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THEORETICAL FRAMEWORK FOR COMBATING CRIME AS A BASIS OF THE INVESTIGATOR'S PROCEDURAL ACTIVITIES

Abstract. Purpose. The purpose of the article is to determine the ways of theoretical basis for the investigator's procedural activities. **Results.** In the article, it is underlined that the activities of specific law enforcement entities are the focus of research of the relevant, to some extent disparate, sectoral legal sciences, each of which uses different terms to refer to actions and processes which are identical in content. It is thought that although scholars have considered individual theories of legal sciences stating their interconnection, they have not taken the next step of combining these theories into a common megatheory – the fight against crime. Due to this situation, the procedural role of the investigator (as activities performed by him/her in different areas) should be clarified using the provisions of the general theory of combating crime. The most effective way to theoretically substantiate the investigator's procedural activities within the general theory of combating crime is to expand scientific knowledge, deepen it and involve knowledge from other branches of (related to) legal science. **Conclusions.** It is concluded that the general theory of combating crime, as a higher-level theory in relation to the theory of criminal procedure, allowing for the importance of pre-trial investigation bodies in the field of implementation of the law enforcement function of the State, should be used as the theoretical basis for the investigator's procedural activities. The theoretical basis for the investigator's procedural activities implies the following: The expansion of knowledge is implemented through proposals and research of additional powers, procedural means, new principles of criminal procedural activities, application of additional measures to ensure criminal proceedings, additional actors, new forms of investigator's activities, forms of his/her interaction with other actors; The deepening of knowledge is realised through the study of the particularities of application of already introduced criminal procedural institutions in the activities of the investigator, study of their legal nature, and determination of ways of their possible improvement; The attraction of knowledge from other fields of science is realised through the application of sociological, general legal knowledge, results of research in natural sciences, technical, humanitarian sciences, etc.

Key words: investigator, procedural activities, combating crime, sectoral legal sciences, theoretical basis.

1. Introduction

As well as a number of other terms, the fight against crime, crime counteraction are used to define a process that includes much more than the components included in the content of these terms. If we consider these terms in relation to their meaning, we can note that their use has become a certain compromise between repre-

sentatives of different legal sciences that create a theoretical basis for law enforcement activities of criminal justice authorities. Law enforcement activities are performed allowing for the provisions of criminal and criminal procedure legislation, theoretical and practical knowledge accumulated in the field of criminalistics, legal psychology, criminology, forensic exam-

ination, operative-search activities and other fields of human knowledge that can be useful in combating crime. The activities of specific law enforcement entities are the focus of research of the relevant, to some extent disparate, sectoral legal sciences. Each of these sciences uses different terms to refer to actions and processes that are identical in content, for example, the theory of operative-search activities uses the terms search activity, documentation, implementation (or legalisation) of operational materials, and the theory of criminal procedure uses other terms to refer to the same actions: detection of crimes, establishment of circumstances, use of materials of operative-search activities. In light of this, the problem of determining the socio-legal role of the investigator in combating crime, carried out by him/her in the course of criminal procedural activities within specific criminal proceedings, remains beyond the focus of scholars. Clarification of this role of the investigator using the provisions of the general theory of combating crime will allow to consider these activities carried out by him/her in different areas from a new perspective.

The theory of combating crime was partially considered by A.Yu. Hnatiuk, who underlines that the social function of the prosecutor's office to maintain law and order in the state and to combat crime in general in criminal proceedings is transformed into quite specific functions that allow the prosecutor to perform his/her social (state) function. After all, in criminal proceedings, criminal law is implemented, which establishes what constitutes a criminal offence and what penalties should be applied to those guilty of committing them. Ultimately, the criminal law is applied by the court, but the function of combating crime is not entrusted to the court, but to the prosecutor (Hnatiuk, 2016).

S.V. Domenko studies of the fight against crime in the context of criminology and criminal law, emphasising the importance of its theoretical function and the need to focus on "the fight against crime" as an element of the subject matter of criminology, and on the interdisciplinary significance of this concept, noting that the evolution from "criminal policy", "policy on combating crime" to the regional legal category "the fight against crime" has contributed to the development of criminal cycle sciences (Domenko, 2013).

