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BODIES OF PRE-TRIAL INVESTIGATION IN UKRAINE IN THE LATE 1920S AND THE EARLY 1930S

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SUMMARY

This paper presents analysis of the organizational structure and legal status of the bodies conducted pre-trial (preliminary) investigation in the Ukrainian SSR in the late 1920s and the early 1930s. On the basis of laws and regulations the author determines the structure and subordinacy of the pre-trial investigation bodies in the Ukrainian SSR. The origins of the legislation regulating legal status of the preliminary investigation agencies in the Ukrainian SSR are examined.

Key words: investigation, justice, investigative body, court, crime.

ОРГАНЫ ДОСУДЕБНОГО РАССЛЕДОВАНИЯ В УКРАИНЕ НА ПЕРЕЛОМЕ 1920-Х И 1930-Х ГОДОВ

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АННОТАЦИЯ

В статье анализируется организация и правовое положение органов досудебного (предварительного) расследования в УССР в конце 1920-х – начале 1930-х гг. На основе нормативного материала автор определяет структуру, субординационную подчиненность органов досудебного следствия в УССР. Анализируется генезис законодательства УССР в части правового статуса органов предварительного расследования.

Ключевые слова: следствие, юстиция, орган расследования, суд, преступление.

REZUMAT

Articolul analizează organizarea și statutul juridic al organelor de anchetă preliminară (preliminară) în SSR ucrainean la sfârșitul anilor 1920 și începutul anilor 1930. Pe baza materialului normativ, autorul determină structura, subordonarea subordonării organelor de anchetă precontencioase în SSR ucrainean. Se analizează geneza legislației SSR ucrainean cu privire la statutul juridic al organelor de anchetă preliminară.

Cuvinte cheie: investigație, justiție, organ de investigație, instanță, criminalitate.

Problem setting. Most scientists currently tend to consider the activities of the Soviet investigative bodies exclusively in a negative way. Recently, in the overwhelming majority of the literary sources, it is stated that these bodies served as a tool to struggle against opposition and the focus is only on their repressive function. While investigative activities and the legal basis for the investigative bodies' operation are not usually considered. Therefore, it is necessary to analyze the legal status and activities of these bodies on the basis of the normative acts in force and archival materials.

Ukraine is a young nation building a democratic, law-governed state. Well-functioning legislation that promotes the protection of human rights and freedoms is an integral component of the state of this kind. However, the functioning of legislation is impossible without supervision over its observance. This

activity belongs to the competence of law-enforcement bodies. In view of the recent changes in Ukraine's line of policy, there is an urgent need to reform the existing criminal procedure legislation with the aim of its democratization. However, the reforms require a comprehensive approach, which will take into account both the experience of building law enforcement systems in foreign countries, and the experience of our state in different historical periods. Reforming the national system of law enforcement agencies without taking into consideration the mistakes of the past will lead to their recurrence. Thus, the **relevance and importance** of the issue under consideration is obvious.

So, **the purpose** of the paper is to analyze the legal status and activities of the bodies of pre-trial investigation on the basis of the existing normative acts and archival materials.

Basic material. On April 13, 2012, the Verkhovna Rada of Ukraine passed the first Criminal Procedure Code of Ukraine. Until this point, the old criminal procedure legislation was in force in the country, to which only slight alterations were made during Ukraine's independence. Some of the provisions of the Code are entirely new, and some traditional rules were creatively rethought. Certainly, only the practice of law enforcement will show (and has already shown) all the advantages and disadvantages of this important normative legal act and will help determine the ways of further reforming the criminal procedure legislation of Ukraine.

Realization of the reform requires clear determination of the role and place of preliminary investigation bodies in the law-enforcement system of our state, precise definition of their competencies, as well as organization of an efficient supervision over the activity of these bodies. The reform should be based on the history and practice of other countries, as well as domestic experience (both positive and negative) of organization of the preliminary investigation bodies' activity, including that of the Soviet period.

