



NOTE

Based on the results of the round table held on May 28

Regarding legislative regulation of pre-trial investigation terms and closure of criminal proceedings

Prepared by Council of Europe national consultant, Mr Andrii Sliusar.

On May 28, 2025, the Office of the Deputy Prime Minister for European and Euro-Atlantic Integration, with the support of the Council of Europe Office in Ukraine, held a round table on the topic: “Legislative regulation of pre-trial investigation terms and closure of criminal proceedings”.

Based on the results of this round table, and at the request of the organisers, Council of Europe national consultant, Mr Andrii Sliusar, prepared a note on the provisions of Article 314 of the Criminal Procedure Code of Ukraine, expressed during the discussion by the head of the Specialized Anti-Corruption Prosecutor’s Office, Oleksandr Klymenko.

I. Proposals and assessments of the SAPO head

Timecode of the round table video recording: 00:42:42, O. Klymenko’s speech: “Let’s go further and look at how these “Lozovyi amendments” were adopted, how point 10 [*of part 1 of Article 284 CPC - author’s notes here and below*] appeared. That is, point 10 appeared and replaced another point 10 that existed before - this was when there was an unrevoked resolution on closing criminal proceedings. Thus, this point was provided for in Article 314 CPC [*among the list established in paragraph 2 of part 3 of Article 314 CPC - A.S.*] and gave the court the right during the preparatory court session to close proceedings based precisely on this point. That is, point 10 in the version that exists now, namely - missed terms of pre-trial investigation, was not provided for as a court power primarily when changes were made, these so-called “Lozovyi amendments”. If there had not been this technical error during the adoption of the law, then there would be no such problem. The court would have been deprived of the possibility to close proceedings precisely based on point 10, which now “hits” as point ten, and before that it was completely different. That is, such confusion occurred and when you open the version of the Criminal Procedure Code, point 10 existed in 314 long before the introduction of changes called “Lozovyi amendments”, and it referred to a completely different point”.

Timecode of the round table video recording: 00:49:42, O. Klymenko's speech: "Actually, point 10 [*of part 1 of Article 284 CPC - A.S.*] is an institution of criminal law on exemption from criminal liability, which does not entail any consequences, and not of procedure. Therefore point 10 itself can be left, but it should be removed from Article 314 [*from the list established in paragraph 2 of part 3 of Article 314 CPC - A.S.*], if you want to keep it, it is quite a "native" one. To ensure it is not treated as a court's authority exercised without actual consideration of the case, after the decision on the sufficiency of evidence and the referral of the indictment to the court, then fine, let it remain. But it should not constitute a power of the court at the preparatory hearing stage without any examination of the case materials."

II. Chronological changes regarding legal regulation of calculating pre-trial investigation terms and their impact on closing criminal proceedings

Legal regulation according to the 2012 CPC

On April 13, 2012, a new Criminal Procedure Code of Ukraine¹ was adopted, in Article 219 of which it was determined that pre-trial investigation must be completed within two months from the day of notifying a person about suspicion of committing a crime.

Article 294 of this Code determined that if pre-trial investigation cannot be completed within a two-month period, this period may be extended by the head of the prosecutor's office of the corresponding level within the specified maximum periods, which cannot exceed twelve months from the moment of notification of suspicion.

Article 284 of this Code, which defined the grounds for closing criminal proceedings, set out in 9 points of part 1, did not contain the expiration of pre-trial investigation terms as a separate ground for making such a procedural decision.

Legal regulation according to the CPC with amendments introduced by Law of Ukraine No. 2147-VIII of October 3, 2017

By Law of Ukraine No. 2147-VIII of October 3, 2017², amendments were made to the Criminal Procedure Code of Ukraine which, among other things, also concerned the regulation of calculating pre-trial investigation terms.

In particular, Article 294 of the CPC was set out in a new version and provided that if from the day of notifying a person about suspicion of committing a crime, pre-trial investigation cannot be completed within a two-month period, this period may be extended to three months - by the head of the prosecutor's office, and for a longer period up to twelve months - by the investigating judge.

