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Features of Notification of Suspicion to a Person, Located in the Temporarily Occupied Territories in the Donetsk and Luhansk Regions

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Abstract

The relevance of the study lies in the systematic analysis of the criminal procedural legislation of Ukraine based on the requirements of international treaties, the consent to be bound by which was granted by the Verkhovna Rada of Ukraine, and in the definition of theoretical and practical problems, without overcoming which the procedural activity of the prosecution during the serving of a written notice of suspicion to a person whose place of residence and/or stay is in the temporarily occupied territories in Donetsk and Luhansk regions, will not meet the tasks of criminal proceedings and guarantees defined by international treaties. Ways to overcome this practical problem are proposed. The purpose of the study is to analyse the specific features of legal regulation of notification of suspicion to a person whose location is established, whose place of residence and/or stay is located in the temporarily occupied territories in Donetsk and Luhansk regions, and to highlight actual theoretical and practical problems that arise during the serving of a written notice of suspicion to a person who is located in the temporarily occupied territories in Donetsk and Luhansk regions. Methodological tools were chosen considering the set goal, the specific features of the object and the subject of research. During the research, a system of methods of scientific cognition was used: formal logic (abstraction, analogy, deduction, induction, synthesis) to clarify the content of the question under study; system analysis – to formulate research conclusions and outline areas for improving the criminal procedure legislation of Ukraine; theoretical – in the process of research of scientific and educational literature. Based on the results of the conducted research, the conclusions were formulated: 1) since the obligation to serve a written notice of suspicion as an integral component of the implementation of notification to a person of suspicion is assigned to the prosecution, in the case of establishing information about the location of a person whose place of residence and/or stay is in the temporarily occupied territories in Donetsk and Luhansk regions, it is the state of Ukraine that should take all available measures to promote and protect the rights of citizens in the temporarily uncontrolled territory, by applying the investigator, prosecutor of the provisions of Section IX of the Criminal Procedure Code of Ukraine; 2) if the prosecution establishes information about the location of a person whose place of residence and/or stay is on the temporarily occupied territories in Donetsk and Luhansk regions, the investigator, prosecutor is obliged to apply to the Russian Federation with a request for international legal assistance to perform certain procedural actions, namely, serving a person with a notice of suspicion, since the Russian Federation exercises “effective control” in the temporarily occupied territory of Ukraine, in connection with which it is obliged to guarantee the implementation of Art. 1 of the Convention; 3) the procedure for reporting suspicion to a person who is in the temporarily occupied territories in Donetsk and Luhansk regions, requires legal improvement by making appropriate changes to the Criminal Procedure Code of Ukraine or special laws. It is necessary to consider the practice of the European Court of Human Rights and the requirements of international treaties, the consent to be bound by which was granted by the Verkhovna Rada of Ukraine

Keywords:

suspicion; notification; suspect; written notification; serving suspicion; temporarily occupied territory; Donetsk region; Luhansk region

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Introduction

Eight years have passed since the entry into force of the Criminal Procedure Code (CPC) of Ukraine No. 4651-VI of April 13, 2012 [1]. During this period, the new CPC of Ukraine has undergone numerous changes and additions, including the institution of notification of suspicion and its integral component – the serving of a written notice of suspicion. This was due to the new conditions of socio-political, military, and economic orientation, which made it necessary to introduce concepts into the procedural legislation that had not yet been regulated.

Despite the substantial achievements of researchers, constantly investigating the problems of the practical application of the norms of the CPC of Ukraine [1] and suggesting ways to improve them to harmonise them with other national legal institutions and European standards, in the vast majority of cases they remain without the attention of the legislator. Instead, changes are made without considering the positions of specialists and system analysis with other institutions of criminal procedure legislation of Ukraine [1]. This practice does not contribute to improving the standards but raises new questions for specialists and researchers that require further scientific understanding and identification of ways to solve them.

