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## Chapter 36-1 of the CPC of Ukraine as a ground for closing criminal proceedings

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### Abstract

The emergence of a new ground for closing criminal proceedings in the current Code of Criminal Procedure of Ukraine – in connection with the decriminalization of an act committed by a person – has caused ambiguous assessments by scholars. The application of the new procedure in judicial practice necessitates a thorough scientific study of the problem in order to prevent violations of the law. The purpose of the study was to determine the practical feasibility of the adopted amendments for pre-trial investigation and court proceedings. To achieve this goal, the following methods were used: dialectical, systemic and structural, comparative legal, formal and logical, and modelling. The study describes the actions of participants in criminal proceedings at the stage of pre-trial investigation and in court during consideration of the said procedure. The author compares the new procedure with other existing special investigative procedures and emphasizes their differences. The author calls into question whether the legislator has singled out this procedure as a type of special procedure. The author comes to the conclusion that the subject under study is an exclusively improved basis for closing criminal proceedings or further continuation of their consideration, depending on the right of the defence to close or continue the proceedings in court. The author analyses the court practice of application of this criminal procedural institute. Attention is focused on the need for investigators, prosecutors, and judges to take into account the requirements of the new grounds for closing criminal proceedings and to prevent violations of the law, since during its consideration the suspect and the accused are granted an additional alternative right to agree or disagree with the closure of proceedings, which is a guarantee of human rights and freedoms. The author's conclusion that it is inappropriate for the legislator to classify the procedure for closing proceedings as a separate type of special procedure is justified by haste and lack of appropriate scientific research. The study provides the basis for improving the methodology of procedural actions of the prosecution during the closure of criminal proceedings and may be used by the legislator for further regulation of the criminal proceedings' procedure

### Keywords:

decriminalization; special procedure of investigation; prosecutor; court; prosecution; defence; criminal procedure form

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## Introduction

On 29 December 2022, the Law of Ukraine No. 2810-IX dated 01.12.2022<sup>1</sup> came into force. In order to regulate the criminal procedural relations between the state in the form of bodies conducting criminal proceedings and the offender, the legislator supplemented the Criminal Procedure Code (CPC) with a new Chapter 36-1 “Criminal proceedings in respect of an act whose criminal unlawfulness was established by a law that has ceased to be in force”. According to it, the grounds for closing criminal proceedings are when the law that established the unlawfulness of the accused person’s act has expired. On this basis, it becomes impossible to close criminal proceedings if the suspect or accused objects to this. In this case, the criminal proceedings continue in accordance with the general procedure provided for by the CPC of Ukraine, taking into account the peculiarities of Chapter 36-1 of this Code. Thus, the legislator’s amendments relate to two procedural aspects: first, the grounds for criminal proceedings in connection with the invalidation of a criminal law, and second, the procedural mechanism for implementing the closure on this ground.

The aforementioned amendments to the Criminal Procedure Code of Ukraine have stirred up the procedural community of Ukraine and prompted it to express different opinions on this issue. This topic was not entirely unambiguous in the perception of procedural scholars. Thus, in the course of their research, scholars E. Krapivin (2022), O.M. Drozdov & O.I. Marochkin (2023), O.O. Torbas *et al.* (2022) considered it as a ground for closing criminal proceedings, and I.V. Hloviuk (2023) paid attention to it not only as a ground for closing proceedings, but also as a type of differentiated form – a special procedure of criminal proceedings.

Some scholars have noticed in these changes a general trend of inequality of the procedural status of the suspect and the accused, which leads to an unfair final decision regarding the suspect and the accused. Thus, O.M. Drozdov & O.I. Marochkin (2023) note that both in relation to a suspect whose consent to the closure of criminal proceedings on the grounds provided for in para. 4-1, part 1, Article 284 of the CPC<sup>2</sup> is absent, and in relation to an accused whose consent to the closure of criminal proceedings on the grounds provided for in para. 4-1, part 1, Article 284 of the CPC of Ukraine<sup>3</sup>, the court shall, based on the results of the trial, unless it establishes that such a suspect/accused committed an

act whose criminal unlawfulness was established by a law that has lost its force, make a relevant court decision. However, in the case of a suspect, the court shall issue a ruling to close the criminal proceedings on the grounds provided for in clause 1 (absence of a criminal offence) or clause 2 (absence of a criminal offence) of part 1 of Article 284 of the CPC<sup>4</sup>. As for the accused, the court acquits the defendant.

