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ELECTRONIC DOCUMENT FLOW AS AN AREA OF IMPROVING THE CRIMINAL PROCEDURAL FORM DURING PRE-TRIAL INVESTIGATION IN UKRAINE

(ABSTRACT, KEY WORDS)

Problem statement. Currently, the problems of optimizing the working hours of the investigator (inquiry officer); the prosecutor as a supervisor of pre-trial proceedings; investigating judge during the pre-trial investigation in criminal proceedings, a significant part of which is document flow, remain unresolved in Ukraine. During the pre-trial investigation, the potentials and functionality of electronic systems or databases are not fully applied due to insufficient incorporation of provisions on electronic proceedings, including electronic document flow, into the criminal procedure legislation. **The purpose** of the work is to improve electronic document flow during the pre-trial investigation in Ukraine as an element of the criminal procedural form. **The methods** applied are comparative legal – to compare and contrast electronic forms of the document flow in Ukraine and abroad; technical legal – to define legal provisions establishing the bases for electronic document flow in Ukraine; logic method and the method of system analysis – to develop proposals for the improvement of electronic document flow in Ukraine. **Results.** It is proposed to change the provisions of the Criminal Procedure Code of Ukraine, revealed in amendments to Articles 36, 40, 40-1 of the Code, regulating the powers of the investigator, inquiry officer, prosecutor in terms of establishing the procedure for filing a motion on security measures, or investigative (search), covert investigative (search) actions. In addition, it is proposed to supplement Articles 99, 110 of the above Code, as well as paragraph 3 of the Regulations on the Unified Register of Pre-Trial Investigations, with provisions that will facilitate the initiation of electronic document flow during the pre-trial investigation. **Conclusions.** Considering the increase in document flow between the investigator (inquiry officer), prosecutor as supervisor of pre-trial proceedings and investigating judge in the criminal proceedings of Ukraine since 2012, and the optimization of such activities is required, including through electronic document flow as the latest criminal procedural form.

Key words: procedural form; pre-trial investigation; document flow; electronic systems; electronic document

Problem statement

During the pre-trial investigation in Ukraine, all the potentials of criminal procedures are not adequately used, while in today's world it is being improved due to the development of the scientific and technical component, in particular in the fields of electronic media, electronic document flow, and electronic databases.

The framework of the existing criminal procedure legislation has enabled S.M. Melnyk, M.M. Mykheienko [1, p.6; 2, p.30] to reveal logically some aspects of the concept of criminal procedural form. However, scientists do not consider the actual transformation of a criminal procedural form due to the electronic and technical potentials of present document flow. Furthermore, Rafael Jorge de Cas-

tillo Barilli (Barilli, 2018) focuses on the form of investigation and considers the oral form as the methodological centre of the process from the beginning of an investigation to appeal proceedings in court [3, p.685].

Taking into account practical needs in optimizing activities during the pre-trial investigation, electronic document flow should be intensively introduced into the activities of law enforcement bodies, but Ukraine takes advantage of the potentials of electronic carriers and systems available at a slow pace. It should be noted that in the course of the study of introducing scientific and technical means in Kazakhstan, Z.K. Aiupova, D.U. Kusainov, Zh.K. Madaliev, G.N. Musabaev, and D. Rakhimova are focused on the issues of the procedural economy [4, p.663].

According to S. Gradmann and J.K. Meister (Gradmann and Meister, 2008), the pragmatic advantages of digital documents are the ease of access and distribution, viewing, and searching of information [5, p.140] that further highlight the benefits of the electronic procedural form. For example, electronic activities are introduced in foreign countries, such as Brazil, where, according to R.R.C. Guimarães and Ribeiro (Guimarães and Ribeiro, 2020), electronic police requests are used in the administration of the judicial police (e-Pol) [6, p.159]. Therefore, the electronic documents and their copies, stored or reproduced from the official electronic databases concerning pre-trial investigation in criminal proceedings (motions, decisions, rulings, communications) could be found adequate and used in the reasoning behind the conduct of any procedural or investigative (search) actions before an investigating judge in the criminal proceedings of Ukraine. However, nowadays, this is not clearly stated in the legislation. For many years, A.V. Stolitnii has been working in this area and admits the presence of document flow in the criminal procedure of Ukraine in the framework of "Electronic Proceedings", but does not sufficiently cover the interaction between electronic systems [7, p.24].

