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RECOGNIZING ANY PERSON WITH A FELONY AFTER HIS DEATH

Actuality of theme. After the entry into force of the new Criminal Procedure Code of Ukraine on November 19, 2012, the rules that changed the regulation of numerous institutes of criminal justice came into force. One of the institutes that undergone a major modification was the institute of criminal procedural proof. The extension of the powers the defense side in the proof, the new consolidation of the principle the immediacy of the study of evidence, the establishment more detailed grounds for the recognition of evidence inadmissible, and so on. At the same time, a number of issues that directly or indirectly relate to the evidence in criminal proceedings, in which the defendant is still absent, remains unresolved, or the person acquires the status of the

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suspect by making a suspected alert on grounds of not establishing his or her location, and performing evidence-based activities in this case, is limited or impossible at all, or it was established after the death of the guilty person in committing a criminal offense.

The purpose of the article is to study the issue of establishing after the death of the guilty person in committing a criminal offense.

Significant role in the implementation of the function of justice is played by the evidence that takes place in the trial with the observance of the constitutional principles of the rule of law, law, equality of all participants in the trial before the law and the court, ensuring the proof of guilt, adversarial parties and freedom in providing them with a court of their own evidence and in proving before the court their convincing and in accordance with the established art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms 1950 the provisions of the right to a fair trial. However, if the proceedings can not reach this stage due to legislative gaps? How to ensure the effective implementation of evidence-based activities by participants at earlier stages? The question of realizing the rights of a suspect, accused, convicted or acquitted in the context of the evolution of the legal status of the central subject of the defense is reflected in the work of the legislator, and their results are transformed into bills, in particular, the bill "On Amendments to the Criminal Procedural Code of Ukraine rehabilitation, including rehabilitation of the deceased) ".

Some of the bills in case of their adoption by the Verkhovna Rada of Ukraine make changes to the existing articles of the Criminal Procedure Code of Ukraine. Law of Ukraine No. 1689-VII of 07.10.2014 "On Amendments to the Criminal and Criminal Procedural Codes of Ukraine Regarding the Inevitability of Punishment for Certain Crimes Against the Fundamentals of National

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Security, Public Security and Corruption" [2]. This law has significantly changed the position of the legislator, according to which a person could not obtain the status of a suspect if he was not given a written notice of suspicion, which caused some complications. If a suspected person could not appear on the calls to an investigator, the prosecutor without compelling reasons deliberately avoids receiving a suspect notification. In this case, such a person was not able to use the drive as it applies to a suspect, accused or witness, and this person has not yet acquired the official status of the suspect [3, p. 124]. After the Law No. 1689-VII of the first part of article 42 of the Criminal Procedure Code of Ukraine was supplemented with the words "or the person against whom a suspicion report was made but was not served to him as a result of not identifying the location of the person, but measures were taken to be served in the manner, provided by this Code for the delivery of communications ", the fact of occurrence of procedural status of a suspect in a person was no longer associated with the necessity of giving her an appropriate notice. At the same time, these changes have been the subject of criticism from some scholars and practitioners who have pointed out the violation of certain elements of the right to protection by a person who has acquired the procedural status of a suspect in such a way, in particular, the right to submit evidence by such a person could not to be realized in full. In the event of a suspect's appearance in a criminal proceeding by drawing up a statement of suspicion as a result of the failure to locate a person, it can be reasonably assumed that such person does not appear on the calls of the investigator or prosecutor knowingly or due to lack of information about the necessity of such appearance. But from a legislative point of view, this does not matter: the person has the status of a suspect and the party of protection, although appearing at the same moment, nevertheless, de facto,

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she is deprived of the opportunity to perform evidence, that is, to collect, present evidence of innocence or Evidence that could improve its position.

Suspicion of a criminal offense can be defined as the legal relationship (legal relationship) between a state and a person, which consists in a specific written claim of the state, represented by its authorized bodies and officials, to a person about possible actions of her, stipulated by the relevant articles of the law. the criminal liability that disappears in the event of a refutation (closure of a criminal proceeding against a suspect) or turns into a prosecution in case of confirmation. The appearance of the suspect and, as a consequence, the defense party in the criminal proceedings, initiates and implements the function of protection. Whether the procedural form will be followed, whether the relevant subject will be guaranteed all the rights guaranteed by the Constitution and legislation, the rule of law, the lawfulness of criminal proceedings, the possibility of a just final decision in the proceeding, and so on. At the same time, it is quite typical that the prosecution, in the performance of its function, collects data relating to a criminal offense by a particular person, conducts vowel and covert investigative actions, but displays the collected evidence base in the filed claim - a substantiated notice of suspicion - does not have time for one or the other (objective or subjective) reasons, and the person who according to the results of the collected data could be informed about suspicion, dies. In this case, it is logical to question the further development of pre-trial investigation and criminal proceedings in general, since it is obvious that the appearance of a defense party in such conditions will be difficult or even impossible at all.

