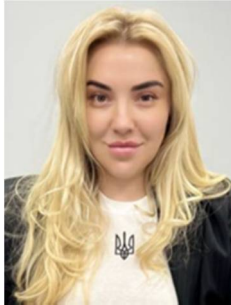


UDC 343.102

DOI: 10.31733/2078-3566-2023-3-38-44



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### PECULIARITIES OF CONDUCTING PROCEDURAL ACTIONS BEFORE ENTERING DATA INTO THE UNIFIED REGISTER OF PRE-TRIAL INVESTIGATIONS IN TERMS OF PROBLEMATIC ASPECTS OF THE MODERN TIME

**Дарія Лазарева, Олексій Кессарійський. ОСОБЛИВОСТІ ПРОВЕДЕННЯ ПРОЦЕСУАЛЬНИХ ДІЙ ДО ВНЕСЕННЯ ДАНИХ ДО ЄДИНОГО РЕЄСТРУ ДОСУДОВИХ РОЗСЛІДУВАНЬ В РОЗРІЗІ ПРОБЛЕМНИХ АСПЕКТІВ СУЧАСНОСТІ.** У науковій статті розглядається проведення процесуальних дій до внесення відомостей до Єдиного реєстру досудових розслідувань з точки зору проблемних аспектів сучасності. Автор звертає увагу на оновлені положення про початок досудового розслідування, зокрема використання Єдиного реєстру досудових розслідувань протягом усього часу його проведення. Враховуючи те, що чинним процесуальним законодавством досі не врегульовано окремі позиції щодо ведення реєстру та його організації, можливості проведення окремих слідчих (розшукових) дій до внесення відомостей, це свідчить про необхідність трансформації ряду положень, які стосуються початку досудового розслідування.

Вирішення цього питання є важливим для слідчої практики. У статті розкриваються проблемні аспекти практичної діяльності, які можуть бути вирішені шляхом проведення певних досліджень відомостей Єдиного реєстру досудових розслідувань з метою організації діяльності органів досудового розслідування та спрямування їх на виконання завдань кримінального процесу.

Автор зазначає, що ЄРДР є досить корисним в організації досудового розслідування, адже завдяки йому контролюється перебіг кримінальних проваджень та їх рух у системі органів досудового розслідування. Також доцільно зазначити, що створення та системне вдосконалення ЄДР є важливим кроком на шляху співвідношення українського кримінального процесу та міжнародного законодавства, яке передбачає формування відповідних баз даних для спрощення діяльності правоохоронних органів та вдосконалення їх якості. Слід зазначити, що в судовій практиці зафіксовано визначальне значення Єдиного реєстру досудових розслідувань як бази для обліку та збереження відомостей про кримінальні правопорушення.

**Ключові слова:** Єдиний реєстр досудових розслідувань, процесуальні дії, огляд місця події, початок досудового розслідування, слідчі (розшукові) дії.

**Relevance of the study.** In the context of Criminal Procedure Code of Ukraine (hereinafter referred to as CPC of Ukraine), it may be stated that there are certain updates to the provisions regarding initiating a pre-trial investigation, particularly, the use of the Unified Register of Pre-trial Investigations (hereinafter referred to as URPTI) throughout its conduct. Taking into account the fact that current procedural legislation has not yet regulated certain positions regarding keeping records in the register and its organization, as well as the ability to conduct certain investigative (search) actions before entering information, this argues for the need to transform a number of provisions that relate to the beginning of a pre-trial investigation. Resolving this issue is important for investigative practice.

**Recent publications review.** In criminal procedural literature, the issue of initiating a pre-trial investigation has been studied by multiple scholars and practitioners among which a

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few names should be mentioned: Yu. Alenin, Yu. Hroshevyi, L. Loboiko, O. Tatarov, V. Farynnyk, V. Shepitko, etc. Despite this, the regulations of procedural actions that should be performed by an investigator at the stage of pre-trial investigation remain unclear, underdeveloped, and requires further research and studies.

