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## Apprehension by an Authorised Official at the Residence or Other Property of a Person: Current Theoretical and Practical Issues

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■ **Abstract.** The purpose of the article is to analyse the issues of criminal procedural procedure for apprehension in a person's residence or other property and, on this basis, to formulate scientifically sound recommendations for improving current legislation and practice of its application. The article uses a set of scientific methods, namely: terminological, system-structural, formal-logical, and comparative-legal. The theoretical framework of the study is based on the works of Ukrainian scientists, provisions of the Criminal Procedure Code of Ukraine, and the practice of its application. The scientific novelty of the study consists in highlighting the specific features of the apprehension of a suspect located in their home or other property, formulating recommendations for the application of the relevant provisions of the Criminal Procedure Code of Ukraine in practice, and identifying the ways to improve the criminal procedural legislation to increase the efficiency of this procedural action. Based on the results of the study, a set of proposals aimed at improving the provisions of the Criminal Procedure Code of Ukraine regulating the procedure for apprehension in one's home or other property, and the practice of their application was formulated: 1) to enter a residence or other property of a suspect to detain a person who has committed a criminal offence, there must be grounds for both entry and detention, since these are actually different procedural actions; 2) in the case of apprehension by an authorised officer without a ruling of an investigating judge or court, physical restraint or apprehension by order may be carried out by all police officers in accordance with the Law of Ukraine "On the National Police", and employees of other law enforcement agencies, but only the investigator, prosecutor has the right to procedurally formalize these actions by drawing up a detention protocol (in view of this provision of the Code, needs to be clarified by clearly delineating detention, which covers the whole range of measures from physical restraint to drawing up the relevant protocol and physical restraint); 3) Article 208 of the Criminal Procedure Code of Ukraine should provide that physical restraint or apprehension by order can be carried out by law enforcement officers if there are legal grounds specified in Part 1 of Article 208 of the Code, and only authorised officials - investigator, prosecutor – can procedurally formalise these actions; 4) at the legislative level, it is necessary to provide for the possibility of detention on suspicion of committing a criminal offence before entering data into the Unified Register of Pre-trial Investigations; 5) it is necessary to expand the exigent circumstances provided for in Part 3 of Art. 233 of the Criminal Procedure Code of Ukraine by granting the right to the investigator, investigator, or prosecutor to enter the home or other property of a person in exigent circumstances related to the detention of a suspect, or accused person in order to participate in the consideration of the application for a preventive measure in the form of detention before the decision of the investigating judge

■ **Keywords:** apprehension; authorised official; housing; other property of a person; penetration into housing or other property of a suspect; search; inspection; investigator

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### ■ Introduction

The Constitution of Ukraine stipulates that each individual has the right to freedom and personal inviolability. No one may be arrested or detained except by a reasoned court decision and only on the grounds and in the manner prescribed by law. The procedure and legal grounds for detaining a person in the event of committing a criminal offence are defined in the Criminal Procedure Code of Ukraine.

It is prohibited to impede movement, detain and restrain a person without the grounds established by law. Criminal liability is established for committing such actions since there is a violation of human and civil rights and freedoms provided for by the Constitution of Ukraine.

If a person is detained on legal grounds, such actions are a lawful temporary interference with human and civil rights and freedoms.

In view of the above, the legal grounds and procedure for detention, especially when apprehension takes place in a person's home or other property, is a rather topical issue in academic circles.

At the same time, numerous issues in this area remained unresolved. Given the above, it is relevant to study the criminal procedural grounds and procedural order of apprehension by an authorised official in the home or other property of a person.

The purpose of the study is to provide an analysis of the issues related to criminal procedural grounds and the procedural order of apprehension by an authorised official in a person's home or other property, and on this basis to formulate scientifically sound recommendations for improving current legislation and its application.

The scientific novelty of the study consists in highlighting the specific features of the apprehension of a suspect located in their home or other property, formulating recommendations for the application of the relevant provisions of the Criminal Procedure Code of Ukraine in practice, and also identifying the ways to improve the criminal procedural legislation in order to increase the efficiency of this procedural action.

