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THE CONCEPT OF NOTIFICATION OF SUSPICION IN CRIMINAL PROCEDURE LAW OF UKRAINE

Abstract. Purpose. The purpose of the article is to elucidate the specificities of the concept of the notification of suspicion in the criminal procedure law of Ukraine. **Results.** The article establishes that some issues of legal application of the concept of notifying a person of suspicion of committing criminal offenses have been considered at the level of the dissertation researches, in monographs, textbooks, manuals, educational and methodical publications, a number of scientific articles and other publications, however, these works do not cover the full complex of issues of proper implementation of the notification of suspicion to the person in the context of modern legal realities and peculiarities of law enforcement. The legal nature of the notification of suspicion to the person is extremely difficult, since, in the doctrine of criminal procedure, it is a comprehensive phenomenon. During the study of the content of the concept "notification of suspicion of committing a criminal offense" as the relevant procedural act, the theoretical comprehensive definition of the term of the notification of suspicion was formulated. It is proved that the legal nature of notifying a person of suspicion should be considered in a broad sense as a procedural concept; in a narrow sense, as a procedural action; in a material sense, as a procedural document made in accordance with the requirements of the CPC of Ukraine; and in a procedural sense, as the set of procedural actions aimed at: a) notifying a person who, in the conviction of the investigator and/or prosecutor, is likely to have committed a criminal offense, of suspicion in a written form of; b) serving a written notification of suspicion and explaining the suspect's rights; c) changing the notification of suspicion in cases envisaged by article 279 of the CPC of Ukraine. **Conclusions.** Ukraine is currently undergoing a period of comprehensive reform of criminal and criminal procedure legislation in view of its compliance with European and international standards. The logical result of State activities on this path is to strengthen the priority of the provisions of international legal acts ratified by Ukraine over the provisions of national criminal procedure legislation. This requires a thorough study of the provisions (standards) of international legal acts in the field of ensuring the rights and freedoms of a person during criminal prosecution against him or her, including in the process of involving such person in the criminal proceeding as a suspect.

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

1. Introduction

Since Ukraine gained independence, the criminal procedure legislation of the country has undergone a lot of changes and additions. One of the novelties is that the lawmaker has completely refused the concept of indictment in pre-trial investigation, replacing it with the mechanism of "notification of suspicion". Accordingly, the possibility of the appearance of the accused at the pre-trial investigation is ruled out, the suspect becomes the accused after serving him or her a copy of the indictment at the conclusion of the pre-trial investigation.

The introduction of the concept of notification of suspicion to the criminal procedure

legislation of Ukraine should be recognised as a significant guarantee of fulfilment of the tasks of criminal proceedings established by article 2 of the CPC of Ukraine. The analysis of the main terms contained in article 3 of the CPC of Ukraine reveals that the notification of suspicion is important, because it is from that moment that the criminal prosecution commences. In addition, the best way to implement principles of criminal proceedings, such as a presumption of innocence and proof of guilt (art. 17 of the CPC of Ukraine), the right to defence (art. 20 of the CPC of Ukraine), competition of parties and their freedom to submit their evidence to the court and to convincingly

prove this evidence before the court (art. 22 of the CPC of Ukraine), reasonable time (art. 28 of the CPC of Ukraine), etc. (Criminal Procedure Code of Ukraine: Law, 2012).

2. The significance of the act of the notification of suspicion in criminal procedure law of Ukraine

According to Yu. P. Alenin and I. V. Hloviuk, the act of notifying a person of suspicion is important, because it serves as a means of ensuring inevitable liability of persons who have committed criminal offenses, furthermore, reasonable suspicion allows the court to appoint such persons a fair punishment in accordance with the nature and gravity of the criminal offense (Alenin, Hloviuk, 2014, p. 161).

However, the scheme, introduced in the CPC of Ukraine, when the person becomes the accused only after the investigation is completed and the indictment becomes the first act of its prosecution, may be vulnerable in view of the provisions of the International Covenant on Civil and Political Rights, which declares in part 2 of article 9 that: "Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him" (International Covenant on Civil Rights, 1966).

