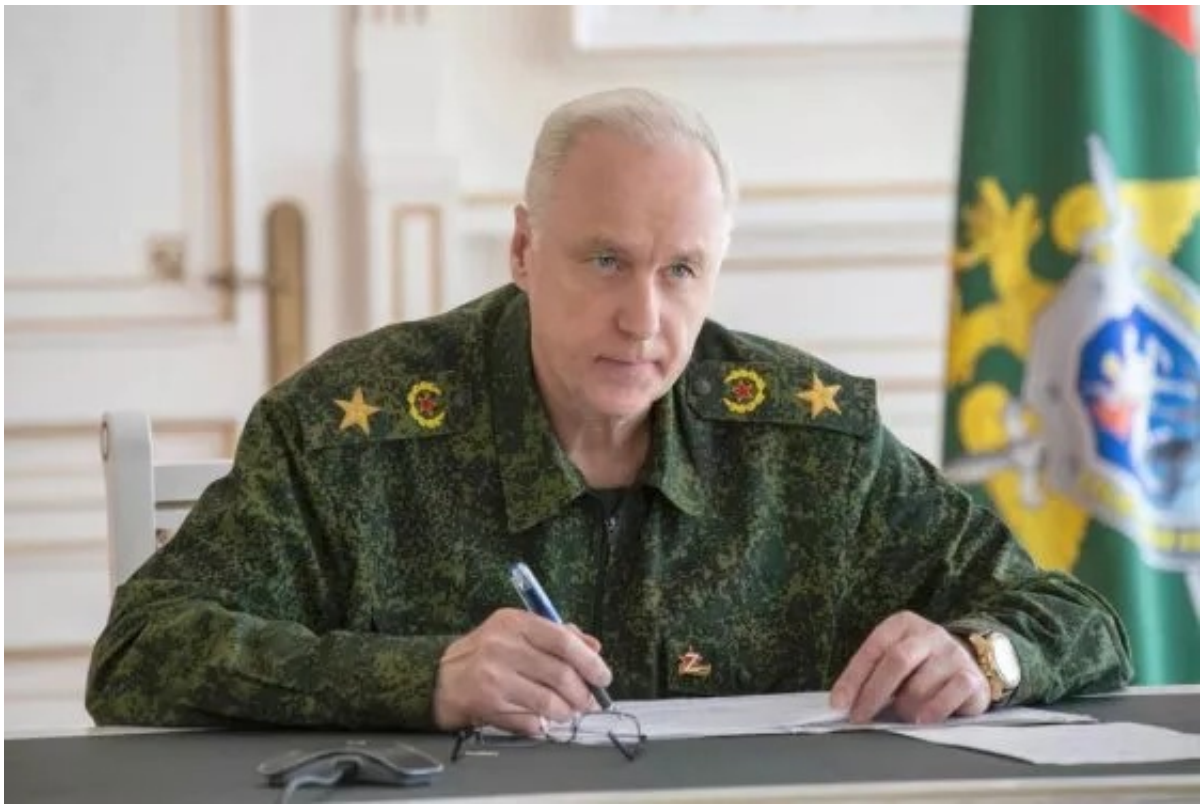
Interview of the Chairman of the Investigative Committee of Russia to Rossiyskaya Gazeta



How to shorten the investigation period and why consensus criteria for the sufficiency of the collected evidence are needed. Interview with Mr. Alexander Bastrykin.

Will the desire to investigate criminal cases as prompt as possible affect the quality of the investigation? Is it necessary to reduce the terms of detention of accused entrepreneurs? Should the procedure for applying the statute of limitations for criminal liability be changed? Mr. Alexander Bastrykin, Chairman of the Investigative Committee of the Russian Federation, spoke on this and many other things in his interview to Rossiyskaya Gazeta.

Mr. Alexander Ivanovich, it's no secret that investigative work on some criminal cases lasts for years and we know that. It has been 15 years since the reform of the investigative bodies was launched and it concluded with the creation of the Investigative Committee in 2011. The quality of the investigation, including its timing, is regularly discussed at the collegiums of

your department and at various meetings. Could you reveal the secret - has it become possible to speed up the investigation of criminal cases after more than a decade work in this area?

Mr. Alexander Bastrykin: Since the establishment of the Investigative Committee of Russia, a set of organizational measures has been taken. Statistics show that these measures have contributed to a gradual reduction in the duration of the preliminary investigation. If in 2011, 61 percent of criminal cases were investigated within a period not exceeding two months, this figure increased to 67 percent this year.

Let me emphasize that the number of serious and especially serious crimes investigated has become higher. That includes criminal acts of past, crimes committed by organized criminal groups and criminal communities, corruption and economic ones.

