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CONTROL OF THE INVESTIGATOR'S CRIMINAL PROCEDURE ACTIVITIES AS AN INTEGRAL PART OF MANAGERIAL ACTIVITIES

Abstract. Purpose. The purpose of the article is to study the content of management of the investigator's procedural activities with regard to the exercise of control functions by managers. **Results.** The article examines the particularities of control of criminal procedure activities of an investigator, which is considered as a part of investigation management and reflects a legal management, the types thereof are procedural control and organisational control. It is noted that since control is one of the functions of public administration, the management of investigative activities is practically the control provided by the higher departmental leadership and procedural supervisor, and accordingly, the management of investigative activities in criminal procedure is represented by the procedural guidance of the prosecutor and departmental control of the head of the investigative unit. The author proves that a prosecutor's procedural guidance is a type of managerial procedural activity, the object thereof is investigative activity in criminal proceedings, which includes managerial and organisational elements (but relates exclusively to a specific criminal proceeding in which the prosecutor is a procedural supervisor). **Conclusions.** The management of investigative activities in criminal proceedings is represented by the procedural guidance of the prosecutor and departmental control of the head of the investigative unit. The position of the prosecutor in relations with the investigator in the course of procedural guidance corresponds to the position of the organising manager. The departmental control of the head of the investigative unit is one of the types of managerial activities, the object thereof is the investigator's performance in relation to criminal proceedings, which covers control of the compliance with the law by the investigator and components that are implemented outside the criminal procedure. However, contrasting prosecutor's control (procedural guidance and supervision), it is carried out when the investigator fails to achieve the set goal and is implemented in the following actions: directing investigators to fulfil the goals and objectives of criminal proceedings; identifying shortcomings and correcting them. Judicial control of the investigator's procedural performance can be considered as passive control not related to the functions of subordination.

Key words: managerial activities, criminal procedure activities, investigator, prosecutor, head of an investigative unit, control, supervision.

1. Introduction

An important area of making criminal proceedings more effective is the improvement of management in terms of control of criminal procedure activities. Improvement of control in the system of criminal proceeding will lead to an increase in the efficiency of the actors

involved in criminal procedure. These actors are the investigator, who is subject to managerial influence in the form of control and supervision. In addition, the basis of the investigator's performance is the management theory, since the criminal procedure system is permeated with managerial-subordinate relations, one

of the participants thereof is the investigator. As an object of managerial influence of "actors-managers", the investigator also performs activities that contain managerial and organisational elements that are characteristic of managerial influence, including control (for example, over the execution of assignments). In other words, the investigator in this case both is subject to managerial influence and exercises managerial influence. Elements of managerial activities in relation to the investigator are manifested in his/her relations with the prosecutor, the head of the investigative unit and the investigating judge. However, the managerial relations among these actors are somewhat confusing and are not always clearly reflected in the system of subordination and control, which necessitates the study of the relations between these managers in view of the methodological basis defined in the management theory.

Researchers who study administration argue that social management is present in any variant of joint activity of people: in the state, public, private, family activities (Kuzmenko, 2007). Depending on an aspect of managerial activities as the subject matter of research, the authors focus on administration in the form of public administration, control, guidance, etc. For example, in the general theory of law, control is associated with the management of certain activities, systems, and processes (Khimicheva, 2004). V.S. Chaiko focuses on the provision of information about the state of the controlled object, feedback in management (based on the information received, the actor makes a management decision) (Chaiko, 2008). D.V. Lisnyi studies the methodological foundations of personnel management in internal affairs bodies and testifies to the exercise of managerial influence by the manager (supervisor) on a certain object (personnel of the organisation) (Lisnyi, 2008). O.V. Khimicheva considers the conceptual foundations of procedural control and supervision at the pre-trial stages and argues that procedural control and supervision is an independent management function, which includes some levels such as: statement, detection, analysis and evaluation of deviations or trends leading to them, correction (Khimicheva, 2004). V.D. Sushchenko argues that the formation of the management goal is the definition of the desired, possible and necessary state of the system, the process of separating it from the impossible, undesirable and unnecessary state of the system where the possible state of the system must be compared with the desired and undesirable state, and the desired state of the system must be compared with the possible and unnecessary, possible but undesirable state (Sushchenko, Prysiazhnyi, Kovalenko, 1999).

