

VIOLATION OF THE PROCEDURE FOR OBTAINING RELIABLE EVIDENCE, WHICH HINDERS THE WORK OF THE TEMPORARY INVESTIGATIVE COMMISSIONS OF THE VERKHOVNA RADA OF UKRAINE

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The published article is determined for studying such a question as the crimes against the procedure for obtaining reliable evidence, which interferes with the activities of the temporary investigative commissions of the Verkhovna Rada of Ukraine. The suggested article includes observing such a question as realization an investigation by temporary investigative commissions of the Verkhovna Rada of Ukraine is one of the leading forms of parliamentary control in Ukraine. The article produces such notions as the temporary investigative commission, the lawful procedure for obtaining reliable evidence, crimes against justice, witness's testimonies, obligation of a witness to testify to the temporary investigative commission. The main attention is given to the methods of obstruction of the investigation of the temporary investigative commission, which are used by the witnesses. The key note concerns such issues as qualification of a witness's refusal to testify by a temporary investigative commission of the Verkhovna Rada of Ukraine as disrespect for the Verkhovna Rada of Ukraine. This study is an original proposal to solve the current problem of criminal law protection of the legal procedure for conducting an investigation by a temporary investigative commission of the Verkhovna Rada of Ukraine.

Keywords: temporary investigative commission, parliamentary control, crimes against justice, witness's testimonies, emergency, parliamentary investigation.

ÎNCĂLCAREA PROCEDURII DE OBȚINERE A PROBELOR VERIDICE, CE ÎMPIEDICĂ ACTIVITATEA COMISIILOR TEMPORARE DE ANCHETĂ ALE RADEI SUPREME A UCRAINEI

Prezentul articol este dedicat studiului problemei privind infracțiunile penale ce încălcă procedura obținerii dovezilor certe împiedicând activitățile Comisiilor temporare de anchetă din cadrul Radei Supreme din Ucraina. Studiul include examinarea problemei anchetării de Comisiile temporare pentru investigație în cadrul Radei Supreme a Ucrainei ca una dintre principalele forme de control parlamentar. Autorul utilizează concepte precum: comisie temporară de anchetă, procedură legală pentru obținerea probelor certe, infracțiuni contra justiției, probe testimoniale, obligația martorului de a face declarații (mărturii) în fața Comisiei temporare de anchetă. O atenție deosebită se acordă modalităților de obstrucționare a cercetării Comisiei temporare de anchetă, care sunt utilizate de martori. Ideea principală a articolului se referă la problema calificării refuzului unui martor de a răspunde în Comisia temporară de anchetă a Radei Supreme a Ucrainei drept lipsă de respect față de organul legislativ suprem a Ucrainei. În articol este prezentată soluția autorului privind problema protecției dreptului penal în proceduri legale pentru desfășurarea investigațiilor de către Comisia temporară de anchetă a Radei Supreme din Ucraina.

Cuvinte-cheie: comisie temporară de anchetă, control parlamentar, infracțiuni contra justiției, probe testimoniale, urgență, anchetă parlamentară.

VIOLATION DE LA PROCÉDURE D'OBTENTION DE PREUVES FIABLES, QUI ENTRAVENT L'ACTIVITÉ DES COMMISSIONS TEMPORAIRE D'ENQUÊTE DU VERKHOVNA RADA D'UKRAINE

L'article publié est consacré à l'étude de la question telle que les infractions pénales contre la procédure d'obtention de preuves fiables entravant les activités des commissions temporaires d'enquête de la Verkhovna Rada de l'Ukraine. Cet article inclut l'examen de la question telle que l'enquête sur les commissions temporaires d'enquête de la Verkhovna Rada de l'Ukraine comme l'une des principales formes de contrôle parlementaire en Ukraine. L'article prévoit des concepts tels que la commission temporaire d'enquête, la procédure légale pour l'obtention des preuves fiables, les infractions pénales contre la justice, la déposition de témoins, le devoir d'un témoin de témoigner à la commission temporaire d'enquête. L'attention principale est portée sur les méthodes d'entrave à l'enquête de la commission intérimaire d'enquête, utilisées par les témoins. L'idée principale de cet article concerne la question telle que la qualification du refus du témoin de témoigner par la commission temporaire d'enquête de la Verkhovna Rada de l'Ukraine comme le manque de respect pour la Verkhovna Rada de l'Ukraine. Cet article présente la solution de l'auteur au problème moderne de la protection par le droit pénal de la procédure légale pour mener l'enquête par la commission temporaire d'enquête de la Verkhovna Rada de l'Ukraine.

