ORGANIZATION OF PROSECUTOR SUPERVISION OVER OBSERVANCE OF THE LAW BY THE AGENCIES SEARCHING FOR MISSING PERSONS

The author studied the specific features pertaining to organization of prosecutor supervision over observance of the Law by internal affairs agencies carrying out missing persons search and body identification subject to conditions of current criminal proceeding. The meaning of the notion «organization of supervision» is expanded by classifying the subjects vested with public prosecution authorities in this area, with description of its peculiarities appearing in the course of prosecutor’s supervision over observance of the Law during operational investigative activities and procedural guidance in pre-trial investigation following the facts of persons gone missing in unclear circumstances.

Keywords: pre-trial criminal proceedings; prosecutor’s supervision; procedural guidance in pre-trial investigation; organization of prosecutor’s supervision; search; missing persons; unidentified bodies.

Problem formulation. Article 214 of the Criminal Procedure Code of Ukraine (the CPC of Ukraine) stipulates that if a report on or a notification of a committed criminal offence is made to an investigator or a prosecutor, or if an investigator or a prosecutor independently learns about any circumstances from any source which may indicate that a criminal offence has been committed, the investigator or the prosecutor is under an obligation to enter respective data into the Uniform Register of Pre-trial Investigations immediately, but not later than 24 hours after thus becoming aware of a criminal offence [1].

Departmental by-laws adopted on the basis of the current CPC of Ukraine have fundamentally changed the legal procedure to be followed by internal affairs agencies (IAA) while processing reports and notifications about missing persons. Within 24 hours
after a report or notification about a missing child is made (if during this period his or her whereabouts are not identified), and also in case an adult person is missing under circumstances indicating that a criminal offence may have been committed against him or her, respective data about such a criminal offence with preliminary classification as intentional homicide must be entered into the Uniform Register of Pre-trial Investigations and all measures stipulated by the CPC of Ukraine should be taken with a view to ensure comprehensive, complete and unbiased investigation into the circumstances of the criminal proceedings [2, 129].

According to data of the Uniform Register of Pre-trial Investigations, in 2013, 14 041 criminal proceedings were instituted in Ukraine following the facts that persons were missing. Of these, 12 088 proceedings were closed based on exonerating grounds, in 7 389 cases absence of criminal act was established (cl. 1, Part 1, Art. 284 of CPC of Ukraine), in 4 699 cases absence of elements of a crime in the act concerned was established (cl. 2, Part 1, Article 284 of the CPC of Ukraine). As of the year end, no decisions were rendered in respect of 1 953 offences [3, 71].

Prosecutor’s supervision over observance of the law by agencies carrying out missing persons search is marked by certain peculiarities: improvement of legal regulation issues and enhancement of the prosecution’s performance in this respect gains increasing importance.


However, the works by these authors give just a fragmentary focus to specific issues of prosecution work organization and optimization in the area of missing persons search and leave current changes in legal regulation of this activity without any consideration at all. At the same time, no subject-specific research relating to this range of issues is available.

The purpose of this Article (objective) is to determine the specific nature of prosecutor’s supervision organization under new conditions of criminal proceedings by identifying the general pattern observable in organization of the prosecutor’s supervisory activity and by marking out specific features inherent in the supervision over law observance in the course of missing persons search.

Description of basic research material. Clear segregation of administrative and procedural powers of entities comprising the system of public prosecution bodies is crucial for appropriate organization of the supervisory activity since it allows to avoid the unnecessary overlapping and duplication at different levels of prosecutors’ work without «... ignoring the major lines of supervision over observance and enforcement of the law» [4, 134].

In scientific literature, organization is understood as streamlining and optimization of the public prosecution system by scientifically justified distribution of labor, timely assignment of operational tasks to inferior employees and subordinate
prosecutors, as well as control of task performance, assessment of work done and other measures of organizational and administrative nature aimed at prosecution activity improvement [5, 7].

