

TERMS OF PRE-COURT INVESTIGATION IN THE FORM OF INQUIRY

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Annotation. The aim of the work is to establish the specifics of terms of pre-trial investigation in the form of inquiry and to identify problems that arise in practice and need to be resolved in order to increase an effectiveness of investigation of criminal misdemeanors. The methodological basis of the work made up provisions of the modern theory of scientific knowledge of legal and social phenomena. While writing the article, both general philosophical and general scientific, as well as special legal methods of scientific knowledge were used. Results. The introduction of a simplified pre-trial investigation in the form of inquiry has accelerated the average terms of pre-trial investigation and trial of minor criminal offences, however, in practice, a number of problems arise, including those related to the terms, which find their ambiguous interpretation and the solution of which is of important practical importance. Thus, the Criminal Procedure Code of Ukraine does not provide for inquiry periods from the moment of entering information about a criminal offense into the Unified Register of Pretrial Investigations until the day of notifying a person of suspicion, which, according to most jurists, is a violation of the general principles of criminal proceedings. In addition, there are gaps regarding the order and terms of the prosecutor's extension of the inquiry period. There are also questions regarding the reasonableness of the inquiry period: a maximum is one month, in particular with regard to proceedings that require the appointment of a forensic psychiatric examination of a suspect; and a minimum of 72 hours, as this period may fall on weekends, etc. It is obvious that the identified complications can be eliminated first of all by introducing reasonable changes and additions to the Code of Criminal Procedure of Ukraine, taking into account the needs of practice and the results of thorough scientific research.

Key words: inquiry, terms, criminal misdemeanor, pre-trial investigation, inquirer, criminal proceeding.

1. Introduction.

Any activity, including criminal procedural, is carried out within certain time limits, which are necessary both to achieve the goal of a specific procedural action and to fulfill the tasks of criminal proceedings in general. At the same time, unjustified delay or delay in making procedural decisions, carrying out procedural actions, applying measures to ensure criminal proceedings, etc. can negatively affect the effectiveness of achieving a quick and complete investigation [1, p. 161, 162].

The period of pre-trial investigation is one of the most important institutions of the criminal process. After all, in each specific criminal proceeding, it is during this period of time that the investigator, inquirer, and prosecutor are empowered, among other things, to take procedural actions characterized by state coercion and associated with the temporary restriction of the rights, freedoms, and legitimate interests of other participants in the criminal proceeding. This is one of a number of reasons that confirm the importance of a well-founded determination of the terms of pre-trial investigation in the Criminal Procedure Code of Ukraine [2, p. 224].

The introduction of the institute of criminal misdemeanors certainly accelerated the average terms of pre-trial investigation and trial of minor criminal offenses, especially in the case of the suspect admitting his guilt. However, as practice shows, a number of problematic issues arise during the investigation, including those related to time limits, which are ambiguously interpreted by law enforcement entities and whose resolution is of important practical importance [3, c. 171].

2. Analysis of scientific publications.

Taking into account the relevance of the scientific research of the Institute of Inquiry in Ukraine, a significant number of scientists' works are devoted to this topic. In particular, various aspects of the organization and implementation of the investigation of criminal offenses were studied in their research Yu.P. Alenin, V.I. Bozhyk, A.F. Volobuiev, I.V. Hloviuk, Yu.M. Hroshevyi, K.P. Zadoia, V.T. Maliarenko, V.O. Popeliushko, O.Iu. Tatarov, V.M. Trofymenko, V.I. Farinnyk, S.S. Cheniavskyi and other researchers. At the same time, problematic issues of the terms of an inquiry within limits of individual scientific studies have not been sufficiently studied, which determines the relevance of this article.

3. The aim of the work.

To establish the specifics of terms of pre-trial investigation in the form of an inquiry and to identify problems that arise in practice and need to be resolved in order to increase an effectiveness of investigation of criminal misdemeanors.

4. Review and discussion.

According to Art. 219 of the Criminal Procedure Code of Ukraine, the period of pre-trial investigation is calculated from the moment of entering information about a criminal offense in the Unified State Register of Court Decisions until the day of filing an indictment with a court, a request for the application of coercive measures of a medical or educational nature, a request for the release of a person from criminal liability or until the day of the decision to close the criminal proceedings [4].

It is expedient to consider the terms of the pre-trial investigation of criminal misdemeanors according to the stages of pre-trial investigation in the form of inquiry, in particular initial, follow-up and final.