¹ URL: <https://zakon.rada.gov.ua/laws/show/4651-17/ed20120413#Text>

² URL: <https://zakon.rada.gov.ua/laws/show/2147a-19#n212>

Article 284 of the CPC was supplemented with a new point 10, which defined as a separate ground for closing criminal proceedings cases when after notifying a person about suspicion, the term of pre-trial investigation determined by Article 219 expired, except for the case of notifying a person about suspicion of committing a serious or particularly serious crime against life and health of a person.

According to the provisions of this law, the mentioned norms providing for amendments to the Criminal Procedure Code of Ukraine were put into effect three months after this Law came into force, that is, from March 15, 2018.

Legal regulation according to the CPC with amendments introduced by Law of Ukraine No. 2213-VIII of November 16, 2017

By Law of Ukraine No. 2213-VIII of November 16, 2017³, part 1 of Article 284 of the CPC was supplemented with point 10, which provided as a separate ground for closing criminal proceedings the existence of an unrevoked resolution of an investigator, prosecutor on closing criminal proceedings regarding the same act.

By this law, parts 4 and 7 of Article 284 of the CPC, which provide grounds for closing criminal proceedings by an investigator and court respectively, were supplemented with a reference to point 10 of part 1 of Article 284.

Also, by this law, paragraph 2 of part 3 of Article 314 of the CPC, which defines the grounds on which the court has the right to close criminal proceedings in a preparatory session, was supplemented with a reference to point 10 of part 1 of Article 284.

According to the provisions of this law, the mentioned norms came into force from the day following the day of its publication, that is, December 7, 2017.

Legal regulation according to the CPC with amendments introduced by Law of Ukraine No. 2548-VIII of September 18, 2018

By Law of Ukraine No. 2548-VIII of September 18, 2018⁴, point 10 of part 1 of Article 284 of the CPC was set out in a new version, which provided as a ground for closing criminal proceedings the existence of an unrevoked resolution on closing criminal proceedings regarding the same act. This item has been assigned the number 9-1, thereby effectively eliminating the previous numbering inconsistencies.

³ URL: <https://zakon.rada.gov.ua/laws/show/2213-19#n70>

⁴ URL: <https://zakon.rada.gov.ua/laws/show/2548-19/ed20231106#n15>

By this law, in parts 4 and 7 of Article 284 of the CPC, which provide grounds for closing criminal proceedings by an investigator and court respectively, the reference to point 10 of part 1 of Article 284 was replaced with a reference to point 9-1.

No changes were made to Article 314 of the CPC by this law.

According to the provisions of this law, the mentioned norms came into force from the day following the day of its publication, that is, November 4, 2018.

Legal regulation according to the CPC with amendments introduced by Law of Ukraine No. 3509-IX of December 8, 2023

By Law of Ukraine No. 3509-IX of December 8, 2023⁵, changes were once again made to the legal regulation of relevant issues, excluding from the CPC provisions regarding calculation of the pre-trial investigation term until the moment of notifying a person about suspicion.

Also, by this law, the second paragraph of part 7 of Article 284 of the CPC, which defines the list of circumstances, upon establishment of which during court proceedings the court issues a ruling on closing criminal proceedings, was supplemented with a reference to point 10 of part 1 of Article 284, that is, expiration of pre-trial investigation terms after notifying a person about suspicion.

III. Application of provisions of paragraph 10 of part 1 of Article 284 CPC

Expiration of the pre-trial investigation term after notifying a person about suspicion, except for the case of notification of suspicion of committing a serious or particularly serious crime against life or health of a person, is a direct ground for closing criminal proceedings provided for in paragraph 10 of part 1 of Article 284 CPC. Such a procedural decision may be made by a prosecutor (under part 4 of Article 284 CPC), a court in a preparatory court session (under part 3 of Article 314 CPC), as well as a court during court proceedings (under part 7 of Article 284 CPC).

Closing criminal proceedings by a prosecutor

According to the content of Part 4 of Article 284 of the Criminal Procedure Code of Ukraine, once a person has been notified of suspicion, the investigator no longer has the authority to close the criminal proceedings; the adoption of the relevant procedural decision falls within the competence of the prosecutor.