Given the above theoretical developments, it can be stated that the relations of control of the criminal procedure activities of an investigator as an integral part of managerial activities are also of scientific interest.

The purpose of the article is to study the content of management of the investigator's procedural activities with regard to the exercise of control functions by managers.

2. Control of the investigator's performance by the head of the investigative unit

The methodological basis of the investigator's performance is implemented in the procedural guidance relations to which he/she is a party. The managerial activities of an investigator and the management of investigative activities reflects a legal management, the types thereof are procedural control, supervision, guidance and organisation. Departmental management, procedural control and procedural guidance can be considered as separate types of management, the actor thereof is the investigator.

Every activity is subordinated to the achievement of a certain goal. Managerial activities are particularly vivid in this regard, as the organisation and direction of the activities of another entity is clearly subordinated to the achievement of a certain result in the form of an ultimate goal. Similarly, procedural control, supervision, and guidance of investigative activities are aimed at effective pre-trial investigation under the legislation in force. V.D. Sushchenko emphasises that the manager should use such measures that stimulate the achievement of goals and objectives, considering the goal-orientation and goals of the system itself (Sushchenko, Prysiazhnyi, Kovalenko, 1999). The author also notes that in social management, the goal can never be identical to the result. When interacting with the means of achieving it, even when the goal is achieved, the result includes other effects that do not coincide with the initial intended result. Therefore, when formulating a goal, potential effects should be allowed for (Sushchenko, Prysiazhnyi, Kovalenko, 1999). For example, an investigator may aim to complete the pre-trial investigation at any cost but may not aim to comply with all procedural rules, as their implementation has a significant subjective component. In order to avoid such excesses, the criminal justice system provides for multi-level control.

In fact, the control function refers to one of the mechanisms of social management, which contains a number of elements: structural and functional mechanism, structural and organisational mechanism, mechanism of managerial activities, mechanism of self-management. The structural and organisational mechanism

is formed by the elements of the social system: elements of the manager, elements of the object of management and manager-object (managerial) relations (Kuniev, 2006). The result of the system's functioning depends on: compliance of the rules of activities with the set goal; compliance of officials' activities with the established rules. The distinction between the concepts of quality and efficiency helps to identify problematic situations when the employee's conscientious performance of his/her duties does not lead to the desired result, or, conversely, such a result is achieved only due to violation of the established rules (Sushchenko, Prysiashnyi, Kovalenko, 1999). Therefore, with regard to the activities of the investigator, it can be noted that its result depends on: the relevance and sufficiency of the procedural powers provided for by law to achieve the goal of criminal proceedings and on the consistency of the investigator's performance with the powers prescribed.

Procedural control and supervision at the pre-trial investigation has a number of specific features that are determined by the nature of the activities under control: investigation of crimes, procedural independence of investigators, regulating of the limits of influence on the activities of investigators (Khimicheva, 2004). As a result of exercising control of an investigator, for example, by the head of an investigative unit or a prosecutor, these actors obtain certain information about the need to make certain adjustments to the investigators' activities, and, accordingly, about the need to make certain decisions, that is, departmental control has a somewhat broader scope than the statement of whether or not the tasks of the pre-trial investigation are fulfilled.

In management theory, general managerial functions are grouped into two types: cognitive-programming (including analysis, prognostication, planning) and organisational-regulatory (organising, regulating, controlling) (Plishkin, 1999). Scholars associate this grouping with the approach to the functions of managerial activities as successive stages (phases) of the managerial process (Kuniev, 2006). A direct example of the types of managerial functions in criminal proceedings is given by S.V. Valov, who, in addition to the functions of procedural control and management, identifies the following functions of the head of the investigative department: informational, organisational and regulatory. Among the managerial functions of the head of the investigative department, the author underlines the analytical, prognostication, planning and accounting functions, which, although directed to the exec-

utors of procedural activities, are not regulated by criminal procedure rules (Valov, 2006).

