

UDC 343.2/.7

DOI <https://doi.org/10.32849/2663-5313/2023.1.09>**Stanislav Svyrydenko,***PhD in Law, Senior Lecturer at the Department of Criminal Procedure, National Academy of Internal Affairs, 1, Solomianska square, Kyiv, Ukraine, postal code 03035, svyrydenkostanislav@ukr.net***ORCID:** [orcid.org/0009-0009-2542-8357](https://orcid.org/0009-0009-2542-8357)

Svyrydenko, Stanislav (2023). Particularities of applying measures to ensure criminal proceedings to persons enjoying immunity. *Entrepreneurship, Economy and Law*, 1, 51–57, doi <https://doi.org/10.32849/2663-5313/2023.1.09>

## PARTICULARITIES OF APPLYING MEASURES TO ENSURE CRIMINAL PROCEEDINGS TO PERSONS ENJOYING IMMUNITY

**Abstract. Purpose.** The purpose of the article is to determine the particularities of applying measures to ensure criminal proceedings to persons enjoying immunity. **Results.** In the article, it is underlined that the current legal mechanism for applying measures to ensure criminal proceedings against persons enjoying immunity has a number of unresolved aspects which need to be regulated. In this area, it is an urgent issue to bring national legislation in line with the basic principles of criminal justice and the realities of today's society. The first steps of this course have already been taken, including the adoption of new laws on administration of justice, but they need to be harmonised with other legislation of Ukraine in terms of the issues raised. It is noted that the specifics of the grounds and procedure for applying measures to ensure criminal proceedings to persons enjoying immunity is that some of them (in particular, a summons, apprehension, imposition of a measure of restraint in the form of detention or house arrest) can be implemented only with the consent of the relevant competent authority. Moreover, it is necessary to allow for the purpose of measures to ensure criminal proceedings, which is to create the necessary conditions for an operative, prompt, complete and impartial investigation and trial on the merits. **Conclusions.** The specifics of the grounds and procedure for applying measures to ensure criminal proceedings to persons enjoying immunity is that some of them can be implemented only with the consent of the relevant competent authority. Moreover, it is necessary to allow for the purpose of measures to ensure criminal proceedings, which is to create the necessary conditions for an operative, prompt, complete and impartial investigation and trial on the merits. The application of measures to ensure criminal proceedings that restrict the rights and freedoms of a People's Deputy of Ukraine is allowed only if the Verkhovna Rada of Ukraine has given its consent to bring him/her to criminal liability.

**Key words:** criminal proceedings, provisional measures, persons enjoying immunity, particularities of application.

### 1. Introduction

The specifics of criminal proceedings and the importance of their tasks under Article 2 of the CPC of Ukraine necessitate the provision of appropriate measures to ensure their implementation. The list of such measures is enshrined in Article 131 of the CPC of Ukraine, which includes: summons by investigator, prosecutor, judicial summons and compelled appearance; imposition of a monetary penalty; temporary restriction on the exercise of a special right; removal from office; temporary suspension of a judge from administration of justice; temporary access to things and documents; temporary confiscation of property; seizure of property; detention of a person; measure of restraints (Criminal Procedure Code of Ukraine, 2012). When describing the essence and characteristic

features of measures to ensure criminal proceedings, it is necessary to focus on their compulsory nature. In this regard, a number of questions arise regarding the application of provisional measures to persons enjoying immunity, since not all of these measures are related to criminal prosecution (which is the subject of immunity) and therefore are not subject to restrictions. Moreover, it is impossible to implement the provisions of law by analogy or logic, and the issue of applying measures to ensure criminal proceedings to persons enjoying immunity has not, unfortunately, been comprehensively studied. Therefore, there is an urgent need to define the particularities of criminal procedural coercion in the context of measures to ensure criminal proceedings and their application to persons enjoying immunity.