## ■ Results and Discussion

There are cases in the practice of law enforcement agencies when it is necessary to enter a person's home or other property for the purpose of arresting a person who has committed a criminal offence. In fact, forced entry and apprehension are different procedural actions, and therefore there must be grounds for each of them.

The grounds for arresting a person who has committed a criminal offence vary depending on who carries out the apprehension. If it is an authorised official, the said procedural action is carried out on the basis of Art. 208 of the CPC of Ukraine, if it is other persons – on the basis of Part 2, 3 of Art. 207 of the CPC of Ukraine. When distinguishing between grounds, most of the practical issues are related to the interpretation of the term “authorised official”.

Who is an authorised official? Analysis of the provisions of Part 6 of Article 191 and Part 3 of Article 207 of the Criminal Procedure Code of Ukraine

gives grounds to assert that an authorised official is a person who is granted the right to carry out an apprehension by law. This raises the question: which law? Presumably, this refers to any law, not only the CPC of Ukraine. To confirm this thesis, it should be emphasised that if the legislator wants to refer to this Code in the articles of the CPC of Ukraine, the phrase “this Code” is used. An example of a law that gives law enforcement officers the right to apprehension is the Law of Ukraine “On the National Police” of 2 July 2015. According to Part 1 of Article 37 of this Law, the police are authorised to apprehend a person on the grounds, in the manner and for the periods specified by the Constitution of Ukraine, the Criminal Procedure Code of Ukraine and the Code of Ukraine on Administrative Offences, and other laws of Ukraine. Thus, this article refers to the provisions of other legal acts, in particular, the CPC of Ukraine. At the same time, an analysis of certain police powers shows that they may relate to detention. The police stop actions related to the commission of a criminal offence and take measures aimed at eliminating threats to the life and health of individuals and public safety that have arisen as a result of the commission of a criminal offence (paragraphs 3, 4 of Part 1 of Article 23 of the law of Ukraine “on the National Police”). In this regard, the report prepared by the police officer states that the apprehension was carried out on the basis of Articles 23, 37 of the Law of Ukraine “On the National Police” of July 2, 2015, and that all police officers, not just investigators, are authorised to carry out apprehensions. According to the letter of the Prosecutor General's Office “On compliance with the requirements of the Convention for the Protection of Human Rights and Fundamental Freedoms and the Criminal Procedure Code of Ukraine during the apprehension of a person” No. 13/4-565 vykh-328 okv-20 of August 17, 2020, “authorised official” is defined as a generic term that covers both investigators and other law enforcement officers who are authorised by the relevant laws to carry out detention. Such employees, in particular, include all other police officers: patrol police, operational units, district police officers, and employees of other law enforcement agencies vested with the right to apprehend persons, which is determined by special legislation, which they use in their activities (laws of Ukraine “On the State Border Guard Service of Ukraine”, “On the National Guard of Ukraine”, “On the Security Service of Ukraine”, “On the National Anti-Corruption Bureau of Ukraine”, “On the State Bureau of Investigation”, etc.)

At the same time, the analysis of certain provisions of Art. 208 of the CPC of Ukraine suggests

a different interpretation of the concept of “authorised official”. For example, in certain cases, it becomes necessary to conduct a search of an arrested person. In accordance with Part 3 of Art. 208 of the CPC of Ukraine, an authorised official, investigator, or prosecutor may search a detainee in compliance with the rules provided for in Part 7 of Art. 223 and Art. 236 of the CPC of Ukraine. Instead, the analysis of the provisions of Part 7 of Art. 223 and Art. 236 of the CPC of Ukraine show that only the investigator and the prosecutor, and not any law enforcement officer, can search a detained person.

Other law enforcement officers, unlike an investigator or prosecutor, also do not have the right to draw up a detention report, and therefore they do not draw it up without an investigator or prosecutor.

Therefore, it is natural that the practice of recognising only employees of pre-trial investigation bodies and prosecutors as authorized officials who have the right to carry out procedural detention without the decision of the investigating judge has been formed.

