Serhii Tiulieniev

DOI: https://doi.org/10.32353/acfs.9.2024.01
UDC 343.98 (477)

Serhii Tiulieniev,
PhD in Economics,
Director at National Scientific Center «Hon. Prof. M. S. Bokarius Forensic Science Institute»
Kharkiv, Ukraine
ORCID: https://orcid.org/0000-0001-9685-1536
e-mail: tiuleniev1976@gmail.com

Commencement Of A Criminal Proceeding Related To Raiding: Peculiarities And Problematic Issues

Successful execution of tasks in a criminal proceeding is significantly influenced by various factors, with the actions of the prosecution playing a pivotal role. It falls upon the prosecution to record information about the committed criminal offense and the proof in a criminal proceeding. Considering the complexity of these activities, particularly in categories of criminal offenses involving preparation, direct commission, and concealment, the Article Purpose is to clarify typical grounds for commencing a criminal proceeding. It focuses on acts related to the unlawful acquisition and seizure of property and assets belonging to enterprises, institutions, and organizations. What is more, it aims to address identified problematic issues that arise after a criminal offense is registered and to establish typical organizational and legal forms for the prosecution's activities during this stage of criminal procedural activity. After theoretical analysis and generalizing empirical data, it has been determined that the prosecution's activity at the beginning of a criminal proceeding related to raiding occurs in two distinct organizational and legal forms: initiative and functional (protocol). Additionally, several other provisions have been substantiated.

Keywords: *raiding, criminal offense registration, criminal proceeding commencement, economic entity, urgent investigative (search) actions, procedural action.*

Funding

This research did not receive any specific grant from funding agencies in the public, commercial, or not-for-profit sectors.

Disclaimer

The funder had no role in the study design, data collection and analysis, decision to publish, or preparation of the manuscript.

Contributors

The author contributed solely to the intellectual discussion underlying this paper, case-law exploration, writing and editing, and accept responsibility for the content and interpretation.

Declaration of Competing Interest

The author declare that they have no conflict of interest.

Research Problem Formulation. In legal practice, there are cases where the mistakes of individual participants in legal relations significantly affect the ability to resolve tasks of a criminal proceeding and administer justice. Therefore, theorists make every effort to develop proven approaches to address problematic issues arising at all stages of criminal procedural activity. Our attention is drawn to the initial stage of the investigation of criminal offenses related to the unlawful acquisition of land and other violations of the rights of economic entities, which, in particular, are criminally punishable, that is those with signs of raiding.

Examining problematic issues of the initial stage in raiding investigations that may arise immediately after the commencement of a criminal proceeding is crucial, given the complex nature of criminal activity in this area, which encompasses not only the preparation and direct commission of raiding but also a wide range of actions related to concealing the consequences of socially dangerous acts.

Analysis of Essential Research and Publications. Eminent Ukrainian scientists such as S. Ye. Ablamskyi, Yu. P. Alenin, T. M. Barabash, O. A. Vakulik, A. F. Volobuiev, I. V. Hloviuk, V. H. Honcharenko, O. V. Kaplina, L. M. Loboiko, V. T. Nor, O. Yu. Tatarov, H. K. Teteriatnyk, V. M. Trofymenko, V. I. Farynnyk, I. V. Churikova, A. Z. Yakubova, and others have contributed to the development of the issues related to commencing a criminal proceeding in Ukraine. Certain procedural and forensic aspects of commencing criminal proceedings and the initial stage of pre-trial investigation have also been elaborated by V. M. Beschastnyi and O. V. Oderii [1], O. A. Vakulik [2], V. A. Zhuravel [3], L. M. Hurtiieva[4], M. A. Pohoretskyi[5], O. A. Samoilenko [6], A. V. Stolitnii [7], Z. M. Toropetska [8], S. S. Cherniavskyi[9], and many others. At the same time, the issues surrounding the commencement of a criminal proceeding in connection with the identification of signs of raiding have not yet been explored either in the theory of criminal procedure science or in criminalistics, underscoring the relevance and timeliness of developing this research area.

The Article Purpose is to specify typical grounds for commencing a criminal proceeding based on actions related to unlawful acquisition and seizure of property and other assets of enterprises, institutions, organizations, outline ways to resolve emerging issues, and identify typical organizational and legal forms of activity of the prosecution party at this stage of criminal procedural activity.