Mots-clés: commission temporaire d'enquête, contrôle parlementaire, infractions pénales contre la justice, témoignage, urgence, enquête parlementaire.

НАРУШЕНИЕ ПОРЯДКА ПОЛУЧЕНИЯ ДОСТОВЕРНЫХ ДОКАЗАТЕЛЬСТВ, ПРЕПЯТСТВУЮЩИХ ДЕЯТЕЛЬНОСТИ ВРЕМЕННЫХ СЛЕДСТВЕННЫХ КОМИССИЙ ВЕРХОВНОЙ РАДЫ УКРАИНЫ

Данная статья посвящена исследованию вопроса криминальных правонарушений против порядка получения достоверных доказательств, которые препятствуют деятельности временных следственных комиссий Верховной Рады Украины. Анализ охватывает рассмотрение такого вопроса как расследования временных следственных комиссий Верховной Рады Украины как одна из главных форм парламентского контроля. В статье приводятся такие понятия как временная следственная комиссия, законный порядок получения достоверных доказательств, криминальные правонарушения против правосудия, свидетельские показания, обязанности свидетеля дать показания временной следственной комиссии. Главное внимание уделяется способам препятствования расследованию временной следственной комиссии, которые используют свидетели. Основная идея статьи касается вопроса квалификации отказа свидетеля от дачи показаний временной следственной комиссии Верховной Рады Украины как неуважение к Высшему законодательному органу страны. Статья представляет также авторское решение современной проблемы уголовно-правовой охраны законного порядка проведения расследования временной следственной комиссией Верховной Рады.

Ключевые слова: временная следственная комиссия, парламентский контроль, криминальные правонарушения против правосудия, свидетельские показания, чрезвычайная ситуация, парламентское расследование.

Introduction

The protection of the administration of justice is one of the most important and priority tasks of the criminal legislation of most countries. After all, it is justice that ensures in the state the principle of equality of all citizens before the law and suppresses violations of the law, regardless of the social status

of the offender in society. Therefore, one of the most important tasks of criminal law is the protection of justice from unlawful encroachments, both on the part of officials and persons who do not belong to them, but at the same time are participants in the process. Responsibility for crimes (criminal offenses) against justice is provided in both the Criminal Code of Ukraine [1] and in the Criminal

Code of the Republic of Moldova [2]. The norms that provide for punishment for crimes (criminal offenses) against justice determine punishments for encroachments on the normal activities of not only the judiciary, but also bodies that contribute to the procedural activities of the court in the performance of the function of justice (prosecuting authorities, inquiry), as well as bodies that execute sentences, decisions and other court decisions handed down by the courts [3, p. 145].

Due to the complexity and magnitude of the concept of “justice”, the rules providing for liability for crimes against justice can be divided into several groups. One of these groups includes articles establishing criminal liability for crimes against justice, which are expressed in violation of the procedure for obtaining reliable evidence and establishing objective truth in a case. In the Ukrainian Criminal Code (hereinafter referred to as the Criminal Code of Ukraine), this group includes accidents: a knowingly unreliable evidence, a knowingly unreliable conclusion of an expert, a knowingly unreliable translation of a translator, qualifies as a criminal offense, which is provided for in Article 384; refusal of the witness to give reveals or the refusal of the expert or translator to fulfill the obligations assigned to him/her, qualifies as a criminal offense, which is provided for in Article 385; obstructing the appearance of a witness, victim, expert, forcing them to give findings or a conclusion that qualifies as a criminal offense, which is provided for in Article 386 [1].

Dispositions of criminal offenses, which are provided for in Articles 384, 385, 386 of the Criminal Code of Ukraine [1] are formulated in such a way that they cover criminal acts that violate the lawful procedure for the administration of justice in all cases of pre-trial investigation. The list of entities

that conduct pre-trial investigations given in these dispositions includes the bodies that conduct pre-trial investigations, as well as, since 2019, temporary investigative commissions and special temporary commissions of the Verkhovna Rada of Ukraine (hereinafter referred to as the VRU).

