



Establishment Of Judicial Control Over The Initiation Of A Criminal Proceeding

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ABSTRACT

The article analyzes the problems of the initial stage of criminal proceedings caused by changes in the criminal procedure legislation. Special attention is paid to the improvement of the rules governing the procedure for appealing to the court against the actions and omissions of officials to initiate a criminal case or refusal to initiate it.

KEYWORDS

Criminal procedure, appeal, pre-trial proceedings, initiation of a criminal case, verification of a crime report, interrogator, investigator, prosecutor's supervision, preliminary inquiry, judicial control.

INTRODUCTION

One of the main tasks of criminal procedural legislation is to provide guarantees for the protection of the rights and legitimate

interests of participants in criminal proceedings.

The court in criminal proceedings is endowed with significant powers in terms of its scope and consequences to control and lawfulness of the actions of the preliminary investigation bodies at the stage of initiating a criminal case. The criminal procedure legislation provides that judicial control is carried out by giving the court permission to perform several procedural actions that may violate or restrict the constitutional rights and freedoms of citizens.

Relations between participants in criminal proceedings at the stage of initiation of a criminal case are often of a conflict nature. The legislator provides that in the event of procedural contradictions, persons who do not have authority have the right to apply to the court for the protection of their rights and interests. According to article 9 of the Law of the Republic of Uzbekistan "On Courts": citizens of the Republic of Uzbekistan, foreign citizens and stateless persons have the right to judicial protection from any illegal actions (decisions) of state and other bodies, officials, as well as from encroachments on life and health, honor and dignity, personal freedom and property, other rights and freedoms. Enterprises, institutions and organizations also have the right to judicial protection [1].

The right to appeal against the procedural actions and decisions of the prosecutor, investigator and inquirer is based on the constitutional guarantee of judicial protection of the rights and freedoms of the individual. Such a right is important for the participants in the process to defend their interests.

An analysis of the provisions of articles 338, 358, 381¹⁷ of the Criminal Procedure Code of the Republic of Uzbekistan showed that

actions to initiate or refuse it can be appealed to the head of the body of inquiry, the head of the investigative unit, as well as to the prosecutor. In the Criminal Procedure Code of the Republic of Uzbekistan, there is no rule defining the procedure for appealing a decision to initiate a criminal case or refusing to initiate it in court.

Thus, judicial control at the pre-trial stages of criminal proceedings should be considered one of the forms of manifestation of judicial power. Investigative and judicial practice shows that violations at the stage of initiating a criminal case in the activities of the preliminary investigation bodies are very common.

A comparative analysis of this provision has shown that the Criminal Procedural Code of the Russian Federation [2] and the Republic of Kazakhstan [3] establishes norms according to which actions and omissions, as well as decisions taken by the inquirer, investigator and prosecutor can be appealed in court.

In accordance with part 1 of Article 99 of the Criminal Procedural Code of the Republic of Kazakhstan, "Participants in criminal proceedings have the right to apply to the person conducting the pre-trial investigation, the prosecutor, the judge (to the court) with petitions for the production of procedural actions or the adoption of procedural decisions to establish the circumstances that are important in the course of the criminal process, to ensure the rights and legitimate interests of the person who filed the petition, or the person represented by them. The application of petitions is possible at any stage of the process. The person who filed the application must indicate in order to establish what circumstances he/she is requesting to take any

action or make a decision. Written petitions are attached to the materials of the criminal case, oral ones are entered in the protocol of the investigative action or the court session".

According to art. 125 of Criminal Procedural Code of the Russian Federation: "Decisions of the body of inquiry, the inquirer, the investigator, the head of the investigative body on refusal to initiate a criminal case, on termination of the criminal case, as well as other actions (inaction) and decisions of the inquirer, the head of the investigation unit, the head of the inquiry body, the investigator, the head of the investigative body and the prosecutor, which are capable of causing damage to the constitutional rights and freedoms of participants in criminal proceedings or obstruct citizens access to justice, may be appealed to the district court at the place of commission of the act, containing signs of a crime.

Based on the results of the consideration of the complaint, the judge makes one of the following decisions:

- 1) On the recognition of the action (inaction) or decision of the relevant official as illegal or unjustified and on its obligation to eliminate the violation committed;
- 2) About leaving the complaint without satisfaction.

It should be noted that the decisions of the inquirer, investigator, prosecutor on the initiation or refusal to initiate a criminal case, as well as other actions (inaction) of officials authorized to conduct a pre-investigation check, inquiry and preliminary investigation, which may damage the constitutional rights

and freedoms of participants in criminal proceedings or hinder citizens access to justice, may be appealed in court at the place of commission of an act containing signs of a crime.

CONCLUSION

In addition, it should be established that, based on the results of the consideration of the complaint, the court must make one of the following decisions:

- 1) On the recognition of the action (inaction) or decision of the relevant official as illegal or unjustified and on its obligation to eliminate the violation committed;
- 2) About leaving the complaint without satisfaction.

Having recognized the refusal to initiate a criminal case as illegal or unfounded, the judge must make an appropriate decision and send it accordingly for execution to the head of the investigative body or the head of the body of inquiry, as well as notify the applicant about it.

Based on the studied issue, we would like to draw attention to another point regarding the development of a mechanism for judicial supervision of pre-trial proceedings, and more specifically to the UN Recommendations on "Judicial control at the stage of pre-trial proceedings in the criminal process of Uzbekistan" [4].

These recommendations address the issue of improving the institution of judicial supervision of pre-trial proceedings. Also, the recommendations focus on the introduction of a new procedural figure. In some post-Soviet countries (Armenia, Georgia, Kazakhstan,

Kyrgyzstan, Moldova, Ukraine) this procedural figure is called the investigating judge or its equivalent, whose role is to ensure judicial control over the legality of pre-trial proceedings. The introduction of this procedural figure can contribute to the observance of the principle of adversarial parties at the pre-trial stage of criminal proceedings.

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