

## PROBLEMS OF STARTING A PRE-TRIAL INVESTIGATION BEFORE AND DURING THE COVID-19 PANDEMIC. COMPARISON OF THE INTERNATIONAL CONTEXT

PROBLEMAS PARA INICIAR UNA INVESTIGACIÓN PREVIA AL JUICIO ANTES Y DURANTE LA  
PANDEMIA COVID-19. COMPARACIÓN DEL CONTEXTO INTERNACIONAL

*Larysa Arkusha*<sup>\*</sup>

*Oleksandr Torbas*<sup>\*\*</sup>

*Vladlena Voloshyna*<sup>\*\*\*</sup>

*Viktor Zavtur*<sup>\*\*\*\*</sup>

*Tetiana Babchynska*<sup>\*\*\*\*\*</sup>

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**Abstract:** The challenges posed by the spread of coronavirus infection are global and affect almost all spheres of public life, including criminal justice. To minimize direct social communication, the possibilities of using remote legal procedures in criminal proceedings have been expanded. The legal

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<sup>\*</sup> Doctor of Legal Sciences, Professor, Acting Head of the Department of Criminal Procedure of the National University “Odesa Law Academy” (Odesa, Ukraine). <https://orcid.org/0000-0002-0422-6416>. [larisa7arkusha@gmail.com](mailto:larisa7arkusha@gmail.com)

<sup>\*\*</sup> Ph.D., Associate Professor of Criminal Procedure Department, National University “Odesa Law Academy” (Odesa, Ukraine). <https://orcid.org/0000-0002-1465-4238>. [torbas.oleksandr@gmail.com](mailto:torbas.oleksandr@gmail.com)

<sup>\*\*\*</sup> Ph.D., Associate Professor of Criminal Procedure Department, National University “Odesa Law Academy” (Odesa, Ukraine). <https://orcid.org/0000-0001-8772-4172>. [kvvoloshyna@gmail.com](mailto:kvvoloshyna@gmail.com)

<sup>\*\*\*\*</sup> Ph.D., Senior Lecturer of the Department of Criminal Procedure of the National University “Odesa Law Academy” (Odesa, Ukraine). <https://orcid.org/0000-0002-7171-2369>. [v.zavtur93@gmail.com](mailto:v.zavtur93@gmail.com)

<sup>\*\*\*\*\*</sup> Specialist of the first category of the Research part of the National University “Odesa Law Academy” (Odesa, Ukraine). <https://orcid.org/0000-0003-4775-7927>. [tanya.onua@gmail.com](mailto:tanya.onua@gmail.com)

procedure of pre-trial proceedings established in the Criminal Procedure Code in the part of the beginning of the pre-trial investigation turned out to be misfit to the conditions of continuous quarantine. The purpose of the article is to identify, describe and propose solutions to the problems of starting a pre-trial investigation during the Covid-19 pandemic. Thus, to solve this problem, the article examines the existing problems of pre-trial investigation before and during the Covid-19 pandemic, taking into account domestic scientific experience, as well as current foreign practices to resolve this issue to study the possibility of adopting their best practices and implementing them in the legislation. In the process of research, such methods as the dialectical, structural-functional analysis, comparative-legal and historical method. It is necessary to emphasize the simplification of the procedure for reporting the detected signs of criminal offenses, which necessitates raising the professional level of law enforcement officers, as well as conducting large-scale information work among internet users.

**Keywords:** Pre-trial Investigation, Quarantine, Covid-19, Unified Register of Pre-trial Investigations, Criminal Proceedings

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**Resumen:** *Los desafíos que plantea la propagación de la infección por coronavirus son globales y afectan a casi todas las esferas de la vida pública, incluida la justicia penal. Para minimizar la comunicación social directa, se han ampliado las posibilidades de utilizar procedimientos legales remotos en los procesos penales. El procedimiento judicial de las diligencias previas establecido en el Código Procesal Penal en la parte del inicio de la instrucción resultó inadaptado a las condiciones de cuarentena continua. El propósito del artículo es identificar, describir y proponer soluciones a los problemas de iniciar una investigación previa al juicio durante la pandemia Covid-19. Así, para solucionar este problema, el artículo examina los problemas existentes de la investigación previa al juicio antes y durante la pandemia Covid-19, teniendo en cuenta la experiencia científica nacional, así como las prácticas extranjeras actuales para resolver este tema para estudiar la posibilidad de adoptar sus mejores prácticas y su implementación en la legislación. En el proceso de investigación, se utilizaron métodos como el dialéctico, el análisis estructural-funcional, el método comparativo-legal y el histórico. Es necesario enfatizar la simplificación del procedimiento para reportar los indicios detectados de infracciones penales, lo que requiere elevar el nivel profesional de los agentes del orden, así como realizar un trabajo de información a gran escala entre los usuarios de internet.*

**Palabras clave:** *Investigación previa al juicio, cuarentena, Covid-19, Registro Unificado de Investigaciones Previas al Juicio, Procedimientos Criminales*

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**Summary.** *I. Introduction. II. Methodology. III. Analysis of recent research. IV. Results and discussion. IV.1. International and National Legislation in the Field Of Pre-Trial Investigation. IV.2. The Problem of Initiating Criminal Proceedings in the Criminal Procedure Code in 2012. IV.3. Exacerbation of the Problem of Starting a Pre-Trial Investigation with an Outbreak of a Pandemic. IV.4. Ways to Overcome the Problem on the Example of International Experience. V. Conclusions. References.*

## **I. INTRODUCTION**

Today, it is difficult to deny that the challenges posed by the spread of coronavirus infection are global in nature and affect virtually all spheres of public life. Criminal proceedings are no exception. Numerous changes that have been made to domestic legislation in recent months are generally aimed at expanding the possibilities of applying remote legal procedures in criminal proceedings, which minimize the need for direct social communication.