In modern literature, a negative approach has developed when evaluating the legal status of the Soviet investigative bodies' activity, in particular since 1929, the year when a new economic policy was rolled back. There was a certain trend to represent these bodies as repressive and acting exclusively in the interests of the ruling Communist Party as an instrument to fight the opposition. The real investigative work and the legal basis of activities conducted by the bodied of preliminary investigation, for the most part, are not considered. Therefore, it is necessary to perform an impartial analysis of the legal status and activities of these bodies on the basis of archival documents and the statutory acts currently in force.

In the first Soviet Criminal Procedure Code of Ukraine of 1922 (and in succeeding years) the bodies of pre-trial investigation were referred to as bodies of preliminary investigation. This term embraced both enquiry and preliminary investigation. According to the Criminal Procedure Code of the Ukrainian SSR of 1922, the bodies of enquiry were the militia and the Criminal Investigation Department, the General Prosecutor's Office of Ukraine, and in certain cases various inspections, government agencies and officials [1]. The main preliminary investigation bodies, under the "Provision on Judicial Organization" of 1922, were people's investigators in the investigation areas, senior investigators in the provincial courts, and Superior Case Investigators at the Supreme Court and the People's Commissariat of Justice of the Ukrainian SSR [2]. Supervision over the bodies of inquiry and preliminary investigation was entrusted to the Prosecutor's Office of the Ukrainian SSR from the very moment of its formation and set forth in the "Provision on Prosecutor's Supervision" adopted on June 28, 1922 [3] and the first Soviet Criminal Procedure Code of Ukraine.

During the period under examination, an enquiry was understood as the initial stage of the pre-trial investigation that precedes the preliminary investigation which aim was to fix the traces of the crime, to collect the very first evidence in hot pursuit, and to take urgent measures to disclose the crime and the criminal. After this, a comprehensive and detailed investigation proceeds to the stage of preliminary investigation. The preliminary investigation played part of the second stage of crime investigation process where collection and examination of evidence, in the condition and the forms required for making a decision on the merits of the case at trial, took place.

In 1929, according to the Decree of the Central Executive Committee and the Council of People's Commissars of the USSR of January 30, 1929, in all Soviet republics investigative units were organizationally subordinated to the Prosecutor's Office and were no longer under court's direction [4]. As it was stated in the literature, prosecutorial and investigative functions of the prosecution were combined with investigative function (bringing to justice) to make a decision on a case [5].

There is an opinion that due to the reform, instead of a tripartite adversarial legal relationship, a linear vertical dependence of subordination to authorities occurred, which is characteristic of the inquisitorial type of the procedure. And consequently, the preliminary investigation was completely reduced to search activity [5]. This point of view was also followed by M.S. Strogovich, who later especially opposed to entrusting the internal affairs agencies with the function of preliminary investigation, noting that the preliminary investigation is a function of the judiciary, and not of the militia. All stated above makes it clear that, by the year 1930, investigative bodies of the Ukrainian SSR, according to the "Regulations on Judicial System of the Ukrainian SSR" of 1929 [6], were under the full command and control of the Prosecutor's Office in terms of organizational subordination.

The bodies of enquiry, at the same time, in the process of their formation by 1929, were in a relatively stable state. Since an enquiry precedes a preliminary investigation, the legal regulation and structure of the bodies of enquiry in the late 1920s – 1930s should be considered first of all.

The list of the bodies having the right to carry out an enquiry was set forth in the Criminal Procedure Code, namely in the Article 94 of the Code. According to this

article, initially since 1927 the following agencies were the bodies of enquiry: the bodies of the militia and criminal investigation department; the bodies of the Prosecutor's Office; labour inspection bodies, the tax, sanitary, technical and trade inspections in the cases of their competence, as well as bodies of other inspections which are entitled to conduct an enquiry by a special law; forest guard in the cases of its competence; government authorities and officials in the cases of illegal acts committed by subordinate officials.

