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Termination of pre-trial investigation due to a serious illness of the suspect (accused) in the criminal procedure of Ukraine and some European states

Зупинення досудового розслідування з огляду на тяжку хворобу підозрюваного (обвинуваченого) у кримінальному процесуальному праві України та деяких європейських держав

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Abstract

The aim of the article is to study the legal regulations, doctrinal approaches to the understanding of mental disorder or another serious disease of the suspect (accused) as a reason for stopping the pre-trial investigation in the criminal procedural law of European countries, and also the development and justification of the proposal, directed for the improvement of the regulation of such reasons in the criminal procedural law of Ukraine. The methodological grounds of the research constitute general scientific and special legal methods, in particular dialectical, method of analysis, method of generalization, structural and functional method, hermeneutical method, dogmatic method, comparative legal method. We analyze one of the reasons for stopping the pre-trial investigation – mental disorder or another serious disease of the suspect (accused). Analyzing the corresponding legal acts of the CPC of Ukraine and European countries, the views of researchers, we provide our views on the questions of the research topic, and give suggestions on the improvement of the criminal procedural law of Ukraine. The signs of mental disorder of the suspect (accused) have been

Анотація

Метою статті є вивчення правового регулювання, доктринальних підходів щодо розуміння психічного розладу чи іншої тяжкої хвороби підозрюваного (обвинуваченого) як підстави для зупинення досудового розслідування у кримінальному процесуальному праві європейських держав, а також напрацювання та обґрунтування пропозиції, спрямованої на вдосконалення регламентації цієї підстави у кримінальному процесуальному законі України. Методологічну основу дослідження становлять загальнонаукові та спеціально-правові методи, зокрема діалектичний, аналізу, узагальнення, структурно-функціональний, герменевтичний, догматичний, порівняльно-правовий. У статті проаналізовано одну з підстав для зупинення досудового розслідування – психічний розлад чи інша тяжка хвороба підозрюваного (обвинуваченого). Аналізуючи відповідні норми КПК України та європейських держав, погляди дослідників, автори подають своє бачення питань, що входять до предмета дослідження, висловлюють пропозиції щодо вдосконалення кримінального процесуального закону України. З'ясовано ознаки психічного

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clarified, the criteria of the serious somatic symptom disorder as a reason for stopping the pre-trial investigation have been singled out. A new version of P. 1 Ch. 1 Art. 280 of the CPC of Ukraine has been proposed.

Keywords: criminal procedural law, stopping (suspension) of the pre-trial investigation, suspect (accused), mental disorder, serious somatic symptom disorder.

Introduction

The society predominantly associates the words “criminal law” and “criminal procedure” with a criminal offence that has been committed, with a perpetrator who should be found and punished (Meikališa & Strada-Rozenberga, 2018). After having been started, the pre-trial investigation, directed to achieving the goals of criminal proceedings, must be brought to a logical conclusion. However, during the pre-trial investigation certain circumstances sometimes appear which prevent the continuation and end of the criminal proceedings. It would appear that if the fact of committing a criminal offense is established, then there cannot exist any delays for the comprehensive, complete and impartial pre-trial investigation. However, in real life this is not always the case. The circumstances, which are meant here, are connected with the temporary obstacle in the implementation of criminal proceedings, in particular with the impossibility of the suspect (accused) to take part in such a pre-trial investigation. Such circumstances make up the content of the grounds for stopping the pre-trial investigation.

The grounds for stopping the pre-trial investigation constitute circumstances confirmed by the totality of evidence, which are provided for in the criminal procedural law and which temporarily prevent the continuation and end of the pre-trial investigation.

It is worth mentioning that in the Polish doctrine of the criminal proceedings the circumstances which make up the grounds for the suspension of the criminal proceedings are treated as such that not only prevent the continuation of the proceedings, but make its course impossible (Waltoś, 1970; Rodzoch, 2017). Instead, in the Ukrainian criminal procedural law, law enforcement practice and science of criminal procedure only the circumstances that make criminal justice impossible are considered as the grounds for the closure of criminal proceedings.

розладу підозрюваного (обвинуваченого) та виокремлені критерії тяжкого соматичного захворювання як підстави для зупинення досудового розслідування. Запропоновано нову редакцію п. 1 ч. 1 ст. 280 КПК України.

