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Improving judicial mechanisms for eliminating pre-trial procedural errors in the criminal process of Uzbekistan

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Abstract: This article addresses the systemic issues of procedural errors in the pre-trial phase of criminal proceedings in Uzbekistan. The research focuses on the theoretical nature of such errors, their classification, and their implications for judicial fairness and legal integrity. Drawing from domestic legal norms, empirical data, and comparative international practice, the article proposes reforms for strengthening judicial mechanisms to detect and eliminate these errors effectively. The goal is to enhance procedural safeguards and ensure compliance with fundamental rights during criminal prosecution.

Keywords: Procedural errors, criminal justice, pre-trial investigation, judicial oversight, legal reform, human rights.

Introduction: The rule of law and protection of individual rights are foundational principles of any modern legal system. In Uzbekistan, recent criminal justice reforms have sought to reduce wrongful convictions, improve the effectiveness of courts, and align national practice with international standards. However, a persistent challenge remains: procedural errors committed during the pre-trial phase, which can compromise the legality and fairness of trials.

This article, based on a dissertation study, investigates the scope and impact of such errors and judicial approaches to eliminating them. It argues that without institutional mechanisms for systematic identification and correction of procedural flaws, the integrity of the criminal justice system is jeopardized.

METHODOLOGY

This study adopts a doctrinal and comparative legal methodology, supplemented by analysis of statistical data from national court practices and relevant international instruments such as the International Covenant on Civil and Political Rights. Legal theory, particularly the works of Uzbek and CIS scholars, is employed to conceptualize 'procedural error' as a violation of procedural form that may or may not be unlawful but always undermines judicial goals.

The research also incorporates qualitative insights from empirical surveys conducted among 410 legal practitioners, judges, and investigators. These methods offer both depth and context to the assessment of how procedural errors arise, are detected, and are addressed by the judiciary.

Defining Procedural Errors in Pre-Trial Proceedings

In the criminal procedure of Uzbekistan, procedural errors in the pre-trial phase refer to any improper application of the procedural norms established by the Criminal Procedure Code (CPC). These errors are committed during inquiry, investigation, or prosecutorial review, and can include: unlawful initiation of criminal proceedings,

improper detention without judicial sanction, ignoring exculpatory evidence, violations of suspects' rights, misclassification of the legal nature of the offense.

Errors may be classified into:

technical errors, substantive errors, tactical errors, intentional or negligent errors.

According to Article 11(2) of the CPC, even inadvertent deviations from established procedures are subject to judicial scrutiny. Scholars such as M.E. Puchkovskaya argue that the gravity of an error lies in its impact on fairness, not just its legality.

Judicial Practice in Uzbekistan

The analysis of judicial practice in Uzbekistan reveals a concerning trend: despite improvements in legislation, procedural errors remain frequent. In 2023 alone, courts issued over 2655 private rulings in connection with violations identified during pre-trial stages. Additionally, 13,522 charges were dismissed or reclassified before the main trial due to insufficient evidence or legal defects in the investigation.

Pre-trial procedural errors not only hinder the achievement of the goals of criminal proceedings, but also negatively impact the effectiveness of law enforcement agencies. In reality, violations of the procedure established in the criminal procedure legislation—designed to uphold the rule of law, prevent crimes, and protect the interests of

individuals, the state, and society—can lead not only to procedural but also to significant socio-political consequences.

Such errors may result in the following outcomes:

- Prosecution of an innocent person or, conversely, evasion of liability by the actual offender;
- Unjustified termination or suspension of a criminal case;
- Issuance of an acquittal;
- Court rulings requiring additional procedural actions;
- Violation of the rights of participants in the proceedings, including both the accused and victims.

Pre-trial procedural errors lead not only to procedural consequences (such as acquittals or the return of cases to investigative bodies for additional inquiry) but also to social consequences, including the formation of negative public opinion regarding the performance of law enforcement agencies and the state's efforts to combat crime.