⁵ URL: <https://zakon.rada.gov.ua/laws/show/3509-20#n18>

According to Part 4 of Article 284 of the Criminal Procedure Code of Ukraine, the prosecutor has the authority to issue a decision to close criminal proceedings, including with respect to a suspect, on any of the grounds provided for in Part 1 of Article 284 of the Criminal Procedure Code of Ukraine (with the exception of closure due to the expiration of the statute of limitations or the repeal of the law on criminal liability, for which a separate procedure is established).

Closing criminal proceedings by a court during judicial proceedings

In turn, part 7 of Article 284 CPC determines that during a court session, the court is authorized to issue a ruling on closing criminal proceedings if during court proceedings circumstances provided for in points 5, 6, 7, 8, 9, 9-1, 10 of part 1 of Article 284 CPC are established, as well as in cases provided for in points 2, 3 of part 2 of this article (that is, prosecutor's refusal to support the prosecution and reaching of tax compromise in cases of criminal offenses provided for in Article 212 of the Criminal Code of Ukraine).

The above-mentioned points of part 1 of Article 284 CPC provide the following grounds for closing criminal proceedings:

- point 5 - death of the accused;
- point 6 - existence of another verdict on the same accusation;
- point 7 - victim's refusal to support prosecution in private prosecution cases;
- point 8 - absence of consent of the state that extradited the person for prosecution for a specific offense;
- point 9 - achievement of tax compromise in cases of crimes provided for in Article 212 of the Criminal Code of Ukraine;
- point 9-1 - existence of an unrevoked resolution of an investigator or prosecutor on closing criminal proceedings regarding the same act;
- point 10 - if after notifying a person about suspicion, the term of pre-trial investigation expired, except for the case of notification of suspicion of committing a serious or particularly serious crime against life and health of a person.

Separately, part 7 of Article 284 CPC obliges the court in case of establishing the absence of an event or elements of a criminal offense (that is, grounds for closing criminal proceedings provided for in points 1, 2 of part 1 of Article 284 CPC) to issue not a ruling on closing proceedings, but to render an acquittal verdict.

Closing criminal proceedings by a court during preparatory proceedings

According to the provisions of paragraph 2 of part 3 of Article 314 CPC, in a preparatory court session, the court has the right to close proceedings in case of establishing grounds provided for in points 5-8, 10 of part 1 or part 2 of Article 284 CPC.

The mentioned points provide the following grounds for closing criminal proceedings:

- point 5 - death of the accused;
- point 6 - existence of another verdict on the same accusation;
- point 7 - victim's refusal to support prosecution in private prosecution cases;
- point 8 - absence of consent of the state that extradited the person for prosecution for a specific offense;
- point 10 - if after notifying a person about suspicion, the term of pre-trial investigation expired, except for the case of notification of suspicion of committing a serious or particularly serious crime against life and health of a person.

Part 2 of Article 284 CPC provides as grounds for closing criminal proceedings the exemption of a person from criminal liability; prosecutor's refusal to support prosecution and achievement of tax compromise in cases of criminal offenses provided for in Article 212 of the Criminal Code of Ukraine.

Procedure of preparatory court session

According to the content of Articles 314, 316 CPC, a preparatory court session is conducted after the court receives an indictment to clarify the possibility of scheduling a trial and preparing for trial.

According to the requirements of Article 291 CPC, before the start of the trial, the court is prohibited from providing other documents except for the indictment, register of pre-trial investigation materials, and civil claim (if available).

According to part 1 of Article 316 CPC, a preparatory court session ends with issuing a ruling on scheduling a trial.

It is during the trial (scheduled after the end of the preparatory court session) that the prosecutor announces the content of the indictment (part 2 of Article 347 CPC), the court explains to the accused the essence of the accusation (part 1 of Article 348 CPC) and determines the procedure for examining evidence and conducts their direct examination (part 2 of Article 349 CPC).