To conclude, physical restraint or apprehension by order can be carried out by all police officers, in accordance with the Law of Ukraine “On the National Police”, and employees of other law enforcement agencies. However, only the investigator or prosecutor has the right to formalise these actions by drawing up a protocol of detention. This applies specifically to temporary detention without the decision of the investigating judge.

Detention by an authorised official in some cases takes place only on the basis of a ruling by an investigating judge, and in others - without such a ruling.

Detention by the ruling of the investigating judge can be carried out not only by investigators, and prosecutors but also by other law enforcement officers who execute such a ruling. In this case, the latter also does not carry out the procedural registration of the specified action, but actually carry out the decision taken by an authorised person (investigating judge), that is, again, they carry out apprehension by order or physical restraint. An investigator or prosecutor may request such detention as part of a criminal investigation. But the decision on detention is made by the investigating judge, the court.

Apprehension without the ruling of the investigating judge. In accordance with Part 1 of Art. 208 of the CPC of Ukraine, an authorised official has the right to apprehend a person suspected of committing a crime punishable by imprisonment without the ruling of an investigating judge or court only in the following cases:

– if this person was caught during the commission or attempt to commit a crime;

– if immediately after the commission of the crime, an eyewitness, in particular the victim, or a set of obvious signs on the body, clothing or scene points to the person who has just committed the crime;

– if there are reasonable grounds to believe that a person suspected of committing a grave or especially grave corruption crime under the jurisdiction of the National Anti-Corruption Bureau of Ukraine may escape with the aim of evading criminal liability;

– if there are reasonable grounds to believe that a person suspected of committing a crime under Art. 255, 255-1, 255-2 of the Criminal Code of Ukraine may escape with the aim of evading criminal liability.

The legislator does not specify who caught the offender during the commission of the crime. Therefore, it can be any person, not only an authorised official, who informed the latter that they had witnessed the crime. To catch a person in the act of committing a crime means to see them in any period of time from the beginning of the crime or attempted crime to its completion. Therefore, this does not include, for example, being near the victim of a crime after its completion.

The following options are possible: 1) immediately after the commission of the crime, an eyewitness, including the victim, points to the person who has just committed the crime; 2) immediately after the commission of the crime, a set of obvious signs on the body, clothing or place of the incident indicate that this person has just committed a crime, which is punishable by a fine of more than three thousand tax-free minimum incomes, only if the suspect has not fulfilled the duties imposed on him during the imposition of a preventive measure, or has not fulfilled the requirements for depositing funds as bail and providing a document confirming this in the prescribed manner.

Despite the clear indication of an exhaustive list of legal grounds for detention, cases of violation of the procedure specified in the legislation are common in practice, obviously due to an attempt to detain a person without appropriate grounds. For example, the local court correctly found that the head of the investigative department committed actions that led to the knowingly illegal detention of a person: in accordance with Article 40 of the CPC of Ukraine, he instructed the operational unit to establish the location of the person, to bring him to the office of the Ministry of Internal Affairs of Ukraine in one of the regions. There were no grounds for detention under Art. 208 of the CPC of Ukraine. When giving instructions to deliver a person to the office premises, the head of the department could not but realise that it could be executed only in one of the ways specified in the mentioned norm of the

law, which actually happened later. Later, confirming this illegal detention, the law enforcement officer drew up a protocol in the absence of any of the grounds provided for in Art. 208 of the CPC of Ukraine (as a result of the above, the actions of the police officer are qualified under Part 1 of Art. 371 of the Criminal Code of Ukraine) [1].

Often, detention does not occur immediately after the crime is committed, but much later. Therefore, law enforcement officers, seeking to detain persons who allegedly committed a criminal offence, in some cases become subjects of a criminal offence themselves. For example, the head of one of the departments of the local prosecutor's office in the Kirovohrad oblast and the senior investigator of the Prymorskyi Police Department of the Central Office of the National Police in Odesa oblast are accused of knowingly unlawful detention (Part 1 of Article 371 of the Criminal Code of Ukraine). The investigation established that the senior investigator received from the prosecutor a written order to apprehend a person in accordance with Art. 208 of the CPC of Ukraine. A police officer who was not part of the investigation team, reliably knowing about the illegality of this order, apprehended a citizen without legal grounds a week after the possible commission of a crime by him. The prosecutor then placed the citizen in a temporary detention facility on the basis of a detention report drawn up by the investigator [2].