The Investigative Committee is focused on eliminating negative trends in the area we study, giving a priority to compliance with the requirements for a reasonable time for pre-trial proceedings.

Don't you think that the Main Investigative Directorate will be overburdened if it is entrusted with the issue of prolonging the investigative period, including the issue of keeping the accused in custodial detention for more than six months?

Alexander Bastrykin: I believe that we'll be met with an excessive workload. In the current conditions in the territorial divisions of the Investigative Committee, about 50,000 petitions are examined annually requesting to harmonize the terms of investigation and custodial detention in criminal cases that exceed 6 months.

At the same time, the Main Investigative Directorate is reviewing about 7,000 applications to extend this period to longer than 12 months. If the entire array of petitions from the regions is shifted to the Main Investigative Directorate, this will require a change in the number of staff and significant additional costs. Moreover, changing this order will not affect the effectiveness of the investigative work. It is much more important to eliminate the real reasons that lead to the need to extend the investigation and custodial detention.

What are these reasons?

Alexander Bastrykin: Practically all criminal cases require forensic examinations. Some expert studies take months to complete, which extends the duration of the investigation. The problem can be solved by gradually expanding the staff of experts, especially narrow specialists, the network of expert institutions and adequately equipping them. The upgrade ofthe scientific, methodologicaland technological components of the examinations, especially the latest innovative technologies, will speed up the process.

I see and approve of the proposal to introduce a unified electronic register of state and non-state

experts and expert institutions under the guarantees of confidentiality of the preliminary investigation. This will make it possible to evenly distribute research, to control its duration, which will minimize the workload of individual institutions.

The demands of the prosecutor and the court to collect and provide sufficient evidence have become very high. And therefore it is essential to develop the consensus criteria to assess the sufficiency of the collected evidence for making a lawful and justified decision in a criminal case. I believe that a consensus can be reached between the relevant departments. But there are other reasons that need to be considered.

The Main Investigative Directorate of the Investigative Committee is examining about 7 thousand applications for extensions of the investigation for a period of more than 12 months.

To improve things, I will make a proposal to set a 10-day period for a prosecutor to review a criminal case received with an indictment, instead of the currently permitted 30 days. Additionally, a lot of time can be saved if the investigators are excluded from the obligation to state in the indictment the content of the collected evidence, limiting themselves to their list.

In practice, this approach often leads to an increase in the volume of the indictment without changing its content and semantic load, especially for multi-episode crimes committed in complicity. However, the strict limitation of the content of evidence only by their enumeration may affect the efficiency and quality of the judicial investigation. Therefore, this issue needs to be accessed in detail.

For several years now, criminal law and criminal procedure have been on the path of mitigation in terms of economic crimes, including the field of entrepreneurship. There was a proposal not to impose custodial detain on citizens accused of committing crimes in this area for more than 12 months. Do you think that this is part of the natural of liberalization process?

Alexander Bastrykin: The existing norms adequately protect suspects and defendants from unjustified selection of restraining in custody measures and their extension. The law establishes time limits for custodial detention. For persons accused of committing especially grave crimes, in exceptional cases, such period may exceed 12 months, but it is limited to 18 months. Further extension is not allowed.

The grounds for applying this measure of restraint to entrepreneurs are regulated in detail by the norms of the criminal procedure legislation. This takes into account the nature of the crime committed, its severity, identity data of the person involved in the criminal case and other circumstances. To provide guarantees to the business entities against unreasonable selection of detention measures and their extension it’s important to apply the clarifications of the decisions of the Plenum of the Supreme Court of the Russian Federation.

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If the statement "in connection with the implementation of entrepreneurial activity" is documented in the law and formally applied, this may lead to negative practice and an expansion of the number of persons falling under the proposed criminal law norm.

For example, if an entrepreneur kills his business partner, such crime does not affect the formation of the business climate in the country, but is specifically related to the entrepreneurial activity. And the person who committed such crime, if there are appropriate grounds, should be custodially detained. Therefore, this proposal seems to be controversial.

It should also be noted that in recent years the measures of custodial restraint have been applied much less frequently. In criminal cases of the Investigative Committee last year, only 16.7 percent of the defendants were kept in custody.

The proposal to introduce the approval of charges by the prosecutor's office in criminal cases of economic crimes in a way brings us back to the "pre-reform" situation.

Alexander Bastrykin: Quite right. Fixing the need to coordinate with the prosecutor the decision to involve defendants in criminal cases of economic crimes does not correlate with the concept of legislative separation of the functions of preliminary investigation and prosecutorial supervision.

All this may have a negative impact on the objectivity of the prosecutor, who will be bound by the previously expressed position. Over the course of several years, the results of our work confirm that at present we have a very good balance of powers between the investigative and supervisory bodies, so it should not be violated.