P.L. Fris defines policy on combating crime as a general line developed by the Ukrainian state that determines the strategy, basic concepts, trends, goals and means of influencing crime by forming criminal, criminal procedural legislation, criminal executive legislation (basic level), as well as legislation that enhances (catalyses) the solution of these tasks (support-

ing level), control of their application, development and implementation of measures aimed at preventing crime. The basic level is formed by those branches of law that are directly responsible for combating crime. It is the criminal law that defines the boundaries of the offence, while the criminal procedure law defines the procedure for finding a person guilty, determining the optimal type and amount of punishment to be applied to the perpetrator as an adequate response of the state to the crime committed (Fris, 2012). That is, scholars have considered individual theories of legal sciences stating their interconnection, but they have not taken the next step of combining these theories into a common megatheory – the fight against crime.

The purpose of the article is to determine the ways of theoretical basis for the investigator's procedural activities.

2. Specificities of the general theory of combating crime

The achievements of individual legal sciences on combating crime, due to a common basis, are formally "united" at the theoretical level into a general theory of combating crime [4, p. 260–509]. The prerequisite for such unity is a joint criminal policy of the state for all law enforcement bodies, which is a directive and constituent criminal and political doctrine of the Verkhovna Rada and the Government, enshrined in a system of regulations that define the tasks, ultimate goals, strategies and general principles of combating crime in the Ukrainian state. Its daily implementation by all law enforcement bodies is a real fact, formative for a general theory of combating crime, which is not only its guide, but also the scientific basis for the activities of all law enforcement bodies to implement criminal policy, implement its principles and strategic guidelines [4, p. 295–296]. In support of the idea of developing a general theory of combating crime, the following theoretical provisions are presented: The idea of the fight against crime is the core of all theories of combating crime; The objective existence of various special legal sciences of the fight against crime is sufficient grounds for concluding that they have something in common which unites these sciences into an integral system; The deepening of knowledge about the fight against crime within the framework of private theories about this fight has led to an increasing individualisation of their subject matter and, on this basis, to a weakening of their interconnectedness and interdependence; The need to create a general theory of the fight against crime is evidenced by the actual tendency in science to develop "cross-cutting" problems, as well as problems common to several criminal law sciences (Zelenetskii, 2012).

It is important for an actor that constantly operates under time constraints to receive specific and scientifically sound advice on its law enforcement activities without spending a lot of time clarifying contradictions in theoretical issues related to it. This is especially true of an actor of criminal proceedings, who begins to implement public policy on combating crime already at the stage of pre-trial investigation – the investigator. Therefore, the general theory of combating crime, as a higher-level theory in relation to the theory of criminal procedure, allowing for the importance of pre-trial investigation bodies in the field of implementation of the law enforcement function of the State, should be used as the basis for integrating certain knowledge related to the fight against crime. Criminal procedure itself is a means of implementing criminal law provisions, and therefore it is closely related to the theoretical knowledge gained in the science of criminal law. Other theories that address problematic issues of combating crime and are relevant to the criminal procedural activities of an investigator include criminalistics, legal psychology, legal statistics, criminal executive law, criminology, operative-search activities, etc. All of these theories have their individual subject matter, but they also have a common subject matter – the fight against crime, which became the basis for a new theory in the legal science – the theory of combating crime. The process of combating crime involves many actors. In criminal proceedings, the function of combating crime is performed by the prosecution. The investigator plays the main role among these actors in most of states. This actor is referred to in different ways in the legislation of other states: "inquiry officer", "investigator", "detective", "investigating officer", etc. The core is that the investigator at the pre-trial investigation stage performs the task of establishing the circumstances of a criminal offence, information about which is entered into the Unified Register of Pre-trial Investigations. The fulfilment of this task is the basis for the implementation of the main task of the prosecution in the pre-trial investigation to prepare the indictment for the purpose of its transfer to the court in collaboration with the prosecutor. The investigator's procedural activities to fulfil these tasks is carried out by him/her in order to overcome crime and thus perform the state function, the content of which is the fight against crime.

