



# **Problematic Issues of Legislative Regulation of Calculation of Pre-trial Investigation Terms in accordance with the Criminal Procedure Code of Ukraine**

This discussion paper was prepared with the support of the Council of Europe Project “[Fostering Human Rights in the Criminal Justice System in Ukraine – Phase II](#)” by the Council of Europe National Consultant Mr Andrii Sliusar

*The views expressed in this discussion paper are those of the author and do not necessarily reflect the official position of the Council of Europe.*

## **1. Current legal regulation of the procedure for calculating the pre-trial investigation period and its application**

Currently, the provisions of Article 219 of the CPC of Ukraine stipulate that the pre-trial investigation period is calculated from the moment a person is notified of suspicion and from that moment the pre-trial investigation of the criminal offence must be completed within two months. If necessary, this period may be extended, but not longer than six months from the date of notification of suspicion of committing a minor criminal offence and not longer than twelve months from the date of notification of suspicion of committing a serious or especially serious criminal offence.

Such a pre-trial investigation period does not include the period from the date of issuance of the decision to suspend the criminal proceedings until the decision to resume the criminal proceedings is issued, as well as the period for the parties to review the pre-trial investigation materials in accordance with Article 290 of the CPC of Ukraine.

However, the period from the date of issuance of the decision to suspend criminal proceedings until the date of its cancellation by the investigating judge is included in the pre-trial investigation.

Pursuant to Article 294 of the CPC of Ukraine, if the pre-trial investigation cannot be completed within two months from the date of notification of a person of suspicion of committing a criminal offence, this period may be extended up to three months by the head of the relevant prosecutor's office; up to six months by an investigating judge at the request of the investigator, approved by the head of the regional prosecutor's office or the Prosecutor General or their deputies; up to twelve months by an investigating judge at the request of the investigator, approved by the Prosecutor General or his deputies.

In accordance with the procedure set out in Article 295 of the CPC of Ukraine, five days prior to filing a motion to extend the investigation period with the head of the prosecutor's office, the investigator or prosecutor shall serve a copy of the motion to the suspect and his or her defence counsel. The defence has the right to submit written objections to the investigator or prosecutor within five days, which, together with the motion, shall be submitted to the head of the prosecutor's office for consideration.

According to the provisions of Article 295-1 of the CPC of Ukraine, the investigating judge considers motions for the extension of the pre-trial investigation with the participation of the investigator or prosecutor, as well as the suspect and his or her defence counsel.

These procedures for extending the pre-trial investigation period entered into force on 15.03.2018 on the basis of Law of Ukraine No. 2147-VIII dated 03.10.2017<sup>1</sup>, according to the Transitional Provisions of which the amendments to the CPC of Ukraine introduced by it "shall enter into force three months after the entry into force of this Law, shall not have retroactive effect in part and shall apply to cases in

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<sup>1</sup> URL: <https://zakon.rada.gov.ua/laws/show/2147a-19#n212>

which information about a criminal offence entered into the Unified Register of Pre-trial Investigations after the entry into force of these amendments".

The expiry of the pre-trial investigation period after serving a person with a notice of suspicion, except in the case of a notice of suspicion of committing a grave or especially grave criminal offence against the life or health of a person, is a direct basis for termination criminal proceedings. Such a procedural decision may be rendered by the prosecutor (in accordance with Article 284(4) of the CPC of Ukraine), the court in a preparatory court hearing (in accordance with Article 314(3) of the CPC of Ukraine), as well as the court during the trial (in accordance with Article 284(7) of the CPC of Ukraine).

Even when such a ground for termination criminal proceedings for the court was expressly provided only for preparatory proceedings (and not for further trial), the Supreme Court formed an opinion<sup>2</sup>, according to which such decisions could be made by the courts of appeal and cassation in case of cancellation of illegal verdicts. The Supreme Court substantiated this legal position by the fact that the prosecutor's submission of an indictment after the pre-trial investigation to the court outside the pre-trial investigation in criminal proceedings concerning offences that are not grave or particularly grave against life and health excludes the acquisition of the procedural status of the accused (defendant), and, therefore, makes it impossible to consider the criminal proceedings on the merits in court and entails the closure of criminal proceedings on the basis of paragraph 10 of part 1 of Article 284 CPC of the . Therefore, if the circumstance provided for in paragraph 10 of part 1 of Article 284 the CPC of is established, the court of appeal or cassation is obliged to cancel the court decisions of lower instances and close the criminal proceedings.