The apprehension of a person who is in a dwelling or other possession of a person, and therefore the penetration into such a dwelling for the purpose of detention, is possible in the following cases:

- with the voluntary consent of the person who owns the dwelling or other property of the person to enter the said premises;
- on the basis of the investigating judge's ruling on permission to enter a suspect's home or other property;
- without a ruling of the investigating judge under exigent circumstances with further obtaining such a ruling after entering the home or other property of the person.

If there is a permit from a person who owns a suspect's home or other property or a permit for door breaching, then there are no procedural obstacles to apprehending a person who is in the dwelling or other property of the person if there are legal grounds for such apprehension.

However, what if there are legal grounds for apprehension, but there is no ruling from the investigating judge and no permission from the person who owns the housing or other property? In this case, it is necessary to establish how the legal grounds for

detention correspond to the grounds for entering a person's home or other property in urgent cases. As rightfully remarks V.Yu. Kalugin, exigent circumstance, apprehension and search are mutually conditioned procedural actions. After all, when a person is apprehended in a dwelling where they are hiding from persecution, then, a search should be conducted to identify evidence of a criminal offence [3].

One of the exigent circumstances that give the right to access the home or other property of a person before the ruling of the investigating judge is the case related to the direct prosecution of persons suspected of committing a criminal offence (Part 3 of Article 233 of the CPC of Ukraine).

Direct prosecution of persons suspected of committing a criminal offence may concern a person suspected of committing a crime punishable by imprisonment only in the following cases: 1) if they were caught during the commission or attempted commission of a crime (paragraph 1, part 1, Art. 208 of the CPC of Ukraine); 2) if immediately after the commission of the crime, an eyewitness, including the victim, or a set of obvious signs on the body, clothing or place of the event indicate that this person has just committed a crime (paragraph. 2, part 1, Art. 208 of the Criminal Procedure Code of Ukraine); 3) if there are reasonable grounds to believe that the person may escape with the purpose of evading criminal liability, provided that they are suspected of committing a grave or especially grave corruption crime, referred by law to the jurisdiction of the National Anti-Corruption Bureau of Ukraine, or of committing a crime under Art. 255, 255-1, 255-2 of the Criminal Code of Ukraine (paragraphs 3-4 of part 1 of Art. 208 of the Criminal Procedure Code of Ukraine). Direct prosecution also applies to a person suspected of committing a criminal offence, if during the immediate prosecution after committing a criminal offence such person fails to comply with the lawful requirements of an authorised official (paragraph 3 of Part 1 of Article 298-2 of the CPC of Ukraine). That is, all these cases are subject to the direct prosecution of persons suspected of committing a criminal offence (Part 3 of Article 233 of the Criminal Procedure Code of Ukraine), and therefore, if present, apprehension is possible in the home or other property of the person. In such cases, it does not matter whether the housing or other property belongs to the perpetrator or another person who may not be involved in the commission of a criminal offence. Such housing or other property may be the place where a person has committed a criminal offence or attempted to commit it, the place where such a person tried to hide, or through which the suspect tried to escape after the latter was committed.

In such cases, the detention of a person immediately after committing a criminal offence is entirely legal and does not require any additional actions to legalise this procedural action. However, the fact of entering into a person's home or other property by obtaining a warrant for an inspection or search actually after they have been conducted requires legalisation.