In democratic countries, parliamentary investigations are a mechanism for monitoring and preventing abuses and errors in the implementation of public policy, and identifying other problematic issues in public life. In European countries (Belgium, Great Britain, the Netherlands, France, etc.), the functioning of the institution of parliamentary investigations takes place in the form of activities of temporary investigative commissions, less often investigative committees [4, pages 4-5]. A common reason for the formation of temporary commissions of inquiry is the desire to separate the process of investigation necessary in a particular situation and the implementation of a particular policy. An analysis of the practice of democratic countries allows us to state the importance of the institution of temporary investigation commissions in the system of public administration. Temporary investigative commissions are created at the moment of actualization of certain problems of public importance and / or aggravation of problems that cause public concern. Often the task of these commissions is to establish the causes of a certain critical and / or threatening situation and develop a set of recommendations (including legislative ones) for its immediate elimination. One of the main reasons for the introduction of the institution of temporary investigative commissions in the political systems of democratic countries is the problem of corruption and the specific features of the investigation of corruption cases due to its nature (backroom agreements, the secret nature of making public decisions, the inaccessibili-

ty of the perpetrators for punishment). Often the perpetrators of illegal acts may have political and economic influence that will allow them to avoid negative consequences from the investigation conducted by law enforcement agencies. In this case, one of the most effective ways to collect the necessary information is to assign this task to a temporary commission of inquiry. Thus, the institution of temporary investigation commissions is an effective and tested in European practice tool for investigating and developing options for solving the most pressing problems of public importance [4, p. 11].

In Ukraine, the institution of temporary investigative commissions is embodied in the so-called temporary investigative commissions of the Verkhovna Rada, special temporary commissions of the Verkhovna Rada, special temporary investigative commissions of the Verkhovna Rada. All of them are collegiate provisional bodies of the Verkhovna Rada, which are created by decree of the Verkhovna Rada, people's deputies of Ukraine are recruited into their main structure, they operate within 6-12 months from the date of their creation. The commission differs in its purpose: the task of the Temporary Investigative Commissions of the VRU - the exercise of parliamentary control through the investigation of issues of public interest; the task of the Special Temporary Commissions of the VRU - preparation, Preliminary consideration and finalization of draft laws and other acts of the Supreme Court, if the subject matter of the legal regulation of such drafts does not belong to the subjects under the competence of the committees of the Supreme Court; except when the VRU establishes a special commission as the main committee to work on the draft law on amendments to the Constitution of Ukraine [5]; task of special temporary commissions of inquiry of the VRU -

preparation for impeachment of the President of Ukraine [6]. The activity of these commissions for a long time was regulated by vague instructions in the Regulation of the VRU [7] and actually was in the grey zone” of enforcement. On December 19, 2019, Law of Ukraine No. 400-IX “On Temporary Investigative Commissions and Special Temporary Commissions of the Verkhovna Rada of Ukraine» [5] was adopted, which clearly regulated the powers and procedures for the work of these commissions. Since then, the VRU has dramatically stepped up its efforts to establish and make use of temporary commissions of inquiry, and consequently, the question of the criminal-legal protection of the legal working procedures of the temporary commissions of inquiry of the Investigative Commission of the VRU has been on the agenda.

In accordance with paragraphs 4, 5 part 1 article 12, part 1, article 19 of the aforementioned law, the commissions of inquiry have the right to invite persons as witnesses to give evidence or explanations, as well as experts or translators, while these persons are warned in writing about criminal liability for: knowingly false testimony, knowingly untruthful conclusion of an expert, knowingly wrong translator's translation; refusal of a witness to testify; the refusal of an expert or an interpreter to fulfill the obligations assigned to him/her without good reason [5], therefore, these acts are considered by the aforementioned law to be the most dangerous violations of the lawful procedure for the work of temporary investigation commissions.

The vigorous activity of temporary investigation commissions in Ukraine currently determines the relevance of the review of violations of the procedure for obtaining reliable evidence, which hinders the activities of temporary investigation commissions of the Verkhovna Rada.

This article does not study the activities of the special temporary investigative commission of the VRU, due to the lack of creation and activities of such a commission in the history of Ukraine.

In this review, the author used the logical method, the method of semantic analysis, as well as the comparative legal method.

