

## PROCEDURAL MANUAL PRE-TRIAL INVESTIGATION

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***Abstract.*** *The prosecutor as head of the pre-trial investigation decision on the establishment of the investigation team and the investigation interagency group, giving the prosecutor in pre-trial investigation right of procedural power management subjects of inquiry and pretrial investigation take place in the article.*

***Keywords:*** *the prosecutor and pre-trial investigation, the investigation team, bodies investigator, departmental control procurator.*

During the preliminary investigation, the following power subjects of criminal proceedings as an inquirer, investigator, head of the pretrial investigation, prosecutor, investigating judge. The procedure for their appointment, the nature of the activities and powers defined in the Code of Ukraine. The comparative analysis of these powers shows that henceforth investigator and the investigator are responsible only for the legality and timeliness of execution proceedings (ch. 1, Art. 40 CPC). However, they are deprived of any means to directly defend his own inner conviction in court, did not participate in the proceedings, did not have the right to appeal against unlawful court decisions. Moreover investigator and the investigator are based on a head of a pretrial investigation, prosecutor and investigating judge engaged in various forms of procedural control over their activities.

Due to a procedural situation investigator and the investigator, the legislator has transferred primary responsibility for the investigation into a criminal offense to prosecutor and ordered him to provide prompt, full and impartial investigation into the offense. For successful implementation of the said duty legislator Ukraine gave the prosecutor, who shall exercise the powers of the prosecutor in the criminal proceedings, the right to procedural guide pre-trial investigation. Thus, the theoretical and practical levels in Ukraine, a new generic term procedural manual pre-trial investigation.

In connection with the determination of key prosecutor powerful as the subject of preliminary investigation during the discussion of the draft Code of Ukraine and after its adoption and entry into force, the legal pages of scientific publications, a discussion on the essence of the concept of «procedural manual pre-trial investigation». The legislator defines it as a form of supervision of the observance of laws during the pre-trial investigation (ch. 2, Art. 36 CPC of Ukraine), from the use which the prosecutor provides

professional, efficient and lawful performance of inquirers and investigators of their tasks [1, p. 160–162]. Thanks to this, the order of the prosecutor General of Ukraine of December 19, 2012 number 4-flexible «On organization of prosecutors in criminal proceedings» of all prosecutors involved in the pre-trial investigation, called «procedural heads of pre-trial investigation» [2].

With this definition of prosecutorial procedural guide pre-trial investigation disagree many jurists of modern Ukraine. Today in the legal literature, there are many views on this issue. Thus, the authors of the first group completely reject the leadership of the prosecutor during the preliminary investigation of criminal offenses, believing that procedural guidance is incompatible with the implementation of Public Prosecutions to the destination, not the content or the order of implementation. Another group of scientists united by the idea that the role of judicial leaders can act only heads of pre-trial investigation, which is inherent in this kind of a procedural activity. They offer a «departmental control» with the term «procedure manual» for the characteristics of these government entities preliminary investigation [3, p. 153].

Still others advocate the presence of a prosecutor's procedural guidance during the pre-trial investigation, but interpreted it as Ukrainian lawmakers in the form of Public Prosecutions [4, p. 62]. The fourth group of scientists identifies procedural guidance as a means of interaction with the investigator and the prosecutor investigating. Authors fifth of justifying the presence of a prosecutor independent function in pre-trial investigation, called procedural guidance during the pre-trial investigation. Finally, representatives of six authors do not see the difference between Public Prosecutions and procedural guidance, considering the two are identical [5, p. 71].

Most convincing is the position of representatives of five groups of scientists. Assuming correct and reasonable formulated their concept of procedural guidance investigations as independent role of prosecutor in pre-trial criminal proceedings, taking it as a basis, is seen necessary to identify unresolved earlier part of the problem, which is in its amended primarily by defining the structure and content of the specified function in their interrelation and interdependence [6, p. 163].

First of all it is necessary to emphasize that the prosecutor's procedural guidance during the pre-trial investigation – is, first, self-direction prosecutorial activities aimed at providing swift, full and impartial investigation – investigation of all circumstances committed a criminal offense to provide the evidence of good legal assessment, indicating the functional nature of the said prosecution. Second, if the performance of the prosecution Ukraine constitutional functions of supervision over observance of laws by the pre-trial investigation (Art. 122 of the Constitution of Ukraine) is intended to ensure the legitimacy of the modern pre-trial investigation (actions and decisions of all participants in this phase of the criminal process, of course, in addition to investigating judges), the performance features prosecutor procedural guidance (usually no supervision) aimed only at ensuring rapid,

full and impartial investigation of criminal offenses individual subjects of the process – inquirers and investigators who are already within the software prosecutor regime legitimacy. And it can not be considered a form of implementation of the supervisory powers of the prosecutor.