Main Content Presentation. Legal principles governing the conduct of economic activities in Ukraine are enshrined in:

- the Constitution of Ukraine;
- international legal agreements ratified by the Verkhovna Rada of Ukraine, including the Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, and the Directive of the European Parliament on the prevention of the use of the financial system for the purposes of money laundering, etc.;
- the Economic Code of Ukraine and the Code of Commercial Procedure of Ukraine;
- the Civil Code of Ukraine and the Civil Procedure Code of Ukraine;
- the Tax Code of Ukraine;
- the Laws of Ukraine On State Registration of Corporeal Rights to Real Estate and Their Encumbrances, On Amendments to Certain Laws of Ukraine on Ensuring the Inviolability of Property Rights, On Limited Liability and Additional Liability Companies, On Protection of Economic Competition, On Protection Against Unfair Competition, On the Fundamental Principles of State Supervision (Control) in the Field of Economic Activity, On

1 Бесчастний В. М., Одерій О. В. Відкриття кримінального провадження (теоретико-прикладний аспект). Процесуальне та криміналістичне забезпечення досудового розслідування: зб. тез наук.-практ. семінару (м. Львів, 01 груд. 2017 р.). Львів : ЛьвДУВС. 2017. С. 26-30.

2 Вакулік О. А. Реформування кримінального процесуального законодавства в частині регламентації початку досудового розслідування. *Науковий вісник Національної академії внутрішніх справ*. 2013. № 4. С. 160-166.

3 Журавель В. А. Початок досудового розслідування: деякі процесуальні та організаційно-тактичні проблеми. *Вісник Луганського державного університету внутрішніх справ імені Е.О. Дідоренка*. 2015. № 1. С. 250-259.

4 Гуртієва Л. М. Початок кримінального провадження України та стадії досудового розслідування. *Правова держава*. 2017. № 25. С. 155-159.

5 Погорецький М. А. Початок досудового розслідування: окремі проблемні питання. *Вісник кримінального судочинства*. 2015. № 1. С. 93-103.

6 Самойленко О. А. Початок кримінального провадження (з позицій криміналістичної науки). *Право і суспільство*. 2019. № 2. С. 226-231.

7 Столітній А. В. Початок досудового розслідування: правова природа, регламентація та межі прокурорського нагляду. *Право і суспільство*. 2015. № 4 (3). С. 200-206.

8 Топорецька З. М. Особливості початку кримінального провадження по фактах зайняття гральним бізнесом. *Вісник кримінального судочинства*. 2015. № 1. С. 127-132.

9 Чернявський С. С. Законодавче удосконалення початку кримінального провадження як чинник підвищення ефективності протидії злочинності. Кримінологічна теорія і пратика: досвід, проблеми сьогодення та шляхи їх вирішення: матеріали наук.-практ. конф. (м. Київ, 26 берез. 2016 р.). Київ : НАВС, 2016. С. 32–36.

Сергій Тюлєнєв

ПОЧАТОК КРИМІНАЛЬНОГО ПРОВАДЖЕННЯ У ЗВ'ЯЗКУ ІЗ УЧИНЕННЯМ РЕЙДЕРСТВА: ОСОБЛИВОСТІ ТА ПРОБЛЕМНІ ПИТАННЯ

Виконання завдань кримінального провадження вагомою мірою зумовлено комплексом чинників, серед яких вагоме місце займають дії сторони обвинувачення, на яку покладено обов'язки щодо реєстрації відомостей про вчинене кримінальне правопорушення та доказування у кримінальному провадженні. Ураховуючи складність такої діяльності, особливо в тих категоріях кримінальних правопорушень, кримінальна-протиправна діяльність у яких складається з дій щодо підготовки, безпосереднього вчинення та приховування вчинених діянь, мету статті визначено як з'ясування типових підстав початку кримінального провадження за фактом учинення дій, пов'язаних із протиправним поглинанням і захопленням майна й інших активів підприємств, установ, організацій, визначення шляхів розв'язання означених проблемних питань, що виникають після реєстрації кримінального правопорушення, установлення типових організаційно-правових форм діяльності сторони обвинувачення на цьому етапі кримінальної процесуальної діяльності На підставі теоретичного аналізу й узагальнення емпіричних даних з'ясовано, що характер діяльності сторони обвинувачення на початку кримінального провадження за фактом учинення рейдерства, здійснюється в двох самостійних організаційно-правових формах, а саме: ініціативний і функціональний (протокольний), а також обґрунтовано низку інших положень.

