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THE EFFECTIVENESS OF PRE-TRIAL INVESTIGATION: ENSURING A BALANCE BETWEEN THE PUBLIC INTEREST IN COMBATING CRIME AND THE NEED FOR UNCONDITIONAL RESPECT FOR HUMAN RIGHTS

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Karapetian A. R. The effectiveness of pre-trial investigation: ensuring a balance between the public interest in combating crime and the need for unconditional respect for human rights.

The article provides a comprehensive constitutional and legal analysis of the effectiveness of pre-trial investigation in Ukraine through the prism of ensuring a balance between the public interest in combating crime and the unconditional observance of human rights and freedoms. It is substantiated that pre-trial investigation, as a key stage of criminal proceedings, represents a sphere of increased risk of interference with fundamental human rights, which necessitates enhanced regulatory and institutional control. The content of constitutional guarantees, including the right to liberty and personal security, the right to a fair trial, the presumption of innocence, and the right to defense, is раскрыта in the context of their implementation at the pre-trial stage.

The article offers a critical analysis of the application of criminal procedural legislation, revealing systemic dysfunctions manifested in excessive duration of investigations, formalization of evidentiary procedures, abuse of procedural powers, and insufficient effectiveness of judicial control. It is argued that such phenomena lead to the actual devaluation of constitutional guarantees and undermine the principle of the rule of law, particularly its elements of legal certainty and effective remedy.

Particular attention is paid to the analysis of specific provisions of criminal procedural law (including those regulating the registration of criminal offenses, time limits of investigation, notification of suspicion, application of preventive measures, and admissibility of evidence), which demonstrate insufficient effectiveness in law enforcement practice. It is emphasized that the formal compliance of legislation with European standards does not ensure their proper implementation without a high level of legal culture and effective judicial oversight.

The article concludes that a comprehensive improvement of pre-trial investigation mechanisms is required, including the clarification of procedural criteria, strengthening of defense guarantees, and implementation of the European Court of Human Rights standards into national practice in order to ensure the real, rather than declarative, nature of human rights protection.

Key words: human rights, rule of law, pre-trial investigation, efficiency, human rights guarantees, criminal process, judicial control, suspicion, preventive measures, evidence.

Карапетян А. Р. Ефективність досудового розслідування: забезпечення балансу між публічним інтересом у боротьбі зі злочинністю та необхідністю безумовного дотримання прав людини.

Стаття присвячена комплексному конституційно-правовому аналізу ефективності досудового розслідування в Україні крізь призму забезпечення балансу між публічним інтересом у боротьбі зі злочинністю та необхідністю безумовного дотримання прав і свобод людини та громадянина. Обґрунтовано, що досудове розслідування як ключова стадія кримінального провадження виступає сферою підвищеного ризику втручання у фундаментальні права особи. Розкрито зміст конституційних гарантій прав людини і основоположних свобод, зокрема права на свободу та особисту недоторканність, права на справедливий суд, презумпції невинуватості та права на захист, у контексті їх реалізації на стадії досудового розслідування.

У науковій статті здійснено аналіз практики застосування норм кримінального процесуального законодавства України, який засвідчує наявність системних дисфункцій, що проявляються у затягу-

ванні строків розслідування, формалізації процесу доказування, зловживанні процесуальними повноваженнями та недостатній ефективності судового контролю. Доведено, що такі явища призводять до фактичної девальвації конституційних гарантій та порушення принципу верховенства права, зокрема його елементів – юридичної визначеності та ефективного засобу правового захисту.

Особливу увагу в науковій статті приділено аналізу окремих норм кримінального процесуального законодавства України (зокрема щодо внесення відомостей до єдиного реєстру досудових розслідувань, строків розслідування, повідомлення про підозру, застосування запобіжних заходів та допустимості доказів), які у правозастосовній практиці виявляють свою недостатню ефективність. Обґрунтовано, що формальна відповідність законодавства України європейським стандартам не забезпечує їх реальної імплементації без належного рівня правозастосовної культури та ефективного судового контролю.

Зроблено висновок про необхідність комплексного вдосконалення механізмів досудового розслідування, посилення гарантій прав сторони захисту з метою забезпечення реального, а не декларативного характеру прав людини.

Ключові слова: права людини, принцип верховенства права, досудове розслідування, ефективність, гарантії прав людини, кримінальний процес, судовий контроль, підозра, запобіжні заходи, доказування.