In general, proceduralists A. Zakharko (2023) and O.P. Shaituro (2022) emphasize the shortcomings in the regulation of the grounds for criminal proceedings of the above amendments, but do not insist on their cancellation or exclusion. However, unlike theorists, practitioners in their works on the general grounds for closing criminal proceedings think more radically, and sometimes, based on negative prosecutorial and judicial practice, propose to repeal problematic amendments to the CPC (Pastusch, 2019). In addition, I.V. Hloviuk (2023) notes that the newly introduced special procedure for criminal proceedings in the current version of Chapter 36-1 of the CPC of Ukraine<sup>5</sup> regulates the peculiarities of the end of the pre-trial investigation and the peculiarities of the trial.

The above indicates that the provisions of this chapter do not cover the preliminary stage of investigation, investigative and procedural actions that are carried out at this stage. For example, the procedure for serving a notice of suspicion on subjects of a criminal offence, in respect of whom a special procedure for criminal proceedings is provided. Meanwhile, this is a key procedural act of prosecutorial and investigative activity in such procedures, which determines the further legal fate of the proceedings, and is also carried out with numerous features in relation to the subjects of the criminal offence (Bublyk, 2019). Therefore, Chapter 36-1<sup>6</sup> concerns only the form of completion of the pre-trial investigation, namely the closure of criminal proceedings. Given the positions of scholars, this ground is not entirely unambiguously perceived in practice by the prosecution and defence, as well as by the court itself.

Therefore, the purpose of the study was to establish the scientific, theoretical and practical features which characterize the introduced institute as a static (grounds for closure) and at the same time dynamic (special procedure for criminal proceedings) category of criminal procedure.

<sup>1</sup> Law of Ukraine No. 2810-IX “On Amendments to the Criminal Code and the Code of Criminal Procedure of Ukraine Regarding the Closure of Criminal Proceedings Due to the Invalidation of the Law Establishing the Criminal Unlawfulness of an Act”. (2022, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/2810-20#Text>.

<sup>2</sup> Criminal Procedure Code of Ukraine. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

<sup>3</sup> *Ibidem*, 2012.

<sup>4</sup> *Ibidem*, 2012.

<sup>5</sup> *Ibidem*, 2012.

<sup>6</sup> *Ibidem*, 2012.

## Materials and Methods

The methodological basis of the publication is made up of general scientific and special methods, namely: dialectical – allowed analysing the object of study as the grounds for closing the proceedings, such as a special procedure of criminal proceedings; systemic and structural – used to clarify the legal guarantees of the procedural rights of the suspect and the accused in the event of circumstances which allow them to use the consent to close the proceedings or vice versa, in connection with the decriminalization of an act; comparative The methods of analysis and synthesis, generalization, induction and deduction, forecasting, analogy, and justification were also used to clarify and summarize empirical data on the basis of logical rules from the specific to the general, from the known to the unknown, and to define the object and subject.

The empirical basis of the study is made up of: The Constitution of Ukraine<sup>1</sup>, the Criminal Procedure Code of Ukraine<sup>2</sup> and other legal acts of Ukraine regulating legal relations in the field of criminal justice<sup>3</sup>. Along with this, case law materials, namely, decisions of Ukrainian courts of general jurisdiction of the first instance from different regions of Ukraine, which reflect a real and objective picture of the practice of applying the studied provision of the Criminal Procedure Law throughout the country. These are the rulings of: Chortkiv District Court of Ternopil Region<sup>4</sup>, Shevchenkivskiy District Court of Kyiv<sup>5</sup>, Kolomyia City District Court of Ivano-Frankivsk Region<sup>6</sup>, Korosten City District Court of Zhytomyr Region<sup>7</sup>, Zolotonosha City District Court of Cherkasy Region<sup>8</sup>, all delivered within a short period of time since the law came into force. In addition to the above, in the context of the issues under consideration, the author examines the decisions of the Constitutional Court of Ukraine<sup>9</sup>. In addition, the author's investigative and prosecutorial experience in law enforcement agencies was used in the preparation of the scientific work.

