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CLOSURE OF CRIMINAL PROCEEDINGS ON THE GROUNDS OF EXPIRATION OF THE PRE-TRIAL INVESTIGATION: ANALYSIS OF CERTAIN LEGISLATIVE INITIATIVES

Oleksii Kalinnikov,
Doctor of Philosophy, Attorney at Law, Doctoral Student,
Kyiv University of Intellectual Property and Law
of the National University "Odesa Law Academy" (Kyiv, Ukraine)
ORCID ID: 0000-0003-4337-833X
advokat.kalinnikov@gmail.com

Abstract. This article analyzes legislative initiatives to improve criminal proceedings in terms of the pre-trial investigation period and the legal consequences of its completion in accordance with the Draft Law "On Amendments to the Criminal Procedure Code of Ukraine and the Law of Ukraine 'On the Public Prosecutor's Office' regarding the removal of obstacles to access to justice for parties to criminal proceedings" No. 12367 of 30.12.2024 and alternative draft laws No. 12367-1 of 08.01.2025, No. 12367-2 of 14.01.2025, No. 12367-3 of 14.01.2025. The author analyzes certain aspects of the development of the statutory regulation of the pre-trial investigation period and the substantive characteristics of the proposed amendments to the criminal procedure legislation. The author presents the positions of scholars, lawyers and representatives of civil society on the proposed changes. It is substantiated that the existing mechanism of closing criminal proceedings on the basis of expiration of the pre-trial investigation term encourages the prosecution to conduct pre-trial investigation within a reasonable time, which is fully consistent with the objectives of criminal proceedings, complies with the provisions of international treaties, the case law of the European Court of Human Rights and meets the general principles of criminal proceedings. Given the systematic analysis of the criminal procedural legislation of Ukraine, the author makes critical remarks on the unreasonable proposals of legislative initiatives.

Key words: terms in criminal proceedings, grounds for closing criminal proceedings, suspect, prosecutor, investigating judge, court.

Introduction. In criminal proceedings, certain procedural deadlines are established within which the participants in criminal proceedings are obliged or entitled to make relevant procedural decisions or perform certain procedural actions. One of such procedural deadlines established by the criminal procedural legislation of Ukraine is the pre-trial investigation.

At the same time, one of the tasks of criminal proceedings is to apply due process to all participants in criminal proceedings, which implies strict observance of the pre-trial investigation period in all modes of criminal proceedings, especially in the absence of the suspect, which is characterized by additional guarantees of the suspect's (accused's) rights.

In recent years, the legislative regulation of the pre-trial investigation timeframe, both in terms of the types of timeframes and the procedure for their calculation and extension, has been repeatedly amended.

At the same time, the reform of the pre-trial investigation terms in criminal proceedings is currently actively ongoing, as evidenced by the relevant legislative initiatives.

Main part. The purpose of the study is to provide a scientific analysis of the Draft Law "On Amendments to the Criminal Procedure Code of Ukraine and the Law of Ukraine 'On the Public Prosecutor's Office' regarding the removal of obstacles to access to justice for parties to criminal proceedings" No. 12367 of December 30, 2024 and alternative draft laws No. 12367-1 of January 08, 2025, No. 12367-2 of January 14, 2025, No. 12367-3 of January 14, 2025, and to formulate conclu-

sions regarding the expediency of its adoption. The object of the study is public relations which are proposed to be regulated by the draft law No. 12367 of December 30, 2024 and alternative draft laws No. 12367-1 of January 08, 2025, No. 12367-2 of January 14, 2025, No. 12367-3 of January 14, 2025. The subject of the study is an analysis of certain legislative initiatives on closing criminal proceedings on the basis of expiration of the pre-trial investigation.