Formulation of the problem. The relevance of the study of the problem of inefficiency of pre-trial investigation under the contemporary conditions of the development of a rule-of-law state is primarily обусловлена its direct connection with the implementation of constitutional rights and freedoms of the individual and citizen. Pre-trial investigation constitutes a key stage of criminal proceedings, within which the state exercises its authoritative powers to detect, terminate, and investigate criminal offenses. At the same time, it is precisely at this stage that the highest risk of violation of fundamental human rights guaranteed by the Constitution of Ukraine [1-3] arises, which confers particular significance on the issue under study from the standpoint of constitutional law.

The constitutional and legal dimension of the effectiveness of pre-trial investigation lies in ensuring a balance between the public interest in combating crime and the necessity of unconditional observance of human rights, in particular the right to liberty and personal security, the right to a fair trial, the presumption of innocence, the right to defense, as well as the right to respect for human dignity. Inefficiency of pre-trial investigation, which may manifest itself in excessive delays, a formalistic approach to evidence collection, improper procedural supervision, abuse of procedural powers, or inactivity of pre-trial investigation bodies, effectively nullifies the substance of these constitutional guarantees.

This issue acquires particular relevance in the context of the principle of the rule of law, which is recognized as fundamental within the constitutional order. One of its elements is the principle of legal certainty and effective judicial control over the activities of public authorities. In the case of ineffective pre-trial investigation, an individual is deprived of a real mechanism for the protection of his or her rights, while criminal proceedings are transformed into an instrument of arbitrary state interference in the sphere of private life [4].

Moreover, the inefficiency of pre-trial investigation undermines public trust in state institutions, which contradicts the constitutional foundations of a democratic, social, and rule-of-law state. The lack of proper quality of investigation leads not only to violations of the rights of suspects and accused persons but also to the failure of the state to fulfill its positive obligation to ensure effective investigation of crimes, particularly those encroaching upon life, health, and human security. In this respect, inefficiency of investigation constitutes a threat to the realization of the right to an effective remedy.

Contemporary challenges related to the reform of the law enforcement system, European integration, and the implementation of international human rights standards [5-9] further intensify the relevance of scholarly reflection on this issue. The practice of applying criminal procedural legislation indicates the presence of systemic shortcomings in the functioning of pre-trial investigation bodies, which necessitates a comprehensive constitutional and legal analysis in order to develop effective mechanisms for their elimination.

Therefore, the study of the inefficiency of pre-trial investigation is relevant both from theoretical and practical perspectives, as it is aimed at ensuring the real, rather than declarative, nature of constitutional rights and freedoms, strengthening the principle of the rule of law, and enhancing the overall effectiveness of the criminal justice system.

The purpose of the article is to analyze the content of the relevant guarantees, the mechanisms of their implementation, and the causes that lead to their actual devaluation in law enforcement practice during the conduct of pre-trial investigation.

The state of research on the issue. The effectiveness of pre-trial investigation in modern legal doctrine is increasingly interpreted through the prism of the rule of law as a substantive, value-oriented principle that requires a careful balance between the public interest in combating crime and the unconditional respect for human rights. In this context, the collective monograph by T. Polychko, Yu. Bysaha, V. Berch, L. Deshko, H. Nechyporuk, and N. Petretska "The supremacy of constitutional norms in the national legal system" [2] substantiates that the supremacy of constitutional norms predetermines the content and limits of criminal procedural activity, including the pre-trial stage. The authors argue that the effectiveness of pre-trial investigation cannot be reduced to instrumental indicators, but must be assessed through compliance with constitutional guarantees, such as the right to liberty, fair trial, and legal certainty. This approach is further developed in the international collective monograph "Law – a vital source of Ukraine's victory over Russia: analytics, opinions, forecasts " [4], which emphasizes that under conditions of armed conflict the state's obligation to ensure security must be exercised within a strict human rights framework, thereby reinforcing the qualitative dimension of effectiveness.

A significant contribution to the doctrinal understanding of this balance is made in the works of L. Deshko, which integrate the standards of the European Court of Human Rights into the national legal discourse. In particular, in " Enforcement of decisions of national courts: principles of the European Court of Human Rights " [5], the author highlights the principles of effectiveness, good faith, and binding force of judicial decisions as essential elements of the rule of law, directly applicable to pre-trial proceedings. These ideas are complemented by the analysis of the concept of restitutio in integrum [9], where it is argued that the effectiveness of criminal justice must also be measured by the availability of real and adequate remedies for violations of individual rights during investigative actions. Furthermore, in "Criteria for the court's compliance with the obligation to provide justification of its decisions" [7], L. Deshko substantiates the requirement of reasoned decision-making, which extends to procedural decisions at the pre-trial stage and serves as a safeguard against arbitrariness.