To sum up, it can be noted that one of the functions of public administration is control, and the function of control is to preserve the established public order. In other words, the function is defined through the activities that is specified - conducting a pre-trial investigation. Therefore, the management of the investigator's performance is carried out through the control of the criminal procedure activities of an investigator since the latter is thus controlled and ensured by the higher departmental management and procedural supervisor.

In order to determine the types of control of the investigator's performance, it is necessary to consider the influence that the investigator is subjected to in the course of criminal proceedings. With regard to such influence, the focus should be on judicial control, procedural guidance of the prosecutor and departmental control.

In the criminal procedure theory, there is a position on the multifunctionality of the court in connection with the separation of its functions of justice and judicial control. From this perspective, the latter is auxiliary to justice. This is proved by the legislator's perspective on the prohibition of a judge who decided on the use of procedural coercion during the pre-trial investigation to participate in the consideration of this case in the future (Melnik, 2004). However, it should be noted that judicial control is carried out mainly on the initiative of the "controlled" participant, the investigator; the court does not proactively manage the investigator's performance, does not give guidelines, does not apply sanctions to the investigator, and therefore judicial control is passive.

3. Particularities of control of investigative activities

Control of investigative activities in criminal procedure is represented by the prosecutor's functions (prosecutorial control, prosecutorial supervision and procedural guidance) and departmental control of the head of the investigative unit.

When considering the influence of the prosecutor on the investigator's procedural activities, it is necessary to dwell on an issue of freedom and independence of procedural decision-making. Analysing the discretion in decision-making in criminal proceedings, proceduralists note that the scope of possible prosecutorial discretion during pre-trial proceedings is greater than the scope of investigator's discretion, since the prosecutor is entitled not only to choose a decision at his/her own discretion, but also to express disagreement with the decisions of investigators. In case of disagreement, the prosecutor may cancel the investigator's decision, with-

hold consent to the investigator's application to the court for permission to conduct certain investigative actions, or not authorise certain investigative actions (Lupinskaia, 2006). Therefore, a decision in criminal proceedings is an act expressed in the procedural form established by law, in which the investigator, within his/her competence, in accordance with the procedure established by law, answers legal issues arising in the case and expresses the will of the authorities regarding actions resulting from the established circumstances and provisions of law aimed at achieving the objectives of criminal proceedings (Boikov, Karpec, 1989).

I.I. Shulhan defines procedural guidance as the organisation of the pre-trial investigation process, determination of its direction, coordination of procedural actions of investigative and operational units, as well as ensuring compliance with the requirements of the laws of Ukraine during the receipt of evidence and making procedural decisions during the pre-trial investigation of a specific, individual criminal proceeding (Shulhan, 2016). According to the author, the prosecutor must have the entirety of the evidence collected in criminal proceedings and be convinced of its admissibility, reliability and legality. The procedural supervisor has full access to documents and other information contained in the criminal proceedings. It has the right to appoint audits and inspections, make procedural decisions in cases provided for by the CPC of Ukraine, commission investigative actions and covert investigative (detective) actions, give instructions on their conduct and participate in them, and, where necessary, personally conduct investigative actions. However, the prosecutor should not perform the functions of an investigator, but only organise the process of investigating criminal proceedings. The prosecutor's procedural guidance of the pre-trial investigation is an effective way to ensure the legality of actions and decisions of the pre-trial investigation bodies (Shulhan, 2016). Therefore, it can be noted that the position of the prosecutor in relations with the investigator corresponds to the position of the organising manager.

