UDC 343.126:343.35.08 DOI: https://doi.org/10.32631/pb.2024.4.09

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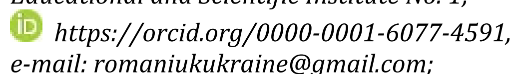
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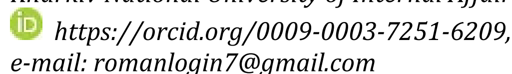
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GROUNDS AND CONDITIONS FOR THE APPLICATION OF PREVENTIVE MEASURES DURING THE PRE-TRIAL INVESTIGATION OF CORRUPTION CRIMINAL OFFENSES

The article is devoted to clarifying the content of the grounds and conditions for the application of preventive measures during the pre-trial investigation of corruption criminal offenses. The specified scientific search was carried out taking into account the specifics of the mechanism of commission and, accordingly, investigation of the selected category of criminal offenses. The main purpose of the study is to identify and characterize the grounds and conditions for applying preventive measures during the pre-trial investigation of corruption criminal offenses. It is proved that during the pre-trial investigation of corruption criminal offenses, preventive measures are applied only if there are legal and procedural grounds. The legal basis is the existence of a reasonable suspicion that a person has committed a corruption criminal offense and risks that give the investigating judge sufficient grounds to believe that the suspect may not fulfill the procedural duties assigned to him and try to hide from the pre-trial investigation bodies, commit actions to destroy or damage evidentiary information, illegally influence other participants in the criminal proceedings, or otherwise obstruct criminal proceedings, or continue criminal illegal activities. It is emphasized that when deciding on the application of preventive measures in the category of criminal proceedings under study, it is necessary to clarify the presence of risks stipulated in Part 2 of Article 177 of the Criminal Procedure Code of Ukraine and justify their sufficiency in relation to the elements of the mechanism of committing a specific corruption criminal offense. The procedural basis is the ruling of the investigating judge at the request of the investigator, agreed with the prosecutor, or the prosecutor. If the corruption criminal offense is attributed to the jurisdiction of the High Anti-Corruption Court, then the procedural basis for applying preventive measures during the pre-trial investigation of such offenses is the ruling of the investigating judge of the High Anti-Corruption Court. Such a ruling is made at the request of the investigator, agreed with the prosecutor of the Specialized Anti-Corruption Prosecutor's Office, or at the request of the prosecutor of the Specialized Anti-Corruption Prosecutor's Office. When making a procedural decision, the investigating judge is obliged to take into account the conditions for applying preventive measures in criminal proceedings: the presence of evidence of circumstances indicating the presence of both components of the legal basis for applying preventive measures and the insufficiency of applying milder preventive measures to prevent the risk or risks specified in the request; ensuring the legality of restrictions on the suspect's rights during criminal proceedings.

Keywords: *preventive measures, pre-trial investigation, corruption criminal offenses, criminal proceedings, application of preventive measures, grounds, conditions.*

Original article

INTRODUCTION. During the pre-trial investigation of corruption criminal offenses, situations often arise when it is necessary to apply preventive measures in order to create conditions favorable for solving the tasks of criminal proceedings, prevent/stop counteraction to the pre-trial investigation and ensure the effectiveness of criminal proceedings. However, given that preventive measures are measures of criminal procedural coercion and are associated with the restriction of human rights and freedoms, the procedure for their application must be clearly regulated. In this case, such an international legal standard as the quality of the law will be observed. The latter is

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one of the components of the principle of the rule of law, which, in turn, is a guarantee of a favorable interpretation of the law for the individual, and therefore its application. Only in this case is it possible to guarantee the rights and freedoms of the individual (Ablamskyi et al., 2021), in our case – during the pre-trial investigation of corruption criminal offenses.

Investigating the concept of "quality of law" as a component of the principle of the rule of law and a guarantee of the application by the court of the interpretation of the law most favorable to the individual, Ya. Bernaziuk (2020), first of all, drew attention to the decision of the Constitutional Court of Ukraine dated December 24, 2004 No. 22-рп/2004на[1], which emphasizes that "in accordance with Part 2 of Article 3 of the Constitution of Ukraine, the main duty of the state is to affirm and ensure human rights and freedoms; ensuring rights and freedoms, among other things, requires, in particular, legislative consolidation of mechanisms (procedures) that create real opportunities for the exercise of rights and freedoms by every citizen." Accordingly, the rule of law is ensured by the predictability of legal acts, the constancy and consistency of legal prescriptions (Tsebenko, 2021).

In the case law of the European Court of Human Rights (hereinafter – the ECtHR), the standard of quality of law has also found its coverage and establishment. In particular, the ECtHR has concluded that the following features are inherent in the requirement of "quality of law": "1) the law must be accessible; 2) the law must be clear (so that a citizen can regulate his behavior and understand what is written in the law); 3) a person must be able to obtain an interpretation of the law in case of application of the law in certain circumstances (for example, it may be consultations with state bodies); 4) the possibility for a person to foresee the consequences of his actions" (Oliinyk, 2019, p. 258; Tsebenko, 2021, p. 33).

