

УДК 343.985

Svitlana SOROKA

Lviv Polytechnic National University,
Educational and Research Institute of Law,
Psychology and Innovative Education,
Associate Professor of the International
and Criminal Law Department,
PhD in Law, Associate Professor
svitlana.o.soroka@lpnu.ua

ORCID iD: <https://orcid.org/0000-0002-9351-4531>

**FEATURES OF PRE-TRIAL INVESTIGATION OF SMUGGLING
OF NARCOTIC SUBSTANCES, PSYCHOTROPIC SUBSTANCES,
THEIR ANALOGUES OR PRECURSORS,
OR COUNTERFEIT MEDICINAL PRODUCTS**

<http://doi.org/10.23939/law2024.42.190>

© Soroka S., 2024

The article explores the peculiarities of pre-trial investigation of smuggling of narcotic substances, psychotropic substances, their analogues or precursors, or counterfeit medicinal products. It emphasizes that the illegal circulation of narcotic substances at regional, national, and international levels is reaching alarming proportions that are constantly growing. As a result, there has been an increase in the number of criminal proceedings investigated within this category of criminal offenses. This has posed new challenges for researchers and practitioners, who are involved in improving existing and developing new research methods. It is noted that pre-trial investigation is one of the most important stages of criminal proceedings, preceding the court hearing and commencing from the moment information about the criminal offense is entered into the Unified Register of Pre-trial Investigations (hereinafter referred to as the URPI).

The initiation of pre-trial investigation within their competence is the responsibility of the investigator or prosecutor. One of the peculiarities of detecting the smuggling of narcotic substances is that information about the commission of this crime is obtained in most cases through independent detection by the investigator, prosecutor, or other authorized official from any source of circumstances that may indicate its commission. It has been established that in most cases, the detection of the smuggling of narcotic substances fully relies on the law enforcement officers during the performance of their professional duties, usually on the officials of the revenue and customs authorities during the implementation of customs control. In the event of direct detection of signs of a crime provided for in Article 305 of the Criminal Code of Ukraine, a report is drawn up by a law enforcement officer, or if by another person, a statement is written, specifying the data that constitute the content of the Unified Register of Pre-trial Investigations. The investigator and prosecutor are obliged to enter the relevant information into the URPI and initiate an investigation urgently, but no later than 24 hours after the detection of circumstances from any source that may indicate the commission of smuggling of narcotic substances. It is stated that in urgent cases, the examination of the scene of the crime can be conducted before entering the information into the URPI. The detection of

smuggling of narcotic substances should be considered an urgent case, therefore the examination of the scene of the crime can be conducted before entering the information into the URPI, and the information must be entered immediately after the completion of the examination. A protocol is drawn up on the conduct of the examination of the scene of the crime in accordance with the requirements of Article 104 of the Criminal Procedure Code of Ukraine. The importance of conducting a search of a person after the examination of the scene of the crime is emphasized. In addition to the examination of the scene of the crime and the search of a person, the following investigative (search) actions are considered priority in the investigation of smuggling of narcotic substances: examination of material evidence, appointment of expertise, interrogation, seizure of property. The peculiarities of conducting the aforementioned investigative (search) actions in the investigation of smuggling of narcotic substances are disclosed. An algorithm of actions during the investigation of this type of crime is proposed.

Key words: smuggling of narcotic substances psychotropic substances, their analogues or precursors, or counterfeit medicinal products; pre-trial investigation; investigative (search) actions; investigator; prosecutor.

Formulation of the problem. In the current conditions, when Ukraine is experiencing a serious social crisis accompanied by the criminalization of all spheres of life, the issue of effectively combating the smuggling of narcotic substances, psychotropic substances, their analogues or precursors, and counterfeit medicinal products through the proper application of legislation becomes particularly relevant. The spread of drug-related crimes is increasing, not only within the domestic market but also beyond its borders. Thus, the illegal circulation of narcotic substances at regional, national, and international levels is reaching alarming proportions that are constantly growing. As a result, there has been an increase in the number of criminal proceedings investigated within this category of criminal offenses, posing new challenges for researchers and practitioners in improving existing methods and developing new investigation techniques. Therefore, the chosen topic is timely and relevant.