However, the normative provisions that supplemented the Criminal Procedure Code of Ukraine (2012) (hereinafter – Criminal Procedure Code) under the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine Aimed at Providing Additional Social and Economic Guarantees in Connection with the Spread of Coronavirus Disease (Covid-19)” (2020) mostly concern procedural activities of the investigating judge and the court in a pandemic, but not the pre-trial investigation bodies.

At the same time, it is obvious that the regulations of the pre-trial investigation, in particular, in terms of accepting allegations of criminal offenses, informing participants of criminal proceedings about criminal proceedings, their participation in certain proceedings also requires some adjustment due to the pandemic.

For now, it can already be stated, that the legal order of pre-trial proceedings established in the Criminal Procedure Code in the part of the beginning of the pre-trial investigation turned out to be misfit to the conditions of continuous quarantine. However, ensuring the principle of legal certainty at this stage of criminal proceedings is extremely important for the implementation of the proclaimed in Art. 2 of the Criminal Procedure Code, the task of protecting persons (especially the victim and the applicant)

from criminal offenses, as it addresses the possibility of initiating proceedings and its further development in general.

The need to study the existing problems at the beginning of the pre-trial investigation in Ukraine is also since such a situation affects, in our opinion, not only the compliance and effectiveness of current criminal procedure legislation, but also the correctness of state statistics on the number of registered criminal offenses during the quarantine period announced in Ukraine based on the Resolution of the Cabinet of Ministers of Ukraine n° 211 of March 11, 2020 “On prevention of the spread of acute respiratory disease Covid-19”.

Thus, according to the Office of the Prosecutor General of Ukraine (2020), the number of criminal offenses registered in Ukraine in March the current year decreased by an average of about 24.7%, compared to the same period in 2019 (in the current year were 35899 in March and 30364 in April, while in 2019 were 46324 in March and 41686 in April).

The reasons for this reduction in criminal activity, in our opinion, were not only the conditions of quarantine recommended by the World Health Organization (hereinafter, “WHO”), but also several other conditions identified by Europol (2020) in the report “Pandemic profiteering how criminals exploit the Covid-19 crisis”. However, the imperfection and unclear definition of the procedure for initiating a pre-trial investigation, in our opinion, also influenced the formation of state statistics on the number of registered offenses during the quarantine period.

To solve this problem, we consider it appropriate to investigate the existing problems of pre-trial investigation before and during the Covid-19 pandemic, taking into account the study of domestic scientific experience and current foreign practices to resolve this issue to study the possibility of adopting their best practices and implementing them in domestic legislation.

## **II. METHODOLOGY**

To conduct a thorough research on the problems of initiating a pre-trial investigation, a certain methodology was used in the article (in particular, in Section 4).

Further, in Section 2, using the system-structural method, the relationships between all stages of the stage of the beginning of the pre-trial investigation as a holistic system of procedural actions were considered.

Moreover, the comparative-legal method was used in the analysis of international law on the initiation of pre-trial investigation and to highlight

the positive aspects of the previous Criminal Procedure Code for their implementation (Sections 1, 2).

In Section 4, the synergetic method allowed to substantiate the procedural features of the beginning of the pre-trial investigation in terms of preventing the spread of acute respiratory disease Covid-19.

Finally, for Sections 1 and 2, the formal-legal method was used to study the stage of the beginning of the pre-trial investigation as a purely legal category, outside of connections with politics, economics, and other social phenomena.

### **III. ANALYSIS OF RECENT RESEARCH**

Before the coronavirus pandemic, several substantial scientific papers were written on the stage of initiating a pre-trial investigation and the most significant problems that arise at this stage were identified.

Among the scientists who are constantly analyzing the procedure for initiating a pre-trial investigation, it is worth noting Maksymenko (2017; 2018), who studied the main terminological problems of this stage and proposed options for building an effective system of pre-trial investigation. He also analyzed the stage of the beginning of the pre-trial investigation in foreign countries and published it in his work “The beginning of the pre-trial investigation: a comparative legal aspect” (2018). As a result, such aspects of the foreign experience were identified, which after their thorough analysis can be successfully implemented in Ukrainian legislation, which will improve the procedure for initiating a pre-trial investigation.

Loboyko (2014), at various times, investigated the problems of determining the grounds and time of the pre-trial investigation and made a reasonable proposal to lift the ban on procedural actions before entering information about criminal offenses in the Unified Register of Pre-trial Investigations (hereinafter, “URPI”).

Besides, Drozd, in his work “Some issues of regulation of the pre-trial investigation in the context of legal reform” (2017), distinguished between the essence of the pre-trial investigation at a separate stage, which has a clear purpose and established at the legislative level, and criminal proceedings of authorized persons in the manner prescribed by law and aims at a full and comprehensive investigation of a criminal offense.

Also in the process of researching this topic, we turned to the works of such domestic scholars as Alenin (2013), Vakulik (2015). Vapnyarchuk (2013), Volobuev (2013), Gurtieva (2013), Zhuravel (2014), Lukyanchikov

(2015), Pogoretskyi (2015), Sereda (n.d.), Stativa (2012), Stolitnyi (2014). Tatarov, (2012), Farynnyk (2012), Churikova (2013).