The concept, characteristics and system of preventive measures, as well as the grounds, conditions and procedural procedure for their application in criminal proceedings, constantly arouse increased interest from the scientific community. Scholars have made a significant contribution to solving important problems for theory and law enforcement practice related to determining the place of preventive measures in the system of measures to ensure criminal proceedings, clarifying the algorithm for choosing preventive measures with due regard to the ECtHR practice, and identifying ways to improve the regulation of the application of preventive measures in criminal proceedings. However, scholars have not paid attention to determining the peculiarities of application of preventive measures during the pre-trial investigation of corruption criminal offenses, in particular, to clarifying the content of the grounds and conditions for such application, taking into account the specifics of the mechanism of committing and, accordingly, investigating a particular category of criminal offenses, and this issue remains unexplored, which, in turn, necessitates a relevant scientific study.

Thus, the essence, grounds and conditions for the application of measures of restraint in criminal proceedings, including during the pre-trial investigation of corruption-related criminal offenses, should be clearly regulated by criminal procedural law. In this case, the entities authorized to apply them will understand the algorithm of their actions, which, in turn, will reduce the likelihood and number of cases of violations during the application of preventive measures, and thus violations of human rights and freedoms as a result of unlawful actions of authorized entities. In addition, the clarity and unambiguity of interpretation of the provisions of the criminal procedural legislation in terms of determining the grounds and procedural procedure for the application of preventive measures is a guarantee of protection of their rights, freedoms and legitimate interests by participants in criminal proceedings. In this regard, in the context of studying the issues related to the application of measures to ensure criminal proceedings during the pre-trial investigation of corruption-related criminal offenses, the issue of the regulation of the institute of preventive measures at the legislative level, as well as law enforcement practice and peculiarities of application of preventive measures with due regard for the specifics of the category of criminal offenses under study is relevant.

PURPOSE AND OBJECTIVES OF THE RESEARCH. The *purpose* of this article is to single out and characterize the grounds and conditions for applying preventive measures during the pre-trial investigation of the offenses under study. This purpose leads to the following *objectives*: firstly,

[1] Constitutional Court of Ukraine (2004). *Decision of the Constitutional Court of Ukraine in the case on the constitutional petition of 46 people's deputies of Ukraine on the compliance with the Constitution of Ukraine (constitutionality) of the Law of Ukraine "On Peculiarities of Application of the Law of Ukraine 'On Elections of the President of Ukraine' during the repeated voting on December 26, 2004" (Case on Peculiarities of Application of the Law of Ukraine "On Elections of the President of Ukraine")* (Decision No. 22-рп/2004). https://zakon.rada.gov.ua/laws/show/v022p710-04.

to clarify the essence of preventive measures, their features and purpose of application; secondly, to determine the essence of the grounds for application of preventive measures in criminal proceedings; thirdly, to reveal the content of the legal and procedural grounds for application of preventive measures during pre-trial investigation of corruption-related criminal offenses; fourthly, to determine the conditions for application of preventive measures during pre-trial investigation of the category of offenses under study.

METHODOLOGY. To achieve the purpose of the research and fulfill the objectives assigned by it, a complex of general scientific and special methods was used. In particular, using the dialectical method, the state of formation and development of scientific approaches to determining the essence and distinguishing the features of preventive measures as a component of the system of measures to ensure criminal proceedings and one of the forms of application of procedural coercion during pre-trial investigation and judicial proceedings was analyzed; a definition of the concept of "precautionary measures" was formed; the formation and development of theoretical, legal and praxeological foundations for determining the grounds and conditions for applying preventive measures in criminal proceedings, including during the pre-trial investigation of corruption criminal offenses, was shown; a comprehensive approach to the use of the grounds and conditions for applying preventive measures during the pre-trial investigation of corruption criminal offenses was formed when making a decision on the possibility and necessity of their application in a specific criminal proceeding. Using the methods of logic, the provisions of regulatory legal acts and scientific approaches to the interpretation of the concept of preventive measures, the grounds for their application, the determination of the characteristics of the features of preventive measures, the role and content of the grounds and conditions for the application of preventive measures during the pre-trial investigation of corruption criminal offenses were analyzed. The system-structural method was used to identify the features of preventive measures and determine their place in the system of measures to ensure criminal proceedings, the grounds and conditions for the application of preventive measures, as well as to disclose their content. Using the specified method, it was established that the grounds for applying a preventive measure in criminal proceedings include two components (the presence of a reasonable suspicion that a person has committed a criminal offense; the presence of risks that give sufficient grounds for the investigating judge or court to believe that the suspect, accused, or convicted person may commit the actions provided for in Part 1 of Article 177 of the Criminal Procedure Code of Ukraine (hereinafter – the CPC of Ukraine)), which are not mutually exclusive, but rather complement each other. A detailed analysis of the provisions of the CPC of Ukraine that regulate the grounds and procedural procedure for applying preventive measures in criminal proceedings allows us to conclude that it is worth distinguishing between the legal and procedural grounds for applying preventive measures. The comparative legal method allowed to compare international legal standards, the practice of the ECtHR, the norms of criminal procedural legislation and law enforcement practice in terms of determining the grounds and conditions for applying preventive measures at the stage of pre-trial investigation of corruption criminal offenses and crimes. Accordingly, the use of the selected set of methods of scientific knowledge created the necessary prerequisites for conducting a qualitative study, which ensured the optimal combination of pragmatic and praxeological components.

