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Historical Development of Administrative-Legal Support for the Activities of Inquiry Units of the National Police of Ukraine

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Abstract

The purpose of the study is to conduct a thorough analysis of the historical development of administrative and legal support for the activities of the National Police investigation units of Ukraine. The methodological tools were chosen considering the set goal, the characteristic feature of the object, and the subject of research. they are based on the general dialectical method of scientific knowledge of specific phenomena, and their connections with the practical activities of the bodies of inquiry of the National Police of Ukraine. These methods are comprehensively used in the systematic processing of statistical materials on the results of practical activities of inquiry units of the National Police of Ukraine and materials of operational search cases and criminal proceedings, etc. The historical method is used in a thorough analysis of the establishment and development of inquiry units of the National Police of Ukraine, the specific features of their activities, administrative, and legal regulations in different historical periods. Based on the analysis of the achievements of the investigation units, the sources covering the aspects of using the term "inquiry" in law enforcement practice, and the content of the concept of "inquiry" as one of the forms of pre-trial investigation at various stages of social development. It is established that at the legislative level and in literary sources for a long time this term has undergone a transformation in accordance with its functional area. The study describes the inquiry at an early stage of development and compares it with the modern form of pre-trial investigation. It is established that inquiry at all stages of its development is characterised by such a feature as the presence of a simplified order. It is proved that the modern model of pre-trial investigation quite successfully reproduces positive historical experience and legal opinion, and a balanced approach to differentiating the forms of pre-trial investigation is applied. The study states that the inquiry was perceived as identifying signs of a crime and conducting initial measures to search for the perpetrators, and investigating all the circumstances of committing crimes, and then as a separate type of Investigation. Researchers in the administrative and legal field outlined the history of the emergence, establishment and development of the units of inquiry of the National Police of Ukraine, which had three fundamental stages: pre-trial inquiry of the second half of the 19th–early 20th centuries (1864-1917); the period of the Soviet era (1917-1991); pre-trial inquiry of independent Ukraine (from 1991 to the present). It is proved that the modern model of inquiry quite successfully reproduces positive historical experience and legal opinion. The key differences between the inquiry of the modern form of pre-trial investigation and the early stage of its occurrence are highlighted: firstly, now the inquiry lasts from the moment of detection of the fact of an illegal act until the end of the pre-trial investigation; secondly, in the 18th-19th centuries the inquiry did not have a clearly defined procedural form and was not limited to specific terms, and also almost entirely depended on the internal conviction of the person who conducted it; thirdly, in the legislation of the pre-revolutionary period, the inquiry had the right to conduct a wide range of authorised persons (police ranks, military and civilian authorities, clergy, officials, village elders), and now the inquiry is conducted by inquirers, that is, officials of the inquiry unit of the National Police of Ukraine, the security body, the body that monitors compliance with tax legislation, the state Bureau of Investigation, in cases established by the Criminal Procedure Code of Ukraine (hereinafter referred to as the CPC), authorised persons of another division of these bodies, which, according to the CPC of Ukraine, conduct pre-trial investigation of criminal misdemeanours; fourthly, the inquiry in that time was conducted in relation to all crimes without exception. In the current conditions, inquiries are conducted exclusively for criminal misdemeanours, that is, minor crimes. However, all these differences have a common feature inherent in learning at all stages of its development – the presence of a simplified order

Keywords: police; National Police; police inquiry; investigator interaction; typical investigative situations; patterns of investigation organisation and planning; investigative versions

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Introduction

At the present stage of development, Ukraine, completing another historical round, found itself on the threshold of serious improvement of the national legal system, considering international legal standards and modern conditions. Globalisation has led to the emergence of new types and forms of illegal activities, their transformation and spread through the territory of Ukraine. Therewith, the impact of corruption, organised crime, and the shadow economy on public processes is growing. These trends and the political and economic situation require rapid and effective reform of pre-trial investigation, transition to a qualitatively new level of functioning.

The study attempts to conduct a thorough analysis of the historical establishment and development of inquiry units of the National Police of Ukraine, which will allow outlining of their historical periods. A scientific approach is proposed both to the reform of the legal system in general and to the definition of ways to improve the pre-trial investigation procedure, in particular, involving the study of the historical past in the context of analysing the main stages of the establishment and development of this legal institution.