## Results and Discussion

Considering the process of emergence of this institution in the Criminal Procedure Code of Ukraine, it should be noted that the initiative for this belonged not to the state, which should guarantee the rights and freedoms of participants in the process, but rather to an individual who initiated its emergence in criminal procedural law. Thus, the Constitutional Court of Ukraine received a constitutional complaint from a citizen who raised the issue of compliance of paragraph 4 of part one of Article 284 of the Criminal Procedure Code of Ukraine (case on presumption of innocence) with the Constitution of Ukraine (constitutionality). The consideration of this complaint resulted in the decision of the Second Senate of the Constitutional Court of Ukraine in the case on the constitutional complaint on the compliance of paragraph 4 of part one of Article 284 of the Criminal Procedure Code of Ukraine (case on the presumption of innocence) No. 3-rp (II) 2022 dated 8 June 2022, which declared paragraph 4 of part 1 of Article 284 of the CPC to be inconsistent with the Constitution of Ukraine<sup>10</sup> (unconstitutional). To legislatively consolidate the above conclusion, the Verkhovna Rada of Ukraine amended the procedural law by which it excluded clause 4, part 1, Article 284 of the CPC of Ukraine as unconstitutional and supplemented the said provision with a new clause 4-1<sup>11</sup>. The purpose of this law was to create a proper legal mechanism for closing criminal proceedings in connection with the decriminalization of an act. Scholars in different countries have paid sufficient attention to the application of decriminalization in procedural science, starting with its definition (Farmer, 2023) and ending with certain corpus delicti that, in the authors' opinion, require a simplified investigation procedure or exclusion from the criminal field as such D. Baranenko *et al.* (2023), O. Grudzur (2020), A.E. Arimoro (2022).

Thus, in accordance with the decision of the Constitutional Court of Ukraine on the right of a suspect (accused) to agree or disagree with the closure of criminal

<sup>1</sup> Criminal Procedure Code of Ukraine. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

<sup>2</sup> *Ibidem*, 2012.

<sup>3</sup> Law of Ukraine No. 2810-IX "On Amendments to the Criminal Code and the Code of Criminal Procedure of Ukraine on Closing Criminal Proceedings in Connection with the Termination of the Law Establishing the Criminal Unlawfulness of an Act". (2022, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/2810-20#Text>.

<sup>4</sup> Ruling of the Chortkiv District Court of Ternopil Region No. 608/179/23. (2023, February). Retrieved from <https://reyestr.court.gov.ua/Review/109193136>

<sup>5</sup> Ruling of the Shevchenkivskiy District Court of Kyiv No. 761/31287/20. (2023, March). Retrieved from <https://reyestr.court.gov.ua/Review/109647758>.

<sup>6</sup> Ruling of the Kolomyia City District Court of Ivano-Frankivsk Region No. 346/5362/20. (2023, April). Retrieved from <https://reyestr.court.gov.ua/Review/110388274>.

<sup>7</sup> Ruling of the Korosten City District Court of Zhytomyr Region No. 279/7081/14-k. (2023, June). Retrieved from <https://reyestr.court.gov.ua/Review/112172826>.

<sup>8</sup> Ruling of the Zolotonosha City District Court of Cherkasy Region No. 695/1594/21. (2023, April). Retrieved from <https://reyestr.court.gov.ua/Review/110533644>.

<sup>9</sup> Decision of the Second Senate of the Constitutional Court of Ukraine in the case on the constitutional complaint of Oleksandr Volodymyrovych Krotiyuk regarding the compliance with the Constitution of Ukraine (constitutionality) of paragraph 4 of part one of Article 284 of the Criminal Procedure Code of Ukraine (case on the presumption of innocence) No. 3-p(II)/2022. (2022, June). Retrieved from [https://zakon.rada.gov.ua/laws/show/v003p710-22?fbclid=IwAR0lKrL6dVxXxf2Ueqkjq8UUFC1\\_%208GVD\\_axwBh7zDSX0HvZbtu6\\_xysPX9k#Text](https://zakon.rada.gov.ua/laws/show/v003p710-22?fbclid=IwAR0lKrL6dVxXxf2Ueqkjq8UUFC1_%208GVD_axwBh7zDSX0HvZbtu6_xysPX9k#Text).