RESULTS AND DISCUSSION. The general provisions on preventive measures, as well as the grounds and procedural procedure for their election, cancellation or change are defined in Chapter 18 of the CPC of Ukraine. However, an analysis of the provisions of this chapter shows that the term "preventive measures" has not been defined at the legislative level. The legislator is limited to providing a list of measures that are preventive measures in Part 1 of Article 176 of the CPC of Ukraine. These are personal obligation, personal guarantee, bail, house arrest, and detention. In addition, Part 2 of the same article states that a temporary preventive measure is the detention of a person, which is applied on the grounds and in the manner prescribed by the CPC of Ukraine[1].

Interpretations of precautionary measures can be found in the professional scientific literature. In particular, Yu. Goshovska (2015, p. 143) emphasizes that "the CPC of Ukraine does not define the term 'preventive measures', which leads to different understanding and application of this concept". At the same time, the scholar offers her own interpretation of preventive measures. In her opinion, this is a type of measure to ensure criminal proceedings, which consists in the use of procedural coercion in order for the suspect or accused to fulfill their procedural obligations. This interpretation emphasizes that:

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[1] Verkhovna Rada of Ukraine. (2012). *Criminal Procedural Code of Ukraine* (Law No. 4651-VI). https://zakon.rada.gov.ua/laws/show/4651-17.

– preventive measures are a structural element of measures to ensure criminal proceedings, which is obvious and follows from the provisions of Paragraph 9, Part 2, Article 131 of the CPC of Ukraine;

– the application of preventive measures is associated with the use of procedural coercion, which means that it involves the restriction of the rights, freedoms and legitimate interests of the person to whom they are applied;

– preventive measures are applied to an exhaustive list of persons – suspects and accused;

– the purpose of the application of preventive measures is to ensure that the suspect or accused fulfills the procedural obligations set forth in the CPC of Ukraine.

An interesting and noteworthy definition of preventive measures proposed by Yu. Hroshevyi (2013, p. 166). In his view, these measures are a type of preventive measures to ensure criminal proceedings, which are applied by the investigating judge or court, if there are grounds and in accordance with the procedure established by law, to the suspect or accused and consist in restricting their constitutional rights and freedoms in order to ensure the fulfillment of procedural obligations imposed on these persons, as well as to prevent attempts of their possible misconduct. In the proposed interpretation of preventive measures, the author identifies the following main features:

– preventive nature, which determines not only the focus of their application but also their place in the structure of measures to ensure criminal proceedings;

– clear regulation of subjects, grounds and procedure for their application;

– are applied exclusively by the investigating judge or court depending on the stage of criminal proceedings;

– are applied to suspects and accused persons;

– are based on the actual restriction of constitutional rights and freedoms of a suspect or accused person during criminal proceedings;

– the purpose of their application is to simultaneously ensure that the suspect or accused fulfills their procedural obligations and prevent attempts at possible misconduct.

It is not unreasonably argued in the scientific literature that preventive measures are the most severe type of measures to ensure criminal proceedings, which, in turn, are coercive measures provided for by the CPC of Ukraine, which are applied on the grounds and in accordance with the procedure established by law in order to prevent and overcome negative circumstances that impede or may impede the solution of the tasks of criminal proceedings, ensuring its effectiveness (Bandurka et al., 2012; Vakulenko et al., 2017). In other words, the proposed statement emphasizes the strict nature of preventive measures as compared to other measures to ensure criminal proceedings, which means that during their application the restriction of the rights and freedoms of a suspect or accused is more severe than during the application of other measures of criminal proceedings. At the same time, it is obvious that scholars reduce the main features of preventive measures to the features of measures to ensure criminal proceedings, of which they are an integral part. In addition, it is emphasized that preventive measures are neither punishment nor means of proof in criminal proceedings (Vakulenko et al, 2017).

We are more impressed by the position of T. Fomina (2016, p. 244) regarding the epistemological characterization of preventive measures. The scientist rightly points out that it is difficult to characterize all their features, attributes, purpose, grounds and procedure for applying preventive measures in one definition. Therefore, taking into account the work of scholars and her own research on this issue, she proposes to define preventive measures as "a type of measures to ensure criminal proceedings of a law-restrictive and coercive nature, which are applied, if there are sufficient grounds, by an investigating judge or court against a suspect, accused, convicted person, the main purpose of which is to ensure the fulfillment of his/her duties, as well as to prevent attempts at his/her possible misconduct". In other words, T. Fomina (2016) defines the essence of preventive measures by identifying its distinctive features, which in their entirety directly affect the procedure for their election, change and cancellation.