**The research paper's objective** is to examine the peculiarities of conducting procedural actions before entering data into the URPTI in terms of problematic aspects of the modern time.

**Discussion.** According to the mandatory provisions of the current Criminal Procedure Code of Ukraine, the stage of criminal proceedings, pre-trial investigation, begins from the moment of entering data into the Unified Register of Pre-trial Investigations. Regulations regarding the Unified Register of Pre-trial Investigations, the procedure for its formation and maintenance are approved by the Prosecutor General's Office of Ukraine upon mutual approval with the Ministry of Internal Affairs of Ukraine, the Security Service of Ukraine, the government body that monitors compliance with tax legislation. In accordance with the Regulation regarding the Unified Register of Pre-Trial Investigations, the procedure for its formation and maintenance No. 298 dated 30.06.2020 "the register is an electronic database created with the help of an automated system, according to which the collection, storage, protection, logging, search, and compilation of data are carried out, as specified in clause 1 of chapter 2 of the ... section [Regulation], which are used to generate reports, as well as provide information about the data entered into the Register, in compliance with the requirements of criminal procedural legislation and legislation regulating the issue of personal data protection and access to information with limited access" [1]. From the above given annotation of the concept of the register, it is possible to formulate the statement that an automated system is also used in the work of pre-trial investigation bodies for the purpose of accumulating and processing data, namely information about committing a certain criminal offense. This system functions in a similar way to the court's automated document management system, where a judge, trial terms and other essential criteria are also autonomously appointed. It should be noted that the URPTI is quite a useful tool in the organization of pre-trial investigation, as it assists in controlling the circulation of criminal proceedings and their movement in the system of pre-trial investigation bodies. It is also worth noting that the creation and continuous improvement of the URPTI is an important step towards the correlation of the Ukrainian criminal process and international legislation, which provide for the formation of relevant databases to simplify and improve the quality of the work of law enforcement agencies. It's important to mention that the key value of the Unified Register of Pretrial Investigations as a database for recording and preserving data on criminal offenses is recorded in judicial practice, in particular, in the decision of the Grand Chamber of the Supreme Court, it is established that the issue of registering criminal offenses and regulation of other features of systematization are contained in a specialized normative legal act, i.e. Regulation about the procedure for maintaining the Unified Register of Pre-trial Investigations [2, pp. 198-203]. The maintenance of the register is coordinated with the provisions of the Criminal Procedure Code of Ukraine, which in many aspects are mandatory and must be followed by authorized officials who have access to the automated system. URPTI is maintained with the purpose of implementing a number of tasks of the criminal process, as well as with the purpose of ensuring:

- prompt and timely registration of criminal offenses (proceedings) and keeping record of decisions made during the pre-trial investigation, recording of personal data of persons who have committed a criminal offense. The results of court proceedings are also entered in the register;
- the register also plays an important role in the statistical arrangement of available information, in particular the analysis of the state and structure of the quantitative ratio of criminal offenses committed throughout the entire territory of the state or area-based by certain administrative-territorial units, etc.;
- the register is an important resource for ensuring the information and analytical activities of law enforcement agencies [3].

Going back to the judicial practice of the Supreme Court, which formulated a number of provisions on the basic foundations of the functioning of the register, it should be noted that the entry of information about a criminal offense into the URPTI is a procedural action and is carried out in accordance with the current criminal procedural provisions. Part 1 of Article 303 of the Criminal Procedure Code of Ukraine defines which decisions, actions, or inaction of the investigator or prosecutor in pre-trial proceedings may lead to a complaint being lodged [4]. Taking into account the fact that the stage of pre-trial proceedings begins from the moment of entering information into the URPTI, there is a certain disagreement regarding the wording of the above mentioned concept, because it does not provide for the right to appeal at this stage the