The initial stage of a simplified pre-trial investigation in the form of an inquiry. In accordance with Part 2 of Art. 298 of the Criminal Code of Ukraine, pre-trial investigation of criminal offenses (inquiry) is carried out according to the general rules of pre-trial investigation and based on the provisions of Chapter 25 of the Criminal Code of Ukraine. That is, to conduct a pre-trial investigation of criminal misdemeanors, the investigator, in accordance with Part 1 of Art. 214 of the Criminal Procedure Code of Ukraine, immediately, but no later than 24 hours after submitting an application, notification of the commission of a criminal offense or after independently discovering from any source circumstances that may indicate the commission of a criminal offense, is obliged to enter the relevant information into the Unified State Register of Court Decisions, start an investigation in the form of an inquiry and, 24 hours after entering such information, provide the applicant with an extract from the Unified State Register of Court Decisions [4].

However, it should be noted that Part 3 of Art. 214 of the Criminal Procedure Code of Ukraine provides for procedural actions that can be carried out before entering information into the Unified State Register of Court Decisions, in order to clarify the circumstances of the commission of a criminal offense.

The next stage of the pre-trial investigation in the form of an inquiry is calculated from the moment of entering information about a criminal offense into the EDPR until the day of the application to the court with an indictment, a request for the application of coercive measures of a medical or educational nature, a request for the release of a person from criminal responsibility, or until the day of the decision to close criminal proceedings [5, p. 19].

In accordance with Part 3 of Art. 219 of the Criminal Procedure Code of Ukraine, a decision on investigation of criminal proceedings should be completed in case of establishing:

1. Within 72 hours, in case of notification to a person of suspicion of committing a criminal offense or detention of a person in the cases provided for in Part 4 of Art. 298² of the Criminal Procedure Code of Ukraine.

2. Within 20 days - in case of notification to a person of suspicion of committing a criminal offense in cases where: the suspect does not admit guilt; there is a need to conduct additional investigative (search) actions; a criminal offense was committed by a minor.

3. Within one month - in case of notification to a person of suspicion of committing a criminal offense, if the person has filed a request for an examination in accordance with Part 2 of Art. 298⁴ of the Criminal Procedure Code of Ukraine.

4. Within two months from the day of notification to a person of suspicion of committing a crime [4].

Part 1 of Art. 298⁵ of the Criminal Procedure Code of Ukraine provides for the possibility for a prosecutor to extend the inquiry period up to two months in the event of need for additional investigative and search actions, which the prosecutor shall issue a corresponding resolution.

In case of impossibility to complete the inquiry within the time limit specified in Art. 219 of the Criminal Procedure Code of Ukraine, an inquirer or prosecutor shall release the detained person no later than 72 hours from the moment of detention (part 2 of Article 298⁵ of the Criminal Procedure Code of Ukraine).

Course of inquiry period is stopped in the case provided for in Art. 280 of the Criminal Procedure Code of Ukraine. The period from the date of issuing a resolution on suspension of criminal proceedings to the day of its cancellation by investigating judge or the issuance of a resolution on the resumption of criminal proceedings is not included in the terms provided for in Art. 298⁵ of the Code of Criminal Procedure of Ukraine.

In accordance with Part 2 of Art. 294 of the Criminal Procedure Code of Ukraine, if, due to the complexity of the proceedings, it is impossible to complete the pre-trial investigation from the date of notification to a person of suspicion of committing a criminal offense (inquiry) within the period specified in paragraph 1 (within 72 hours – in the case of notification to a person of suspicion of commission of a criminal offense or detention person in accordance with the procedure provided for in Part 4 of Article 298² of the Criminal Procedure Code of Ukraine) and Clause 2 (within 20 days - in the event of notification to a person of suspicion of committing a criminal offense in cases where the suspect does not admit guilt or the need for additional investigative (search) actions , or committing a criminal offense by a minor) Part 3 of Art. 219 of the Criminal Procedure Code of Ukraine, such a period may be extended by a prosecutor within the period established by clause 1 (two months from the date of notification to a person of suspicion of committing a criminal offense in exceptional cases provided for by clauses 1 and 2 of part 3 of this article) part 4 Art. 219 of the Criminal Procedure Code of Ukraine.

The final stage of the simplified pre-trial investigation in the form of an inquiry. The inquirer is obliged as soon as possible, but no later than 72 hours from the moment of a person's detention in accordance with the procedure provided for in Part 4 of Art. 298² of the Criminal Procedure Code of Ukraine to submit to a prosecutor all the collected inquiry materials together with the notification of suspicion, which the suspect, his defense attorney, legal representative, and the victim are immediately notified in writing.