<sup>10</sup> Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

<sup>11</sup> Criminal Procedure Code of Ukraine. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

proceedings against him/her and the consequences of such closure, the legislator filled the gap in the procedural end of the decriminalized offence<sup>1</sup>. In this case, the Constitutional Court granted the accused the right to look at the decriminalization of the offence differently. This decision can be compared to the Report on Decriminalization issued by the Council of Europe in 1980, which was studied by M. Pinto (2023). His opinion was to take into account the provisions of the Report, which could be used by the European Court of Human Rights to take a different approach to the consideration of criminalization cases. The issues of alternative decriminalization were also addressed in the works of A. Stevens *et al.* (2022) and W.C. Heffernan (2019), although it did not concern a group of crimes, but only certain types.

The above-mentioned decision of the Constitutional Court was made in pursuance of the requirements of the constitutional principle of criminal procedure – the presumption of innocence contained in Article 62 of the Constitution of Ukraine<sup>2</sup>. In the case under study, it concerns the treatment of a person as guilty or innocent in case of decriminalization of an act for which he or she was prosecuted and his or her exclusive right to agree to the closure of criminal proceedings against him or her on rehabilitating or non-rehabilitating grounds.

The presumption of innocence is not only a Ukrainian heritage. Its content is also being studied in other countries. Thus, F. Yu (2022), in his work on the presumption of innocence, notes that this principle requires a prior commitment to the accused or defendant and presumes his or her innocence. At the same time, there is a certain difference in the understanding of the principle in the European and international contexts, as noted by J. Mulák (2018), F. Picinali (2021). To exercise the offender's right to the presumption of innocence, the legislator has provided for procedural behaviour options in two articles: 479-1 and 479-2 of the Criminal Procedure Code of Ukraine. Their content relates to two stages of criminal proceedings – pre-trial investigation

and trial, which contain certain procedural features. Although, in our opinion, these are rather conditions than peculiarities, as the legislator calls them. Thus, if the suspect does not agree to close the proceedings on non-rehabilitating grounds at the end of the pre-trial investigation, the actions of the prosecutor-procedural supervisor will be as follows. The prosecutor shall file a motion with the court to close the criminal proceedings against the suspect under clause 4-1, part 1, Article 284 of the CPC of Ukraine<sup>3</sup>, provided that

- if the suspect objects to the closure of the criminal proceedings under paragraph 4-1, part 1, Article 284 of the CPC of Ukraine<sup>4</sup>;

- the prosecutor recognizes that the evidence of the decriminalized criminal offence is sufficient;

- notifying the suspect and his/her defence counsel of the completion of the pre-trial investigation;

- providing access to the pre-trial investigation materials;

- familiarizing the suspect and defence counsel with the pre-trial investigation materials.

It is worth emphasizing the exclusive role of the prosecutor during this procedure, since, unlike the investigator and the court, he or she participates in it at both stages of the process: pre-trial and trial. And an important point is that its effectiveness depends on the prosecutor's careful study of the criminal proceedings in order to provide a legal assessment of whether there are grounds for closing them (Pashchenko, 2020). I.I. Gafich (2019) also notes the special place of the prosecutor in the system of subjects of criminal proceedings' termination. At the same time, further development of procedural events takes place not only at the investigation stage, but also in the court instance. The Code stipulates that the court conducts court proceedings in relation to a decriminalized act in the general procedure, but with appropriate conditions. As a result of a scientific analysis of the new legislative provisions, five options for closing court proceedings were classified (Table 1).

**Table 1.** Classification of options for closing criminal proceedings in court

Court order	Conditions
1. Closure of criminal proceedings under clauses 1-2, part 2 of Article 284 of the CPC	Disagreement by the suspect to the closing of the proceedings under Clause 4-1, Part 1, Art. 284 of the CPC; The court confirmed the commission of a decriminalized criminal offence.
2. Closure of criminal proceedings under Clause 1 or 2, Part 1 of Article 284 of the Criminal Procedure Code	The court did not establish the fact of committing a decriminalized criminal offence.