Ключові слова: рейдерство, реєстрація кримінального правопорушення, початок кримінального провадження, суб'єкт господарювання, першочергові слідчі (розшукові) дії, процесуальна дія.

COMMENCEMENT OF A CRIMINAL PROCEEDING RELATED TO RAIDING: PECULIARITIES AND PROBLEMATIC ISSUES

Successful execution of tasks in a criminal proceeding is significantly influenced by various factors, with the actions of the prosecution playing a pivotal role. It falls upon the prosecution to record information about the committed criminal offense and the proof in a criminal proceeding. Considering the complexity of these activities, particularly in categories of criminal offenses involving preparation, direct commission, and concealment, the Article Purpose is to clarify typical grounds for commencing a criminal proceeding. It focuses on acts related to the unlawful acquisition and seizure of property and assets belonging to enterprises, institutions, and organizations. What is more, it aims to address identified problematic issues that arise after a criminal offense is registered and to establish typical organizational and legal forms for the prosecution's activities during this stage of criminal procedural activity. After theoretical analysis and generalizing empirical data, it has been determined that the prosecution's activity at the beginning of a criminal proceeding related to raiding occurs in two distinct organizational and legal forms: initiative and functional (protocol). Additionally, several other provisions have been substantiated.

Keywords: raiding, criminal offense registration, criminal proceeding commencement, economic entity, urgent investigative (search) actions, procedural action.

International Commercial Arbitration, On Mediation, On the Anti-Monopoly Committee of Ukraine, etc.;

- other legal regulations.

Legal grounds for bringing a person to responsibility for encroachment upon the established legal principles of conducting economic activity are governed by: the Criminal Code of Ukraine (hereinafter referred to as the CC), the Criminal Procedure Code of Ukraine (hereinafter referred to as the CPC), the Code of Administrative Proceedings of Ukraine, the Code of Ukraine on Administrative Offenses, etc. In this regard, only the existence of sufficient grounds indicating the commission of an act envisaged by the Special Part of the Criminal Code of Ukraine constitutes a basis for commencing a criminal proceeding.

The direction of a criminal proceeding is determined by its objectives, which are outlined in Article 2 of the CPC of Ukraine. In accordance with the regulations of criminal procedural legislation, a criminal proceeding should be understood as pre-trial investigation and a court proceeding, as well as procedural actions undertaken in relation to the commission of an act stipulated in the Law of Ukraine On Criminal Liability [10]. At the same time, at each of the outlined stages, there is an investigation into the event that occurred, and due to the specificity of the social relations arising in this situation, such activity is referred to as criminal procedural activity.

According to the theory of legal science, criminal procedural activity is carried out in connection with the submission and receipt of a request or notification by an investigator, inquiring officer, or prosecutor regarding a committed criminal offense, or in the case of independent discovery by investigators or prosecutors of information about a potential criminal offense from another source of circumstances that collectively may indicate a committed crime or an impending criminal offense or other socially dangerous act [11]. Facts stated in procedural documents also serve as grounds for initiating a criminal proceeding. From a theoretical perspective, studying the specifics of criminal activity is important for developing guidelines for efficient and adequate responses to notifications of unlawful activities, and for pinpointing the sequence of actions in this regard [12]. Such guidelines will be of practical importance, as they will contribute to the correct identification of the best methods for establishing the circumstances of a crime on the basis of the information available to the prosecution at the initial stage of investigation. Taking into account that the quality of pre-trial investigation, both during the conduct of procedural actions and when making procedural decisions, depends on the correctness of actions taken by the investigator or inquiring officer conducting a pre-trial investigation [13], we consider it necessary,

[10] Кримінальний процесуальний кодекс України : Закон України від 13.04.2012 № 4651-VI. Верховна Рада України: офіційний веб-портал. URL: http://zakon.rada.gov.ua/laws/show/-4651-17

[11] Гуртієва Л. М. Указана праця. С. 155-156.