Analysis of the study of the problem. Researchers such as P. D. Bilenchuk, I. O. Vozhrin, Yu. M. Groshevy, I. I. Kohutych, V. A. Kolisnyk, V. M. Shevchuk, S. A. Sheyfer, V. Yu. Shepitko, I. M. Yakimov, and others have addressed the problem of investigating specific types (groups) of criminal offenses.

The purpose of the article: The aim of this article is to clarify the peculiarities of pre-trial investigation of the smuggling of narcotic substances, psychotropic substances, their analogues or precursors, or counterfeit medicinal products.

Presentation main material: Pre-trial investigation is one of the most important stages of criminal proceedings, preceding the court hearing and commencing from the moment information about the criminal offense is entered into the Unified Register of Pre-trial Investigations. The initiation of pre-trial investigation within their competence is the responsibility of the investigator or prosecutor. The law provides two reasons to initiate pre-trial investigation: 1) submission of a statement or notification of a committed criminal offense; 2) independent detection by the investigator, prosecutor, or other authorized officials from any source of circumstances that may indicate the commission of a criminal offense (Article 25 of the Criminal Procedure Code of Ukraine).

One of the peculiarities of detecting the smuggling of narcotic substances is that information about the commission of this crime is obtained in most cases through independent detection by the investigator, prosecutor, or other authorized officials from any source of circumstances that may indicate its commission. The term “any source” refers to obtaining information by the investigator, prosecutor about a specific criminal offense during the pre-trial investigation of another criminal offense or by the operational units based on the results of measures aimed at establishing the identity of the person who committed the criminal offense, receiving information from other government authorities, mass media, or while

performing their legally assigned duties. Therefore, in most cases, the detection of the smuggling of narcotic substances relies heavily on the law enforcement officers during their professional activities, usually on the officials of the revenue and customs authorities during the implementation of customs control. Customs control is carried out directly by the officials of the revenue and customs authorities through: 1) verification of documents and information; 2) customs inspection (inspection and re-inspection of goods, commercial vehicles, inspection and re-inspection of hand luggage and baggage, personal search of individuals); 3) oral questioning of citizens and officials of enterprises; 4) inspection of territories and premises of temporary storage facilities, customs warehouses, free trade zones, duty-free shops, and other places where goods and commercial vehicles subject to customs control are located or where activities subject to control under the Customs Code and other laws of Ukraine are carried out. In the event of direct detection of signs of a crime provided for in Article 305 of the Criminal Code of Ukraine, a report is drawn up by a law enforcement officer, or if by another person, a statement is written, specifying the data that constitute the content of the Unified Register of Pre-trial Investigations (Article 214, Part 5 of the Criminal Procedure Code of Ukraine).

The investigator, prosecutor, without delay but no later than 24 hours after the discovery of any circumstances that may indicate the commission of drug smuggling, is obliged to enter the relevant information into the Unified Register of Pre-trial Investigations (URPI) and initiate an investigation. The pre-trial investigation begins from the moment the information is entered into the URPI. Conducting a pre-trial investigation before entering the information into the register or without such entry is not allowed and entails liability as established by law. The examination of the crime scene in urgent cases can be carried out before entering the information into the URPI. The detection of drug smuggling should be considered an urgent case, so the examination of the crime scene can be conducted before entering the information into the URPI, and the information must be entered immediately after the completion of the examination. Conducting an examination of the crime scene in cases of drug smuggling is an urgent and mandatory investigative (search) action. This is explained by the need to obtain information about the circumstances of the event in its original, unchanged state, as any delay leads to the loss of material evidence, tools, and means of its commission, as well as the loss of information about the persons who committed it. The examination of the crime scene can be conducted by the investigator independently or by assigning it to an operational unit employee, for which the investigator issues a written assignment. When performing assignments, the operational unit employee exercises the powers of the investigator. During the examination of the crime scene, information about the circumstances of drug smuggling is recorded in accordance with the law, witnesses are identified, seized narcotic substances and other items and documents that are relevant to the criminal proceedings are confiscated, and the seized narcotic substances are weighed. The seized items, objects, and documents must be properly packaged to prevent damage and unauthorized access, with tags attached, certified by appropriate inscriptions and signatures of the persons involved in the examination, and sealed with the seal of the respective authority, as indicated in the protocol. If it is not possible to examine the seized narcotic substances, items, and documents at the scene, they must be temporarily sealed and stored in that condition until their examination is carried out, and final sealing must be performed. During the examination of the crime scene, the investigator has the right to prohibit any person from leaving the scene until its completion and from taking any actions that interfere with the examination. To conduct an examination for assistance in matters requiring special knowledge, it is advisable to invite an expert who, by the investigator's assignment, has the right to take measurements, photograph, audio or video record, create plans, diagrams, make graphic representations of the examined place or individual objects, make prints and casts, examine and seize narcotic substances, items, and documents that are relevant to the criminal proceedings, and weigh narcotic substances. A protocol is drawn up regarding the examination of the crime scene in accordance with the requirements of Article 104 of the Criminal Procedure Code of Ukraine, indicating the recording of the investigative (search) action using technical means. After the protocol is drawn up, the participants who took part in the procedural action are given the opportunity to familiarize themselves with its text. Remarks and additions are noted in the protocol before the signatures. The protocol is signed by all participants who took part in the procedural action. In addition, after the examination of the crime scene, it is advisable to conduct a search