The broader constitutional and human rights context of pre-trial investigation effectiveness is reflected in the works of Ukrainian scholars addressing freedom of expression, minority rights, and interdisciplinary legal safeguards. In particular, the monograph by K. Barnych, Yu. Bysaha, V. Berch, L. Deshko, and R. Fridmanskyi [6] emphasizes that any restriction of fundamental rights must comply with the criteria of legality, necessity, and proportionality, which are equally binding for investigative authorities. Similarly, the study by L. Deshko, O. Vasylchenko, and O. Lotiuk [8] expands the understanding of effectiveness to include the protection of vulnerable groups, while V.D. Volkov [3] demonstrates the relevance of interdisciplinary standards, such as respect for human dignity and personal autonomy. In conjunction with the jurisprudence of the European Court of Human Rights (e.g., Salduz v. Turkey [13], Kudła v. Poland [14]), as well as the works of A. Ashworth, L. Zedner, and M. Delmas-Marty, the analyzed literature confirms a doctrinal shift toward a model of pre-trial investigation in which effectiveness is inseparable from legality, procedural fairness, and the primacy of human rights.

Presenting main material. The main part of the study of the problem of inefficiency of pre-trial investigation in the constitutional and legal dimension involves a comprehensive analysis of the content of the relevant guarantees, the mechanisms of their implementation, and the causes that determine their actual devaluation in law enforcement practice.

First and foremost, pre-trial investigation as a stage of criminal proceedings has a clearly expressed public-law character and is carried out on behalf of the state [10], which imposes on it the obligation to act exclusively within the limits and in the manner prescribed by the Constitution and laws. Such an obligation directly follows from the principle of the rule of law, which requires not only formal legality but also substantive fairness of procedures. At the same time, in practice there is a tendency toward the formalization of procedural actions, which substitutes for the genuine establishment of the circumstances of a criminal offense and reduces the quality of the evidentiary basis.

One of the key indicators of inefficiency of pre-trial investigation is the violation of reasonable time limits in criminal proceedings. Excessive duration of investigation contradicts the constitutional guarantees of the right to a fair trial and creates a situation of legal uncertainty for the participants in the proceedings. Delays

in investigation may be caused both by objective factors (complexity of the case, lack of resources) and subjective ones (improper organization of work, inactivity of the investigator or prosecutor, abuse of procedural rights). In any case, such phenomena indicate a failure of the state to comply with its positive obligation to ensure effective justice.

A significant aspect of the problem is also the insufficient level of judicial control over the activities of pre-trial investigation bodies. Although procedural legislation provides for the institution of the investigating judge as a guarantor of the observance of human rights and freedoms, in practice its role is often reduced to the formal authorization of procedural decisions. The limited possibilities for prompt and effective appeal against the inactivity of an investigator or prosecutor lead to the fact that the constitutional right to judicial protection is not fully realized.

Particular attention should be paid to the problem of abuse of procedural powers by pre-trial investigation bodies. This concerns, in particular, the unjustified application of measures to ensure criminal proceedings, such as detention, the imposition of preventive measures, searches, or temporary access to items and documents. Such actions, carried out without proper justification or in violation of procedural safeguards, constitute direct interference with constitutional rights, in particular the right to liberty, inviolability of the home, and private life.

An important element of effective pre-trial investigation is compliance with the principle of adversarial proceedings and the ensuring of the right to defense. However, in practice, there is often an imbalance between the parties to criminal proceedings, where the prosecution enjoys significantly broader opportunities in collecting and using evidence. Restrictions on the defense's access to case materials, untimely notification of suspicion, or manipulation of a person's procedural status undermine the substantive realization of the right to defense and contradict constitutional standards of a fair trial.

No less important is the problem of the institutional organization of pre-trial investigation bodies. An insufficient level of coordination between investigative bodies and prosecutors, excessive workload, кадрові проблеми (staffing issues), and lack of proper professional training negatively affect the quality of investigation. In this context, the question arises as to whether the existing model of organization of pre-trial investigation complies with the constitutional principles of efficiency of public administration and good governance.

In addition, it is necessary to take into account the practice of international judicial institutions, which forms standards of effective investigation as a component of human rights protection. The failure of the state to fulfill its obligation to conduct an effective, independent, and timely investigation may indicate systemic problems in the functioning of criminal justice and requires an appropriate response at both legislative and law enforcement levels.

The effectiveness of pre-trial investigation in Ukraine, as a component of criminal procedure, directly depends on the ability of the provisions of the Criminal Procedure Code of Ukraine to ensure a balanced combination of two interrelated but potentially conflicting values: the public interest in combating crime and the unconditional observance of human rights and freedoms. At the same time, the analysis of the current provisions of the Criminal Procedure Code of Ukraine through the prism of law enforcement practice, including the positions of national courts and the case law of the European Court of Human Rights, allows us to conclude that there are a number of normative constructions that prove to be insufficiently effective or even dysfunctional in the real mechanism of pre-trial investigation.