actions of the investigator or prosecutor regarding the entry of information into the URPTI. According to the second part of this article, complaints about other decisions, actions or inaction of the investigator or prosecutor are not considered during the pre-trial investigation and may be taken into consideration during the preparatory proceedings in court in accordance with the rules of articles 314-316 of the Criminal Procedure Code of Ukraine [4]. Thus, complaints about decisions, actions, or inaction of the investigator or prosecutor, which cannot be appealed in accordance with the first part of Article 303 of the Criminal Procedure Code of Ukraine during the pre-trial investigation, may be considered during preparatory proceedings in accordance with the Criminal Procedure Code of Ukraine [4]. This is also stated in the codified procedural law in the provisions related to the entry of data into the register and the possibility of appealing the decisions, actions or inaction of authorized officials.

The Regulation contains information about the data entered into the Register, particularly about the date and time of receiving the report, the commission of a criminal offense; the sources from which information regarding the commission of a specific offense came from or the data of the person who reported it; a brief summary of the circumstances (factual allegations), taking into account all the key features of the committed socially dangerous act; legal qualification (according to the Regulation, it is preliminary, since criminal procedural legislation does not provide for a ban on changing the qualification of a criminal offense in the future). The Register also requires a big amount of data of various variability, which must be determined for a particular kind of criminal offense. In order to correctly mark all the elements of the elements of criminal offence that is being registered, it is obligatory, based on the legal qualification, to take into account all the features. The automated system is arranged in such a way that it automatically makes a record of the time of entering information into the URPTI and assigns a number of the criminal proceedings with a certain coding, meaning that among many markings for various criminal offenses, the URPTI also contains a coding system [5].

In accordance with the current provisions of the Criminal Procedure Code of Ukraine, in particular Part 6 of Art. 214 of the Criminal Procedure Code of Ukraine "the investigator, the inquirer shall immediately notify the head of the prosecutor's office in writing about the initiation of the pre-trial investigation, the grounds for the initiation of the pre-trial investigation and other information", provided for in Part 5 of Art. 214 of the CPC of Ukraine, which we outlined above [4]. Also, the analyzed norm provides for the possibility of entering information into the URPTI by the prosecutor, who is obliged to transfer the available materials in compliance with the rules of investigation to the relevant body of pre-trial investigation no later than the next day after the entry of the data, concurrently authorizing the conduct of a pre-trial investigation.

The most important characteristic of the criminal procedural norm provided for in Article 214 of the Criminal Procedure Code of Ukraine is that it prohibits the conduct of pre-trial investigation prior entering the information into the register or without such entry. Accordingly, conducting a pre-trial investigation without entering the data into the register is not allowed and entails accountability as provided for by current legislation.

It should be emphasized that the legislator deems it logical to conduct an inspection of the scene of the event before entering information into the URPTI, and to enter information immediately after the completion of such inspection. In case signs of a criminal offense were detected on a sea or river vessel located outside of Ukraine, a pre-trial investigation is launched immediately; information about the investigation is entered into the Unified Register of Pre-trial Investigations at the earliest opportunity. An investigator, prosecutor, any other official authorized to accept and register statements and reports on criminal offenses is obliged to accept and register such a statement or report. Refusal to accept and register a report or statement of a criminal offense is not allowed. We draw your attention to the fact that the criminal procedural legislation prohibits the refusal to accept a statement about the commission of a criminal offense from a person or legal entity, but this does not mean that the information will be entered into the URPTI immediately, within 24 hours. In accordance with the Procedure for keeping uniform records of statements and reports about criminal offenses and other events in police bodies (subdivisions), approved by order No. 100 dated 08.02.2019, certain filtering mechanisms are provided for, which enable managers to distribute statements and reports about criminal offenses that have been received by corresponding territorial police body [6]. This mechanism enables a more efficient implementation of identification of events in which the elements of a criminal offense is traced. Mechanisms for filtering statements and messages are quite effective, however, in our opinion, the issue of entering information into the URPTI, i.e. starting a pre-trial investigation provided there is a criminal offence, remains relevant. Opponents of this position