<sup>1</sup> Decision of the Second Senate of the Constitutional Court of Ukraine in the case on the constitutional complaint of Oleksandr Volodymyrovych Krotiyuk regarding the compliance with the Constitution of Ukraine (constitutionality) of paragraph 4 of part one of Article 284 of the Criminal Procedure Code of Ukraine (case on the presumption of innocence) No. 3-p(II)/2022. (2022, June). Retrieved from [https://zakon.rada.gov.ua/laws/show/v003p710-22?fbclid=IwAR0IKrL6dVxXxf2Ueqlqj8UUF1\\_%208GVD\\_axwBh7zDSX0HvZbtu6\\_xysPX9k#Text](https://zakon.rada.gov.ua/laws/show/v003p710-22?fbclid=IwAR0IKrL6dVxXxf2Ueqlqj8UUF1_%208GVD_axwBh7zDSX0HvZbtu6_xysPX9k#Text).

<sup>2</sup> Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

<sup>3</sup> Criminal Procedure Code of Ukraine. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

<sup>4</sup> Ibidem, 2012.

Table 1, Continued

3. Closure of criminal proceedings under item 4-1, part 1 of Article 284 of the Code	During the consideration of the indictment in court, the criminal offence committed by the accused becomes invalid;
	The court stops the trial;
	The court asks for the consent of the accused to close the criminal proceedings. clause 4-1 part 1 of Art. 284 of the CPC;
	If the accused does not object to it.
4. Closure of criminal proceedings under clauses 1-2, part 2 of Article 284 of the CPC	Lack of consent of the accused;
	Establishment by the court of the fact that the accused committed an act, the criminal illegality of which was established by a law that has lost its validity.
5. Acquittal	The court did not establish that the accused committed an act, the criminal illegality of which was established by a law that has lost its validity

**Source:** developed by the author based on the CPC of Ukraine<sup>1</sup>

The above options for closing criminal proceedings are applied in practice. From the analysed judgments delivered in criminal proceedings concerning decriminalized acts, it is possible to draw certain conclusions about the formation of a very diverse judicial practice in this category of proceedings. There are court decisions that satisfy the motions of the parties to the proceedings and close the proceedings<sup>2</sup>, while there is also negative practice after consideration of the relevant appeals<sup>3</sup>. Thus, in the part of criminal proceedings where the defence counsel and the accused apply to the court with a motion to close the criminal proceedings on the basis of clause 4-1, part 1, Article 284 of the CPC<sup>4</sup>, the prosecutor refuses to support it<sup>5</sup>. Conversely, in cases where the prosecutor applies to the court with a motion to close the criminal proceedings against the suspect on the grounds provided for in paragraph 4-1 of part one of Article 284 of the CPC, the defence counsel and the suspect or accused object to the motion<sup>6</sup>. Also, the court itself, on legal grounds, denies the parties or a party to satisfy such a motion<sup>7</sup>. Thus, the procedural theatre of the trial of these cases, with the existing variety of scenarios for its development, is more like a general procedure than something special and differentiated.

To summarize the amendments to the current legislation under consideration, the following should be noted. Given the finalizing nature of Art. 284 of the CPC of Ukraine<sup>8</sup> for pre-trial investigation, the new amendments are quite logical within the content of this provision. Since the newest paragraph 4-1 (1)<sup>9</sup> is an ordinary ground for closing criminal proceedings, although

improved by the decision of the Constitutional Court of Ukraine<sup>10</sup>. In other words, one ground, which was declared unconstitutional, was replaced by another, and it takes into account the right of the suspect and the accused to self-determination. Based on the process of improvement of the criminal procedure legislation, it is possible to summarize the increase in the number of grounds for closing the proceedings in the future. Moreover, there is a strong scientific basis for this, in particular, I.V. Hloviuk (2021) expresses the opinion that the model of classification of the grounds for closing criminal proceedings in court into rehabilitating and non-rehabilitating ones does not meet the challenges of today and the needs of the practice of application.

At the same time, as noted above, the legislator supplemented Chapter XX with Chapter 36-1<sup>11</sup>, effectively introducing a new special, but in the author's opinion, incomplete procedure for criminal proceedings. Despite the fact that this procedure is carried out in certain parts of the pre-trial investigation and trial stages, it does not deserve the status of a special procedure, since it regulates a few criminal procedural relations. O.V. Sachko (2019), studying the issue of differentiation in criminal procedure, distinguished two forms of it: the first is simplified criminal proceedings, the second is complicated, special. He quite justifiably linked their content through the definition, but noted that the name does not always correspond to the content. Thus, in his opinion, the simplified proceedings include: proceedings on criminal offences, proceedings based on agreements, proceedings in the form of private

<sup>1</sup> Criminal Procedure Code of Ukraine. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

<sup>2</sup> Ruling of the Chortkiv District Court of Ternopil Region No. 608/179/23. (2023, February). Retrieved from <https://reyestr.court.gov.ua/Review/109193136>.