The presence of the function of supervision over the observance of laws to ensure the legality of all pre-trial investigation, so to speak, «pure» indicates, for example, the right of the Prosecutor General of Ukraine, his first deputy and deputy prosecutors of the Autonomous Republic of Crimea, regions, Kyiv and Sevastopol, prosecutors of cities and districts, city districts, inter-regional and specialized prosecutors, their first deputies and deputies to abolish illegal and unjustified decision of the investigator and subordinate prosecutors made during the preliminary investigation within its terms under Art. 219 Code of Ukraine. These decisions are overturned regardless of their participation in the pre-trial investigation, and their cancellation report to prosecutors who directly supervise the observance of laws during the corresponding pre-trial investigations, is during the investigation of specific criminal offenses (ch. 6 Art. 36 CPC of Ukraine).

Thus, the function of supervision of the observance of laws in the pre-trial investigation realized mainly higher public prosecutor (the head of the prosecution) and procedural management function – mainly the prosecutor who exercises the powers of the prosecutor in the criminal proceedings (procedure manager). From the contents determining that procedural guidance prosecutor – an organization of the process of pre-determining the areas of investigation, coordination of proceedings, promote the creation of conditions for the normal functioning of investigative, enforcement in the investigation with the laws, it is clear that this prosecution of inherent characteristics administration dispose instead surveillance [6, p. 120].

Guide – this kind of management structure in the state and society, which is associated with solving social and administrative problems of general jurisdiction. Head – official, which endowed administrative authorities of her on the team and performing in-house management [7, p. 82].

Then, combine the function of supervision and procedural guidance or put an equal sign between them is impossible. After prosecutor (leader procedure) under present – an active participant (organizer) of the process of pre-trial investigation and is responsible for all the actions or omissions of the investigator and the investigator.

One of the most important tasks of the formation process is the proper organization management procedure in criminal proceedings. Today surveillance as a procedural guide pre-trial investigation carried out by the prosecutor in the form of licensing procedures and is permanent. The above differs significantly from surveillance that was carried out in the past by the prosecutor, who was actually an episodic and in many cases reduced to verification activities. Currently, CPC Ukraine provided 23 cases where the investigator must obtain the consent of the prosecutor's actions and commitment of decision-making. In this case, it applies to all the important

decisions in the case. This design office of the prosecutor itself provides for the continuous monitoring of the legality of the investigator, which in turn should help reduce the number of violations during criminal proceedings [8, p. 54–55].

So, firstly, the provisions on procedural guide pre-trial investigation does not indicate any new prosecution function, and provides generic name procedural form the constitutional functions of supervision over observance of laws by bodies that conduct pre-trial investigation. Secondly, by its legal nature given in ch. 2, Art. 36 Ukraine handheld powers the prosecutor is powers and specific management as a procedural guide carried on procedural (investigating) and procedural form. Thirdly, in modern conditions need special allocation «procedure leadership as a form of Public Prosecutions» due to the fact that for legal ideology of the new Code of Ukraine introduced the principle of «immutability prosecutor during the criminal proceedings», according to which the process of forming the prosecution in pre-trial criminal its proceedings and in court will be provided by a prosecutor. Fourth, in the given situation is not about some new feature prosecutor («procedural manual pre-trial investigation»), and are generic name procedural form the constitutional functions of supervision over observance of laws by authorities conducting the inquiry, pre-trial investigation and quick search activity [8].

In particular, according to the decision of the investigating judge accepted the petition on the basis of the investigator agreed with the prosecutor or the request of the prosecutor, the following investigative (detective) and covert investigative (detective) acts as a search; review home or other property; audio, video surveillance entity; seizure, inspection and seizure of correspondence; interception of telecommunications transport networks; interception of electronic information systems; inspection of inaccessible public places, home or other property; installation location of radio-electronic means; observation of a person thing or place; audio, video surveillance space; tacit obtaining samples required for comparative study.

It should be noted that the prosecutor – procedure leader not only approves the request of the investigator to conduct these proceedings, but also participates in trials during their consideration of the investigating judge. Moreover, only by order of the prosecutor conducted such an unofficial investigative (detective) act as controls for the offense.

Also exclusively on the basis of agreed prosecutor investigating judge investigating petitions:

- considering imposing monetary penalties on a person;
- temporarily limiting the use of special rights: a) the right to control the vehicle or vessel; b) the right to hunt; c) the right of establishment;
- suspension from work;
- authorizes temporary access to things and documents;
- imposes seizure of property and the temporarily seized property;

- applying preventive measures in the form of: a) personal commitment; b) personal surety; c) collateral; d) house arrest; e) detention;
- authorizes the detention for the purpose of the drive;
- continued detention and house arrest;
- changes precautions.