[12] Гусєва В. О. Особливості відкриття кримінального провадження і початкового етапу розслідування у злочинах проти працівників. Актуальні питання кримінального процесу і криміналістики, удосконалення діяльності судової і правоохоронної систем: матеріали Всеукр. наук.-практ. конф., присвяченої пам'яті професора М. Й. Курочки (м. Сєвєродонецьк, 19 трав. 2017 р.). Сєвєродонецьк, 2017. С. 186.

[13] Гусєва В. О. Особливості методики розслідування злочинів проти життя та здоров'я особи. Впровадження нового Кримінального процесуального кодексу України в правоохоронну діяльність та навчальний процес: досвід та шляхи

following the regulatory provisions and guided by the results of the analysis of empirical data, to ascertain which grounds for commencing a criminal proceeding are typical during the investigation of criminal offenses related to raiding.

The commencement of a pre-trial investigation is linked to entering information into the Unified Register of Pre-trial Investigations (hereinafter referred to as URPI). Upon receiving a notification or request of raiding activities, or in the event of independently discovering such signs, it is essential to thoroughly gather information about the source from which the circumstances indicating the commission of a criminal offense have been uncovered. If it involves natural persons, it is necessary to collect their personal information, including details about their occupation, connections, and determine their awareness of the circumstances of the event they reported. Additionally, it is important to establish whether they were harmed by the event or reported it because of their own active public involvement.

The receipt of a request alleging a criminal offense against an individual is the most common reason for commencing a criminal proceeding based on signs of raiding. A significant number of these requests are received via mail and are submitted by the victim's representative: an attorney at law to whom the affected economic entity has turned. Thus, for example, the request by the victim's representative served as the basis for commencing a criminal proceeding investigated by the Horodyshchenskyi District Court of Cherkasy Region concerning the illegal seizure of property belonging to CHERKASY-DNIPRO AGRO LLC, including shares owned by its founders, accounting for 100% ownership collectively held by individuals S and K [14].

If information about raiding activities is obtained from another source, it also requires proper procedural documentation. For instance, when specific details are highlighted on social media during the monitoring of open sources, information can be recorded by examining computer data or compiling the Berkeley Protocol. We believe that such actions should be documented as required after the appropriate information is entered into URPI.

Information may also indicate that raiding is only in the planning stage, and certain persons are only involved in preparatory actions, while the actual socially dangerous act has not yet been committed. Legal literature suggests proposals for the mandatory verification of information regarding planned criminal offenses [15]. It is important to note that the current Criminal Procedure Code of Ukraine does not govern the procedure for conducting verification, and therefore, in our opinion, it should be carried out only after the relevant information has been entered into the Unified Register of Pre-trial Investigations (URPI). If the aforementioned grounds are refuted, the investigator, inquiring officer, or prosecutor will have all grounds to make a lawful and justified decision to close a criminal proceeding under clauses 1 or 2 of Part 1 of Article 284(1) of the Criminal Procedure Code of Ukraine, which will remain in force even during its appeal to the investigating judge.

удосконалення: матеріали наук.-практ. конф. (м. Харків, 05 квіт. 2013 р). Харків : Харків. нац. ун-т внутр. справ, 2013. С. 287-290.

[14] Вирок Городищенського районного суду Черкаської області від 29.05.2019 у справі № 691/540/19. Єдиний державний реєстр судових рішень : офіц. сайт. URL: https://reyestr.court.gov.ua/Review/82048005

[15] Гуртієва Л. М. Указана праця. С. 156.