<sup>3</sup> Ruling of the Shevchenkivskiy District Court of Kyiv No. 761/31287/20. (2023, March). Retrieved from <https://reyestr.court.gov.ua/Review/109647758>.

<sup>4</sup> Criminal Procedure Code of Ukraine. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

<sup>5</sup> Ruling of the Kolomyia City District Court of Ivano-Frankivsk Region No. 346/5362/20. (2023, April). Retrieved from <https://reyestr.court.gov.ua/Review/110388274>.

<sup>6</sup> Ruling of the Korosten City District Court of Zhytomyr Region No. 279/7081/14-k. (2023, June). Retrieved from <https://reyestr.court.gov.ua/Review/112172826>.

<sup>7</sup> Ruling of the Zolotonosha City District Court of Cherkasy Region No. 695/1594/21. (2023, April). Retrieved from <https://reyestr.court.gov.ua/Review/110533644>.

<sup>8</sup> Criminal Procedure Code of Ukraine. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

<sup>9</sup> Ibidem, 2012.

<sup>10</sup> Ibidem, 2012.

<sup>11</sup> Ibidem, 2012.

prosecution. These types of proceedings include a simplified procedure for investigation or trial. At the same time, other procedures include more complicated investigation procedures, such as the special regime of criminal proceedings under martial law, proceedings in respect of a certain category of persons, minors, the use of compulsory medical measures, as well as proceedings containing information constituting a state secret and other similar aspects.

If taking into account the above types of special criminal proceedings, they correspond to a certain group of criteria according to which they are classified as a differentiated form of criminal procedure. V.M. Trofimenko (2017) identified three rather broad groups of criteria for differentiation of the criminal procedure form: 1) material (criminal law) – which determines the further legal fate of criminal proceedings and depends on the gravity of the qualified crime, 2) procedural – provides for a difference from the general form of proceedings, 3) criminological – related to certain legal regimes characterizing the environment where the criminal offence was committed. To determine whether the procedure of proceedings differs from the general form of proceedings, the authors propose a number of criteria which are somewhat different from the above, namely:

- Special legal status of the subjects of a criminal offence;
- Procedural immunity of the subjects of a criminal offence;
- Criminal procedural guarantees for participants in the proceedings;
- Special procedure for bringing to justice and application of measures to ensure criminal proceedings against offenders;
- Peculiarities relating to a certain territory, group of criminal offences or certain institutions;
- Application at the pre-trial and trial stages of the process.

In view of the above, the new Chapter 36-1<sup>1</sup> is neither a simplified criminal proceeding nor a particularly complicated one, since the legal relations referred to in it are considered in accordance with the general rules of the Code. In addition, it does not meet the scientific criteria that characterize a differentiated form of criminal procedure. From this point of view, it seems problematic that the legislator has included such a small group of criminal procedural relations in a separate special procedure of criminal proceedings. In fact, this is a unified criminal procedure form, since it is conducted in accordance with the general rules of

criminal proceedings. This statement is confirmed by scientific research, as well as by the judicial practice that is developing in the Ukrainian judiciary. In connection with the above, it is proposed to exclude Chapter 36-1 from Section VI “Special Procedures of Criminal Proceedings”<sup>2</sup>. And to supplement clause 4 of part 1 of Article 284 of the CPC of Ukraine<sup>3</sup> with two parts: the first one corresponds to Article 479-1<sup>4</sup>, and the second one – to Article 479-2<sup>5</sup>. Applying the legal construction of paragraph 10 of part 2 of Article 284 of the Criminal Procedure Code of Ukraine<sup>6</sup>.