Given the objectives, object and subject of the study, the following methodological tools were used in the course of its implementation: bibliographic method – for analyzing publications on the subject matter of the study; methods of system analysis – to reveal the content of legal provisions used in the course of the study; comparative legal method – to compare legal regulation in retrospect and proposed changes; formal legal method – to analyze the provisions of acts of national legislation of Ukraine with a view to clarifying

Discussion. The issue of the pre-trial investigation timeframe has been thoroughly studied by domestic scholars, including: Y. Alenin, L. Vasyliev, V. Voloshyna, I. Hloviuk, V. Hryniuk, A. Huliayev, H. Hrytsak, O. Drozdov, O. Drozdova, S. Zaika, I. Zinkovskyi, E. Kovalenko, S. Kovalchuk, V. Kozii, O. Kornaha, L. Loboyko, T. Lukashkina, I. Mytrofanov, E. Nemchynov, V. Pavlovsky, D. Pysmennyi, N. Rohatynska, V. Rozhnova, H. Sysoyenko, V. Tomin, O. Torbas, O. Torbas, S. Fomin, M. Khavroniuk, I. Tsyupryk, I. Shcherbak, H. Yurkova, D. Yahunov, R. Yakupov, and others.

Given the repeated changes in the legal regulation of the institute of pre-trial investigation terms in criminal proceedings and current attempts to further reform it, further scientific research of this issue remains extremely important.

With a view to determining the vector of current legislative proposals, it is necessary to analyze the legal regulation of the pre-trial investigation terms in criminal proceedings and their enforcement in retrospect.

The Law of Ukraine "On Amendments to the Commercial Procedure Code of Ukraine, the Civil Procedure Code of Ukraine, the Code of Administrative Procedure of Ukraine and Other Legislative Acts" No. 2147-VIII of 03.10.2017 introduced, in particular, the following innovations

− the pre-trial investigation period was differentiated into: 1) the period from the moment of entering information about a criminal offense into the Unified Register of Pre-trial Investigations until the day of serving a person with a notice of suspicion and 2) the period from the moment of serving a person with a notice of suspicion until the day of filing an indictment, a motion for the application of compulsory medical or educational measures, a motion for the release of a person from criminal liability or until the day of making a decision to close criminal proceedings;

− part 1 of Article 284 of the CPC of Ukraine was supplemented by paragraph 10, according to which criminal proceedings shall be closed after serving a person with a notice of suspicion if the pre-trial investigation period specified in Article 219 of the CPC of Ukraine has expired, except in the case of serving a person with a notice of suspicion of committing a grave or especially grave crime against the life and health of a person

− clause 2 of part 3 of Article 314 of the CPC of Ukraine was amended, according to which in the preparatory court hearing the court has the right to decide to close the proceedings in case of establishing the grounds provided for in clauses 5-8, 10 of part 1 of Article 284 of the CPC of Ukraine (Law No. 2147-VIII, 2017).

These legislative changes were called "Lozovyi's amendments" in the media and among lawyers, after the name of their author, MP Andrii Lozovyi.

There was no unanimity among scholars and lawyers in assessing such innovations, which led to repeated amendments and additions.

Zinkovskyi I. critically assessed the fact that two regimes of pre-trial investigation terms were introduced into the criminal procedure legislation, given that this could have a destructive impact on the protection of the rights of victims of criminal offenses and the effectiveness of pre-trial investi-

gation in general. According to the scholar, this regulatory framework will not be able to achieve a reasonable balance of public and private interests in criminal proceedings (Zinkovskyi, 2018: 94).

At the same time, O. Drozdov and O. Drozdova were somewhat concerned about the changes concerning the timing of the pre-trial investigation. Thus, according to the scholars, closing a case by an investigator if no one has been notified of suspicion within a year actually relieves the state of the obligation to investigate crimes, which is certainly contrary to international standards. If a person does not hide from the court and the investigation, a certain period of time passes, depending on the severity of the crime, taking into account the rules on statutes of limitations, his or her criminal prosecution should be terminated (Drozdov, Drozdova, 2017: 24).

At the same time, I. Fomin, a representative of the bar community, a member of the Ukrainian National Bar Association's Committee for the Protection of Human Rights, positively assessed the changes in the legal regulation of pre-trial investigation terms and noted that for a long time almost all changes in criminal procedure legislation were repressive, but the only exception was the Lozovyi amendments. According to the lawyer, this was the only legislative attempt in recent years to somehow limit the monopoly of the repressive apparatus on violence in time, and to protect the rights of people and businesses that are directly or indirectly under pressure from criminal prosecution (Fomin, 2023).