The European Convention for the Protection of Human Rights and Fundamental Freedoms (Convention) also provides: "Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him (part 2 of art. 5) [4].

In view of the above problem of legal definition and the fact that in accordance with the current legislation, the concept of "suspect" does not cover the status of a person against whom criminal proceedings are carried out, but he has not yet been detained and a preventive measure has not been applied to him or her, scientific works propose to introduce in legislative circulation, instead of the concept of "suspect", a new term "person under investigation" (Tertyshnyk, 2014, pp. 88–89). In our opinion, this proposal deserves attention. At present, lawyers and scientists give many comments on acquiring the status of the suspect in scientific works, but none of them is reflected in legislative acts.

It should be noted that the Criminal Code of Ukraine in force establishes the suspect as a specific participant in criminal proceedings, against whom criminal prosecution is conducted in the pre-trial investigation. Unfortunately, the legislative novelties did not promote effective protection of the rights and freedoms of the person suspected of committing a criminal offense, while causing many difficulties in law enforcement practice.

On this point, the legal experts rightly stress that the CPC of Ukraine in force contains a number of defects, the clear evidence of which is the practice of its enforcement. In particular, the term "notification of suspicion" may affect a certain stage of the pre-trial investigation, from which the prosecution of the person commences. It can be understood as a combination of criminal procedural actions and decisions taken at this stage (Faraon, 2013, p. 184).

Scientific research of any theoretical concept is based on its semantics. Therefore, before considering the essence of the concept of a notification of suspicion in criminal proceedings, we believe it appropriate to consider components of its definition such as "suspicion" and "notification".

According to the *Great explanatory dictionary of modern Ukrainian language* by V. Busel, the general meaning of the term "suspicion" is that suspicion is an opinion about someone's involvement in something negative; doubts about someone's decency, honesty, loyalty, etc. To suspect means to allow someone to be involved in something negative; to doubt honesty, decency, loyalty, etc. (Busel, 2009, p. 960).

Some scientists consider the definition "suspicion" (in case of criminal proceedings) as a reasonable assumption, the opinion of the investigator and/or prosecutor. In particular, L. Frank believed that suspicion was the opinion of the investigator about the relationship, interconnection and correspondence between the well-known circumstances of the case and the relevant person, which is based on reliable facts, research and scientific provisions and conclusions, as well as on unverified data, which detect this person in the investigation of the crime, with some or other degree of reliability (Frank, 1963).

Nowadays, the CPC of Ukraine does not provide a definition that would interpret the term "suspicion", but instead proposes to interpret it with the term "suspect".

The legal approach to the formulation of the term "suspect" does not reveal its true nature. First, because suspicion is interpreted through coercion, while it does not give rise to it, but vice versa, it entails the application to the person of coercive measures. Second, the detention of suspects and the application of a preventive measure to him or her does not eliminate situations when the person is actually under suspicion of law enforcement bodies.

Yu. Lysiuk identified suspicion as a precondition for a person to gain a procedural status of suspect in the event of a combination of the primary known circumstances of the case with the appropriate person on the basis of authenticity and probability (Lysiuk, 2014, p. 59).

According to O. Masliuk, suspicion is a reasonable assumption (based on the assessment of evidence available at a certain time) by the investigator, prosecutor about involvement of the person in criminal offense, which is procedurally formalised in the notification of suspicion and shall be checked for simplification or confirmation (Masliuk, 2017, p. 33).

We believe that such definitions of the term "suspicion" do not fully reflect all its aspects and essence.

Another component of the concept under study is the definition of "notification", which means (Busel, 2009, pp. 997–998): 1) the act of announcement, statement, report on something; 2) tell, communicate something; 3) what is communicated to someone, written or oral information; 4) the data, information, provided, transmitted to someone; 5) a small public speech, a small report on a topic; 6) a document in which something is reported, is conveyed (Krymchuk, 2020, p. 49).

