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PROCEDURE FOR PREPARATION AND SERVICE OF WRITTEN NOTIFICATION OF SUSPICION

Abstract. ***Purpose.*** The purpose of the Article is to characterise the procedure for preparation and service of written notification of suspicion. ***Results***. The Article formulates a criminal procedural model for notifying a person of suspicion using the case law of the European Court of Human Rights, representing a set of legal means for determining the procedure for notification of suspicion; procedure for the preparation and service of a written notification of suspicion by the prosecutor or investigator or inquiry officer, with the agreement of the prosecutor; appeal of a notification of suspicion in criminal proceedings and affecting criminal procedural relations. The algorithm for preparing and serving a written notification of suspicion is as follows: First, the investigator (inquiry officer) and/or prosecutor, after entering information in the Unified Register of Pre-trial Investigations, shall collect evidence and establish the circumstances to be proved in criminal proceedings, including the involvement of a specific person in a criminal offence, then, relying on the information obtained and evidence, makes the decision to formalise suspicion, which should ultimately correspond to such attributes as: objectivity of presentation of factual data; logic; legality; reasonableness; motivation; legal clarity; after that calculates organisational and tactical aspects and directly serves notification against the signature of the person or with the use of video fixation and a reminder of the procedural rights and duties of the suspect. The final stage involves the subsequent verification of suspicion, the circumstances of the criminal proceeding and the search for new evidence, which may lead to the notification of a change in suspicion previously notified. ***Conclusions***. It is concluded that the following procedural algorithm for notifying a person of suspicion consisting of certain investigator/prosecutor's actions at each stage is proper: first, collection of evidence; establishment of circumstances to be proved and of the involvement of a person in the commission of a criminal offence; second, formation of suspicion on the grounds of the information received, which includes factual ("sufficiency of evidence") and legal ("the commission of a criminal offence by a certain person") component; third, the formalisation of suspicion, its procedural formalities; forth, explaining of the rights to the suspect; fifth, subsequent verification of suspicion.

Key words: suspect, notification of suspicion, criminal procedure, criminal proceedings, pre-trial investigation.

1. Introduction

Article 3 of the Constitution establishes the initial basis of a democratic social State governed by the rule of law: the individual, his or her life and health, honour and dignity, inviolability and security are recognised in Ukraine as the highest social value; to affirm and ensure human rights and freedoms is the main duty of the State. In other words, the State has an obligation not only to recognise but also to guarantee and ensure respect for human and civil rights and to assist them in the realisation of their individual rights, the key ones thereof are enshrined in Section II of the Constitution of Ukraine, which is one of the aspects of the exercise of the law enforcement function (Constitution of Ukraine, 1996).

Attempts to reform the criminal procedure legislation of Ukraine were not in vain; and the Criminal Procedure Code (CPC) of Ukraine, already adopted in 2012, directed the activities of the pre-trial investigation bodies and the Prosecutor's Office not only to the prompt, full and impartial pre-trial investigation of criminal offences, but also to an enabling environment for the effective resumption of social relations disrupted by the criminal offence, and established a framework to safeguard the rights and legitimate interests of participants in criminal proceedings. The analysis of the innovations of the current CPC of Ukraine requires focusing on the concept of notification of suspicion to a person, which replaced the system of legislative provisions on

the accusation of a person at the stage of pre-trial investigation.

Since then, the notification of suspicion to a person has a special place in the structure of the stages of pre-trial investigation, because it is the beginning of the prosecution of a person and determines the further direction of criminal proceedings. For example, the number of criminal offences, during proceedings thereof a person was notified of suspicion, in 2021 was 167,098, which is 2.7% less than the year before (in 2018, +24.5%; in 2019, –3.3%; in 2020, –10.5%). However, the share of acts entailing the notification of suspicion to a person among the total number of assaults reported during the period under review increased to 46.3 % (in 2018, 37,9 %; in 2019, 39,4 %; in 2020, 38.7%). The highest percentage of criminal offences entailing the notification of suspicion to a person was reported in Zakarpattia, Khmelnitsk, Volyn, Ivano-Frankivsk, Vinnytsia and Kyiv Oblasts (55-64%), and the smallest in Kyiv City (32.6%), Chernihiv, Zaporizhzhia and Donetsk Oblasts (39-41%) (Website of the Office of the Prosecutor General of Ukraine, 2021).

