DOI 10.5281/zenodo.1405152

PRZEANALIZOWANIE POJĘCIA ORAZ TREŚCI ŚLEDZTWA PRZESTĘPSTW POPEŁNIONYCH PRZEZ SKAZANYCH W ZAKŁADACH KARNYCH UKRAINY

Batiuk Oleh
doktor nauk prawnych, docent, profesor w Katedrze Prawa Karnego i Sądownictwa prorektor ds. integracji europejskiej i współpracy międzynarodowej Międzynarodowego Uniwersytetu Gospodarczo-Humanistycznego imienia Stepana Demianczuka
Równe, Ukraine
olegbatiukmegu@gmail.com

Streszczenie. W artykule naukowym autor, na podstawie poglądów naukowych wiodących naukowców Ukrainy oraz na podstawie stałych przepisów nauki procesu karnego a także nauk kryminalistycznych, bada pojęcia oraz przedstawia treść śledztwa przestępstw popełnionych przez skazanych w zakładach karnych Ukrainy. Na podstawie uogólniających wniosków w artykule naukowym autor proponuje udoskonalić mechanizm prawny śledztwa przestępstw popełnionych przez skazanych w zakałach karnych Ukrainy, poprzez wykonanie następujących przedsięwzięć: po pierwsze, uzupełnić ust. 1 art. 3 Kodeksu postępowania karnego Ukrainy "Określenie głównych terminów Kodeksu" p. 27, po drugie, wprowadzić zmiany do czwartego zdania ust. 1 art. 104 Kodeksu karnego wykonawczego Ukrainy "Działalność operacyjno-poszukiwawcza w zakładach karnych".

Słowa kluczowe: postępowanie karne, kryminalistyka, pojęcie, treść, przestępstwo, zakład karny, skazany, śledztwo.

THE RESEARCH OF THE CONCEPT AND CONTENT OF INVESTIGATION OF CRIMES COMMITTED BY CONVICTS IN CORRECTIONAL COLONIES OF UKRAINE

Batyuk Oleg
candidate of legal sciences, docent, professor of the department of criminal law and justice, Vice-Rector for European integration and international relations of International economic-humanitarian University named after academician Stepan Demyanchuk, Rivne, Ukraine

Abstract.. In the provisions of the scientific article, on the basis of scientific views of leading Ukrainian scientists and constant provisions of the science of the criminal process and forensic studying, the author researches the concept and discloses the content of investigation of crimes committed by convicts in correctional colonies of Ukraine. Based on the generalized conclusions on the theme of the scientific article, the author proposes to improve the legal mechanism of investigation of crimes committed by convicts in correctional colonies of Ukraine through committing the following measures, namely: first, to supplement the part 1 of art. 3 of the Criminal Procedure Code of Ukraine «Definition of the main terms of the Code» paragraph 27, secondly, to make changes in the fourth sentence of part 1 of art. 104 of the Criminal-executive code of Ukraine «Operative and research activity in colonies».

Keywords: criminal procedure, forensics, concept, content, crime, colony, convicts, investigation.

ДОСЛІДЖЕННЯ ПОНЯТТЯ ТА ЗМІСТУ РОЗСЛІДУВАННЯ ЗЛОЧИНІВ, УЧИНЕНИХ ЗАСУДЖЕНИМИ У ВИПРАВНИХ КОЛОНІЯХ УКРАЇНИ

Батюк Олег
кандидат юридичних наук, доцент, професор кафедри кримінального права та правосуддя, проректор з європейської інтеграції та міжнародних відносин Міжнародного економіко-гуманітарного університету імені Степана Дем'янчука, Рівне, Україна

Анотація. У положеннях наукової статті автор на основі наукових поглядів провідних вчених України та сталих положень науки кримінального процесу та криміналістичного вчення досліджує поняття та розкриває зміст розслідування злочинів учиних засудженими у виправних колоніях України. На основі узагальнених висновків по темі наукової статті автор пропонує удосконалити правовий механізм розслідування злочинів, учинених засудженими у виправних колоніях України, через здійснення наступних заходів, а саме: по-перше, доповнити ч. 1 ст. 3 Кримінально-процесуального кодексу України «Визначення основних термінів Кодексу» п. 27, по-друге, внести зміни у четверте речення ч. 1 ст. 104 Кримінально-виконавчого кодексу України «Оперативно-розшукова діяльність в колоніях».