Some aspects of this issue were studied by L. D. Udalova and I. B. Babii (2010), but study was conducted, firstly, on the basis of the CPC of Ukraine of 1960 and the previous Law of Ukraine "On the Judicial System and Status of Judges" of 07 July 2010; secondly, the study was carried out only in the context of presidential, parliamentary and judicial immunity, but today these are not all persons enjoying immunity, in particular, the Ukrainian Parliament Commissioner for Human Rights and persons with diplomatic immunity were left out. The study by O.Yu. Tatarov is focused on the comparison of the mechanism of implementation of measures of criminal procedural coercion in other countries. The scientist notes that (with the exception of Mongolia, Hungary, and Ukraine) in cases of arrest of a Member of Parliament at the scene of a crime, the latter is automatically deprived of immunity without parliamentary sanction (in Finland, it is possible to arrest a parliamentarian and initiate criminal proceedings against him/her without parliamentary sanction if his/her act is classified as a crime punishable by imprisonment for a term of at least 6 months; in Sweden, 2 years; in Macedonia, Slovenia, Croatia, Yugoslavia, 5 years), and parliaments may only demand the dismissal of a Member of Parliament before the court passes a verdict, referring to his or her immunity (Tatarov, 2015, p. 206). In the context of the analysis of these legislative provisions, M.V. Cherkhovskyi and S.E. Ablamskyi note that the fullness of the pre-trial investigation, including the possibility of apprehension of a People's Deputy by law enforcement bodies, depends on obtaining the consent of the Verkhovna Rada to bring him to criminal liability; therefore, the current model of criminal procedural regulation of the aspect under study has a number of contradictions and shortcomings, which undoubtedly have a negative impact on the practical application of the CPC of Ukraine (Cherkhovskyi, Ablamskyi, 2018, pp. 248–250). V.I. Farynnyk argues that the liberty of a person should be restricted only when it is impossible to ensure the fulfilment of the tasks, namely for a prompt, complete and impartial pre-trial investigation of criminal offences, including those committed by persons enjoying immunity (Farynnyk, 2015, p. 86). Thus, this issue is of interest for scientific research.

The purpose of the article is to determine the particularities of applying measures to ensure criminal proceedings to persons enjoying immunity.

## 2. Categories of persons enjoying immunity in criminal proceedings

The specificity of the grounds and procedure for applying measures to ensure criminal

proceedings to persons enjoying immunity is that some of them become possible only with the consent of the relevant competent authority. Therefore, there is a need to consider comprehensively the criminal procedure mechanism for applying measures to ensure criminal proceedings to persons enjoying immunity. The analysis of the current legislation reveals that the scope of the immunity of People's Deputy significantly complicates the process of applying a number of measures of restraints to them. This is clearly evidenced by the provisions of Article 27 of the Law of Ukraine "On the Status of People's Deputy of Ukraine" and Article 482 of the CPC of Ukraine (Law of Ukraine On the status of People's Deputy of Ukraine, 1992). In addition, in our opinion, this situation is explained, firstly, by the fact that the content of immunity is interpreted rather broadly in the above articles; secondly, by the prevailing understanding of measures to ensure criminal proceedings exclusively as a means of coercion. Taken together, these two circumstances turn parliamentary immunity into a privilege rather than an enhanced guarantee due to the specifics of professional activity. If one literally interprets the legislator's position on this issue, one may even come to the absurd conclusion that such a simple measure of ensuring criminal proceedings as a summons may be regarded as an attempt to restrict the rights and freedoms of a People's Deputy. But this is not the case, because the challenge does not restrict the rights and freedoms of a People's Deputy, so it should not be considered as such. As a witness, a People's Deputy is obliged to appear when summoned by an investigator, prosecutor, or court, and to duly fulfil other witness duties provided for by the CPC of Ukraine. At the same time, the People's Deputy's parliamentary immunity does not exempt him/her from fulfilling this obligation, since:

- first, maintaining the regime of law and order in the state and society, restoring persons' rights, freedoms and legitimate interests violated as a result of unlawful actions, as well as bringing perpetrators to justice is one of the state's top priorities. For the proper performance of this task, the competent actors of the law enforcement system of the State, among other things, should be able to interact (cooperate) with other participants in proceedings without hindrance, regardless of their procedural status. Obviously, work with witnesses is one of the manifestations of this interaction, and the specific legal status of a person should not be an obstacle to its implementation;

- second, the summons is not an urgent measure, so the witness has a certain time to implement it, which allows him/her to prop-

erly prepare for it, to plan his/her affairs in such a way as to fulfil this obligation without significant inconvenience to himself/herself. For example, in accordance with Article 135 of the CPC of Ukraine, a person shall receive a summons or be notified of it in another way no later than three days before the day on which he or she is obliged to appear. If the CPC establishes deadlines for procedural actions that do not allow for the summons to be made within the specified timeframe, the person shall receive the summons or be notified of it in another way as soon as possible, but in any case, with the necessary time to prepare and arrive at the summons (Criminal Procedure Code of Ukraine, 2012);

– third, the summons of a People's Deputy as a witness does not actually have a direct coercive nature. All these circumstances in practice allow a People's Deputy to evade appearing before law enforcement bodies without any significant consequences for themselves (Svyrydenko, 2016).

It should be noted that according to Article 139 of the CPC of Ukraine, if a suspect, accused, witness, victim, civil defendant, representative of a legal entity in respect thereof proceedings are being conducted, has been summoned in accordance with the procedure established by the CPC (in particular, there is a confirmation of receipt of the summons or familiarisation with its content in another way), fails to appear without valid reasons or fails to report the reasons for his/her non-appearance, a fine shall be imposed in the amount of: 0.25 to 0.5 of the subsistence minimum for able-bodied persons – in case of failure to appear at the call of the investigator, prosecutor (Criminal Procedure Code of Ukraine, 2012). The procedure for imposing a monetary penalty is set out in Articles 144-174 of the CPC of Ukraine, which stipulate that during the pre-trial investigation it shall be imposed by a ruling of the investigating judge at the request of the investigator or prosecutor, and during the court proceedings – by a court ruling at the request of the prosecutor or on his/her own initiative. The motion shall be considered no later than three days from the date of its receipt by the court. The officer who filed the motion and the person who may be subject to a pecuniary penalty shall be notified of the time and place of the motion's consideration, but their failure to appear shall not prevent the consideration of the matter. If during the consideration of the motion the investigating judge or court finds that the person has failed to fulfil the procedural obligation imposed on him/her without valid reasons, he/she shall impose a monetary penalty on him/her. A copy of the respective decision shall be sent to the person on whom the monetary pen-

alty was imposed no later than the next business day after its issuance (Criminal Procedure Code of Ukraine, 2012). Therefore, the analysis of the above provisions of the CPC of Ukraine reveals that there are no restrictions on the possibility of imposing a monetary penalty on a People's Deputy, as well as on other persons enjoying immunity.

In practice, the issue of applying a compelled appearance to a People's Deputy is more complicated, as the CPC of Ukraine does not directly establish this. This again raises the question of the possibility of applying physical coercion to a People's Deputy if he or she refuses to voluntarily comply with the decision on a compelled appearance with respect to him or her. This is explained by the fact that the use of physical force against a People's Deputy may be regarded as an attempt to put pressure on him/her, especially if he/she is not deprived of immunity in accordance with the established procedure. In our opinion, in order to avoid practical misunderstandings regarding this issue, the CPC of Ukraine should include a provision according to which, until the Verkhovna Rada of Ukraine gives its consent to bring a People's Deputy to criminal liability, no measures of physical influence may be applied to him/her, including during the execution of the compelled appearance. If a People's Deputy refuses to voluntarily comply with the decision of the investigating judge or court on compelled appearance and proceed to the place of summons, the person executing such a decision shall record the relevant reasons for the refusal and return the decision to the court.