of a person to identify and seize narcotic substances. A search of a person is carried out if there are sufficient grounds to believe that the person is hiding on or in their person substances or materials that are relevant to the criminal proceedings. Such a search of a person is an urgent investigative action and is carried out without a prior decision by the investigating judge or the investigator himself [2, p. 600]. A search of a person is conducted with the mandatory participation of at least two witnesses, one of whom is of the same sex as the person being searched. In this case, the search of a person is not an integral part of the examination of the crime scene, so a separate protocol is drawn up regarding the conduct of the search in accordance with the requirements of Article 104 of the Criminal Procedure Code of Ukraine. The above-mentioned provisions regarding the documentation and preservation of material evidence apply. If narcotic substances are seized specifically during the examination of a person by the employees of the revenue and customs service during customs control, in such cases, as a rule, it is impractical to conduct an examination of the crime scene, as it will have a rather formal nature and will not yield positive results in obtaining evidentiary information, except in cases where the person in possession of the narcotic substances attempts to dispose of them.

In order to ensure a prompt, comprehensive, and unbiased investigation of drug smuggling, it is advisable for the investigator to prioritize certain investigative (search) actions. In addition to the examination of the crime scene and the search of a person, the following actions should be included as priority investigative (search) actions in the investigation of drug smuggling: examination of material evidence, appointment of expertise, interrogation, and seizure of property.

The most common investigative (search) action for obtaining evidence is interrogation. Interrogation is a procedural action that is a regulated information-psychological process of communication between the persons involved in it, aimed at obtaining information about known facts relevant to establishing the truth in criminal proceedings, as provided by criminal procedural norms. Its conduct requires the investigator to have a high level of general and professional culture and a deep understanding of human psychology [6, p. 187]. The interrogation of a suspect is usually conducted by the investigator immediately after the arrest, search of the person, or examination of the crime scene at the place of pre-trial investigation or at another location with the consent of the person to be interrogated. During the interrogation of a suspect, their personal data is first clarified, which is compared with the document identifying the person (passport, birth certificate, etc.). Then, the person is informed about their rights, obligations, and the procedure for conducting the interrogation. If the person does not understand the language in which the criminal proceedings are conducted, an interpreter may be involved in the interrogation. The suspect has the right to refuse to testify. During the interrogation, photography, audio, and/or video recording may be used. If the suspect agrees to give testimony, they are asked to provide information about the circumstances of the committed crime. The main task of the investigator during the interrogation of a suspect is to clarify and record the suspect's testimony in full, ensuring their understanding, specification, and detailing, so that each of the circumstances mentioned can be verified and corroborated by other evidence. Witness interrogation. In the investigation of drug smuggling, witnesses can be divided into three groups: a) persons who directly discovered the narcotic substances and apprehended the suspect – officials of the revenue and customs authorities during customs control, border guards, operational police officers, Security Service of Ukraine, etc.; b) witnesses who were present at the time of the smuggling (eyewitnesses of the crime) – service personnel (train conductors, flight attendants, railway, bus, airport, river, and sea port employees), drivers and passengers of the vehicle used by the smuggler to commit the crime, the head of a train brigade, ship captain, tour group leader, etc.; c) witnesses who, although not directly involved in the discovery and apprehension of the smuggler, can provide information about events preceding or following the crime – relatives of the suspect, their friends, acquaintances, colleagues at work. During the interrogation of witnesses, the investigator clarifies what they know about the smuggling of narcotic substances by the apprehended person, information about the apprehended person, and what they specifically saw or heard. A protocol is drawn up regarding the interrogation in accordance with the requirements of Article 104 of the Criminal Procedure Code of Ukraine.