Ключові слова: кримінальний процес, криміналістика, поняття, зміст, злочин, колонії, засуджені, розслідування.

The problem statement. Scientific researches on investigation of crimes in penal institutions of Ukraine, first, are based on practical recommendations, which determine the need for both maintenance and strengthening the rule of law in places of deprivation of liberty in Ukraine. It is precisely in the cases of the committing of the crimes by convicts not only the final results of the investigation are important, but also the connected with their achievements the results of separate procedural actions, which ensure the timeliness and validity of making the information into a single register of pre-trial investigations, the rapid establishment of person, who committed crime, by the evidences, the taking necessary measures for his isolation from other convicts, as well as the rapid detection and elimination of the causes and conditions that contributed to the commission of a crime in a special closed environment of the penal institution.

State of research. The theoretical basis for writing this article of science became the work of both domestic Ukrainian scientists and foreign scientists, in particular: R.S. Byelkin, I.G. Bogatyryov, A.P. Gel, M.M. Serbin, O.G. Kolb, I.O. Kolb, I.M. Kopotyn.

Statement of the main provisions. Disclosing the main provisions it is necessary to analyze the term «investigate» is to make research, to study someone, something; to clarify, to find out, conducting an investigation or dealing a certain issue *(The jurisprudence: V.G. Goncharenko, 2007, p. 558)*. In the general (broad) understanding in legal literature, this term is interpreted as a stage of the criminal process, during which the bodies of pre-trial investigation fulfill the actions provided for by the criminal procedure law and make decisions for collecting and verifying evidence, for fast, complete and impartial investigation of crimes, involvement as accused persons who committed it; making measures for prevention crimes, finding out and eliminating the causes and conditions conducive to the committing of crimes, as well as measures that provide compensation for damage caused by a crime *(The jurisprudence: V.G. Goncharenko, 2007, p. 502)*.

In a more narrow content, the term «investigation» is considered in the context of such a stage of the criminal process as «pre-trial investigation» (Section III of the Criminal Procedure Code of Ukraine, further on the CPC of Ukraine), because, if to proceed from the tasks of criminal proceedings, as defined in art. 2 of the CPC, the specified stage should ensure fast, complete and impartial investigation of the fact that anyone who committed a criminal offence was brought to justice in the measure of his guilt, no innocent was accused or convicted, no person was subjected to unreasonable procedural coercion and that each participant in the criminal proceedings has been subjected to the due process of law.

In addition, it should be noted that the specified task of criminal proceedings is implemented in practice, if other tasks are performed, that have been talking in art. 2 of the CPC, namely:

a) the protection of person, society and state from criminal offences;

b) the protection of the rights, freedoms and legitimate interests of the participants in criminal proceedings. It should be borne in mind that, notwithstanding the legally defined approach to this problem, the question of the relationship between the categories of «disclosure of crimes» and «investigation of crimes» remains in the discussion in science *(Criminal Procedure Code of Ukraine, 2012).*

According to our belief, S.S. Chernyavskyi correctly established, the content of the disclosure of a crime is the activity to investigate the crime in the absence of information about the person of the offender, which is to find this information and use it to prove his involvement in the crime. That is, the disclosure of the crime coincides with the initial stage of the investigation, in the event that at the moment of the criminal proceedings there is no information about the person of the offender – in such circumstances a pre-trial investigation begins in conditions of non-obviousness (in situations where the source information does not contain data about the crime committed by a particular person). In this case, the content of the initial stage of the investigation is the disclosure of a crime, while the content of further actions is a proofing of the circumstances of the case. At the same time, the investigation of crime is always carried out to establish the truth by the way of performing a dual task: on the one hand, the establishment of a person of the offender and other unknown circumstances (in fact, this is the disclosure of a crime), and, on the other hand, - the proper processing of detected traces and formation of system of evidences (proofing) (*Konovalenko V.V., Moiseyev Ye.M., Tatsiy V.Ya., Shemshuchenko Yu.S., 2010., p. 868-869).*