Therefore, we propose to supplement Article 140 of the CPC of Ukraine with an additional Part 5 as follows: "5. *The compelled appearance cannot be applied to a People's Deputy until the Verkhovna Rada of Ukraine gives its consent to bring him/her to criminal liability. If the People's Deputy refuses to voluntarily comply with the decision of the investigating judge or court on compelled appearance and proceed to the place of summons, the person executing such a decision shall record the relevant reasons for the refusal and return the decision to the court without its execution*".

We consider that the focus should be on the fact that the investigating judge or court, when considering a motion to impose a monetary penalty or a compelled appearance on a People's Deputy, shall find out whether his or her absence is due to valid reasons. Moreover, relying on the provisions of the CPC, the investigating judge or court, in resolving these issues, should check not only the existence of valid reasons for non-appearance, but also find out whether the person had a real

opportunity to inform the pre-trial investigation body or the prosecutor of the objective impossibility of arrival. This, in particular, follows from Article 137 of the CPC of Ukraine, which provides that the summons shall contain a reminder of the obligation to notify in advance of the impossibility of appearing (Criminal Procedure Code of Ukraine, 2012). Therefore, we can conclude that if the investigating judge or court finds out that the People's Deputy failed to appear at the summons of the investigator or prosecutor, albeit for valid reasons, but fails to notify in advance, having a real opportunity to do so, he or she may be subject to a monetary penalty or a compelled appearance.

In addition to the above measures to ensure criminal proceedings, other measures to ensure criminal proceedings provided for by the CPC of Ukraine may be applied to a People's Deputy, but only after the VRU gives its consent to bring him/her to criminal liability. However, there is no special procedure for applying these measures to a People's Deputy at the legislative level, except for his or her apprehension, imposition of a measure of restraint in the form of detention or house arrest. The implementation of these measures requires the consent of the Parliament, regardless of whether the latter has agreed to bring the perpetrator to criminal liability.

It should be emphasised that the provisions of Article 482 of the CPC of Ukraine, unlike the requirements of Article 80 of the Constitution of Ukraine and Article 27 of the Law "On the Status of the People's Deputy of Ukraine", also require the consent of the Verkhovna Rada of Ukraine to impose a measure of restraint in the form of detention or house arrest on a People's Deputy. Obviously, this situation has arisen because in the previous CPC of Ukraine of 1960 the terms "arrest" and "detention" were used synonymously. However, the current CPC of Ukraine introduced a new measure of restraint associated with a significant restriction of the liberty of a suspect or accused – house arrest. At the same time, if we refer to Decision of the Constitutional Court of Ukraine No. 12-rp/2003 (case on guarantees of parliamentary immunity) of 26 June 2003, it explains that parliamentary immunity should be understood in such a way that a special procedure for bringing a deputy to criminal liability, his/her apprehension, arrest, as well as application of other measures related to restriction of his personal rights and freedoms is envisaged (Decision of the Constitutional Court of Ukraine in the case based on the constitutional submission of 56 People's Deputies of Ukraine on the official interpretation of the provisions of the first and third parts of Article 80 of the Constitution of Ukraine, the first part

of Article 26, the first, second and third parts of Article 27 of the Law of Ukraine "On the Status of the People's Deputy of Ukraine" and according to the constitutional submission of the Ministry of Internal Affairs of Ukraine on the official interpretation of the provisions of the third part of Article 80 of the Constitution of Ukraine regarding the detention of a people's deputy of Ukraine (case on guarantees of parliamentary immunity), 2003). However, neither this Decision nor the provisions of Article 80 of the Constitution of Ukraine contain a direct indication that house arrest is applied to People's Deputies with the consent of the Verkhovna Rada. In order to avoid such misunderstandings in practice regarding the above legislative discrepancy, it is advisable to amend part 3 of Article 80 of the Constitution of Ukraine and Article 27 of the Law of Ukraine "On the Status of the People's Deputy of Ukraine" to read as follows: *"The prosecution of a People's Deputy of Ukraine, his or her apprehension or arrest, or the imposition of a measure of restraint in the form of detention or house arrest may not be carried out without the consent of the Verkhovna Rada of Ukraine"*.