Serhii Tiulieniev

EINLEITUNG EINES STRAFVERFAHRENS WEGEN RAZZIEN: BESONDERHEITEN UND PROBLEME

Die erfolgreiche Erledigung von Aufgaben in einem Strafverfahren wird maßgeblich von verschiedenen Faktoren beeinflusst, wobei die Maßnahmen der Staatsanwaltschaft eine entscheidende Rolle spielen. Es obliegt der Staatsanwaltschaft, Informationen über die begangene Straftat und die Beweise in einem Strafverfahren aufzuzeichnen. In Anbetracht der Komplexität dieser Aktivitäten, insbesondere bei Kategorien von Straftaten, die Vorbereitung, direkte Begehung und Verschleierung beinhalten, besteht der Zweck des Artikels darin, typische Gründe für die Einleitung eines Strafverfahrens zu klären. Er konzentriert sich auf Handlungen im Zusammenhang mit dem unrechtmäßigen Erwerb und der Beschlagnahme von Eigentum und Vermögenswerten von Unternehmen, Institutionen und Organisationen. Darüber hinaus zielt er darauf ab, identifizierte problematische Fragen anzugehen, die nach der Registrierung einer Straftat auftreten, und typische organisatorische und rechtliche Formen für die Aktivitäten der Staatsanwaltschaft in dieser Phase der strafrechtlichen Tätigkeit festzulegen. Nach theoretischer Analyse und Verallgemeinerung empirischer Daten wurde festgestellt, dass die Tätigkeit der Staatsanwaltschaft zu Beginn eines Strafverfahrens im Zusammenhang mit Razzien in zwei unterschiedlichen organisatorischen und rechtlichen Formen erfolgt: initiativ und funktional (Protokoll). Darüber hinaus wurden mehrere weitere Bestimmungen konkretisiert.

Schlüsselwörter: Razzia, Straftatenregister, Einleitung eines Strafverfahrens, wirtschaftliche Einheit, dringende Ermittlungs-(Durchsuchungs-)Maßnahmen, Verfahrenshandlungen.

Serhii Tiulieniev

OUVERTURE D'UNE PROCÉDURE PÉNALE LIÉE À UN RAID : PARTICULARITÉS ET PROBLÈMES

La réussite de l'exécution des tâches dans une procédure pénale est fortement influencée par divers facteurs, les actions du ministère public jouant un rôle central. Il incombe au ministère public d'enregistrer les informations sur l'infraction pénale commise et d'en apporter la preuve dans le cadre d'une procédure pénale. Compte tenu de la complexité de ces activités, en particulier dans les catégories d'infractions pénales impliquant la préparation, la commission directe et la dissimulation, l'objectif de l'article est de clarifier les motifs typiques pour l'ouverture d'une procédure pénale. Il se concentre sur les actes liés à l'acquisition et à la saisie illégales de biens et d'actifs appartenant à des entreprises, des institutions et des organisations. De plus, il vise à résoudre les problèmes identifiés qui surviennent après l'enregistrement d'une infraction pénale et à établir des formes organisationnelles et juridiques typiques pour les activités du ministère public au cours de cette étape de la procédure pénale. Après analyse théorique et généralisation des données empiriques, il a été déterminé que l'activité du ministère public au début d'une procédure pénale liée à un raid se déroule sous deux formes organisationnelles et juridiques distinctes : initiative et fonctionnelle (protocole). De plus, plusieurs autres dispositions ont été étayées.

Mots clés : perquisitions, enregistrement d'infractions pénales, ouverture d'une procédure pénale, entité économique, actions d'enquête (recherche) urgentes, actions procédurales.

Considering that the current legislation on criminal procedure stipulates a unique procedure for conducting criminal proceedings, such as conducting them in the form of private prosecution, it is necessary to delve into this issue in more detail. As set out in Part 4 of Article 26 of the CPC of Ukraine, "Criminal proceedings such as private prosecution shall be initiated only upon the request of the victim. Dropping charges by the victim or his/her representative in cases specified in this Code shall be the unconditional ground for closing criminal proceedings" [16]. In the context of our study, it should be noted that criminal offenses such as Making Bankrupt (Article 219 of the CC of Ukraine), Illegal Collection for the Purpose of Use or Use of Information that Constitutes Banking or Trade Secrets (Article 231 of the CC of Ukraine), Disclosure of Commercial, Banking or Professional Secrets on Capital Markets and Organised Commodity Markets (Article 232 of the CC of Ukraine), etc.) [17]. Therefore, for these crimes, the only basis for commencing a criminal proceeding is the victim's request, stating that a crime has been committed against him/her. This request must be filed within the statute of limitations for holding a person criminally liable for committing these crimes.

In legal practice, situations often arise when, during the pre-trial investigation of a criminal case, the investigator or prosecutor discovers evidence of another crime or another incident of criminal misconduct, which also requires legal assessment. It is essential that, when disjoining materials of a criminal offence (Article 217 of the CPC of Ukraine), the prosecutor explicitly states that copies of materials should also be provided when making this decision. These specifically designated materials are copies of procedural documents and will constitute the initial materials for a further criminal proceeding.