Besides, it should be emphasised that, in Ukraine, mainly electronic databases relating to the criminal procedure are used for the collection of information, its analysis, and statistical reports, but the development of electronic systems interoperability and document flow are not studied substantially, though it would significantly affect the quality of pre-trial investigation in general. Therefore, the article aims to improve electronic document flow during pre-trial investigation in Ukraine as a component of criminal procedural form. Its originality is the establishment of a regulatory legal framework for the use of copies of documents made by the investigator (inquiry officer), the prosecutor, and the investigating judge in the electronic criminal procedural form during electronic document flow at the stage of pre-trial investigation in Ukraine.

The article aims to analyse the concept of criminal procedural form and to define the areas of its improvement; to determine the state of affairs in applying electronic document flow in Ukraine; to provide suggestions on initiating electronic document flow in the criminal procedure of Ukraine as an updated criminal procedural form.

The concept of criminal procedural form and its electronic application

Since the concept of procedural form is not de-

defined in Ukrainian legislation, it has become interpreted in the scientific literature.

In particular, according to S.M. Melnyk, the procedural form is a certain sequence of stages in criminal proceedings, provided for in criminal procedure law; the system of criminal procedure institutions and rules regulated by law; and the set of procedural requirements for participants in proceedings, taking into account the most appropriate procedure for their powers to be exercised, the methods and the time limits for procedural actions, the legal regime for the operation and enforcement of the rights of all participants in the process [1, p.6–7]. Without the advocacy of this author's perspective on the definition of the procedural form as the sequence of the stages of the criminal procedure, it should be noted that in the definition of this form, the scholar focuses on the most appropriate procedure for exercising the powers of the parties to proceedings, but does not sufficiently specify the form for this procedure to be applied. Therefore, electronic document flow may be a step towards the development of the criminal procedural form, in particular, a reasonable procedure for the exercise of powers by participants in criminal proceedings, which requires both the further study by the scientific world and its implementation.

According to M.M. Miheienko, the procedural form is the arrangements of all criminal procedure activities of the preliminary investigation bodies, the prosecutor's office, and courts, as well as citizens and legal entities involved in these activities, within the framework of the criminal procedure law; as well as the procedure for the commission and processing of individual procedural actions, the adoption, processing, and enforcement of procedural decisions [2, p.30].

It should be noted that the criminal procedural form is nothing more than a procedure for the activities of the subjects of criminal proceedings that is the obtaining permits for investigative (search) or procedural actions, in compliance with the requirements for case management in the process of the creation and production of documents of criminal proceedings. However, it should be noted that scientist does not cover the impact of the development of electronic technology on the criminal procedural form in Ukraine.

In addition, the comparative method of the study enables one to mention that, for example, in Brazil, the additional oral format of the procedural form is considered alongside the written criminal procedural form. For example, Rafael Jorge De Castillo Barilli (Barilli, 2018), argues that the written proce-

dural form is not ideal and sufficient, given the influence of many factors, not formally fixable, but affecting the outcome of the case [3, p.669].

In Ukraine, the procedural form of criminal proceedings is an understudy for a long time, but, given the potential for scientific and technological progress, it should be noted that the perspective on it has been updated. For example, academic circles study issues concerning electronic evidence in criminal proceedings, its admissibility, and adequacy, that is, the adoption as a criminal procedural form. The question of the admissibility of evidence shall be decided by the court during the trial, which may consider it either on its initiative or on the initiative of the parties to the criminal proceedings, in the form of a motion [8, p.153]. The Ukrainian Criminal Procedure Code (hereinafter referred to as the CPC) has introduced individual regulations providing for the basis for the evaluation of electronic evidence for admissibility in criminal proceedings and the like. However, in Ukraine, the issues of electronic criminal procedural form are insufficiently under focus.

