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# The realization of the requirement of the rapid investigation of the circumstances of the case at the stage of the institution ofthe criminal cause

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**Abstract.** The requirements of the rapid investigation of the circumstances of the cause at the stage of the institution of the proper criminal cause have been analyzed in the article. The authors emphasize that the criminal proceedingsshould be the effective tool of the state protection of the rights and the legitimate interests of citizens and legal entities when the tasks of the rapid and the complete disclosure of the crimes are properly implemented by gradually implementation of the tasks of each stage. At the same time, any institution of lawfulness, rights and legitimate interests of the individuals and the legal entities are inadmissible, and institution of lawfulness cannot be justified by the link to the fact that it is necessary to fight against crime.

**Key words:** prejudicial proceedings; crime; criminal cause; criminal proceedings; criminal procedural legislation.

**Statement of the problem**. The political and the socio-economic changes, the way of the transformation where Ukraine has stood, require the new approaches to the reform of the Ukrainian criminal procedural legislation. At the same time, its change assumes the wide use of the achievements of the legal science, taking into account the social realities, awareness and estimation of the positive and the negative Ukrainian and the foreign experience of the criminal procedural practice.

The important modern task of the legal science, rule-making and legal practice is the real securityof the legal protection of the person, fuller and deeper strengthening and the development of the guarantees of the rights and the freedoms of every citizen, the legitimate interests of the state and the society as a whole. The significant role in security of these regulations is given to the realization of the present criminal procedural tasks as for the rapid and the complete disclosure of the crimes. Legislative securityof the realization of the tasks of rapid and full disclosure of crimes should be optimal and based on the correct correlation of interests of the state and the individual.

**Analysis of recent research and publications**. The studied problem has been highlighted in the works of such scientists as S. Bazhanov (Bazhanov, 1995, pp. 51-54), A. Huliaiev (Huliaiev, 1976, 135 p.), V. Zelenetskyi (Zelenetskyi, 1998, 340 p.), N. Kovtun (Kovtun, 1991, pp. 91-99), D. Pismennyi (Pismennyi, 1980, p. 19) and others. The state and the logic of the previous scientific research, the modern investigating practice, the requirements of the Constitution of Ukraine and international-legal acts, the regulations of the Concept of Judicial Reform in Ukraine require the new approaches to security of qualitative investigation and, ultimately, to the rapid and the full disclosure of crime.

All afore-said led to the choice of the theme of scientific research, which is actual and has the scientific and the practical meaning.

**Methodologyof research**. Choosing the methodsof the research, the authors took into account their compliance with such criteria as efficiency and reliability. The number of the approaches has been usedduring the research: dialectical, descriptive, formal-legal and comparative-legal.

**Purpose of the article** is to reveal the concept and the essence of the rapid and the complete disclosure of the crime, to determine their unity, relationship, interdependence, the role in the implementation of other tasks of the criminal process and the installation of the truth in the cause at the stage of institution of criminal cause.

**Presentation of the main material**. The initial stage of criminal proceedings is limited with thedetermined time frame. As a rule, the conclusionabout the institution of a criminal cause or the denialin its institution must be made no later than three days, and if it is necessary, the inspection of the declaration or the notification about the crimemust be within a period not exceeding ten days. The installedterms are, on the one hand, the means of security of efficiency in the fight against crime, and on the other it is as a guarantee of the protection of the state, the public and the personal interests of the citizens. The installation of the time period in the law is necessary because of the speed of the proceedings won't excessive and it won't turn into unjustified haste, because of time limits allow realizing assigned tasks to its. So, the compliance with the term of the conclusion of notificationabout the crime or event which have been received by the competent authority, always contributes not only the fight against red tape, but also security

of the effectiveness of proceedings, the protection of rights of the personality. At the same time, untimely institution of the criminal causecan lead to non-disclosure of the crime.

One of the reasons of the institution of the terms in the initial stage of the criminal process is the imperfection of the legal nature of the proceedings of checking action. In practice, the time limits of this stage are often unspecified. The destruction of the limits of the stage is caused, in our opinion, with the imperfection of the legal formulation of such mentioned cause in the law as the direct exposure of the signs of the crime, and on the other hand as the expanded interpretation of "sufficient data" indicating the signs of the crime. Such ground as the direct exposure of the signs of the crime, firstly, has no legally fixed form; secondly, its installation is preceded by non-procedural activities.