IV. Conclusions

Regarding the chronology of adopting legislative changes

1. By the Law of October 3, 2017, the CPC was supplemented with point 10 of part 1 of Article 284 of Ukraine, which provided as a separate ground for closing criminal proceedings the expiration of pre-trial investigation terms, but these changes came into force on March 15, 2018.
2. In parallel, by another law of November 16, 2017, the CPC was supplemented with point 10 of part 1 of Article 284, which provided as a separate ground for closing criminal proceedings the existence of an unrevoked resolution on closing proceedings regarding the same act. These changes came into force on December 7, 2017.
3. By the Law of September 18, 2018, the numbering of points of part 1 of Article 284 CPC was arranged, as a result of which point 10 provided as a ground for closing criminal proceedings the expiration of investigation terms and point 9-1 - the existence of an unrevoked resolution on closing another criminal proceeding regarding the same act.
4. That is, from December 4, 2017, to March 15, 2018, part 1 of Article 284 CPC contained point 10, which provided as a separate ground for closing criminal proceedings the existence of an unrevoked resolution on closing another criminal proceeding regarding the same act. The provisions of parts 4, 7 of Article 284 and part 3 of Article 314 CPC gave authority to close criminal proceedings on this ground to an investigator, prosecutor, and court (both during trial and during preparatory proceedings).
5. From March 15, 2018, to November 4, 2018, part 1 of Article 284 CPC contained simultaneously two points numbered 10: one concerned the existence of an unrevoked resolution on closing another proceeding, and another - expiration of investigation terms. At the same time, the provisions of Articles 284 and 314 CPC, which defined the powers of an investigator and court to close proceedings, contained only references to point number 10. From the above chronology of legislative changes, it is obvious that the primary intention of the legislator was to refer to point 10 precisely regarding the existence of an unrevoked resolution on closing another criminal proceeding.
6. From November 4, 2018, the numbering of the points in Part 1 of Article 284 of the Criminal Procedure Code of Ukraine was organized so that point 9-1 established, as a separate ground for closing a criminal proceeding, the existence of an uncanceled ruling to close another criminal proceeding concerning the same act, while point 10 referred to the expiration of the pre-trial investigation period. At the same time, the provisions of parts 4 and 7 of Article 284 CPC, which define the powers of an investigator and court during trial to close criminal proceedings, contained references to the ground provided for in paragraph 9-1 of part 1 of this article, and did not contain references to the ground provided for in paragraph 10 of part 1. However, the provisions of paragraph 2 of part 3 of Article 314 CPC, which provide for the court's powers to close criminal proceedings during a preparatory court session, continued to contain a reference to the

ground provided for in paragraph 10 of part 1 of Article 284 CPC, but did not contain a reference to the ground provided for in paragraph 9-1 of part 1 of Article 284 CPC.

7. By the Law of December 8, 2023, the provisions of Article 7 of Article 284 CPC, which define the court's powers during trial to close criminal proceedings, were supplemented with a reference to the ground provided for in paragraph 10 of part 1 of Article 284 CPC, that is, expiration of pre-trial investigation terms.
8. Therefore, the primary reason for including paragraph 10 of part 1 of Article 284 CPC in the list established in paragraph 2 of part 3 of Article 314 CPC was the legislator's desire to give the court powers during a preparatory court session to close criminal proceedings on the grounds of existence of an unrevoked resolution on closing another criminal proceeding regarding the same act. However, subsequent legislative changes that took place after arranging the numbering of points of part 1 of Article 284 CPC indicate the legislator's intention to leave the court with powers to close criminal proceedings at this stage on grounds of expiration of the pre-trial investigation term.

