in conditions of war or state of emergency [11].

Also Part 2 of Art. 29 of the Constitution of Ukraine states that there must be an urgent need to prevent a crime or stop it by the bodies authorized by law to detain a person [11], and not when there are grounds that a person suspected of having committed a crime may flee in order to evade criminal responsibility.

Based on the analysis of the materials of criminal proceedings, the most typical violations of the criminal procedural legislation, which are made by operatives and investigators when drawing up the arrest protocol, are incorrect indication the time, place of actual detention, and the grounds for detention provided for in clauses 1-4, part 1 of Art. 208 of the Criminal Procedure Code of Ukraine, as well as.

There are also cases of absence of information about giving the detainee the opportunity to inform close relatives, family members or other persons of the person's choice in the materials of criminal proceedings.

In accordance with Part 1 of Art. 213 of the Criminal Procedure Code of Ukraine, the authorized person who carried out the detention [8] (for example, an employee of the operational unit) is obliged to provide such an opportunity.

As for the next stage of delivery to the body of pre-trial investigation, the authorized official who made the arrest should deliver the detained person to the nearest unit of the pre-trial investigation body, in accordance with the provisions of Part 1 of Art. 210 of the Criminal Procedure Code of Ukraine [8]. However, the criminal procedural legislation of Ukraine, as well as other normative legal acts, does not specify the time period of delivering a detained person to the body of a pre-trial investigation by authorized official.

We agree with the opinion of I. Bortun, who thinks that the process of detaining a person is a method of its legal delivery to the pre-trial investigation body, while the delivery period should not exceed three hours, in accordance with Art. 208 of the Criminal Procedure Code of Ukraine [12, p. 104; 13, 149].

Also, during the delivered a detained person to the body of pre-trial investigation operative units employees are obliged to hand over temporarily seized property (Art.168 of the Criminal Procedure Code of Ukraine).

**Conclusions.** Thus, the resolution of problematic issues of the interaction of operative

units with investigators during the detention of a person on suspicion of a crime is possible in such circumstances:

- a clear distribution and observance of powers of operative units (the authorized official who carries out the actual detention) and the investigator;
- the official who actually detained the person on suspicion of a crime should draw up all the necessary procedural documents in compliance with the requirements of Art.208, 168 of the Criminal Procedure Code of Ukraine;
- criminal procedural legislation should be improved in next positions: 1) to grant the investigator with the power to instruct the operational unit to detain a person suspected of committing a crime upon receipt of statements and reports about criminal offenses and responding to them when working as part of the Investigative-operational group. For this item Clause 3, Part 2 of Art. 40 of the Criminal Procedure Code of Ukraine should be supplemented with the power to issue instructions for the conduct of procedural actions, not only the Investigative search actions and Covert investigative actions; 2) Clause 6, Part 1, Art. 615 of the Criminal Procedure Code of Ukraine about the existence of an additional reason for detention under martial law by an authorized official without a decision of the investigating judge should be excluded due to the fact that it contradicts the requirements of Art. 64 of the Constitution of Ukraine.

*Conflict of Interest and other Ethics Statements*

The author declares no conflict of interest.

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#### ABSTRACT

The criminal procedural legislation on the interaction of operative units with investigators when detaining a person on suspicion of a crime was analyzed. Attention was paid to the powers of operational units employees when receiving statements and reports about criminal offenses and responding to them regarding the detention of persons suspected of a crime. Selected the next stages of detention during the interaction of operational units with investigators regarding the detention of a person on suspicion of a crime: actual detention of a person; delivery of the detained person to the pre-trial investigation body; temporary detention of a person in custody.

The author comes to the conclusion that in order to avoid the problematic issue of the interaction

of operational units with investigators when detaining a person on suspicion of committing a crime, it is necessary to clearly distribute and observe powers between operational units and investigators; strict compliance with the requirements of the criminal procedural legislation of Ukraine and its improvement.

**Keywords:** *operative units, interaction, detention of a person, investigator, suspicion, commission of a crime, investigating judge.*

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### **THE SITUATION OF COMMITTING FRAUD UNDER EXTRAORDINARY LEGAL REGIMES**

**Наталія Павлова. ОБСТАНОВКА ВЧИНЕННЯ ШАХРАЙСТВА В УМОВАХ НАДЗВИЧАЙНИХ ПРАВОВИХ РЕЖИМІВ.** У статті на підставі аналізу криміналістичної літератури обстановку вчинення кримінальних правопорушень визначено як систему обраних злочинцем чи об'єктивно його оточуючих фізично-матеріальних та соціальних умов середовища, у яких відбувається кримінальне правопорушення. Відзначено, що кількісний та якісний склад структурних елементів обстановки вчинення кримінальних правопорушень залежать від видів кримінальних правопорушень. Відзначено, що шахраї нерідко пристосовуються до типових факторів у схожій обстановці, внаслідок цього з'являється типовий почерк злочинної діяльності. Щодо обстановки та умов кримінальних правопорушень, вчинених шляхом шахрайства, зауважується, що вони вчиняються під впливом певних економічних, правових, соціальних, політичних, психологічних та інших факторів, що створюють підґрунтя для безперешкодного здійснення обману та сприяють приховуванню протиправних дій.

Наголошено, що від того, як правильно слідчий здійснить аналіз просторово-часових характеристик та умов, в яких діяли шахраї, часто залежить результативність усього розслідування у кримінальному провадженні в цілому. Надзвичайно важливим є врахування особливостей обстановки, що складається в умовах надзвичайних правових режимів (епідемії, пандемії, воєнного стану та ін.), які прямо впливають на механізм вчинення вказаних кримінальних правопорушень і, відповідно, на рівень їх розкриття.

**Ключові слова:** *обстановка вчинення кримінальних правопорушень, вчинених шляхом шахрайства, криміналістична характеристика кримінальних правопорушень, методика, надзвичайні правові режими, епідемія, пандемія.*

**Relevance of the study.** Each criminal offense is always committed and concealed in specific conditions of reality and has its own spatio-temporal characteristics. At the same time, criminals often adapt to typical factors in a similar environment, as a result of which a typical pattern of criminal activity appears. Speaking about the situation and conditions of criminal offenses committed by fraud, it should be noted that they are committed under the influence of certain economic, legal, social, political, psychological and other factors that create the basis for the unhindered implementation of deception and contribute to the concealment of illegal actions. It is extremely important to take into account the specifics of the situation that exists in the conditions of emergency legal regimes (epidemic, pandemic, martial law, etc.), which directly affect the mechanism of committing the specified criminal offenses and, accordingly, the level of their disclosure.

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