As legal doctrine and scientific and practical comments were used the works of scholars as Golovnenkov and Spitsa (2012), and Tertyshnyk (2014).

Due to the specifics of the legislation and the work of law enforcement agencies in the post-Soviet space among foreign scholars, the works of scholars from Lithuania were used, which faced a similar problem. In particular, Kurapka, Navickienė, Šlepetys, Bilevičiūtė, and Matulienė (2016).

Despite the rich scientific material developed by experts to address the problems that arise at the beginning of the pre-trial investigation, in the conditions in which countries found themselves due to the outbreak of the coronavirus pandemic, it will be important not only to systematize them but also to supplement the solution of those problematic issues that have arisen through the introduction of quarantine measures.

## **IV. RESULTS AND DISCUSSION**

### ***IV.1. International and National Legislation in the Field Of Pre-Trial Investigation***

Among the basic acts that establish the basic principles of pre-trial investigation and trial are numerous international treaties. It is important, however, to highlight that Art. 8 of the Universal Declaration of Human Rights (1948) obliges States to ensure that everyone has the right to an effective remedy by the competent national tribunals. We are talking not only about the direct trial but also about the stage of pre-trial investigation, because it is impossible to achieve effective restoration of violated rights, if already at the stage of pre-trial investigation significant mistakes and deviations from the law were made.

Convention for the Protection of Human Rights and Fundamental Freedoms (1950) in Art. 6 proclaimed the right to a fair trial, which is interpreted not only as of the right to a fair trial and a reasoned sentence, but also the obligation of public authorities to conduct a pre-trial investigation under the law.

It is also important that some of the requirements of the above-mentioned article of the Convention should be considered as relating not only to the stage of the trial but also to the pre-trial investigation, including the stage of initiation, in particular the requirement of reasonable time and defense counsel (*Affaire Imbrioscia v. Suisse*, 1993).

If we consider the national legislation, then, first of all, it is necessary to highlight Art. 55 of the Constitution of Ukraine (1996), which proclaims the right of everyone to defend their rights and freedoms in court. This right applies not only to the procedure of direct trial but also to the pre-trial investigation because at this stage many procedural actions are carried out, during which it is necessary to ensure full respect for the rights and freedoms of the parties. Violation of the law at this stage entails the impossibility of further consideration of the court case and the issuance of a reasonable and fair sentence under the law.

In Ukrainian law, the pre-trial investigation procedure is set out in the Code of Criminal Procedure in Section III. The new Code of Criminal Procedure was adopted on April 13, 2012, entered into force on November 19, 2012, and incorporated the latest approaches and requirements for the pre-trial investigation, including the article regulating the procedure for initiating such an investigation.

Thus, the basic norm, which enshrines the basic provisions for the start of pre-trial investigation is Art. 214 of the Criminal Procedure Code. The first part of this article indicates the formal moment of the beginning of pre-trial investigation – registration of the statement, the message, or the self-revealed fact of commission of a criminal offense by the investigator, the prosecutor, or the coroner in the Uniform Register of pre-trial investigations. It is mandatory to register information about the committed criminal offense immediately, but not later than 24 hours after the receipt of the above statements and notifications, or to identify the circumstances that may indicate the commission of a criminal offense.

At all stages of the stage of the beginning of the pre-trial investigation, numerous bylaws specify the provisions set out in the Criminal Procedure Code. In particular, the procedure for using the Uniform Register of pre-trial investigations is enshrined in the Regulation on the Procedure for Maintaining the URPI, approved by the Order of the Prosecutor General's Office of April 6, 2016, n<sup>o</sup> 139, which defines the Register, access to information, bodies supervising the Register, etc.

Certain explanations and recommendations on the procedure for initiating a pre-trial investigation are also contained in the Decisions, Conclusions, and Letters of the Supreme Court. For example, the Opinion of the Judicial Chamber for Criminal Cases of the Supreme Court of Ukraine on the Initiation of Criminal Proceedings against Judges Related to Their Proceedings of July 1, 2013, clarifies some key points relating to the initiation of a pre-trial investigation and recommends its own solutions to the problems.

To identify certain controversial issues and problems that exist in the Ukrainian legislation in the field of pre-trial investigation, it will also be appropriate to refer to the legislation of foreign countries and compare its provisions with domestic ones. For example, the time of the beginning of the pre-trial investigation is not defined in the Criminal Procedure Code of Germany (1987), however, an indication of it is in the article of the Fiscal Code of Germany (2017). According to this article, a criminal case (and hence a pre-trial investigation) is considered open from the moment when the authorized body, official, or court applies such measures aimed at exposing a certain person to commit a criminal offense. This definition applies not only in the tax criminal process but applies to the entire criminal process (Golovnenkov & Spitsa, 2012). Thus, the moment of the beginning of the pre-trial investigation in Germany is not related to certain formal actions, such as, for example, entering information into the register.

The Criminal Procedure Code of the Republic of Poland (1997) determines the issuance of an order to initiate a criminal case as the moment of the beginning of the pre-trial investigation. Moreover, in contrast to the Ukrainian Criminal Procedure Code, which contains a certain period during which information about a criminal offense must be entered into the URPI, the Polish code operates with the concept of “immediately”, not limited in time.