The purpose and objectives of the study are to comprehensively examine the establishment and development of administrative and legal support for the activities of inquiry units of the National Police of Ukraine, analyse the historical prerequisites for structural and functional differentiation of inquiry as a procedural form of pre-trial investigation.

Results and Discussion

It is reasonable to start the examination of the Institute of inquiry at the present stage of development of Ukrainian administrative and legal science from its sources. The prerequisite for its establishment, as noted by K.A. Volkov, were a need to ensure the search for guilty persons who violated the norms of customary law. According to the researcher, certain features of the inquiry can be traced already in the “Russkaya Pravda” (“Yaroslav's Court”), which mentions such forms of search as “code” and “persecution of the trace” [1-3]. However, on the territory of Ukraine in legal monuments, the term “inquiry” has been widespread since the beginning of the 18th century, in particular, on the lands that were part of the Russian Empire. The sources indicate that such a function of the police as inquiry appeared from the moment of its creation by Peter I in 1718, but in the procedural sense, this form of the proceeding was combined with the investigation [4]. It can be agreed with such testimony since during this period an extensive police apparatus was created, in which the criminal search function was not specifically allocated, and the police were simultaneously engaged in search and inquiry together with other institutions.

Therewith, the judicial search system of the Russian Empire was increasingly spreading throughout the territory of what was then Ukraine, along with the Hetman's forms of ensuring the investigation. Notably, the police were authorised to conduct both an inquiry and a preliminary investigation into the overwhelming number of crimes and misdemeanours. There were city and county police. The city was divided into parts (200-700 yards), headed by a private bailiff with their own office, who was entrusted with the duties of solving criminal offences and conducting inquiry [5-7]. Notably, such actions were effective, since the private bailiff was obliged to personally collect and record information about the person against whom the crime was committed, the event of the committed illegal act, the method and instrument of the crime, the time and place when and where the crime was committed, the witnesses of the event, who could explain the intentions of the offence and attest to the involvement of the criminal or even expose them. As Yu.A. Kholod rightly noted, the police reform of the 60s of the 19th century affected not only the structure of the general police but also had a substantial impact on its competence: according to the specified decree of the emperor, the preliminary investigation of criminal cases was transferred to judicial investigators, cases of minor criminal and civil cases – to magistrates, economic functions and issues of good management – to zemstvo and city self-government bodies [8]. The study supports the author's opinion that these measures contributed to more effective activities of the police in fulfilling their main duty – to protect the safety of society and the state.

The institute under study had a difficult and inconsistent path after the October Revolution of 1917. Thus, as a result of these political transformations, the police as a law enforcement agency was abolished and a number of state bodies were created, among which the police occupied a substantial place. According to O.V. Grinenko, at that time, the police, as an investigative body, were given the right to conduct only separate investigative actions with the subsequent transfer of the collected materials to the preliminary investigation bodies [9]. It can be argued that the actions of the police were somewhat limited in this area. The subsequent CPC of the Ukrainian SSR of 1927, in the provisions of Art. 94, somewhat expanded the range of bodies of inquiry. In addition, the legislator for the first time provided for two types of it: a) Inquiry in cases in which the preliminary investigation is not mandatory (Art. 95 of the CPC of the Ukrainian SSR); b) inquiry in cases in which the preliminary investigation is mandatory (Art. 97 of the CPC of the Ukrainian SSR), the procedure for which was conducted according to all the rules established for the preliminary investigation [10]. Analysing the

legislation of this period, it can be noted that the range of cases in which inquirers conducted investigations was expanded, and the difference between investigation and inquiry was gradually levelled. Subsequently, the order of the Ministry of Public Order Protection of July 31, 1963 "On conducting an inquiry in the police" established the procedure according to which the conduct of an inquiry in criminal cases should be entrusted to the most experienced, legally trained, operational employees of the Criminal Investigation Department, the service for combating theft of socialist property, other services, and district inspectors [11].