Regarding closing criminal proceedings during a preparatory court session

9. As noted above, according to CPC requirements at the time of conducting a preparatory court session, the court should have at its disposal only an indictment and a register of pre-trial investigation materials. The prosecution is directly prohibited from providing the court at this stage with any other documents, and especially evidence.
10. Given the predominantly technical function of this stage (which consists in clarifying the possibility of scheduling a trial), clarifying the presence or absence of grounds for closing criminal proceedings at this stage also has certain limitations: establishing the fact of death of the accused; existence of a previously rendered verdict on the same accusation; prosecutor's or victim's refusal to support prosecution; restrictions on criminal prosecution in case of extradition of a person from abroad; achievement of tax compromise - these are legally significant facts that are directly confirmed by one document, and therefore in case of existence of such a document, the court can immediately make a somewhat technical decision to close criminal proceedings on these grounds.
11. Making such a "technical" decision under the condition of existence of an obvious and undoubted ground for closing criminal proceedings precisely at this stage is also dictated by the principle of reasonable terms and procedural economy and is intended to prevent unnecessary delay of court procedures when an established presence of an unalternative ground for closing criminal proceedings exists.
12. On the other hand, expiration of pre-trial investigation terms as a ground for closing criminal proceedings by its nature requires a different form of clarification and verification. The law provides for a whole range of circumstances that affect the calculation of pre-trial investigation terms: time and method of notification of suspicion; extension of the pre-trial investigation term; suspension of pre-trial investigation; resumption of pre-trial investigation or cancellation of the resolution on

such suspension; combining materials of pre-trial investigations or their separation into separate proceedings; moment of beginning and end of fulfilling requirements of Article 290 CPC; moment of drafting an indictment and its submission to court, etc. In cases involving charges against multiple individuals, such circumstances must be clarified for each accused separately, followed by a comparison and determination of how these circumstances affect the overall calculation of the pre-trial investigation period in the criminal proceedings.

13. All the above circumstances are reflected in separate procedural documents and other evidence, research, analysis, and evaluation of which require from the court an approach comparable to the procedure of examining evidence. The complexity of such research increases with each additional episode or additional accused in criminal proceedings.
14. Therefore, verification by the court precisely during preparatory proceedings of the presence or absence of the fact of expiration of pre-trial investigation terms as a ground for closing criminal proceedings appears to be an uncharacteristic task for this stage of court proceedings and does not fully correspond to the function and role of such a preparatory stage.
15. Under the current legal regulation and the presence of the ground for closing criminal proceedings provided for in paragraph 10 of part 1 of Article 284 CPC, as well as the powers defined in parts 4, 7 of the same article for closing criminal proceedings on this ground in connection with expiration of pre-trial investigation terms for a prosecutor and court during trial, who are endowed with powers to comprehensively verify and examine all materials of pre-trial investigation, excluding the possibility of closing criminal proceedings on this ground at the stage of preparatory court proceedings will not have a critical negative impact on the general balance of criminal process and procedural possibilities of parties, control over compliance with reasonable investigation terms and ensuring compliance with human rights during criminal proceedings.
16. At the same time, establishing the ground for closing criminal proceedings provided for in paragraph 9-1 of part 1 of Article 284 CPC, namely the existence of an unrevoked resolution on closing another criminal proceeding regarding the same act, which is confirmed by a single document, fully corresponds to the function of preparatory court proceedings and is consistent with other grounds for closing criminal proceedings that the court verifies at this stage.

V. Proposals

17. To further improve legislative regulation of pre-trial investigation terms, it is advisable to consider as one of the variants of legislative changes the exclusion of the possibility to make decisions during preparatory court proceedings on closing criminal proceedings on the basis of paragraph 10 of part 1 of Article 284 CPC in connection

with expiration of the pre-trial investigation term after notification of suspicion, instead giving the court the possibility at this stage of court proceedings to make decisions on closing criminal proceedings on the basis of paragraph 9-1 of part 1 of Article 284 CPC in connection with the existence of an unrevoked resolution on closing criminal proceedings regarding the same act.

- 18.** Such a legislative change would require only replacing the number 10 with number 9-1 in paragraph 2 of part 3 of Article 314 CPC.
- 19.** Subject to preserving other existing methods of control over compliance with reasonable terms and maximum terms of pre-trial investigation, in particular, procedures for closing criminal proceedings by a prosecutor, as well as by a court at the stage of trial, such a legislative change will not worsen the procedural position of any of the parties and the balance of their procedural possibilities and will not lower standards of protection of human rights in criminal proceedings.