There are no such deadlines in the Criminal Procedure Code of Italy (2012), where, however, as in the domestic procedural law, there is an obligation of the prosecutor to enter information about the committed criminal offense in a special register. According to the Italian Criminal Procedure Code, the prosecutor immediately enters information about the committed criminal offense, obtained from any statements, or found by him independently in the relevant register. However, if he/she knows a person who may later acquire the status of a suspect, he/she is also obliged to enter data about him/her.

Common to most of the legal systems we studied is the establishment at the regulatory level of the possibility of a person to submit an oral or written statement of a criminal offense<sup>1</sup>, indicating the inadmissibility of submitting an anonymous application<sup>2</sup>.

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<sup>1</sup> Code of Criminal Procedure of the Republic of Estonia (2003), Art. 195; Code of Criminal Procedure of the Republic of Belarus (1999), Art. 168; Code of Criminal Procedure of the Russian Federation (2001), Art. 141.

<sup>2</sup> Code of Criminal Procedure of Latvia (2005), Art. 369§3; Code of Criminal Procedure of the Republic of Moldova (2003), Art. 263, Part 8; Code of Criminal Procedure of the Republic of Kazakhstan (2014), Art. 181, Part 6; Code of Criminal Procedure of the Russian



At the same time, for example, Part 2 of Art. 101 of the Code of Criminal Procedure of Georgia stipulates that information about a crime may be received in writing, orally, or otherwise recorded. Such regulations provide flexibility in resolving the issue of the form of a crime report and the procedure for its submission.

Another example of adaptive regulation of the issue of initiating a pre-trial investigation is the provisions of paragraph 3 of Art. 195 of the Code of Criminal Procedure of the Republic of Estonia, which states that it can be an oral report of a criminal offense transmitted by telephone (sound recording). Under quarantine conditions, this method of reporting a crime and recording it is quite relevant.

It is worth noting the issue of sources of information that serve as a pretext for the pre-trial investigation in the Criminal Procedure Code of the Republic of Kazakhstan. This normative legal act is the only one of the studied legislative acts, which contains a clear indication of the possibility of filing a crime report in the form of an electronic document. At the same time, the law sets requirements for an electronic application for a criminal offense, in particular, it must be signed by the person who submits it, as well as contain information about the applicant, his place of residence and work, identity document (Part 1, 2 Article 181 of the Criminal Procedure Code of the Republic of Kazakhstan).

The analysis of foreign legislation suggests that the legal systems of post-Soviet countries are characterized by a high degree of formalization of the pre-trial investigation, which is reflected in strict legal requirements for content, form, the procedure for filing a criminal offense, as well as a clear definition of the moment of the beginning of criminal prosecution, which is associated with the issuance of a certain procedural act or the commission of a certain action. It is difficult to follow a certain bias in the normative construction of these requirements. They do not depend on the principle on which the normative model of starting a pre-trial investigation within a particular legal order is based, but rather are a manifestation of the progressiveness of the local legislator.

As noted by Golovko (2017), there are two theoretical principles on which criminal prosecution can be based: the principle of legality and expediency. The principle of legality stipulates that an official is obliged to initiate criminal proceedings in every case of a crime, regardless of any other considerations. Instead, the principle of expediency provides that the official

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Federation (2001), Art. 141, Part 7; Code of Criminal Procedure of the Republic of Belarus (1999), Art. 168, Part 5; and Code of Criminal Procedure of Georgia (2009), Art. 101, Part 3.

has the right in each case at its discretion to assess the need and expediency of criminal prosecution.

The principle of legality is the basis for building a normative model for initiating a pre-trial investigation in Georgia and the Republic of Kazakhstan. He found his realization in Art. 214 of the Criminal Procedure Code of Ukraine. Instead, the principle of expediency is the basis of the legal systems of the Republic of Belarus, the Russian Federation, the Republic of Azerbaijan, and the Republic of Moldova. A characteristic feature of the normative model of pre-trial investigation in these countries is the granting of authorized discretionary powers to authorized entities in terms of deciding whether to initiate criminal proceedings or to refuse to carry it out.

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The countries of Central and Western Europe are characterized by a much lower degree of formalization of the beginning of criminal prosecution. The commencement of criminal proceedings under the legislation of some European countries is informal both in the context of the source of its occurrence (source of information about the criminal offense and the procedure for its receipt) and in the context of its procedural design (issuance of a separate procedural act).

Under the Criminal Procedure Code of Germany (1987), the public prosecutor's office must initiate criminal proceedings in any case if there are sufficient factual grounds to believe that a criminal offense has been committed. At the same time, the legislation of Germany does not clearly define the moment of initiation of criminal proceedings. In the professional literature, it is noted that under German law the proceedings are considered initiated when the competent authority applies a measure aimed at exposing the person in the commission of a crime.

Such a point is not clearly defined in the Criminal Procedure Code of Switzerland (2007). The local judicial and law enforcement practice, based on the position of the Supreme Criminal Court of the Confederation, states that under Swiss law, criminal proceedings in the substantive sense begin when the competent authorities become aware of the circumstances that give grounds to suspect a person of committing a criminal offense.

The activity approach to the beginning of the pre-trial investigation is reflected in item 1 of Art. 193 of the Criminal Procedure Code of the Republic of Estonia, according to which the investigative body or the prosecutor's office initiates criminal proceedings by committing the first investigative or other procedural action.

Among the CIS countries, an element of such an approach is contained in the Criminal Procedure Code of the Republic of Azerbaijan (2000). Art. 38.1 of this legal act contains a provision according to which the coroner, investigator, or prosecutor, having received notice of signs of a committed or impending criminal offense must take measures to preserve and remove traces of the crime, as well as immediately conduct an inquiry or investigation in within its powers. At the same time, the beginning of criminal prosecution under the Criminal Procedure Code of the Republic of Azerbaijan is formalized by a separate procedural act.