might point out that in order to determine the elements of a criminal offense, it is necessary to find and establish a number of mandatory constituents, and this is difficult to do at the stage of solving the issue before entering information into the URPTI. We propose to expand the investigator's toolkit in this matter in order to be able to resolve the issue of entering information into the register at the stage of registering the application in the unified accounting journal. We argue for this based on the fact that recently the vast majority of applications received by the territorial police bodies are entered into the register, which has impact on the workload of each investigator and, accordingly, the quality of their work [7, pp. 51-55].

However, legal precedents provide an opposite position on this issue, because according to the Case law analysis of processing complaints against the decisions, actions or inaction of pre-trial investigation bodies or the prosecutor during a pre-trial investigation, which contain the legal positions of higher judicial authorities, in particular the Higher Specialized Court of Ukraine for consideration of civil cases and criminal cases in letter No. 9-49/0/4-17 dated 12.01.2017 "... if it is clear from the person's application that he raises before the pre-trial investigation body the issue of the commission of a criminal offense, initiating his performance of the actions specified by the CPC, then even if the results of the analysis of the information provided by the person indicate the absence of signs of the elements of the crime, such information must be entered into the URPTI with subsequent closing of the criminal proceedings in accordance with Art. 284 of the CPC", etc. [3]. Thus, from this position of the judicial authorities, we can derive a well-argued premise that despite the existence of certain filtering mechanisms it's the authorized persons that enter information into the register, because this is the position of the legislator and judicial practice today. There is an equally common practice where applicants, after receiving a refusal to enter information into the register, refer to the appropriate court with the aim of issuing a decision in which the judge will oblige an authorized official of a specific territorial police body to enter information about the commission of a criminal offense into the URPTI. Moreover, this mechanism is quite effective for applicants, since an authorized official of a specific body, having received a court decision to enter information from the applicant or by mail, is not allowed to refuse to do so. In accordance with the current criminal legislation, failure to comply with a court's decision constitutes an independent component of the criminal offense provided for in Art. 382 of the Criminal Code of Ukraine (hereinafter – the CCU) "deliberate failure to execute a sentence, decision, resolution, court resolution that has taken legal effect, or obstruction of their execution." In addition, this norm also provides for failure to comply with a court's decision by an official in Part 2 of Article 382 of the CCU, which indicates the specialization of this norm in relation to officials [8].

In connection with the active full-scale military aggression, from February 24, 2022, a number of amendments were introduced to the CPC of Ukraine, which regulate the conduct of pre-trial investigations under martial law conditions, in particular, the codified criminal procedural law was supplemented by key norms: Articles 615-616.

Amendments introduced to the CPC of Ukraine were made in view of the existence of a socio-political turmoil, during which compliance with legal order plays an important role, for which effective legal mechanisms are created by the legislator, based on certain objective circumstances and taking into account the relevant limits. In view of the introduction of martial law from February 24, 2022, the legislator made changes to Section IX-1 "Special regime of pre-trial investigation, trial under martial law" of the CPC of Ukraine, which should ensure effective criminal prosecution of persons who have committed a criminal offense, taking into account unfavorable situation in society and the state as a whole [4]. Concurrently, along with the introduction of changes, there is a tendency to narrow the procedural guarantees of the defense side and, accordingly, to expand the procedural possibilities of the prosecution side. However, it should be noted that the expansion of the prosecution's procedural capabilities does not always have negative consequences, granting certain freedom of actions in regard of using certain procedural tools can significantly improve the quality of the pre-trial investigation.

