УДК 343.1

Volodymyr Kantsir
Lviv Polytechnic National University,
Institute of Law, psychology and innovative education,
Doctor of Law,
profesor of the Department of Criminal Law and Procedure
Natalia Slotvinska
Lviv Polytechnic National University,
Institute of Law, psychology and innovative education,
Ph. D., assistant of the Department of Criminal Law and Procedure
https://orcid.org/0000-0002-2756-4557

RECEIPT BY A WHISTLEBLOWER OF CORRUPTION OF INFORMATION ON THE STATE OF THE PRE-TRIAL INVESTIGATION INITIATED UPON HIS APPLICATION OR NOTIFICATION

http://doi.org/10.23939/law2020.27.207

Abstract. The article analyzes certain provisions of current legislation and judicial practice in order to clarify the content of the definition contained in Part 3 of Article 60 of the Criminal Procedure Code of Ukraine "the state of pre-trial investigation."

This goal is conditioned by the norm of the Criminal Procedure Code of Ukraine which states that an applicant who is a whistleblower (in addition to the possibility: to receive a document confirming acceptance and registration of his application from the body to which he applied; to obtain an extract from the Unified Register of pre-trial investigations; to add items and documents in confirmation of his application; to receive information on the completion of the pre-trial investigation) has the right to receive information on the state of pre-trial investigation initiated by his application in the manner prescribed by the Law of Ukraine 1700-VII "On Prevention of Corruption" of October 14, 2014; as well as due to the lack of official interpretation of this provision, scientific research and ambiguity of case law.

An analysis of the Regulations on the Unified Register of Pre-Trial Investigations proved that the content of the term of "state of pre-trial investigation" should not be equated with information outlining the state of continuation or completion of this investigation, because the legislator granted the whistleblower compared to the applicant a privileged position to obtain information about the pre-trial investigation (Part 3 of Article 60 of the CPC of Ukraine, paragraph 13 of Part 2 of Article 53-3 of the Law of Ukraine № 1700-VII of 14 October 2014), we reasonably conclude that this information is not covered by the data contained in the extract from the Unified Register of Pre-trial Investigations.

Key words: applicant, whistleblower, criminal proceeding, state of pre-trial investigation, extract from the Unified Register of pre-trial investigations.

Formulation of the problem. On January 1, 2020, the Law of Ukraine "On Amendments to the Law of Ukraine "On Prevention of Corruption" Concerning Whistleblowers" of October 17, 2019 entered into force, which led to a number of changes and additions to a number of regulations. This normative legal act "modifies the definition of whistleblowers, streamlines the organizational and institutional basis for informing about violations of anti-corruption legislation, details the rights of whistleblowers and the procedure for their implementation, establishes a full system of jurisdictional and procedural means of whistleblower protection, etc." [1].

Thus, in accordance with the Law of Ukraine No. 1700-VII "On Prevention of Corruption" of October 14, 2014 (as amended), a whistleblower is a natural person who, in the presence of belief that the information is reliable, reported possible facts of corruption or corruption-related offenses, other violations of the Law of Ukraine "On Prevention of Corruption" committed by another person, if such information became known to him in connection with his work, professional, economic, social, scientific activities, service or training, or its participation in the procedures provided by law which are mandatory for the start of such activities, service or training" [2].

According to the Explanation of the National Agency for the Prevention of Corruption of June 23, 2020 No. 5 "On the legal status of whistleblowers", "a whistleblower" is a natural person who: 1) has information about alleged corruption offenses – factual data, namely on the circumstances of the offense, the place and time of its commission and the person that committed the offense; 2) is convinced of the accuracy of the relevant information; 3) has received information in the course of employment, professional, economic, social, scientific activity, service or training or participation in the procedures provided by law which are mandatory for the beginning of such activity, service or training; 4) reported the information, in particular, through: 4.1) internal channels to the head or authorized unit or person of the body or legal entity in which the whistleblower works, undergoes service or training or on whose behalf he performs work; 4.2) regular channels to specially authorized entities in the field of anti-corruption, pre-trial investigation entities, bodies responsible for monitoring compliance with laws in relevant areas; 4.3) external channels" [3].