Court practice has shown that the mechanism of closing criminal proceedings by the court due to the expiration of the pre-trial investigation at the stage of the preparatory hearing is an effective means of protecting the rights and legitimate interests of the participants, especially the defense.

At the same time, the Lozovyi amendments have been gradually abolished.

Thus, the Law of Ukraine "On Amendments to the Criminal Procedure Code of Ukraine and Other Legislative Acts of Ukraine on Strengthening the Independence of the Specialized Anti-Corruption Prosecutor's Office" No. 3509-IX of December 08, 2023, which entered into force on January 01, 2024, abolished the Lozovyi amendments in terms of the pre-trial investigation period from the moment of entering information about a criminal offense into the URPTI or issuing a decision to initiate a pre-trial investigation until the day the person is notified of suspicion (Law No. 3509-IX, 2023).

At the same time, even after these legislative changes, the discussion on further reforming the pre-trial investigation timeframe continued.

On December 30, 2024, the Cabinet of Ministers of Ukraine initiated the registration of the Draft Law "On Amendments to the Criminal Procedure Code of Ukraine and the Law of Ukraine 'On the Prosecutor's Office' to remove obstacles to access to justice for parties to criminal proceedings" No. 12367 (Draft Law No. 12367, 2024).

According to the explanatory note, it was prepared with the aim of improving the criminal procedure legislation in terms of the terms of pre-trial investigation and appealing the closure of criminal proceedings.

According to O. Stefanishyna, this draft law was developed to implement the Letter of Intent and Memorandum of Economic and Financial Policies between Ukraine and the IMF of June 17, 2024 and the Letter of Intent and Memorandum with the IMF of October 04, 2024, and therefore the exclusion of the expiration of the pre-trial investigation after the notification of suspicion as a ground for closing the proceedings is in line with international obligations (Mamchenko, 2025).

At the same time, a number of alternative draft laws were also registered for the same purpose: No. 12367-1 of January 08, 2025 (Draft Law No. 12367-1, 2025), No. 12367-2 of January 14, 2025 (Draft Law No. 12367-2, 2025), and No. 12367-3 of January 14, 2025 (Draft Law No. 12367-3, 2025).

The National Anti-Corruption Bureau and the Specialized Anti-Corruption Prosecutor's Office supported draft law No. 12367-3 and called on MPs to support it in the first reading and in general, as it would make it impossible for individuals to avoid responsibility due to formal deadlines, even in cases where they have been notified of suspicion (NABU, SAP, 2025).

This draft law proposes, in particular, to exclude the expiration of the pre-trial investigation periods specified in Article 219 of the CPC of Ukraine after a person has been served with a notice of suspicion as a ground for closing criminal proceedings. Instead, it is proposed to provide that in case of expiration of the pre-trial investigation and failure of the prosecutor to perform the actions provided for in clauses 1, 2 of part 2 of Article 283 of the CPC of Ukraine, or failure to open the pre-trial investigation materials, the defense, the victim or other person whose rights or legitimate interests are restricted during the pre-trial investigation, has the right to file a motion to oblige the prosecutor to resolve the issue of termination of the pre-trial investigation. If the motion is granted, the investigating judge shall issue a ruling obliging the prosecutor to resolve the issue of termination of the pre-trial investigation. At the same time, it is also envisaged that a ruling on satisfaction of the motion to oblige the prosecutor to decide on the termination of the pre-trial investigation cannot be issued if, on the day of consideration of the relevant motion by the investigating judge, the pre-trial investigation materials were opened by the prosecutor or investigator on his/her behalf in accordance with the procedure provided for in Article 290 of the CPC of Ukraine. At the same time, it is proposed to grant prosecutors the authority to extend the pre-trial investigation. It is also proposed that a prosecutor may be brought to disciplinary liability in disciplinary proceedings on the grounds of non-performance or improper performance of official duties, including failure to make a procedural decision or failure to perform a procedural action within the time limits provided by law, etc. (Draft Law No. 12367-3, 2025).