Despite this, some researchers focus on the fact that the freedom of action of the prosecuting party may entail unlawful restriction of the rights and freedoms of a person who is subject to criminal prosecution under martial law. From this follows the logical statement that in the conditions of martial law, the active participation of the defender is necessary in order to prevent cases of arbitrary violation of the rights and freedoms of the suspect. Also, the probability of violation of the rights and freedoms of a person suspected of committing a criminal offense can be linked even to the moment of the start of the pre-trial investigation. Thuswise, in accordance with Clause 1, Part 1, Art. 615 of CPC of Ukraine "there is no technical possibility

of access to the Unified Register of Pre-Trial Investigations – the decision to initiate a pre-trial investigation is made by the inquirer, investigator, or prosecutor, about which a corresponding resolution is issued, which must contain the information provided for in part five of Article 214 of this Code. In urgent cases, an inspection of the scene of the incident may be conducted before the inquirer, investigator, or prosecutor issues a decision on the initiation of a pre-trial investigation (the decision is taken immediately after the inspection is completed). Information which is subject to be entered into the Unified Register of Pre-trial Investigations is entered into it at the earliest opportunity, and procedural actions during criminal proceedings are recorded in relevant procedural documents, as well as with the help of technical means of recording criminal proceedings, except in cases where recording with the use of technical means is impossible for technical reasons. In case it is impossible to draw 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 a corresponding protocol no later than seventy-two hours after the completion of such investigative (search) actions or relevant procedural actions" [4]. Purely theoretically, it is not possible to start a pre-trial investigation without entering information into the URPTI, however, in the conditions of martial law, the legislator slightly simplified a number of provisions related to maintaining the register. Significantly, before the resolution on the initiation of the pre-trial investigation is made, it is allowed to conduct an inspection of the scene of the incident, similarly as if the pre-trial investigation was initiated upon submitting information. Despite this, even in the conditions of martial law, it is still required to comply with the deadlines for entering information into the URPTI, although a specific deadline for this has not been determined, there is an indication to complete it urgently, within the shortest period of time possible [9, p. 25].

As we have already mentioned earlier, a significant number of problematic aspects related to the efficiency of the pre-trial investigation would be resolved if the legislator expanded the list of procedural tools to be used before entering information into the register. Thus giving the opportunity to the investigator, inquirer or prosecutor to start a pre-trial investigation according to the resolution, the legislator still defines only one investigative (search) action that can be carried out before entering information into the URPTI – an inspection [10, pp. 241-246; 11, pp. 246-256].

We are convinced that such autocratic position negatively affects the efficiency of the pre-trial investigation and, correspondingly, the implementation of the tasks of the criminal procedure, including the protection of the individual, society and the state from criminally unlawful infringement. Today, it is still commonplace to aim for quantitative rather than qualitative work of law enforcement agencies. Meanwhile, URPTI as a statistical data processing system displays thousands of criminal proceedings, which investigators, due to the lack of time, do not have the opportunity to examine fully, quickly, and without bias. It should be noted that the problem does not lie in the lack of proper qualification or expertise of the investigators, but rather in a considerable workload. This is precisely reflected by the URPTI, because it contains data on the number of registered criminal proceedings against all pre-trial investigation bodies of territorial divisions of the National Police on the territory of Ukraine. We are of the opinion that the subject of sociological research should be the quantitative distribution of the workload among these subdivisions and the assessment of the possibility of a qualitative investigation under the conditions of having a certain number of criminal proceedings for a certain investigative body of the National Police of Ukraine.

**Conclusions.** In accordance with the mandatory provisions of the current Criminal Procedure Code of Ukraine, the stage of the criminal procedure, a pre-trial investigation begins from the moment of entering information into the Unified Register of Pre-trial Investigations. The given system functions similarly to the court's automated document management system, where a judge, trial terms and other mandatory parameters are also autonomously appointed. It should be noted that the URPTI is quite a useful tool in the organization of pre-trial investigation, because it enables the control over the circulation of criminal proceedings and their movement in the system of pre-trial investigation bodies.

