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Theoretical and applied principles of control and supervisory activities within the pre-trial investigation

Review of the book: Mirkovets D. M. Control and supervisory activity in the pre-trial investigation: theory and practice: monograph. Odesa : Helvetica, 2021. 432 p.

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The monograph of D.M. Mirkovets investigates a modern theoretically and practically significant problem – the implementation of control and supervisory activities in the pre-trial investigation.

The author rightly notes that ensuring, observing and protecting human rights is extremely relevant for criminal proceedings at the stage of pre-trial investigation, the characteristic features of which are specific tasks and ways of solving them, and its procedural nature involves using restrictive measures and means, in particular covert ones.

The importance of control and supervisory activity as an effective means of ensuring the observance of human rights and the legality of pre-trial investigation is beyond doubt, but unsystematic legislative changes resulting in duplication of powers of subjects of control and supervisory activity, legal uncertainty of such concepts as “supervision” and “control”, contradictory regulation of the mechanism of implementation of control and supervisory powers are the reasons that significantly complicate the functioning of the system of control and supervisory activity in the pre-trial investigation.

Therefore, the scientific and practical recommendations developed in the monograph based on the results of a comprehensive and systematic study of control and supervisory activities in the pre-trial investigation will contribute to its improvement both in regulatory and law enforcement aspects. The monograph includes five chapters, which, considering the current state of legislation and law enforcement

practice, comprehensively investigate the problems of control and supervisory activities in the pre-trial investigation within the author's concept and identify areas for improving this activity.

The first section, “Theoretical, methodological and legal foundations of control and supervisory activity in the pre-trial investigation”, are devoted to the analysis of scientific literature in the relevant area, substantiation of the author's concept of control and supervisory activity in the pre-trial investigation, development of research methodology and definition of the concept and essential characteristics of control and supervisory activity in the pre-trial investigation.

The concept of this activity in the pre-trial investigation, developed by the author, is a holistic theoretical model, a system built based on the defined purpose, concept, tasks, principles and other essential characteristics of control and supervisory activity in the pre-trial investigation as an institution, and through the prism of a common understanding, the features of each of its types are outlined with the definition of its place in the system of control and supervisory activity, its relationship with other types.

The concept and purpose of control and supervisory activity in the pre-trial investigation are defined, which is the foundation for its systematic study as a legal institution and its types as relatively independent but related elements of this system, the subject, object, boundaries, principles and other essential characteristics are outlined.

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The mentioned activity is presented as a system, in which the following elements are distinguished: the subject of control and supervision activity, which exercises influence; the object of control and supervision activity – investigator, detective, prosecutor, inquirer, who are influenced; means and methods of control and supervision activity, due to which the influence is exercised (necessary changes); the result of control and supervision activity – the response of the authorised body, which was subject to control and supervision influence.

The second section, “Head of the pre-trial investigation body in the system of control and supervision of pre-trial investigation”, covers the concept of organisation of pre-trial investigation as a procedural function of the head of the pre-trial investigation body and describes the procedural and organisational ways of exercising powers by the head of the pre-trial investigation authority.

The organisation of this activity as a procedural function and process is designed to perform the tasks of criminal proceedings and to respect the rights and freedoms of individuals, which is ensured through its legal instruments and means. It defines the specifics of this type of control and supervision activity and, therewith, describes it as a component of the relevant system.

Based on the analysis of regulations and materials of practice, the author substantiated that the procedural and organisational powers of the head of the pre-trial investigation body are incompletely embodied in the Criminal Procedure Code of Ukraine, which causes problems in practice.

Recommendations for improving legislation and law enforcement practice were developed, and significant attention was devoted to the issues of the covert component of the pre-trial investigation.

Section 3, “Organisation and procedural guidance of the pre-trial investigation as the main functions of the prosecutor's office”, contains the issues of correlation of supervision and procedural guidance in the activities of the prosecutor in the pre-trial investigation, the definition of the concept, purpose, objectives, principles of procedural guidance in the pre-trial investigation and the methodology of procedural guidance.

