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Research Article

ISSUES TO BE CLARIFIED IN A CRIMINAL CASE RECEIVED BY THE COURT

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ABSTRACT

The article examines theoretical views on procedural problems of constructive resolution of issues to be clarified in a criminal case submitted to the court, critically and in detail examines the procedural prerequisites and the possibility of optimal implementation of the institution of preliminary hearing.

KEYWORDS

The ordering of a criminal case for trial, questions to be clarified on the received case, preliminary hearing, procedural functions in criminal proceedings.

INTRODUCTION

When examining the Code of Criminal Procedure of the Republic of Uzbekistan through the lens of ensuring the rights of the parties in the adversarial process, it appears that the legislator's efforts were primarily aimed at expanding and guaranteeing such an important principle of criminal proceedings - principle

of adversarial proceedings, according to which, when considering a case in court, the functions of accusation, defense, and case resolution are separated from each other. While retaining objectivity and impartiality, the court does not take sides and does not express any of the parties' interests. Instead, it sets the necessary

conditions for the parties to perform their procedural obligations and exercise their rights (Article 25 of the Code of Criminal Procedure of the Republic of Uzbekistan).

The provisions of Article 25 of the Code of Criminal Procedure of the Republic of Uzbekistan are consistent with the guarantees enshrined in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and they can be applied not only during court hearings, but also at the stages as a whole [1, p.35], as rightly stated in the Precedents and Comments on Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

I would like to analyze the provisions of the Code of Criminal Procedure of the Republic of Uzbekistan, streamlining the actions of a judge in resolving issues that arise at the initial stage of judicial proceedings - at the stage of ordering a case for trial, from the standpoint of protecting the rights of the parties, observing guarantees that ensure the possibility of exercising procedural rights, and observing the principle of adversarial participation of the parties.

As a result, the validity and fairness of the court decision are dependent on the proper settlement of the issues that arise when a case is ordered to a court hearing. The criminal justice system is set up in such a way that each step has its own set of responsibilities, which are based on the general responsibilities of legal processes. A distinctive procedural order, the subjects functioning in it, and the nature of the criminal procedural legal connections that form between the subjects in the course of the proceedings are all provided for at each stage.

As previously stated, the issue of either the proof of the charge or, more importantly, the guilt of the

accused is not determined at the time of scheduling a court session. These difficulties are resolved at the stage of trial by court verdict on the basis of complete execution of all the principles of the criminal process, based on the presumption of innocence and the administration of justice solely by the court. The judge has a narrow specific task, which is embodied in establishing, based on the materials of the criminal case, whether the preliminary investigation was carried out in strict accordance with the law, whether all the circumstances of the case have been clarified with the necessary completeness and comprehensiveness, whether the requirements of the law were observed to ensure the rights of the accused, whether sufficient evidence has been collected against the accused, allowing to put him in the position of a defendant, ensuring further development of the criminal case, as well as ensuring that the case can be considered on the merits without undue delay.

For instance, when defining the functions of this stage, V.M. Bozrov first drew attention to its place in the criminal process, pointing out that this location determines the two main functions of the judge - exercising control over the preliminary investigation stage, as well as the definition and implementation of organizational measures for the upcoming trial [2, p.20].

The denial or infringement of the parties' rights at the stage of ordering the case for trial entails the denial or infringement of the guarantees provided for in Article 6 of the Convention for a fair and public hearing in a reasonable time, with the participation of a defense lawyer, and with sufficient time and opportunity for defense preparation. Violations of the parties' procedural rights or poor case preparation for trial not only violate the adversarial concept of criminal

processes, but they can also impact the fairness of the judgment.

To comprehend the criteria for the inclusion of the preliminary hearing into national legislation and practice, it is necessary to examine the shortcomings of the current Code of Criminal Procedure in terms of the stage of ordering a criminal case for trial. Despite the importance of the objectives and aims of this stage of the criminal process, it should be underlined that it is formal, or more accurately, 'not alive'. The issue is that, although having a variety of procedural authorities conferred on him by law, the judge lacked the necessary tools to carry them out.