Consequently, it can be argued that there were positive changes in the legislation, in particular in the fact that the function of inquiry was distributed among individual police services. Until 1993, the CPC of Ukraine defined two types of inquiry: in cases in which preliminary investigation is mandatory, and in cases in which it is not mandatory, and where the inquiry was used as the main and final form of preliminary investigation of certain categories of criminal cases. Even then, experts clearly distinguished between inquiry and investigation [12]. Fully agreeing with the possibility of distinguishing two of these types of inquiry based on the current legal regulation, it is impossible to recognise the grounds that are used in this case as correct. Conducting an inquiry on grievous and non-grievous crimes cannot be considered as independent types of inquiry, since the latter are used as criteria for applying specific forms of inquiry that exist, and therefore should be considered as independent types of inquiry. Thus, O.O. Popov believed that the inquiry differs from the pre-trial investigation in that: a) the inquiry precedes the pre-trial investigation; b) in the process of the inquiry, information is obtained regarding a particular event and persons involved in it, while the investigation checks the data obtained during the inquiry and collects new evidence, providing them with the established form; c) the inquiry about the crime receives only data that gives rise to assumptions, guesses, and suspicions, and the investigation aims to find such evidence that, having destroyed the doubts that arose based on the inquiry, would bring them to the state of truth; d) the inquiry requires efficiency to identify traces of a crime and evidence of the suspect's guilt, and is usually conducted secretly, and the activity of an investigator, on the contrary, requires attention and balance, since their orders must be based on irrefutable evidence and therefore cannot be taken hastily; e) the activity of inquiry consists in secret observation, questioning, and protection of traces of a crime [13]. Considering the opinion of the researcher, it can be agreed that investigative actions are conducted by an investigator and require formalities and are accompanied by compliance with clearly defined rules, and inquiries are usually conducted by police officers and generally persons who do not belong to the Judicial Department. According to T.V. Omelchenko, the characteristic features of the inquiry, according to the Statute of criminal proceedings, were that it: had a public character; did not include the involvement of the parties; was the activity not of the prosecutor but of government bodies that were entrusted with the duty to stop and prevent crimes; was terminated at the moment when the case went to the stage of preliminary investigation [14]. Therefore, it is necessary to outline the positive features of the inquiry, since it provided for the implementation of actions that fell within the competence of the investigator, and was conducted immediately after the start of the investigation by the police of a crime that had just been committed in the "hot pursuit". In the absence of a judicial investigator or prosecutor, the police, informing them about an event that contained signs of a crime, had to independently start and conduct an inquiry. After that, the collected materials were transferred to the judicial investigator, who was supposed to conduct a pre-trial investigation in the future, carefully checking the information established during the inquiry. The police had the right to investigate minor crimes and misdemeanours. In accordance with the statute of criminal proceedings, the police were required to conduct certain tasks of the investigator, including those related to the search for criminals. In a situation where the judicial investigator could not arrive at the scene of a criminal event in a timely manner and there was a threat of damage, loss or destruction of traces, the police replaced the judicial investigator in all investigative actions that could not be postponed, in particular during inspections, investigations, searches, seizures (Art. 258 of the Statute of criminal proceedings, hereinafter referred to as the SCP) [15]. Therefore, positive aspects should be noted, since the judicial investigator could check and supplement the inquiry conducted by the police, cancel decisions taken during the inquiry, and all actions conducted both during the inquiry and the implementation of urgent investigative actions in the absence of the judicial investigator without exception.

Comparing the inquiry and the preliminary investigation, O.P. Boyko came to the following conclusions: 1) in the SCP, for the first time at the legislative level, independent forms of interaction between the investigator and the police were formed during the preliminary investigation; 2) in the process of creating the institute of investigators itself, the investigator's right to organise the interaction with the bodies of inquiry during the investigation of criminal cases was legally established [16]. This opinion can be agreed with since the interaction between investigators and the police was conducted functionally,

that is, the investigator assessed the sufficiency and quality of the materials of the police inquiry and the beginning of criminal proceedings (provision and acceptance, verification and, possibly, non-acceptance of the materials of the police inquiry), performed separate urgent investigative actions. The persons who conducted the inquiry and investigation were not able to finish the case until the fact that the established event was a crime was clarified and the person involved was found. However, the inquiry was distinguished by the fact that it was limited to collecting key factual information about the traces of the crime and who was responsible for its commission. But during the preliminary investigation, the work was conducted by collecting an exhaustive amount of evidence, which also had to be obtained in strict compliance with legal rules. The investigation of crimes and misdemeanours consisted in collecting information that came from assumptions, guesses, and suspicions. Under these conditions, no searches or seizures were conducted in the houses, except in extreme and extraordinary cases. Therewith, on November 23, 2018, the second reading adopted the Law of Ukraine No. 7279-d "On amendments to certain legislative acts of Ukraine on simplification of pre-trial investigation of certain categories of criminal offences" [17], which introduces the Institute of criminal misdemeanours and entered into force on January 1, 2020.