Considering the current powers that the prosecutor's office obtain, in your opinion, does it make possible for the supervisory agency somehow help reduce the time for preliminary investigation?

Alexander Bastrykin: I believe that the role of the prosecutor's office could be strengthened in matters of prevention and suppression of violations of the law by business entities.

The introduction of appropriate response acts by the supervisory agency can help reduce the number of situations when economic disputes between entrepreneurs enter the criminal law area and the intervention of investigative and operational units is no longer required.

In addition, a change in the approach to conducting prosecutorial inspections, focusing **on** the completeness and sufficiency of the collected files would allow the investigatingauthorities to launch a criminal case in a timely manner and give a legal assessment of the actions of persons involved in

illegal acts without delaying the pre-investigation inspection stage.

Do you think it is worth setting a period of one year for making a final procedural decision if the statute of limitations for criminal liability has expired?

Alexander Bastrykin: As we know, the termination of a criminal case due to the expiration of the statute of limitations is a non-rehabilitating ground. Of course, the person involved in a criminal case often does not agree with the termination of the case on such grounds and would like to achieve innocence in court. But in practice it is not always possible to send the case to court promptly.

Recently, the Constitutional Court formulated a provision that it is necessary to decide the question of guilt or innocence of a person within a reasonable time. And if the legislator finds a new, more neutral wording for such cases, indicating that the guilt of a person has not been proven, I believe this will help protect the rights of participants in criminal proceedings. But in this case, of course, it is necessary to take into account a number of related issues, including how and by whom the damage caused by the crime will be compensated.

It is no secret that the defendants may delay the period of familiarization with the files of the case, for example, in order to wait for the statute of limitations for criminal liability to expire. Is it necessary to legally limit the period of familiarization with the files in general for all participants in criminal proceedings?

Alexander Bastrykin: In investigative practice, cases of abuse of this right by the defense are really common. This leads to a delay in the process of familiarization with the materials of the criminal case, violation of the terms of the investigation, as well as the violation of the rights of other persons. Now the deadline for familiarizing the defense side with the files of the criminal case can only be set by the court.

The results of the work confirm that now there is a good balance of powers between the investigative and supervisory bodies, so you should not violate it.

Further simplification of this procedure, as well as its extension to victims, civil plaintiffs (defendants) optimizes the investigation process should be subject to strict observance of such principles of criminal justice as equality and competitiveness of the parties. However, it is important to analyze and develop clear criteria for determining the sufficiency of the period for familiarization with a particular criminal case that differs in volume. It will also be necessary to resolve the issue of familiarization with physical evidence and other documents.

Of course, the proposals that have been made should be discussed with all departments that have investigative bodies, taking into account their law enforcement practice and the peculiarities of investigating those categories of criminal cases that fall under their jurisdiction. And only after a thorough analysis of all the arguments, an informed decision on changing the legislation should be

made.

Focal question:

Mr. Alexander Ivanovich, the professional community is actively discussing a proposal to establish a so-called "preclusive term" of one month for the prosecutor and the head of the investigative body to cancel an illegal decision to decline to start a criminal case and to introduce the subsequent cancellation of such decisions only by the court. What is the position of the Investigative Committee?

Mr. Alexander Bastrykin: Until now, the legislator has thoroughly regulated the procedure for studying the files of procedural inspections, as a result - the investigator decides to decline the start of a criminal investigation. A copy of the decision to decline the start a criminal case is sent to the applicant and the prosecutor. If the refusal to initiate a criminal case is recognized as illegal or unreasonable, then the prosecutor or the head of the investigative body has the right to recognize the decision of the investigator to decline the start of a criminal case as illegal or unreasonable and cancel it. And sometimes, to ensure the rights of the victim, it may even be necessary to repeal the decision to decline the start of a criminal investigation in order to conduct additional verification activities and detect an objective picture of what happened.

Statistical data and law enforcement practice show that the introduction of a preclusive term will not lead to a positive effect, but rather, on the contrary, will lead to difficulties and deterioration in the quality of verification of materials. In 2021, the Investigative Committee and the Ministry of Internal Affairs of Russia made over 6 million decisions to refuse to initiate criminal cases. Subsequently, more than a million decisions were cancelled. A period of one month is not enough for a qualitative check of all procedural decisions made to decline the start of criminal investigations. In addition, investigators are often working in the areas, that are located far from the investigating body or the supervising prosecutor, which will also contribute to delaying the specified period.

At the same time, if the mechanism of canceling decisions to decline the start of a criminal case in court is constantly activated, the burden on the courts will increase significantly. In addition, it may require additional financial costs. As a result, the stated goals and objectives of the reforms in legislation will not be achieved. The innovation may also have a negative impact on the restoration of the violated rights and interests of the victims.

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