The timeliness of the adaption of the conclusion at the stage of the institution of the criminal cause depends directly on the interpretation of the concept of "sufficient data indicating signs of the crime". This concept is evaluative, which causes difficulties duringthe installation of the grounds to the institution of the cause.

Within 10 days, the significant part of the notificationssolves which has entered the authorities of Internal Affairs about the bodily injuries, the severity and the criminal nature which have not yet been determined. The victim can be hospitalized for some time, and if during this time to wait for the end of the medical examination without institution ofthe criminal cause, the person who has caused the injury, has the opportunity to do everything to avoid the possible responsibility (to destroy traces of the event, the evidence, to create an alibi, etc.).

Very often in such cases, there is the necessitytoinstitutethe criminal cause, because eventually it turns out that the victim is suffered with the moderate or the severe injuries. In the practice, there have been cases where victims have died from received injuries after long-term treatment. The investigation in such cases was significantly complicated due to the untimely institution of criminal cause, and then it led to the impossibility of proving the culpability of the person in committing ofthe criminal act. When, after treatment, the minor injuries are detected, not all victims refuse to file a complaint or to reconcile with the individuals who have done it. As a result, the judge must institutethe criminal cause.

As it is known from the practical experience that according to the report of the operatives or the district inspectors, the head of the bodies ofinquest continues the deadline (10 days) ofthe checking materials. Such practice is not based on the law and it exists, in our opinion, for the following reasons:

1. Lack of knowledge of some heads that the law does not assume the possibility of continuation of the term of the checking of declarations and notifications of the crimes;

2. Insufficient exactingness of the heads of the authorities of internal affairs to the executors of the initial checking of the materials as soon as possible.

If the checking is not completed within ten days, it should not be continued, but theconclusionabout the institution or about the denialaboutthe institution of the criminal cause should be made. So, 10-day of checking is final and cannot be subject to continue, it is about in the order of the Prosecutor General of the USSR of № 8 of 5.02.1985 "About the tasks of prosecutor's office of the monitoring of the implementation of legislationaimed at further increase of efficiency of work of bodies of inquest, preliminary investigation and court". We will dwell in detail on the deadlines of the solution ofdeclaration and notification of the crimes where it is necessary to carry out checking actions. There are several opinions about these termsin the literature. Some authors have spoken for the preservation of existing terms. Other authors consider it is necessary to change them.

The supporters of the following view, based on the fact that "it is impractical to continue the existing termof checking for all cases, because the predomination part of declarations are considered in installed term", propose to give the prosecutor the right in exceptional cases to continue the 10-day term of the consideration of declarationsand notifications about crime. This proposal is supported by A. Huliaiev (Huliaiev, 1976). M. Yakubov, supporting the same position, also points out the limits to which it would be possible to continue the term,it is up to one month (Yakubov, 1969, p. 8, 16). Some authors, speaking for allotment the right ofthe prosecutor to continue these terms, point out that "it is expedient to foresee in law the right of the prosecutor to set the term of the additional checking within ten days" during abolition of the resolution about denial in the institution of the criminal cause, which is issued by the bodies of inquest or interrogator on incomplete, insufficiently tested materials.

S. Bazhanov does not agree with this proposal, because its realization, the author considers, would contribute to red tape, which goes against this principle of criminal legislation as the inevitability of responsibility. The scientist speaks against conducting of investigative inspection, noting that the checking actions at the stage of institution of the criminal causeconstitutes an anachronism of the criminal procedural legislation, which is reduced to meaningless red tape and the excessive reinsurance (Bazhanov, 1995, pp. 52-53).

It is impossible to agree with this proposal. It is obvious that conducting of the investigative actions, aimed at installation of the presence or the absence of the signs of the crime, can lead to arbitrariness, narrowing or institution of the rights of the personality. In the literature, in our opinion, it has been rightly noted that the institution of the criminal cause on the primary materials, if it does not need to carry out checking actions, should be carried out immediatelyentrance of these materials. The main problem in the solution of the question of the timeliness of the institution of the criminal cause is due to the impossibility without carrying outof certain procedural actions to collect in some cases sufficient data which are indicated the signs of the crime. One of the means of the collection of the factual data without institution ofthe criminal cause is the demand of the necessary documents.