A prosecutor is obliged no later than three days after receiving the inquiry materials together with a notification of suspicion, and in case of detaining a person in accordance with the procedure provided for in Part 4 of Art. 298² of the Criminal Procedure Code of Ukraine – within 24 hours, perform one of the specified actions:

1) to make a decision to close a criminal proceedings, and in case of detaining a person in accordance with the procedure provided for in Part 4 of Art. 298² of the Criminal Procedure Code of Ukraine - on the immediate release of a detained person;

2) return a criminal proceedings to an inquirer with written instructions to conduct procedural actions with simultaneous extension of inquiry period to one month and release a detained person (in case of detention of the person in accordance with the procedure provided for in Part 4 of Article 298² of the Criminal Procedure Code of Ukraine);

3) apply to a court with an indictment, a petition for the application of coercive measures of a medical or educational nature or for exemption from criminal liability;

4) in case of establishing signs of a crime, to send criminal proceedings for pre-trial investigation.

Copies of inquiry materials are provided (sent) to a person who committed criminal offense, or to his defense counsel, victim or his representative.

After receiving an indictment on the commission of a criminal misdemeanor, the court shall schedule a trial within five days, and in case of detention of a person, immediately.

The court considers the indictment for committing a criminal misdemeanor without conducting a trial in a court session in the absence of participants in court proceedings, if the accused does not contest the circumstances established during the inquiry and agrees to consider the indictment in his absence.

Therefore, a simplified pre-trial investigation in the form of an inquiry begins immediately from the moment of discovery and clarification of the circumstances of the commission of a criminal offense, but no later than 24 hours after the submission of a statement, notification of the commission of a criminal offense or after it independently discovers the circumstances from any source, that may testify to the commission of a criminal offense, and must be completed within the terms stipulated in the Criminal Procedure Code of Ukraine, which cannot exceed [5, p. 20].

Scientists have repeatedly pointed out the problematic aspects of regulating the terms of pre-trial investigation of criminal misdemeanors [6, p. 42–44; 7; 8]. Thus, A.O. Vorobei notes that the maximum period of pre-trial investigation in the form of an inquiry provided for by Art. 219 of the Criminal Procedure Code of Ukraine and is one month from the moment of notifying the person of the suspicion is too short in the case of the need for a forensic psychiatric examination. The scientist believes that the most optimal period in this case will be a period of two months from the moment of notifying a person of suspicion of committing a criminal offense, as in the case of pre-trial investigation of crimes [9, p. 114].

The opinion is also expressed that the lower limit of 72 hours is unjustified, therefore there is a practice of reporting a suspicion already after conducting an examination and collecting other evidence in order to achieve it. In the opinion of practical workers, it would be expedient to cancel the indicated limit of the period of inquiry and limit it to the existing upper limit (20/30 days). Another proposal is 3 working days, because the current 72 hours may include weekends and holidays. A short period of investigation, if a person pleads guilty and there is no need to conduct additional investigative actions, can lead to a violation of the right to defense, in particular by delaying notification of suspicion and making such notification immediately before sending the indictment to a court, which gives a person little time to prepare for protection [10, p. 29].

Assessing the implementation of criminal misdemeanors in Ukraine, E. Krapyvin notes that although the Code of Criminal Procedure of Ukraine does not clearly define how many times the prosecutor can extend the period of inquiry, the practice followed the path of such an interpretation that no more than once. This means that a maximum period of investigation after notification of suspicion is 60 days, and usually everything ends earlier [10, p. 29].

A. Romanyuk's remark that the Code of Criminal Procedure has duplication of identical legal relations in various articles of the Code of Criminal Procedure, which complicates the understanding and application of these norms, seems to be correct. In particular, a procedure for extending an inquiry period is duplicated in Clause 1, Part 4 of Art. 219 and in Art. 294 of the Criminal Procedure Code and leads to a misunderstanding of the general period of inquiry, for which a prosecutor has the right to extend it [11].

In turn, T.O. Kuzubova draws attention to the fact that currently the Criminal Procedure Code of Ukraine does not provide for inquiry periods from the moment information about a criminal misdemeanor is entered into the Unified Register of Pretrial Investigation until the day the person is notified of the suspicion. At the same time, the scientist emphasizes, the absence of these terms excludes the possibility of an inquirer, an prosecutor, fulfilling the requirements of the provisions of para. 2 p. 10 h. 1 art. 284 of the Criminal Procedure Code of Ukraine, according to which investigator, inquirer, prosecutor are obliged to close criminal proceedings in the event that the term of the pre-trial investigation, defined

in the provisions of Art. 219 of the Criminal Procedure Code of Ukraine, ended and no person was notified of the suspicion [2, p. 226].