Taking into consideration the introduction of martial law throughout the territory of Ukraine, amendments were made to the CPC of Ukraine in view of the existence of an acute socio-political turmoil, during which compliance with legal order is of great importance, for which effective legal mechanisms are created, which are formed by the legislator, based on certain objective circumstances and taking into account corresponding limits. However, a significant number of problematic aspects related to the efficiency of the pre-trial investigation

would be resolved if the legislator expanded the list of procedural tools to be used before entering information into the register. By providing an opportunity for an investigator, inquirer or prosecutor to start a pre-trial investigation according to the resolution, the legislator still defines only one investigative (search) action that can be carried out before entering information into the URPTI – an inspection. We are convinced that such autocratic position negatively affects the efficiency of the pre-trial investigation and, correspondingly, the implementation of the tasks of the criminal procedure, including the protection of the individual, society and the state from criminally unlawful infringement. Today, it is still commonplace to aim for quantitative rather than qualitative work of law enforcement agencies. Meanwhile, URPTI as a statistical data processing system displays thousands of criminal proceedings, which investigators, due to the lack of time, do not have the opportunity to examine fully, quickly, and without bias.

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*Submitted 31.07.2023*

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#### ABSTRACT

The scientific article examines the conduct of procedural actions before entering information into the Unified Register of Pretrial Investigations in terms of problematic aspects of modern time. The author draws attention to the updated provisions for the initiation of a pre-trial investigation, in particular, the use of the Unified Register of Pre-trial Investigations throughout its conduct.

Taking into account the fact that current procedural legislation has not yet regulated certain positions regarding keeping records in the register and its organization, as well as the ability to conduct certain investigative (search) actions before entering information, this argues for the need to transform a number of provisions that relate to the beginning of a pre-trial investigation. Resolving this issue is important for investigative practice. The article reveals problematic aspects of practical activity that can be solved by conducting certain studies with the information contained in the Unified Register of Pretrial Investigations in order to organize the activities of pretrial investigation bodies and direct them towards the implementation of the tasks of the criminal process.

**Keywords:** *Unified register of pre-trial investigations, procedural actions, inspection of the scene of the incident, initiation of pre-trial investigation, investigative (search) actions.*

УДК 342.7

DOI: 10.31733/2078-3566-2023-3-44-51



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### ПРАВОВІ СТАНДАРТИ У СФЕРІ ЗАХИСТУ ПРАВ ДІТЕЙ В УМОВАХ ЗБРОЙНОГО КОНФЛІКТУ В УКРАЇНІ

В умовах війни особливої уваги потребують діти, які є найбільш вразливою групою і стають головними жертвами воєнних дій. Діти, які опиняються в епіцентрі збройних конфліктів, стикаються з середньозваженою загрозою для свого життя та здоров'я, психологічним травмами та обмеженням доступу до освіти та засобів проживання. Особливо гостро ці проблеми відчуються в Україні, яка зазнала агресії з боку російської федерації на своїй території. Кількість дітей, постраждалих внаслідок збройної агресії, залишається високою, що ставить перед українським урядом серйозні завдання забезпечення їхньої безпеки, освіти та соціальної адаптації. Досягнення позитивних результатів в цій сфері потребує впровадження комплексних заходів з покращення доступу до якісної медичної допомоги, освіти та соціальної підтримки для дітей, постраждалих від конфлікту. Це передбачає створення спеціальних центрів реабілітації, психологічної підтримки та соціальної адаптації для забезпечення повноцінного розвитку для кожної дитини, постраждалої від воєнного конфлікту.

**Ключові слова:** *права дитини, правовий захист, безпека, агресія, захист прав дитини.*

**Постановка проблеми.** Діти є особливо вразливою категорією населення, віковою групою, якій найбільше загрожує бідність та соціальна ізоляція. Також вони є основним суб'єктом та об'єктом системної дискримінації, яка особливо загострюється в

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