At the same time, the Federation of Employers of Ukraine, the Association of Entrepreneurs – ATO Veterans, the Union of Ukrainian Entrepreneurs, Diia. City United, Manifesto 42, Coalition of Business Communities for the Modernization of Ukraine, Ukrainian League of Industrialists and Entrepreneurs, International Business Community Board, and the Ukrainian Chamber of Commerce and Industry are deeply concerned about the draft law No. 12367, as well as alternative drafts No. 12367-1, No. 12367-1, No. 12367-2, No. 12367-3, as the proposed amendments pose risks of violating the principle of presumption of innocence, the principle of adversarial proceedings, and placing the burden of proof on the defense, which significantly affects the business environment of Ukraine. At the same time, the business community believes that the changes introduce even greater uncertainty in criminal proceedings, lead to paralysis and blocking of its economic and commercial activities due to investigative actions and delays. At the same time, due to the possibility of abuse, law enforcement officers will send indictments to courts, and nothing can be done at the stage of preparatory proceedings, as is currently provided, and the defense will have to go through the entire trial procedure (Prasad, 2025).

To evaluate the proposed changes, the reasonableness of the time limits should be analyzed first, which is one of the general principles of criminal proceedings that the content and form of criminal proceedings must meet (Articles 7, 28 of the CPC of Ukraine) (CPC, 2012).

Reasonableness of time implies that everyone has the right to have the charges against him/her either brought to trial or to have the relevant criminal proceedings against him/her closed as soon as possible (Article 28 of the CPC of Ukraine) (CPC, 2012).

This general principle of criminal proceedings is in line with the provisions of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, which guarantees everyone the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law, which shall decide in a civil case the rights and obligations of the person concerned or determine the validity of any criminal charge against him (Convention, 1950).

At the same time, the European Court of Human Rights in its case-law on reasonable time limits in criminal proceedings proceeds, in particular, from the following

– the right to a trial within a reasonable time is based on the need to ensure that the accused do not have to remain in a state of uncertainty about the outcome of the criminal charges against them for too long (paragraph 68 of the judgment in Kart v. Turkey, application no. 8917/05) (Kart v. Turkey, 2009)

– the clear purpose of the relevant provision of paragraph 1 of Article 6 of the Convention in criminal cases is to ensure that accused persons do not remain under indictment for too long and that the charges are determined (paragraph 18 of the judgment in Wemhoff v. Germany, application no. 2122/64) (Wemhoff v. Germany, 1968).

Thus, in view of the above, the existing mechanism for closing criminal proceedings on the grounds of expiration of the pre-trial investigation period encourages the prosecution to conduct pre-trial investigation within a reasonable time, which is fully consistent with the objectives of criminal proceedings, in line with the provisions of international treaties, the case law of the European Court of Human Rights and in line with the general principles of criminal proceedings.

Violation of the pre-trial investigation deadlines set by the CPC of Ukraine cannot be considered a formality, as it indicates compliance with due process.

According to the Supreme Court, in the theoretical aspect, "due process of law" is a form of administration of justice, which is formed by a set of procedural human rights guarantees aimed at achieving procedural justice. The guarantees that together form due process include the right to judicial protection, the right to an effective investigation, and the right to a speedy trial. The application of due process is one of the constituent elements of the rule of law principle and provides, among other things, that the powers of public authorities are defined by the provisions of law and requires that officials have permission to act and continue to act within the scope of their authority. Application of due process of law in criminal proceedings is a method of implementing the rules of criminal procedure established by the criminal procedural law, which ensures the achievement of the goals of legal regulation of criminal procedural relations in the field of pre-trial investigation and trial. Due process of law applies both during court proceedings and at the pre-trial investigation stage. Failure to comply with due process entails a violation of the right to a fair trial guaranteed to everyone by Article 6 of the Convention (Supreme Court Decision, 2021).