For example, O. Tatarov argues that the notification of suspicion is one of the key acts at the stage of pre-trial investigation and the process of proving in criminal proceedings is carried out precisely to prove or refute the person's criminal offense and ensure his prosecution, which commences exactly when the person is notified of suspicion of committing a criminal offense (para. 14, part 1, art. 3 of the CPC) (Tatarov, 2012, p. 142).

Therefore, it should be noted that in semantics conveys the term "notification of suspicion" as follows:

- 1) the act of informing the person about his or her involvement in the criminal offense;
- 2) the document in which the person reports that he or she is suspected of committing a criminal offense.

On the other hand, the notification of suspicion can be considered as a criminal procedural guarantee of rights of the suspect, i.e. the aggregate of legal provisions established by law, which ensure fulfilment of tasks of criminal proceedings and enable the parties to the criminal procedure to perform duties and enjoy rights.

3. Regulatory and legal framework for the notification of suspicion in criminal procedure law of Ukraine

The systematic analysis of the CPC of Ukraine concerning the legal regulatory framework for the notification of suspicion shows the contradiction of the legislative provisions that determine the essence of the notification of suspicion. In our opinion, the first reason for this is that the legislator has not given the official definition of the term "notification of suspicion". Chapter 22 of the CPC of Ukraine, which directly regulates this institution, does

not explain it. Only article 277 of the CPC of Ukraine specifies the contents of the written notification of suspicion; article 276 of the CPC of Ukraine establishes a comprehensive list of cases of mandatory notification of suspicion and the procedure for such notification, and articles 278, 279, 481 of the CPC of Ukraine establish procedural aspects of the notification of suspicion to the person.

It should be underlined that article 110 of the CPC of Ukraine, providing the types of procedural decisions in criminal proceedings, does not point to the notification of suspicion as a procedural decision of the investigator or prosecutor, but provides for that procedural decisions are all decisions of the bodies of the pre-trial investigation, prosecutor, investigator judge, court. The decision of the investigator, prosecutor is made in the form of a resolution. However, part 1 of article 111 of the CPC of Ukraine defines the notification in criminal proceedings as a procedural action by which the investigator, prosecutor, investigating judge or court informs a certain participant of criminal proceedings about the date, time and place of the relevant procedural action or about a procedural decision or a procedural action taken (Andrieiev, Blazhivskiyi, Hoshovskiyi, 2012).

With this regard, most scientists argue that although the term itself refers to the term "written notification of suspicion" and contains the word "notification", but the formulation of this term does not meet the requirements of article 110 of the CPC of Ukraine, and to a greater extent corresponds to features of a procedural decision. Therefore, when defining a notification of suspicion as a procedural document, it is noted that this procedural decision, made by the party of the prosecution and executed in the form of a notification corresponding to the form of the resolution, in cases provided for in part 1 of article 276 of the CPC of Ukraine (Faraon, 2016, p. 26).

Comparing part 5 of article 110 of the CPC of Ukraine, which defines the constituent parts of the resolution of the investigator, prosecutor, and article 277 of the CPC of Ukraine, which regulates the contents of the written notification of suspicion, we can conclude that the formal content of the notification of suspicion does not fully correspond to the constituent parts of resolution. Given this, we believe that according to the provisions of the CPC of Ukraine, the notification of suspicion cannot be equated with the procedural decision.

The legal nature of the notification of suspicion in criminal proceedings is extremely complex, as a result of which the doctrine of criminal proceedings deals with the above concept in many aspects.

N. R. Kostiv considers the notification of suspicion to be an independent criminal procedural concept, but gives a somewhat different definition of it. In particular, according to her belief, the notification of suspicion is an independent concept of criminal procedure law, the provisions of which determine the grounds and procedure for the notification of suspicion to a person (cases when the notification of suspicion is necessarily made; the contents of the notification of suspicion and the procedure for serving it; the procedure for changing the notification of suspicion; peculiarities of the notification of suspicion of certain categories of persons, etc.) (Kostiv, 2012, p. 127).