The Supreme Court has also formulated a coherent court practice<sup>3</sup>, according to which the extension of the pre-trial investigation is carried out by the investigating judge within the powers defined by the provisions of Laws No. 2147-VIII and No. 2617-VIII in criminal proceedings entered into the URPTI from 15 March 2018 and which were merged with criminal proceedings initiated before that date, since the provisions of para. 4 of paragraph 2 of the "Final Provisions" of Law No. 2147-VIII regarding the exercise of judicial control over the extension of the pre-trial investigation term are subject to application, taking into account the provisions of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, Article 58 of the Constitution of Ukraine, Articles 5, 8, 9 of the CPC.

For the period of martial law, Article 615(1)(3) of the CPC of Ukraine provides that in the absence of an objective possibility of further conducting, completing the pre-trial investigation and filing an indictment with the court, the prosecutor has the right to suspend the pre-trial investigation in criminal proceedings by his/her reasoned resolution setting out the relevant circumstances. Such suspended term is subject to renewal if the grounds for its suspension cease to exist.

## **2. Existing draft laws on amendments to the procedures for determining the timeframe for pre-trial investigation and closure of criminal proceedings**

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<sup>2</sup> See CCU Resolution of 21.09.2021 in case No. 711/3111/19. URL: <https://reyestr.court.gov.ua/Review/99687323>

<sup>3</sup> See, for example, the Resolution of the Joint Chamber of the CCU of 31.10.2022 in case No. 753/12578/19. URL: <https://reyestr.court.gov.ua/Review/107219619>

Currently, four draft laws have been registered with the Verkhovna Rada to amend the procedure for calculating the pre-trial investigation period:

- No. 12367<sup>4</sup> of 30.12.2024, the subject of the legislative initiative is the Cabinet of Ministers of Ukraine;
- No. 12367-1<sup>5</sup> dated 08.01.2025, the subject of the legislative initiative is MP Pavliuk M.V.;
- No. 12367-2<sup>6</sup> dated 14.01.2025, the subject of the legislative initiative is a group of MPs consisting of D.H. Arakhamia, V.M. Neklyudov, V.V. Zakharchenko, S.K. Ionushas, O.S. Bakumov, M.V. Zaremsky, S.A. Minko, I.P. Marchuk, A.M. Pushkarenko, O.M. Tkachenko, R.M. Mulyk;
- No. 12367-3<sup>7</sup> dated 14.01.2025, the subject of the legislative initiative is a group of MPs consisting of D.H. Arakhamia, O.S. Bakumov, O.M. Tkachenko, Y.R. Yurchyshyn, S.A. Minko, I.P. Marchuk, O.V. Bondarenko, E.V. Bragar, A.M. Pushkarenko, R.M. Mulyk.

For ease of understanding, the main provisions of all four draft laws are presented in the attached comparative table.

In general, all four draft laws propose to exclude from the Criminal Procedure Code of Ukraine paragraph 10 of part 1 of Article 284 as a separate ground for termination criminal proceedings in case of expiration of the pre-trial investigation. Also, all four draft laws provide for the introduction of a separate procedure for the defence to file a motion to the investigating judge with a request to oblige the prosecutor to make a decision to complete or terminate the investigation in case the investigation has expired.

With regard to the procedure for extending the investigation period, the draft laws vary in their approaches, from leaving the existing procedure in place to partial or full transfer of the relevant powers from investigating judges to heads of prosecutor's offices at various levels.

Draft law No. 12367-1, along with preserving the current procedure for extending the pre-trial investigation by investigating judges, proposes to increase the maximum time limit for the investigation from 12 to 16 months.