Another common reason for commencing a criminal proceeding in connection with raiding is voluntary reports of law enforcement agencies, including those from operational units, and less frequently, community police officers. If obtained information indeed contains details related to raiding, such information will be submitted for consideration to the head of the pre-trial investigation agency by a decision of the head of the respective police department or agency, who will decide whether to initiate a pre-trial investigation of a criminal offense and enter the information in the URPI [18].

Therefore, typical materials that may be considered sufficient to commence a criminal proceeding and provide a preliminary legal assessment of actions that are believed to have signs of raiding include:

- requests from victims—entrepreneurs, founders of economic entities regardless of their organizational and legal forms, or shareholders of the authorized capital of an economic entity—concerning actions of a raiding nature towards their assets;
- requests from heads or other authorized individuals—who are employed workers—regarding the commission of raiding actions concerning assets owned by the economic entity;
- notifications from representatives of enterprises, institutions, organizations, as

[16] Кримінальний процесуальний кодекс України : Закон України від 13.04.2012 № 4651-VI. Верховна Рада України: офіційний веб-портал. URL: http://zakon.rada.gov.ua/laws/show/-4651-17

[17] Кримінальний кодекс України: Закон України від 05.04.2001 №2341-III. Верховна Рада України: офіційний веб-портал. URL : https://zakon.rada.gov.ua/laws/show/2341-14#Text.

[18] Самойленко О. А. Указана праця. С. 228.

well as state registrars or notaries, regarding the submission for registration of an economic entity or for the registration of a specific legal transaction involving forged documents or documents with signs of forgery;

- notification from the Anti-Raider Office concerning identification of signs of committing a criminal offense related to raiding;

- independent identification by law enforcement agencies of signs indicating the commission of raiding actions, including during the investigation of other criminal offenses [19].

It is worth noting that, based on the analysis of investigative practices regarding the peculiarities of the initial stage of a criminal proceeding, O. A. Samoilenko has identified four distinct organizational and legal forms of commencing a criminal proceeding, including: 1) non-alternative; 2) alternative; 3) non-initiative; 4) initiative. The author identified that the non-alternative form of commencing a proceeding involves receiving a request or notification from an investigator on a committed criminal offense, which must be entered into the URPI within 24 hours. In the alternative form of commencing a proceeding, the investigator evaluates materials used to verify information from crime-related operational sources. In view of the author, the non-initiative form is implemented by the investigator through methodological support of operational search activities within the framework of an operational search case. The initiative form entails the investigator independently discovering evidence of another criminal offense during the pre-trial investigation of a criminal case that has already been assigned for investigation [20].

O. A. Samoilenko's approach is undoubtedly innovative, so we consider it necessary to apply it in the context of the criminal offenses we are investigating. Firstly, it should be noted that disjoining the non-initiative form does not entirely align with the current provisions of the Criminal Procedure Code of Ukraine. This is because the investigator is not directly involved with materials from operational-search activities, and identification of signs of a criminal offense or its preparation serves as the basis for commencing a criminal proceeding. Secondly, in our opinion, the initiative can be considered a form of initiating pre-trial investigation when signs of a criminal offense are independently identified by the investigator. Thus, within the scope of our inquiry, this could include situations where a criminal proceeding is initiated on the basis of the investigator's or prosecutor's review of the register of responses to complaints handled by the Anti-Raider Office. Given that the investigator independently identifies signs of a criminal offense during the pre-trial investigation and is obliged to initiate a pre-trial proceeding regarding the detected fact, it is difficult to agree that this is an initiative form. Thirdly, the alternative form, which requires mandatory commencement of a criminal proceeding, raises some doubts. In legal practice, it is not uncommon for the head of the pre-trial investigation body to review collected materials and, not finding signs of a criminal offense, conclude that the received request should be addressed according to the procedure set out in the Law of Ukraine On Citizens'