In connection with the electronic criminal procedural form, various aspects, both organizational and normative, are studied, in particular, A.V. Stolitnii's scientific developments on electronic proceedings in criminal procedure. The scientist proposes to define electronic proceedings as "a criminal procedure regime based on compositional algorithms of URPI's automated criminal proceeding procedures and integrated electronic information systems". According to the scientist, electronic proceeding "is realized by the subjects in electronic format and is recorded in an official electronic procedural document" [7, p.26-27]. It should be accepted that from the technical perspective, the introduction of electronic proceedings is best carried out based on the Unified Register of Pre-Trial Investigations. However, for electronic proceedings to function, the regulatory legal framework for the adequacy and admissibility of this electronic criminal procedural form should be provided in detail, which is not specifically proposed by the scholar.

Development and application of electronic document flow in Ukraine

In general, in Ukraine, electronic documents and document flow are being initiated. For example, the Laws of Ukraine "On electronic documents and electronic document flow" of 22 May 2003 [9] and "On electronic trust services" of 5 October 2017 [10] are adopted; an electronic taxation cabi-

net is established [11]; access to the Unified State Register of Declarations is provided in the form of electronic document [12], etc.

Furthermore, the Concept for the development of e-government in Ukraine, approved by the Order of the Cabinet of Ministers of Ukraine no. 649-r of 20 September 2017, recognizes e-government as a challenge to be addressed by 2020 and identifies it as one of the priorities of public administration reform. Moreover, the Concept focuses on the development of electronic interaction and the development of electronic document flow. The introduction of automated data exchange between the information and telecommunications systems of the authorities is envisaged in the area of the development of electronic interaction. It is underlined that this would improve the efficiency of the authorities by reducing the time required for obtaining the necessary data, improving the quality and relevance of the data processed, etc. [13].

It should be noted that, under the legislator's enhancing understanding of the criteria for the admissibility of electronic documents in criminal procedure, as well as following the amendments to Article 99 of the CPC in 2017, the duplicate of the document, as well as a copy of the information, which is in the relevant electronic or automated systems and is made by an investigator or a prosecutor with the participation of a specialist, is admitted by the court as the original document [14]. Therefore, if a copy of the information contained in the relevant electronic systems is found admissible as the original of the document, similarly it is possible to file documents for obtaining a court permitted in criminal proceedings in an electronic form that optimizes the activities of participants in proceedings and is particularly relevant in circumstances such as the overload of investigators and investigating judges.

Similar to the development of e-government, it is advisable to design and implement the concept of development of electronic interaction and electronic document flow during the pre-trial investigation of a criminal offence.

Electronic document flow dissemination in criminal procedure of Ukraine

It should be noted that since 2012 document flow has increased significantly, due to the procedural guidance in criminal proceedings and the powers of the investigating judge in criminal procedure. Given of the above, the focus should be on the relatively new concept in the criminal procedure of Ukraine, namely the concept of criminal proce-

dural guidance, which came into effect in 2012 with the introduction of the CPC to replace the previous one that has incorporated Soviet law and required changes, since it could not meet the needs of modern society, priority thereof is the protection of human rights and freedoms as the supreme value in the State [15]. In addition to procedural guidance available during the pre-trial investigation, a significant part of the actions of the investigator or the prosecutor requires the permission of the court, namely, a decision to take security measures, to conduct, investigative (search) actions, investigative (search) actions in a person's home (in some cases), almost all covert investigative (search) actions.

For example, according to para. 10, Part 2, Article 36 of the CPC, the Public prosecutor, while providing procedural guidance, shall have the right to support or refuse to support the motions of the investigator (inquiry officer) on the conduct of investigatory or other procedural actions. Moreover, the prosecutor, as the procedural supervisor of the criminal proceedings, can individually submit such motions to the investigating judge [14].