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<sup>4</sup> URL: <https://itd.rada.gov.ua/billinfo/Bills/Card/55533>

<sup>5</sup> URL: <https://itd.rada.gov.ua/billinfo/Bills/Card/55565>

<sup>6</sup> URL: <https://itd.rada.gov.ua/billinfo/Bills/Card/55615>

<sup>7</sup> URL: <https://itd.rada.gov.ua/billinfo/Bills/Card/55616>

### 3. Additional context on the content of the proposed legislative changes

#### *Regarding the proposed transfer of powers to extend the pre-trial investigation to the prosecutor*

The positive impact of the existing procedure for extending the pre-trial investigation by investigating judges on ensuring human rights, competitiveness of the parties and ensuring reasonable time limits has been repeatedly emphasised by individual representatives of civil society<sup>8</sup> and expert circles<sup>9</sup>, as well as professional participants in the criminal process.<sup>10</sup>

At the same time, some representatives of civil society organisations assess<sup>11</sup> the transfer of powers to extend the investigation period from investigating judges to prosecutors as a necessary change, arguing that only the prosecutor can determine the procedure of investigative actions and their stages, as well as the sufficiency of evidence for suspicion and prosecution.

In addition, some prosecutor's offices in their public communications maintain the position that the transfer of powers to extend the pre-trial investigation will make it impossible to automatically close proceedings due to the formal expiry of the investigation.<sup>12</sup>

According to the Unified Report on Criminal Offences<sup>13</sup>, in 2014, all pre-trial investigation bodies registered 194,688 criminal offences in which persons were served with notices of suspicion, and in the first quarter of 2025, 51,961 such criminal offences were registered (for comparison, the NABU registered 107 and 11 such criminal offences, respectively).

Even if we take into account that there may be several suspects in one proceeding, and one suspect may be notified of suspicion of several offences at once, this is still tens of thousands of proceedings with suspects throughout Ukraine every year, in the vast majority of which it is necessary to extend the investigation period beyond three months.

In practice, the workload associated with the adoption of a significant number of resolutions may be excessive for a limited number of heads of regional prosecutor's offices and their deputies. This may

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<sup>8</sup> "5 questions about Lozovyi's 'amendments': what is the essence of the problem?" Transparency International Ukraine. URL: <https://ti-ukraine.org/blogs/5-zapytan-pro-popravky-lozovogo-v-chomu-sut-problemy/>.

<sup>9</sup> "Round table on amendments to the CPC of Ukraine". URL: <https://pravo.org.ua/vidbuvsya-kruglyj-stil-shhodo-vnesennya-zmin-do-kpk-ukrayiny/>.

<sup>10</sup> "Cancellation of judicial control over the extension of investigation terms will give grounds for abuses by law enforcement officers - UNBA". Judicial and Legal Newspaper. URL: <https://sud.ua/uk/news/publication/283050-otmena-sudebnogo-kontrolya-za-prodleniem-srokov-rassledovaniya-stanet-osnovoy-dlya-zloupotrebleniy-pravookhraniteley-naau>.

<sup>11</sup> "Lozovyi's amendments: debunking the main myths about the rules that leave corrupt officials unpunished. Olena Shcherban. URL: <https://www.pravda.com.ua/columns/2025/01/15/7493672/>.

<sup>12</sup> Published on 15.01.2025 on the SAPO Facebook page. URL: [https://www.facebook.com/share/p/1\\_EmWnjTjc/](https://www.facebook.com/share/p/1_EmWnjTjc/).

<sup>13</sup> URL: <https://gp.gov.ua/ua/posts/pro-zareyestrovani-kriminalni-pravoporushennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2>.

lead to an approach whereby the relevant draft decisions are prepared by investigators, which in turn may undermine the expected goal of introducing effective prosecutorial control.

It is doubtful that such a change in the existing procedure will better protect the rights of victims to an effective and prompt investigation.