M.K. Iakymchuk believes that the essence of «... organization as a specific administrative function is to ensure implementation of a decision in organizational terms, to create a network of organizational relations assuring, in the first place, the integrity of the system under control and the most efficient interrelation between its components» [6, 108].

A.S. Kurys formulates the following definition of the prosecutor’s supervision over observance of the law: «... the whole of measures aimed at allocation of the subject under control between particular public prosecution bodies with a view to ensure efficient use of their potential, accurate, steadfast and timely fulfillment of assigned tasks in full compliance with the law, and also organization of cooperation between public prosecution bodies and other law enforcement agencies etc.» [7, 447].

Notably, Ia.Iu. Koniushenko recognizes that organization of prosecutor’s supervision over observance of the law during pre-trial proceedings is a specific type of state activity carried out by a respective public prosecutor (or prosecutor’s deputy or assistant) and comprising the application of a system of special-purpose measures with a view to prevent, detect and eliminate offences of the law, their causes and adverse circumstances affecting the activity of parties to criminal proceedings [8, 158–159].

Summarizing the above assertions, it would be reasonable to emphasize that organization of work relating to public prosecutor’s supervision over law compliance by internal affairs agencies during such activities as missing persons search, establishing identity of unknown bodies and respective pre-trial criminal proceedings following such facts gains new opportunities allowing to determine optimal ways and methods for the exercise of public prosecutor’s authorities in a respective domain of legal relationship related to public prosecutor’s supervision, provided that appropriate scientific methodological and tactical support is available. In its turn, this establishes the basis for timely performance of tasks assigned to them in any area of the supervisory activity, with due regard for objective and subjective factors having an impact on the practice of prosecutor’s supervision over observance of the law in the course of criminal offence investigation falling under cl. 115 of the CPC of Ukraine following the fact that a person is missing, as well as for the state of legality related to such supervision.

The essence of prosecutor’s work organization in the mentioned domain can be best described using the definition formulated by M.I. Zubrytskyi which, because of its accuracy and sufficiency, may be used in this research as an operating term. The scientist suggests that organization of work related to public prosecutor’s supervision over observance of the law during investigation of crimes against life be understood as «... activity of authorized parties exercised with the use of respective pre-established means and characterized by the adherence to its inherent principles of efficient use of the public prosecution staff’s potential, assurance of accurate, steadfast and timely fulfillment of assigned tasks in full compliance with the law with the aim of achieving the maximum possible result which is to detect and eliminate offences against the law» [9, 140].

However, the essence of organization of public prosecutor’s supervision over observance of the law during missing persons search carried out by IAAAs can be best...
understood after appropriate consideration of organizational peculiarities at each level. From this perspective, increasing methodological importance is gained by conclusions made by O.F. Kozlov who marks out three types of activity within the framework of efforts aimed at organization of prosecutor’s supervision work.

The first one is work organization at each institution. Public prosecution bodies are vested with wide powers exercised with involvement of respective staff. First of all, it is necessary to determine major lines of activity of each body, to put a particular official in charge of each of them, and to determine the scope of responsibilities, with subsequent control over their performance. Besides, appropriate labor conditions should be ensured, in particular, availability of premises and equipment. Work organization of a separate body represents organization of public prosecutor’s supervision in general.

The second type of activity is organization of work of a structural subdivision. The structure of territorial prosecution offices is made of departments and sections. Each structural subdivision employs a certain number of employees and their work should be appropriately organized. Specific sectors of supervisory activity are singled out, a particular employee is put in charge of each of them and work schedules are made; the quality of official duties performance is subject to official control. Organization of work of internal structural subdivisions represents work organization in respective domains or under respective lines of public prosecutor’s supervision.

And the third type is individual work organization by each official; the performance and efficiency of each official and fulfillment by him or her of official duties depends directly on how this particular official organizes his or her work (for instance, the deadline of tasks assigned to him/her should be coordinated with the work of other bodies, information about offences against the law should be obtained in due time and measures to verify it should be carried out) [10, 70–71].