The introduction of the institute will help to ensure the rapid investigation of minor criminal offences and reduce the burden on the investigative bodies of pre-trial investigation, since employees of other divisions would be able to exercise their powers in the process of pre-trial investigation of criminal misdemeanours, according to the provisions of part 3 of Art. 38 of the CPC of Ukraine [18]. In comparison with a pre-trial investigation, an investigation in the form of an inquiry provides for a somewhat simplified procedure, in particular, reduced investigation time, restrictions on the use of preventive measures and secret investigative (search) actions, etc.

Given the above, questions about the experience of some countries regarding alternative forms of investigation, including inquiry, are becoming particularly relevant. Therefore, a comparative legal examination of the legal regulation of the form of pre-trial investigation under study will help to increase the effectiveness of the application of this institution in the country in the future.

According to paragraph 4 of part 1 of Art. 3 of the CPC of Ukraine, an inquiry is a form of pre-trial investigation in which criminal offences are investigated. After the entry into force of the Law of Ukraine "On amendments to Section II "Final and transitional provisions" of the Law of Ukraine "On amendments to certain legislative acts of Ukraine on simplification of pre-trial investigation of certain categories of criminal offences" dated December 3, 2019, No. 321-IX from July 1, 2020, the work of the investigation unit began. considering this, a comprehensive scientific understanding of the historical prerequisites for differentiating the forms of pre-trial investigation and its impact on the functional structure of inquiry and the pre-trial investigation becomes particularly relevant. Examining the experience of the establishment and development of inquiry at various stages of social development, considering the influence of conceptual, socio-economic, ideological, political, and other factors, allows generally predicting the effectiveness of the implemented criminal justice reforms.

Conclusions

Thus, in administrative and legal science, the history of the emergence, establishment, and development of the units of inquiry of the National Police of Ukraine was outlined, which had three fundamental stages: pre-trial inquiry of the second half of the 19th-early 20th centuries (1964-1917); the period of the Soviet era (1917-1991); pre-trial inquiry of independent Ukraine (from 1991 to the present). The modern model of inquiry quite successfully reproduces positive historical experiences and legal opinions.

Summarising the above, the key differences between the inquiry at an early stage of its occurrence and the modern form of pre-trial investigation:

– firstly, now the inquiry continues from the moment of detection of the fact of an illegal act and until the end of the pre-trial investigation;

– secondly, in the 18th-19th centuries the inquiry did not have a clearly defined procedural form and was not limited to specific terms, it almost completely depended on the internal conviction of the person who conducted it;

– thirdly, in the legislation of the pre-revolutionary period, a wide range of authorised persons (police ranks, military and civil leadership, clergy, officials, village elders, etc.) had the right to conduct the inquiry, while now the inquiry is conducted by inquirers, that is, officials of the inquiry unit of the National Police of Ukraine, the security body, the body that monitors compliance with tax legislation, the State Bureau of Investigation, in cases established by the CPC of Ukraine, persons of other divisions of these bodies authorised within the competence provided for by the CPC of Ukraine to conduct pre-trial investigation of criminal misdemeanours;

– fourthly, at that time the inquiry was conducted in respect of all crimes without exception, without considering the degree of their severity. In the current conditions, inquiries are conducted exclusively for criminal misdemeanours, that is, minor crimes. However, all these differences have a common feature inherent in learning at all stages of its development –

the presence of a simplified order. Both now and in the past, inquiries are conducted much faster, with less effort and resources involved. As part of the implementation of this approach, § 1 of Chapter 30 of the CPC of Ukraine defines a special procedure for simplified proceedings on criminal misdemeanours.

The modern model of inquiry quite successfully reproduces positive historical experiences and legal opinions. In today's conditions, it can be observed, that a clear procedural order for conducting an inquiry, a well-defined circle of authorised persons and a balanced approach to differentiating the forms of pre-trial investigation are present. At first, the inquiry was perceived as identifying signs of a crime and conducting initial measures to search for the perpetrators, and investigating all the circumstances of committing crimes, and later the inquiry in some cases was cited as a separate type of Investigation. Therefore, despite all the difficulties of theoretical, legal, law enforcement and social nature, the introduction of the institution of criminal misdemeanours in the Ukrainian reality should be another step towards building a European criminal justice system and a new important stage in the creation of civil society, the main foundations of which are social justice and humanistic principles.