Another critical issue is the lack of criteria for determining the severity of a procedural error, which creates difficulties in distinguishing such errors from criminal offenses. This legal ambiguity may allow intentional violations of the law—especially those infringing on individual rights and freedoms—to be disguised as mere “errors,” undermining accountability.

Although the CPC does not define the concept of an error, Article 401¹ of the Criminal Procedure Code refers to typographical, textual, and arithmetic mistakes as technical deficiencies. Based on this, the CPC allows procedural errors to be grouped into the following categories:

1. Errors in applying provisions of the Criminal Code;
2. Errors in applying norms of the Criminal Procedure Code;
3. Technical errors.

From the perspective of their content, procedural errors can be further classified as:

1. Errors related to the incompleteness or bias of the preliminary investigation;
2. Errors that involve restriction of a person's constitutional rights and freedoms;
3. Errors associated with failure to comply with procedural form;
4. Errors in the incorrect application of substantive criminal law.

Based on the possibility of elimination, procedural

errors are divided into correctable and uncorrectable ones. In terms of procedural stage, correctable pre-trial errors can be addressed:

1. At the pre-trial investigation stage;
2. At the stage of preparation for trial in the court of first instance;
3. During the trial stage;
4. In appellate or cassation proceedings.

Accordingly, errors occurring during pre-trial proceedings can be classified as:

- **Criminal procedural errors**
- **Errors in criminal law**
- **Organizational and tactical errors**, including incorrect formulation of investigative versions, poor planning or implementation of investigative actions, misidentification of participants, and improper documentation of results.

By procedural nature:

- **Procedural errors**

Non-procedural (tactical) errors

By cognitive approach and evaluation outcome:

Errors in establishing the factual circumstances of the case;

Errors in assessing established facts or in legal qualification.

By procedural form, errors can be divided into:

Errors in procedural decisions (e.g., indictment, termination, suspension, drafting of the indictment conclusion);

Errors in carrying out procedural actions (e.g., searches, interrogations).

In summary, the most frequent forms of procedural errors at the pre-trial stage include:

Depriving participants of their procedural rights or unlawfully restricting them, such as:

Failing to acquaint the accused with case materials upon completion of investigation;

Violating the right to use one's native language or to receive interpretation services;

Conducting investigative actions without the required presence of defense counsel or legal representative;

Initiating investigation despite existing legal grounds for exclusion;

Violations in drafting procedural decisions related to the indictment or charging documents.

However, courts in Uzbekistan are limited in their ability to rectify these errors. The CPC does not

currently provide for:

Judicial annulment of unlawful procedural acts at the investigative stage;

Mandatory correction of procedural violations identified during preliminary hearings;

Binding force of judicial findings related to investigative misconduct.

Judges can issue private rulings (per Articles 416–417 of the CPC), return cases to prosecutors, or reject evidence, but these actions often lack preventative or corrective strength. The absence of a systemic model for judicial oversight undermines the consistency and authority of court interventions.

Moreover, judicial inertia is often compounded by prosecutorial resistance to oversight and the lack of accountability for repeated procedural misconduct. Surveyed judges noted that many errors, particularly in the qualification of criminal charges and application of coercive measures, recur due to insufficient legal reasoning in pre-trial acts.

Another concern is the ineffective implementation of judicial rulings. Despite the issuance of thousands of private rulings annually, the follow-up mechanisms ensuring compliance remain weak. This undermines the corrective potential of judicial responses and perpetuates a culture of impunity in the pre-trial process.

The lack of transparency in investigative actions further complicates judicial review. For example, investigative authorities often withhold or delay the submission of key materials to the court, limiting the judge's ability to verify legality. Additionally, courts are not always equipped with sufficient time and procedural authority to investigate complex pre-trial conduct fully.

This evidences the systemic nature of the problem and demonstrates that addressing procedural errors requires more than formal powers—it demands institutional cooperation, enhanced legal culture, and procedural clarity.