Direct prosecution in Part 3 of Article 233 of the Criminal Procedure Code of Ukraine means that a person suspected of committing a crime can be prosecuted both immediately after the commission of the crime and after a certain time, in particular, if his prosecution was continuous. In fact, continuous prosecution is one of the options for direct prosecution, and therefore it is logical that it is also used to interpret the provisions of Article 208 of the Criminal Procedure Code of Ukraine (detention by an authorized official) and Part 3 of Article 233 of the Criminal Procedure Code of Ukraine (forced entry into a person's home or other property in exigent circumstance), although the term "continuous" is contained only in Paragraph 2 of Part 2 of Article 207 of the Criminal Procedure Code of Ukraine.

Carrying out continuous persecution, authorised officials are not actually limited in time, the key factor is that the persecution does not stop. For example, a person can be detained for 10-15 minutes, 1-2 hours or even several days after committing a criminal offence during a continuous pursuit. In the process of continuous pursuit, persons suspected of committing a crime can avoid detention by constantly changing their location. In such cases, employees of operational units indicate such circumstances in the report, after which they perform actions aimed at establishing the location and detention of these persons.

Detention of a person suspected of committing a criminal offence without a decision is possible in any place, including housing, but only immediately after the commission of the crime or during its continuous prosecution. At the same time, if there is a court permit for detention in the form of a ruling, such detention can take place at any time, regardless of the time that has passed since the commission of a criminal offence [4].

From the time of establishing the location of a suspect in the housing or other possession of a person, the investigator, while apprehending a person in such places, also draws up a report of inspection or search. At the same time, it should be noted that the search as an investigative (search) action can be conducted after entering data into the Unified Register of Pre-trial Investigations (URPTI). Therefore, as O.V. Sachko rightly notes, having found the offender at the scene, investigators and detectives are

actually "beyond the possibilities" of legally defined actions, because criminal proceedings have not yet been opened, and the law not only allows but also requires such a person to be detained [5]. However, O.A. Luchko defends a different position on this issue, emphasising that although the CPC of Ukraine does not clearly provide for the possibility of conducting a search in the URPTI, however, after analysing Part 3 of Art. 233 of the CPC of Ukraine on the right of the investigator, prosecutor in exigent circumstance before the ruling of the investigating judge to enter the home or other property, applying after such actions to the investigating judge with a request for a search, it can be concluded that it is possible to conduct it before registering the data of the URPTI in cases provided for by this rule [6].

In practice, to avoid the problematic situation associated with the lack of a clear legislative provision on the possibility of conducting a search before entering information about a criminal offence into the URPTI, law enforcement officers only inspect the scene after the physical restraint of a suspect. Meanwhile, another investigator (who is on daily duty as a member of the investigative team) enters the relevant information into the URPI, and only after that the apprehension report is drawn up and the suspect is searched. Generally, if such actions are taken promptly enough, there are usually no problems.

Judge of the Criminal Court of Cassation under the Supreme Court S. Fomin rightly points out that many concerns that were raised in 2012, when the CPC of Ukraine was adopted, remain unresolved to this day. Among them, there are issues related to the regulatory expansion of the range of procedural actions that could be carried out before entering information in the unified state register of legal entities. It is primarily a matter of the possible apprehension of a person in respect of whom the police officers, who are not authorised to carry out criminal procedural activities, have information about committing or preparing to commit criminal offences, personal search and engagement of an expert for examination. He noted that the Supreme Court receives cassation appeals, in which the defenders point out violations of the rights of a person when he was forced to stay near the police officers who performed the functions of public order protection. The Law of Ukraine "On the National Police" provides for a superficial check and inspection and restriction of movement of a person or vehicle as preventive police measures. According to Part 1 of Article 37 of this Law, the police are authorised to apprehend a person on the grounds, in the manner and for the periods specified by the Constitution of Ukraine, the Criminal Procedure Code of Ukraine

and the Code of Ukraine on Administrative Offences, and other laws of Ukraine. Administrative detention is carried out on the grounds and in the manner prescribed by Art. 260-264 of the CAO, it can not be applied to persons suspected of committing a criminal offence, and detention as a measure to ensure criminal proceedings can be carried out only after entering data into the URPI. Such inconsistency between the normative acts in some cases may indeed lead to a violation of human rights, and subsequently – to the recognition of evidence obtained before the criminal proceedings as inadmissible [7].