The specified approach should be considered scientifically grounded and such one that can be implemented at the legislative and practical levels. As for other constituent elements of the content of the term «investigation», the scientific views on their literal interpretation coincide. In particular, under the requirement of a fast investigation, scientists understand that the timeline for establishing event of a criminal offence and guilty persons should be as close as possible to the moment of committing of crime *(Bandurka O.M., Blazhivskyi Ye.M., Budrol Ye.P., Tatsiy V.Ya., 2012, p. 7).*

The completeness of the investigation means that all circumstances are established, which according to art. 91 of the CPC are subject to evidence in criminal proceedings, namely:

1) the event of a criminal offence (time, place, method and other circumstances of its committing);

2) the guilty of an accused in committing a criminal offence, the form of guilt, the motive and purpose of his committing;

3) the type and amount of damage inflicted by a criminal offence, as well as the amount of procedural expenses;

4) the circumstances that affect the degree of gravity of the committed criminal offence, characterize the person of accused, aggravating or mitigating penalties that exclude criminal liability or are the basis for the closure of criminal proceedings;

5) the circumstances which give rise to the release from criminal liability or punishment;

6) the circumstances that confirm that money, valuables and other property which are subject to special confiscation, are obtained as a result of a criminal offence and/or are earned from such property, or were intended (used) to incline a person to commit a criminal offence, finance and/or material providing of a criminal offence or reward for his committing, or is the subject of a criminal offence, including related to their illicit traffic, or found, manufactured, adapted or used as a means or instrument for committing a criminal offence;

7) the circumstances that are the basis for the application to legal entities the measures of criminal law nature.

At the same time, how a number of scholars correctly concluded, when specified circumstances have been established, the crime is recognized fully disclosed. Moreover, the statement of fact is possible only after the entry of guilty verdict into legal force, and in cases of closure of criminal proceedings in non-rehabilitating circumstances – upon entry into force of the appropriate legal judgement *(Bandurka O.M., Blazhivskyi Ye.M., Budrol Ye.P., Tatsiy V.Ya., 2012, p.7),* in the end, under the impartiality of the pre-trial investigation at the doctrinal level, understand the objectivity and fairness of investigating all the circumstances of the proceedings. In particular, in accordance with the requirements of part 2 of art. 9 of the CPC of Ukraine, the prosecutor, head of pre-trial investigation body, investigator is obliged to investigate impartially the circumstances of criminal proceedings, and to reveal both the circumstances, which are incriminating, and those that justify the suspect, the accused, as well as circumstances that mitigate or aggravate his punishment, to provide them with proper legal assessment and ensure the adoption of unbiased procedural decisions. In turn, the court, while maintaining impartiality, must create the necessary conditions for the parties to exercise their procedural rights and exercise their procedural responsibilities (p. 2 of art. 22 of the CPC) *(Bandurka O.M., Blazhivskyi Ye.M., Burdol Ye.P., Tatsiy V.Ya., 2012, p. 7-8)*.

In our view, proceeding from the specified theoretical approaches and in order to solve the corresponding task of this scientific research, one can determine the following notion «investigation of crimes committed by convicts in correctional colonies», namely – it is the procedural activity of investigators in the manner determined by the law, which is carried out at the stage of pre-trial investigation of criminal proceedings in the specified criminal-executive institutions of the closed type taking into account the peculiarities of execution and serving of sentence in the form of deprivation of liberty, and which is aimed at the realization in the full measure of the tasks of criminal proceedings.

We believe that to systemically important features that make up the content of this concept include the following:

Firstly, this is the procedural activity of the investigator.

As I.V. Basysta concluded about it, the entire criminal process can be characterized as the activity of authorized agents which is regulated by the norms of criminal law, is aimed at disclosing criminal offences, exposing and punishing the perpetrators and preventing the punishment of innocents, and as a system of legal relations that arise during this activity *(Basysta I.V., 2013, p. 41)*. That is, in practical terms of view, the procedural activity of the investigator – is the system of procedural actions and decisions of latter that are provided in the CPC.