Based on the foregoing, it can be concluded that preventive measures are a type of measures to ensure criminal proceedings, which are applied to a suspect or accused person solely on the grounds and under the conditions set forth in the CPC of Ukraine in order to ensure the fulfillment of their procedural obligations and prevent the commission of any unlawful acts aimed at continuing illegal activities, evading criminal liability and obstructing criminal proceedings. Accordingly, it is impossible to determine either the essence of preventive measures or the procedure for their application, change and cancellation, in particular in the investigation of corruption criminal offenses, without clarifying the content of the grounds and conditions for such application.

V. Butenko (2019, p. 120) rightly notes that it is difficult to clearly and unambiguously determine the grounds for applying preventive

measures in criminal proceedings without understanding their essence and content. At the same time, he concludes that only a comprehensive application of the grounds for the application of preventive measures provided for by the CPC of Ukraine can objectively assist in making a procedural decision and ensure guarantees of the rights and freedoms of a person. From the above, it follows that the scholar is a supporter of an integrated approach to defining the concept and system of grounds for choosing preventive measures. In view of this, he supports scientific opinions according to which "the grounds for choosing a preventive measure should be understood as a set of data indicating the person's involvement in the crime; his/her possible illegal behavior; circumstances that are taken into account when choosing a preventive measure"; "the grounds for applying preventive measures are the factual data indicating that the person committed the crime and the data establishing the possibility of evading investigation and trial and serving a sentence, as well as committing other illegal actions that impede the establishment of the truth"; "to implement the relevant procedure … requires a set of substantive and criminal procedural grounds".

We fully share the opinion that the grounds and conditions for the application of preventive measures during the pre-trial investigation of corruption criminal offenses are categories that require comprehensive use when deciding on the possibility and necessity of their application in a particular criminal proceeding. In particular, in Article 177 of the CPC of Ukraine, the legislator considers the grounds for the application of preventive measures for the purpose of such application. Part 1 of this article states that "the purpose of applying a preventive measure is to ensure that the suspect or accused fulfills the procedural obligations imposed on him/her, as well as to prevent attempts to: 1) hide from the pre-trial investigation bodies and/or the court; 2) destroy, hide or distort any of the things or documents that are of significant importance for establishing the circumstances of the criminal offense; 3) illegally influence the victim, witness, other suspect, accused, expert, specialist in the same criminal proceedings; 4) obstruct the criminal proceedings in any other way; 5) commit another criminal offense or to continue the criminal offense of which the person is suspected or accused"[1]. That is, the purpose of applying preventive measures in criminal proceedings in general and during the pre-trial investigation of corruption criminal offenses in particular is both to ensure that the suspect or accused fulfills the procedural duties assigned to him, and to prevent attempts at possible unlawful behavior by the suspect or accused during criminal proceedings (Fomina, 2020).

At the same time, in Part 2 of Article 177 of the CPC of Ukraine, the legislator defines the grounds for applying a preventive measure in criminal proceedings. It includes two components that are not mutually exclusive, but rather complement each other. These are, firstly, the existence of a reasonable suspicion that a person has committed a criminal offense, and, secondly, the existence of risks that give the investigating judge or court sufficient grounds to believe that the suspect, accused, or convicted person may commit the actions provided for in Part 1 of Article 177 of the CPC of Ukraine[2]. In other words, "the grounds for choosing preventive measures should be understood as two types of factual data (evidence): evidence establishing the fact of a past event and evidence establishing the possibility of a future event. The first group of grounds includes evidence confirming the commission of a crime and the degree of danger of the person who committed it. The second group includes evidence proving the suspect's ability to evade investigation and trial and serving a sentence, the possibility of obstructing the investigation or committing new illegal actions" (Fomina, 2020, p. 117).

However, a more detailed analysis of the provisions of the CPC of Ukraine regulating the grounds and procedural procedure for the application of preventive measures in criminal proceedings leads to the conclusion that it is necessary to distinguish between legal and procedural grounds for the application of preventive measures. In the first case, we are talking about the grounds upon which the authorized entities have the right to initiate the application of a preventive measure. These grounds are specified in Part 2 of Article 177 of the CPC of Ukraine. In the second case, we are talking about a court decision on the basis of which a preventive measure is applied to a suspect or accused. The procedural grounds for applying a preventive measure are set forth in Part 4 of Article 176 of the CPC of Ukraine. According to this procedural rule, "preventive measures are applied: during the pre-trial investigation and before the preparatory court hearing – by the investigating judge at the request of the investigator, agreed with the prosecutor, or at the

[1] Verkhovna Rada of Ukraine. (2012). Criminal Procedural Code of Ukraine (Law No. 4651-VI). https://zakon.rada.gov.ua/laws/show/4651-17.