Ключові слова: кримінальне процесуальне право, зупинення досудового розслідування, підозрюваний (обвинувачений), психічний розлад, тяжке соматичне захворювання.

The termination of the pre-trial investigation leads to unfavorable consequences. Indeed, the termination of the pre-trial investigation results in the fact that its normal development and course is disturbed, the restoration of the violated rights of participants in criminal proceedings is delayed. This affects the quality and effectiveness of the criminal proceedings in general. The termination of the pre-trial investigation has also negative consequences of the mental nature. The natural processes which occur in the memories of the witnesses and victims lead to forgetting of some details of the committed criminal offense, which surely affects the completeness and depth of establishment of the subject of proof. On the other hand, the opinion about the helplessness of law enforcement agencies is increasing in society, the authority of the law enforcement agencies decreases. With this in mind, the legislator must introduce effective procedural means which would decrease (neutralize) negative effects of the fact of termination of the pre-trial investigation, and provide for successful overcoming of obstacles that led to such a decision. The doctrine of the criminal process is supposed to help the legislator to accomplish this task.

The article answers the questions about the regulation of such ground for the termination of the pre-trial investigation as mental disorder or other serious disease of the suspect (accused) in the criminal procedural law of Ukraine, whether it is consistent with the approaches established in the criminal procedural law of some European countries and which are the doctrinal positions on the essence of such ground for the termination of the pre-trial investigation.

Literature Review

The problems of termination of pre-trial investigation, in particular mental disorder or another serious disease of the suspect (accused) as the ground for making such a decision, were

considered in the works of Ada Famiglietti, Jan Kudrelek, Inka Rodzoch, Stanisław Waltoś, Mykola Shumylo, Liudmyla Dunaievska, Olena Kozeratska. Scientific ideas, theoretical provisions and recommendations which were formulated in their works were reflected in legislation and positively perceived by law enforcement practice.

Stanisław Waltoś (1970) researched the matter of disease duration of the suspect as the ground for termination of criminal proceedings. The author justifies that the language unit “duration” means that the suspect would be ill for an indefinite period of time or during the period that is larger than the maximal term of pre-trial investigation. On the other hand, Jan Kudrelek (2004) rightly noted that the termination of pre-trial investigation based on the mental disorder of the suspect may be possible only in the case when mental dysfunction occurs after the suspect commits a criminal offense. The researcher rightly attributed the impossibility of the suspect's participation in criminal proceedings as the ground for termination of pre-trial investigation to the signs of a mental disorder of the suspect. Instead, Inka Rodzoch (2017) arrived at the conclusion that the use of the term “another serious disease of the suspect” by Polish legislators provides for an opportunity to differentiate it from mental disorder and to affirm that somatic symptom disorder of the suspect was meant in this case. She argued that unlike in the case of mental disorder, doubts in the somatic health of the suspect should not require certification of the fact of the disease by the expert's conclusion.

Ada Famiglietti (2014, 2018) emphasized that in order to terminate criminal proceedings it is not enough only to prove the mental disorder of the accused. It is also necessary for the accused to be in the state which makes it impossible for him to understand what is happening all around, and such a state prevents the accused from self-defense. The researcher pointed out that the aforementioned can be expanded also to somatic symptom disorders in the case when they are reflected on the psyche of the accused in a way that excludes the possibility to consciously participate in the criminal proceedings.

Mykola Shumylo, Liudmyla Dunaievska and Olena Kozeratska (2019) made a distinction between the terms “mental disorder” and “mental disability”. They arrived at the conclusion that mental disability constitutes a deviation from normal mental development, that includes speech disorders, emotional and volitional sphere,

mental development and limits the total intellectual activity of a person. Instead, mental disorder is always connected with the lack of the ability of a person to realize the meaning of their actions and control them. It is the mental disorder that is the ground for the termination of the pre-trial investigation.