Therefore, according to the Office of the Prosecutor General of Ukraine, monthly about 15 thousand suspicions of committing criminal offenses are notified. At the same time, pre-trial investigation bodies and the Prosecutor's Offices often deviate from the procedural form defined by the criminal procedure law in the procedure for notifying a person of suspicion on the grounds specified in Article 276, part. 1, of the CPC of Ukraine, which entails only unlawful and ungrounded restriction of the rights of participants in criminal proceedings, but furthermore call into question the possibility of achieving the objectives of criminal proceedings in general.

2. Specificities of the procedure for preparing a written notification of suspicion

Despite significant achievements in reforming criminal procedure legislation and bringing it closer to European standards, a number of problematic issues related to the procedural activities of the investigator, prosecutor during the notification of suspicion to a person remain relevant, requiring further scientific understanding and identification of ways to overcome them (Atamanov, 2021, p. 46).

The process of preparing and serving a written notification of suspicion can be presented in the form of certain stages. *In the first stage*, the investigator (inquiry officer) and/or prosecutor, after entering information in the Unified Register of Pre-trial Investigations (URPI) and commencing pre-trial investigation, collect evidence in accordance with the provisions of the CPC of Ukraine, establishing that the circumstances to be proved in criminal proceedings, including the involvement of a particular person in the commission of a criminal offence. This period is not limited to special terms, except for the requirement by Article 28, para. 1, of CPC of Ukraine, according to which, during criminal proceedings, each procedural act or decision shall be perfomed or taken within reasonable time (Tatsii, Hroshevyi, Kaplina, Shylo, 2013, p. 463).

The second stage involves the formulation of suspicion on the ground of the information received. In this regard, O. Kaplina argues that the document on the notification of suspicion is a special type of procedural notification in criminal proceedings, i.e. a procedural document which is the result of intellectual activity of specially authorised persons (investigator, prosecutor), which assesses the suitability and admissibility of pre-trial evidence and may have legal effects for the parties to the proceedings if the requirements regarding terms, procedure and parties to the service are met (Kaplina, 2017).

The decision to notify a person of suspicion did not mean that the purpose of the pre-trial investigation had been achieved and could be completed. The suspect shall also be questioned about the notification of suspicion, his/her testimony shall be verified and, if necessary, other procedural steps shall be taken. If, in the light of the verification of the suspect's testimony and other evidence obtained in the course of further investigation, evidence for inferring the guilt of the suspect may be insufficient or his/her innocence have been established, the criminal proceedings shall be terminated on grounds envisaged under Article 284 CPC of Ukraine (Criminal Procedure Code of Ukraine, 2012).

Thus, the notification of suspicion requires two components:

1) Actual ("sufficiency of evidence");

2) Legal ("the commission of a criminal offence by a certain person").

Therefore, from criminal law perspective, suspicion involves structural elements since the change of this element entails a change in the content of suspicion, which has criminal procedural effects. The structure of suspicion should include: 1) the factual circumstances of the criminal offence of which a person is suspected; 2) the legal classification of the criminal offence (Article, part of Article of the Law of Ukraine on criminal liability); 3) substantive characteristics of the offender; 4) the extent of damage caused by the criminal offence.

In addition, the circumstances that characterise a person, aggravate or mitigate punishment, may be attributed to the structure of suspicion, but they are optional at the time of the notification and may be established after

suspicion has been notified and specified in the indictment (Tatsii, Hroshevyi, Kaplina, Shylo, 2013, p. 464).

3. Specificities of the procedure for serving a written notice of suspicion

The third stage is the formalisation of suspicion, its procedural formalisation. In other words, the investigator, with the agreement of the prosecutor, or prosecutor draws up the corresponding procedural document directly, after which the person is notified of suspicion.

The CPC of Ukraine does not provide an exhaustive list of procedural actions that may be taken during pre-trial investigations, but clearly defines the forms of their recording, the most common of which is the record.

The service of the notification of suspicion may be considered as a procedural act whereby a person is informed of a procedural decision taken in respect of him/her – written notification of suspicion. Moreover, the specificity of a procedural action such as the serving of notifications, including a notice of suspicion, is the absence of the need to further record its results in the record, after all, the fact of receiving the notification is confirmed by the personal signature of the person directly in the notification. However, this does not preclude the possibility that a written notice of suspicion may be served by technical means in accordance with Article 107 of the CPC of Ukraine (Hladun, 2018).