The purpose of the study is to conduct a comprehensive scientific analysis of the criminal procedural legislation of Ukraine in terms of the procedural activities of the prosecution when serving suspicion to a person whose location is established, whose place of residence and/or stay is in the temporarily occupied territories in Donetsk and Luhansk regions; clarification of current theoretical and practical problems regarding the serving of a written notice of suspicion to a person who is in the temporarily occupied territories in Donetsk and Luhansk regions, and compliance of current legislation with the provisions of international treaties, consent to be bound by which is provided by the Verkhovna Rada of Ukraine.

Results and Discussion

Following amendments to the code of Criminal Procedure of Ukraine, in accordance with the Law of Ukraine “On amendments to the criminal and Criminal Procedure Codes of Ukraine regarding the inevitability of punishment for certain crimes against the foundations of national security, public security, and corruption crimes” of October 7, 2014, No. 1689-VII [2], which introduced the form of criminal proceedings in the absence of a suspect or accused (in absentia), the concept of the suspect was expanded (a person towards whom a notice of suspicion was drawn up, but it was not served to them due to the failure to establish the location of

the person, but measures were taken to serve in the manner provided for CPC of Ukraine for serving notifications). These changes have caused additional problems in the enforcement of the institution of notification of suspicion.

Since the actual problems of applying such new legislation as the acquisition of the status of a suspect by a person whose location has not been established, but measures have been taken to serve in the way provided for by the CPC of Ukraine [1] for serving messages, were the subject of previous publications, the purpose of this study is to choose the specific features of the legal regulation of notification of suspicion to a person whose location is established, whose place of residence and stay is located in the temporarily occupied territories in Donetsk and Luhansk regions.

Based on a systematic analysis of Art. 42, 276, 278 of the CPC of Ukraine [1], provide the serving of a notice of suspicion, and not its delivery in any way. Therewith, Art. 278 of the CPC of Ukraine [1] provides that if such serving is impossible – in the manner provided for by this Code for the serving of notifications. Only one case of impossibility of such serving has been identified – failure to serve a notice of suspicion to a person due to failure to establish the person's location (Art. 42 of the CPC of Ukraine). Therefore, if the location of a person is established, namely, the prosecution has information about the place of work, place of residence or temporary stay of the person, then it is impossible to serve them with a notice of suspicion in the way provided for by the CPC of Ukraine for serving notifications. Therefore, if the investigator or prosecutor has established information about the location of a person, then, considering the content of part 1 of Art. 42 of the CPC of Ukraine [1], measures cannot be taken to serve them in the manner provided for by the CPC of Ukraine for serving messages. The “general” procedure for a personal (direct) serving of a written notice of suspicion to such a person is subject to application.

However, in practice, there are cases of establishing the location of a person whose place of residence and/or stay is located in the temporarily occupied territory of Ukraine, namely in certain territories in the Donetsk and Luhansk regions, the factual access to which is restricted.

When investigating the issue of how a notice of suspicion should be served if the prosecution establishes information about the location of a person whose place of residence and/or stay is located in the temporarily occupied territories in the Donetsk and Luhansk regions, it is necessary to consider the following. According to Art. 1 of the Law of Ukraine “On the specific features of national policy to ensure the state sovereignty of Ukraine in the temporarily