[2] Ibid.

request of the prosecutor, and during the trial – by the court at the request of the prosecutor"[1].

It follows from the above that the legal basis for the application of preventive measures during the pre-trial investigation of corruption criminal offenses is the existence of a reasonable suspicion that a person has committed a corruption criminal offense and risks that give the investigating judge sufficient grounds to believe that the suspect may not fulfill his procedural duties and try to hide from the pre-trial investigation authorities, take actions to destroy, damage evidence, unlawfully influence other participants in the investigation. The procedural basis for the application of preventive measures during the pre-trial investigation of the investigated category of criminal offenses is the decision of the investigating judge at the request of the investigator, agreed with the prosecutor, or the prosecutor. At the same time, if a corruption criminal offense is within the jurisdiction of the High Anti-Corruption Court (hereinafter – HACC), the procedural basis for the application of preventive measures during the pre-trial investigation of such offenses is the decision of the HACC investigating judge at the request of the investigator, agreed with the prosecutor of the Specialized Anti-Corruption Prosecutor's Office (hereinafter – SAPO), or at the request of the SAPO prosecutor.

We would like to emphasize that the application of preventive measures during the pre-trial investigation of corruption criminal offenses is possible only if there are legal and procedural grounds. Only a legal basis allows the investigator or prosecutor to initiate the application of a preventive measure. At the same time, a preventive measure cannot be applied in the absence of a procedural basis – a relevant decision of the investigating judge or court. Therefore, an intermediate conclusion can be made that the existence of a legal basis gives the right to initiate the application of preventive measures in criminal proceedings, and the application of such measures is possible only if there are legal and procedural grounds.

Let us dwell in more detail on the disclosure of the content of the grounds for applying preventive measures during the pre-trial investigation of corruption criminal offenses.

The first component of the legal basis for the application of preventive measures, in particular during the pre-trial investigation of corruption criminal offenses, is the existence of a reasonable suspicion that a person has committed a criminal offense. It is worth noting that the term "reasonable suspicion" is not explained by the legislator in the CPC of Ukraine. In fact, we are faced with the need to apply an evaluative criminal procedural rule. This situation, of course, is characterized by contradictions both in the interpretation of this evaluative term and in its application when deciding on the choice of a preventive measure. This, in turn, contradicts the position of the ECHR, according to which "in cases where national law allows deprivation of liberty, the law must be clear and foreseeable in order to avoid any risk of arbitrary arrest" (Titko, 2010, p. 124). After all, as rightly noted by I. Titko (2010, p. 43), "the quality of the language and style of the criminal procedure law is of particular importance for the unity of approaches to its understanding and practical application".

Therefore, taking into account the fact that the CPC of Ukraine does not define the concept and criteria for the reasonableness of suspicion, when deciding on the existence of grounds for applying preventive measures and choosing the appropriate preventive measure, the investigating judge, the court, in accordance with the principles of criminal proceedings (in particular, the rule of law, legality (Articles 8, 9 of the CPC of Ukraine)), applies the ECtHR case law.

Taking into account the study of the ECtHR case law[2] researchers note the formation of new approaches to the interpretation of reasonable suspicion:

– facts or information that can convince an objective observer that a person may have committed the offense (Titko, 2010; Butenko, 2019);

– the facts giving rise to suspicion do not yet reach the level necessary to convict a person or even to bring charges against him or her, which occurs at the next stages of the criminal process (Titko, 2010).

At the same time, as the ECtHR notes, "the requirement that suspicion must be based on reasonable grounds is an essential part of the guarantee against arbitrary arrest and detention. Moreover, in the absence of a reasonable suspicion, a person may not under any circumstances be detained or taken into custody with the aim of forcing him to confess to a crime, to testify against other persons or to obtain from him facts or information that may serve as a basis for a reasonable suspicion"[3].

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[1] Ibid.

[2] European Court of Human Rights. (2011). *The Case of Nechiporuk and Yonkalo v. Ukraine* (Apllication No. 42310/04). https://zakon.rada.gov.ua/laws/show/974_683; European Court of Human Rights. (1997). *The Case of K.-F. v. Germany* (Application No. 25629/94). https://hudoc.echr.coe.int/tur?i=001-58119.

[3] European Court of Human Rights. (2011). *Case of Nechiporuk and Yonkalo v. Ukraine* (Apllication

At the same time, we fully agree with the statement of R. Kokosh (2020) that the reasonableness of suspicion contains two aspects. The first one concerns the issue of committing a criminal offense (the fact of committing an unlawful act that contains the features provided for in the disposition of the relevant article of the Special Part of the Law on Criminal Liability), and the second one is proving the circumstances that, upon a reasonable impartial interpretation, raise suspicion of a person's involvement in a particular criminal offense. At the same time, the circumstances set forth in the notice of suspicion are proved exclusively by the evidence available in the proceedings.