First of all, attention should be paid to the issues related to the implementation of Article 214 of the Criminal Procedure Code of Ukraine, which establishes the obligation of an investigator or prosecutor to immediately, but no later than within 24 hours, enter information into the Unified Register of Pre-Trial Investigations. Despite the imperative nature of this provision, in practice it often turns into a formal guarantee that does not ensure real access to justice. A typical situation is the actual "filtering" of reports of criminal offenses at the stage preceding the entry of information into the Unified Register of Pre-Trial Investigations, which contradicts the legal position of the Supreme Court and the approaches of the European Court of Human Rights (in particular, in cases concerning effective investigation under Articles 3 and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms [11]). As a result, the public interest in timely response to crimes is replaced by administrative expediency, while the individual's right to an effective investigation is restricted.

Equally problematic is the regulation of time limits for pre-trial investigation enshrined in Article 219 of the Criminal Procedure Code of Ukraine. Formally, this provision is aimed at ensuring reasonable time limits for proceedings; however, its practical implementation demonstrates the opposite effect. In particular,

the mechanism for extending the time limits of pre-trial investigation through the court often turns into a formal procedure in which investigating judges, proceeding from the presumption of the reasonableness of the prosecution's motions, effectively legitimize delays in investigation. At the same time, the absence of clear criteria for the "complexity of proceedings" or "exceptional circumstances" creates a wide field for discretion, which is not always consistent with the principle of legal certainty.

Special attention should be paid to the institution of notification of suspicion (Articles 276-278 of the Criminal Procedure Code of Ukraine), which is of key importance for ensuring the procedural rights of an individual. Practice indicates the existence of the phenomenon of so-called "formal suspicions," when notification of suspicion is carried out without proper substantiation of the sufficiency of evidence, which contradicts the "reasonable suspicion" standard developed in the case law of the European Court of Human Rights. Such practice, on the one hand, enables the prosecution to intensify the application of coercive procedural measures (preventive measures, searches, etc.), and on the other hand, creates risks of arbitrary interference with human rights, in particular the right to liberty and personal security.

The provisions regulating the application of preventive measures (Articles 176–199 of the Criminal Procedure Code of Ukraine) also demonstrate a certain inefficiency in ensuring a balance of interests. Despite the declared priority of less restrictive preventive measures, in practice there is a tendency toward the widespread use of detention, which is often justified by general, template formulations regarding the risks provided for in Article 177 of the Criminal Procedure Code of Ukraine. The European Court of Human Rights, in numerous judgments against Ukraine (in particular, "Kharchenko v. Ukraine" [12]), has identified a systemic problem of insufficient individualization of risks and automatism in extending periods of detention. This indicates that the relevant provisions of the Criminal Procedure Code of Ukraine, although formally compliant with European standards, do not ensure their proper implementation.

The mechanism of judicial control over pre-trial investigation is also debatable, particularly with regard to appealing against the inactivity of an investigator or prosecutor (Article 303 of the Criminal Procedure Code of Ukraine). The limited list of appealable decisions, actions, or omissions effectively narrows the possibilities of the defense to respond effectively to violations of its rights. Moreover, practice demonstrates a formalistic approach of investigating judges to the consideration of such complaints, which nullifies the very idea of judicial control as a guarantee of human rights.

Finally, attention should be drawn to the issue of admissibility of evidence (Articles 86–89 of the Criminal Procedure Code of Ukraine). Despite the formal закріплення of the "fruit of the poisonous tree" doctrine, in practice courts do not always consistently apply the criteria of inadmissibility of evidence obtained in violation of human rights. This creates a situation in which procedural violations do not always entail appropriate legal consequences, thereby undermining the preventive function of procedural guarantees.

Conclusions. The analysis of specific provisions of the Criminal Procedure Code of Ukraine indicates the existence of a systemic problem: the formal compliance of legislation with European standards does not translate into their effective implementation in practice. This is обусловлено both by the imperfection of certain normative constructions (lack of clear criteria, excessive discretion) and by the peculiarities of law enforcement (formalism, accusatory bias, institutional inertia). As a result, the balance between the public interest in combating crime and human rights is often shifted in favor of the former, which contradicts the principles of the rule of law and fair trial.

Addressing these problems requires a comprehensive approach that includes both the improvement of normative regulation (in particular, the specification of grounds and criteria for procedural decisions) and changes in law enforcement practice through strengthening the role of judicial control, developing the legal consciousness of participants in proceedings, and implementing the standards of the European Court of Human Rights into national practice.

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