occupied territories in Donetsk and Luhansk regions” of January 18, 2018, No. 2268-VIII (hereinafter – Law No. 2268-VIII) [3], temporarily occupied territories in Donetsk and Luhansk regions on the day of adoption of this law are recognised as parts of the territory of Ukraine, within which the armed formations of the Russian Federation and the occupation administration of the Russian Federation have established and exercise general control. The borders and list of districts, cities, towns and villages, parts of their territories temporarily occupied in Donetsk and Luhansk regions are determined by the President of Ukraine on the recommendation of the Ministry of Defence of Ukraine, prepared based on proposals of the General Staff of the Armed Forces of Ukraine [3], 2018. The decree of the President of Ukraine “On the borders and list of districts, cities, towns and villages, parts of their territories temporarily occupied in Donetsk and Luhansk regions” dated February 7, 2019, No. 32/2019 [4] approved the borders and list of districts, cities, towns and villages, parts of their territories temporarily occupied in Donetsk and Luhansk regions. According to Art. 2 of Law No. 2268-VIII [3], the legal status of the temporarily occupied territories in Donetsk and Luhansk regions, the Autonomous Republic of Crimea and the city of Sevastopol, and the legal regime in these territories are determined by this Law, the Law of Ukraine “On ensuring the rights and freedoms of citizens and the legal regime in the temporarily occupied territory of Ukraine”, other laws of Ukraine, international treaties, the consent to be bound by which is granted by the Verkhovna Rada of Ukraine, principles and norms of international law. Within the temporarily occupied territories in the Donetsk and Luhansk regions, there is a special procedure for ensuring the rights and freedoms of the civilian population, defined by this Law, other laws of Ukraine, international treaties, the consent to be bound by which was granted by the Verkhovna Rada of Ukraine, and principles and norms of international law.

In addition, paragraph 1 of part 1 of Art. 5 together with paragraph 1 of part 1 of Art. 6 of Law No. 2268-VIII [3] stipulates that to ensure the state sovereignty of Ukraine in the temporarily occupied territories in the Donetsk and Luhansk regions, state authorities and their officials, acting on the basis, within the limits of their powers and in the manner provided for by the Constitution and laws of Ukraine, take measures to protect the rights and freedoms of the civilian population. The main areas of protecting the rights and freedoms of the civilian population in the temporarily occupied territories in the Donetsk and Luhansk regions are the protection of fundamental political and civil human rights and freedoms.

The Russian Federation, as an occupying state, in accordance with the IV Hague Convention on the laws and customs of war on land and its annexe (the regulation on the laws and customs of war on land of October 18, 1907, the Geneva Convention for the protection of the civilian population in the time of war of August 12, 1950 [5], and the additional protocol to the Geneva Conventions of August 12, 1950, regarding the protection of victims of international armed conflicts (Protocol I), of June 8, 1977) is responsible for violating the protection of the rights of the civilian population (part 2 of Art. 7 of Law No. 2268-VIII).

Therewith, Law No. 2268-VIII [3] does not define a special procedure for ensuring the rights and freedoms of Ukrainian citizens living in the temporarily occupied territories in Donetsk and Luhansk regions, in terms of the procedure for criminal proceedings, however, considering Art. 2, the provisions of Law No. 1207-VII [6], Art. 12 of which defines a special procedure for ensuring the rights and freedoms of Ukrainian citizens living in the temporarily occupied territory, regarding the procedure for criminal proceedings, should be applied. According to this article of Law No. 1207-VII [6], the special procedure involves only the issues of determining jurisdiction and certain aspects of the implementation of a special pre-trial investigation or special judicial proceedings, and not the procedure for conducting a pre-trial investigation in general, which is conducted according to the general rules established by the CPC of Ukraine [5]. Therefore, since neither Law No. 2268-VIII [3] nor Law No. 1207-VII [6] establish the specific features of criminal proceedings when reporting suspicion to a person whose place of residence or stay is located in the temporarily occupied territories in Donetsk and Luhansk regions, the general rules for reporting suspicion to a person established by the CPC of Ukraine should be applied.

In terms of the impossibility of taking measures to serve a notice of suspicion in the way provided by the CPC of Ukraine [1] for serving messages, if the prosecution has established information about the location of a person, namely the place of residence and stay of which is located in the temporarily occupied territories in Donetsk and Luhansk regions, which are an inseparable part of the territory of Ukraine, the serving of a notice of suspicion must be conducted directly.