A search is conducted with the purpose of identifying and documenting information regarding the circumstances of drug smuggling. A search of a person's residence or other property is conducted based on

a resolution of an investigating judge, to which the investigator applies with a motion agreed upon with the prosecutor. The grounds for conducting a search must be sufficient, otherwise the investigating judge refuses to grant the motion. The execution of the investigating judge's resolution authorizing the search of a person's residence or other property can be delegated by the investigator to the relevant operational units of law enforcement agencies. A specialist may be invited to participate in the search to provide assistance on matters requiring special knowledge. A search of a person's residence or other property must involve the participation of at least two witnesses, regardless of the use of technical means of documentation, at a time that causes the least disruption to the normal activities of the person in possession, unless the person conducting the search concludes that complying with this condition could significantly harm the purpose of the search.

Before the execution of the investigating judge's resolution, the person who owns the residence or other property, or in their absence, another present person, must be presented with the resolution and provided with a copy. The authorized officer in charge of conducting the search has the right to prohibit any person from leaving the search location until its completion and to take any actions that interfere with the conduct of the search. If there are no individuals present at the residence or other property, a copy of the resolution must be left in a visible place. In this case, the authorized officer conducting the search is responsible for ensuring the security of the property located in the residence or other property and preventing access to it by third parties. During the search, it is necessary to identify and seize: 1) narcotic substances, psychotropic substances, their analogues or precursors, or counterfeit medicinal products; 2) money and other valuables obtained from illegal activities involving narcotic substances, items and objects prohibited for free circulation; 3) equipment and its parts, utensils, or other items used for the illegal production of narcotic substances, including those with traces (bowls, pots, flasks, sieves, etc.); devices for packaging narcotic substances (scales, containers, empty ampoules, etc.); 4) documents indicating the connection of the suspect with other participants in the smuggling (notebooks with addresses and phone numbers, photographs of accomplices, letters, telegrams, rough notes containing information about smuggling operations, etc.); 5) travel documents (tickets), notifications of international postal shipments; 6) other items and documents that may be relevant to the case. The scope and content of search actions, including the disclosure of closed premises, hiding places, compartments, dismantling of technical equipment or devices, etc., must correspond to the achievement of the purpose of the search. The authorized officer conducting the search may decide to conduct a personal search of individuals if there are sufficient grounds to believe that the individuals present during the search have substances, items, or documents that are relevant to the criminal proceedings and refuse to voluntarily surrender them, as mentioned above. Information about the search of a person and its results are reflected in the search protocol, which is drawn up in accordance with the requirements of Article 104 of the Criminal Procedure Code of Ukraine.

The examination of narcotic substances, psychotropic substances, their analogues or precursors, or counterfeit medicinal products is an investigative (search) action conducted with the purpose of identifying and documenting information about the circumstances of the committed crime under Article 305 of the Criminal Code of Ukraine. It involves examining the seized substance and describing its external characteristics: appearance; quantitative and qualitative characteristics (composition, consistency, color, odor, size, volume, weight). In the case of ampoules or tablets, the presence of inscriptions on the ampoules or tablets, the level of liquid filling in the ampoules, the color of the liquid, the presence of sediment, the method of packaging and packaging material, digital markings, and the name of the manufacturing plant, etc., are described. The examination should have a scientific nature. The speed and completeness of the pre-trial investigation depend on the knowledge, experience, and ability of the investigator to conduct such an examination.