The concept of an investigator is given in p. 17 of part 1 of art. 3 of the CPC, namely, is the official of the National Police, of the safety authority, of the body that commits the control under the compliance with tax legislation, of the body of the State bureau of investigations, authorized within the competence, that is provided by this Code, to implement pre-trial investigation of criminal offences.

In accordance with the requirements of part 1 of art. 216 of the CPC, the pre-trial investigation of crimes (in the context of the content of the subject of this study – the investigation of crimes committed by convicts), is implemented by investigators of National Police of Ukraine.

Secondly, the specified activity is carried out in the manner prescribed by law.

In accordance with the requirements of part 2 of art. 1 of the CPC of Ukraine, the criminal procedure legislation of Ukraine consists of the relevant provisions of the Constitution of Ukraine, of the international treaties, the consent to binding of which is provided by the Verkhovna Rada of Ukraine, this Code and another Laws of Ukraine.

The procedure for pre-trial investigation, including for crimes committed by convicts in correctional colonies, is defined in section III of the CPC and includes, in particular: a) general provisions of the pre-trial investigation (chapter 19); b) investigative (search) actions (chapter 20); c) covert investigative (search) actions (chapter 21); d) notification of suspicion (chapter 22); e) suspension of pre-trial investigation and extension of the investigation period (chapter 23); f) the end of the pre-trial investigation and the extension its his period (chapter 24); g) peculiarities of pre-trial investigation of criminal offences (chapter 25); h) є) appealing actions, acts or inactivity during pre-trial investigation (chapter 26).

In addition, it should be noted that in the CPC the peculiarities of pre-trial investigation of crimes committed by convicts in the places of deprivation of liberty are not identified, which, as practice shows, negatively affects the effectiveness of procedural activities of investigators in correctional colonies.

Third, the specified activity is carried out at the stage of pre-trial investigation of criminal proceedings.

In accordance with the provisions of p. 5 of part 1 of art. 3 of the CPC, this stage begins with moment of the introduction of information about a criminal offence committed by a convict (or group of persons) in a correctional colony, into the Single Register of pre-trial investigations, further SRPTI, and ends with the closure of a criminal proceeding or sending to a court the indictment, the application for the implementation of coercive measures of a medical or educational nature, the application for exemption from criminal liability.

The criminal proceedings – is pre-trial investigation and judicial proceedings, procedural actions in connection with the committing of an act provided for by the law of Ukraine on criminal liability (p. 10 of part 10 of article 3 of the CPC). It should be

noted that in this thesis criminal proceedings is said only in the context of committing of pre-trial investigation of crimes committed in correctional colonies of Ukraine.

Fourth, the procedural activity of investigator on the investigation of crimes is carried out only in correctional colonies.

As it follows from the content of part 3 of art. 11 of the CEC of Ukraine, correctional colonies belong to closed-type criminal executive institutions, which, in turn, are divided into colonies of minimum, average and maximum safety levels (article 4, article 11 of the CEC).

In accordance with the requirements of art. 18 of the CEC, correctional colonies carry out punishment in the form of deprivation of liberty for a certain period, of life imprisonment.

Taking into account that with the participation of sentenced to life imprisonment, since the introduction of this criminal punishment in the CC of Ukraine (2000) to date (2018) no crime was registered, the issue of correctional colonies in this thesis is conducted only in the context of the committing of crimes by convicts to deprivation of liberty for a certain period (article 63 of the CC).

Fifthly, in investigating crimes in correctional colonies, peculiarities of execution and serving of punishment in the form of deprivation of liberty in colonies of different levels of safety are taken into account.

In accordance with the requirements of part 2- 3 of art. 18 of the CEC, convicts to deprivation of liberty serve their sentence in correctional colonies:

a) of minimum level of safety with light conditions of confinement;
b) of minimum level of safety with general conditions of confinement;
c) of medium level of safety;
d) of maximum level of safety;
e) in the remand centres, further the RC that serve as correctional colonies of a minimum level of safety with general conditions of confinement and as correctional colonies of a medium level of safety regarding convicts who are left for facility-related work.