The demand of the necessary documents, as practice shows, is not always the effective ways of the collection of such data. One of the reasons of this is that the documents are submitted in an unreasonably long time, and the law has not provided the real means for the acceleration of this. This is due to the fact that at the stage of the investigation of the checking, thecompetent authorities do not have the possibility of the application of the measures of the criminal procedural compulsion in its order. In our opinion, the criminal cause regarding accidents, fires, explosions and other events should be instituted immediately, because only as the result of the investigative actions it is possible to identify fully all the circumstances of the accident, explosion, fire, to provide real measures for the elimination of the reasons which have caused them. In these cases, the conclusion about immediately institution ofthe criminal cause is valid, because the consequences testify the institution of the rules of labor protection and safety measures.

One of the actual problems at the stage of the institution of the criminal cause is the security of the timely solution of the declarations and the notifications about missing citizens. As V. Zelenetskyi notes, latelymissingcitizens have become very widespread (Zelenetskyi, 1998, p. 120). The large number of missing individuals are victims of crimes, especially the elder people, children and women. Suchregulationsare largely explained by the fact that the established orderof the consideration of thedeclaration and the notification of the disappearances arebroken.

In our opinion, the approximate list of the circumstances of the crimeshould be made in the Criminal Procedure Code of Ukraine which are most common, in the presence of which it is necessary to instituteimmediately the criminal cause: the juvenile and old age of the missing person; the absence of information about the intention to leave; theabsence of disease that can cause sudden death, memory loss; availability of personal documents at the place of residence; availability of personal clothing in which the missing person has to be; the availability of prolonged conflicts in the family; the availability of criminal connections, threats against the missing person, contradictory explanations and illogical behavior of those who have come into contact with the missing person; the availability of traces that testify the commission of the crime in the apartment, in the car; when it can be foreseen the specific suspects from the explanations of the interviewees.

These circumstances were discussed in the General Instructions of the General Prosecutor's Office of the USSR, the Ministry of Internal Affairs and the Ministry of Health of № 101/15/18 of 03.11.1986 "About measures of the security of lawfulness of the solution of the declarations and the notifications about the missing citizens, timely disclosure of the crimes" and also in the General Instructions of the Prosecutor General's Office, the Ministry of Internal Affairs and the Ministry of Health of Ukraine of № 15/110 of 28.07.1993, of № 6 of 30.06.1993 "About consideration of the declaration and the notifications about missing in-

dividuals, timely institutionof the criminal cause at the articles of the Criminal Code and realization of detection". These circumstances are too important for the determination: under what criminal or other influence a person has disappeared. However, for the lawfulness of the provision of the decision of the bodies of inquest and investigation, as rightly V. Zelenetskyi notes, it is necessary to establish the signs of the specific crime (Zelenetskyi, 1998, p. 123).

The speed of adoption of the legal conclusion at the initial stage of the criminal process also depends on the timeliness consideration of the complaints about the denialin the institution of the criminal cause. According to Article 99-1 of the Criminal Procedure Code of Ukraine, the interested person has the right to file the complaint to the relevant prosecutor against the provision of the investigator and the bodies of inquestabout the denial of the institution of the criminal cause for seven days of receiving of the copy of the provision (Criminal Procedure Code of Ukraine, 2013). Having checked the complaint, the prosecutor can refuse in abrogation of this provision. After that, the interested person has the right to file a complaint to the court, where it is considered for 10 days from the date of entrance (Criminal Procedure Code of Ukraine, 2013). The court can decide to cancel the provisionabout thedenial of the institution of the criminal cause and return the materials to the competent authority for therealization of the additional checking. This means that the task of timely and lawful solution of information about the crime has not been carried outby the bodies of inquest or the investigator.

From the analysis of the content of Article 99-1 of the Criminal Procedure Code of Ukraine, it can be come to the conclusion that the procedure of checking of the lawfulness of the adaption ofdecision about denial of the institution of the criminal cause has the significant duration, which does not meet the requirements of rapid disclosure of the crime (Criminal Procedure Code of Ukraine, 2013). We consider that Article 99-1 of the CPC must be brought inaccordance with Article 55 of the Constitution of Ukraine, which guarantees everyone the right to appeal decisions of authorities and officials directly in the court (Constitution of Ukraine, 1996). Each person, interested in abrogation of the provision of the investigator or bodies of in questabout the denial in the institution of the criminal cause, must have the right to go directly to court, bypassing the prosecutor.