The notification of suspicion must contain the following information (the CPC of Ukraine, art. 277): 1) The last name and position of the investigator, prosecutor, notifying; 2) Personal details of the person (last name, first name, patronymic, date and place of birth, place of residence, nationality) who is notified of suspicion; 3) The designation (number) of a criminal proceeding, under which the notification is made; 4) The content of suspicion; 5) The legal classification of the criminal offence of which the person is suspected, indicating the article (part of the article) of the Law of Ukraine on criminal liability; 6) A brief description of the facts of the criminal offence of which the person is suspected, including the time, place of commission and other significant circumstances known at the time of the notification of suspicion; 7) The rights of the suspect; 8) The signature of the investigator, prosecutor serving the notification (Criminal Procedure Code of Ukraine, 2012).

Consequently, the notification of suspicion is characterised with: objectivity in the presentation of the facts; logic; legitimacy; reasonableness; motivation; legal clarity in the formulation of suspicion (Faraon, 2016, pp. 105–106).

The law does not clearly specify when the investigator (inquiry officer) and/or prosecutor shall notify the person of suspicion if there is sufficient evidence to do so, giving the prosecution the right to decide the matter independently, guided by internal conviction. It should be noted, however, that an artificial delay in the notification of suspicion limits not only the procedural but also the constitutional rights of a person who does not acquire a timely and adequate legal status (Tatsii, Hroshevyi, Kaplina, Shylo, 2013, p. 465).

It should be noted that there is some inconsistency on the part of the law-maker that, on the one hand, establishes the rule that suspicion shall be notified if a measure of restraint is enforced against a person (the CPC of Ukraine, art. 276, part 1, para. 2), on the other hand, it is possible to enforce a preventive measure only against the suspect at the pre-trial stage (the CPC of Ukraine, Art. 177, part 1; art. 179, part 1; art. 179, part 1; art. 180, part 1; art. 181, part 1; art. 182, part 1, art. 183, part 1). It seems that to resolve this logical and content defect of the criminal procedure rules the priority should be on Article 177, part 2, of the CPC of Ukraine, which stipulates that the basis for the application of a preventive measure is, among other, "the existence of a reasonable suspicion of committing a criminal offence by a person" (Tatsii, Hroshevyi, Kaplina, Shylo, 2013, p. 464).

Therefore, before applying to the investigating judge for a preventive measure, the investigator or prosecutor shall notify the person of suspicion. In essence, this ground for notifying suspicion is close to that contained in part 1, para. 3, of Article 276 of the CPC of Ukraine, since the law prohibits the investigator or prosecutor from initiating the use of a preventive measure without the grounds provided for in the CPC of Ukraine (art. 177 of the CPC of Ukraine). In addition, the investigating judge, deciding on the use of preventive measures, except for the existence of the risks specified in Article 177 of the CPC of Ukraine, on the grounds of the materials provided by the parties to the criminal proceedings, is obliged to assess all the circumstances, including the significance of evidence available that the suspect has committed a criminal offence. That is, at this stage, the investigator and/or the prosecutor should have already collected sufficient evidence to suspect a person of having committed a criminal offence, which makes it possible to initiate a preventive measure against him/her.

According to Article 278, part 1, of the CPC, of Ukraine, a written notification of suspicion shall be served the day on which it has been drawn up by the investigator or public prosecutor. A written notification of suspicion as to having committed a crime shall be served to detained person within 24 hours after he has

been detained (the CPC of Ukraine, art. 278, part 2). If a person is not served with a notification of suspicion after twenty-four hours from the moment of detention, such person is subject to immediate dismissal (the CPC of Ukraine, art. 278, part 3). If it is not possible for the investigator or the prosecutor directly to serve a person with a notice of suspicion, such service may take place in the manner provided for in Chapter 6 of the CPC of Ukraine "Notification" (art. 278, part 1, art. 111, 112 of the CPC of Ukraine) (Criminal Procedure Code of Ukraine, 2012).