The peculiarities of serving sentences in correctional colonies of different types are defined in chapter 20 of the CEC (art. 138-140), and the features of the equipment of these CVU and the differences of the execution (serving) of this punishment - in the Rules of Internal Order, further RIO, the penal institutions, futher PI, (p. 4 of the section I «The general provisions»; p. 2 of the section IV «The conduction of checks on the availability of convicts», the section XVII «The order of conducting inspection and searches»; etc.).

Investigators who investigate crimes committed by convicts in correctional colonies must necessarily know the specified features and differences, as these circumstances significantly affect the efficiency, speed and completeness of the pre-trial investigation, as well as the process of identification, consolidating and using evidence in criminal proceedings and in general for proving in it (chapter 4 of the CPC).

Sixthly, the procedural activity of an investigator in correctional colonies, first of all, is aimed at realization of the tasks of criminal proceedings in full measure.

The tasks of the criminal proceedings are defined in art. 2 of the CPC. Their realization in conditions of correctional colonies is carried out taking into account the peculiarities of execution and serving of punishment in the form of deprivation of liberty.

The completeness of their realization is the maximum achievement of the purpose of pre-trial investigation. In addition, it should be noted that the basic indicators of crime detection activity have not been identified in science or practice yet. As O.Yu. Tatarov concluded regarding it, a comprehensive objective assessment of the activity of law enforcement bodies is a complex task, which has no unambiguous deterministic solution, since it is characterized by a large and not clearly defined number of factors, that affect their activity, as well as by many criteria of evaluation, which depends on both the one who evaluate and the one who is evaluated *(Tatarov O.Yu., 2012, p. 85)*.

Summarizing the above, it should be noted that although at the present time, at the legislative level (p. 5 of the part 1 of the article 3 of the CPC), the concept of "pre-trial investigation" is defined, which is understood as the stage of criminal proceedings which begins with moment of the introduction of information about a criminal offence into the Single Register of pre-trial investigations and ends with the closure of a criminal proceeding or sending to a court the indictment, the application for the implementation of coercive measures of a medical or educational nature, the application for exemption from criminal liability – at the scientific level, the specified problem is still the subject of discussions and a comprehensive study, what has been used in this dissertation in the realization of tasks related to the investigation of crimes committed by convicts in correctional colonies of Ukraine. In its focus and content, as V.S. Zelenetskyi clearly noted, this work differs significantly from judicial activity, because it is not aimed at directly solving a legal conflict between a state and an individual, who committed crime offence, but at a written reconstruction, the restoration of all its circumstances, as events of the past, in a special documentation grouping – the materials of the criminal case *(Zelenetskyi V.S.,1998, p.25)*.

In turn, according to R.S. Byelkin, the specified work has a heuristic, search and research character, it is dominated by elements of the cognitive and supporting plan that form the evidence base for both prosecution and defense. This type of study is not characteristic for the bodies of justice, because the courts apply not material-search (forensic), and informative-logical methods of research of already collected, systematized and submitted forensic evidence to the court. In other words, in its nature, the court cannot engage in the discovery, search and consolidation of forensic evidence. The court is required to research already collected and properly enshrined evidence in order to establish their reliability and sufficiency to resolve the criminal case on the merits. This is an entirely different kind of research evidence, the name of which is not material, and informative-logical *(Belkyn R.S., 2000, p. 104)*.

The CPC of Ukraine the carrying out a material research of a criminal offence rests with the pre-trial investigation bodies, naming the initial stage in which they operate a pre-trial investigation (articles 38-40). As Yu. Deryshev remarked about this, this name of stage is resulted from that it precedes the consideration of the materials of criminal case file in court and ensures its proper solution *(Deryshev Yu., 2005, p. 81)*. In this stage also is established the presence or absence of circumstances excluding judicial settlement of materials of criminal proceedings (article 284 of the CPC of Ukraine). In this case, pre-trial investigation of crimes is carried out by the investigators of authorities of the pre-trial investigation, and criminal offences - by investigators of authorities of inquiry under the supervision of the prosecutor (article 36 of the CPC of Ukraine). In the correctional colonies, the specified activity is carried out by investigators of the National Police of Ukraine (article 216 of the CPC).