The procedure for the Parliament's consent to the apprehension, arrest or imposition of a measure of restraint in the form of detention or house arrest on a People's Deputy is the same as the procedure for consenting to the prosecution of a People's Deputy. However, this approach seems somewhat ambiguous. On the one hand, the need for the VRU's consent to detain a People's Deputy and to impose a measure of restraint in the form of detention or house arrest on him or her is even more logical and justified than consent to bring him or her to criminal prosecution. This is due to the fact that these measures, firstly, are of the most severe and extreme nature; secondly, they restrict one of the fundamental human rights and freedoms – the right to liberty and security of person; thirdly, they impede the proper performance of the People's Deputy's professional duties and, most importantly, his/her duties to the voters. On the other hand, the procedure for granting consent to these measures is too lengthy, which, of course, does not allow for their timely application, which, in turn, may negatively affect their effectiveness and efficiency. An additional argument for the need to promptly resolve the issue is the requirements of Article 186 of the CPC of Ukraine, which stipulates that a motion to apply or change a measure of restraint shall be considered by the investigating judge or court without delay, but no later than seventy-two hours after the suspect, accused has actually been apprehended, or from the moment of receipt of the petition by the court, if the sus-

pect, accused is at large, or from the moment the suspect, accused, his/her defence counsel files the relevant petition with the court (Criminal Procedure Code of Ukraine, 2012).

According to the legislation in force, when considering the Prosecutor General's motion to consent to the apprehension, arrest or detention of a People's Deputy, the Verkhovna Rada of Ukraine also checks the motivation and clarity of the justification of this motion, ascertains whether it contains specific facts and evidence confirming the need for a measure of restraint. This raises the question of the significance of the VRU's conclusions for the investigating judge and the court when considering a motion to impose a measure of restraint on a People's Deputy. In general, given the principles guiding justice in Ukraine, including impartiality, it can be noted that the VRU's conclusion on granting permission to apply a measure of restraint to a People's Deputy is not binding on the investigating judge or court that will subsequently consider a motion to apply a measure to ensure criminal proceedings or conduct a procedural action.

### **3. Problematic issues of applying measures to ensure criminal proceedings to persons enjoying immunity**

The issue of apprehension of a People's Deputy without a ruling of an investigating judge or court is problematic. In general, we agree that the apprehension of a People's Deputy should be subject to a special procedure, as this measure, although temporary, is quite severe, which is frequently emphasised by researchers. According to L. D. Udalov, apprehension is a severe restriction of human liberty in criminal proceedings, which is essentially similar to criminal punishment in the form of deprivation of liberty since a person in custody is subject to restrictions on his or her rights and freedoms provided for by the Constitution of Ukraine. First and foremost, this is about restricting the inviolability of the person (Udalova, Babii, 2010, p. 142). Instead, it should not be forgotten that one of the main tasks of law enforcement bodies is to prevent, deter criminal activity, prevent and/or eliminate its negative consequences, and ensure that all perpetrators are prosecuted. Therefore, apprehension can rightly be considered one of the key tools at the disposal of law enforcement bodies. Therefore, in the event of a criminal offence, apprehension is an effective and efficient means of creating the necessary conditions for determining the involvement of a person in the commission of a crime and deciding on a measure of restraint for the detainee. That is why, as scientists quite appropriately note, timely apprehension of a person suspected of committing a crime makes it impossible for him or her to evade pre-trial investigation bodies, as well as to obstruct the establishment of the truth