The legal activities of investigative bodies, as well as other state bodies, consists of such professional, labour, state power activities mediated by law and involving legal decisions of competent authorities, which are aimed at fulfilling public functions and tasks (creation of laws, administration of justice, specification

of law, etc.) and thus meeting both public, group and individual needs and interests (Kartashov, 1989). The investigator's criminal procedural activities, carried out in accordance with the requirements of the CPC, is aimed at meeting not only the individual needs of the participants in the pre-trial investigation, but also the public need to combat crime.

3. The functioning of theories of combating crime

Scholars believe that the provisions substantiated in the general theory of combating crime are relevant for all specific theories of combating crime, including the theory of criminal procedure, and from this perspective, this theory is, so to speak, in a relationship of "subordination" with the theory of criminal procedure (Yurchyshyn, 2016). The theory of combating crime is implemented in the activities of criminal justice authorities, courts and the bar on the basis for the provisions of a number of branches of law. Each of them (branches) has its specifics, leaves a certain imprint on the forms and methods of implementation. Despite their specificities, all of them ensure the solution of a single task – the fight against crime. From the theoretical perspective, this gives grounds to distinguish the field of combating crime as an integral social regulatory system, its individual subsystems: criminal law, criminal procedure, criminal executive and criminological (preventive) policy (Fris, 2012). In our opinion, the theory of combating crime within criminal procedure developed by V.S. Zelenetskii (Zelenetskii, 2012) can be considered an integral part of the theoretical basis for the criminal procedure policy of combating crime. However, a number of other scholars have significantly contributed to the developments of this scholar.

For example, O.M. Lytvynov identifies several levels of functioning of the actors in the fight against crime: The first level is characterised by the development of crime that is virtually uncontrollable by the actors of combating crime, and their role under such organisation of work is limited to registration and stating the very fact of committing an unlawful act; The second level is characterised by the fact that law enforcement bodies are struggling to counter the overall volume of crime (with virtually no forces and means left to prevent crimes in preparation and to solve serious and especially serious crimes committed in conditions of uncertainty); The third level is characterised by the fact that law enforcement bodies manage to take meaningful and often effective measures to solve non-obvious crimes, as well as crimes that have caused a wide public outcry; The fourth level is achieved when law enforcement bodies can carry out extensive preventive, oper-

ational search and criminal procedure activities, as a result of which there are objective prerequisites for minimising crime and neutralising the enabling factors (Lytvynov, 2012).

V.M. Yurchyshyn argues that theories of the general scientific level perform a certain function in relation to research in the theory of criminal procedure. The author develops the idea that criminal procedure is a branch of knowledge related to the study of the grounds and procedure for determining whether a criminal offence has been committed, whether a particular person has committed it and whether he or she is subject to criminal liability in this regard. That is, in his opinion, criminal procedure is a means of implementing criminal law, and therefore it is closely related to the knowledge gained within the theory of criminal law. Theories that address the issues of crime prevention and counteraction also include criminalistics, criminal executive law, criminology, operative-search activities, etc. All of these theories develop their own aspect of crime prevention and counteraction, but they also have a common focus of research, which is crime prevention and counteraction (Yurchyshyn, 2016).

The review of opinions of these and other scholars who have carried out scientific research in the field of the theories of combating crime enable, in development of their thoughts, to argue that the development of the theory can be the following trends: to cover a significant number of objects from various related legal fields with the aim of determining the possibilities of combining them with common features in the theory of combating crime; to clarify the deep content, the essence of the objects already established for the theory in order to find common features that allow them to be attributed to the general theory of combating crime; to change some provisions of the theory of related legal fields in order to bring them in line with the general theory of combating crime; to involve knowledge from other fields of science, which can be essentially positioned as "interdisciplinary", in the general theory of combating crime.