Violation of the procedure for obtaining reliable evidence, which hinders the activities of the temporary investigation commissions of the VRU, is currently a little-studied problem that has not managed to attract the attention of scientists in 2020-2021. In 2021, Doctor of Law O. Zozulya studied the temporary investigative commissions of the VRU without affecting the protection of their activities [8]. As a result of the review of modern legal literature, the author is forced to state that the problem of criminal law protection of the activities of temporary investigation commissions of the VRU is still waiting for its researcher.

International experience in the work of parliamentary investigative bodies (investigative commissions and/or investigative committees)

The principles generally accepted in the democratic world for the functioning of temporary investigative commissions are as follows: 1) the commission must adhere to the deadlines for its activities prescribed by law; 2) the commission must conduct the investigation in the most efficient and cost-effective way; 3) the commission must adhere to the principles of objectivity; 4) the commission must adhere to the requirements of secrecy until the official decision on the publication of the results of the commission's investigation; 5) the commission must draw rational and justified conclusions based on its own investigation; 6) the commission must avoid legal errors; 7) the report prepared by the commis-

sion should be comprehensive and cover all aspects of the studied problem [4, p. 5-8].

The European Parliament has the authority to create an investigative committee to investigate controversial issues or incorrect implementation of Commonwealth law in accordance with Article 193 of the Treaty on the European Union [9]. In the Kingdom of the Netherlands, since 2002, the Lower House of the State Parliament has its own investigative unit - the Investigative Office [4, p. 2]. In the Republic of Moldova, according to Part 1 of article 35 of the Rules of Procedure of the Parliament, at the request of a parliamentary faction or a group of deputies comprising at least 5% of the elected deputies, the Parliament may adopt a resolution on the establishment of an investigative commission by a majority of votes of the present deputies [10]. In accordance with article 36 of the Rules of Parliament [10] the commission of inquiry calls as a witness any person who has information about any fact or circumstance who can assist in the investigation of the case and any person who has any evidence or has any means of evidence, is obliged to present them to the commission at its request. Institutions and organizations are required by law to assist the commission of inquiry. But the investigative commission cannot summon representatives of the judiciary, the prosecutor's office and the criminal prosecution authorities to present information that could harm the correctness of the consideration of cases in court and / or the secrecy of criminal prosecution.

Crimes against the procedure for obtaining reliable evidence and establishing objective truth in a case in the Criminal Code of the Republic of Moldova

In the Criminal Code of the Republic of Moldova, criminal law protection of the pro-

cedure for obtaining reliable evidence and establishing objective truth in the case is devoted to: Article 312 “False testimony, conclusion or incorrect translation”, it provides criminal liability for knowingly false testimony of a witness or victim, or specialist or expert opinion, knowingly incorrect translation of an interpreter in a civil case, criminal proceedings, proceedings on offenses or consideration of a case in an international court; article 313 “Refusal or evasion of a witness or a victim from giving evidence”, it provides criminal liability for refusal or evasion of a witness or a victim from giving evidence in the course of a criminal prosecution or during a trial; article 314 “Inducement to give false testimony, false conclusion, improper translation”, it provides for criminal liability for causing a witness, a victim to give false testimony, an expert to give false conclusion, translator to perform incorrect translation [2]. Unfortunately, the investigation of the commission of inquiry is not mentioned among the processes protected by these articles.

Legislated procedure for the work of temporary investigative commissions of the VRU

In accordance with article 12 of the Law of Ukraine “On temporary investigative commissions and special temporary commissions of the Verkhovna Rada of Ukraine”, the temporary investigative commission has the right to: receive all information, documents, materials necessary for its activities from state authorities and / or local governments, their officials and employees, enterprises, institutions, organizations, regardless of their form of ownership, to get acquainted with the documents that relate to the subject of the investigation, receive copies of them, if necessary, seize them, and in the case when the-