Let us look at what we're talking about in more detail. At the stage of scheduling a court session, the judge decides on issues that are directly related to the possibility of scheduling a court session, such as the presence or absence of factual and legal grounds, compliance with legal requirements, and the absence of other impediments to the case being heard in court.

In fact, the proceedings in the court of first instance begin when the judge familiarizes himself with the received criminal case and clarifies a wide range of issues, including: firstly, whether the case is within the jurisdiction of the court; secondly, whether there are any circumstances leading to the termination or suspension of the proceedings; thirdly, whether there are sufficient grounds for its consideration in a court session; fourthly, whether the measure of restraint was correctly chosen in relation to the accused; fifth, whether the procedural law requirements were observed during the investigation of the case; sixth, whether measures to ensure compensation for property damage have been taken (Article 396 of the Code of Criminal Procedure).

All of these essential decisions are now decided by the judge alone, without the involvement of the prosecutor, the victim, the accused, his defense counsel, or other parties to the proceedings, which, in our opinion, risks infringing on the parties' rights and legitimate interests.

The criminal case is only returned to the prosecutor if the judge determines that the case is not within the jurisdiction of this court or that there are insufficient grounds for it to be heard in a court session. The case is returned to the prosecutor when it becomes obvious that the accused has fled and a search has been declared for him after the proceedings have been discontinued or suspended. The law does not provide for the return of the case to the prosecutor in all other cases (when the measure of restraint was chosen incorrectly, no measures were taken to compensate for the property damage caused by the crime, procedural norms were violated during the investigation and drawing up of the indictment). Even in these cases, individual courts return cases to the prosecutor, citing the necessity to clarify the circumstances and conduct investigative actions, such as interrogation, confrontation, and so on, which could have easily been done in court. It is difficult to see how such definitions could be justified or useful.

At the same time, the judge when familiarizing himself with the case materials and preliminary analysis cannot ignore the question of whether there is sufficient evidence to sustain the charge, or if it is insufficient. According to O. Gurova, when the evidence in the case file is sufficient and procedurally well-formed, the judge often has an internal attitude to prove the accused's guilt even before the court session is scheduled. That is, it is as if the rule of "first information" is triggered when, based on the evidence obtained from the case, a possible, fictional

circumstance is concocted that can serve as a suitable backdrop for subsequent condemnation. A similar problem develops when a judge has an opposing viewpoint when reviewing a poorly investigated case. However, not every judge can deal with the views that form after studying the case; this is where the uniqueness of the judge's job presents itself, because the presumption of innocence should always be a priority. It appears that the problem of the limits of evidence verification and assessment requires more and more in-depth investigation. The essence of this stage and the decisions made are determined in many ways by the nature of the answers to the questions posed, which influence the judge's inner conviction of the evidence presented, as well as the ability to check the correctness of the qualifications and legal formulations in the preparation stage [3, p.67].

In general, predetermined sufficiency of evidence at the stage of ordering a case for trial is very shaky and ambiguous. Thus, the intervention of a judge in resolving questions about the reliability of evidence, the proof of the prosecution and the guilt of the accused would create an undesirable prejudice of judges against the accused and would turn the stage of scheduling a court session into a kind of trial rehearsal [4, p.30].

Let's take a closer look at each issue. Initially, the question of the correctness of the jurisdiction of the criminal case is resolved. It should be mentioned that the question of the proper jurisdiction of the case has already been verified by the prosecutor during the investigation of the case, which finished with the investigation and approval of the indictment. The judge has the authority to transfer the case to jurisdiction in the course of resolving this question at the stage of ordering the case for trial, as stipulated by Articles 389-395 of the Code of Criminal Procedure.

Thus, the requirement for the jurisdiction of the case is formal, in fact, and the subject of verification in this context is only the legality of bringing the case to this particular court on the basis of subject, territorial or personal jurisdiction [5, p.37].