The analysis of the provisions of the acts of criminal procedure legislation of other countries shows that the foreign legislator pays much more attention to these issues, formulating normative models for the beginning of the pre-trial investigation.

As we can see, the acts of criminal procedure legislation of European countries establish quite different models of pre-trial investigation, each of which is characterized by a different degree of formalism in determining the time of pre-trial investigation and adaptation to those challenges that may complicate criminal proceedings.

The normative model of pre-trial investigation enshrined in the Criminal Procedure Code of Ukraine is characterized by a high degree of formalism in determining its initial stage, which is mostly dictated by the national legal tradition. Its improvement in the context of new social challenges is possible within the general trend of informatization of criminal proceedings, namely: consolidation of the right of a person to file a criminal offense in electronic form (using a reliable method of identification), expanding the possibilities of electronic notification of criminal proceedings by e-mail memos on procedural rights, extracts from the Unified Register of pre-trial investigations, copies of relevant procedural decisions, etc.).

#### ***IV.2. The Problem of Initiating Criminal Proceedings in the Criminal Procedure Code in 2012***

To ensure equal opportunities for all parties in the criminal process, to increase the guarantees of protection of their rights, to implement the recommendations and resolutions of the Parliamentary Assembly of the Council of Europe in 2018, on April 8, 2018, the Concept of Criminal Justice

Reform of Ukraine was adopted, which was previously approved by the Decree of the President of Ukraine n° 311 (On the progress of reforming the criminal justice system and law enforcement agencies, 2018). This Concept introduces a simplified procedure for initiating a pre-trial investigation, which should be considered the moment when legally authorized authorities receive information about a criminal offense or crime. As a result, in the process of reforming criminal justice in Ukraine in 2012, the Criminal Procedure Code of Ukraine was adopted, which included Article 214, which refused to make a procedural decision to initiate a criminal case, which radically changed the pre-trial investigation.

Today, the information provided in any statement or notification of a criminal offense must be entered in the URPI (this legal position is expressed, in particular, in the Generalizations “On the practice of reviewing complaints against decisions, actions or omissions pre-trial investigation bodies or the prosecutor during the pre-trial investigation”, approved at the meeting of Judges of the High Specialized Court of Ukraine for Civil and Criminal Cases on December 23, 2017). However, according to the point of view given, in particular, in the letter of the Chairman of the Supreme Court of Ukraine to the Chairman of the Verkhovna Rada Committee on Legislative Support of Law Enforcement n° 20-2822/0/8-17 dated October 10, 2017, such statements and notifications must contain information, which (with some probability) indicate the commission of a specific criminal offense.

In turn, the European Court of Human Rights in the case of *Merit v. Ukraine* (2004) in determining the beginning of the “reasonable period” used to respect the right to a fair trial in the context of Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, emphasizes that it may begin from the start of the pre-trial investigation. If we resort to the decisions of Ukrainian courts, we can find cases where an inaccurate determination of the moment of the pre-trial investigation leads to the recognition of the evidence obtained as inadmissible. An example is the Decision of the Criminal Court of Cassation of the Supreme Court of January 21, 2020, in case n° 381/2316/17, where the court declared inadmissible the evidence obtained as a result of the inspection of the scene, conducted before entering information into the URPI, because, as seen from the case file, under the guise of inspecting the scene, the investigator actually conducted an own search of the person.

This situation has provoked a heated discussion of this problem among scholars, both in Ukraine and in other countries. First of all, it should be noted that, at the moment, there is no single point of view among scholars on the accuracy of the abolition of the stage of initiating a criminal case.

Thus, Sereda (n.d.) believes that this stage is the last “wall” of legality on the way to illegal initiation of a criminal case.

A similar view is expressed by Volobuev (2013), who considers the elimination of the stage of initiating a criminal case as the destruction not only of the actual theoretical structures but also the destruction of a certain algorithm of pre-trial investigation and operational units, which developed over many decades, where the verification of statements and messages acted as a kind of “filter” for false and erroneous statements. «In a society, where there are constant social conflicts, the parties of which often try to involve law enforcement agencies and use their opportunities to achieve their not always legitimate goal, a simplified mechanism for prosecuting is unacceptable» (p. 238).

Supporting these positions in general, Alenin (2013) notes that, despite certain gaps in law enforcement, which are more related not to procedural form, but extra-procedural factors, this stage still made it possible to filter reports and allegations of crimes quite effectively and to separate non-criminal events.

Zhuravel (2014) is also critical of the liquidation of the criminal case:

«If the domestic legislator believes that the opening of criminal proceedings and the beginning of criminal prosecution should be considered a common, everyday phenomenon for every citizen of our state, such an approach is extremely dangerous. It can lead (and already leads) to the humiliation of honor and dignity of honest, principled citizens, businessmen, civil servants, etc. Simplification always corresponds to the possibility and temptation to open criminal proceedings against unwanted persons, raids, and redistribution of property, settling accounts with competitors, especially in a certain level of corruption of the judiciary and law enforcement agencies» (p. 139).