Serhii Tiulieniev

WSZCZĘCIE POSTĘPOWANIA KARNEGO ZWIĄZANEGO Z NAJAZDEM: SPECYFIKACJE I ZAGADNIENIA PROBLEMATYCZNE

Na pomyślną realizację zadań w postępowaniu karnym duży wpływ ma wiele czynników, przy czym kluczową rolę odgrywa działanie prokuratora. Obowiązkiem prokuratora jest utrwalanie informacji o popełnionym przestępstwie i przedstawianie jego dowodów w postępowaniu karnym. Biorąc pod uwagę złożoność tych czynności, zwłaszcza w kategoriach przestępstw polegających na przygotowaniu, bezpośrednim popełnieniu i zatajeniu, celem artykułu jest wyjaśnienie typowych przesłanek wszczęcia postępowania karnego. Koncentruje się na czynach związanych z nielegalnym nabywaniem i zajmowaniem mienia oraz majątku należącego do firm, instytucji i organizacji. Ponadto ma na celu rozwiązanie zidentyfikowanych problemów, które pojawiają się po zarejestrowaniu przestępstwa oraz ustalenie typowych form organizacyjno-prawnych działania prokuratury na tym etapie postępowania karnego. Po analizie teoretycznej i uogólnieniu danych empirycznych ustalono, że działalność prokuratury na początku postępowania karnego związanego z obławą odbywa się w dwóch odrębnych formach organizacyjno-prawnych: inicjatywnej i funkcjonalnej (protokole). Ponadto poparto kilka innych przepisów.

Słowa kluczowe: przeszukania, rejestracja przestępstw, wszczęcie postępowania karnego, podmiot gospodarczy, pilne czynności dochodzeniowo-śledcze (poszukiwawcze), czynności procesowe.

[19] Степанюк Р. Л. Сучасні криміналістичні засоби та методи протидії злочинності : навч. посіб. / Р. Л. Степанюк, В. О. Гусєва ; МВС України, Харків. нац. ун-т внутр. справ. Харків : ХНУВС, 2024. С. 142-143.

[20] Самойленко О. А. Указана праця. С. 228.

Appeals. Therefore, we believe that the initial stage of investigating a criminal case related to raiding can be manifested in two distinct organizational and legal forms, namely:

- in the initiative form, which involves independently establishing the commission of a criminal offense related to raiding, registering information about it in the URPI, and subsequently investigating the detected fact;
- in the functional (protocol) form, which presupposes that the prosecution, upon receiving a request or notification of the commission of a criminal offense, carries out actions prescribed by law, i.e., acts in accordance with defined functional duties.

Conclusions. Relying on the analysis of theoretical developments and empirical data synthesis, we consider the following to be typical grounds for commencing a criminal proceeding in connection with raiding:

- requests from victims—entrepreneurs, founders of economic entities regardless of their organizational and legal forms, or shareholders of the authorized capital of an economic entity, etc.—concerning actions of a raiding nature towards their assets;
- requests from heads or other authorized individuals—who are employed workers—regarding the commission of raiding actions concerning assets owned by the economic entity;
- notifications from representatives of enterprises, institutions, organizations, as well as state registrars or notaries, regarding the submission for registration of an economic entity or for the registration of a specific legal transaction involving forged documents or documents with signs of forgery or other actions aimed at implementation of criminal intent related to raiding;
- notification from the Anti-Raider Office concerning identification of signs of committing a criminal offense related to raiding;
- independent identification by law enforcement agencies of signs indicating the commission of raiding actions, including during the investigation of other criminal offenses.

In light of the nature of prosecution activity, we believe that commencing a criminal proceeding for raiding typically occurs in two distinct organizational and legal forms, namely:

- in the initiative form, which involves independently establishing the commission of a criminal offense related to raiding, registering information about it in the URPI, and subsequently investigating the detected fact;
- in the functional (protocol) form, which presupposes that the prosecution, upon receiving a request or notification of the commission of a criminal offense, carries out actions prescribed by law, i.e., acts in accordance with defined functional duties

References

Beschastnyi, V. M., Oderii, O. V. (2017). Vidkryttia kryminalnoho provadzhennia (teoretyko-prykladnyi aspekt). Protsesualne ta kryminalistychne zabezpechennia dosudovoho rozsliduvannia: zb. tez nauk.-prakt. seminaru (m. Lviv, 01 hrud. 2017 r.). Lviv : LvDUVS. S. 26-30. [in Ukrainian].