However, the direct serving by an investigator or prosecutor of a notice of suspicion to a person in the temporarily occupied territory of Ukraine is hindered by high risks of certain negative consequences for officials of the prosecution, which cannot be proportional to the purpose of ensuring the rights and freedoms of citizens, in terms of the proper implementation of the notice of suspicion. The practice of

law enforcement of such legal relations has shown that the prosecution actively uses the method of informing a person of suspicion by sending a notice of suspicion by mail, with a declared value, a list of the attachment, and notification of serving [7]. By examining judicial practice, it was established that investigative judges generally share this position of the prosecution [8].

In addition, a common behaviour of the prosecution in the analysed category of criminal proceedings is:

- application of the procedure for handing procedural documents to a suspect under Art. 297-5 of the CPC of Ukraine [1];
- sending a written notice of suspicion to the embassy of the Russian Federation in Ukraine;
- failure to take any actions aimed at serving the person with a written notice of suspicion.

These approaches are groundless, erroneous, and contrary to the tasks and general principles of criminal proceedings.

First, the norms of the CPC of Ukraine [1] allow sending a notice of suspicion by means of postal communication in certain cases. Therewith, such a procedure is exclusive, it is applied only if it is impossible for the prosecution to serve a notice of suspicion on the day of its compilation. It is clear that such impossibility of serving should be objectively justified, and the investigator, prosecutor, guided by the principle of publicity, should take all measures to establish the exact location of the person and conduct (if reasonably possible) personal serving of the notice of suspicion to the person.

In any case, the prosecution's performance of the obligation to serve a notice of suspicion in the manner provided for the serving of notifications is an activity with the purpose to achieve a certain result – obtaining this written procedural decision by a person and is not an activity with a “formal composition”. An analysis of the provisions of the CPC of Ukraine gives grounds to assert that sending a notice of suspicion to a person by means of postal communication will meet the requirements of the CPC of Ukraine only if such a person receives it personally. This additionally certifies the provision of part 1 of Art. 136 of the CPC of Ukraine [1], according to which the proper confirmation of a person's receipt of a summons or acquaintance with its content in another way is the signature of the person on receipt, in particular on a postal message, a video recording of the serving of the summons to the person, any other data confirming the fact of serving the summons to the person or acquaintance with its content [9]. Therefore, only the fact of sending a notice of suspicion by mail, and confirmation of receipt of a postal item by one of the persons listed in part 1 of Art. 135 of the CPC of Ukraine [1], is not

proof of proper serving of a notice of suspicion to a person. Thus, a person acquires the status of a suspect from the moment of serving of a postal item to them personally, and not from the moment of sending such notification by the prosecution, so only after that the investigator or prosecutor can enter information about the notification of suspicion in the Unified Register of pre-trial investigations.

A similar opinion is advocated for by N.A. Lugina [9], who claims that “served” does not mean “received”, and therefore, it is advisable to consider the requirements for proper confirmation of receipt or acquaintance by a person with the content of the notice of suspicion in another way.

The approach to determining the moment when a person is notified of suspicion without considering the fact that receiving written notice of suspicion contradicts the principle of the rule of law, distorts the essence of the institution of notification of suspicion, and may actually deprive or restrict a person in the exercise of the right to be immediately and in detail informed in an understandable matter about the nature and reasons of the charge brought against them (subparagraph “a” of paragraph 3 of Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms of November 4, 1950 No. 995_004 (hereinafter referred to as Convention) [5] and be clearly and promptly notified of their rights provided for by law, and receive their explanations (paragraph 2 of part 3 of Art. 42 of the CPC of Ukraine).

According to the standards of proper notification of a person of suspicion developed by the European Court of Human Rights (ECHR), it is not sufficient that the information is only provided in writing, the authorities must take all reasonable measures to ensure that the suspect has been notified of their right to defence and, as far as possible, understood the consequences of their conduct during interrogation (decision in “Pishchalnikov v. Russia” case of 24 December 2009 [10]).

Art. 17 of the Law of Ukraine “On the enforcement of decisions and application of the practice of the European Court of Human Rights” of February 23, 2006, No. 3477-IV established that courts apply the Convention and practice of the European Court when considering cases, that is, judges are obliged to apply the Convention and the decision of the ECHR as a source of law at all stages of proceedings on an equal basis with the laws of Ukraine [11].