However, there is another point of view. For example, Tatarov (2012) points to the positivity of the abolition of the institute of “initiation of a criminal case”, because the lack of investigative verification will avoid re-conducting some procedural actions that are necessary within the investigative verification (for example, survey–interrogation; certificate of specialist–expert opinion). Farynyk (2012) also supports legislative changes. According to him, the introduction of a radically new procedure will allow citizens to exercise their right to protection immediately after receiving a statement or report of a crime (as each statement or report must be considered and, therefore, appropriate decisions will be made on them).

Drozd (2017), generally supporting these positions, pointed out that the attempt to establish the fact of committing a criminal offense, i.e. to reveal all subjective and objective elements of the crime, is illegal at the

stage when the decision to start an investigation has not been made yet. This does not correspond to the cognitive situation that develops at this stage of criminal proceedings.

Besides, Churikova (2013) concluded that the investigator could collect and verify the information obtained before entering it into the URPI only by conducting one investigative action as an inspection of the scene. However, Loboyko (2015) disagrees with this position, noting that the procedural activities carried out before entering information about a criminal offense into the URPI are not aimed at establishing the grounds for the investigation, but “anticipating events” to establish the circumstances of the criminal offense by pre-trial investigation its registration.

«Such “advance” is due to emergency circumstances. The latter are since the delay in inspecting the scene may result in the loss of the ability to establish the circumstances of the criminal offense. Inspection of the scene before entering information into the URPI is the beginning of the criminal process» (p. 90).

A similar opinion is supported by Stolitnyi (2014), who notes that criminal proceedings begin not from the moment of entering information into the URPI, but from the moment of receiving information about the criminal offense (from a statement, notification, direct detection by law enforcement agencies), because there is a rule to appeal failure to enter information into URPI to investigating judge.

«This norm testifies in favor of the research proceedings: according to its phasing, chronology, it begins before the pre-trial investigation (...). Thus, we distinguish the reception, consideration, and study of applications and notifications of criminal offenses and the resolution of the issue of entering information into the URPI as an independent stage of the criminal process and which precedes the stage of pre-trial investigation» (p. 193).

Further, Stativa (2012) argues that the legislator’s refusal to “transfer” to the Criminal Procedure Code (in 2012) the institute of pre-investigation verification actions aimed at obtaining additional information does not mean the abolition of the stage of consideration of the information received from applications, reports, and other sources. Also, Tertyshnyk (2014) defines this stage as a research proceeding.

Moreover, Vakulik (2015) supports the most balanced position, noting that the new pre-trial investigation procedure has both positive and negative aspects. According to the author, such an order, to some extent, increases the chances of victims to protect their rights and legitimate interests and bring the perpetrators to justice. On the other hand, the procedural situation

and legal protection of suspects have significantly deteriorated, depriving them of the opportunity to challenge groundless criminal prosecution.

Thus, there is a debate among domestic scholars about the expediency of changing the procedure for initiating a pre-trial investigation. However, scientists in Ukraine relatively unanimously support another position – the need to further improve and clarify the procedure for initiating a pre-trial investigation, because the current version of Art. 214 of the Criminal Procedure Code leaves quite a lot of questions. Thus, Gurtieva (2013) believes that the beginning of the pre-trial investigation stage in the Criminal Procedure Code was determined incorrectly and inaccurately. In particular, in her opinion, outside the criminal proceedings is the activity of accepting statements and notifications of criminal offenses<sup>3</sup>, a possible inspection of the scene before entering data into the URPI<sup>4</sup>, as well as activities to appeal the refusal to enter data into the URPI to the investigating judge<sup>5</sup>, consideration of the complaint by the investigating judge<sup>6</sup>, his/her decision<sup>7</sup>, etc. All these actions are regulated by the Criminal Procedure Code, so they are procedural and carried out within the stage of pre-trial investigation. In this regard, the author considers it appropriate at the beginning of the pre-trial investigation to see the submission of a statement or notification of a criminal offense or self-discovery by the investigator, prosecutor from any source of circumstances that may indicate a criminal offense.

Scholars also have complaints about the wording of the reasons for the pre-trial investigation by the legislator. Lukyanchikov (2015) argues that the Criminal Procedure Code should clearly define the reasons and grounds for initiating a pre-trial investigation, as well as the requirements for a statement or notification, and the decision of the investigator and prosecutor to initiate a pre-trial investigation should be expressed in the form of a resolution. In fact, the pretext is defined as a statutory source from which the body of inquiry, investigator, and prosecutor receives information (data) about the crime or a crime being prepared, and which obliges them to consider the need to initiate criminal proceedings (Vapnyarchuk, 2013).

Accordingly, the doctrine proposes to allocate the following list of reasons for initiating a pre-trial investigation: (i) a statement of the circumstances that may indicate the commission of a criminal offense; (ii) notification of circumstances that may indicate the commission of a criminal

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<sup>3</sup> Criminal Procedure Code, Art. 214, Part 1.

<sup>4</sup> Criminal Procedure Code, Art. 214, Part 3.

<sup>5</sup> Criminal Procedure Code, Art. 303, Part 1§1.

<sup>6</sup> Criminal Procedure Code, Art. 306.

<sup>7</sup> Criminal Procedure Code, Art. 307.

offense; and (iii) independent detection by the investigator or prosecutor from any source of circumstances that may indicate the commission of a criminal offense (Pogoretsky, 2015).

If we are talking about the actual statements and reports of criminal offenses, the doctrine differently assesses the lack of clear regulations governing the requirements that should apply to such statements. In this regard, Stolitnyi (2014) noted that under such conditions, citizens exercise the right to protect their interests immediately after submitting a statement or notification of a crime. This is aimed at ending the “conflict” between law enforcement officers and citizens, as each statement, report of a crime must be considered with the adoption of an appropriate procedural decision. At the same time, the author points out the statutory requirements for the relevant statements (such statements must be about criminal offenses), as well as the fact that the applicant or the victim must be informed of criminal liability for knowingly false reporting of a crime.