According to Yu. Alenin and I. Hloviuk, the notification of suspicion as a procedural document is a procedural decision – a legal act of the beginning and at the same time personification of criminal prosecution, because in connection with the notification of suspicion a party to criminal proceeding such as a suspect appears, and since the moment of the notification of suspicion of committing a criminal offense the prosecution of the person commences (para. 14, part 1, art. 3, CPC of Ukraine) (Alenin, Hloviuk, 2014). I. Ivasiuk proposes his definition of the notification of suspicion. He argues that this is a criminal procedural decision of the investigator, prosecutor, which is taken in a mandatory manner in case of detention of a person on suspicion of criminal offense in a written form and causes acquiring by the person, on whom it is adopted, a procedural status of the suspect (Ivasiuk, 2013, p. 77).

M. Huzela and A. Paliukh propose similar definition. In their opinion, the notification of suspicion to the person is a concept of criminal procedure law, which consists in procedural actions by a competent State body or official (the prosecutor or the investigator by his approval), implemented in the relevant law-enforcement act, this causes the person to be brought to criminal liability and to obtain the procedural status (of the suspect) by this person, as well as creates conditions for further progress of criminal proceedings and fulfilment of tasks of criminal proceedings (Huzela, Paliukh, 2017, p. 253). But this understanding of the notification of suspicion does not seem to be to the point and causes the following remarks. First, it is wrong to argue that the concept of law is to take procedural action, since in the theory of the State and law it is generally known that it is a system of related legal provisions regulating uniform social relations. Second, despite the fact that para. 14 of part 1 of article 3 of the CPC of Ukraine provides that criminal prosecution is the stage of criminal proceedings, which commences at the moment of the notification of sus-

picion, we believe that it is inappropriate to indicate that the latter causes the person to be brought to criminal liability. This is explained by the fact that the suspicion is only the primary assumption of the investigator, prosecutor of committing a criminal offense by the person (Krymchuk, 2018).

A detailed analysis of the provisions of the criminal procedure legislation of Ukraine in force and available scientific perspectives provides an opportunity to formulate original perspective on the definition of the term being investigated.

In our opinion, the notification of suspicion should be considered: first, in broad and narrow senses; second, in material and procedural aspects. We are convinced that such interconnected and complementary interpretation covers all its properties and more fully reflects its legal nature and essence.

In the broad sense, the notification of suspicion is the concept of criminal procedure law, which includes relatively independent legal provisions regulating legal relations, that arise between the participants in criminal proceedings in connection with the notification of suspicion, its change and consists in the procedural actions by the prosecutor, investigator upon approval with the prosecutor, implemented in the relevant law-enforcement act, in the presence thereof the person acquires the procedural status of the suspect, as well as conditions for further progress of criminal proceedings and fulfilment of tasks of criminal proceedings are created.

In a narrow sense, the notification of suspicion is a procedural action, involving the assumption by an authorised official (the prosecutor or investigator upon approval of the prosecutor), on the basis of available evidence in a criminal proceeding against committing the criminal offense by the person, which is made in written form, as prescribed by criminal procedure law, and served to the person with the observance of the specified procedure and determines his or her obtaining the procedural status of the suspect.

In the material aspect, the notification of suspicion is a procedural document, made by an authorised person in accordance with the requirements of the CPC of Ukraine, which should contain: contents of suspicion; legal classification of a criminal offense, in which the person is suspected (with the indication of the article (part of the article) of the Law of Ukraine on criminal liability; a brief description of the circumstances of a criminal offense; a list of the suspect's rights.

In the procedural aspect, the notification of suspicion is the set of procedural actions

aimed at: a) notifying a person who, in the conviction of the investigator and/or prosecutor, is likely to have committed a criminal offense, of suspicion in a written form; b) serving a written notification of suspicion and explaining the suspect's rights; c) changing the notification of suspicion in cases envisaged by article 279 of the CPC of Ukraine.