Reasonableness of suspicion can be established only in relation to an act that falls under the elements of an offense under the law on criminal liability. Reasonableness of suspicion cannot be established *in abstracto* or based on subjective assumptions, but must be supported by specific evidence in criminal proceedings. The "reasonable suspicion" standard of proof does not imply that the authorized bodies must operate with evidence sufficient to bring charges or convict, which is due to the lower degree of probability required in the early stages of criminal proceedings to restrict a person's rights. The standard of proof "reasonable suspicion" is dynamic, i.e. over time, such suspicion of a criminal offense cannot be an independent basis for continuing to restrict a person's rights, relevant and sufficient grounds (risks) must be provided, supported by evidence. Even when making the first decision to apply a preventive measure in the form of detention, national courts must provide evidence of the existence of reasonable suspicion and relevant risks cumulatively (Hloviuk, Zhovtan, Ponomarenko, 2020; Pohoretskyi, Mitskan, 2019a). In other words, it is necessary to establish simultaneously the evidence that allows to confirm the existence of reasonable suspicion and risks provided for by the criminal procedural law. In no way is there an alternative to establishing these circumstances, as they are complementary. It is their symbiosis that allows motivating the decision to apply preventive measures during the pre-trial investigation of corruption criminal offenses.

With regard to establishing the validity of suspicion when applying preventive measures during the pre-trial investigation of corruption criminal offenses, it is worth noting that the investigating judge should in no case establish the involvement of a person beyond a reasonable doubt, however, reasonable suspicion must be supported by specific facts and circumstances that can convince an objective observer, i.e. a layperson, of the existence of a link between the person's actions and the event. Such factual circumstances must be clear and understandable and reflected in the relevant decision of the competent authority (Hloviuk, Stepanenko, 2018, p. 19; Hloviuk, Zhovtan, Ponomarenko, 2020).

The second component of the legal basis for the application of preventive measures during the pre-trial investigation of corruption criminal offenses is the presence of risks specified in part 1 of Article 177 of the CPC of Ukraine, which give sufficient grounds for the investigating judge to believe that the suspect may fail to fulfill his procedural obligations and attempt to hide from the pre-trial investigation authorities, take actions to destroy or damage evidence, unlawfully influence other participants in criminal proceedings or otherwise impede the criminal investigation.

The list of risks is exhaustive and is provided in part 1 of Article 177 of the CPC of Ukraine. At the same time, it is worth noting that the legislator formulates the second component of the legal basis, by analogy with the existence of reasonable suspicion, using an evaluative concept. In particular, part 2 of Article 177 of the CPC of Ukraine indicates the existence of risks that provide sufficient grounds. In this aspect, scholars note that the standard of proof in the criminal procedure of Ukraine "reasonable grounds" is based on "common sense" and on the actual analysis (assessment) of the entire set of facts and circumstances in their integrity by authorized entities using special knowledge and experience to establish the existence of "reasonable grounds" for making the relevant decision. This standard applies to most procedural decisions at the stage of pre-trial investigation in criminal proceedings, when a reasonable suspicion of a criminal offense is not enough in view of the significant restriction of a person's rights as a result of making the relevant decision (Pohoretskyi, Mitskan, 2019b, p. 39).

We should agree with the position of A. Pavlyshyn, Kh. Slyusarchuk (2018, pp. 107–108), that "the standard of proof 'reasonable grounds' is more aimed at proving the probability of a certain event occurring in the future and provides for obtaining probable prospective knowledge in criminal proceedings… The 'prospective' character of the 'reasonable grounds' standard of proof when deciding on the application of a preventive measure is determined by the object of knowledge, which is the probability of a certain event in the future (a reasonable probability of one or more risks)… In turn, the retrospective character of the

No. 42310/04). https://zakon.rada.gov.ua/laws/show/974_683.

'reasonable grounds' standard of proof is that the probability of a certain risk is substantiated by reliable factual data of the past. For example, the probability that the suspect or accused will hide from the pre-trial investigation authorities may be substantiated by the existence of a previous fact of evasion (hiding) from the pre-trial investigation authorities".

It should be emphasized that the sufficiency of grounds to believe that the presence of risks in criminal proceedings that will actually lead to negative consequences defined by the criminal procedure legislation correlates with the specifics of corruption criminal offenses. First of all, the mechanism of committing the studied category of criminal offenses is characterized by the presence of a special subject. The person of the offender is an official who uses his/her status to facilitate the preparation, commission and concealment of his/her illegal activities, as well as as a way to counteract the pre-trial investigation. Accordingly, typical methods of committing corruption criminal offenses are associated with the use of a person's official position or other opportunities of his or her status. In particular, it can be power, corrupt connections, large amounts of money obtained through criminal means. In view of this, when deciding on the application of preventive measures in the studied category of criminal proceedings, it is necessary to find out whether there are risks provided for in Part 2 of Article 177 of the CPC of Ukraine and to substantiate their sufficiency in relation to the elements of the mechanism of committing a specific corruption criminal offense.