Thus, it can be concluded that, at present, Ukraine has not yet developed a common understanding of the essence of the pre-trial investigation, even although, at the time of writing this article, the Criminal Procedure Code has been in force for over eight years. This indicates the need for our legislator to make a choice in favor of one of the approaches and close this issue, to further improve the current criminal procedure legislation in Ukraine.

### ***IV.3. Exacerbation of the Problem of Starting a Pre-Trial Investigation with an Outbreak of a Pandemic***

According to the above, problems related to the pre-trial investigation procedure appeared at different stages of this stage. However, at present, in the context of the coronavirus pandemic, new difficulties arise that require the attention of government agencies. But before moving on to these problems, it is necessary to distinguish the above stages and outline what exactly the procedural actions are carried out on each of them.

Polishchuk (2017) distinguishes four stages of the pre-trial investigation stage, emphasizing that some of them are optional: (i) the stage of acceptance of applications and notifications about the committed criminal offense; (ii) registration of these applications in specially created for this purpose journals and information-telecommunication networks; (iii) carrying out urgent investigative actions and taking other measures aimed at confirming or refuting the data contained in the statement, and gathering sources of information relevant to the criminal proceedings; and (iv) entering information into the URPI.



Let's look at some of the difficulties that arise in the first and third stages of the pre-trial investigation.

In accordance with the Procedure for maintaining a single record in the bodies (units) of the police statements and notifications of criminal offenses and other events, approved by the Order of the Ministry of Internal Affairs of Ukraine from February 8, 2019, n° 100, the authorized official of the police must accept and register in the information-telecommunication system "Information Portal of the National Police of Ukraine" or the journal of unified registration of applications and notifications of criminal offenses and other events oral or written statements received by it, with subsequent transmission to the pre-trial investigation body for registration in URPI. Such statements may come directly to the police department.

Besides, it is possible to file a criminal offense with investigators such as the Security Service of Ukraine, the State Bureau of Investigation, the National Anti-Corruption Bureau of Ukraine, and directly with the prosecutor's office, as evidenced by appropriate instructions for receiving and registering applications.

However, to prevent the spread of Covid-19, the Main Directorate of National Policy and district police departments restricted the admission of citizens with statements (for example, Main Directorate of National Policy in Poltava region, 2020). Admission of citizens to the Security Service of Ukraine, the State Bureau of Investigation and some other pre-trial investigation bodies was regulated in the same way. Such a restriction, given the lack of awareness of some categories of citizens about the possibilities and rules of e-mail, lack of publicly available information on the address of these bodies, etc., and due to lack of access to the internet (according to the Internet Association of Ukraine 71% of Ukrainians are users internet, however, only 65% have access to the internet at home; *cf.* Yatsenko, 2019) and special means to send applications by e-mail, leads to the fact that some applications simply cannot be submitted to law enforcement agencies for further registration. Accordingly, without registration of these statements in the URPI, a pre-trial investigation cannot be initiated.

Also, at a certain stage of the implementation of quarantine measures, the Procedure for anti-epidemic measures related to self-isolation of persons approved by the Cabinet of Ministers of Ukraine of March 11, 2020, n° 211 established a regime of self-isolation for certain categories of persons, including persons over 60-year-old As a result, such persons were deprived of the opportunity to file complaints with the police and other pre-trial investigation bodies.

Of course, increasing the computer literacy of a certain part of the population and public awareness of all existing ways of communication with

law enforcement agencies can solve the above problem, however, it should be noted that this is possible only if the state mobilizes appropriate resources for the implementation of information literacy programs for the population.

The difficulties that arise in the third stage of the pre-trial investigation stage are primarily related to the restrictions that have been introduced in the various phases of quarantine.

According to the forensic recommendations (on which Polishchuk (2017) emphasizes), to prepare for the inspection of the scene, the investigator must, among other things, determine the range of persons who will participate in the inspection following the nature of the criminal offense and invite them to the scene. We are talking about such specialists as cynologists, forensic experts, forensic specialists, etc. However, after the introduction of quarantine, there were some difficulties with the departure of these specialists to the scene.

Considering that, under paragraph 3.9 of the Instruction on appointment and conduct of forensic examinations and expert research and Scientific and methodological recommendations on preparation and appointment of forensic examinations and expert research, approved by the Order of the Ministry of Justice of Ukraine of October 8, 1998, n° 53/5, the body or person engaging the expert to inspect the scene must ensure his/her arrival, the above-mentioned quarantine measures significantly complicate the implementation of this requirement.

The introduction of quarantine restrictions once again highlighted the problem of insufficient logistics of public institutions, which provide the experts and specialists to inspect the scene (Purig, 2015), including vehicles, as well as the lack of a single independent state body that would send experts to conduct investigative (search) actions.

It is also important to note the problems caused by the lack of staff at all levels of the law enforcement system. In particular, according to BBC News Ukraine, as of 2020, the shortage of staff in the National Police is almost 16%. The main reasons are low wages, which, although they remain the same as they were at the beginning of this structure, but, due to inflation, no longer correspond to the level they were. Also, it is necessary to pay attention to the insufficient funding of surcharges for police officers, who, especially during the pandemic, must work overtime to additionally monitor the population's compliance with quarantine measures and self-isolation.