V. Farynyk believes that the absence of Art. 219 of the Code of Criminal Procedure of Ukraine, which would regulate the duty of the investigator, inquirer or prosecutor to close proceedings regarding a criminal misdemeanor in which no person has been notified of the suspicion, is a serious gap that leads to a violation of the general principles of criminal proceedings. The scientist notes that due to the imperfect legislation, a maximum period of pre-trial investigation until the moment of notification of a person of suspicion is provided for in proceedings regarding criminal offenses of minor and medium severity, but not for criminal misdemeanors. Thus, concludes V. Farynyk, persons who are being investigated for criminal misdemeanor proceedings do not have a real opportunity to demand the closure of such proceedings, which are allegedly ongoing, but a suspicion is not announced [12].

The Criminal Court of Cassation as part of the Supreme Court also made its conclusion regarding a term of pre-trial investigation for criminal misdemeanors. According to circumstances of the case, a court of first instance closed criminal proceeding on commission of a misdemeanor by a decision that was left unchanged by an appellate court, referring to paragraph 10, part 1 of Article 284 of the Criminal Procedure Code of Ukraine (closing of criminal proceedings, if the period of pre-trial investigation specified in Article 219 of the Criminal Procedure Code of Ukraine has expired after notification to a person of suspicion, except in the case of notification of a person suspected of committing a serious or particularly serious crime against a person's life and health).

In the cassation appeal, the prosecution noted that the Code of Criminal Procedure of Ukraine provides for investigation periods for criminal misdemeanors after a person is notified of suspicion, but not before that moment, and therefore believed that the closure of criminal proceedings on the basis of Clause 10 Part 1 of Art. 284 of the Criminal Procedure Code of Ukraine is incorrect.

The Criminal Court of Cassation as part of the Supreme Court did not agree with such arguments of a prosecution, stating the following. Part 2 of Art. 219 of the Criminal Procedure Code of Ukraine stipulates that the period of pre-trial investigation from the moment of entering information about a criminal offense into the EDPR until the day of notifying a person of suspicion is: 1) twelve months – in criminal proceedings for a minor crime; 2) eighteen months – in criminal proceedings regarding a serious or particularly serious crime.

In Part 2 of Art. 298 ch. 25 of the Criminal Procedure Code of Ukraine "Peculiarities of the pre-trial investigation of criminal misdemeanors" established the rule that the pre-trial investigation of criminal misdemeanors (inquiry) is carried out in accordance with the general rules of pre-trial investigation provided for by this Code, taking into account the provisions of this chapter. Therefore, the Criminal Procedure Code of Ukraine does not determine the period of investigation for criminal offenses from the moment of entering the relevant information into the EDPR.

At the same time, criminal offenses under Art. 12 of the Criminal Code of Ukraine are the least socially dangerous acts. At the next level of gradation according to public danger are non-serious crimes. Part 2 of Art. 219 of the Criminal Procedure Code of Ukraine defines the period of pre-trial investigation for minor, serious and especially serious crimes.

Given the fact that criminal misdemeanors are less socially dangerous acts compared to minor crimes, the term of their investigation should not be longer than for minor crimes [13].

In the end, the above-mentioned gap in the Criminal Procedure Code of Ukraine became the reason for the Human Rights Commissioner of the Verkhovna Rada of Ukraine to submit a proposal to improve the legal regulation of pre-trial investigation of criminal misdemeanors to the Parliamentary Committee on Law Enforcement. In particular, the Commissioner asked to make changes to Art. 219 of the Criminal Procedure Code of Ukraine, determining a period of pre-trial investigation from the moment of entering information about a criminal offense into the Unified Register of Pre-trial Investigations until the day of notifying a person of suspicion of criminal proceedings regarding a criminal misdemeanor as six months [14].

5. Conclusions.

The introduction of a simplified pre-trial investigation in the form of inquiry definitely accelerated the average terms of a pre-trial investigation and trial of minor criminal offenses, especially if a suspect admits his guilt. However, as practice shows, a number of problems arise during an investigation, including those related to terms that are ambiguously interpreted by law enforcement entities and the solution of which is of important practical importance. The most significant complications, in particular, are: the absence of a maximum period of inquiry stipulated in the Criminal Procedure Code of Ukraine from the moment of entering information about a criminal offense into the Unified Register of Pretrial Investigations until the day a person is notified of suspicion; The Criminal Procedure Code of Ukraine does not clearly define how many times a prosecutor can extend period of inquiry; in the Criminal Procedure Code of Ukraine, there is a duplication of identical legal relations in various regulations, in particular, the procedure for extending inquiry period is duplicated in Clause 1, Part 4 of Art. 219 and in Art. 294 of the Criminal Procedure Code, which leads to a misunderstanding of general period of inquiry, for which a prosecutor has the right to extend it.

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