in the case, and to continue criminal activity (Rozhnova, 2005, p. 141; Udalova, Babii, 2010, pp. 141–142). In accordance with the provisions of part 1 of Article 177 of the CPC of Ukraine, apprehension of a person is aimed at preventing attempts to hide from the pre-trial investigation and/or court; destroy, conceal or distort any of the things or documents that are essential for establishing the circumstances of a criminal offence; exert unlawful influence on a victim, witness, other suspect, accused, expert, or specialist in the same criminal proceedings; to obstruct criminal proceedings in any other way; to commit another criminal offence or to continue the criminal offence of which the person is suspected or accused. Moreover, V. I. Farynnyk emphasises that criminal procedure legislation does not contain a clear definition of the purposes of apprehension (Farynnyk, 2015, p. 86). Instead, we believe that in this case, the purpose and objective of detention of a person coincide, despite the actor of its application. According to the CPC of Ukraine, Article 178, part 2, the grounds for applying a measure of restraint are the existence of a reasonable suspicion that a person has committed a criminal offence, as well as the existence of risks that give sufficient grounds for the investigating judge or court to believe that the suspect, accused or convicted person may commit the actions provided for in part one of this article. The investigator and the prosecutor have no right to initiate the application of a measure of restraint without grounds provided for by the CPC. Moreover, the legislative approach to providing for reasonable suspicion as a ground for applying a measure of restraint does not seem logical enough. We believe that the recognition of a reasonable suspicion that a person has committed a criminal offence as a ground for applying a measure of restraint is not quite correct. In this case, it is a necessary condition, not a ground. Relying on the analysis of the current legislation of Ukraine, we conclude that the apprehension of a People's Deputy is possible only with the consent of the Verkhovna Rada of Ukraine. That is, if we characterise this aspect from the procedural perspective, the consent of the Verkhovna Rada of Ukraine is a necessary condition for the apprehension of a People's Deputy (Farynnyk, 2015, p. 130). However, we believe that, on the one hand, making it impossible to detain a People's Deputy at the scene of a crime or immediately after it has been committed does not meet either the objectives of criminal proceedings or the principles of equality of all before the law and the court and the inevitability of legal liability for unlawful acts. On the other hand, the general provisions on the application of measures of restraints do not provide for such consent, and only a special provision (CPC of Ukraine, Article 482, part 3) requires that such consent be



obtained from the Verkhovna Rada. In this regard, we conclude that the current legislative approach to the procedure for apprehension of a People's Deputy has a negative impact on the quality of pre-trial investigation, in particular on the preservation of evidence of a crime. Therefore, we believe that the CPC of Ukraine, Article 482, part 3, should be supplemented with the following provision:

*"A People's Deputy detained on suspicion of committing an act subject to criminal liability shall be immediately released after his or her identity is established, except for the following:*

1) *if the Verkhovna Rada of Ukraine has given consent to his or her apprehension;*

2) *apprehension of a People's Deputy during or immediately after the commission of a grave or exceptionally grave crime, if such apprehension is necessary to prevent the commission of a crime, to prevent or avert the consequences of a crime or to ensure the preservation of evidence of such crime. The People's Deputy shall be released immediately if the purpose of such apprehension (prevention of a crime, prevention or averting of the consequences of a crime or ensuring the preservation of evidence of such crime) is achieved".*

In our opinion, this approach cannot be considered an encroachment on the inviolability

of a People's Deputy, since the mere fact of apprehension does not oblige the latter to be notified of suspicion in accordance with Article 276 of the CPC, as this requires the consent of the Verkhovna Rada. Such apprehension is primarily aimed at providing a better evidence base, and therefore will increase the level of validity and motivation of the motion to bring the latter to criminal prosecution.

#### 4. Conclusions

The specifics of the grounds and procedure for applying measures to ensure criminal proceedings to persons enjoying immunity is that some of them (in particular, a summons, apprehension, imposition of a measure of restraint in the form of detention or house arrest) can be implemented only with the consent of the relevant competent authority. Moreover, it is necessary to allow for the purpose of measures to ensure criminal proceedings, which is to create the necessary conditions for an operative, prompt, complete and impartial investigation and trial on the merits. The application of measures to ensure criminal proceedings that restrict the rights and freedoms of a People's Deputy of Ukraine is allowed only if the Verkhovna Rada of Ukraine has given its consent to bring him/her to criminal liability.