NKVD of the Ukrainian SSR was liquidated by the Regulation of VUTSIK and SNK of the Ukrainian SSR in 1930 [4]. This event was preceded by the liquidation of the all-Union NKVD and transfer of the Militia and Criminal Investigation Department as the principal inquiry bodies under control of the OGPU.

On December 15, 1930, TSIK and SNK of the USSR adopted two Resolutions signed by M. Kalinin, A. Rykov, and A. Yenukidze:

1) "On Liquidation of People's Commissariats of Internal Affairs of the Union and Autonomous Republics";

2) "On administering activities of the Militia and Criminal Investigation Department by the Bodies of OGPU" [7, c. 42].

As a result of these decisions, the corresponding Central Executive Committees and Soviets of People's Commissars in all the union and autonomous republics of the USSR adopted resolutions on liquidation of the NKVD. Throughout the country the Militia and the Criminal Investigation Department were placed under the command of the GPU. It resulted in the integration of the bodies involved in the protection of state interests and those engaged in combating crime within the country, including in the form of an inquiry. A powerful structure was formed that combined enormous powers for combatting both offenders committing crimes against state security and criminal elements throughout the country.

Subordination of the militia and criminal investigation department staff to the bodies of the OGPU, which took place when the republican NKVD was liquidated, on the one hand, enabled to establish a single legal framework for the organization and operation of the militia staff throughout the country (on May 25, 1931, the government of the USSR approved the first All-Union Provision on workers' and peasants' militia), and, on the other hand, it positively influenced the effectiveness of crime control.

The need to abolish the NKVD at that time was explained as follows: "At a new stage under conditions of the socialist reconstruction of the national economy, commissariats of the internal affairs of the union and autonomous republics, which exercised control over various separate branches of government and the economy, as communal services, militia, criminal investigation, places of imprisonment, became redundant elements in the Soviet State machinery" [7, c. 42].

In view of the mentioned above, in 1932, the Main Directorate of the Workers' and Peasants' Militia attached to the OGPU was established by the Decree of the TSIK and SNK of the USSR. In the same year, owing to establishment of regions, Regional Directorates of the Workers' and Peasants' Militia were formed that was enshrined in the corresponding charter. The organizational activity of the militia was regulated by the "Charter of the Workers' and Peasants' Militia" [8].

The study highlights the legal status of the bodies, whose function to conduct an inquiry was one of the principal kinds of activity. Therefore, the research does not provide a detailed consideration of other bodies which functions of enquiry were only provisional and performed under certain circumstances.

At the beginning of 1930s, organizational activity of the GPU was regulated by the Decree of the TSIK of the USSR "Regulations on Unified State and Political Government of the Union of Soviet Socialist Republics and its bodies" of November 15, 1923. A desperate class struggle and the need for tight control over all spheres of vital activity at local levels on the part of the central apparatus were prerequisites to the fact that the functions of inquiry were delegated to the bodies that had not been engaged in legal activities. Thus, in 1933, by the Decree of the NKYu (the People's Commissariat of Justice) of the Ukrainian SSR, the functions of inquiry were vested in the workers' supply and state trade network inspectors.

In the same year, the right to conduct inquiry was also granted to the instructors of industrial cooperative organizations. In 1934, the NKYu of the Ukrainian SSR entitled controllers-auditors of the state labor savings banks to conduct an inquiry. It was entirely legitimate to vest powers of enquiry in various inspections and provided for by article 94 of the CPC.

In those cases where the preliminary investigation was not mandatory and where the enquiry replaced the investigation, the body of enquiry, according to article 95 of the CPC, was guided by the rules of carrying out preliminary investigation provided for by the CPC with some restrictions set forth in the Code. Enquiry on crimes involving sanctions in the form of imprisonment for a term of one year or less was performed within one month, and within two months in all other cases. Where the conduct of the preliminary investigation was not obligatory, the enquiry, in cases determined by law, was terminated by a resolution of the inquiry bodies; in all other cases, according to article 101 of the CPC, the case materials along with the conclusion of the body performing enquiry were sent to the investigator.