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Анотація

Мета дослідження полягає в тому, щоб здійснити ґрунтовне дослідження історичного розвитку адміністративно-правового забезпечення діяльності підрозділів дізнання Національної поліції України. Методологія. Методологічний інструментарій обрано з огляду на поставлену мету, характерологічну особливість об'єкта й предмета дослідження. Він ґрунтується на загальному діалектичному методі наукового пізнання конкретних явищ, а також їхніх зв'язків із практичною діяльністю органів дізнання Національної поліції України. Ці методи комплексно використано під час системного опрацювання статистичних матеріалів щодо результатів практичної діяльності підрозділів дізнання Національної поліції України та матеріалів оперативно-розшукових справ і кримінальних проваджень тощо. Історичний метод використано під час ґрунтовного аналізу становлення та розвитку підрозділів дізнання Національної поліції України, специфіки їхньої діяльності й особливостей адміністративно-правового регулювання в різні історичні періоди. Наукова новизна. На підставі вивчення досягнень підрозділів дізнання досліджено джерела, у яких ґрунтовно висвітлено аспекти щодо оперування терміном "дізнання" в правозастосовній практиці, і зміст поняття "дізнання" як однієї з форм досудового розслідування на різних етапах суспільного розвитку. Встановлено, що на законодавчому рівні та в літературних джерелах протягом тривалого часу цей термін зазнавав трансформації відповідно до його функціонального спрямування. Надано характеристику дізнання на ранньому етапі розвитку та здійснено порівняння із сучасною формою досудового розслідування. Встановлено, що дізнанню на всіх етапах його розвитку притаманна така риса, як наявність спрощеного порядку. Доведено, що сучасна модель досудового розслідування досить вдало відтворює позитивний історичний досвід і правову думку, застосовано збалансований підхід до диференціації форм досудового розслідування. У статті констатовано, що дізнання сприймалося як виявлення ознак злочину та проведення первинних заходів щодо розшуку винних осіб, а також дослідження всіх обставин вчинення злочинів, згодом – як окремий вид розслідування. Висновки. Науковці в адміністративно-правовій галузі окреслили історію виникнення, становлення та розвитку підрозділів дізнання Національної поліції України, що мала три основоположних етапи: досудове дізнання II половини XIX – початку XX ст. (1864-1917 рр.); період радянської доби (1917-1991 рр.); досудове дізнання незалежної України (з 1991 року – дотепер). Обґрунтовано, що сучасна модель дізнання досить вдало відтворює позитивний історичний досвід і правову думку. Виокремлено ключові відмінності дізнання сучасної форми досудового розслідування від раннього етапу його виникнення: по-перше, нині дізнання триває від моменту виявлення факту протиправного діяння до моменту закінчення досудового розслідування; по-друге, у XVIII–XIX ст. дізнання не мало чітко визначеної процесуальної форми й не обмежувалося конкретними строками, а також майже цілком залежало від внутрішнього переконання особи, яка його проводила; по-третє, у законодавстві дореволюційного періоду дізнання мало право проводити широке коло уповноважених осіб (поліцейські чини, військове та цивільне начальство, духовенство, урядники, сільські старости), а нині дізнання проводять дізнавачі, тобто службові особи підрозділу дізнання органу Національної поліції України, органу безпеки, органу, що здійснює контроль за дотриманням податкового законодавства, органу Державного бюро розслідувань, у випадках, установлених Кримінальним процесуальним кодексом України (далі – КПК), уповноважені особи іншого підрозділу зазначених органів, які, відповідно до КПК України, здійснюють досудове розслідування кримінальних проступків; по-четверте, тогочасне дізнання проводилося щодо всіх без винятку злочинів. В умовах сьогодення дізнання провадять виключно за кримінальними проступками, тобто нетяжкими злочинами. Однак усі ці відмінності мають спільну рису, притаманну дізнанню на всіх етапах його розвитку, – наявність спрощеного порядку

Ключові слова:

поліція; національна поліція; поліцейське дізнання; взаємодія слідчого; типові слідчі ситуації; закономірності організації та планування розслідування; слідчі версії