The European Court of Human Rights has developed a general approach to the application of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms regarding the right of everyone to a fair and public hearing within a reasonable time by an independent and impartial tribunal. According to this approach, such a reasonable time is calculated from the moment of notification of suspicion until the decision is made by the court of first instance. In the absence of exceptional circumstances in the form of the extreme complexity of the case or the behaviour of the suspect himself, the ECtHR recognises a violation of such a reasonable time limit of more than three years before the decision of the first instance court and more than four years for two instances of trial.<sup>14</sup>

Therefore, the lack of proper control over the calculation of the pre-trial investigation timeframe may have a negative impact on the effectiveness of Ukraine's implementation of its Convention obligations to ensure reasonable time limits for trials.

The ECtHR has also drawn attention to the lack of impartiality of prosecutors in view of their role in criminal proceedings. In particular, in the case of *Kaverzin v. Ukraine* (application no. 23893/03) back in 2012, the Court stated that the reluctance of prosecutors to promptly and quickly take all appropriate measures to establish the facts and circumstances of complaints of ill-treatment and to secure relevant evidence in situations where suspects were allegedly subjected to ill-treatment in order to obtain confessions may be explained, at least to some extent, by the conflict between the tasks of prosecutors in criminal proceedings, such as supporting the state prosecution in court and carrying out the investigation. Since confessions are often one of the main pieces of evidence in criminal proceedings, it cannot be ruled out that prosecutors are not interested in conducting a comprehensive investigation that could potentially negate the reliability of such evidence.<sup>15</sup>

***On the proposed exclusion from the CPC of Ukraine of the expiry of the investigation period as a separate ground for termination criminal proceedings***

The exclusion from the Criminal Procedure Code of Ukraine of clause 10 of part 1 of Article 284 as a separate ground for termination criminal proceedings will actually lead to the need to form a new court practice on possible forms of response to the facts of violation of the investigation deadlines revealed during the trial.

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<sup>14</sup> See, for example, the judgements in *Bondarenko and Others v. Ukraine*, application no. 42664/21, *Kompaniets and Others v. Ukraine*, application no. 70622/12, and others.

<sup>15</sup> See the *Kaverzin v. Ukraine* judgment, application no. 23893/03, para. 176

Certain representatives of civilian expert institutions expressed the opinion that the deliberate removal from the CPC of Ukraine of the provision on the legal consequences of failure to comply with the pre-trial investigation deadlines is a violation of the criminal procedural form and is hardly a good decision for the legislator.<sup>16</sup>

On the other hand, some representatives of civil society noted that the expiry of the pre-trial investigation should not necessarily lead to the closure of criminal proceedings, but if the court's power to close criminal proceedings due to the expiry of the pre-trial investigation is removed, the discussion will return to the admissibility of evidence collected after the expiry of the pre-trial investigation.<sup>17</sup>

It should be noted that as a result of the constitutional reform after the adoption of the Law of Ukraine "On Amendments to the Constitution of Ukraine (regarding Justice)" on 02.06.2016 No. 1401-VIII<sup>18</sup>, Section VIII of the Constitution of Ukraine "Justice" was actually fundamentally changed and Article 129 stipulates that in administering justice, courts should be guided by the rule of law, not the principle of legality, as previously defined. Thus, under such constitutional principles of administration of justice, the editorial exclusion of a provision from the law does not deprive courts of the possibility of applying the previous approach and forming judicial practice based on the basic principle of the rule of law and the general principles of criminal procedure and human rights.

The above-mentioned practice of the Supreme Court is also illustrative here, as in the absence of a rule allowing for closure of proceedings at the trial stage, the Court, based on the general principles of criminal proceedings, has formed a legal position on the possibility and even necessity of making such a decision in case of violation of the time limits for filing an indictment with the court.

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<sup>16</sup> "Evaluation of some proposals for amendments to the Criminal Procedure Code of Ukraine regarding the system of calculation of the pre-trial investigation terms in criminal proceedings". CPLR, E. Krapyvin, M. Khavroniuk, O. Han. URL: <https://pravo.org.ua/wp-content/uploads/2024/04/Vysnovok-TSPPR-stosovno-strokiv-dosudovogo-rozsliduvannya.pdf>.

<sup>17</sup> Refer to note 15

<sup>18</sup> URL: <https://zakon.rada.gov.ua/laws/show/1401-19#n6>