Considering the above, O.R. Mykhailenko makes a reasonable remark: «… each particular official, each public prosecutor exercising prosecutor’s supervision should determine, firstly, what should be analyzed and assessed, what is covered by the supervision and where it should be exercised (supervision object) and, secondly, what constitutes the essence of such assessment, its criteria, with due regard for statutory regulations, the application and implementation of which is subjected to public prosecutor’s supervision (supervision subject-matter)» [11, 139].

However, we believe that only if certain specific factors are taken into consideration, can we see the most comprehensive picture of work organization relating to public prosecutor’s supervision over law compliance by IAAs during pretrial criminal proceedings instituted following the facts of persons missing or with the aim of establishing identity of unknown bodies.

Firstly, the current legal procedure used to investigate the mentioned facts consolidates the efforts of IAAs, which are simultaneously carried out within the framework of stand-alone functional lines. A report (notification) about a missing person as defined in the Law of Ukraine «On the Operational Investigative Activities» gives a criminal investigation department of IAA the grounds to institute operational investigative proceedings under respective category. If an unidentified dead body is found, the same operational department institutes investigative proceedings. At the same time, such a report (notification) also constitutes the grounds for submitting respective data to the

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Uniform Register of Pre-trial Investigations and for commencement of pre-trial criminal proceedings by an investigation officer.

Secondly, one of the specific features of the operational investigative activities and pre-trial criminal proceedings following such facts is the tactical criminological operation titled «Missing Person Search» which is carried out in such cases. Its objective is to identify the whereabouts of a missing person who is still alive or to find the dead body (human remains) and establish the body’s identity. Subsequent procedural steps of an investigator and operational departments directly depend on the outcomes of this operation because they determine the prospective organization of pre-trial investigation and operational investigative activities (working out of versions, planning, criminal offence classification etc.). If an unidentified body is found, the tactical criminological operation titled «Corpse Attribution» is carried out with the objective of establishing the dead person’s identity and the causes and circumstances of death. The outcomes of this operation also have an impact on the further course of criminal proceedings and investigative activities.

Thirdly, when prosecutor’s supervision in this area is organized, there should be an appropriate integration of stand-alone lines of prosecutor’s supervision in accordance with functional peculiarities of the prosecutor’s supervision object: supervision over law observance by IAAs in the course of operational investigative activities; supervision over law observance by IAAs conducting pre-trial investigation, in particular, with regard to acceptance, registration and examination of reports and notifications about missing persons; supervision over observance of the law during pre-trial investigation in the form of procedural guidance in pre-trial investigation.

Fourthly, as far as streamlining of the supervisory activity is concerned, respective organizational levels ensuing from the structural pattern of the public prosecution system bodies should be taken into account.

Eventually, the existence of these levels and public prosecutor’s organizational and supervisory powers, which correspond to these levels and to the above-mentioned lines of prosecutor’s supervision and which differ in scope and contents, makes it necessary to bring them together into a single integrated activity – public prosecutor’s supervision over law observance by IAAs during missing person search or while establishing the identity of unidentified corpses. This activity area should be given top priority in the organizational and executive regulations of the General Prosecutor’s Office of Ukraine.

Given the above-mentioned specific features, there is a need to apply the method of classification in order to determine regular relations between the subjects of prosecutor’s supervision organization, the place and role each of them has in the general organizational system, as well as to identify their most essential features and characteristics. The classification is applied to the subjects (chiefs) who organize the work relating to supervision by the public prosecution bodies over observance of the law during pre-trial investigation in cases when persons are missing or unidentified bodies are found. We believe that classification by the mentioned signs enables to define clearly the institutional position which each subject involved in the organization of prosecutor’s supervision has in the general system of governance of public prosecution bodies; to understand the functional purpose of their powers; to define the limits of the said powers and legal argumentation of organizational and executive decisions made by subjects
involved in the organization of prosecutor’s supervision; to improve organizational and functional powers of these subjects etc.