Methodology

The methodological basis of this article is the dialectical approach to the scientific knowledge of social phenomena. While writing this article, we have also used general scientific and special legal methods of knowledge: the analysis, which was used to determine the drawbacks of legal regulations of mental disorder or another serious disease of the suspect (accused) as ground for the termination of pre-trial investigation in the criminal procedural law of Ukraine); generalization, which was used to form new scientific approaches to understanding mental disorder of the suspect (accused) as ground for the termination of pre-trial investigation); structural-functional method, which made it possible to find out the signs of mental disorder as ground for the termination of pre-trial investigation; hermeneutical method, which was used to interpret the essence of the serious somatic symptom disorder as ground for the termination of pre-trial investigation; dogmatic or special legal method, which was used to study scientific approaches to understanding mental disorder or another serious disease of the suspect (accused) as ground for the termination of pre-trial investigation; comparative legal method, which made it possible to compare norms regarding regulations of such ground for the termination of pre-trial investigation as mental disorder or another serious disease of the suspect (accused) in the criminal procedural law of Ukraine and other European countries.

Results and discussion

The case when a suspect has come down with a serious illness which prevents him from participating in the criminal proceedings and such an illness is confirmed by a medical conclusion (P.1 Ch. 1 of Art. 280 of the CPC of Ukraine) is the first ground for the termination of pre-trial investigation in the criminal procedural law of Ukraine (Law of Ukraine No. 4651-VI, 2012).

The latter describes the situation when a person has been informed about the suspicion but the illness of the person prevents them from participating in the criminal proceedings. Since

such an active participant as the suspect is excluded from the investigation process, this prevents pre-trial investigation from continuing and ending. Under such circumstances the criminal proceedings shall be stopped.

In addition, similar ground is present in the criminal procedural law of a number of European countries.

Indeed, according to P.1 Ch.1 of Art. 24 of the CPC of the Republic of Bulgaria, the criminal proceedings are stopped if the accused gets a short-term disorder of consciousness which excludes prudence or another serious disease which prevents the implementation of proceedings after committing a crime (Code of the Republic of Bulgaria).

According to § 1 Art. 22 of the CPC of Republic of Poland, if there exists a long-term obstacle which prevents the implementation of the proceedings in particular if the accused cannot participate in the criminal proceedings due to the mental or another serious disease, the proceedings in the case is terminated for the duration of the obstacle (Act of Republic of Poland No. 555).

According to points «b», «c» Ch. 2 § 228 of the CPC of Slovak Republic, police officer terminates the criminal prosecution if the accused cannot be taken to court due to the serious disease and also if the accused cannot understand the essence of the criminal prosecution due to the mental disease which occurred only after the crime was committed (Law of Slovak Republic No. 301, 2005). At the same time, the decision about the termination of pre-trial investigation can be made only after indictment (Kolektív autorov, 2012). Analogous legal regulations are stated in points «b», «c» Ch. 1 § 173 of the CPC of Czech Republic (Law of Czech Republic No. 141, 1961).

In turn, the CPC of the Republic of Italy connects the termination of pre-trial investigation to the mental disorder of the accused. According to p. 1 of art. 70 of this codified act, if the results of investigation reveal that the mental state of the accused is one that prevents their conscious participation in the proceedings and that this state is reversible, the judge makes the decision about the termination of proceedings under the condition that an acquittal or a decision not to prosecute the suspect will not be issued (Code No. 477, 1988).

It is worth mentioning that Italian criminal procedural law makes a distinction between the ability to understand and desire and the ability to participate in the proceedings. The first one covers the fullness of mental abilities that the suspect had at the moment when the crime was committed. The second one corresponds to the possibility of execution of all rights by the suspect connected with legal capacity, in order to guarantee the right to self-defense "on the assumption that technical protection alone is not sufficient" (Famiglietti, 2018).

According to the interpretation of the Constitutional Court of the Republic of Italy the termination of criminal proceedings is not only due to the presence of disorder which can be defined in the clinical sense as mental but also any other state of weakness of the accused that prevents them from the efficient participation in the criminal proceedings (for example, the ischemic pathology makes it difficult to express oneself fully and clearly). Subsequently, the Constitutional Court of the Republic of Italy clarified that a sign of inability to appear before the court is the "irreversibility" of the illness, which excludes any form of conscious participation of the accused. In this case a significant change of the previous legal position happened since the last decision suggests adhering to the current legal regulation despite the attempts to expand the concept of inability of the accused to participate in the criminal proceedings (Famiglietti, 2014).