If following the inquiry the data exposing someone committed a crime were collected, the inquiry body, provided that the preliminary investigation was not necessary, transferred the inquiry records, along with its conclusion, to people's court in case that the sanction set for the committed crime did not exceed one year of imprisonment, or to an investigator if the sanction was more than one year. In the cases where preliminary investigation was mandatory, the materials were sent directly to an investigator (art.102, art.103 CPC).

The investigator, in whose station the given inquiry body was located, supervised over the process of inquiry with regard to each individual case. The

general supervision of the actions of the bodies of inquiry was exercised by the prosecutor. The process of supervision over the inquiry conducted by the bodies of the National Security Department of the NKVD was regulated by special regulations.

On receiving the inquiry records, the investigator had to make sure whether the case was sufficiently investigated and:

1) dismissed the case, if there were grounds described further in this study;

2) sent the case back for additional inquiry if he found the materials incomplete;

3) initiated conduct of preliminary investigation in the case if recognized it as necessary;

4) made a decision with regard to bringing the accused person to trial if there were sufficient grounds in the case papers.

It was within the competence of an investigator to suspend or resume an inquiry. The investigator's decision to put on trial contained the same information as the indictment in the criminal case described further in the research, as well as the list of persons whose cases were severed into separate trials or closed. The decision along with the case was transferred to court. According to art.218 of the Criminal Procedure Code, the investigator was to make a decision on each case received from the body of inquiry within 5 days if the accused was in custody, and within 10 days in all other cases. If there was not such an opportunity, the investigator reported it to the prosecutor stating the reason for the delay.

As already noted earlier, by the Regulation of the TSYK and SNK of the USSR of January 30, 1929, the investigative apparatus organizationally was fully subordinated to the prosecutor's office [4]. Prior to the transfer of investigative bodies from subordination to courts under the jurisdiction of the prosecutor's office, Article 25, par. 4 of the said CPC, before introduction of amendments to it, gave the following explanation of the concept of "investigator": a people's investigator, a senior investigator attached to a circuit court, an investigator for the most important cases attached to the People's Commissariat of Justice and the Supreme Court, and a military investigator of the military tribunal. Investigators of the state security bodies were not provided for by this provision, which was an overt gap in the legislation.

A detailed description of the new legal status and organization of the investigative bodies, which occurred after the reform of inquisitorial system, is set out in the Regulations on the Judiciary of the Ukrainian SSR of 1929:

1. The Prosecutor's Office at that time was subordinate to the People's Commissariat, namely, there was a Department of the Prosecutor's Office attached to the People's Commissariat of Justice of the Ukrainian SSR, and the Prosecutor General of the Ukrainian SSR (this position was introduced in 1925) also held office of the People's Commissar of Justice of the Ukrainian SSR.

2. The Prosecutor's Office Department of the People's Commissariat of Justice of the Ukrainian SSR had an investigator for the most important cases.

3. In the Prosecutor's Office of the AMSSR (at that time Moldova was part of the Ukrainian SSR as an autonomy) and circuit prosecutor's offices (in 1929 regions as administrative territorial divisions did not yet exist) there were senior investigators.

4. In investigative areas, people's investigators acted.

Evidently, the reform did not make significant changes in subordination of investigators, in other words, there was simply a parallel transition of investigators from one department (court) to another (prosecutor's office) while preserving the respective ranks in the occupational hierarchy (people's investigator in court – people's investigator in the investigation area; a senior investigator in a circuit court – a senior investigator of the circuit prosecutor's office or prosecutor's office of the AMSSR, etc.

Under the Regulations on the Judiciary of 1929, investigators for the most important cases were appointed, removed and, in certain cases, suspended by the People's Commissariat of Justice and the Prosecutor General of the Ukrainian SSR.