#### References:

- Cherkhavskiy, M.V., Ablamskiy, S.Ye.** (2018). Okremi problemni pytannia zakonodavchoi rehlementatsii zatrymannia narodnoho deputata Ukrainy [Separate problematic issues of the legislative regulation of the detention of a people's deputy of Ukraine]. *Aktualni problemy suchasnoi nauky v doslidzhenniakh molodykh ucheynykh - Actual problems of modern science in the research of young scientists*, 3, 247–252 [in Ukrainian].
- Farynyk, V.I.** (2015). Zatrymannia osoby: problemy kryminalnoi protsesualnoi rehlementatsii ta shliakhy yikh vyrishennia [Detention of a person: problems of criminal procedural regulations and ways to solve them]. *Visnyk kryminalnoho sudochynstva - Herald of Criminal Justice*, 2, 85–94 [in Ukrainian].
- Kryminalnyi protsesualnyi kodeks Ukrainy vid 13 kvit. 2012 r. № 4651-VI [Criminal Procedure Code of Ukraine dated April 13, 2012 No. 4651-VI]. (2012). *rada.gov.ua*. Retrieved from <http://zakon2.rada.gov.ua/laws/show/4651-17> [in Ukrainian].
- Rishennia Konstytutsiinoho Sudu Ukrainy u spravi za konstytutsiynym podanniam 56 narodnykh deputativ Ukrainy pro ofitsiine tлумachennia polozhen chastyn pershoi, tretioi statti 80 Konstytutsii Ukrainy, chastyny pershoi statti 26, chastyn pershoi, druhoi, tretioi statti 27 Zakonu Ukrainy «Pro status narodnoho deputata Ukrainy» ta za konstytutsiynym podanniam Ministerstva vnutrishnikh sprav Ukrainy pro ofitsiine tлумachennia polozhennia chastyny tretioi statti 80 Konstytutsii Ukrainy stosovno zatrymannia narodnoho deputata Ukrainy (sprava pro harantii deputatskoi nedotorkannosti) vid 26.06.2003 r. № 12-pp/2003 [Decision of the Constitutional Court of Ukraine in the case based on the constitutional submission of 56 People's Deputies of Ukraine on the official interpretation of the provisions of the first and third parts of Article 80 of the Constitution of Ukraine, the first part of Article 26, the first, second and third parts of Article 27 of the Law of Ukraine "On the Status of the People's Deputy of Ukraine" and according to the constitutional submission of the Ministry of Internal Affairs of Ukraine on the official interpretation of the provisions of the third part of Article 80 of the Constitution of Ukraine regarding the detention of a people's deputy of Ukraine (case on guarantees of parliamentary immunity) dated 06.06.2003 No. 12-pp/2003]. (2003). *rada.gov.ua*. Retrieved from <http://zakon3.rada.gov.ua/laws/show/v012p710-03> [in Ukrainian].
- Rozhnova, V.** (2005). Osoblyvosti kryminalno–protsesualnoho zatrymannia okremykh katehorii hromadian [Particularities of criminal-procedural detention of certain categories of citizens]. *Pidpryemnytstvo, hospodarstvo i pravo - Entrepreneurship, economy and law*, 8, 141–145 [in Ukrainian].
- Svrydenko, S.V.** (2016). Provedennia dosudovoho rozsliduvannia koruptsiynykh zlochyniv shchodo okremoї katehorii osib [Conducting a pre-trial investigation of corruption crimes against a separate category of persons]. *Realizatsiia derzhavnoi antykoruptsiinoi polityky v mizhnarodnomu vymir - Implementation of state anti-corruption policy in the international dimension*, 6, 359–362 [in Ukrainian].

**Tatarov, O. Yu.** (2015). Provedennia nehlasnykh slidchykh (rozshukovykh) dii stosovno okremoi katehorii osib [Carrying out covert investigative (research) actions against a separate category of persons]. *Naukovyi visnyk Khersonskoho derzhavnogo universytetu - Scientific Bulletin of Kherson State University*, 3–2, 205–208 [in Ukrainian].