Some scholars deny a managerial nature of the prosecutor's activities in relation to the investigator's performance in criminal proceedings. For example, in his publication, V.V. Pavlovskiy states as if it were a well-known provision that prosecutorial supervision differs from control in that it does not contain elements of direct order and management, such as the cancellation of legal acts, imposition of an obligation on pre-trial investigation bodies to perform a particular action, imposition of sanctions, etc. He notes that the prosecu-

tor's intervention in the activities of supervised bodies is permissible only in order to establish violations of the law, the causes of violations and the conditions that contributed to such violations (Pavlovskiy, 2015). However, it should be noted that such statements are in a significant minority among criminal procedure theorists. The majority of proceduralists agree with the managerial nature of the prosecutor's influence on the investigator's performance, which does not exclude the critical attitude of some of them in this regard. Therefore, the prosecutor's procedural guidance is one of the types of managerial procedural activity, the object of which is the investigator's performance in criminal proceedings, which includes managerial and organisational elements.

Another type of managerial activities aimed at the investigator is departmental control of the head of the investigative unit. With regard to departmental control, heads of pre-trial investigation bodies have organisational, control and procedural powers. The organisational powers of the head of the relevant pre-trial investigation body are determined by departmental regulations (Kovalov, 2014). The legal literature emphasises the important place of departmental control "in the system of supervision over the observance of human rights and freedoms in the process of exemption from criminal liability" (Kozak, 2005).

M.A. Pohoretskyi argues that the head of the investigative department exercises procedural and administrative control of both the organisation of criminal investigation in general in his/her unit and in each specific criminal case under proceedings by investigators of the department, and that the term "control" enshrined in Article 114-1 of the CPC of 1960 is not entirely appropriate, as it does not reflect the reality (Pohoretskyi, 2002). In the current CPC of Ukraine, the scientist's position was partially implemented in Article 39, Part 1 thereof establishes that the head of the pre-trial investigation body organises the pre-trial investigation but does not control it.

Z.M. Onishchuk proposes to give the head of the investigative department additional powers: to cancel illegal or unreasonable decisions of investigators subordinate to him/her, to remove an investigator from further investigation if he violates the law during the investigation; to transfer the case from one investigator to another in order to ensure the most complete and objective investigation of the case (Onishchuk, 1964).

Opponents of expanding the powers of the head of the investigative department as regards the right to cancel illegal and unjustified decisions of investigators suggest that the law

should only clarify and enshrine his/her duty to immediately contact the prosecutor if an illegal and unjustified decision of an investigator is discovered. Granting the head of the investigative department the power to cancel the said decisions of the investigator would reduce prosecutorial supervision to supervision of the head of the investigative department rather than the investigator and would significantly narrow the procedural independence of the investigator (Seleznev, 1999).

In our opinion, departmental control of the investigator's performance is actually combined (constitutes a single mechanism) with procedural guidance, which consists in organising the most efficient conduct of the pre-trial investigation. However, the intervention of the head of the investigative unit is necessary only when the investigator fails to achieve the goal. The essence of his/her leadership is that the head of the investigative unit:

- directs investigators to fulfil all goals and objectives of criminal proceedings using the powers vested in him/her;
- identifies shortcomings (checks materials on verification of crime reports and materials of criminal proceedings, approves the initiation of a petition by the investigator before the court to make a number of decisions);
- corrects the identified deficiencies (takes the criminal case from the investigator and transfers it to another investigator, cancels an illegal and unjustified decision of the investigator, gives instructions to the investigator, removes the investigator from further investigation) (Pobedkin, Novikov, 2010).

That is, the departmental control of the head of the investigative unit is one of the types of managerial activities, the object thereof is the investigator's performance in relation to criminal proceedings, which covers control of the compliance with the law by the investigator and guidelines for directing activities in case of shortcomings identified in the investigator's performance and components that are sometimes outside the criminal procedure.