In addition, according to p. 3 of Art. 80 of the CPC of Greece/Hellenic Republic, if the accused has been proven to have the state of disorder of mental functions before the end of the investigation, the investigator shall make a decision about the termination of the proceedings (Law of Hellenic Republic No. 4620, 2019).

As it has been rightly noted in the literature, the incorrect application of this ground is one of the reasons for the increased duration of pre-trial investigation that affects in a negative way the evaluation of the actions of the investigator and prosecutor (Kudrelek, 2004).

In the Law of Ukraine, the term "serious disease" is not defined. Therefore, this category is evaluative. By pointing at such a disease Ukrainian legislator do not define its specific belonging to the groups defined by medicine. In the medical literature the health ailments of a person are customarily divided into two big categories: somatic (from Greek, *soma* – body) symptom disorders and mental (also known as

psychiatric) (from Greek, *psyche* – soul) disorders. In addition, the eleventh revision of the International statistical classification of diseases and related health problems (ICD-11), adopted by the World Health Organization on December 12, 2018, describes health-related mental and behavioral disorders and not mental diseases (World Health Organization, 2018). It is explained by the fact that the use of the main criteria of the disease (biological – the presence of the physical pathology, medical – the quality of life and life threat, social – human social dysfunction) in psychiatry is complicated. Mental disorders do not always manifest themselves in a clear way. Moreover, mental disorder does not have the stages which are traditional for the term “disease” and includes different reactions, personality decompensations against the background of somatic dysfunctions.

It is such diseases that are mentioned in Ch.1 p.1. of the Art. 280 of the CPC of Ukraine. At the same time, it is worth mentioning that Ukrainian legislators defined “mental or any other serious extended disease” as one of the grounds for the termination of trial investigation (art. 335 of the CPC of Ukraine). The absence of indication of mental disorder in P.1 Ch. 1 of Art. 280 of Ukraine can be explained by imperfections of the legislative technique (Law of Ukraine No. 4651-VI, 2012).

It is important to keep in mind that the criminal procedural law of Ukraine does not include the list of somatic diseases or mental disorders that lead to termination of pre-trial investigation.

According to the List of diseases that can serve as a ground for the submission to the court of the materials on the release of the accused from further serving their sentences, approved by a joint order of the Ministry of Justice of Ukraine and the Ministry of Health of Ukraine dated August 18, 2014 № 1348/5/572, tuberculosis, AIDs, leprosy, all IV-th stage malignancies, some endocrine diseases/diseases of endocrine system, mental disorders, diseases of nervous system and sense organs, blood circulation diseases, respiratory diseases, diseases of digestive system, kidneys diseases, diseases of the musculoskeletal system and connective tissue, metabolic diseases, anatomical defects developed from a disease or trauma, acute radiation syndrome are considered as such diseases (Decree of the Ministry of Justice of Ukraine and the Ministry of Health of Ukraine No. 1348/5/572, 2014). However, not all of the diseases mentioned above serve as a factual ground for the termination of pre-trial

investigation. Some of them (for example, mental disorders) serve as a ground for changes in the order of proceedings in pre-trial investigation, the others (for example, malignancies) serve as a ground for the release of a person from criminal liability due to a situation change, in the presence of the necessary material and legal conditions. Therefore, the corresponding by-law normative legal act does not answer the questions which exactly serious somatic disorders and mental disorders cause the termination of pre-trial investigation.

It follows from P.1. Ch.1 of Art. 280 of the CPC of Ukraine that such diseases must be serious and confirmed by relevant medical conclusions (Law of Ukraine No. 4651-VI, 2012).

The medical conclusions can be prepared by a doctor-professional in the specific branch himself or collegially by a medical commission. Moreover, the medical conclusion can be issued either by a doctor who directly treats the suspect or by a head doctor of the medical institution or their deputy, where the suspect is held. In addition, the medical conclusion can be compiled both on the basis of the procedural act of the investigator and at the request of the suspects themselves, their defender or legal representative. Finally, medical conclusions can be prepared by the doctors of both public and communal health care institutions, but also by doctors of private clinics. However, in the controversial cases a forensic medical examination can be appointed to establish the fact of somatic disease of the suspect itself and to determine its seriousness.