In addition, the exclusion of the expiration of the pre-trial investigation after serving a person with a notice of suspicion as a ground for closing criminal proceedings and the introduction of the possibility for the investigating judge to oblige the prosecutor to make a decision on the issue of closing the pre-trial investigation not only does not comply with the general principle of reasonableness of terms, but also narrows the judicial control at the pre-trial investigation stage, and therefore cannot be considered an effective way to protect the rights of the parties to the decision. Since the prosecutor's power to close criminal proceedings is discretionary, no effective means of influence is provided in case of deliberate inaction of the prosecutor.

The introduction of disciplinary liability of the prosecutor can in fact in no way serve as an effective mechanism for restoring the violated rights of participants in criminal proceedings as a result of failure to comply with the mandatory pre-trial investigation deadlines.

Scholar and lawyer Yevhen Pelikhos believes that the Government, represented by the Ministry of Justice, as the developer of this draft law, has chosen an erroneous strategy to improve the results of the pre-trial investigation: according to the explanatory note, to achieve this goal, it is necessary to eliminate the shortcomings of the legislation. Unfortunately, the Government considers clause 10 of part 1 of Article 284 of the CPC to be such a shortcoming. However, it would be much more effective to direct efforts not to exclude from the legislation undesirable for the prosecution provisions on the consequences of the expiration of the investigation period, but to ensure that the prosecution complies with this period. At the same time, the author draws attention to the fact that it is proposed not to extend the effect of the innovations only to those proceedings that will be closed before they come into force, but the legislator, supplementing in 2017 Part 1 of Article 284 of the CPC with paragraph 10, provided that the amendments apply to cases in which information about a criminal offense was entered into the URPTI after the entry into force of these amendments. However, when the Government wants to roll back, it does not propose to apply these amendments only to cases in

which information about a criminal offense was entered into the URPTI after the amendments came into force (Pelikhos, 2025).

Lawyer D. Ponomarenko notes that the terms of pre-trial investigation, their completion and extension are a key element of criminal proceedings, as they ensure a balance between the speed of the pre-trial investigation, and ultimately justice and the rights of the suspect. At the same time, the exclusion of clause 10 of Article 284 of the CPC looks unreasonable and unfounded. At the same time, these draft laws do not solve the practical problems of the issue of the pre-trial investigation timeframe in criminal proceedings where no person has been served with a notice of suspicion and their control by investigating judges in terms of compliance with the principle set out in Article 28 of the CPC – there is no real, unitary mechanism for implementation (Ponomarenko, 2025).

Thus, a systematic analysis of the criminal procedure legislation, the position of lawyers and the public shows that the exclusion of the expiration of the pre-trial investigation after a person has been notified of suspicion as a ground for closing criminal proceedings is supported only by law enforcement agencies, as it will simplify their activities and offset the legal consequences of violating the pre-trial investigation deadlines. At the same time, the proposed mechanism cannot be considered effective and is in no way able to strike a balance between the efficiency of the pre-trial investigation and the rights of the suspect, including the fact that the charges against him/her will either be subject to trial or the relevant criminal proceedings against him/her will be closed as soon as possible.

Given the results of this study, it is important to further study in depth the pre-trial investigation period and the legal consequences of its violation, taking into account the provisions of both national criminal procedure legislation and international treaties, in order to find the best way to bring Ukrainian legislation in line with international standards.

Conclusions. The existing mechanism of closing criminal proceedings on the grounds of expiration of the pre-trial investigation period encourages the prosecution to conduct pre-trial investigation within a reasonable time, which is fully consistent with the objectives of criminal proceedings, the general principles of criminal proceedings, and is consistent with the provisions of international treaties and the case law of the European Court of Human Rights.

The above criticisms of the unfounded proposals of the draft law No. 12367 of 30.12.2024 and alternative draft laws No. 12367-1 of 08.01.2025, No. 12367-2 of 14.01.2025, No. 12367-3 of 14.01.2025 should be taken into account when considering legislative initiatives in the Parliament.

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