The corresponding consolidation regarding the mandatory application of the ECHR practice is also contained in part 2 of Art. 8 and part 5 of Art. 9 of the CPC of Ukraine, according to which the principle of the rule of law in criminal proceedings and the criminal procedure legislation of Ukraine are applied considering the practice of the ECHR [8].

Consequently, in the absence of documents in the materials of criminal proceedings that unequivocally certify the fact that a person received a postal item with a written notification of suspicion, they cannot be considered notified of suspicion in the manner established by law. In such circumstances, the entry of information by an investigator or prosecutor into the Unified Register of Pre-trial Investigations regarding the notification of suspicion to a person is groundless and illegal. Secondly, Ukrposhta JSC does not send mail to localities in Donetsk and Luhansk regions where state authorities temporarily do not exercise their powers [12].

Despite the fact that these circumstances indicate the impossibility of delivering postal items, which excludes the possibility of receiving a notice of suspicion in this way by a person whose place of residence and stay is located in the temporarily occupied territories in Donetsk and Luhansk regions, the prosecution chooses this method of informing a person of suspicion, and the investigating judges in the vast majority of cases recognise it as appropriate, even referring to the circumstances of the impossibility of delivering postal items in their decisions. The motivation in general is the recognition by the investigating judges of these actions of the prosecution as sufficient measures taken to serve the person with a notice of suspicion in the manner provided for by the CPC of Ukraine [1] for serving notices (Art. 42 of the CPC of Ukraine).

However, in such legal relations, the requirements of Art. 42 of the CPC of Ukraine [1] cannot be applied, since it is possible to take measures to serve a person with a notice of suspicion in the way provided for by the CPC of Ukraine for serving messages due to the inability to establish the person's location. In this case, the prosecution establishes information about the location of the person, namely the place of residence and stay in the temporarily occupied territories in the Donetsk and Luhansk regions, which are an inseparable part of the territory of Ukraine.

Thirdly, considering the requirements of Art. 2, 7, 8, 9 of the CPC of Ukraine, the activities of an investigator or prosecutor in the implementation of a notice of suspicion must comply with international treaties, the consent to be bound by which was granted by the Verkhovna Rada of Ukraine. Most international human rights treaties contain a "jurisdiction clause", which aims to define the range of persons for which states are obliged to fulfil their human rights obligations under the relevant international treaty [13].

Art. 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms of November

4, 1950, No. 995_004 [5], ratified by the Law of Ukraine "On ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, the First Protocol and Protocols No. 2, 4, 7 and 11 to the Convention" of July 17, 1997 No. 475/97-BP [11], stipulates that the High Contracting Parties guarantee everyone under their jurisdiction the rights and freedoms defined in section I of this convention [10].

The case-law of the ECHR has defined the jurisdictional competence of the state under Art. 1 of the Convention primarily as territorial. It is presumed that jurisdiction is exercised within the territory of the state. However, such a presumption may be limited in some exceptional cases, first of all, if a state is hindered from exercising power in a part of its territory, in particular as a result of: military occupation of a part of the territory by the armed forces of another state exercising effective control over such territory; military actions or uprisings; acts of a foreign state supporting the establishment of a separatist state on the territory of the state.

The court examines on the one hand, all objective facts that may limit the possibility of a state using power on its territory, and on the other, the state's actions to determine that such a situation exists. The obligations undertaken by a state, signing the Convention include, in addition to the obligation to refrain from interfering with the exercising of the rights and freedoms guaranteed by it, positive obligations regarding steps to ensure respect for such rights and freedoms in its territory. These obligations remain even if the power of the state is limited to a part of its territory, that is, the state is obliged to take all appropriate measures that are still available to it to guarantee rights and freedoms. Other "Transnistrian" cases also explicitly stated that even the existence of the "effective control" of the Russian Federation over the Pridnestrovian Moldavian Republic (PMR), which was unequivocally recognised by the court due to the military, economic, and political support of the PMR, does not exempt Moldova from fulfilling its positive human rights obligations. The ECHR reached a similar conclusion in its decision in the "Ivanțoc and Others v. Moldova and Russia" case of 4 June 2012 [14], stating that although Moldova does not have effective control over the actions of the PMR in Transdniestria, the fact that this region is recognised by international law as part of the territory of Moldova entails a duty under Art. 1 of the Convention to use all legal and diplomatic means available to it to continue to guarantee the exercise of the rights and freedoms defined by the convention to all persons residing there.