The second question to be answered is whether there are sufficient grounds to dismiss or postpone the criminal case. The procedural prospect of the judge alone resolving this issue is, in our opinion, highly contentious. In particular, checking the thoroughness and completeness of the preliminary investigation, as well as the (real) sufficiency of the collected (in fact, accusatory) evidence, without delving into the essence of the charge, and assessing the real existence of grounds for terminating the criminal case (paragraph 3 of part 1 of article 396, article 401 of the Code of Criminal Procedure) appears to be highly controversial. Part 1 of Article 401 of the Code of Criminal Procedure establishes rehabilitative grounds. That is, a reasonable inquiry arises: how can the fact of committing or not committing a crime be established without diving into the heart of the evidentiary base!?

Undoubtedly, the circumstances enshrined in Article 84 of the Code of Criminal Procedure may genuinely exist during the process of ordering a case for trial. As an example, by the time the court is familiar with the case materials, an act of amnesty may have taken effect; the accused may have died; there is no complaint from the victim, if the case should be begun only on his complaint, and so on. Even in such circumstances, however, it is difficult for the judge to settle these matters on his or her own. It is also difficult to settle the issue of the case being closed due to a lack of a complaint from the victim without the participation of the victim himself. In terms of the grounds for suspension that occurred immediately after the case was handed to the court, it should be



highlighted that they can absolutely be objective in nature and arise even if the investigating authorities did not break the law. According to Article 399 of the Code of Criminal Procedure, if the judge determines that the accused has left while examining the issue of ordering a criminal case for trial, the judge issues an order suspending the proceedings against the accused and declaring a search for him. However, such a course of the procedure is fraught with negative nuances. The fact that the accused fled before the court accepted the case for trial, albeit inadvertently, indicates that the investigating authorities did not take the necessary precautions to prevent such a course of events, therefore, the responsibility for concealing the accused should be fully assigned on them. The bodies in charge of criminal prosecution are tasked with finding the accused. Because the case in which the proceedings are suspended due to the accused's concealment is transferred to the prosecutor who approved the indictment for taking measures for the search under Art. 400 of the Code of Criminal Procedure, it appears appropriate for the prosecutor to make a decision on the accused's search. The search for a fugitive accused should not be initiated by the court since it is an act of criminal prosecution and will distort the court's position on the accusatory side.

The decision to put the case on hold owing to the accused's illness is also questionable. As a result, under the second part of Article 399 of the Code of Criminal Procedure, in the event of a serious and prolonged illness of the accused, as determined by the results of a forensic medical examination, which precludes his participation in the court session, the judge issues an order suspending the proceedings until the accused's recovery. Again, how does the judge become aware of the fact of the accused's illness if he evaluates the case on his own, and in what procedural order does he appoint a forensic medical examination? Why was the

preliminary inquiry not suspended if the examination had already taken place and the results were in the criminal case materials? As a result, without the participation of the parties and the use of suitable procedural tools, the judge will be unable to address this matter!

So, while a more extensive examination of the criminal case materials is required, the question of whether there are circumstances leading to the termination or suspension of the case can only be determined directly in the trial. That is, a judge's decision to suspend or terminate a criminal case is made in a court session with the parties present, because their involvement is not required by law when a criminal case is ordered to trial.

It is also fascinating to see how the court can decide whether there are adequate grounds for the case to be heard in court without digging into the substance of the charge. In this regard, L.E. Vladimirov noted: "No procedure for bringing to trial, based on reviewing only dead and often misleading acts of preliminary investigation, can lead to a clarification of the truth". Protection based solely on preliminary investigation acts will not provide major benefits and will be confined to highlighting violations of legal forms and rituals or the incompleteness of investigative proceedings [6, p.95]. It's also important to understand what determines the sufficiency of the grounds for the case to be heard in court! In practice, judges typically regard the absence of circumstances that would lead to the termination or suspension of a case to be sufficient grounds for evaluating the issue on its merits. However, because the last question is addressed independently in paragraph 3 of the first part of Article 396 of the Code of Criminal Procedure, it can in no way be interpreted as a logical continuation of paragraph 2 of this article. Such a formulation of an

independent fact to be addressed by the judge at the stage of ordering the case for trial, in our opinion, is unsuitable; it not only serves no purpose, but it also serves as an unnecessary impediment to the proper ordering of the case.

