

PECHERSKYI DISTRICT COURT OF KYIV

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Registration № 757/4597/20-c

Attorney-at-law

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State Bureau of Investigation

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The Pecherskyi District Court of Kyiv sends to your address a certified copy of the order of the investigating judge of the Pecherskyi District Court of Kyiv of 06.02.2020 for information/execution.

Addition: a certified copy of the order of 06.02.2020

Investigating Judge

of the Pecherskyi District Court of Kyiv _____ I.V. Lytvynova

(signature)

Executor: Assistant Judge – Ye.I. Chepiha

PECHERSKYI DISTRICT COURT OF KYIV

Case № 757/4597/20-к

**DECISION
IN THE NAME OF UKRAINE**

On 06 February, 2020, the investigating Judge of the Pecherskyi District Court of Kyiv I.V. Lytvynova, at the clerk of the court S.M. Vynnyk, having considered in the open court session in the courtroom in Kyiv, the court proceedings on the complaint of the attorney-at-law O.I. Teleshetskiy acting in the interests of V.M. Shokin on the inaction of the authorized persons of the State Bureau of Investigation is the failure to enter information into the Unified Register of Pre-trial Investigations after receiving an application of a criminal offence (crime),

FOUND:

On 31.01.2020 the Pecherskyi District Court of Kyiv received a complaint from the attorney-at-law O.I. Teleshetskiy, representative of the victim, of V.M. Shokin, that was transferred to the investigating judge I.V. Lytvynova on the same day, in accordance with Article 303 of the Criminal Procedural Code of Ukraine, for the inaction of the authorized officials of the State Bureau of Investigation with regard to the failure to enter information about a criminal offence into the Unified Register of Pre-trial Investigations after receiving an application of 28.01.2020 registration № 763VMI.

The applicant did not receive information that the data on the application of 28.01.2020 registration № 763VMI was entered into the Unified Register of Pre-trial Investigations, and therefore the inaction of the State Bureau of Investigation on this fact was appealed to the Pecherskyi District Court of Kyiv.

The person who filed the complaint did not appear at the court session, and the place and time of the complaint's proper consideration was duly submitted through the court office in his absence.

A representative of the State Bureau of Investigation did not appear at the court session, and did not inform the court about the place and time of the proper consideration of the complaint, nor about the reasons for his failure to appear.

According to the rule of paragraph 4 Article 107 of the CPC of Ukraine there was no technical fixation of the complaint by the investigating judge.

Paragraph 3 Article 306 of the CPC of Ukraine provides that the absence of an investigator or a prosecutor is not an obstacle to the consideration of a complaint.

According to the provisions of Article 26 of the CPC of Ukraine, the parties to criminal proceedings are free to exercise their right within the limits and in the manner prescribed by the Code.

In the light of these provisions of the law and taking into account the principle of optionality, the court considered that it was possible to take a decision on the merits of the complaint in the absence of persons.

After examining the complaint and examining the materials of the proceedings, the investigating judge, in his or her inner conviction, which is based on a comprehensive, complete and impartial study of all the circumstances of the criminal proceedings, guided by the law, having assessed each argument from the point of view of relevance, admissibility and credibility, and the totality of the evidence gathered – from the point of view of sufficiency and interconnectedness for the adoption of the relevant procedural decision comes to the following conclusion.

According to paragraph 2 Article 19 of the Constitution of Ukraine, bodies of state power and their officials are obliged to act only on the basis, within the limits of authority and in the manner envisaged by the Constitution and the laws of Ukraine.

An exhaustive list of decisions, actions or omissions of an investigator or prosecutor which may be appealed against during a pre-trial investigation, as defined in paragraph 1 Article 303 of the CPC of Ukraine. In particular, according to c. I paragraph I Article 303 of the CPC of Ukraine, the inaction of the investigator or the prosecutor, which consists in failing to provide information on the criminal offence to the URPI, may be appealed against during the pre-trial proceedings.

The court proceedings established that on 28.01.2020 Shokin V.M. has submitted to the State Bureau of Investigation an application on the commission of a criminal offence, that was registered by the body of pre-trial investigation on 01.28.2020 registration № 763VMI.

However, according to paragraph 1 Article 214 of the CPC of Ukraine, an investigator, a prosecutor immediately, but not later than 24 hours after filing an application, notification of a criminal offence or after independently identifying him from any source of circumstances that may testify to a criminal offence is obliged to provide relevant information to the Unified registry of pre-trial investigations was investigated, investigations initiated and 24 hours after such information had been entered to provide the applicant with an extract from the Unified registry of pre-trial investigations". The investigator who will conduct the pre-trial investigation is determined by the head of the pre-trial investigation body.

With regard to the content of the said norm, the obligation to adopt and register an application or report on criminal offences rests with the investigator, procurator and other officials authorized to adopt them. The acceptance and registration of an application or communication concerning a criminal offence may not be refused, regardless of whether the investigation of the facts concerning the communication concerns criminal offences under the territorial jurisdiction or the procedural competence of the body to which an application or report was submitted.

In addition, paragraph 2 Article 60 of the CPC of Ukraine provides that the applicant of the masses of the right to receive from the body to which he filed an application, a document confirming its acceptance and registration, an extract from the Unified Register of Pre-trial Investigations.

In a report of a criminal offence, the applicant provides a summary of the circumstances that may indicate the commission of criminal offences and the preliminary qualification of the offence.

Taking this into account, the court concludes that it is necessary to oblige officials of the State Bureau of Investigation to enter information into the Unified Register of Pre-trial Investigations in accordance with the complaint of V.M. Shokin about a criminal offence in the manner and within the time limits envisaged in Article 214 of the CPC of Ukraine, since it was

established at the court hearing that, in violation of the above provision, as of the time of consideration of the complaint, information from the complaint of 28.01.2020, registration № 763VMI was not entered into the Unified Register of Pre-trial Investigations, and the investigation had not been started.

According to Article 535 of the CPC of Ukraine, the bodies executing the court's decision inform the court that issued the decision about its implementation.

According to Articles 60, 214, 303, 305, 306, 307, 309 of the CPC of Ukraine, the investigating judge,

DECIDED:

To satisfy the complaint of the applicant attorney-at-law O.I. Teleshetskiy acting in the interests of V.M. Shokin on the inaction of the authorized persons of the State Bureau of Investigation, which consists in not entering information in the Unified register of pre-trial investigations after receiving a criminal complaint

To oblige the authorized officials of the State Bureau of Investigation to enter the data from the application of V.M. Shokin № 763VMI of 28.01.2020 on committing criminal offences into the Unified Register of Pre-trial Investigations and to start pre-trial investigation of the reported data.

To oblige the official who entered the data into the Unified Register of Pre-trial Investigations to provide the applicant with an extract from the Unified Register of Pre-trial Investigations in 24 hours from the date of entry of such data and inform the Pecherskyi District Court of Kyiv. The applicant shall submit a copy of the extract from the Uniform Register of Pre-trial Investigations to the Pecherskyi District Court of Kyiv.

The decision of the investigating judge shall not be subject to appeal.

Investigating judge _____ **I.V. Lytvynova**
(signature)

Pecherskyi District Court of Kyiv
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*Stamp / AS PER ORIGINAL / Judge – I.V. Lytvynova / clerk of the court – S.M. Vynnyk *