For example, in the case of the temporary absence of a person from his or her place of residence, the notification of suspicion for him or her is served against the receipt of an adult member of the person's family or another person living with him or her, the operating organisation at the place of residence of the person or the administration at his/her place of work. A person in custody may be notified of suspicion through the administration of the place of detention. The notification of suspicion to a juvenile is usually served to his or her father, mother, adoptive parent or legal representative, and in case of a disabled person, to a capable guardian (Blahuta, Hutsuliak, Dufeniuk, 2017, p. 411).

Alternative procedure for the notification of suspicion is permitted only if the circumstances of criminal proceedings so require. In the event of a decision to conduct a special pre-trial investigation, the notification of suspicion to the person, charged with a criminal offence, is sent to the last known place of his/her residence or stay and shall be published in the national media and on the official websites of the bodies conducting pre-trial investigation (Blahuta, Hutsuliak, Dufeniuk, 2017, p. 414). From the moment of publication of a notification of suspicion in the nationwide mass media, the suspect is deemed to have been duly acquainted with its content. In proceedings carried out as part of a special pre-trial investigation, a copy of the notification of suspicion to be handed over to the suspect shall be sent to the counsel.

Among the decisions, in which these legal conclusions are applied in practice, we can highlight the decision of the investigating judge of the High Anti-Corruption Court of 16 January 2020 in case 991/88/20 (proceeding 1-ks/991/89/20), which states: *"... on September 28, 2017, the Prosecutor General's Office of Ukraine addressed to PERSON_2 living at ADDRESS_1 sent a notice of suspicion to PERSON_2 in criminal proceeding 420160000003490 under Art. 255, 3682, 369 of the CC of Ukraine of September 28, 2017 as a suspect. On the same day September 28, 2017, the above-mentioned mails were not served during delivery and returned by mail to the Prosecutor General's Office of Ukraine, which is confirmation of the non-receipt of the notification of suspicion of September 28, 2017 by PERSON_2 and PERSON_1. Therefore, the investigating judge concluded that PERSON_1 and PERSON_2 were not notified of suspicion in the manner prescribed by the provisions of Article 278, part 1, and Article 135, part 2 of the CPC of Ukraine, and therefore, as of the day of the issuance of the appealed decision of the investigator to stop the pre-trial investigation, they have not acquired the status of suspects in criminal proceeding..."* (The decision of the investigating judge of the High Anti-Corruption Court, 2020).

Therefore, the notification of suspicion should be deemed complete and the person to have acquired the status of a suspect from the moment of the delivery of the mail, rather than the dispatch of such notification by the investigator. The confirmation fact that a person has received the notification of suspicion or has been informed of its contents in other way shall be confirmed by means defined in Article 136 of the CPC of Ukraine.

In the fourth stage, the rights of the suspect are explained, which is an indispensable mandatory step in the procedure of the notification of suspicion. The rights of the suspect provided for in Article 42 of the CPC of Ukraine shall be explained after the person has been directly notified of suspicion by the prosecutor, investigator or other authorised official.

In order to eliminate duplicate documents (for example, a list of the suspect's rights in a written notification of suspicion to the person and a pamphlet listing procedural rights and duties of the suspect), an unjustified, purely formal and extra-procedural increase in the workload of pre-trial investigation bodies and the Public Prosecutor's Office, we propose the provision of Article 42, part 8, of the CPC of Ukraine to be worded as follows: *"The suspect or accused person shall be served a pamphlet listing his/her procedural rights and duties be informed promptly of them by the person making such notification, certified by the signature of the suspect, the accused and the person notifying suspicion. The pamphlet listing procedural rights and duties of the suspect is made in two copies: the first one is handed to the suspect, the accused, the second one is attached to the materials of criminal proceedings"*, while para. 7 of Article 277 of the CPC of Ukraine should be deleted.

A person is notified of suspicion of having committed a criminal offence in the national language or in any other language in which he

or she has sufficient knowledge to understand the essence of suspicion of having committed a criminal offence (art. 29, part 1, of the CPC of Ukraine). If the suspect does not understand the language of the proceeding, the notification of suspicion shall be served in a translation into his/her native language or the language of which he or she has command (the CPC of Ukraine, art. 42, part 3, para. 18).

The fifth stage is related to the subsequent verification of suspicion. Suspicion is verified when it is proved that it occurs in accordance with the rules of the CPC of Ukraine and under adversarial conditions, since there is a defence party who performs the relevant function.