When making a procedural decision on the application of preventive measures during the pre-trial investigation of corruption-related criminal offenses, it is important to determine not only the grounds but also the conditions for applying preventive measures in criminal proceedings. There is no separate article in the CPC of Ukraine that would define the conditions for the application of preventive measures in criminal proceedings. At the same time, an analysis of the provisions of the CPC of Ukraine regulating the grounds and procedural procedure for the application of preventive measures in criminal proceedings leads to the conclusion that a decision to apply a preventive measure cannot be made in the absence of conditions for its application. In particular, Part 3 of Article 176 of the CPC of Ukraine states that "the investigating judge or court shall refuse to apply a preventive measure unless the investigator or prosecutor proves that the circumstances established during the consideration of the motion for application of preventive measures are sufficient to convince that none of the more lenient preventive measures provided for in part one of this article can prevent the risk or risks proved during the consideration"[1]. It follows from the above that the conditions for the application of preventive measures during the pre-trial investigation of corruption criminal offenses are the existence of circumstances that, taken together, are sufficient to convince that it is impossible to prevent the risk(s) defined in Part 1 of Article 177 of the CPC of Ukraine in a way other than applying one of the preventive measures. At the same time, a more severe preventive measure is applied to a suspect only if it is not possible to prevent the risk(s) mentioned above with a softer preventive measure.

Also, Part 1 of Article 194 of the CPC of Ukraine states that "when considering a motion for the application of a preventive measure, the investigating judge or court is obliged to establish whether the evidence provided by the parties to the criminal proceedings proves the circumstances that indicate: 1) the existence of a reasonable suspicion that the suspect or accused has committed a criminal offense; 2) the existence of sufficient grounds to believe that there is at least one of the risks provided for in Article 177 of this Code and indicated by the investigator or prosecutor; 3) the insufficiency of applying more lenient preventive measures to prevent the risk or risks specified in the motion"[2]. In other words, the legislator refers to the conditions for the application of preventive measures in criminal proceedings as the availability of evidence of circumstances that, in turn, indicate the presence of both components of the legal basis for the application of preventive measures and the insufficiency of applying more lenient preventive measures to prevent the risk or risks specified in the motion. Moreover, in part 2 of the same article, the legislator imposes on the investigating judge or court the obligation to refuse to apply a preventive measure if the circumstances specified in Part 1 of Article 194 of the CPC of Ukraine are not proven[3].

In addition, the conditions for the application of preventive measures during the pre-trial investigation of corruption criminal offenses should include those that ensure the legality of restrictions on the rights of the suspect during criminal proceedings. For example, as rightly noted by T. Fomina (2016, pp. 242–243), the legality of

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[1] Verkhovna Rada of Ukraine. (2012). *Criminal Procedural Code of Ukraine* (Law No. 4651-VI). https://zakon.rada.gov.ua/laws/show/4651-17.

[2] Ibid.

[3] Ibid.

restrictions on the rights and freedoms of citizens when applying preventive measures in criminal proceedings is ensured by observing the following rules

– restriction of individual rights is allowed only by law. That is, preventive measures may be applied exclusively on the grounds and in the manner prescribed by the criminal procedural legislation of Ukraine;

– restriction of individual rights should not be implemented if it does not meet the objectives of criminal proceedings. At the same time, the preventive measure applied must be proportionate to the task to be solved in a particular criminal proceeding, taking into account both the type and nature of the criminal offense under investigation, as well as the behavior and other circumstances characterizing the suspect or accused;

– restrictions on a person's rights may be carried out for a certain period of time;

– the rights of an individual must be provided with legal guarantees.

CONCLUSIONS. Summarizing the above, it can be concluded that the grounds and conditions for the application of preventive measures during the pre-trial investigation of corruption criminal offenses are categories that require a comprehensive use when deciding on the possibility and necessity of their application in a particular criminal proceeding. It is worth noting that during the pre-trial investigation of corruption-related criminal offenses, preventive measures are applied only if there are legal and procedural grounds. First of all, this is due to the fact that the existence of a legal basis gives the right to initiate the application of preventive measures in criminal proceedings, and the application of such measures is possible only if there are legal and procedural grounds.