## Conclusions

The legislative norms that were the subject of this study and introduced to the Criminal Procedure Code of Ukraine arose as a result of one of the fundamental principles of criminal procedure – the presumption of innocence – and are a confirmation of the exercise of inalienable conventional and constitutional human rights aimed at protecting their fundamental freedoms and legitimate interests. The analysed amendments to the CPC are the result of the expression of will made by means of an initiative petition of a citizen to the Constitutional Court of Ukraine. This is a classic example of the right to a fair trial as defined by the European Convention on Human Rights. Despite their novelty and progressiveness, as well as their compliance with the “spirit of the law”, these amendments were drafted and placed contrary to the legal technique of structuring legal acts.

The legislator prematurely and inappropriately introduced a new chapter entitled “Criminal proceedings in respect of an act whose criminal unlawfulness was established by a law that has ceased to be in force”, which contains only two articles of little substance. The analysis has shown that in terms of form and content, the new chapter of the CPC is not a type of special procedure for criminal proceedings. Since it does not cover the entire process of proceedings from the beginning to the end, but only its final form of completion – closure. That is, a short, episode in the investigation during which the suspect or accused exercises his or her right to consent to the closure of the proceedings by the prosecutor at the pre-trial investigation stage, or vice versa – in case of his or her disagreement with the prosecutor’s closure of the proceedings, by being sent to court for consideration in the general procedure. Thus, this chapter is only one of the numerous grounds for closing criminal proceedings provided for by the CPC of Ukraine with its inherent procedure. It is worth noting that cases of decriminalization are not so

<sup>1</sup> Criminal Procedure Code of Ukraine. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

<sup>2</sup> Ibidem, 2012.

<sup>3</sup> Ibidem, 2012.

<sup>4</sup> Ibidem, 2012.

<sup>5</sup> Ibidem, 2012.

<sup>6</sup> Ibidem, 2012.

common in legislative practice. At other times, criminal proceedings are investigated in a general manner and are not consistent in law enforcement practice.

Prospects for future research are to create further developments to improve the procedural actions for closing proceedings on the basis of decriminalization, in order to prevent violations of the rights of the suspect and the accused during the proceedings

and to ensure their right to agree or disagree with such closure.

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### Conflict of Interest

None.

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# Глава 36-1 КПК України як підстава для закриття кримінального провадження

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### Анотація

Поява в чинному Кримінальному процесуальному кодексі України нової підстави для закриття кримінального провадження – у зв'язку з декриміналізацією діяння, вчиненого особою, – викликала неоднозначні оцінки вчених. Застосування нового порядку провадження в судовій практиці зумовлює необхідність ґрунтовного наукового опрацювання проблеми з метою недопущення порушень закону. Метою дослідження було визначення практичної доцільності прийнятих змін для досудового розслідування та судового розгляду. Для досягнення поставленої мети було використано такі методи: діалектичний, системно-структурний, порівняльно-правовий, формально-логічний, моделювання. У дослідженні описано дії учасників кримінального судочинства на стадії досудового розслідування, а також у суді під час розгляду зазначеного порядку. Здійснено порівняння нового порядку провадження з іншими наявними особливими порядками розслідування, акцентовано на їх відмінності. Поставлено під сумнів виокремлення законодавцем цієї процедури як виду особливого порядку. Сформульовано висновок, що досліджуваний предмет є виключно вдосконаленою підставою для закриття кримінального провадження або ж подальшого продовження його розгляду залежно від права сторони захисту на закриття або ж продовження процесу провадження в суді. Проаналізовано судову практику застосування цього кримінального процесуального інституту. Увагу зосереджено на необхідності врахування слідчими, прокурорами та суддями вимог нової підстави закриття кримінального провадження та недопущення порушень закону, позаяк під час його розгляду підозрюваному й обвинуваченому надано додаткове альтернативне право на згоду або ж незгоду із закриттям провадження, що є гарантією прав і свобод людини. Авторський висновок щодо недоречності віднесення законодавцем процедури закриття провадження до окремого виду особливого порядку обґрунтовано поспішністю та відсутністю відповідного наукового опрацювання. Дослідження є підґрунтям для вдосконалення методики процесуальних дій сторони обвинувачення під час закриття кримінального провадження та може бути використано законодавцем для подальшого врегулювання порядку кримінального провадження

### Ключові слова:

декриміналізація; особливий порядок розслідування; прокурор; суд; сторона обвинувачення; сторона захисту; кримінальна процесуальна форма