In the absence of at least one of these essential features, a person cannot be considered a whistleblower. It should be noted that the person who provided the notice is not a whistleblower if the information: 1) does not contain factual data, namely the circumstances of the offense, the place and time of its commission, the person who committed the offense; 2) became known to her not in the course of professional, economic, social, scientific activity, service or training or participation in the procedures provided by law which are mandatory for the beginning of such action activity, service or training [3].

Consistently, the mentioned provisions of the Law of Ukraine "On Amendments to the Law of Ukraine "On Prevention of Corruption" Concerning Whistleblowers" of October 17, 2019 were reflected in the Criminal Procedure Code of Ukraine (hereinafter – the CPC of Ukraine). Thus, the whistleblower is included in the circle of participants in the criminal proceedings. In accordance with paragraph 16-2 of Part 1 of Art. 3 of the CPC of Ukraine, a whistleblower is "an individual who, in the presence of a belief that the information is reliable, filed a statement or notification of a corruption criminal offense to the pre-trial investigation body".

Analyzing the content of the concept and provisions of Article 60 of the CPC of Ukraine, it is obvious that the procedural status of a whistleblower correlates with the procedural status of an applicant. Thus, part 3 of Article 60 of the CPC of Ukraine states that an applicant who is a whistleblower (in addition to the possibility: to receive a document confirming acceptance and registration of his application from the body to which he applied; to obtain an extract from the Unified Register of pre-trial investigations; to add items and documents in confirmation of his application; to receive information on the completion of the pre-trial investigation) has the right to receive information about the state of the pre-trial investigation initiated by his application or notification in the manner prescribed by the Law of Ukraine No. 1700-VII.

At the same time, paragraph 13 of Part 2 of Art. 53-3 of the Law of Ukraine № 1700-VII "On Prevention of Corruption" of October 14, 2014 provides that a whistleblower has the right to receive information about the status and results of consideration, inspection and/or investigation upon his notification of information [2].

In this context, the question arises as to what is meant by the "state of the pre-trial investigation", in particular, what information about the pre-trial investigation can be obtained by the whistleblower.

The purpose of the article is to clarify the content of the definition contained in Part 3 of Article 60 of the CPC of Ukraine "the state of pre-trial investigation" on the basis of the analysis of the provisions of current legislation and judicial practice.

Presentation of main material. Analysis of case law shows that the above-mentioned issue is not only theoretical but also practical. Thus, the Resolution (Case No. 991/5099/20) of the Supreme Anti-Corruption Court of 24 June 2020 states that due to the fact that the provisions of criminal procedure legislation, in particular the CPC of Ukraine, do not contain a definition of "state of pre-trial investigation", the investigating judge considers it necessary to refer to the Academic Explanatory Dictionary of the Ukrainian language in order to define the term "state" in the general sense of the word in order to address the question of what information should be provided by the investigator/prosecutor in accordance with Part 3 of Art. 60 of the Criminal Procedure Code of Ukraine.

Thus, the state is: 1) circumstances, conditions in which someone, something is, exists at the moment; 2) a set of features, traits that characterize the subject, phenomenon at the moment in accordance with certain requirements for quality, degree of readiness, etc., for example, a person's health is defined as sick / not sick, marital status– – married / single and so on.

In view of the relevant definition, the investigating judge concludes that the notion of "state of pre-trial investigation" is defined as "completed or ongoing" pre-trial investigation in the criminal proceeding in question at the moment, i.e. at the time of consideration by the authorized person of the pre-trial investigation in this criminal proceeding" [4].

However, it is difficult to agree with this conclusion of the court, given the following.

Article 60 of the CPC of Ukraine provides that an applicant, as well as an applicant who is a whistleblower, has the right, inter alia, to obtain an extract from the Unified Register of Pre-trial Investigations.