An exception to the principle of territorial jurisdiction from the opposite exists when, as a result of lawful or illegal actions, a contracting state exercises effective control over territory outside its national territory. The obligation to secure in such territory the rights and freedoms defined in the Convention stems from the fact of such control, whether it is exercised directly, through the contracting state's own armed forces, or through a subordinate local administration. Thus, the controlling state is responsible under Art. 1 of the convention, namely, it must guarantee in the territory under its control the full set of substantive rights provided for in the Convention and those additional protocols that it has ratified. This state will be responsible for any violations of such rights. The application of these approaches to the issue under study is fundamentally important for the current situation in Ukraine since part of its territory is under the control of another state. Consequently, according to the provisions of the convention, considering the practice of the ECHR, Ukraine is obliged to take all appropriate measures that are available to it to guarantee rights and freedoms, and the Russian Federation is obliged to guarantee everyone under its jurisdiction, in particular in the temporarily occupied territory of Ukraine, the rights and freedoms defined in section I of the Convention for the Protection of Human Rights and Fundamental Freedoms [11].

In such circumstances, if the prosecution establishes information about the location of a person whose place of residence and/or stay is located in the temporarily occupied territory of Ukraine, the investigator, prosecutor is obliged to take all available measures to promote the rights of a person who in the temporarily uncontrolled territory of Ukraine [15], namely, to apply the provisions of Section IX of the CPC of Ukraine regulating international cooperation during criminal proceedings, and to apply to the Russian Federation with a request for international cooperation to ensure that the person is served a written notice of suspicion.

Thus, the analysis of the procedure for serving a written notice of suspicion to a person whose location is established, whose place of residence and stay is located in the temporarily occupied territories in the Donetsk and Luhansk regions gives grounds to accept that the lack of unambiguous and uniform understanding of procedures by participants in criminal proceedings leads to a violation of the rule of law and also determines the need for further rule-making in this area of law.

The study highlights problematic issues related to the specific features of legal regulation of notification of suspicion to a person whose location is established, whose place of residence or stay is located in the temporarily occupied territories in the Donetsk and Luhansk regions and outlines actual theoretical and practical problems that arise in the case of serving of a written notice of suspicion to a person who is located in the temporarily occupied territories in the Donetsk and Luhansk regions. Difficulties in these cases are caused by the fact that the legislator did not fully adhere to the principle of legal certainty in terms of such a general legal category as "quality and accuracy of the law" [16], which is of critical importance in the development and functioning of the law system of a democratic state. In such circumstances, the practical application of these norms is not uniform, often erroneous in relation to compliance with the principles of criminal proceedings. Elimination of the investigated shortcomings is possible only by making appropriate changes to the CPC of Ukraine [1].

Conclusions

Since the obligation to serve a written notice of suspicion as an integral part of notifying a person of suspicion is assigned to the prosecution, in case of establishing information about the location of a person whose place of residence or stay is located in the temporarily occupied territories in the Donetsk and Luhansk regions, it is the state of Ukraine that should take all available measures to ensure and protect the rights of its citizens in the territory temporarily beyond its control, by applying the provisions of Section IX of the CPC of Ukraine by an investigator or prosecutor – to apply to the Russian Federation with a request for international legal assistance to perform certain procedural actions, namely, to serve a person with a notice of suspicion, since it is the Russian Federation that exercises "effective control" in the temporarily occupied territory of Ukraine, in connection with which it is obliged to guarantee the implementation of Art. 1 of the Convention. The procedure for reporting of suspicion a person who is in the temporarily occupied territories in the Donetsk and Luhansk regions requires legal improvement by making appropriate changes to the CPC of Ukraine or the special laws mentioned above. It is necessary to consider the practice of the ECHR and the requirements of international treaties, the consent to be bound by which was provided by the Verkhovna Rada of Ukraine.