The author substantiates the position that the prosecutor's supervision should be designed to verify the legality and validity of the actions and decisions already performed, and the management of the pre-trial investigation - to verify the actions and decisions that are being performed (taken) or planned for implementation. It will facilitate the effective distribution of powers of the subjects of control and supervision activities and allow them to perform their functions transparently to achieve a common purpose.

The purpose of procedural guidance is defined on three related levels: 1) determined by the purpose of the pre-trial investigation (the pre-trial investigation

is considered as the sphere of activity of the prosecutor, the purpose of the pre-trial investigation here is the starting point for determining and specifying the way to achieve the purpose of procedural guidance, it is further structuring); 2) corresponds to the general purpose of control and supervisory activities in the pre-trial investigation; 3) is specified by the tasks of criminal proceedings (as a substantive component).

In the development of the methodology of procedural guidance, the emphasis is placed on its active, dynamic characteristic, rather than the perception of procedural guidance as a “static” set of specific elements with a simultaneous definition as an activity.

Section 4, “Judicial control in the pre-trial investigation”, defines the place of judicial control in the system of control and supervisory activities in the pre-trial investigation, and discloses the content of preliminary and subsequent judicial control.

Judicial control over the pre-trial investigation as a field of control and supervisory activity is defined as the activity of the investigating judge to observe the rights, freedoms and interests of persons in pre-trial proceedings. The subject of judicial control is defined at two levels: 1) the legality of the action or decision of the pre-trial investigation body (whether these actions and decisions are provided for by law, compliance with the procedural form); 2) the content (factual data), which justifies these actions and decisions.

In addition, the author substantiates the position that the actions and measures requiring judicial control constitute a particular group, which is based on the law-restrictive nature of such actions and measures, and the mandatory nature of judicial control is a legal guarantee of respect for the rule of law, rights and freedoms of individuals.

Section 5, “Prospects for improving the organisational foundations of control and supervisory activities in the pre-trial investigation”, contains recommendations for optimising the structural and functional support of the pre-trial investigation, positions on the delimitation of procedural guidance and organisation of the pre-trial investigation, the author's opinion on the correlation of the institute of control and supervisory activities with the autonomy and independence of the investigator (detective).

Considering the significant experience of the activity of the investigative units of the National Police of Ukraine (until 2015 – internal affairs bodies) and the material, organisational and legal foundation for the activity of the investigative units of the State Bureau of Investigation, the necessity of establishing a single investigative apparatus based on the relevant agencies – the State Pre-trial Investigation Service – is substantiated. It will allow maintaining the established interaction of investigators and operational units during the investigation of criminal offences and over-

come the departmental dependence of investigators on the heads of territorial law enforcement agencies.

The purpose of the function of organising the pre-trial investigation is defined as: ensuring the comprehensiveness, completeness and impartiality of the investigation of the circumstances of criminal proceedings, and the adoption of lawful and impartial procedural decisions by actively influencing the course of the pre-trial investigation; providing a correct and objective assessment of the actions of the investigator and correction of investigative errors; making effective decisions to improve the activities of the investigator, and in case of detection of misconduct – taking measures to eliminate violations of the law.

The necessity of empowering the investigator to independently perform the following actions were confirmed: to resolve the issue of combining or providing materials of pre-trial investigations; to

suspend the pre-trial investigation; to decide on the examination; to apply to the investigating judge with a petition for the application of such measures to ensure criminal proceedings as a summons, removal from office, temporary access to things and documents, property arrest, preventive measures (personal commitment and personal guarantees), covert investigative (search) actions; to open the materials of the pre-trial investigation; to send to the court a petition for release from criminal liability; to request international legal assistance.

Thus, the monograph is completed scientific research on current subjects and has significant scientific and practical significance.

Implementation of the results of the study and recommendations developed by D.M. Mirkovets into practice and the rule-making process will contribute to the improvement of control and supervisory activities in the pre-trial investigation.

Теоретичні та прикладні засади контрольно-наглядової діяльності в межах досудового розслідування

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