At the same time, the Regulations on the Unified Register of Pre-trial Investigations, the procedure for its formation and maintenance (approved by Order No. 298 of the Prosecutor General of 30.06.2020) state that information on the "criminal proceeding registration number, date of registration of the proceeding (materials of pre-trial investigation), date of receipt of the application, notification of a criminal offense or detection from another source of circumstances that may indicate the commission of a criminal offense, surname, name, patronymic of the victim, that of the applicant (name of legal entity and code of the Unified State Register of Legal Entities, Natural Persons-Entrepreneurs and Public Formations), date and time of entering information on the application/notification of a criminal offense or identification from another source of circumstances that may indicate the commission of a criminal offense into the Unified Register of pre-trial investigations, legal qualification of the criminal offense, a summary of the circumstances that may indicate the commission of the criminal offense, last name, first name, patronymic, date of birth of the person notified of the suspicion, ***the results of the investigation and information about the specific pre-trial investigation***, name and code USR of the legal entity in respect of which the proceeding is carried out, surname, name, patronymic representative of the legal entity, ***consequences of the investigation of the criminal offense***, pre-trial investigation body, surname, name, patronymic of the investigator (investigators) who carries out the pre-trial investigation, surname, name, patronymic of the prosecutor (prosecutors) who exercises procedural guidance") [5]. This gives grounds to claim that the extract from the Unified Register of Pre-trial Investigations should already contain information whether the pre-trial investigation is "completed or ongoing".

Conclusion. Therefore, the content of the term of "state of pre-trial investigation" should not be equated with information outlining the state of continuation or completion of this investigation, as the analysis of Article 60 of the CPC of Ukraine shows that the legislator granted a whistleblower a privileged position, compared to an applicant, to obtain information about the pre-trial investigation, i. e. to obtain information that is not covered by the Extract. Thus, it is obvious that the analyzed norm of the CPC of

Ukraine needs more detailed (clear) specification in the part concerning the amount of information that a whistleblower can receive regarding the pre-trial investigation initiated upon his application or notification.

СПИСОК ВИКОРИСТАНИХ ДЖЕРЕЛ

1. Хамходера О., Снісарчук Т. Право викривача на винагороду:зміст, критерії, порядок реалізації. *Юридичний науковий електронний журнал.* 2020. № 1. С. 183–190. Retrieved from: http://lsej.org.ua/1_2020/46.pdf. 2. "Про запобігання корупції" : Закон України № 1700-VII від 14.10.2014 року. 2014. Retrieved from: https://zakon.rada.gov.ua/laws/show/1700-18#n1489. 3. Щодо правового статусу викривача : Роз'яснення Національного агентства з питань запобігання корупції від 23.06.2020 року № 5 ". 2020. Retrieved from: https://nazk.gov.ua/wp-content/uploads/2020/06/Rozyasnennya_pravovyj-status-vykryvacha.pdf. 4. Ухвала Вищого антикорупційного суду від 24.06.2020 року. Справа № 991/5099/20. 2020. Retrieved from: http://reyestr.court.gov.ua/Review/90051686. 5. Положення про Єдиний реєстр досудових розслідувань, порядок його формування та ведення, затверджене Наказом № 298 Генерального прокурора від 30.06.2020 року. 2020. Retrieved from: https://zakon.rada.gov.ua/laws/show/v0298905-20#Text.