Moreover, the most effective way to theoretically substantiate the investigator's procedural activities within the general theory of combating crime is to expand scientific knowledge, deepen it and involve knowledge from other branches of (related to) legal science.

4. Conclusions

The use of the provisions of the general theory of combating crime with regard to the theoretical issues of criminal procedure, within which the State decides on criminal liability of a particular person, ensures the reliability of scientific results of the sectoral sci-

ence – the criminal procedure. The general theory of combating crime, as a higher-level theory in relation to the theory of criminal procedure, allowing for the importance of pre-trial investigation bodies in the field of implementation of the law enforcement function of the State, should be used as the theoretical basis for the investigator's procedural activities.

The theoretical basis for the investigator's procedural activities implies the following: The expansion of knowledge is implemented through proposals and research of additional powers, procedural means, new principles of criminal procedural activities, application of additional measures to ensure criminal proceedings, additional actors, new forms of investigator's activities, forms of his/her interaction with other actors; The deepening of knowledge is realised through the study of the particularities of application of already introduced criminal procedural institutions in the activities of the investigator, study of their legal nature, and determination of ways of their possible improvement; The attraction of knowledge from other fields of science is realised through the application of sociological, general legal knowledge, results of research in natural sciences, technical, humanitarian sciences, etc.

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ТЕОРЕТИЧНЕ ОБҐРУНТУВАННЯ БОРОТЬБИ ЗІ ЗЛОЧИННІСТЮ ЯК ОСНОВА ПРОЦЕСУАЛЬНОЇ ДІЯЛЬНОСТІ СЛІДЧОГО

Анотація. Мета. Метою статті є визначення шляхів теоретичного обґрунтування кримінальної процесуальної діяльності слідчого. **Результати.** У статті зазначено, що діяльність конкретних суб'єктів правоохоронної діяльності є предметом дослідження відповідних, певною мірою розрізних між собою, галузевих правових наук, кожна з яких використовує різні терміни для позначення дій, процесів, які за змістом тотожні. Розвивається думка, що хоча науковці розглядали окремі теорії юридичних наук, позиціонуючи їх взаємозв'язок, але не робили наступного кроку, об'єднання цих теорій у загальну мегатеорію – боротьби зі злочинністю. Такий стан обумовлює необхідність з'ясування процесуальної ролі слідчого (як діяльності, здійснюваної ним у різних напрямках) з використанням положень загальної теорії боротьби зі злочинністю. Найбільш ефективним шляхом теоретичного обґрунтування кримінальної процесуальної діяльності слідчого в рамках загальної теорії боротьби зі злочинністю є розширення наукових знань, їх поглиблення шляхом залучення знань з інших областей (дотичних) юридичної науки. **Висновки.** Зроблено висновок, що загальну теорію боротьби зі злочинністю як теорію вищого рівня щодо теорії кримінального процесу з урахуванням значення діяльності органів досудового розслідування в царині реалізації правоохоронної функції держави доцільно використовувати як теоретичну основу процесуальної діяльності слідчого. Теоретичне обґрунтування кримінальної процесуальної діяльності слідчого здійснюється такими шляхами: розширення знань реалізується через пропозиції та дослідження додаткових повноважень, процесуальних засобів, нових засад кримінальної процесуальної діяльності, застосування додаткових заходів забезпечення кримінального провадження, додаткових суб'єктів, нових форм діяльності слідчого, форм його взаємодії з іншими суб'єктами; шляхом поглиблення знань реалізується через дослідження особливостей застосування вже запроваджених кримінальних процесуальних інститутів у діяльності слідчого, вивчення їх правової природи, визначення на цій підставі шляхів їх можливого вдосконалення; шляхом залучення знань з інших областей науки реалізується через застосування соціологічних, загально-правових знань, результатів досліджень природничих наук, технічних, гуманітарних тощо.

Ключові слова: слідчий, процесуальна діяльність, боротьба зі злочинністю, галузеві правові науки, теоретичне обґрунтування.

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