In the course of the pre-trial investigation, new evidence may be obtained after notification of the suspect, including the need to change the person's notification of suspicion. Moreover, evidence already known may be reassessed. If grounds arise for the notification of new suspicion or change in suspicion previously notified, the investigator is obliged to perform the actions of handing written notification to the person of suspicion, provided for in Article 278 of the CPC of Ukraine. If the prosecutor has served a notification of suspicion, the prosecutor exclusively has the right to report the new suspicion or to change the suspicion previously notified.

In this context, it is necessary to clarify that the change of the notification of suspicion in the broad sense is: 1) failure to confirm part of the notification of suspicion; 2) supplement to the notification of suspicion. Suspicion may be refuted, which entails the termination of criminal proceedings against the suspect or be confirmed and transformed into an accusation, which, unlike suspicion, is not an assumption, but an allegation that a certain person has committed an act, provided for in the Criminal Code of Ukraine and formalised in an indictment, which is approved by the prosecutor and sent to the court.

4. Conclusions

Therefore, we propose the procedural algorithm for notifying a person of suspicion consisting of certain investigator/prosecutor's actions at each stage: first, collection of evidence; establishment of circumstances to be proved and of the involvement of a person in the commission of a criminal offence; second, formation of suspicion on the grounds of the information received, which includes factual ("sufficiency of evidence") and legal ("the commission of a criminal offence by a certain person") component; third, the formalisation of suspicion, its procedural formalities; forth, explaining of the rights to the suspect; fifth, subsequent verification of suspicion.

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ПРОЦЕСУАЛЬНИЙ ПОРЯДОК ПІДГОТОВКИ ТА ВРУЧЕННЯ ПИСЬМОВОГО ПОВІДОМЛЕННЯ ПРО ПІДОЗРУ

Анотація. ***Мета.*** Метою статті є характеристика процесуального порядку підготовки та вручення письмового повідомлення про підозру. ***Результати.*** У статті сформульовано кримінальну процесуальну модель механізму повідомлення особі про підозру з використанням практики Європейського суду з прав людини, що являє сукупність правових засобів, які визначають процесуальний порядок здійснення повідомлення про підозру; процесуальний порядок підготовки та вручення письмового повідомлення про підозру прокурором або слідчим чи дізнавачем за погодженням з прокурором; оскарження повідомлення про підозру у кримінальному провадженні та вплив на кримінальні процесуальні відносини. Алгоритм підготовки та вручення письмового повідомлення про підозру виглядає так: насамперед слідчий (дізнавач) та/або прокурор після внесення відомостей до Єдиного реєстру досудових розслідувань здійснюють збирання доказів, встановлюють обставини, які підлягають доказуванню у кримінальному провадженні, у тому числі й щодо причетності конкретної особи до вчинення кримінального правопорушення, потім за результатами отриманої інформації та здобутих доказів приймають рішення у формалізації підозри, яка у кінцевому вигляді має відповідати таким ознакам, як: об'єктивність викладення фактичних даних, логічність, законність, обґрунтованість, вмотивованість, юридична чіткість; після чого прораховують організаційно-тактичні аспекти та безпосередньо здійснюють під підпис особи або із застосуванням засобів відеофіксації разом із пам'яткою про процесуальні права та обов'язки підозрюваного вручення такого повідомлення. Заключний етап пов'язаний із подальшою перевіркою підозри, обставин кримінального провадження та пошуком нових доказів, що може мати наслідком повідомлення про зміну раніше повідомленої підозри. ***Висновки.*** Зроблено висновок про доцільність наступного процесуального алгоритму повідомлення особі про підозру, що складається з визначених дій слідчого/прокурора на кожному з етапів: 1-й – збирання доказів; встановлення обставин, які підлягають доказуванню й причетності особи до вчинення кримінального правопорушення; 2-й –безпосереднє формування підозри на підставі отриманої інформації, яке включає фактичний («достатність доказів») та юридичний («вчинення кримінального правопорушення певною особою») складники; 3-й – формалізація підозри, її процесуальне оформлення; 4-й – роз'яснення прав підозрюваному; 5-й – подальша перевірка підозри.

Ключові слова: підозрюваний, повідомлення про підозру, кримінальний процес, кримінальне провадження, досудове розслідування.

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