According to para. 5, Part 2, Article 40; para. 4, Part 2, Article 40¹ of the CPC, the investigator or the inquiry officer shall have the right to submit upon the approval of the public prosecutor, motions to the investigative judge in respect of the application of investigatory (search) actions or measures to ensure conducting criminal proceedings [14].

According to para. 18, Part 1, Article 3 of the CPC, the investigating judge is in charge of carrying out court supervision over the observance of rights, freedoms, and interests of persons involved in criminal proceedings [14].

Attention to the issues of electronic document flow is prompted by the current need to optimize the activities of the participants in the pre-trial investigation, in particular the investigator, the prosecutor as the procedural supervisor, and the investigating judge [16 p.248], which is also the procedural economy. Z.K. Ayupova, D.U. Kusainov, Z.K. Madaliev, G.N. Musabaev, and G.D. Rakhimova (2019) define the use of scientific and technological means and electronic proceeding as one of the forms of such an economy [4, p.663].

Therefore, the focus should be on activities related to obtaining: 1) permits during the conduct of procedural or investigative (search) actions; 2) rulings, judgements for enforcement by the direct executor.

1. Obtaining permits (rulings) from the investigating judge

To optimize obtaining permits (rulings) in the course of procedural or investigative (investigative) actions and submitting the materials of criminal proceedings in this regard, at the initiative of the Office of the Prosecutor-General, a system of electronic proceedings "e Case" has been developed which is to be tested by the National Anti-Corruption Bureau of Ukraine, the Specialized Anti-Corruption Prosecutor's Office and the Supreme Anti-Corruption Court. In the case of its positive application, the question of its further introduction into the practice of pre-trial investigation of a criminal offence will be addressed. The "e Case" system is currently being discussed by scientists and practitioners and has been presented to the members of the Committee on Law Enforcement Activities of the Verkhovna Rada of Ukraine [17]. It is expected that the exchange of information between the investigator, the prosecutor, the judge will be improved; the time spent by the participants in the pre-trial investigation will be reduced and interaction between them will be coordinated; the possibilities of materials falsification will be eliminated and corruption risks will be reduced. The "e Case" system will provide real-time up-to-date and objective information on the state of affairs in criminal proceedings and crime in general [18, p.1–2].

2. Obtaining judgements for enforcement

The next is to improve the ways of obtaining judgements for enforcement of rulings or decisions by electronic means in the activities of law enforcement bodies – cooperation between the authorities, units, and courts in the course of apprehending a person on suspicion of having committed a criminal offence or a person who has been announced in a wanted list or in whose regard there is a ruling to apprehend for compelled appearance. Such work may be carried out not only in the area of apprehending but also in other cases concerning rulings, decisions for enforcement.

A comparison of the legal provisions of the criminal procedure of Ukraine and those of the United States of America shows that electronic devices and systems have been introduced into the law enforcement activities of US police and significantly assist police officers in the performance of their duties. For example, through the National Crime Information Centre electronic database, a police officer in the United States can obtain information about a person to be checked, for example, for driving license, etc. [19 p.94]. If the system contains information on the presence of this person in a wanted list for the commission of an offence, the

arrest of such a person may be promptly carried out. Moreover, an electronic copy of the arrest warrant of a person is the lawful and legal ground for such apprehending [20, p.548]. Therefore, apprehending is lawful and in by the procedural form of its conduct.

Currently, in Ukraine, no statutory or organizational possibility is provided to promptly identify and apprehend a person suspected of committing a criminal offence similar to United States law.