It should be noted that Ukraine is currently undergoing a period of comprehensive reform of criminal and criminal procedure legislation in view of its compliance with European and international standards. The logical result of State activities on this path is to strengthen the priority of the provisions of international legal acts ratified by Ukraine over the provisions of national criminal procedure legislation. This requires a thorough study of the provisions (standards) of international legal acts in the field of ensuring the rights and freedoms of a person during criminal prosecution against him or her, including in the process of involving such person in the criminal proceeding as a suspect.

According to M. Huzela, the CPC of Ukraine in force provides for that the suspect is a single actor of criminal proceedings

against whom criminal prosecution is ongoing in the pre-trial investigation stage. That is why the subject matter of a thorough scientific analysis is the problem of ensuring rights of suspects in the context of the standards set out in the provisions of international legal acts ratified by Ukraine (Huzela, 2016, p. 190).

4. Conclusions

Therefore, during the study of the content of the concept "notification of suspicion of committing a criminal offense" as the relevant procedural act, the following theoretical definition of the term "notification of suspicion" should be formulated and legislated in part 1 of article 3 of the CPC of Ukraine by supplementing new paragraph 13-1 to be read as follows: "*The notification of suspicion is a procedural action, involving the assumption by the prosecutor or investigator or inquiry officer upon approval of the prosecutor, on the basis of available evidence in a criminal proceeding against committing the criminal offense by the person, which is made in a written form and served to the person with the observance of the specified procedure and determines his or her obtaining the procedural status of the suspect*".

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ІНСТИТУТ ПОВІДОМЛЕННЯ ПРО ПІДОЗРУ У КРИМІНАЛЬНОМУ ПРОЦЕСУАЛЬНОМУ ПРАВІ УКРАЇНИ

Анотація. Мета. Метою статті є з'ясування особливостей інституту повідомлення про підозру у кримінальному процесуальному праві України. **Результати.** У статті встановлено, що окремі проблеми правозастосування інституту повідомлення особі про підозру у вчиненні кримінальних правопорушень розглядалися на рівні дисертаційних досліджень, у монографіях, підручниках, посібниках, навчально-методичних виданнях, низці наукових статей та інших публікаціях, однак зазначені праці не охоплюють повного комплексу питань належного здійснення повідомлення особі про підозру в контексті сучасних правових реалій та особливостей правозастосування. Позаяк правова природа повідомлення особі про підозру надзвичайно складна, оскільки в доктрині кримінального процесу воно є багатоаспектним явищем. Під час дослідження змісту поняття «повідомлення про підозру в учиненні кримінального правопорушення» у значенні відповідного процесуального акта як сформульовано власне теоретичне комплексне визначення терміна повідомлення про підозру. Доведено, що правову природу повідомлення особі про підозру варто розглядати у широкому розумінні як процесуальний інститут, вузькому – процесуальну дію, матеріальному – як процесуальний документ, складений у відповідності до вимог КПК України, й процесуальному – як сукупність процесуальних дій, спрямованих на: а) пред'явлення особі, яка, на переконання дізнавача, слідчого та/або прокурора, ймовірно вчинила кримінальне правопорушення, письмового повідомлення про підозру; б) вручення письмового повідомлення про підозру та роз'яснення підозрюваному його прав; в) зміну повідомлення про підозру у випадках, передбачених ст. 279 КПК України. **Висновки.** Україна сьогодні переживає період комплексного реформування кримінального та кримінального процесуального законодавства з огляду на його відповідність європейським та міжнародним стандартам. Логічним результатом діяльності нашої держави на цьому шляху є закріплення пріоритету положень міжнародно-правових актів, ратифікованих Україною, над нормами національного кримінального процесуального законодавства. Цим обумовлюється необхідність ретельного вивчення норм (стандартів) міжнародно-правових актів у галузі забезпечення прав

і свобод особи під час здійснення щодо неї кримінального переслідування, в тому числі у процесі залучення такої особи в кримінальний процес як підозрюваного.

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

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