



No. 407 dated April 11, 2024

Ministry of Justice of Ukraine

**Committee of the Verkhovna Rada of
Ukraine on Law Enforcement**

**Committee of the Verkhovna Rada of
Ukraine on Legal Policy**

Appeal

of the Committee on Criminal and Criminal Procedural Law of the Ukrainian Bar Association on the proposal of the G7 Ambassadors to amend the Criminal Procedure Code regarding the time limits for pre-trial investigation after serving a person with a notice of suspicion

The Ukrainian Bar Association (UBA) is an all-Ukrainian non-governmental organization. The main goal of the UBA is to strengthen the rule of law in Ukraine, promote the protection of human rights and the development of the legal profession.

In the Letter dated 07.03.2024, the G7 Ambassadors propose to

- abolish the ground for closing criminal proceedings as the expiration of the pre-trial investigation;
- grant the prosecutor exclusive authority to extend the pre-trial investigation.

We kindly express our reservations towards these proposals for the following reasons.

Ukraine has made significant progress in implementing the rule of law, but it should be noted that the Ukrainian law enforcement system still needs to get rid of post-Soviet methods of conducting pre-trial investigations, which are characterized by an accusatory bias in pre-trial investigations. These facts are indicated by numerous decisions of investigating judges, which recognize non-compliance with the provisions of the Criminal Procedure Code (CPC) by representatives of the prosecution. These circumstances are also confirmed by a significant number of judgments of the European Court of Human Rights (ECtHR) against Ukraine on violation of Article 6 of the ECHR (right to a fair trial).

GENERAL PARTNERS

AEQUO  ASTERS  AVELLUM  LCF

 MORIS  SAYENKO
KHARENKO  Sokolovskiy
and Partners

 VB'

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 GreenbergTraurig  Linklaters  WHITE & CASE

PARTNERS

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I. On the right of a person to a reasonable period for proceedings against him/her

A reasonable time limit for proceedings is a right of the parties to the proceedings. Article 6 of the ECHR defines a reasonable time limit for proceedings as an element of the right to a fair trial. In its judgments, the ECtHR has repeatedly emphasized that the period of criminal prosecution of a person must be reasonable. At the same time, the ECtHR determines the moment when such prosecution begins in different ways. However, in any case, according to the ECtHR, the period from the official presentation of suspicion to the completion of the trial should be reasonable.

Thus, the right to a reasonable time limit for proceedings is fundamental in criminal proceedings.

Criminal procedure guarantees of the right to a reasonable time limit for proceedings include:

1. Establishment of time limits for the investigation after a person is notified of suspicion (Article 219 of the CPC of Ukraine).
2. Expiration of such terms as a ground for closing the proceedings.

Part 10 of Article 284 of the CPC provides for the obligation of the investigation to close the proceedings in case of expiration of the time limits provided for in Article 219 of the CPC. Such an obligation is a logical consequence of non-compliance with the right of a person to a reasonable time limit for the proceedings, since the prosecution should be limited in its ability to coerce.

The term available to the investigation is sufficient for a proper and complete collection of evidence. Violating such a term indicates improper conduct of the pre-trial investigation and should result in the impossibility of further criminal consequences for the person.

Thus, both the time limits for the investigation after suspicion and the expiration of such a period as a ground for closing the proceedings are necessary guarantees of the right to a reasonable time limit.

The abolition of paragraph 10 of part 1 of Article 284 of the CPC will lead to the leveling of such principles of criminal proceedings enshrined in Article 7 of the CPC as observance of reasonable time limits of pre-trial investigation, ensuring the right to appeal against actions or inaction, and, ultimately, access to justice.

II. On the need for judicial control over the investigation timeframe

The institute of investigating judges in the current CPC was introduced to ensure judicial control over the actions / inactions of participants in criminal proceedings. Judicial control at the stage of pre-trial investigation is intended to prevent abuse of procedural rights of pre-trial investigation bodies, in particular, in terms of compliance with reasonable time limits. The proposed changes are unlikely to lead to greater efficiency of the pre-trial investigation, but will only result in a decrease in the level of judicial control at this stage.

Obviously, the prosecutor, as a representative of the prosecution, cannot be objective in assessing the need for and expediency of extending the pre-trial investigation. In this case, there is a risk of strengthening the accusatory bias of criminal proceedings and ignoring the rights and interests of other participants in the process.

In addition, due to the fact that the pre-trial investigation period prior to serving a person with a notice of suspicion has been canceled, law enforcement agencies are no longer limited in time and ability to collect evidence and conduct all necessary investigative actions prior to serving a notice of suspicion.

The proposed amendments can be adopted only if an effective mechanism is created for the defense to appeal the prosecutor's procedural decisions and the investigating judge is empowered to make binding decisions.

In view of this, the proposal to grant the prosecutor exclusive powers to extend the pre-trial investigation cannot be supported.

Respectfully,

Vice President of the UBA

Tetiana Lysovets

**Chairman of the UBA Committee on
Criminal and Criminal Procedural Law**

Maksym Sheverdin