That is, the lack of a clear indication in the CPC of Ukraine on who is the authorised person to apprehend, and the absence of clear regulation of the procedure and grounds for physical restraint by law enforcement officers of persons suspected of committing criminal offences, leads to errors in the execution of these actions. In some cases, this leads to the defence filing appeals and subsequently cassation appeals to the courts to challenge the detention.

Article 262 of the CAO states that the administrative detention of a person who has committed an administrative offence may be carried out only by bodies (officials) authorised by the laws of Ukraine. Administrative detention is carried out, in particular, by the National Police. That is, in the CAO, unlike the CPC of Ukraine, physical apprehension and its procedural registration can be carried out by the same authorised person. Instead, according to the CPC of Ukraine, physical detention can be carried out by any law enforcement officer, and procedural registration of this action can be carried out only by the investigator, or prosecutor.

The time of detention of a suspected person in specially designated premises starts from the moment of his/her apprehension. The concept of apprehension is defined in Article 209 of the Criminal Procedure Code of Ukraine (a person is apprehended from the moment when he/she is compelled by force or by obedience to an order to remain near an authorised official or in a room designated by an authorised official).

At the same time, the legislation does not provide for the possibility of apprehension on suspicion of committing a criminal offence before entering data into the URPTI. Consequently, the obtained evidence is recognised as inadmissible. In particular, the Ruling of the panel of judges of the First Trial Chamber of the Criminal Court of Cassation of the Supreme Court of February 16, 2021, in case No. 204/6541/16-k states that the defender requests to cancel the court rulings and close the criminal proceedings. In this case, the defence, among other arguments, raises the question of the inadmissibility

of narcotic drugs seized from the convicted person, since they were obtained during a personal search after he was detained under Article 209 of the Criminal Procedure Code of Ukraine.

Justifying their arguments, the defence refers to the fact that this apprehension and personal search were not documented in the report of apprehension, but in the report of an inspection of the scene. The report of the inspection of the scene in fact reflects a personal search of the detainee PERSON\_1, which was conducted before entering information about the crime into the URPI. The court agreed that in such circumstances the protocol of inspection of the scene and the evidence derived from it should be declared inadmissible [8].

Given this, it is advisable to envisage the possibility of apprehension on suspicion of committing a criminal offence before entering data into the URPTI. In such circumstances, any apprehension of a person on suspicion of committing a criminal offence will be lawful regardless of the moment of physical restraint and procedural registration. If, after the introduction of these legislative changes, the apprehension occurs in a person's home or other property and it is necessary to conduct a search, the algorithm of actions will be as follows 1) entry into the dwelling or other property of a person with his/her voluntary consent or upon exigent circumstances (related to saving lives and property or direct prosecution of persons suspected of committing a criminal offence); 2) physical apprehension of a person and its procedural registration; 3) entering data into the URPTI; 4) conducting a search; 5) immediate appeal of the prosecutor, investigator, inquiry officer in agreement with the prosecutor after such actions to the investigating judge with a request to conduct a search.

Apprehension in the residence or other property of a suspect to bring him/her to participate in the consideration of the application for a preventive measure in the form of detention. Apprehension in a person's home or other property may also apply to persons who have acquired the status of a suspect or accused. For example, in accordance with Part 1 of Art. 188 of the CPC of Ukraine, the prosecutor, and investigator, with the consent of the prosecutor, have the right to apply for permission to apprehend the suspect, accused to bring him/her to participate in the consideration of the application for a preventive measure in the form of detention. Such cases occur when the whereabouts of the suspect is unknown and the suspect is put on the wanted list. After obtaining a permit to apprehend for the purpose of bringing such a person to justice and establishing their whereabouts, the question arises as

to how to apprehend them if they are in the housing or other property. If there are legal grounds for the apprehension of a person (the relevant decision or the person is officially wanted), law enforcement officers try to carry out the apprehension without entering the home or other property of the person, so as not to apply to the court for a search (inspection) of the premises. This situation is partly determined by a legal loophole, which does not classify such circumstances as exigent under Part 3 of Article 233 of the CPC of Ukraine, which significantly complicates the work of law enforcement. To avoid this problem, the investigator may use the provisions of Art. 234 of the CPC of Ukraine "Search", which states that one of the tasks of the search is to establish the location of the wanted persons. However, to achieve this goal, the investigator requires a search warrant from the investigating judge, unless, of course, there are grounds for an urgent search involving the saving of lives and property.