Cherniavskyi, S. S. (2016). Zakonodavche udoskonalennia pochatku kryminalnoho provadzhennia yak chynnyk pidvyshchennia efektyvnosti protydii zlochynnosti. Kryminolohichna teoriia i pratyka: dosvid, problemy sohodennia ta shliakhy yikh

vyrishennia: materialy nauk.-prakt. konf. (m. Kyiv, 26 berez. 2016 r.). Kyiv : NAVS. S. 32–36. [in Ukrainian].
Hurtiieva, L. M. (2017). Pochatok kryminalnoho provadzhennia Ukrainy ta stadii dosudovoho rozsliduvannia. *Pravova derzhava*. № 25. S. 155-159. [in Ukrainian].
Husieva, V. O. (2013). Osoblyvosti metodyky rozsliduvannia zlochyniv proty zhyttia ta zdorov'ia osoby. Vprovadzhennia novoho Kryminalnoho protsesualnoho kodeksu Ukrainy v pravookhoronnu diialnist ta navchalnyi protses: dosvid ta shliakhy udoskonalennia: materialy nauk.-prakt. konf. (m. Kharkiv, 05 kvit. 2013 r). Kharkiv: Kharkiv. nats. un-t vnutr. sprav. S. 287-290. [in Ukrainian].
Husieva, V. O. (2017). Osoblyvosti vidkryttia kryminalnoho provadzhennia i pochatkovoho etapu rozsliduvannia u zlochynakh proty pratsivnykiv. Aktualni pytannia kryminalnoho protsesu i kryminalistyky, udoskonalennia diialnosti sudovoi i pravookhoronnoi system: materialy Vseukr. nauk.-prakt. konf., prysviachenoi pam'iati profesora M. Y. Kurochky (m. Sievierodonetsk, 19 trav. 2017 r.). Sievierodonetsk. S. 186 – 189. [in Ukrainian].
Kryminalnyi protsesualnyi kodeks Ukrainy. URL: https://zakon.rada.gov.ua/laws/show/4651-1 [in Ukrainian].
Pohoretskyi, M. A. (2015). Pochatok dosudovoho rozsliduvannia: okremi problemni pytannia. *Visnyk kryminalnoho sudochynstva*. № 1. S. 93-103. [in Ukrainian].
Samoilenko, O. A. (2019). Pochatok kryminalnoho provadzhennia (z pozytsii kryminalistychnoi nauky). *Pravo i suspilstvo*. № 2. S. 226-231. [in Ukrainian].
Stepaniuk, R. L. (2024). Suchasni kryminalistychni zasoby ta metody protydii zlochynnosti : navch. posib. / R. L. Stepaniuk, V. O. Husieva ; MVS Ukrainy, Kharkiv. nats. un-t vnutr. sprav. Kharkiv : KhNUVS. 232 s. [in Ukrainian].
Stolitnii, A. V. (2015). Pochatok dosudovoho rozsliduvannia: pravova pryroda, rehlamentatsiia ta mezhi prokurorskoho nahliadu. *Pravo i suspilstvo*. № 4 (3). S. 200-206. [in Ukrainian].
Toporetska, Z. M. (2015). Osoblyvosti pochatku kryminalnoho provadzhennia po faktakh zainiattia hralnym biznesom. *Visnyk kryminalnoho sudochynstva*. № 1. S. 127-132. [in Ukrainian].
Vakulik, O. A. (2013). Reformuvannia kryminalnoho protsesualnoho zakonodavstva v chastyni rehlamentatsii pochatku dosudovoho rozsliduvannia. *Naukovyi visnyk Natsionalnoi akademii vnutrishnikh sprav*. № 4. S. 160-166. [in Ukrainian].
Vyrok Horodyshchenskoho raionnoho sudu Cherkaskoi oblasti vid 29.05.2019 u spravi № 691/540/19 // Yedynyi derzhavnyi reiestr sudovykh rishen : ofits. sait. URL: https://reyestr.court.gov.ua/Review/82048005. [in Ukrainian].
Zhuravel, V. A. (2015). Pochatok dosudovoho rozsliduvannia: deiaki protsesualni ta orhanizatsiino-taktychni problemy. *Visnyk Luhanskoho derzhavnoho universytetu vnutrishnikh sprav imeni E.O. Didorenka*. № 1. S. 250-259. [in Ukrainian].

Received by Editorial Board: 26.02.2024

Suggested Citation:
Tiulieniev, S. (2024). Commencement Of A Criminal Proceeding Related To Raiding: Peculiarities And Problematic Issues. *Archives of Criminology and Forensic Sciences*. 1 (9). 28-35. DOI: https://doi.org/10.32353/acfs.9.2024.01