The legal basis for the application of preventive measures during the pre-trial investigation of corruption criminal offenses is the presence of a reasonable suspicion that a person has committed a corruption criminal offense and risks that give the investigating judge sufficient grounds to believe that the suspect may not fulfill the procedural duties assigned to him and try to hide from the pre-trial investigation bodies, commit actions to destroy, damage evidentiary information, illegally influence other participants in the criminal proceedings or otherwise obstruct criminal proceedings, continue criminal illegal activity. In our opinion, it is necessary to synchronously establish evidence that allows confirming the existence of reasonable suspicion and risks provided for by criminal procedural legislation, because they are complementary. It is their symbiosis that allows motivating the decision to apply preventive measures during the pre-trial investigation of corruption criminal offenses. At the same time, when deciding on the application of preventive measures in the studied category of criminal proceedings, it is necessary to clarify the presence of risks stipulated in Part 2 of Article 177 of the Criminal Procedure Code of Ukraine and justify their sufficiency in relation to the elements of the mechanism of committing a specific corruption criminal offense: the status of the offender, the presence of corrupt connections; typical methods of committing an offense related to the use by the offender of his official position or other opportunities of his status; the post-criminal behavior of the offender; the presence of assets obtained by criminal means and their size; facts of resistance to the pre-trial investigation and methods of its implementation, etc.

The procedural basis for the application of preventive measures during the pre-trial investigation of the investigated category of criminal offenses is the decision of the investigating judge at the request of the investigator, agreed with the prosecutor, or the prosecutor. It should be noted that if a corruption criminal offense falls within the jurisdiction of the HACC, the procedural basis for the application of preventive measures during the pre-trial investigation of such offenses is the decision of the investigating judge of the HACC at the request of the investigator, agreed with the SAPO prosecutor, or at the request of the SAPO prosecutor.

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Received the editorial office: 1 October 2024

Accepted for publication: 16 December 2024

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ПІДСТАВИ ТА УМОВИ ЗАСТОСУВАННЯ ЗАПОБІЖНИХ ЗАХОДІВ ПІД ЧАС ДОСУДОВОГО РОЗСЛІДУВАННЯ КОРУПЦІЙНИХ КРИМІНАЛЬНИХ ПРАВОПОРУШЕНЬ

Статтю присвячено уточненню змісту підстав і умов застосування запобіжних заходів під час досудового розслідування корупційних кримінальних правопорушень. Означений науковий пошук здійснено з урахуванням специфіки механізму вчинення та відповідно розслідування виокремленої категорії кримінальних правопорушень. Основною метою дослідження є виокремлення та надання характеристики підставам та умовам застосування запобіжних заходів під час досудового розслідування корупційних кримінальних правопорушень. Доведено, що під час досудового розслідування корупційних кримінальних правопорушень запобіжні заходи застосовуються тільки за наявності правової та процесуальної підстав. Правовою підставою є наявність обґрунтованої підозри у вчиненні особою корупційного кримінального правопорушення та ризиків, які

дають достатні підстави слідчому судді вважати, що підозрюваний може не виконувати покладені на нього процесуальні обов'язки та спробувати переховуватися від органів досудового розслідування, вчинити дії зі знищення, псування доказової інформації, незаконного впливу на інших учасників кримінального провадження чи в інший спосіб перешкоджати кримінальному провадженню, продовжити кримінальну протиправну діяльність. Акцентовано, що під час вирішення питання про застосування запобіжних заходів у досліджуваній категорії кримінальних проваджень потрібно з'ясовувати наявність ризиків, передбачених ч. 2 ст. 177 Кримінального процесуального кодексу України, та обґрунтовувати їх достатність релевантно до елементів механізму вчинення конкретного корупційного кримінального правопорушення. Процесуальною підставою є ухвала слідчого судді за клопотанням слідчого, погодженим з прокурором, чи прокурора. Якщо корупційне кримінальне правопорушення віднесено до підсудності Вищого антикорупційного суду, то процесуальною підставою застосування запобіжних заходів під час досудового розслідування таких правопорушень є ухвала слідчого судді Вищого антикорупційного суду. Така ухвала постановляється за клопотанням слідчого, погодженим із прокурором Спеціалізованої антикорупційної прокуратури, чи за клопотанням прокурора Спеціалізованої антикорупційної прокуратури. Слідчий суддя під час прийняття процесуального рішення зобов'язаний урахувати умови застосування запобіжних заходів у кримінальному провадженні: наявність доказів про обставини, які свідчать про наявність обидвох компонентів правової підстави застосування запобіжних заходів і недостатність застосування більш м'яких запобіжних заходів для запобігання ризику або ризикам, зазначеним у клопотанні; забезпечення законності обмежень прав підозрюваного під час здійснення кримінального провадження.

Ключові слова: *запобіжні заходи, досудове розслідування, корупційні кримінальні правопорушення, кримінальне провадження, застосування запобіжних заходів, підстави, умови.*

Цитування (ДСТУ 8302:2015): Romaniuk V. V., Login R. I. Grounds and conditions for the application of preventive measures during the pre-trial investigation of corruption criminal offenses. *Law and Safety*. 2024. No. 4 (95). Pp.105–115. DOI: https://doi.org/10.32631/pb.2024.4.09.

Citation (APA): Romaniuk, V. V., & Login, R. I. (2024). Grounds and conditions for the application of preventive measures during the pre-trial investigation of corruption criminal offenses. *Law and Safety, 4*(95), 105–115. https://doi.org/10.32631/pb.2024.4.09.