In this case, it would be advisable to supplement Part 3 of Article 233 of the CPC of Ukraine, namely: "Investigator, detective, the prosecutor shall have the right to enter the home or other property of a person only under exigent circumstances related to saving lives and property or direct prosecution of persons suspected of committing a criminal offence, or to apprehend a suspect, accused to bring him/her to participate in the consideration of a request for a preventive measure in the form of detention".

Thus, entering a person's home or other property to apprehend a person who has committed a crime may be carried out both with and without appropriate warrants in cases provided for by law. In practice, there may occur situations where a warrant to forcibly enter the premises is available, and the apprehension will be abrupt and carried out on the basis of Art. 208 of the CPC of Ukraine, or, conversely, there is a warrant to apprehend a person, and the entry into the premises is carried out with voluntary consent or in the presence of exigent circumstances because there is a real threat that the person sought is in a certain place and can hide.

Thus, having analysed the CPC, it should be noted that entry into a dwelling or other property of a person is possible by the ruling of the investigating judge, by the voluntary consent of the owner, and also under exigent circumstances. Such forced entry can be executed by authorized bodies, i.e., law enforcement officers. Further physical restraint or apprehension by order of a suspected person may also be carried out by law enforcement officers. However, the investigator and the prosecutor are authorised to draw up a report of apprehension or a report of the investigative (search) action. They are

the ones who are authorised to carry out criminal procedural activities. The lack of clear definitions of this issue in the CPC of Ukraine leads to confusion regarding the powers of apprehension.

## ■ Conclusions

Entering a residence or other property of a person due to the need to apprehend a perpetrator requires grounds for both entering and apprehending, as these are actually different procedural actions.

Apprehension in the housing or other property of a person, and, consequently, entering such housing or other property of a person for the purpose of apprehension is possible in such cases:

- with the voluntary consent of the person who owns the dwelling or other property of the person to enter the said premises;
- on the basis of the investigating judge's ruling on permission to enter a suspect's home or other property;
- without a ruling of the investigating judge under exigent circumstances with further obtaining such a ruling after entering the home or other property of the person.

In the event of apprehension by an authorised official without a ruling of an investigating judge or court, all police officers, in accordance with the Law of Ukraine "On the National Police", as well as employees of other law enforcement agencies, may physically restraint or apprehend by order. However, only the investigator or prosecutor has the right to formalise these actions by drawing up a protocol of detention. In view of the above, the provisions of the CPC of Ukraine require further elaboration by clearly delineating apprehension, which covers a range of measures from physical apprehension to drawing up a relevant protocol.

Article 208 of the Criminal Procedure Code of Ukraine should provide for a provision that physical restraint or apprehension by order can be carried out by law enforcement officers if there are legal grounds specified in Part 1 of Article 208 of the Criminal Procedure Code of Ukraine, and only authorized officials – investigator, prosecutor – can procedurally formalise these actions.

It is advisable to provide for the possibility of apprehension on suspicion of committing a criminal offence before entering data into the URPTI at the legislative level. In such circumstances, any apprehension of a person on suspicion of committing a criminal offence will be lawful regardless of the moment of physical restraint and procedural registration. If, after the introduction of these legislative changes, the apprehension takes place in a person's home or other property and there is a need to conduct a search, the algorithm of actions will be as follows:

– entering a person's home or other property with his or her voluntary consent or under exigent circumstances (in urgent cases related to saving lives and property or direct prosecution of persons suspected of committing a criminal offence);

– apprehension of a person and its procedural registration;

– entering data into the URPI;

– conducting a search;

– immediate appeal of the prosecutor, investigator, and inquiry officer upon agreement with the prosecutor to the investigating judge with a request to conduct a search after conducting such actions.