The existence and nature of disease of the suspect can be also confirmed by medical certificates and conclusions, which are prepared not in connection with the criminal proceedings, but prior to the beginning of the criminal proceedings.

Firstly, let us consider *the mental disorder of the suspect as the ground for the termination of pre-trial investigation*.

In the CPC of Ukraine, the specific signs of the mental disease, which provide an opportunity to separate it from the other disorders of mental activity that do not result in the termination of pre-trial investigation, are not defined. As a result, the cases of termination of pre-trial investigation in the investigative practice happen only on the ground of the statement of fact of mental dysfunction but without the establishment of the nature and degree of illness of the suspect.

Only such a mental disorder can be the ground for the termination of pre-trial investigation which occurred after the criminal offense had been committed. Those are the cases, in which the suspect committed the criminal offense in a state of sanity, namely when they were aware of their actions (inactivity) and were able to control them.

The discovery of mental disorder of the suspect during the pre-trial investigation, which occurred after a criminal offense had been committed and which did not result in the loss of ability to be aware of their actions (inactivity) or control them, cannot be the ground for termination of pre-trial investigation. The criminal proceedings in this case are conducted in the usual manner with providing such a suspect with an additional guarantee for the right of defense. According to P. 3 Ch. 2 of the Art. 52 of the CPC of Ukraine, mandatory participation of the defender from the moment of establishing the mental defect serves as such a guarantee (Law of Ukraine No. 4651-VI, 2012).

Mental defects, as opposed to mental disorders, do not cause a distorted perception of reality. A defect is any deviation from a mental norm. The difference between a defect or state, when a person is not capable to realize their own actions and control them, and another morbid state of mind is in the depth of the defect, its complexity and in the way how it affects the actions of a person. The state of the mental functions (perception, attention, memory, thinking), which provides for an adequate reflection of reality and creates prerequisites for full-fledged intellectual activity, is required for a person's ability and provides them with the right to defend themselves. Such persons realize their actions and can control them, although this does not combine with the mental anomalies without the signs, typical of mental disorders. Such persons have limited abilities to perceive, to comprehend and to remember the facts and circumstances, knowledge of which is necessary for the exercise of the right to protect themselves (Shumylo, Dunaievskaya, & Kozeratska, 2019).

Solving the problem of what kinds of mental disorder can cause the termination of pre-trial investigation, and in which case the pre-trial investigation has to continue in the order of proceedings regarding the application of coercive measures of a medical nature has an important value for the legislator practice. The answer to this question is stated in the criminal procedural law. Indeed, according to P.4 of the Art. 503 of the CPC of Ukraine, the coercive measures of a

medical nature are applied only to persons, who are dangerous for the society (Law of Ukraine No. 4651-VI, 2012).

In the Ch. 39 of the CPC of Ukraine it is stated, that if the temporary mental disorder, insanity or other morbid mental states of the suspect, which prevent them from realizing their actions (inactivity) and (or) controlling them, are established during pre-trial investigation, and in the nature of the committed criminal offense and their mental state the suspect is dangerous for the society and needs forced treatment then the pre-trial investigation is not terminated. In such a case the resolution on the change in the order of pre-trial investigation and its continuation according to the rules stated for the criminal proceedings regarding the application of coercive measures of a medical nature is issued (Law of Ukraine No. 4651-VI, 2012).

It is worth pointing out that in P.1 Ch. 1 of art. 280 of the CPC of Ukraine does not state on the temporary nature of suspect's dysfunction, since in the case of the clinics of mental disorders it is difficult to know beforehand when leveling of symptomatic manifestations occurs and if it occurs at all.

Therefore, the signs of the mental disorder of the suspect that serve as a ground for the termination of pre-trial investigation are the following:

- 1) serious mental disorder, which lasts for a certain period of time and ends with a compensation, relief of its symptoms, remission;
- 2) such a disorder caused a loss of ability by the suspect to understand their actions (inactivity) and (or) control them;
- 3) taking this into account, the mental disorder deprives the suspect of intellectual capacity to participate in pre-trial investigation;
- 4) such a disorder of the suspect occurred during pre-trial investigation;
- 5) the suspect is not socially dangerous for the society and for themselves, and therefore does not require the application of coercive measures of medical nature.