Senior investigators were appointed, removed and, in certain cases, suspended on the decision of those bodies of the Prosecutor's Office, to which they were attached. Circuit prosecutors were obliged to submit those orders to the Prosecutor General of the Ukrainian SSR for approval. Thereby the procedural and organizational independence of the senior investigator from the circuit prosecutor was ensured.

People's investigators were appointed, removed and, in certain cases, suspended on the proposal of the bodies of the Prosecutor's Office, in the capital city of the AMSSR and in district (okrug) cities by city councils and within the rest of territory by district (okrug) executive committees and in the AMSSR by the People's Commissariat of Justice of the AMSSR.

Technical staff in the number provided for by the staff list was attached to a people's investigator. The chambers of people's investigators were maintained at the expense of the respective local budget. The rest of investigators were financed from the budgets of the respective bodies of the prosecutor's office to which they were attached. The network of people's investigators chambers in a district (okrug), with the exception of the network of district (okrug) cities, is established (on the proposal of the circuit court) by the executive committee of the district [6].

Thus, attention can be drawn to the fact, that the people's investigators attached to investigation areas were financially dependent on the local administrative authorities, which gave the latter the right, upon the proposals of the prosecution authorities, to appoint, remove and, in certain cases, suspend people's investigators. Furthermore, from our point of view, financial dependence of the lower level of the investigative system on local authority could not ensure the objectivity of criminal investigation, especially in cases of malfeasance. This statement is proved true and remains relevant nowadays as well, when the material interest of law-enforcement agencies makes them the tools of various organizations to achieve subjective and, at times illegitimate, purposes.

In order to become an investigator in accordance with clause 3 of article 23

of the Regulation on the Judiciary of the Ukrainian SSR, it was necessary to have a 2-year experience of practical work in the bodies of Soviet justice holding position not lower than the secretary of the people's court or the same length of work in those bodies on a voluntary basis, or to pass special examination [6].

Decree of the VUTSIK and SNK of the Ukrainian SSR "On the reorganization of local bodies of justice of the Ukrainian SSR" introduced some changes to the structure of the prosecutor's office, and consequently to the investigation system. Namely, under Article 1 of the above-mentioned normative legal act the circuit prosecutor's offices and positions of senior investigators attached to them were abolished since October 1, 1930. From this very day, according to article 3 interdistrict prosecutor's offices were established.

Article 7 of the said decree provided for the establishment of the chambers of people's investigators in each administrative district. These chambers, as before, were to be financed at the expense of a local budget. Article 10 specified the procedure for appointing and dismissing people's investigators, namely by the proper executive committee of district or city soviets of people's deputies upon the recommendation by their respective district or city prosecutor.

According to the decree mentioned above, there were senior investigators attached to the interdistrict prosecutor's offices who engaged in investigation of important cases, as well as cases of interdistrict importance. Senior investigators were subordinated directly to the interdistrict prosecutor and were appointed and dismissed by the Prosecutor General of the Ukrainian SSR on the recommendation of the interdistrict prosecutor. At that time, the investigators of the prosecutor's offices did not yet have class ranking equal to officer ranks that equated them with civil servants.

Thus, taking into consideration all stated above, one can come to a conclusion that a one-sided negative approach to the activities of the preliminary investigation bodies during the 1930s in the absolute majority of the recent literary sources is not quite sound. It is of crucial importance to distinguish between repressive activity of public authorities determined by party and political instructions, which was disguised as an investigative one, and a real legal activity of the preliminary investigation bodies, which had completely different legal tasks. The problem is exactly that both repressive and investigative activities were conducted by the same law-enforcement agencies (NKVD, prosecutor's office, court).

Currently, there is an urgent need to revise the attitude of the state to the bodies of preliminary investigation, since only when a well-functioning law-enforcement system is used properly, it is possible to build a truly democratic and law-governed state, where human and civil rights and liberties will be secured not only de jure, but also de-facto. To achieve this we need the experience of the past, since without realizing the causes of errors, which have negatively affected the development of the whole society, we are doomed to repeat them.

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