Cl. 1.2 of the Rules of Procedure of the General Prosecutor’s Office of Ukraine stipulates that the General Prosecutor’s Office of Ukraine and subordinate public prosecution bodies are guided by Prosecutor General of Ukraine. Deputies of Prosecutor General of Ukraine organize, guide and control the operation of structural subdivisions within the framework of prosecution and investigative areas of which they are in charge, make administrative and procedural decisions on issues within their competence. Official duties of top officials of the General Prosecutor’s Office of Ukraine are distributed and their interchangeability is established by order of Prosecutor General of Ukraine. Chiefs of structural subdivisions of the General Prosecutor’s Office of Ukraine and their deputies directly deal with work organization in subdivisions [12].

However, it should be mentioned that at the public prosecution bodies, work relating to law observance by IAAs during missing persons search is organized by the following subjects:

– subjects with competence ensuing from general guidance exercised by them in respect of supervision over law observance by IAAs – Prosecutor General of Ukraine, deputies of Prosecutor General of Ukraine, chiefs of structural subdivisions of Prosecutor General’s Office of Ukraine (Central Department for supervision over law observance in criminal proceedings, Department for supervision over law observance by internal affairs agencies); public prosecutors of regions and public prosecutors granted the same status; chiefs of respective subdivisions of the regional prosecution system; city, district, interdistrict prosecution services and prosecutors granted the same status;

– subjects with competence comprising prosecutor’s supervision over law observance by IAAs conducting operational investigative activities and also in case of acceptance, registration and examination of reports and notifications about missing persons – chiefs of structural subdivisions of the Prosecutor General’s Office of Ukraine supervising over IAAs which conduct operational investigative activities and pre-trial investigation following such facts: 1) division of supervision over law observance during operational investigative activities; 2) division of supervision over law observance during investigation of crimes against life; 3) supervisory divisions for law compliance during pre-trial investigation and prosecution on behalf of the State. This category also includes public prosecutors of the mentioned subdivisions with special authorities, chiefs of district-level public prosecution offices and their deputies;

– subjects with competence comprising direct supervision over law observance in the form of procedural guidance in pre-trial investigation instituted following the facts of persons missing – prosecutors (senior prosecutors) of subdivisions exercising supervision over IAAs in charge of pre-trial investigation of these facts: divisions of procedural guidance in pre-trial investigation and prosecution on behalf of the State of the Prosecutor General’s Office of Ukraine and regional-level public prosecutor; public prosecutors (senior prosecutors) of city, district, interdistrict public prosecution offices and public prosecution offices granted the same status.
Undoubtedly, the quality and efficiency with which a public prosecution office operates and the possibility of its continuous improvement depends on scientific aspects of work organization, i.e. on the practical application of scientific and technological achievements and positive experience with the aim of ensuring that prosecutor’s activities are carried out with optimal performance. Theoretically, work organization in such a manner envisions the following: efficient segregation of duties between employees; ensuring that employees’ actions are well-coordinated; creating necessary conditions for uninterrupted and rhythmic operation, highly efficient and complete use of work time and labor resources; application of various methods and techniques of supervisory activities and technical facilities including personal computers and office equipment [13, 7].

Therefore, it is possible to single out the basic and optional elements of prosecutor’s supervision organization. The basic elements include: segregation of duties between employees of a public prosecution body of a respective level; forecasting; planning; performance control; analysis and assessment of work performed. This list can be extended by optional (additional) elements: personnel management; sharing of positive experience; records management [14, 17]; information management and analysis; provision of appropriate conditions (arrangement of workplaces, availability of office equipment and expendable materials, methodological literature, scientific and technical means); creating and maintaining a sound psychological working environment [15, 15–17] etc.