Article 284 of the current Criminal Procedural Code of Ukraine contains in its norms an exhaustive list of grounds for the closure of criminal proceedings and proceedings against a legal entity. Part 5, Part 1, art. 284 of the Criminal Procedural Code of Ukraine indicates that criminal proceedings are closed in the

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event of the death of the suspect, the accused, except in cases where the proceedings are necessary for the rehabilitation of the deceased. At the same time, it is obvious that in this case we are talking about the death of a person in respect of which certain actions, provided for in art. 42 CPC of Ukraine and has already acquired the status of a suspect. Possibility of closing criminal proceedings against a deceased person who at the time of death did not have the status of a suspect or accused, but in respect of which a pre-trial investigation body has collected enough data to suspect a crime is not provided for by applicable criminal procedural law.

The importance of a sign of suspicion as an assumption is that it can be directed only to a living person. This is confirmed by articles 42, 276-278 of the Criminal Procedural Code of Ukraine, which determine the status of a suspect, the cases of his acquisition and the procedure for writing suspicion. As already mentioned above, article 42 of the Criminal Procedure Code of Ukraine defines a single case where a person may be suspected without having been directly acquainted with a suspected alert: if the location of the person is not established (but the suspicious alert is made). In this case, the legislator assumes that the person is alive, but it is impossible to find it for delivery and acquaintance with such a suspicion message (although such attempts, of course, are carried out by the relevant authorities). Therefore, this legal relationship can not arise between the state and the person who died, and to which at the time of death no suspicion (claims of a criminal nature) was directed from the state. This position is also reflected in the theory of criminal law. Thus, in the scientific and practical comments to the Criminal Code of Ukraine states that dead persons can not be subjects of the commission of a crime, respectively, the death of the person who committed the crime, excludes the question of the responsibility of this person [4, p. 67-68].

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Not specifying the possibility of reporting a suspicion to a person who died at the time of establishment as a result proving sufficient data for such a message, the legislator, in our opinion, proceeded from the following considerations. First, such an opportunity can be perceived as a violation of some elements of the right to a fair trial, which are reflected in art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, in particular: the right to be immediately and fully informed in a language which is understandable to him about the nature and causes of the charge against him; the right to protect oneself personally or to use legal aid to a lawyer chosen at his own discretion; the right to question the witnesses of the charge. All three of these elements are closely linked to the procedural evidence of the suspect of his innocence. Only after learning about the causes and grounds of the essence of the "prosecution" (under current conditions, under the "accusation in the understanding of the Convention, we obviously need to understand the term" suspicion "as a state's claim at the stage of pre-trial investigation), the person against whom he has been nominated will be able to conduct, if desired committing a crime, is not able to perform any other evidence-based activity, either personally or through a defense counsel of his choice. At the same time, the Soviet proceduralists recognized the proof of the protection of the necessary element of the criminal-procedural form. Despite the fact that, according to the elements of the presumption of innocence, the suspect is not obliged to prove his innocence, he must, nevertheless, must be granted the right to carry out evidence-based activities at his request. It is obvious that under these conditions the hypothetical desire or reluctance of the person to carry out such activity remains unclear. The European Court of Human Rights has repeatedly expressed its position on this occasion.

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At the same time, the European Court of Human Rights admits that, under certain conditions, the accused (suspect) should not be given direct access to the case file, but sufficient information on the content of the materials through his representatives.

But under these circumstances, we again rely on the impossibility of the deceased person to show the will to choose his representative, who in this case would have to defend the "good name" of the deceased as a defender. Reflecting on the procedure for action by the participants in the event of the death of a suspect or a person who could become a suspect, it is necessary to proceed from the following circumstances. In a situation where the person was not in a procedural status in proceedings, and after the death of the authorities of the pre-trial investigation, sufficient evidence was provided for a reasonable suspicion, it is impossible to apply mechanisms for closing criminal proceedings, similar to the procedure specified in clause 5 part 1 of art. 284 of the Criminal Procedural Code of Ukraine for the following reasons. In this case, a person may not have a procedural status in proceedings in general, or be questioned as a witness. The most important is the fact that the state, its authorized bodies and officials are absent from any specific, written claims regarding the commission of a criminal offense. At the same time, the fact of the death of a person, the loss of her criminal procedural law-subjectivity does not allow, in the context of the rules of the current criminal and criminal procedural legislation, to send such claims to the deceased [1, p. 191] .

At the same time, the direction of such claims to her close relatives is quite controversial, as the principle of personal (individual, personal) criminal liability of the person. You can not talk about any evidence of a deceased person, or at least the possibility of choosing a lawyer to do such an activity. At

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the same time, the current Criminal Procedure Code of Ukraine does not provide for the opening of criminal proceedings against a particular person.

Analysis of art. 214 of the Criminal Procedure Code of Ukraine in 2012 provides grounds for arguing that the possibility of establishing a person for whom there is certain data regarding the commission of a criminal offense by that particular person is impossible, at least from the procedural point of view, at the stage of entering data into the Uniform Register of Pre-trial Investigations. At the same time, the Criminal Procedure Code of 1960 provided for such an opportunity, in particular, in part 3 of art. 98 contained a provision that if a person who committed a crime has been identified at the time of the criminal prosecution, a criminal case should be instituted against this person. In such a case, the state already has a certain criminal-legal claim to a specific person, and although it compares the status of a person against whom a criminal case has been initiated with the status of a suspect or accused the person was seen impossible due to the almost complete absence of norms regulating the legal status of the person against whom a criminal case was initiated (in fact, such a person was mentioned, in addition to article 98, in articles 98-1 and 98-2), it was still evident that there was a procedural link between pre-trial investigation bodies and the person concerned.

Prospects for development and resolution of the issues raised in this article are seen in two possible constructions to amend the existing Criminal Procedure Code in order to fill the gap that has arisen at the moment: By introducing amendments to clause 5, part 1, article 284 of the Code of Criminal Procedure of Ukraine, stating in the wording: "the suspect died, the accused person, or a person about whom after his death sufficient evidence of involvement in the commission of a crime has been gathered, unless the proceedings are necessary for the rehabilitation of the deceased." In such a case,

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a new subject of criminal proceedings will be legally established - a person about whom, after her death, sufficient evidence of involvement in the commission of an offense is required, which will require changes to the article. 3 of the Criminal Procedure Code of Ukraine and the further introduction of a mechanism for the participation of the defenders of such a person, etc. In fact, under these conditions, the prosecution of a person will be terminated, as well as any probative activity of both the prosecution party and the defense, except when, by analogy with the suspect or accused person in the future will carry out probative activities, including interrogating witnesses of the prosecution. True, the issue of procedural relations between close relatives and a lawyer can be discussed, such as the harmonization of the method of protection, the necessity of carrying out evidentiary activities in a certain form and volume, and others like that.

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Встановлення винуватості особи у вчиненні кримінального правопорушення після її смерті

Після набрання чинності 19 листопада 2012 року новим Кримінальним процесуальним кодексом України вступили в силу норми, які змінили регулювання численних інститутів кримінального судочинства. Одним з інститутів, що зазнав значної модифікації, був інститут кримінального процесуального доказування. Збільшення повноважень сторони захисту у доказуванні, якісно нове закріплення засади безпосередності дослідження доказів, встановлення більш деталізованих підстав визнання доказів недопустимими тощо. В той же час, невирішеним залишається питання, коли було встановлено після смерті винуватість особи у вчиненні кримінального правопорушення. У

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статті досліджуються проблемні питання встановлення після смерті винуватості особи у вчиненні кримінального правопорушення. Визначаються проблеми нормативно-правового регулювання доказування за таких умов, формулюються пропозиції щодо їх усунення.

Ключові слова: доказування, кримінальне провадження, підозрюваний, реабілітація померлої особи.

Гнускова А. Ю., Шафорост Т. В., Дробчак А. Л.

Установление виновности лица в совершении уголовного преступления после его смерти

После вступления в силу 19 ноября 2012 нового Уголовного процессуального кодекса Украины вступили в силу нормы, которые изменили регулирования многочисленных институтов уголовного судопроизводства. Одним из институтов, который потерпел значительной модификации, был институт уголовного процессуального доказывания. Увеличение полномочий стороны защиты в доказывании, новое закрепления основ непосредственности исследования доказательств, установления более детализированных оснований признания доказательств недопустимыми и т.д. В то же время, нерешенным остаётся вопрос, когда было установлено виновность лица в совершении уголовного преступления после смерти. В статье исследуются проблемные вопросы установления после смерти виновности лица в совершении уголовного преступления. Определяются проблемы нормативно-правового регулирования доказывания в таких условиях, формулируются предложения по их устранению.

Ключевые слова: доказывание, уголовное производство, подозреваемый, реабилитация умершего.

▪ Встановлення винуватості особи у вчиненні кримінального правопорушення після її смерті / А. Ю. Гнускова, Т. В. Шафорост, А. Л. Дробчак // Часопис Національного університету «Острозька академія». Серія «Право». – 2018. – № 1(17) : [Електронний ресурс]. – Режим доступу : http://lj.oa.edu.ua/articles/2018/n1/18haypys.pdf.

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Recognizing any person with a felony after his death

After the entry into force of the new Criminal Procedure Code of Ukraine on November 19, 2012, the rules that changed the regulation of numerous institutes of criminal justice came into force. One of the institutes that undergone a major modification was the institute of criminal procedural proof. Increasing the powers of the party of defense in the proof, qualitatively new consolidation of the principle of the directness of the study of evidence, the establishment of more detailed grounds for the recognition of evidence inadmissible, etc. At the same time, the issue remains unresolved, when it was established after the death of the guilty person in committing a criminal offense. The article deals with the problem of establishing after the death of the person guilty of committing a criminal offense. The problems of normative-legal regulation of proof in such conditions are determined, proposals for their elimination are formulated.

Key words: evidence, criminal proceedings, suspect, rehabilitation of a deceased person.

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