The next issue resolved by the judge is the question of whether the requirements of the Code of Criminal Procedure were observed during the inquest and preliminary investigation.

The judge is undoubtedly guided by the requirements of the criminal procedure form when assessing this issue. What should he do, however, if facts of non-compliance with the Code of Criminal Procedure are discovered in the case materials, and what legal consequences occur as a result, which the law does not specify? That is, the legislator does not provide the judge the right to respond and correct the deficiencies by putting the responsibility of determining whether violations were committed by the investigating authorities before the court. As a result, the judge is obliged to order a criminal case with evident violations to the court session due to a lack of procedural instruments, after which he returns it for further investigation! It's also questionable whether violations the court considers substantial, given that the judge can only assess their essence officially, based on the case documents.

The necessity to determine whether the appropriate restraining measure was utilized in respect to the accused is similarly uncertain. This question is linked, in some manner, to the court's direct assessment of (in some way) the degree of proof of the factual side of the charge as the genuine basis for the legality and propriety of applying a measure of restraint to the accused at this stage. It is important to note that this requirement refers to the court's mandatory assessment of the need for future application of this

measure, not to the accused's choice of this measure at the time of ordering the case for trial. But it is precisely this assessment that the legislator warns the judge against at the stage of ordering the case, that is, he demands to resolve this issue without deep immersion in the essence of the charge.

However, because the court is not involved in the discussion of one or another degree of proof of the accused's guilt (about the sufficiency of accusatory evidence, etc.) as a possible basis for choosing a measure of restraint at this stage of the proceedings, the subject of the court's verification and evaluation in this case is:

- Only formal conditions for the application of the cited measure;
- Procedural form of election and (or) extension of a particular measure of restraint (criterion of legality);
- Grounds for its cancellation or change at this stage.

Several conclusions follow from this norm, according to A.A. Yunusov:

- a) In the ruling, the court is not only entitled to resolve the issue of choosing the specified preventive measures, but may also formulate a conclusion on their cancellation or change;
- b) The issue of canceling, changing, or choosing other preventive measures can (and should) be reflected in the said decision, without requiring a separate decision (by the judge) regarding this [7, p.33].

The preceding 'difficult moments' (shortcomings) only scratch the surface of the issues that arise at the stage of ordering a case to trial. That is, all of these significant decisions are currently made solely by the judge, without the participation of the prosecutor, the victim, the accused, his defense counsel, and other parties to

the proceedings, which, in our opinion, risks infringing on the parties' rights and legitimate interests. We feel that the judge's powers are being employed without the essential procedure for rendering a constructive decision at this time. The complete lack of adversary procedure in scheduling a court session prevents the thorough establishment of all the necessary grounds and prerequisites for the further development of the case.

The procedure for a preliminary hearing of the case is more democratic and ideal, in which the judge learns about and considers the opinions of the parties in competitive settings, and if there are objections, he defends his judgment. At the same time, he is self-sufficient and unaffected by others' opinions. All of the judge's decisions can be challenged to a higher court, which ensures their legality and validity.

In conclusion, the preliminary hearing of the case is a form of direct judicial control over the compliance of the actions of the bodies of inquiry and preliminary investigation with the requirements of the law during the stage of preparation for the trial, during which, through the application of the principle of adversarial proceedings, the main issues of the further movement of the criminal case are resolved in order to achieve the objectives criminal justice. The incorporation of this institution into national legislation aims to reinforce and broaden the court's procedural powers, as well as timely restoration of the violated rights of persons participating in criminal proceedings.

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