However, in Ukraine for two years an electronic system "Custody Record" has been introduced in the test mode in four temporary holding facilities (hereinafter referred to as the THF) in Sarny, Kropyvnytskyi, Kherson, and Dnipro [21]. This was caused by violations by law enforcement officials during apprehension or false reports on this from persons apprehended as part of their tactical conduct to counter legitimate criminal proceedings. The initial stage in the introduction of the system is the external monitoring of video recording of persons apprehended in the THF premises, which contributes to the protection of their rights and freedoms and protects the employees of these institutions from unfounded complaints and the time spent in ascertaining their truthfulness.

A pilot project to launch the "Custody Record" system is planned in the units of the National Police of Ukraine, in addition to its further testing in the THF [21]. This system has the unconditional benefit of being oriented towards documenting actions related to apprehending a person.

Measures to improve document flow in criminal proceedings of Ukraine

In order to optimize the activities of the investigator (inquiry officer), the prosecutor as the procedural supervisor and the investigating judge, as well as considering: 1) the requirement to organize the cooperation of the Unified Register of Pre-Trial Investigations (hereinafter – the URPI) with other public information systems, registers and databases (para. 5 of Regulations on the URPI, its creation and management, approved by the Prosecutor General's Order no. 298 of 30 June 2020); 2) the purpose of the court automated document flow system (hereinafter referred to as the CADFS) is to ensure *the exchange of information resources* between the courts, the judiciary and trial participants (para.1, para.2, Section III of the Regulations on the CADFS); *we consider it necessary to organize automated document flow* as part of the pre-trial investigation of criminal proceedings using official electronic databases (systems), including be-

tween the URPI database and the CADFS or the Unified Judicial Information Telecommunication System (from the date of its establishment).

To do this, *it is proposed* to amend:

1. The Criminal Procedure Code of Ukraine:

– in para. 10, Part 2, Art. 36; para. 5, Part. 2, Art. 40; para. 4, Part 2, Art. 40-1 of the CPC, add "including by means of information (automated) systems, telecommunication systems, information and telecommunications systems, their integral parts";

– in Article 99 of the CPC of Ukraine, add Part 4-1 to read as follows: "A copy of the information contained in official electronic databases or systems of law enforcement bodies, the Prosecutor's Offices or judicial authorities, produced by the investigator (inquiry officer), the prosecutor, the investigating judge or the judge shall be admitted by the court as the original document";

– in Article 110 of the CPC of Ukraine, add Part 6-1 to read as follows: "The decision of the investigator, the inquiry officer, the prosecutor can be expressed in electronic form";

– in Article 110 of the CPC of Ukraine, add Part 6-2 to read as follows: "The decision of the investigator, the inquiry officer, the prosecutor shall be issued electronically under with the requirements of the laws governing the processing of such documents, including the use of an electronic digital signature";

– in Article 110 of the CPC of Ukraine, add Part 8 to read as follows: "An electronic copy of the decision of the investigator, the inquiry officer, the prosecutor, contained in official electronic databases or systems of law enforcement bodies, the Prosecutor's Offices or judicial authorities shall be the legal ground for their execution".

– in Article 371 of the CPC of Ukraine, add Part 7 to read as follows: "A copy of an electronic judgement contained in official electronic databases or the systems of law enforcement bodies, the Prosecutor's Offices or judicial authorities shall be the legal ground for its execution";

2. the Regulation on the Unified Register of Pre-Trial Investigations, a procedure for its creation and management:

– in para. 3, Section 1, Subsection 1, add the third paragraph to read as follows: "storage of texts of decisions, motions and other procedural documents, organization of automated document flow".

Conclusions

1. Concerning to interpreting the concept of criminal procedural form, it is revealed that its defi-

nitions do not give sufficient attention to the electronic expression of this form.

2. It is established that one of the areas of improving criminal procedural form during pre-trial investigation in Ukraine is electronic document flow.

3. It is proposed in the CPC and the URPI regarding the introduction of electronic document flow in the criminal procedure of Ukraine as an updated criminal procedural form – to admit electronic copies of criminal procedural documents, con-

tained in the relevant automated databases as original documents.

Conflict of interest

The author of the article reports the absence of any conflict of interest.

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