In actual practice, the mentioned elements of organization of a public prosecution office’s work are interrelated and exist in unity thus forming a system of organization management techniques and means the purpose of which is to ensure that the tasks encountered by public prosecutors are fulfilled in due time and with high quality, in particular, that the powers granted to them are exercised completely and in due time, that breaches of law are remedied in real terms and in a prompt manner, that public order is enhanced, breached constitutional rights and freedoms of citizens are renewed and those found responsible bear liability as envisaged by the law. At the same time, comprehensive use of these elements in the course of work organization is conductive to the improvement and enhancement of public prosecution efficiency.

Conclusions. Organization of work relating to prosecutor’s supervision over law observance by internal affairs agencies carrying out missing persons search should be understood as activities of authorized parties which is underlain by the principles of efficient use of public prosecution employees and legitimate, accurate, timely and steadfast fulfillment by them of the tasks assigned, and which is implemented at respective levels of the system of public prosecution bodies with the use of forms, ways and means defined by the law.

Organizational impacts should also embrace stand-alone lines of prosecutor’s supervision: supervision over law observance by IAAs exercising operational investigative activities; supervision over law observance by IAAs in charge of pre-trial investigation, in particular, in case of acceptance, registration and examination of reports and notifications about missing persons; supervision over law observance during pre-trial investigation in the form of procedural guidance in pre-trial investigation. Given its specific features and ramified structure, organization of prosecutor’s supervision in...
respect of missing persons search should consolidate efforts of prosecutors with different scopes of authority with the aim of achieving the objective and performing the tasks of each of the mentioned activity areas. Here, the objective with which public prosecutor’s work is organized in these areas constitutes maximum possible performance of efforts aimed at detecting and remedying breaches of the law and protecting human and civil rights and freedoms within the framework of criminal proceedings.

Proceeding from organizational levels which correspond to the structural pattern of the system of public prosecution bodies, we can thus classify the subjects of organization of supervision over law observance by IAAs carrying out missing persons search as follows:

1) subjects with competence ensuing from general guidance exercised by them in respect of supervision over law observance by IAAs; 2) subjects with competence comprising prosecutor’s supervision over law observance by IAAs conducting operational investigative activities and also in case of acceptance, registration and examination of reports and notifications about missing persons; 3) subjects with competence comprising direct supervision over law observance in the form of procedural guidance in pre-trial investigation instituted following the facts of persons missing.

Consolidating various opinions developed by the prosecutor’s supervision science, it is possible to formulate the following thesis: the theoretical foundation of organization of prosecutor’s supervision over law observance by IAAs carrying out missing persons search is established by the total of interrelated activities aimed at:

– selection, allocation, professional training of staff and efficient segregation of duties between members of the staff;
– information and analytical support of supervision, in particular, systematic and cyclic analysis of identified breaches of legislation occurring in the course of pretrial investigation;
– situation development forecast and supervisory activity planning;
– coordination of activity carried out by pre-trial investigation bodies in the course of investigation of criminal offences involving facts of persons missing;
– establishment of interaction between chiefs of procedural guidance in pretrial investigation and investigating officers and operational subdivisions;
– uninterrupted control by prosecutors over fulfillment of orders and instructions and implementation of coordination activities.

Therefore, appropriately framed organization of work relating to prosecutor’s supervision over law observance by internal affairs agencies in cases of missing persons search contains the potential targeted at ensuring optimal use of material resources and work time as well as personal qualities of employees serving at public prosecution bodies. Here, efficiency of supervisory efforts will grow in direct proportion to the extent to which respective objectives are achieved in a respective area of activity.

The provisions and conclusions obtained from the research conducted do not exhaust the whole range of issues arising in respect of organization of prosecutor’s supervision over missing persons search. Therefore, further studies in this area should involve construction of a theoretical model demonstrating interaction of subjects which organize the supervisory activity, as well as development of respective organizational and legal means and measures.
REFERENCE LIST:
