

KRIMINĀLTIESĪBU APAKŠNOZARE

REFORMS IN THE CRIMINAL JUSTICE SYSTEM. LESSONS LEARNED FROM THE REPUBLIC OF LITHUANIA

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Progress is impossible without change, and those who cannot change their minds cannot change anything.

George Bernard Shaw

Abstract

The paper consists of two parts: one - analysis of obtaining permission to conduct pre-trial investigative action from economic aspects and another on the lessons learned in the Republic of Lithuania during the reforms in the civilian security sector.

An essential component of an effective pre-trial investigation is not just investigative actions prescribed by criminal procedure laws, their procedures for conduction during one of the criminal process stages – a pre-trial investigation, qualification of investigators, prosecutors, their skills, secondary law that regulates conduction of investigative actions in details. Also, how does the investigative action work at the preliminary stage of conducting the investigative actions? Is it effective and efficient? For example, in obtaining permission for such actions as a search, covert surveillance, or wiretapping. The author analyses investigative actions from an economic point of view in the first part of this paper.

The paper aims to introduce obstacles, misunderstandings, and committed mistakes before launching and during the implementation of the reforms in the Lithuanian criminal justice system after the collapse of the Soviet Union, namely, in the civilian security sector. The author of this paper presents his experience through bullet points named “lessons learned” of being a participant in the above-mentioned reforms. The outcomes of this paper are going to be important in light of the reform in the civilian security sector launched and still going on in Ukraine after the Revolution of Dignity of 2014. It helps to avoid mistakes that were made during reforms in the Republic of Lithuania.

Keywords: *an investigative action, police investigator, a prosecutor, a court, a criminal proceeding, resources, reform.*

Introduction

The Revolution of Dignity 2014 implies the beginning of huge changes in Ukraine, including the buildup of the new legal system in Ukraine and succession the best values of Western (the term “Western” is used here as well as an intellectual and cultural rather than a geographical meaning) legal traditions. At the same time, it can be considered to be the starting point for the legal system of Ukraine, from which it has been beginning and developing in the direction of respect for human rights and for fundamental freedoms. This is clearly reflected in the Constitution of Ukraine. The Constitution of Ukraine aspires to ensure human rights and freedoms, and living conditions worthy of human dignity.

This aim means that Ukraine must be under the rule of law and the most important value are human rights and fundamental freedoms. Each democratic country based on rule of law is responsible



and accountable for ensuring human rights and fundamental freedoms enshrined in international and domestic law.

1948 The Universal Declaration of Human Rights, 1950 European Convention on Human Rights and Fundamental Freedoms, 1966 International Covenant on Civil and Political Rights and other international conventions on human rights, the Constitution of Ukraine, Code of Criminal Procedure of Ukraine (hereinafter referred to as the CCP) and other national law guarantees individual rights and freedoms laid down by law. The rights and freedoms of individual citizens can be limited by law in criminal proceedings applying measures of criminal procedural coercion.

Case law of the European Court of Human Rights (hereinafter referred to as the ECHR), the European Court of Justice (hereinafter referred to as the ECJ) strictly limits the use of procedural coercion measures specified in criminal proceedings by the principle of proportionality. It is a safeguard against an unlimited use of administrative powers. The principle of proportionality is required before making a decision on the use of criminal-procedural coercion measures. Decision-makers must evaluate and find the right balance between human rights, fundamental freedoms, and coercive measures to achieve the legitimate objectives, which are intended, i.e., there are no less severe means of achieving the objectives according to the severity and nature of the criminal offense.

The Preamble of the European Convention on Human Rights and Fundamental Freedoms provides that human rights and fundamental freedoms which are “the foundation of justice and peace in the world are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the human rights upon which they depend.”¹ Of course, this does not mean that the state authorities should refrain from any interference in the human rights and fundamental freedoms of individuals. The social nature of human beings pushes them for social interaction and each human being has his/her own interest which may not always coincide with the interest of other individuals. Therefore, a state’s high-priority task is to ensure that every human being and the whole of society is protected by the state from unlawful acts. The state is forced to take legal means to disclose the criminal acts committed by the individuals, and the limitation of human rights and fundamental freedoms is inevitable. For this purpose, law enforcement authorities are granted in right to use investigation actions in conducting the prosecution. Also, law enforcement agencies, mainly the police and prosecution office are obliged to conduct criminal proceedings speedily but at the same time not to violate human rights. It is very important to notice that the state’s resources allocated for the disclosure of criminal acts are limited. Each investigation of criminal acts requested resources from the state budget.

Methodology

During the preparation of the paper, the author has used a range of methods to analyze and assess how police investigator goes to get permission to conduct investigation action from a management point of view and the mistakes made during the reforms in the civilian security sector.

The following research methods were used: content analysis, textual analysis, archival research, case study; structured, semi-structured, and unstructured interviews; analytic induction, comparative research, authors’ observation in the field; analysis of statistics.

The authors used the basic methods for data collection: primary and secondary. The collection of primary data leads to quantitative/ empirical-analytical and qualitative/interpretative research methods. Secondary data is data that has been previously collected or gathered. This type of data is already available in different forms from a variety of sources – internal and external.

All data for preparing the paper have been obtained from open sources of information such as official websites of law enforcement agencies, mainly the General Prosecution Office, the National Police of Lithuania, and other institutions. For ex., The Parliament, from official websites of Lithuania law enforcement agencies, media publications, and mainly through the author’s personal experience during reforms in the civilian security sector of the Republic of Lithuania in the 2000s. It brings value to the officials and researchers who are interested in experiences from other countries.

The economic side of pre-trial investigative action. The example

*Efficiency is doing things right; effectiveness is doing the right things.*²

Peter Drucker

The author of the paper tries to attract the attention of lawmakers and top managers of law enforcement agencies to the economic side of criminal proceedings in light of the reform in the civilian security sector of Ukraine. How much does it cost to investigate criminal acts? How much does it cost to conduct investigative action prescribed by the criminal procedure code?

Let's do simple calculations on the most prevailing investigative action in a criminal proceeding such as the interview of a witness. At first, an investigator has to find a person who has important information on committed criminal acts, identify her or him, get information about his or her domicile, invite him for an interview, and finally conduct an interview according to law. These simple actions required a lot of time counted in long hours of meticulous work of an investigator especially if a potential witness shows no eagerness to come to the police station or prosecution office for testimony.

The procedure of conduction of each investigation action can be split into several main stages: preparation, conduction, and evaluation stages. Each stage of a conduction investigation action requires resources (human, material). If investigative action is not coercive it is most will be the shorter stage for preparation to conduct investigative action.

If the prosecutor or police investigator has made a decision to use special investigation methods for collecting information about a criminal act, the preparation stage is going to be much longer. In that case, a lawmaker put into law additional safeguard tools to ensure a person's privacy from law enforcement agencies wishing to dig deeper into a person's privacy. If a police investigator had come to the conclusion that s/he needs to get permission to conduct a search, wiretapping, or other special methods, he or she has to pass procedures prescribed by the code of criminal procedure of Ukraine: to prepare documents that prove the existence of conditions, grounds, and a necessity for conduction such actions and address it to a prosecutor who is in charge for supervision in the particular criminal proceedings; after receiving required documents a prosecutor is going to assess the existing condition and grounds for the conducting such actions. Finally, a prosecutor comes to the conclusion that the investigation action meets all requirements; only after that does the prosecutor have the right to submit an application to a court for issuing permission to conduct investigative action for example search, or wiretapping.³ It requires material and human resources. It leads to the conclusion that before planning an investigative action the head of the unit of the police, an investigator must assess the necessity of using the investigative action in a given situation, and other factors closely related to the event.

Lessons learned from reforms in the civilian security sector of the Republic of Lithuania

*Experience is the teacher of all things.*⁴

Julius Caesar

The author of the paper analyzes the topic of the given research from the point of view of information on ongoing reform in the civilian security sector.

The paper also aims at introducing the reforms of the Lithuanian criminal justice system after the collapse of the Soviet Union. Each of the former 15 Soviet Republics gained or regained independence. At the same time, the former Soviet republics inherited the same criminal justice system, the legal education system, the study programs on law at law faculties and police academies/schools, criminal procedure code, the organizational structure of the prosecution offices and police, standard operation procedures, and job descriptions. Unfortunately, soviet ideological provisions on the rule of law and human rights, which existed for over half of a century, have left deep patterns in the mindsets of a lot of academic staff, and law practitioners.

Many post-soviet countries faced the following dilemma: whether to build a new criminal justice system or just introduce new changes into already existing and functioning institutions and

laws. Each arguing party provided arguments for and against regarding the strategy of reforming the country's criminal justice system and presented their action plans on how to implement it. Reforms of the country's criminal justice system have a direct impact on public security. Due to different interests amongst various groups of society, some reforms faced obstacles during the implementation phase and even caused some harm to the country's civil security sector reform process.

The author of the paper started working in the prosecution office in 1991. Thus, he experienced the outcomes of the reforms implemented in the Public Prosecution Office of the Republic of Lithuania and at the same time was directly or indirectly involved in the ongoing changes in the country's socio-economic life, and witnessed a series of reforms in the law enforcement agencies (mainly in the police) and saw how these reforms affected criminal justice system in the context of the public prosecution office's effectiveness in dealing with public prosecution. The author of the paper presents his personal view on the mistakes made during reforms and emphasizes the good examples of reforming the country's civilian security sector.

The first lesson learned

The new criminal procedure code of the Republic of Lithuania came into force in 2003 after long-lasting discussions among different working groups on the creation of the new criminal procedure code.⁵ It is very important to have representation in the working group from all parties involved in criminal proceedings: defense lawyers, prosecutors, judges, academics, representatives of different human rights organizations, and lawmakers.⁶

So, fair, equal representation of all parties closely related to the civilian security sector in the creation of new fundamental bills (for ex., a draft of a Criminal code⁷) is one of the prerequisites and a guarantee for a good final product.

The second lesson learned

Proper usage of legal terminology in the lawmaking process. For example, the phrase "operational-search activity" does not exist and is not used in the law terminology of West European countries and the USA. The first task for the authors of the bill is to be on the same wavelength with practitioners and other members of society representing different groups, and parties. It allows to decrease the level of misunderstanding amongst different groups of society, prevents from spreading of fake news, and finally, it will ensure the high quality of the final product before it becomes valid. For example, some groups of the society openly and widely called to abrogate the Law on operational-search activity in Lithuania in the 2000s. The argument was that no such laws exist in democratic countries and the above-mentioned law is just the relict of the Soviet era. The calls for the abolishment of the Law on operational-search activity were the biggest nightmare for practitioners. How to deal with the most dangerous crimes, how to prevent them from being committed, and how to ensure national security? These and other questions have been raised. Even supporters of the abolishment of this law suggested asking representatives from West European countries and the USA on operational-search activity in their countries. Of course, due to the usage of different legal terminology, the answer was clear – no such laws. Although, if you ask a question about the presence of law on criminal intelligence in West European countries, the answer will be, yes, we have it.

So, the usage of proper legal terminology during the lawmaking process allows to avoid misunderstanding among different stakeholders and is one of the prerequisites for successful civilian security sector reforms.

The third lesson learned

The author of the paper is going to share his remarks on the importance of awareness-raising campaigns amongst police officials, society, lawmakers, and politicians on the essence and details of the upcoming reform in the police. Each human being meets the news of changes in his/her life differently. The lack of a clear picture of the framework of upcoming changes at institutions creates fertile soil for the production and spreading of various rumors, gossip, and fake news on the reform. Some members of senior management do not want to lose their comfort zone, positions, and powers, which they have been enjoying for many years. They can pour more fuel into the fire of disappointment on upcoming reforms by using different methods from withholding information on details of reforms, or interpreting it in a different way, to passing wrong messages to politicians to

stop reform or make changes in it. Some politicians and groups of society due to different interests can use this uncertainty for their own, narrow aims.

To sum up it, before the full-scale launch of the reform in the civilian security sector, supporters (persons in charge of creating the frame of reform) have to launch information campaigns to deliver messages in simple words to the target audience.

The fourth lesson learned

Each reform is a challenge not only for the initiator of the reform but also for the human being directly or indirectly related to the area which is going to be subjected to changes. Each human being is the biggest value and at the same time the most vulnerable part of an upcoming improvement. It puts huge pressure on their mental health, starting from the fear to be fired or losing a position, uncertainty, end of a comfort zone, lack of confidence especially if it is going to be mandatory to obtain new skills, etc. Here, we are talking about the mindset of a human being. It is a vitally important element of each reform – to change the mindset of human beings by involving them in the construction of a reform frame, and pillars updating them on changes, and giving them a period of time for adaptation of novelties in life.

The fifth lesson learned

Amendments to already existing laws or the introduction of a new law require a meticulous revision of other provisions of laws, standard operation procedures, and official explanations on the subject of changing regulations contradicting already introduced new legal regulations.

So, revision of other laws on the subject of elimination of future contradictions on the same issues in different laws.

The sixth lesson learned

Organizational changes in the structure of the criminal police. It is characterized by the complexity of actions that encompass not only peculiarities of criminal activities but also the implementation of new forms of work organization in practice. The author of the paper is going to share several remarks on work organization between police investigators and operatives/detectives. Before launching a reform analysis must be regarding both criminal intelligence and pre-trial investigations in police itself and outside of it, including analysis on how upcoming changes in work organization might affect other institutions, for example, a public prosecution office.

Both internal and external reasons determined the necessity for the reform of the criminal police system in Lithuania. The main objectives to do it were: to speed up the pre-trial investigation; to increase the quality of collection data, to create solid grounds for better analysis of information during the pre-trial investigation; to increase the efficiency of criminal intelligence activities, and to create better management of human resources. Legal prerequisites for changing the form of work organization between a police investigator (so-called specialist in criminal procedure law who conducts pre-trial investigation) and an operative/detective who conducts operational-search activity/criminal intelligence were laid down in the new Criminal Procedure Code of the Republic of Lithuania.⁸ The necessity for specialized criminal intelligence shaped a new model for conducting pre-trial investigations and criminal intelligence activity. It is also named by the term “operational-search activity” in Ukraine, and other Post-Soviet countries’ law terminology.

Work organization form for conduction of criminal intelligence activity in the Republic of Lithuania based on the United Kingdom’s police model. Lithuanian Police has a structural unit on criminal intelligence activity at the central level and at separate units at the regional level. The separate units are located in the 10 police county police headquarters (the territory of the Republic of Lithuania divided into 10 counties).⁹ All former police operatives/detectives became police investigators (if they met the requirement set up in the law).

Nowadays, two police officials: a specialist in criminal procedure law and a specialist in criminal intelligence are always included in an official document at the start of a pre-trial investigation as officials are granted the powers to conduct a pre-trial investigation in the particular criminal case. The reform of work organization in the criminal police sector decreased the amount of internal bureaucracy. For example, an investigator does not need to send a request to a detective to fulfill some tasks. The pre-trial investigation became more effective. An investigator and former operative

/detective are procedural officials according to the Criminal Procedure Code of Lithuania and have equal responsibilities for the outcomes of the pre-trial investigations in criminal proceedings. Before the reform, a police investigator before going on leave handed over the criminal cases at his/her disposal to another investigator. Although, another official did not have strong motives for the outcomes of the temporarily handed over criminal cases. The above-mentioned reform also facilitates better corruption risk management in criminal police.

To sum it up, the reform of work organization in the criminal police sector by joining police investigators and former operatives/detectives leads to increased efficiency of pre-trial investigation, speeds up investigations, and decreases the risk for corruption.

The seventh lesson learned

During the pre-trial investigation, an operative/detective is more oriented towards arrangements of the covert investigative actions and/or other procedural coercive measures. For example, search, arrest, and conduction of criminal intelligence actions which do not require any approval from a line manager, a prosecutor, or a judge. For example, collection of information from open sources, analysis of collected information and presentation of the analysis results in the report, and conduction of an interview with an aim to identify possible sources of information on a criminal offense. An operative/detective does not have a mandatory requirement additionally to collect data that allows starting a criminal proceeding. For example, 2-3 criminal cases must be started per month based on data collected by a former operative/detective. This type of requirement is still alive in some post-Soviet countries and remains a relict of planned economy/socialist type economy. At the same time, it creates risks for opening criminal proceedings without sufficient grounds.

After the reform in the criminal police sector in Lithuania, activities of special criminal intelligence units became more purposeful, clear delineation of criminal intelligence activity and pre-trial investigation allows to arrange work in a more effective way. The workload of criminal police units became better equalized. This form of work organization has also some disadvantages although it is a more advanced form compared with the old form of work organization inherited from the Soviet times. It leads to better conditions for sharing information within all police structural units, decreases the risk of corruption during the pre-trial investigation, etc. It can be another separate topic of research.

To sum up this part of the paper's "**lessons learned**", the author would like to finish famous physicist Albert Einstein's quote that "*the only source of knowledge is experience.*"¹⁰

Conclusions

1. The procedure of conduction each of investigative actions can be split into several main stages: preparation, conduction, and evaluation stages. Each stage of conducting an investigation action procedure requires resources (human, material).
2. Fair, equal representation of all parties closely related to the civilian security sector on the creation of new fundamental bills (for example, a draft of a Criminal code) is one of the prerequisites and a guarantee for a good final product.
3. Usage of proper legal terminology during the lawmaking process allows us to avoid misunderstandings amongst different stakeholders.
4. An important element of each reform – is to change the mindset of human beings by involving them in the construction of a reform frame, and pillars, updating them on changes and giving them a period of time to adapt to novelties in life.
5. Before launching the reform in the civilian security sector, supporters (persons in charge of creating the frame of reform) have to launch information campaigns to deliver a message on the goal of reform, changes in simple words to the target audience.

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Аннотация

Неотъемлемой составляющей частью эффективного досудебного расследования являются не только следственные действия, предусмотренные уголовно-процессуальным законодательством, квалификация следователей, прокуроров, но и процессуальный порядок их проведения. В статье анализируются вопросы эффективности таких действий, например, получение разрешения на такие действия как обыск, скрытое наблюдение, прослушивание телефонных разговоров. Целью исследования является доведение до широкой аудитории важности управления ресурсами (материальными, финансовыми, человеческими) для получения разрешения на проведение обыска или прослушивания телефонных разговоров в ходе досудебного следствия. Также автором в статье выявлены препятствия, недоразумения, допущенные ошибки перед началом и во время проведения реформ в секторе гражданской безопасности Литовской Республики. Автор этой статьи, участник вышеупомянутых реформ, представляет свой опыт, названный в этой статье “извлечёнными уроками”.