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Особливості повідомлення про підозру особі, яка перебуває на тимчасово окупованих територіях у Донецькій та Луганській областях

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Анотація

Актуальність статті полягає в системному аналізі кримінального процесуального законодавства України на підставі вимог міжнародних договорів, згода на обов'язковість яких надана Верховною Радою України, й у визначенні теоретичних і практичних проблем, без подолання яких процесуальна діяльність сторони обвинувачення під час вручення письмового повідомлення про підозру особі, місце проживання та/або перебування якої знаходиться на тимчасово окупованих територіях у Донецькій та Луганській областях, не буде відповідати завданням кримінального провадження та гарантіям, визначеним міжнародними договорами. Запропоновано шляхи подолання окресленої практичної проблеми. Метою статті є аналіз особливостей правового регулювання повідомлення про підозру особі, місцезнаходження якої встановлено, місце проживання та/або перебування якої знаходиться на тимчасово окупованих територіях у Донецькій та Луганській областях, а також виокремлення актуальних теоретичних і практичних проблем, що постають під час вручення письмового повідомлення про підозру особі, яка перебуває на тимчасово окупованих територіях у Донецькій та Луганській областях. З огляду на поставлену мету, специфіку об'єкта та предмета дослідження обрано методологічний інструментарій. Під час дослідження використано систему методів наукового пізнання: формальної логіки (абстрагування, аналогію, дедукцію, індукцію, синтез) для з'ясування змісту досліджуваного питання; метод системного аналізу – для формулювання висновків дослідження та окреслення напрямів удосконалення кримінального процесуального законодавства України; теоретичний – у процесі дослідження наукової та навчально-методичної літератури. За результатами здійсненого дослідження сформульовано висновки: 1) оскільки обов'язок вручення письмового повідомлення про підозру як невід'ємна складова здійснення повідомлення особі про підозру покладений на сторону обвинувачення, у разі встановлення відомостей про місцезнаходження особи, місце проживання та/або перебування якої знаходиться на тимчасово окупованих територіях у Донецькій та Луганській областях, саме держава Україна має вживати всіх доступних заходів щодо сприяння забезпеченню та захисту прав громадян, які опинилися на тимчасово не підконтрольній їй території, шляхом застосування слідчим, прокурором положень розділу IX Кримінального процесуального кодексу України; 2) у разі встановлення стороною обвинувачення відомостей про місцезнаходження особи, місце проживання та/або перебування якої знаходиться на тимчасово окупованих територіях у Донецькій та Луганській областях, слідчий, прокурор зобов'язаний звертатися до Російської Федерації із запитом про міжнародну правову допомогу для виконання окремих процесуальних дій, а саме вручення особі повідомлення про підозру, оскільки Російська Федерація здійснює «ефективний контроль» на тимчасово окупованій території України, у зв'язку із чим зобов'язана гарантувати виконання статті 1 Конвенції; 3) порядок повідомлення про підозру особі, яка знаходиться на тимчасово окупованих територіях у Донецькій та Луганській областях, потребує правового вдосконалення шляхом внесення відповідних змін до Кримінального процесуального кодексу України або спеціальних законів. В обов'язковому порядку мають бути враховані практика Європейського суду з прав людини та вимоги міжнародних договорів, згода на обов'язковість яких надана Верховною Радою України

Ключові слова:

підозра; повідомлення; підозрюваний; письмове повідомлення; вручення; тимчасово окупована територія; Донецька область; Луганська область