se documents are needed by the bodies that conduct a criminal investigation - seize their copies, invite persons for give evidence and/or explanations on issues that are being investigated by the investigative commission, listen to them at meetings of the investigative commission, put questions to them, receive testimony and/or explanations from them about the circumstances that are being investigated, except as otherwise provided by law, to decide on the involvement of experts and specialists in the work of the commission of inquiry, invite them to meetings of the commission of inquiry, appoint examinations, seek assistance from state authorities and / or local self-government, other state bodies, their officials, heads of enterprises, institutions, organizations, public associations that are obliged to assist the investigative commission in its investigation, to involve in the investigation employees of the prosecutor's office of Ukraine, the SSU, the Ministry of Internal Affairs of Ukraine with the consent of their leaders [5]. In accordance with Article 17 of the Law of Ukraine “On Temporary Investigation Commissions and Special Temporary Commissions of the Verkhovna Rada of Ukraine”, a member of the temporary investigative commission takes part in the meetings of this commission, visits without hindrance upon presentation of a certificate of a People's Deputy of Ukraine and instructions from the investigating commission to clarify issues related to investigation, any enterprises, institutions, organizations on the territory of Ukraine, receives, on behalf of this commission, written or oral explanations from officials of state authorities and / or local authorities, heads of enterprises, institutions, organizations, regardless of their form of ownership, public organizations and individual citizens, receives, on behalf of the commission of inquiry, originals or copies of

documents, including those containing state secrets, from these persons [5].

In accordance with Article 13 of the Law of Ukraine “About Temporary Investigative Commissions and Special Temporary Commissions of the Verkhovna Rada of Ukraine” Temporary Investigative Commission is obliged to: conduct punctures and transcripts of its sittings, collect information, evidence, explanations, documents, materials, to study them, to keep in accordance with the established procedure the entry and exit documents of the commission of inquiry, on the basis of a comprehensive analysis of the circumstances studied, to prepare conclusions and proposals for submission to the Constitutional Court for consideration and proposals for draft acts of the VRU on the basis of their consideration; to report to the VRU on the progress and results of the investigation in accordance with the deadlines and tasks assigned to it by the VRU, and, upon completion of its work, to transmit all minutes and transcripts of meetings to the relevant units of the Office of the VRU; other materials of the Commission of Inquiry, its conclusions and proposals, if the materials of the Commission of Inquiry are transmitted to the General Prosecutor’s Office of Ukraine, the corresponding structural units of the apparatus of the VRU receive their copies [5].

According to article 19 of the Law of Ukraine “On temporary investigative commissions and special temporary commissions of the Verkhovna Rada of Ukraine” officials and officers of public authorities and / or local authorities, heads of enterprises, institutions, organizations, regardless of their form of ownership, public organizations and individuals are required to appear at the invitation of the Commission of Inquiry and give truthful testimony and / or explanations about the circumstances known to them, on issues

related to the subject of the investigation, in the manner prescribed by law. A person who gives evidence and/or explanations as a witness is warned in writing about criminal liability for knowingly untruthful testimony or refusal to testify, and this person is also obliged to answer questions that relate to the subject of the investigation, and, if necessary, state his/her testimony in writing and/ or explanations and they will be added to the minutes of the meeting of the commission of inquiry. If the invited person did not come to the meeting of the investigative commission without valid reasons, then the investigative commission may decide on the application of the procedure for forced bringing to such a person by the forces of the National Police [5]. In accordance with article 20 of the Law of Ukraine “On temporary investigation commissions and special temporary commissions of the Verkhovna Rada of Ukraine”, members of the temporary investigation commission conduct an investigation by checking the facts and circumstances both directly at the places of their occurrence, and by requesting documents, obtaining testimony and / or explanations [5].

It must be pointed out that, in accordance with paragraph 2 of part 4 of article 4 of the Law of Ukraine “On temporary investigative commissions and special temporary commissions of the Verkhovna Rada of Ukraine”, the temporary investigative commission cannot establish the presence or absence of guilt in the commission of a criminal offense [5]. If the temporary investigative commission discovers clear signs of a criminal offense, the temporary investigative commission, when drawing up for the VRU a report on the investigation done with a reasoned conclusion and proposals, includes a proposal to send the report to the Ministry of Internal Affairs of Ukraine, the National Police of Ukraine,

the SSU, the State Bureau of Investigation to verify the stated information and taking measures to respond to violations of the law, then the VRU, after processing the report of the temporary investigative commission, adopts a resolution in which it confirms the above proposal.