The procedure for the examination is defined in Article 237 of the Criminal Procedure Code of Ukraine, which stipulates that the suspect, their defense counsel, legal representative, and a specialist may be invited to participate in the examination. It is advisable to conduct photography during the examination. A protocol is drawn up regarding the examination in accordance with the requirements of Article 104 of the Criminal Procedure Code of Ukraine. The examined material evidence must be immediately sealed and

certified with the signatures of the persons who participated in the examination and kept in a storage room until the case is resolved on its merits.

The involvement of an expert for conducting an expertise is a procedural action that involves appointing an expertise, conducting research, and providing a conclusion by the expert. An expert is engaged if scientific, technical, or other specialized knowledge is necessary to clarify circumstances relevant to the criminal proceedings. The investigator issues a ruling on appointing an expertise in accordance with the requirements of Part 5 of Article 110 of the Criminal Procedure Code of Ukraine. A comprehensive examination of the seized substances is carried out during a forensic chemical examination. The objects of examination are narcotic substances, psychotropic substances, their analogues or precursors, or counterfeit medicinal products. A forensic chemical examination is used to determine the classification of the seized substances or items as belonging to a specific type, which, according to the Law "On the Circulation of Narcotic Drugs, Psychotropic Substances, their Analogues, and Precursors" dated February 15, 1995, are included in the List of Narcotic Drugs, Psychotropic Substances, and Precursors, or to establish that the seized medicinal product is counterfeit. The questions posed to the expert by the investigator and their conclusions regarding them must not exceed the scope of the expert's specialized knowledge. The investigator conducting the criminal proceedings is not obliged to follow the expert's conclusion. Any disagreement between the investigator and the expert's conclusion must be justified in the respective ruling.

Seizure of property. If the sanction of Part 2 or 3 of Article 305 of the Criminal Code of Ukraine provides for the confiscation of property, the investigator has the right to impose a seizure on the property of the suspect. The investigator applies to the investigating judge with a motion agreed upon with the prosecutor for the seizure of property. The motion must be accompanied by original or copies of documents and other materials that substantiate the grounds for the motion.

Conclusions. In conclusion, considering the above, we propose the following algorithm of actions at the initial stage of investigating drug smuggling: 1) registration of a statement, report, or notification; 2) conducting a scene examination; 3) entering information into the Unified Register of Pre-trial Investigations; 4) conducting a personal search; 5) questioning the suspect; 6) conducting a search of the person's residence or other property; 7) examining the seized narcotic substances; 8) appointing a forensic chemical examination; 9) questioning witnesses; 10) imposing a seizure on property.

Considering that each criminal case has specific characteristics, at the initial stage of investigating drug smuggling, there may be a need to conduct other investigative (search) actions in each specific case.

REFERENCES

1. *Kryminalnyi protsesualnyi kodeks Ukrainy*. Naukovo-praktychnyi kommentar: u 2 t. T. 1 / O. M. Bandurka, Ye. M. Blazhivskiy, Ye. P. Burdol ta in. za zah. red. V. Ya. Tatsiia, V. P. Pshonky, A. V. Portnova. Kh.: Pravo, 2012. 768 p. [In Ukrainian].
2. Kohutych, I. I. *Kryminalistyka*: Kurs lektsii. K.: Atika, 2009. 888 s. [In Ukrainian].
3. *Mytnyi kodeks Ukrainy* URL: <http://zakon4.rada.gov.ua/laws/show/4495-17/page12> [In Ukrainian].
4. *Polozhennia pro poriadok vedennia Yedynoho reiestru dosudovykh rozsliduvan*: Nakaz Heneralnoi prokuratury Ukrainy vid 17 serpnia 2012 roku No. 69 iz zminamy ta dopovnenniamy. URL: <http://document.ua/pro-edinii-reestr-dosudovih-rozsliduvan-doc110019.html> [In Ukrainian].
5. *Kryminalistyka*: Pidruchnyk / kol. avt. V. Yu. Shepitko, V. O. Konovalova, V. A. Zhuravel ta in. / Za red. prof. V. Yu. Shepitka. 4-e vyd., pererob. i dop. Kh.: Pravo, 2008. 464 p. [In Ukrainian].