Moreover, all of the above investigation (search) operation and covert investigative (detective) action measures to criminal proceedings may be conducted and, accordingly, apply investigating judge not only at the request of the investigator, and at the request of the prosecutor [1, p. 164–165].

The limitation of the powers of the prosecutor of procedural guidance, in our opinion, are the provisions of the new Code of Ukraine concerning the right of the prosecutor to initiate before the head pretrial investigation issues to remove the investigator from the pre-trial investigation and the appointment of another investigation on the grounds provided by this Code, for its removal, or in case of inefficient pre-trial investigation. In addition, only the Prosecutor General of Ukraine, his deputies, prosecutors of the Autonomous Republic of Crimea, Kyiv and Sevastopol and public prosecutors assimilated thereto its motivated decision have the right to entrust the implementation of pre-trial investigation of any criminal offense other pretrial investigation, including investigating higher-level unit within the same body, in case of inefficient pre-trial investigation. In Art. 227 CPC in 1960 provided by the prosecutor the right to immediate removal from office of the investigator [4, p. 63].

Unlike other sectors of the judicial and procedural guidance provides quality investigation, which has a direct and crucial both for drawing up the indictment by the prosecutor, and the formation of its position in court, public prosecutor. And to have the confidence, the prosecutor himself obliged to regularly participate in the investigation of the case and pre-trial investigation to manage and coordinate it. Only on the basis of the procedural management activities inquirers and investigators directly involved in the proceedings of important investigations, timely correction of errors, the prosecutor can provide objective, complete and comprehensive investigation, and therefore have the actual and legal opportunity as public prosecutor firmly and consistently defend judicial podium with their views on the proof of the crime and the defendant's guilt [9, p. 27–28].

Knowing the essence of the prosecutor for the observance of laws on pre-trial investigation in the form of procedural guidance, consider some controversial issues concerning the procedure for this supervision unclear in the new Code of Ukraine. According to Art. 214 CPC of Ukraine to the Unified Register of pre-trial investigations made statements notification committed a criminal offense. So the duty of the prosecutor to oversee the prevention of the roster of applications, communications, where there are no signs of a criminal offense. Code of Ukraine does not establish criteria by which, unlike PDAs Ukraine 1960 (it can be opened only in cases where there is sufficient data to indicate the presence of a crime), you can determine whether related information provided to criminal offenses.

How prosecutor must act if the investigator has made in the Unified Register application for a criminal offense has started preliminary investigation and notified the prosecutor, and that the content of the application sees only an administrative offense or the circumstances which prevent criminal proceedings. The prosecutor has no authority to remove such information from the registry, not because it does not involve Ukraine, and a purely technical reasons, according to ch. 5, Art. 214 Code of Ukraine in the Unified Register of pre-trial investigation is automatically fixed date submit information and given a number of criminal proceedings. That prosecutor striking out information about criminal procedure violates these registration statements and reports. In our opinion, in such cases, the prosecutor must decide the closure of criminal proceedings under the relevant paragraph of Art. 284 Code of Ukraine.

At the beginning of criminal proceedings in cases of grave and especially grave crimes that are large in scope and very complex, it may be the establishment of the investigation team. The new Code of Ukraine does not provide procedural order of creation of such a group, but it twice referred to the possibility of their existence: in ch. 2, Art. 38 Code of Ukraine states that pre-trial investigation is carried out investigative pretrial investigation alone or investigative group.

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## **ПРОЦЕСУАЛЬНЕ КЕРІВНИЦТВО ДОСУДОВИМ РОЗСЛІДУВАННЯМ**

**А. М. Долгополов**

**Анотація.** У статті розглядається доцільність прийняття прокурором як керівником досудового розслідування рішення про створення слідчої групи та слідчої міжвідомчої групи, наділення прокурора у досудовому розслідуванні правом на здійснення процесуального керівництва владними суб'єктами органів дізнання і досудового слідства.

**Ключові слова:** прокурор, досудове розслідування, слідча група, органи дізнання, слідчий, відомчий контроль, прокурорський нагляд.

## **ПРОЦЕССУАЛЬНОЕ РУКОВОДСТВО ДОСУДЕБНЫМ РАССЛЕДОВАНИЕМ**

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**Аннотация.** В статье рассматривается целесообразность принятия прокурором как руководителем досудебного расследования решения о создании следственной группы и следственной межведомственной группы, наделение прокурора в досудебном расследовании правом на осуществление процессуального руководства властными субъектами органов дознания и досудебного следствия.

**Ключевые слова:** прокурор, досудебное расследование, следственная группа, органы дознания, следователь, ведомственный контроль, прокурорский надзор.