In theory and in practice, pre-trial investigation is defined as an independent stage of criminal proceedings and as an independent institution of criminal procedural law, that is, as a set of legal norms that determine the procedure for criminal procedural activity and regulate (govern) criminal procedural legal relations at this stage between its participants. These norms are contained in chapters 19-26 of section III of the CPC of Ukraine. The task of the specified stage, according to V.M. Yurchyshyn, are to establish objective truth by the way of investigating criminal offences by conducting investigative (search) actions and use of other methods established by law to collect, verify and evaluate evidence *(Yurchyshyn V.M., 2014, p. 55)*. The content of the pre-trial investigation, in our opinion, is the activities of authorized bodies of the detection and consolidation of material traces of a criminal offence, as well as the search of other sources of proof, through which one can install (recreate, reconstruct) a picture of the event of this offence in all its details, as well as to get and procedurally to enshrine of evidence contained in the identified sources.

After establishing a person who has committed a criminal offence in correctional colony, a pre-trial investigation is conducted to identify all its participants. (performers, instigators, accomplices), to establish the degree of guilt of each of them, the motives of illegal activity, circumstances aggravating or mitigating liability, the nature and extent of the caused damage, the causes and conditions that contributed to the committing of the offence *(Yurchyshyn V.M., 2014, p. 55)*. At this stage, in our opinion, the question of the use of appropriate preventive measures regarding the guilty is solved, eliminating the possibility of their committing of new offenses, evasion from the investigation and court, and preventing the investigation of a criminal offence.

The pre-trial investigation is generic notion. Under it is understood two of its forms: inquiry and pre-trial investigation. The criminal offences are investigated in the form of inquiry. In most criminal offences, inquiries are produced by the bodies of National Police and only in certain types of offences - by other bodies specified in art. 38 of the CPC of Ukraine *(Yurchyshyn V.M., 2014, p.55)*. At the same time, the operational units of the law-enforcement bodies which are defined in the CPC of Ukraine (in the correctional colonies - they are the operational units of these CVU) are assigned of adoption of the necessary operative-search measures in order to identify the features of a criminal offence and those persons who committed it. They perform this duty in the exercise of their functional duties, enshrined in the status laws governing their organization and activity. In addition, they have the right to conduct separate investigative (search) and covert investigative (search) actions in criminal proceedings on the written instruction of the investigator, the prosecutor (article 41 of the CPC of Ukraine) *(Yurchyshyn V.M., 2014, p. 55-56)*. Moreover, it should be recognized that pre-trial investigation is the main form of pre-trial investigating (of criminal offences), because only the investigative body of the pre-trial investigation has the right to investigate the crime. In this case, pre-trial investigation is carried out in all criminal cases, with the exception of criminal offences (article 216 of the CPC of Ukraine).

Thus, it can be stated that even after the new CPC of Ukraine, pre-trial investigation bodies have wider powers than the bodies of inquiry under which they are formed. Thus in these respects investigator of body of pre-trial investigation has the rights (p. 3 of part 2 of art. 40 of the CPC of Ukraine), and the body of inquiry has duties (of parts 1, 3 of art. 41 of the CPC of Ukraine). As V.Ya Tatsiy noted in this regard, in this situation the formation and functioning of pre-trial investigation bodies in

the system of inquiry bodies cannot receive scientific confirmation and is a clear mistake of the legislator *(Tatsiy V.Ya., 2013, p. 4-5)*. This conclusion fully concerns, in particular, to the elimination of the institute of inquiry in the PI and in the RC, that is, the deprivation of the right of the heads of these institutions to carry out the inquiry, given that the legislator clearly has not defined the place and role of the bodies of pre-trial investigation in the state apparatus of Ukraine, which caused itself to its imperfect institutional and legal construction. Moreover, this topical issue continues to remain unresolved and at the theoretical level, although the search for an optimal organizational legal construction for pre-trial investigation lasts more than a century *(Yurchyshyn V.M., 2014, p. 60)*.