It is necessary to expand the list of exigent circumstances provided for in Part 3 of Art. 233 of the

CPC of Ukraine by granting the investigator, coroner, or prosecutor the right to enter the home or other property of a person in urgent cases related to the apprehension of a suspect, or accused in order to bring them to participate in the consideration of the motion for the imposition of a preventive measure in the form of detention. Therefore, Part 3 of Art. 233 of the CPC of Ukraine should be worded as follows: “Investigator, detective, prosecutor shall have the right to enter the home or other property of a person only under exigent circumstances related to saving lives and property or direct prosecution of persons suspected of committing a criminal offence, or to apprehend a suspect or accused to bring him/her to participate in the consideration of a request for a preventive measure in the form of detention”.

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## **Затримання уповноваженою службовою особою в житлі чи іншому володінні особи: актуальні проблеми теорії та практики**

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■ **Анотація.** Метою статті є аналіз проблемних питань кримінального процесуального порядку затримання в житлі чи іншому володінні особи та формування на цій підставі науково обґрунтованих рекомендацій з удосконалення чинного законодавства та практики його застосування. Методологія. У статті використано комплекс наукових методів, а саме: термінологічний, системно-структурний, формально-логічний, порівняльно- правовий. Теоретичне підґрунтя дослідження становлять праці українських учених, положення Кримінального процесуального кодексу України, а також практика його застосування. Наукова новизна статті полягає в тому, що в ній висвітлено особливості затримання особи, яка перебуває в житлі чи іншому володінні особи, сформульовано рекомендації щодо застосування відповідних положень Кримінального процесуального кодексу України на практиці, а також визначено напрями вдосконалення кримінального процесуального законодавства з метою підвищення ефективності проведення цієї процесуальної дії. За результатами дослідження сформульовано комплекс пропозицій, спрямованих на вдосконалення положень Кримінального процесуального кодексу України, що регламентують порядок затримання в житлі або іншому володінні особи, і практики їх застосування, зокрема: 1) для проникнення до житла чи іншого володіння особи у зв'язку з необхідністю затримання особи, яка вчинила кримінальне правопорушення, необхідні підстави як для проникнення, так і затримання, оскільки фактично це різні процесуальні дії; 2) у випадку затримання уповноваженою службовою особою без ухвали слідчого судді, суду фізичне затримання чи затримання за наказом можуть здійснювати всі працівники поліції відповідно до Закону України «Про Національну поліцію», а також працівники інших правоохоронних органів, однак процесуально оформляти ці дії шляхом складання протоколу затримання має право лише слідчий, прокурор (з огляду на зазначене положення цього Кодексу, потребують уточнення шляхом чіткого розмежування затримання, яке охоплює весь комплекс заходів від фізичного затримання до складання відповідного протоколу та фізичного затримання); 3) у ст. 208 Кримінального процесуального кодексу України доцільно передбачити положення про те, що фізичне затримання чи затримання за наказом можуть здійснювати працівники правоохоронних органів за наявності правових підстав, зазначених у ч. 1 ст. 208 Кодексу, а процесуально оформлювати ці дії можуть лише уповноважені службові особи – слідчий, прокурор; 4) на законодавчому рівні необхідно передбачити можливість затримання за підозрою у вчиненні кримінального правопорушення до внесення даних до Єдиного реєстру досудових розслідувань; 5) слід розширити невідкладні випадки, передбачені ч. 3 ст. 233 Кримінального процесуального кодексу України, шляхом надання права слідчому, дізнавачу, прокурору до постановлення ухвали слідчого судді увійти до житла чи іншого володіння особи в невідкладних випадках, пов'язаних із затриманням підозрюваного, обвинуваченого з метою його приводу для участі в розгляді клопотання про застосування запобіжного заходу у вигляді тримання під вартою

■ **Ключові слова:** затримання; уповноважена службова особа; житло; інше володіння особи; проникнення до житла або іншого володіння особи; обшук; огляд; слідчий