4. Conclusions

The management of investigative activities reflects a legal management, the types thereof are procedural control (supervision, guidance) and organisational control and organisational control. Moreover, control is one of the functions of public administration, since the function of control is to maintain the established state order, therefore the management of investigative activities is the control provided by the higher departmental leadership and the procedural supervisor.

The management of investigative activities in criminal procedure is represented by the procedural guidance of the prosecutor and departmental control of the head of the investigative unit. The position of the prosecutor in relations with the investigator in the course of procedural guidance corresponds to the position of the organising supervisor. A prosecutor's procedural guidance is a type of managerial procedural activities, the object thereof is investigative activity in criminal proceedings, which includes managerial and organisational elements (but relates exclusively to a specific criminal proceeding in which the prosecutor is a procedural supervisor). The departmental control of the investigator's performance is combined (constitutes a single mechanism) with procedural guidance, which is to organise the most efficient conduct of the pre-trial investigation. The departmental control of the head of the investigative unit is one of the types of managerial activities, the object thereof is the investigator's performance in relation to criminal proceedings, which covers control of the compliance with the law by the investigator and components that are implemented outside the criminal procedure. However, contrasting prosecutor's control (procedural guidance and supervision), it is carried out when the investigator fails to achieve the set goal and is implemented in the following actions: directing investigators to fulfil the goals and objectives of criminal proceedings; identifying shortcomings and correcting them. Judicial control of the procedural investigator's performance can be considered as passive control not related to the functions of subordination.

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КОНТРОЛЬ ЗА КРИМІНАЛЬНОЮ ПРОЦЕСУАЛЬНОЮ ДІЯЛЬНІСТЮ СЛІДЧОГО ЯК СКЛАДОВА ЧАСТИНА УПРАВЛІНСЬКОЇ ДІЯЛЬНОСТІ

Анотація. Мета. Метою статті є дослідження змісту управління процесуальною діяльністю слідчого щодо реалізації функцій контрольних повноважень суб'єктами управління. **Результати.**

У статті розглядаються особливості контролю за кримінальною процесуальною діяльністю слідчого, який позиціонується як частина управління слідчою діяльністю та є відображенням певного правового менеджменту, видами якого є процесуальний контроль та організаційний контроль. Зазначено, що оскільки контроль є однією з функцій державного управління, то управління слідчою діяльністю практично полягає в контролі, який забезпечується вищим відомчим керівництвом і процесуальним керівником. Відповідно, управління слідчою діяльністю у кримінальному процесі представлено процесуальним керівництвом прокурора та відомчим контролем керівника слідчого підрозділу. Доведено, що процесуальне керівництво прокурора є видом управлінської процесуальної діяльності, об'єктом якої є слідча діяльність щодо кримінального провадження, що включає керівні та організаційні елементи (проте стосується виключно конкретного кримінального провадження, у якому певний прокурор є процесуальним керівником). **Висновки.** Управління слідчою діяльністю у кримінальному процесі представлено процесуальним керівництвом прокурора та відомчим контролем керівника слідчого підрозділу. Позиція прокурора у відносинах зі слідчим у ході процесуального керівництва відповідає позиції керівника-організатора. Відомчий контроль керівника слідчого підрозділу є одним із видів управлінської діяльності, об'єктом якої є діяльність слідчого щодо кримінального провадження, що охоплює контролювання за дотриманням законності слідчим та складники, які реалізуються поза сферою кримінального процесу. Однак, на відміну від контролю прокуратури (процесуального керівництва та нагляду), контроль діяльності слідчого здійснюється, коли слідчий своєю діяльністю не досягає поставленої мети, і реалізується в таких діях: спрямуванні слідчих на виконання цілей і завдань кримінального судочинства, виявленні недоліків та їх виправленні. Що стосується судового контролю за процесуальною діяльністю слідчого, то його можна позиціонувати як пасивний контроль, не пов'язаний із функціями підпорядкування.

Ключові слова: управлінська діяльність, кримінальна процесуальна діяльність, слідчий, прокурор, керівник слідчого підрозділу, контроль, нагляд.

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