Consequently, pre-trial investigation is not only the largest in terms of volume and character, but also the most complex in its vulnerability the form of state-legal activity, especially in the conditions of conducting investigation in places of deprivation of liberty. As V.M. Yurchyshyn notes, if to add the one-sidedness of the investigative work, the limited publicity, in which it is realized, the invasion of the sphere of specially protected rights and legitimate interests of the person to it, where any violation of the law may entail grave, but often irreparable consequences, both for an individual citizen and for the state as a whole, then the urgent need for rigorous external control over the lawfulness of the specified state activity will become clear *(Yurchyshyn V.M., 2012, p. 177)*. In accordance with the current legislation of Ukraine, the implementation of such control in the pre-trial stage of the criminal process following the compliance of investigators with the law, including in the correctional colonies, during their conduction of any investigative (search) action, of covert investigative (search) action and of adoption of each investigative (search) decision rests with the prosecutor, which realizes it (control) in the form of a procuratorial supervision (p. 3 of article 121 of the Constitution of Ukraine, p. 3 of part 1 of article 5 of the Law of Ukraine «On Prosecutor's Office» and article 36 of the CPC of Ukraine). At the same time, as practice shows, due to improper organizational and legal provision of pre-trial investigation prosecutors have to work in pre-trial investigation literally in extreme conditions, often replacing the investigator.

Well-known (in the science of the criminal process) is the conclusion that the criminal process consists of a system of clearly defined and separate phases of criminal proceedings *(Yurchyshyn V.M., 2014, p. 66)*. These phases are traditionally considered as stages of the criminal process, including the investigation of crimes in correctional colonies, in connection with the fact that the contribution of each stage in achieving the goal and objectives of criminal proceedings in general is specific, especially in conditions of the investigation of crimes in correctional colonies, and each of these stages has inherent in its own, characteristic only for it the system of criminal procedural functions of subjects that operate there. Moreover, in each stage several basic (general-procedural) functions it can be performed, but the presence of at least one of them is, as it scientifically reasoned by the scientists, obligatory *(Yurchyshyn V.M., 2014, p. 66)*. As for the power subjects of the criminal proceedings, including for crimes committed by convicts in correctional colonies, then they in each of the seven stages of the process necessarily perform, in addition to its fundamental (general-procedural) function, also the main and additional functions, are due to the specifics of the specific stage in which they operate, its tasks, the specific composition of the participants, the peculiarities of the criminal-executive legal relations and equipment of different safety levels of

correctional colonies and their structural divisions (articles 18, 138-140 of the CEC of Ukraine), the nature of powers and the order of their realization. However, as V.M. Yurchyshyn reasonably proves, the type (model) of criminal proceedings determined in the CPC of Ukraine, with its division into parties, both in the pre-trial investigation and in the proceedings, cannot be called completely general, because it preserves pre-trial investigation, characteristic of the mixed (continental) process. Moreover, the key issue about the sufficiency of the evidence gathered by the investigator for the preparation of the indictment and the provision of procedural status of the accused to the suspect is decided by the prosecutor alone without the participation of the accused, protector, lawyer and legal representative (article 291 of the CPC of Ukraine) *(Yurchyshyn V.M., 2014, p. 67)*. All this is a vivid testimony to the fact that in the pre-trial investigation, in particular for crimes committed by convicts in correctional colonies, only certain elements of generality were based, but in general it continues to be independent, written, one-sided and limited transparent, which indicates that it belongs to the mixed (continental) type of criminal proceedings. This requires from the investigator, as the key power subject of the pre-trial investigation, the active realization of all of its criminal procedural functions at this stage of criminal proceedings, including in facts of committing crimes by convicts to deprivation of liberty.

The conclusions and further perspectives of scientific study. In our opinion, it is the investigation of crimes committed by convicted prisoners in correctional colonies, - is such a process, which, on the one hand, is based on general theoretical-methodological and normative-legal provisions of the pre-trial investigation, that are determined in the current CPC of Ukraine, and on the other hand, - is carried out taking into account the content of criminal-executive activity and of the OIA of operational units of these CVU, the bases of which are defined in art. 104 of the CEC of Ukraine, that it is important to take into account from the review of the solving other tasks of this dissertation study, which are mentioned in the relevant units of this scientific development.