To differentiate serious violations of the CPC, several classification criteria have been developed, including:

1. The identity of the subject who committed the violation (e.g., investigator, interrogator, prosecutor);
2. The stage of the criminal process at which the violation occurred;
3. Whether the error is correctable or uncorrectable;
4. Whether it involves a single error or a combination of multiple violations;
5. The nature and severity of its legal

consequences.

The list of serious violations may be partly stipulated in the CPC (mandatory part) and partly defined by judicial decisions such as plenary resolutions (advisory part). However, the non-statutory part does not have binding legal force for law enforcers. Thus, the determination of what constitutes a serious violation not explicitly listed in the law must depend on:

1. The factual circumstances of the specific case;
2. The extent of restriction on the rights of the participants in the process;
3. The degree to which the error obstructed comprehensive judicial review;
4. The degree of its influence on the legality, reasonableness, and fairness of the final decision.

The court's authority to eliminate procedural errors committed during the pre-trial stage is defined by the following limitations:

- The court must not exercise prosecutorial powers under any circumstances;
- The court may only address errors using procedural instruments;
- The elimination of procedural errors must not infringe on the rights of participants in the process.

While the CPC mandates that the court seek the truth, it also obliges the court to identify and eliminate procedural violations that obstruct this objective, even if they were committed by the investigating body. The public nature of the criminal process and the court's responsibility for delivering justice impose on the judiciary an obligation to actively employ procedural tools to correct errors—regardless of the defense's initiative.

Survey results among investigators show that criminal procedure norms are perceived in two categories:

1. Mandatory norms, where failure to comply leads to adverse consequences for investigators (disciplinary actions). This includes ensuring the presence of defense counsel or witnesses during specific actions, and strict compliance with procedural time limits (especially detention periods). Violations can result in evidence being deemed inadmissible, leading to acquittals and professional consequences for the investigator.

2. Non-mandatory norms, whose violation does not result in direct consequences. This includes explaining rights to participants, the presumption of innocence, and respect for dignity. These norms are sometimes undervalued and treated as non-binding declarations.

The causes of investigative errors may include lack of

experience, legal nihilism, or unjustified classification of norms as either essential or non-essential. Many investigators tend to subjectively differentiate between "important" and "unimportant" rules, treating some procedural guarantees as merely declarative and thus non-mandatory in practice.

Comparative Perspectives: CIS and Beyond

One of the most significant contemporary challenges facing the criminal procedure systems of CIS countries is the reform of the inherited Soviet institution of "supplementary investigation" and the modernization of procedural remedies for correcting errors in court. Although there is broad consensus that supplementary investigation is incompatible with the adversarial principle and the modern judicial function, creating a replacement mechanism has proven technically difficult. Experience in some jurisdictions has shown that such reform cannot be achieved without broader restructuring of the pre-trial procedure.

For example, the new Criminal Procedure Code (CPC) of the Russian Federation eliminated the supplementary investigation but introduced a limited procedure known as "returning the case to the prosecutor" for correcting formal defects. This applies in cases where:

1. The indictment or prosecutorial act violates CPC requirements;
2. The indictment was not served to the accused;
3. A bill of indictment is required in cases involving compulsory medical measures;
4. Grounds for consolidation of multiple cases exist;
5. The accused was not informed of their rights during familiarization with the case materials.

However, judicial practice revealed that this mechanism is insufficient to resolve issues beyond the technical deficiencies of the indictment, particularly when the charges require requalification to a more serious offense. As a result, the absence of a procedural mechanism allowing courts to initiate such requalification led to violations of victims' rights. This was addressed through the Russian Constitutional Court's decision of December 8, 2003, and further reinforced by the Supreme Court's resolution of March 5, 2004. Ultimately, the supplementary investigation was reintroduced into the CPC under the new label of "returning the case to the prosecutor," by the Law of December 2, 2008.