From a brief review of the procedure for the work of temporary investigation commissions of the VRU, it follows that obtaining testimony and / or explanations from officials and officials of state authorities and / or local authorities, heads of enterprises, institutions, organizations, regardless of their form of ownership, public organizations and individual citizens on the subject of the investigation is one of the key tools of the work of the temporary investigative commission, the success of the investigation depends on its unhindered and maximum active use. Witnesses knowingly giving false testimonies and/or refusing to testify can create significant difficulties in conducting an investigation by a temporary commission of inquiry. Therefore, the legal procedure for obtaining testimony by the temporary investigative commission during the work of the temporary investigative commission needs criminal legal protection, which is provided by article 384, 385, 386 of the Criminal Code of Ukraine [1] according to their dispositions. It is worth paying attention to the easiest way to violate the legal procedure for obtaining testimony by a temporary commission of inquiry during the work of a temporary commission of inquiry - the refusal of a witness to testify without good reason, which qualifies under part 1 of article 385 of the Criminal Code of Ukraine [1]. This act is characterized by two signs - the action in the form of a witness refusing to testify without good reason and the time the act was committed - during the investigation of the temporary investigative commission. Also, such an

act is characterized by the direct intent of the witness, who understands that he/she evades testifying, but does so for his/her own personal reasons. This tactic of obstructing the investigation of the interim Commission of Inquiry can be resorted to by high-ranking officials, on whose testimony the progress of the investigation depends. The above conclusions are confirmed by the practice of Temporary Investigative Commissions, which will be discussed below.

Violation of the procedure for obtaining reliable evidence in the practice of the temporary investigative commission

In 2020, an emergency situation developed on the territory of Ukraine in the Luhansk region in the form of two waves of large-scale fires that occurred in July and September-October 2020. In July 2020, 1,500 hectares of forest burned out in the Severodonetsk forestry, which is 4% of all forests in the Luhansk region, the State Forest Agency estimated the losses from the fire at 4-5 billion UAH. [11]. In September-October 2020, forest fires in the Severodonetsky district of the Luhansk region burned 12,000 hectares of forest [12], while the fire spread to settlements: the villages of Kapitanovo, Sirotino, the village of Voronovo almost completely burned down, more than 100 houses were destroyed by fire [12], 17 people died in the fire [13, p.9]. Luhansk region received 185 million UAH from the budget to help the victims alone, not counting other expenses for the liquidation of the natural disaster [12]. A natural disaster of this magnitude caused a wide public outcry and the VRU had to apply the mechanisms of parliamentary control to find out the reasons for the current situation.

In accordance with the Decree of the VRU No. 1047-IX dated December 2, 2020, a temporary investigative commission of the VRU

(hereinafter referred to as the commission) was created, consisting of 8 People's Deputies of Ukraine to investigate the causes of large-scale fires in 2020 in the Luhansk region and the actions / inaction of the Luhansk regional Department of the State Service of Ukraine for Emergency Situations and the Luhansk Regional State Administration - Luhansk Regional Civil-Military Administration regarding the timely regulation of the occurrence and prevention of occurrence of emergency incidents for a period of 6 months from the date of the commission's creation [14].

People's Deputy of Ukraine Gorbenko R.A. was elected as the head of the commission. In accordance with the Resolution of the VRU of December 2, 2020 No. 1047-IX the Commission was entrusted with the following tasks: 1) finding out the real reasons for the outbreak of mass fires in 2020 on the territory of the Luhansk region, controlled by the Ukrainian authorities; 2) studying the effectiveness of managerial decisions of the Luhansk Regional Department of the State Emergency Service of Ukraine and the Luhansk Regional State Administration - the Luhansk Regional Civil-Military Administration in organizing the process of localization and firefighting, evacuation of citizens; 3) investigation of the facts of abuses, actions/inaction of the leadership of the Luhansk Regional Department of the State Emergency Service of Ukraine, the leadership of the Luhansk Regional State Administration - the Luhansk Regional Military-Civilian Administration to implement precautionary measures after the fire in July 2020, which would make it impossible to spread to large territories of not only forests but also settlements; 4) establishing circumstances, collecting information and obtaining explanations from citizens, enterprises, institutions, organizations, central and local state authorities and local self-government and

their officials involved in activities that are related to the subject of the commission's investigation; 5) initiating the issue of bringing the perpetrators to justice in accordance with the legislation of Ukraine [14].

During the period of the commission's work, 12 meetings were held, in particular 2 field meetings in the Luhansk region (in Severodonetsk on December 21, 2020 and in the settlement of Sirotino on March 11, 2021) [13, p. 7].