To improve the legal mechanism of investigation of crimes committed by convicts in the correctional colonies of Ukraine, the following measures should be taken:

1. To supplement the part 1 of art. 3 of the CPC «The definition of the main terms of the Code» with p. 27 of the following content: «The investigation of crimes – is the procedural activity of the specified in the law participants of the prosecution, which is carried out at the stage of pre-trial investigation and aimed at full realization of tasks of the criminal proceedings».

2. To make changes in the fourth sentence of part 1 of art. 104 of the CEC «The operative and investigative activity in the colonies», namely: to exclude the word «disclosure» in it and to replace it with the word «investigation», to put this sentence in the new wording: «Providing assistance in investigation, stopping and preventing crimes to law enforcement agencies conducting operative investigative activity or criminal proceedings».

The arguments in this regard are set out in specified section of the dissertation and stem from the content of the concept «investigation of crimes committed by convicts in correctional colonies», which is formulated in this work.

References:

1. Pravoznavstvo: slovnyk terminiv: navch. posibnyk // Za red.. Vladlena Honcharenka. – K.: Yurystkonsult, 2007. – 636 s.
2. Kryminalnyi protsesualnyi kodeks Ukrainy v ostannii chynnii redaktsii vid 10 chervnia 2018 roku. Elektronnyi resurs [Rezhym dostupu], https://urist-ua.net 11.06.2018.
3. Mizhnarodna politseiska entsyklopediia : u 10 t. / vidp. red.: Valentyn Kovalenko, Yevhen Moiseiev, Vasyl Tatsii, Yurii. Shemshuchenko. – K.: Atika, 2010. – T. VI: Operatyvno-rozshukova diialnist politsii (militsii). – 1128 s.
4. Kryminalnyi protsesualnyi kodeks Ukrainy. Naukovo-praktychnyi komentar: u 2 t. t.1 / Oleksandr Bandurka, Yevhen Blazhivskyi, Yevhen Burdol; za zah. red.. Vasyl Tatsii. – Kh.: Pravo, 2012. – 768 s.
5. Basysta Iryna Pryiniattia i vykonannia protsesualnykh rishen slidchoho na stadii dosudovoho rozsliduvannia: teoretychni i praktychni problemy: monohrafiia / Iryna Basysta. – Lviv: Lv DUVS, 2013. – 600 s.
6. Tatarov Oleh Dosudove provadzhennia v kryminalnomu protsesi Ukrainy: teoretyko-pravovi ta orhanizaini zasady (za materialamy MVS) [Tekst]: [monohrafiia] / Tatarov Oleh – Donetsk: TOV «VVP «Promin», 2012. – 640 s.
7. Zelenetskyi Vladymyr Vozbuzhdenye uholovnoho dela / Vladymyr Zelenetskyi. – Kh.: «KrymArt», 1998. – 339 s.
8. Belkyn Rafuil Teoryia dokazivanyia v uholovnom sudoproyzvodstve / Rafuyl Belkyn. – M.: Norma, 2000. – 528 s.
9. Deryshev Yuryi Uholovnoe dosudebnoe proyzvodstvo: problemы y puty reformyrovanyia / Yu. Deryshev // Uholovnoe pravo.– 2005. – № 1. – S. 81-83.
10. Yurchyshyn Volodymyr Protsesualni funktsii prokurora u dosudovii stadii kryminalnoho provadzhennia: poniattia, pryznachennia, systema: navch. posib. / Volodymyr Yurchyshyn. – Chernivtsi: Tekhnodruk, 2014. – 276 s.
11. Tatsii Vasyl Prokuratura ta orhany pravoporiadku v systemi pravookhoronnykh orhaniv // Visnyk prokuratury. – 2013. – № 3. – S. 3-15.
12. Yurchyshyn Volodymyr Zahalna kharakterystyka dosudovoho provadzhennia, rol i mistse prokuratury v nomu. / Volodymyr Yurchyshyn // Pidpryiemnytstvo, hospodarstvo i pravo. – 2012. – № 8. – C. 176-180.