Дата надходження: 09.02.2024 р.

Світлана СОРОКА

Національний університет “Львівська політехніка”,
Навчально-науковий інститут права,
психології та інноваційної освіти,
доцент кафедри міжнародного та кримінального права,
кандидат юридичних наук, доцент
svitlana.o.soroka@lpnu.ua
ORCID ID: <https://orcid.org/0000-0002-9351-4531>

**ОСОБЛИВОСТІ ДОСУДОВОГО РОЗСЛІДУВАННЯ КОНТРАБАНДИ НАРКОТИЧНИХ
ЗАСОБІВ, ПСИХОТРОПНИХ РЕЧОВИН, ЇХ АНАЛОГІВ ЧИ ПРЕКУРСОРІВ АБО
ФАЛЬСИФІКОВАНИХ ЛІКАРСЬКИХ ЗАСОБІВ**

У статті досліджено особливості досудового розслідування контрабанди наркотичних засобів, психотропних речовин, їх аналогів чи прекурсорів або фальсифікованих лікарських засобів. Акцентовано, що незаконний обіг наркотичних засобів на регіональному, національному і міжнародному рівнях набуває загрозливих розмірів, що постійно зростають. У зв'язку з цим зросла кількість кримінальних проваджень, що розслідуються у межах цієї категорії кримінальних правопорушень. Це викликало нові завдання для дослідників і практиків, які пов'язані з удосконаленням наявних та розробкою нових методик проведення досліджень. Відзначено, що досудове розслідування є однією із найважливіших стадій кримінального провадження, яка передуює судовому розгляду і розпочинається із моменту внесення відомостей про кримінальне правопорушення до Єдиного реєстру досудових розслідувань (далі ЄРДР).

Розпочати досудове розслідування в межах своєї компетенції зобов'язані слідчий або прокурор. Особливістю виявлення контрабанди наркотичних засобів є те, що отримання інформації про вчинення цього злочину відбувається в більшій частині випадків через самостійне виявлення слідчим, прокурором, іншою уповноваженою службовою особою із будь-якого джерела обставин, що можуть свідчити про його вчинення. Встановлено, що в більшій частині випадків виявлення контрабанди наркотичних засобів повною мірою покладається на працівників правоохоронних органів під час здійснення їх професійної діяльності зазвичай на посадових осіб органів доходів і зборів під час здійснення митного контролю. У разі безпосереднього виявлення ознак злочину, передбаченого ст. 305 Кримінального кодексу (далі КК) України, працівником правоохоронного органу складається рапорт, а якщо іншою особою, то пишеться заява, де зазначаються дані, які становлять зміст єдиного реєстру досудових розслідувань. Слідчий, прокурор невідкладно, але не пізніше 24 годин після виявлення з будь-якого джерела обставин, що можуть свідчити про вчинення контрабанди наркотичних засобів, зобов'язаний внести відповідні відомості до ЄРДР та розпочати розслідування. Констатовано, що огляд місця події у невідкладних випадках може бути проведений до внесення відомостей до ЄРДР. Виявлення контрабанди наркотичних засобів треба вважати невідкладним випадком, тому огляд місця події може бути проведений до внесення відомостей до ЄРДР, а відомості мають бути внесені негайно після завершення огляду. Про проведення огляду місця події складається протокол відповідно до вимог ст. 104 КПК України. Акцентовано про доцільність проведення обшуку особи після проведення огляду місця події. Запропоновано, крім огляду місця події і обшуку особи, до першочергових слідчих (розшукових) дій під час розслідування контрабанди наркотичних засобів віднести: огляд речових доказів, призначення експертизи, обшук, допит, арешт майна. Розкрито особливості проведення вищезазначених слідчих розшукових дій під час розслідування контрабанди наркотичних засобів. Запропоновано алгоритм дій під час розслідування цього виду злочинів.

Ключові слова: контрабанда наркотичних засобів, психотропних речовин, їх аналогів чи прекурсорів або фальсифікованих лікарських засобів; досудове розслідування; слідчі (розшукові) дії; слідчий; прокурор.