The question about the term of the realization of the additional checking is actual after the judge has decided to cancel the provision about the denial of the institution of the criminal cause. In our opinion, in each case of adaption of this decision, the term of such checking, as it seems, it will be correct to set a judge who realizes the judicial control of the observance of lawfulness at the stage of the institution of the criminal cause.

However, the investigator's activity begins not from the moment of the institution of the criminal cause, but from the moment of receiving of information about the crime by him. A. Huliaiev draws attention to this circumstance, who

considers it is expedient in the legislative order to give the investigator the right to instruct the bodies ofinquestabout realization ofthe actions of the checkingof the existence of grounds tothe institution of the criminal cause. In his opinion, the investigator does not always have the opportunity to quickly switch to the implementation of the checking actions in the proceedings of who the criminal causeis, which leads to loss of efficiency at the stage of the institution of the criminal cause, and as a result it is the loss of opportunity of receiving ofevidence, continuing of criminal activity, etc. (Huliaiev, 1976, p. 32).

D. Pismennyi approaches this question differently. In his opinion, the right to charge with missions and instructions to the bodies of inquestabout the realization of the checking and the search actions should be given to the head of the investigative subdivision (Pismennyi, 1980, p. 18). In our opinion, the investigator must not be engaged in the implementation of checking activities that take a long time. And the modern practice goes this way. If the investigator during the day from the date of entranceof the declaration or the notification about the crime has not established the availabilityof the grounds for the institution of the criminal cause, the absence of circumstances including its institution, he must have the right to send materials to the bodies ofinquest for conducting of the investigation. In order to prevent red tape on the part of individualsconsidering the current information, it is recommended to fix in the law interdict of the bodies of inquest to transfer to the investigator declaration, letters, notifications that require preliminary checking.

The law currently inforcedoes not oblige the bodiesof inquest to inform the investigator about the entranceof thedeclaration or the notificationabout the crime. Absolutely, timely receiving of such information would be a precondition of the rapid inclusion of the investigator in the consideration of suchdeclaration or notification. In this regard, the proceduralists propose to supplement the criminal procedural law with a regulationabout the obligation of the bodies of inquestduring a day to inform about the detected crime of the investigator to whom it is sent. According to A. Huliaiev, "such information is appropriate from two points of view:

firstly, it contributes the earlier inclusion of the investigator in the examination of thedeclaration or the notificationabout the crime;

secondly, it allows the investigator to distribute his working time more systematically" (Huliaiev, 1976, p. 32).

It is noteworthy opinion of the scientists about that with the purpose of timely exposure and elimination of admitted institution of the law, it will be appropriate to foresee a rule that obliges the bodies of inquest and investigator to reportimmediately the prosecutor about the declaration or the notificationabout the crime which has been received (Pismennyi, 1980, pp. 18-19). The correct and timely reaction to each declaration and notification about the crime which has been received by the authorities of Internal Affairs, provides the successful

solution of the tasks of disclosure, quality and rapid investigation of crimes. The wrong, and also untimely decision on the declaration and the notification, insufficiently deep checking of the declaration and the notification aboutthe crime, and even more hiding them from accounting,undermines the foundations of the fight against crimes, the principle of inevitability of responsibility for each crime and it generates in criminals the notion about impunity, weakness of government agencies in the fight against crimes.

**Conclusions and perspectives of further research**. The reserves of the increase of the efficiency of the reaction to the signals about the crimes are in further improvement of the criminal procedural legislation. In the interests of the theory and the practice of the fight against the crimes, the normshould be includedto the Criminal Procedure Code of Ukraine that will regulate the task of rapid and complete disclosure of the crimes, which will provide the optimal correlation of the protection of the interests of the society and the interests of the personality in the criminal proceedings. The rapid disclosure of the crime means the activity of the bodies of preliminary investigation, aimed at reduction of the time from the moment of the perpetrationof the crime (receiving of information about the crime) to the institution of the criminal cause, and in further proceedings, it is before the establishment of all circumstances of the crime and the personalities who havecommittedthem which is expedient only, when it does not interfere with the comprehensiveness, completeness and objectivity, the achievement of the purpose of the proceedings, and also does not institute the rights and the legitimate interests of the subjects of the process.

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