The question of presence or absence of mental disorder of the suspect cannot be solved solely by the investigator and prosecutor, since even for the professionals difficulties often arise during the diagnostics and evaluation of seriousness and nature of mental dysfunction of the suspect. After obtaining the document which certifies that the suspect has a mental disorder (for example, references from the psychiatric neurological

dispensary) it is necessary to appoint a forensic psychiatric examination to obtain additional data on the nature and seriousness of the disease and also to establish if it is allowed for the suspect to participate in the criminal proceedings. Such a conclusion follows from the provisions of P.3 Ch.2 Art.242 and Art. 509 of the CPC of Ukraine (Law of Ukraine No. 4651-VI, 2012).

By the way, a similar approach is stated also in both Slovak and Czech sciences of the criminal process (Čentéš, 2012; Jelinek, 2012). In other words, the mental disorder of the suspect shall be established as a result of conducting a forensic psychiatric examination, and not be a probable mental disease of the perpetrator of a criminal act (Kudrelek, 2004).

In addition, according to P. 1 of the Art. 70 of the CPC of the Republic of Italy, assessment of the presence of a mental disorder of the suspect is not necessarily connected to the results of the expert examination *ex officio*. The judge can also establish the fact on the basis of evidence, which can be obtained from the case materials. Therefore, such an activity is referred to the judge's discretion (Rumore, 2013; Famiglietti, 2014).

When the criminal proceedings are terminated on the ground of *serious somatic symptom disorder of the suspect*, it is necessary to establish the nature of the disease and its seriousness.

The somatic disease of the suspect can occur in different forms and can have different consequences. Some diseases are of chronic nature and cannot serve as a ground for the termination of pre-trial investigation (for example diabetes, tuberculosis, loss of vision, hearing etc.) except for the period of their exacerbation.

In the same way, the diseases that are of episodic nature, but which are connected with high temperature, increased blood pressure, loss of conscience, namely with temporary sharp deterioration of health, exclude the possibility for the suspect to participate in the criminal proceedings during such a period, however, do not serve as a ground for the termination of pre-trial investigation due to their short-term nature. Under such circumstances if needed the investigator has to raise a question about the continuation of pre-trial investigation terms, if such disease of the suspect prevents pre-trial investigation from ending in times, established by the law.

If it is established during the pre-trial investigation that the suspect has come down with an incurable serious illness (for example, focal ischemic myocardial dystrophy, III-IV stage malignancy, amyotrophic lateral sclerosis), then in such a case if the suspect has committed a criminal offense or minor crime for the first time (apart from corruption criminal offenses, criminal offenses related to corruption, violations of traffic safety rules or vehicle operation by persons in a state of alcohol, drug or other intoxication or were under the influence of drugs, which reduce the attention and reaction speed), pre-trial investigation has to be terminated by filing a petition for the release of a person from criminal liability due to the change in the circumstances and due to the loss of suspect's danger for the society.

Therefore, the evaluation of the suspect's disease as serious, which results in the termination of pre-trial investigation, causes some difficulties.

The medical and legal criteria of such a disease are traced in order to provide correct and equal enforcement with P.1. Ch.1 of Art. 280 of the CPC of Ukraine (Law of Ukraine No. 4651-VI, 2012).

Based on medical criteria, the diseases that are dangerous for the life and health of the suspect (some soft tissue damage and injuries of musculoskeletal system, a number of internal organs diseases) and their surroundings (some infectious diseases) belong to serious somatic symptom diseases.

The soft tissue damage and injuries of musculoskeletal system which can serve as an actual ground for the termination of pre-trial investigation, should include clavicle dislocations, upper and lower limbs dislocations, bone fractures, pelvic fractures, skeletal fractures, multiple injuries, that require urgent intervention with the following rehabilitation.

The main diseases of internal organs which at some stages of the course and during the period of exacerbation can lead to the suspension of pre-trial investigation, namely chronic bronchitis, bronchiectasis, bronchial asthma, emphysema, pulmonary fibrosis, respiratory failure, hypertension, ischemic heart disease, a myocardial infarction, rheumatism, chronic venous insufficiency, a peptic ulcer disease, a duodenal ulcer disease, chronic pancreatitis, chronic hepatitis, cirrhosis, gallstone disease, chronic cholecystitis, chronic glomerulonephritis, chronic pyelonephritis,

chronic kidney disease, hyperthyroidism, hypothyroidism, diabetes, obesity, iron-deficiency anemia, B₁₂-(folate) deficiency anemia, hemolytic anemia, chronic lymphocytic leukemia, polycythemia vera.