**Udalova, L. D., Babii, I. V.** (2010). Dosudove provadzhennia u kryminalnykh spravakh shchodo okremykh sluzhbovykh osib, yaki obiiimaiut osoblyvo vidpovidalne stanovyshe [Pre-trial proceedings in criminal cases against individual officials who occupy a particularly responsible position]. K.: KNT [in Ukrainian].

Zakon Ukrainy Pro status narodnoho deputata Ukrainy: vid 17 lystop. 1992 r. № 2790–XII [Law of Ukraine On the status of People's Deputy of Ukraine: No. 2790–XII of November 11, 1992]. (1992). *rada.gov.ua*. Retrieved from <https://zakon.rada.gov.ua/laws/show/2790-12#Text> [in Ukrainian].

**Станіслав Свириденко,**

кандидат юридичних наук, старший викладач кафедри кримінального процесу, Національна академія внутрішніх справ, площа Солом'янська, 1, Київ, Україна, індекс 03035, [svyrydenkostanislav@ukr.net](mailto:svyrydenkostanislav@ukr.net)

**ORCID:** [orcid.org/0009-0009-2542-8357](https://orcid.org/0009-0009-2542-8357)

## ОСОБЛИВОСТІ ЗАСТОСУВАННЯ ЗАХОДІВ ЗАБЕЗПЕЧЕННЯ КРИМІНАЛЬНОГО ПРОВАДЖЕННЯ ДО ОСІБ, ЯКІ КОРИСТУЮТЬСЯ НЕДОТОРКАННІСТЮ

**Анотація. Мета.** Метою статті є визначення особливостей застосування заходів забезпечення кримінального провадження до осіб, які користуються недоторканністю. **Результати.** У роботі зазначено, що наявний на сьогодні правовий механізм застосування заходів забезпечення кримінального провадження стосовно осіб, які користуються недоторканністю, має низку неврегульованих аспектів, які потребують свого унормування. У цьому напрямі нагальним питанням є приведення національного законодавства у відповідність до основних засад здійснення кримінального судочинства, а також реалій сьогоденного життя суспільства. Перші кроки в окресленому напрямі вже здійснено, зокрема прийнято нові закони щодо здійснення правосуддя, при цьому вони потребують узгодження з іншим законодавством України щодо порушених питань. Зазначено, що специфіка підстав і порядку застосування заходів забезпечення кримінального провадження до осіб, які користуються недоторканністю, полягає в тому, що деякі з них (зокрема, привід, затримання, обрання запобіжного заходу у вигляді тримання під вартою чи домашнього арешту) можуть бути реалізовані лише в разі отримання згоди відповідного компетентного органу. При цьому варто враховувати мету заходів забезпечення кримінального провадження, якою є створення необхідних умов для проведення оперативного, максимально швидкого, повного й неупередженого розслідування та судового розгляду справи по суті. **Висновки.** Специфіка підстав і порядку застосування заходів забезпечення кримінального провадження до осіб, які користуються недоторканністю, полягає в тому, що деякі з них можуть бути реалізовані лише в разі отримання згоди відповідного компетентного органу. При цьому потрібно враховувати мету заходів забезпечення кримінального провадження, якою є створення необхідних умов для проведення оперативного, максимально швидкого, повного та неупередженого розслідування й судового розгляду справи по суті. Зокрема, застосування до народного депутата України заходів забезпечення кримінального провадження, які обмежують його права та свободи, допускаються лише в разі, якщо Верховною Радою України надано згоду на припинення його до кримінальної відповідальності.

**Ключові слова:** кримінальне провадження, заходи забезпечення, особи, які користуються недоторканністю, особливості застосування.

*The article was submitted 16.12.2022*

*The article was revised 05.01.2023*

*The article was accepted 24.01.2023*