REFERENCES

1. Khamkhodera O., Snisarchuk T. ***Pravo vykryvacha na vynahorodu: zmist, kryterii, poriadok realizatsii***. [The right of the whistleblower to remuneration:content, criteria, procedure for implementation]. Yurydychnyi naukovyi elektronnyi zhurnal. 2020. No. 1. P. 183–190. Retrieved from: http://lsej.org.ua/1_2020/46.pdf. 2. ***Pro zapobihannia koruptsii***" [On the prevention of corruption] : Zakon Ukrainy No. 1700-VII (14.10.2014). 2014. Retrieved from: https://zakon.rada.gov.ua/laws/show/1700-18#n1489. 3. ***Shchodo pravovoho statusu vykryvacha*** [Regarding the legal status of the whistleblower] : ***Roziasnennia Natsionalnoho ahentstva z pytan zapobihannia koruptsii.(23.06.2020). 2020. No. 5.*** "Retrieved from: https://nazk.gov.ua/wp-content/uploads/ 2020/06/ Rozyasnennya_pravovyj-status-vykryvacha.pdf.https://nazk.gov.ua/wp-content/uploads/2020/06/ Rozyasnennya_ pravovyj-status-vykryvacha.pdf. 4. ***Ukhvala Vyshchoho antykoruptsiinoho sudu***.[Decision of the Supreme Anti-Corruption Court]. (24.06.2020). Sprava No. 991/5099/20. 2020. Retrieved from: http://reyestr.court.gov.ua/Review/90051686. 5***. Polozhennia pro Yedynyi reiestr dosudovykh rozsliduvan, poriadok yoho formuvannia ta vedennia*** [Regulations on the Unified Register of Pre-trial Investigations, the procedure for its formation and maintenance] : zatverdzhene Nakazom No. 298 Heneralnoho prokurora. (30.06.2020). 2020. Retrieved from: https://zakon.rada.gov.ua/laws/show/v0298905-20#Text.

Дата надходження: 29.07.2020 р.

Володимир Канцір
Національний університет "Львівська політехніка",
Інститут права, психології та інноваційної освіти,
доктор юридичних наук,
професор кафедри кримінального права і процесу
Наталія Слотвінська
Національний університет "Львівська політехніка",
Інститут права, психології та інноваційної освіти,
кандидат юридичних наук,
асистент кафедри кримінального права і процесу
https://orcid.org/0000-0002-2756-4557

ОДЕРЖАННЯ ВИКРИВАЧЕМ КОРУПЦІЇ ІНФОРМАЦІЇ ПРО СТАН ДОСУДОВОГО РОЗСЛІДУВАННЯ РОЗПОЧАТОГО ЗА ЙОГО ЗАЯВОЮ ЧИ ПОВІДОМЛЕННЯМ

В статті проаналізовано окремі положення чинного законодавства та судової практики з метою з'ясування змістовного наповнення визначення, що міститься у частині 3 статті 60 Кримінального процесуального кодексу України "стан досудового розслідування".

Поставлена мета зумовлена нормою Кримінального процесуального кодексу України, яка встановлює, що заявник який є викривачем (крім можливості: отримувати від органу, до якого він подав заяву, документ, що підтверджує її прийняття і реєстрацію; отримувати витяг з Єдиного реєстру досудових розслідувань; подавати на підтвердження своєї заяви речі і документи; отримувати інформацію про закінчення досудового розслідування) наділений правом в порядку, встановленому Законом України № 1700-VII "Про запобігання корупції" від 14

жовтня 2014 року, отримувати інформацію про стан досудового розслідування, що розпочате за його заявою чи повідомленням; а також зумовлена відсутністю офіційного тлумачення цього положення, наукових розвідок та неоднозначністю судової практики.

Аналіз Положення про Єдиний реєстр досудових розслідувань, порядок його формування та ведення, довів, що зміст визначення "стан досудового розслідування" недоцільно прирівнювати до інформації, що окреслює стан тривання чи завершення цього розслідування, адже враховуючи той факт, що законодавець надав викривачу привілейоване становище, поряд з заявником щодо отримання інформації про досудове розслідування (ч. 3 ст. 60 КПК України, п. 13 ч. 2 ст. 53-3 Закону України № 1700-VII від 14 жовтня 2014 року), обґрунтовано приходимо до висновку, що ця інформація не охоплюється даними, що містяться у витязі з Єдиного реєстру досудових розслідувань.

Ключові слова: заявник, викривач корупції, кримінальне провадження, стан досудового розслідування, витяг з Єдиного реєстру досудових розслідувань.