Among infectious diseases it is relevant to single out the following: respiratory tract infections (tonsillitis, flu, acute respiratory viral infections, meningococcal infection, diphtheria, measles, rubella, epidemic parotitis, chicken pox, scarlet fever, whooping cough); bowel infections (typhoid, cholera, food poisoning, salmonellosis, botulism, shigellosis, campylobacteriosis, intestinal yersiniosis), viral hepatitis (hepatitis A, hepatitis B, acute hepatitis C, hepatitis D, hepatitis E), infections of the integumentary system (tetanus, anthrax, erysipelas); infections with multiple transmission mechanisms (3rd and 4th clinical stages of HIV infection, plague, primary and recurrent herpes infection, herpes zoster, infectious mononucleosis, cytomegalovirus infection).

It is important that the disease is either temporary or of a chronic nature but undergo treatment that should cause health improvement to the level that allows suspects to participate in the criminal proceedings.

At the same time, not every serious or even incurable somatic disease of the suspect from the medical point of view can serve as the ground for termination of pre-trial investigation. For example, pulmonary hypertension, poliomyelitis, Parkinson's disease at certain stages and without exacerbation have no significant interference with the suspect's life activities. Therefore, the judicial criterion of the definition of presence of a serious somatic disease from P.1 Ch. 1 Art. 280 of the CPC of Ukraine. This also includes such a circumstance that the disease causes the suspect's health disorder, which physically prevents him from participating in pre-trial investigation for a certain period of time (to testify, make a request, familiarize yourself with the materials of criminal proceedings, etc). The understanding of the legal criterion is complemented in the doctrine by the fact that a serious somatic disease does not allow to deliver the suspect to the place of implementation of procedural actions due to the danger of suspect's health deterioration and physical and mental efforts, connected with participating in such actions (Waltoś, 1970). However, this characteristic is only a specification of the previous provision due to the legal criterion of the definition of the presence of serious somatic disease.

Finally, it is worth mentioning that in the Slovak criminal process theory it is emphasized that such an assessment of the somatic disease is usually stated in the expert's conclusion (Ivor, 2012).

Based on this, P.1 Ch. 1 of Art. 280 of the CPC of Ukraine should be stated in the following form – «the suspect has a serious disease, is injured or has a mental disorder, that temporarily prevents him from participating in the criminal proceedings if this diagnosis is confirmed by a medical or expert's conclusion».

Conclusions

One of the conditions for the comprehensive, complete and impartial pre-trial investigation is a mandatory participation of the suspect. This is because the criminal proceedings happen because of the actions incriminated to them. The presence of the circumstances for which the suspect is not able to participate in pre-trial investigation directly, realizing the procedural rights and executing their own procedural responsibilities, provided to them by the laws, prevents the completion of tasks of the criminal proceedings. It is not always possible to establish the subject of proof without the presence of a suspect. That is why plenty of European countries defined the causes connected with mental disorders or serious somatic diseases of the suspect (accused) to be grounds for the termination of pre-trial investigation.

Legal regulation of this cause in the CPC of Ukraine and European countries is similar. Indeed, the presence and nature of mental disorder of the suspect (accused) is established only in the conclusion of forensic psychiatric examination. Instead, it suffices to have a corresponding medical document in the case of serious somatic disease. The essential sign of termination of pre-trial investigation for this ground is the impossibility of participation of the suspect (accused) in the criminal proceedings for a certain period of time.

At the same time, the question whether the mental disorder should be connected with the loss of the suspect's ability to understand their actions (inactivity) and control them or not remains debatable in the doctrine of the criminal procedure. In our opinion, the establishment of the presence of such a mental disorder of the suspect (accused) after a criminal offense was committed, which did not cause the loss of suspect's ability to understand their actions (inactivity) or to control them, serves as a ground to recognize such participant of criminal

proceedings to be a person, which due to their mental defects is not able to fully exercise their rights, but cannot serve as a ground for the termination of criminal proceedings.

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