It is expected that the main method of collecting information for the commission was to obtain testimony from persons involved in the subject of the investigation, mainly officials. With this, the commission immediately began to have serious difficulties. On December 21, 2020, at an off-site meeting of the commission in the city of Severodonetsk, the head of the Luhansk Regional State Administration, the Luhansk Regional Military-Civilian Administration Gaidai S.V., who was invited to testify on the subject of the investigation, refused to answer the questions of the members of the commission and arbitrarily left the meeting, which was regarded by the commission as a failure to fulfill its legal requirements [13, p. 7]. It is obvious that the commission regarded the actions of Gaidai S.V. as a violation of the provisions of part 2 of article 19 of the Law of Ukraine "On temporary investigation commissions and special temporary commissions of the Verkhovna Rada of Ukraine" [5]. If we evaluate these actions from the point of view of criminal law, then there is a refusal of the witness to testify without good reason, since such reasons would have been noted by the commission in its report. The absence of evidence from Gaidai S.V. prevented the further work of the commission, and the commission made a second attempt to obtain evidence - on December 24, Gaidai S.V. was summoned by an agenda for

a meeting of the commission, which was held in Kyiv on December 30, 2020 from 13-00 to 15-30. However, Gaidai S.V. did not come to the meeting, referring to the letter he received dated December 28, 2020 No. 5271 / 0 / -20 about holding meetings on December 29-30 in the government house under the leadership of the Vice Prime Minister of Ukraine Reznikov O.Y. At the same time, Gaidai S. V. did not propose to the commission to consider the possibility of his arrival at this meeting not at 13-00, as he was called, but at another time during the meeting. Therefore, at the meeting of the commission, it was unanimously decided to re-summon Gaidai S.V. to hear and receive written and oral evidence and explanations on issues within the competence of the commission and about his absence at the meeting of the commission on December 30, 2020 [13, p. 7]. Let us pay attention to the fact that the official reason for summoning Gaidai S.V. was the hearing and receipt of his written and oral testimony on issues within the competence of the commission, therefore, this decision confirmed that Gaidai S.V. had the status of a witness in the investigation of the commission. On January 15, 2021, Gaidai S.V. announced in a letter No. 01. 01-09-172 that he would take part in the meeting on January 28, 2021 at 16-00 via videoconference [13, p. 7]. Since, according to the law and in practice, commission meetings are never held via videoconference, from the point of view of Ukrainian criminal law, this is a refusal of a witness to testify without good reason. Only after the direct appeal of the commission to the Prime Minister of Ukraine regarding the behavior of Gaidai S.V., was Gaidai S.V.'s appearance ensured to attend the meeting of the commission on January 25, 2021 [13, p. 7]. Thus, there is an obstacle to the work of the commission in the form of the repeated refusal of the wit-

ness to testify, which delayed the work of the commission for about a month and which the commission could not bypass by simply refusing to receive the testimony of the witness because of the importance of the testimony. It should be noted that from the point of view of Ukrainian Criminal Law, the refusal of a witness to testify without good reason is qualified as a criminal offense, which is provided for by part 1 of article 385 of the Criminal Code [1].

In the course of further investigation, the Commission found that in violation of the requirements of article 4 of the Law of Ukraine “On Military-Civil Administrations” [15] and article 71, 75, 76 of the Civil Defense Code of Ukraine [16] Head of the Luhansk Regional State Administration - Luhansk Regional Military-Civil Administration Gaidai S. V. in the periods from August 6, 2020 to July 14, 2020 and from September 30, 2020 to October 5, 2020 (i.e. at the immediate time of the disaster) did not appoint a disaster manager to establish a regional disaster management headquarters for emergency response [13, p. 9]. In accordance with Ukrainian legislation, due to his official status, Gaidai S.V. also holds the post of head of the regional commission for technological and environmental safety and emergency situations. The commission of inquiry found that, in violation of the norms of Ukrainian legislation, the head of the aforementioned regional commission did not ensure the organization of measures to eliminate the consequences of the emergency. In violation of the requirements of paragraphs 11, 12, 17, 22 of the Procedure for evacuation in case of a threat of occurrence or an emergency situation, approved by the Resolution of the Cabinet of Ministers of Ukraine No. 841 dated October 30, 2013 [17], part 6 of article 33 of the Code of Civil Defense of Ukraine [16], the head of the Luhansk Regio-

nal State Administration - the Luhansk Regional Military-Civilian Administration Gaidai S. V. did not organize the evacuation of the population during an emergency. As a result, on September 30, 2020 in the town Sirotino and the village of Voronovo during the fire burned 11 people who could not evacuate on their own [13, page 9].