In order to solve this problem, in the spring of 2020, the expenses for the maintenance of the National Police were increased, thanks to which those police officers who are constantly exposed to the danger of contracting coronavirus disease through contact with citizens were able to receive salary supplements. However, at the same time, expenditures on other law

enforcement agencies, such as the Security Service of Ukraine, the State Bureau of Investigation, and the Prosecutor General's Office (Vinokurov, 2020), were reduced. Thus, there is again a problem of lack of funds to pay for the work of investigators, prosecutors, and other authorized persons during the pandemic.

#### ***IV.4. Ways to Overcome the Problem on the Example of International Experience***

International experience can be used to develop options for overcoming these problems. At present, all countries of the world are faced with the problem of the need to limit public contacts, including the reduction of working hours, or in general, the ban on visiting police stations by citizens. However, in many countries around the world, even before the pandemic, government programs were introduced to inform the public about possible means of communication with law enforcement agencies.

In particular, in the United States, there is a "National Program 911" (2020). This program aims to inform the public about a single phone number that you can call, especially if you have witnessed or been a victim of a criminal offense. To this end, the state budget allocates funds for the development of this program, and the 911 office cooperates with numerous companies that supply leading technologies, with states and authorized persons responsible for public safety, and so on. In addition, due to the current situation, in order for the 911 system to continue to operate in a Covid-19 pandemic, the office is working with other federal agencies and national associations to provide up-to-date information.

Also noteworthy is the issue of sources of information that serve as a pretext for the pre-trial investigation in the Criminal Procedure Code of the Republic of Kazakhstan. This normative legal act is the only one of the studied legislative acts, which contains a clear indication of the possibility of filing a crime report in the form of an electronic document. In this case, the law establishes requirements for an electronic application for a criminal offense, in particular, it must be signed by the person submitting it, as well as contain information about the applicant, his place of residence and work, identity document (of the Criminal Procedure Code of the Republic of Kazakhstan (2014), Art. 181, Part 1, 2).

To overcome the second problem that has arisen in connection with the introduction of quarantine measures in Ukraine, and to prevent such situations in the future, we can turn to the experience of South Korea. As early as 1955, the Ministry of the Interior of the Republic of Korea established the National Forensic Service (2020), which trains leading

forensic experts and experts to provide expertise for certain criminal offenses. This organization is actively funded from the state budget, it is provided with all the necessary material and technical resources and tools, which allows experts to timely and fully fulfill their obligations, regardless of any external circumstances.

Regarding the issue of staff shortages and inadequate pay for overtime during the pandemic, the only possible solution is to increase funding for all law enforcement agencies in Ukraine. In addition, the introduction of certain state social programs for law enforcement officers will help raise the level of interest in these professions and solve the staffing problem.

## **V. CONCLUSIONS**

During the elaboration of the topic of the problems of the beginning of the pre-trial investigation, several problematic issues were identified, that need to be addressed by the legislator and the government as soon as possible. Options for their solution are offered, in particular:

1. Insufficiently clear beginning of the pre-trial investigation provided in Art. 214 of the Criminal Procedure Code has led to the overuse of the opportunity to conduct an inspection of the crime scene before entering information into the URPI by authorized persons. It is necessary to establish a clear framework for the start of pre-trial investigation, for example, by analogy with the legislation of Germany—from the moment when the authorized person carries out measures aimed at exposing a certain person in the commission of a criminal offense. From international experience, it is worth focusing on German legislation as an example and the Polish experience of liberal reforms in recent decades, including in the criminal law sphere.

2. The absence of certain grounds and reasons for the pre-trial investigation in the Criminal Procedure Code entails practical difficulties, in particular, in drawing up allegations of a criminal offense. To solve this problem, Art. 214 of the Criminal Procedure Code should be supplemented (or additional article should be added to the Criminal Procedure Code), which would clearly list all possible grounds and reasons, or the Supreme Court should provide a final formal explanation on this issue.

3. There is also an acute problem of lack of specifics on the time from which the 10-day period for appealing against the inaction of an investigator or prosecutor due to the failure of these persons to enter information into the URPI within 24 hours of receiving a statement or notification of a criminal offense. The best solution to this problem may be to allow all interested

parties to obtain from the URPI certain limited information (for example, information on the date of entry of data) concerning a particular criminal case.

4. Insufficient computer literacy and lack of public policy in informing people about ways to communicate with law enforcement agencies, such as the National Program 911 in the United States or the electronic application in Kazakhstan, lead to the fact that in situations where it is impossible to get an appointment in law enforcement agencies, in particular, due to the implemented quarantine measures, some individuals are simply unable to report a criminal offense. The state needs to implement a social program to increase the computer literacy of the population and raise public awareness of the activity of various law enforcement agencies.

5. The introduced quarantine measures once again highlighted the insufficient logistics of expert institutions and the lack of a single expert body funded from the state budget. Borrowing the experience of South Korea, it is necessary to merge the existing state expert institutions into a single expert organization under the auspices of, for example, the Ministry of Justice.

6. The problem of lack of staff and lack of necessary funding for the increased risks associated with working during a pandemic at all levels of the law enforcement system is solved by increasing funding for law enforcement agencies and the creation of state social programs for employees of such bodies.

Ignoring the above problems and improper care of the law enforcement system can lead to adverse consequences that will need to be corrected over time. That is why the state urgently needs to start implementing this set of measures that will help to establish the work of law enforcement agencies and bring the legislation in line with modern needs.

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