Following another Constitutional Court ruling (July 2, 2013), the CPC was amended again (July 21, 2014), introducing two grounds under Article 237(1)(6) for returning the case to the prosecutor: (a) When the indictment's factual basis requires requalification of the

act as a more serious crime; (b) When, during preliminary hearings or trial, facts emerge indicating the need for more serious qualification of the act.

A study of other CIS countries shows a general trend toward abandoning the institution of supplementary investigation by narrowing or differentiating the grounds for returning a case. However, implementation has varied technically by jurisdiction. For instance, Article 301(2) of the CPC of Belarus allows the court to requalify the charge during the trial. In Belarus and Azerbaijan, there is a closed list of serious procedural violations at the pre-trial stage, while Kazakhstan, Kyrgyzstan, and Tajikistan allow for rectifying such violations through returning the case to the prosecutor.

In civil law systems, serious violations of the CPC are increasingly addressed through judicial review during the pre-trial stage itself. In these systems, the problem of incomplete investigation is addressed not by returning the case but by instructing the investigative body to conduct specific procedural actions.

The civil law tradition avoids the term "serious procedural violation" and instead refers to "violation of the right to a fair trial." The case law of the European Court of Human Rights (ECtHR) prioritizes legal certainty over the correction of procedural defects unless they rise to the level of a "fundamental defect" or a "miscarriage of justice."

Errors made by state authorities should never disadvantage the accused; the burden of such risks must lie with the state. The ECtHR evaluates not isolated procedural actions, but the overall fairness of the proceedings—i.e., "the fairness of the proceedings taken as a whole." Accordingly, minor violations may be remedied at later stages, and only structural violations justify annulment of the judgment.

Civil law systems differentiate between:

- 1. Unconditional violations**—which, if proven, mandate annulment (mostly in Eastern European and CIS jurisdictions);
- 2. Conditional violations**—which, in Western Europe, serve only as grounds for appeal or cassation.

In contrast, in common law systems (Anglo-Saxon legal traditions), the concept of "serious procedural violation" is largely irrelevant. There is no CPC in the conventional sense; regulation of pre-trial conduct (e.g., by the police) is limited to cases involving physical detention or collection of evidence violating fundamental rights. In those cases, the remedy is not retrial or return to prosecution, but release from custody or exclusion of unlawfully obtained evidence.

Uzbekistan can draw valuable lessons from other

jurisdictions:

- Russia and Kazakhstan have introduced pre-trial judicial review mechanisms;
- Germany integrates judicial authorization into every significant pre-trial decision;
- The United States employs the doctrine of due process to reverse or suppress outcomes derived from unlawful procedures.

These systems emphasize the role of courts not only in adjudicating guilt but also in ensuring procedural regularity from the very beginning of criminal proceedings.

Proposed Reforms for Uzbekistan

To bring national practice in line with international standards, the following legal and institutional reforms are proposed:

- 1. Amend the CPC** to explicitly empower courts to annul unlawful investigative actions, including pre-trial detention, charges, or evidence gathering.
- 2. Strengthen preliminary hearings** by giving judges authority to evaluate the procedural legality of all pre-trial decisions.
- 3. Codify judicial instructions** that compel prosecutors or investigators to correct identified violations.
- 4. Clarify prosecutorial discretion** to prevent arbitrary actions and ensure consistent enforcement of legal standards.
- 5. Enhance training programs** for judges and legal professionals to develop skills in identifying and addressing procedural violations.
- 6. Implement compliance monitoring** for judicial rulings to ensure their enforcement by investigative authorities.
- 7. Introduce a centralized register** of private rulings and court findings to analyze trends and target systemic misconduct.

These reforms would position the judiciary as an active institutional guarantor of procedural justice, aligned with Uzbekistan's constitutional commitments and international obligations.

CONCLUSION

Procedural errors committed at the pre-trial stage represent a major risk to the legitimacy and fairness of the criminal justice system in Uzbekistan. By adopting international best practices and empowering courts with the tools to monitor and rectify procedural flaws, Uzbekistan can advance toward a more just and rights-oriented criminal process.

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