The commission's investigation could not have been successful without establishing the facts described above. These facts could not be established by the commission without obtaining evidence from Gaidai S.V., and their importance explains the reasons for the repeated refusal of witness S.V. Gaidai to testify.

The Provisional Commission of Inquiry, in its report on the investigation for the VRU, proposed to consider the resignation of Gaidai S. V. from the post of Head of the Luhansk Regional State Administration - Luhansk Regional Military and Civil Administration on the basis of paragraph 1. 1 article 9 of the Law of Ukraine "On Local Administrations" taking into account the features of paragraph 1.4 article 6 Law of Ukraine "On Military-Civil Administrations" in connection with its violation of the laws of Ukraine [13, p. 11]. Since the Provisional Commission of Inquiry does not have the power to establish whether or not there is a criminal offence, it requested the Head of the Commission of Inquiry to send the report of the Interim Commission of Inquiry to the Office of the Attorney General, The SBU, the National Police, the State Bureau of Investigation to verify the information contained therein and to respond to violations of the law [13, p. 11]. After processing the report of the Interim Investigation Commission, the VRU adopted Resolution 1529-IX of June 3, 2021 [18], in which it supported the above-mentioned proposals of the Commission. Currently, Ukrainian law enforcement

agencies are engaged in a pre-trial investigation of the activities of Gaidai S. V. during emergencies in July and September-October 2020.

Conclusions

Due to the incomplete pre-trial investigation, the author does not make a final determination as to the qualification of Gaidai S. V. However, the example of the investigation of the Provisional Commission of Inquiry described above demonstrates the importance of respecting the legal procedure for obtaining testimony during the work of the Interim Commission of Inquiry, as well as the difficulty for the Provisional Commission of Inquiry to overcome such artificial obstacles to its investigation. This is partly due to the high-ranking status of the persons speaking as witnesses, their deep knowledge of the procedure for conducting an investigation, a brief, limited resolution of the VRU on the establishment of a temporary commission of inquiry for the duration of the investigation by this commission. If the "dangerous" time of the work of the temporary investigative commission is kept "silent", then this will allow avoiding responsibility for miscalculations and violations of laws in their official activities. From the point of view of international institutions of parliamentarism, such behavior of a witness is unequivocally assessed as disrespect for the parliament and should be punished not just as an obstacle to the investigation, but as a demonstration of disrespect for the legislature of their country. Therefore, in the event that a witness or an expert or translator commits what is described in the disposition of article 385 of the Criminal Code of Ukraine [1] of a criminal act during the investigation of the temporary investigative commission, this act should be considered directed against the authority

of the state power of Ukraine. Therefore, it would be logical to toughen the punishment for this act. Since the disposition of part 1 of article 385 of the Criminal Code of Ukraine [1] does not separately single out the criminal act of a witness, expert, translator during the investigation of the temporary investigative commission and it will be necessary to create a new part of this article of the Criminal Code of Ukraine in order to save time and effort when creating a new edition of Article 385 of the Criminal Code of Ukraine [1], we propose to supplement the sanction of Part 1 of Art. 385 of the Criminal Code of Ukraine [1] with a new alternative type of punishment that will be applied in the event of a criminal act committed by a witness, expert, translator during the investigation of the temporary commission of inquiry, as the most severe version of this act. According to the sanction of Part 1 of Art. 385 of the Criminal Code of Ukraine, all described in the disposition of Part 1 of Art. 385 of the Criminal Code of Ukraine, criminal acts are punishable by a fine of 50 to 300 non-taxable minimum incomes of citizens or arrest for up to 6 months [1]. When tightening the sanction, a more severe type of punishment should be chosen than arrest, and in accordance with Art. 50 of the Criminal Code of Ukraine [1] such type of punishment, which is next in severity after arrest, is restriction of freedom.

The proposed wording of the sanction, Part 1, Art. 385 of the Criminal Code of Ukraine [1] will be as follows: “punishable by a fine of 50 to 300 non-taxable minimum incomes of citizens or arrest for up to 6 months or restriction of liberty for 1 year.”

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