

ENSURING THE RIGHTS, FREEDOMS AND LEGAL INTERESTS OF A PERSON WHEN REFUSING TO INITIATE A CRIMINAL CASE

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Abstract

In this article, proposals on the introduction of new conceptual tasks into the legislation to improve the mechanisms of ensuring a reliable guarantee of individual rights and freedoms in criminal procedure legislation are scientifically based.

Key words: refusal to prosecute, presumption of innocence, suspect, accused, individual rights and freedoms, minor.

Reforms based on logical consistency have been implemented in order to fully protect human rights and freedoms, legal interests, and to establish a judiciary capable of delivering justice, which has become the priority of the development of the new Uzbekistan.

The President of Uzbekistan Sh. Mirziyoyev participated in the 46th session of the UN Human Rights Council held in Geneva, and in his speech, "Uzbekistan, as a member of the Human Rights Council, strictly protects and actively promotes the universally recognized principles and norms of international law on human rights."¹

In this regard, in the development strategy of New Uzbekistan for 2022-2026, aimed at creating the necessary political-legal, socio-economic and scientific-educational basis for the reforms to be implemented in our country in the next five years based on the principle of "From the strategy of actions to the strategy of development", the promotion of human value and further development of free civil society

Accordingly, there are a number of requirements that must be followed when refusing to initiate a criminal case in the Criminal Procedure Code, and their fulfillment serves not only to ensure the rights and freedoms of a person, but also to fulfill the duties of the criminal procedural law. As we all know, according to Article 3202 of the Criminal Procedure Code: "Pre-investigative investigation shall include the verification of applications, messages and other information related to crime, actions to make a decision on the result of their review, as well as to consolidate and preserve traces of crime, objects and documents that may be important for the case.



includes related measures". In our view, there are a number of ambiguities in the concept of pre-investigation investigation provided in this norm of the law, and in order to clarify them, we found that it is necessary to refer to the existing definitions of pre-investigation investigation in the Criminal Procedure Code.

To date, there is no consensus in the legal literature regarding the concept of pre-trial investigation. This indicates the versatility of this institution. Some scholars interpret the pre-investigation investigation process as a form of criminal investigation, while the second group of scholars emphasize the case as a stage of bringing the case to court, an event that occurs before the initial investigation, and the next group of scholars say that the pre-investigation investigation is a form of activity of certain state bodies. a group of scientists emphasize that the pre-investigation investigation is a clear concept, an independent stage of the criminal process.

In particular, U.T. Tadzhikhanov said that the investigation before the investigation is a vague concept, and in the process of its implementation, the issue of initiating a criminal case and refusing to initiate it is resolved.

There is another definition of the concept of pre-investigation investigation, according to which it is the registration of an application, message or other information about a crime, as well as carrying out certain investigative and procedural actions in order to determine the legality of the reason for the initiation of a criminal case and the existence of grounds. or the process of making a decision to refuse to initiate a case is understood.

It is known that the issue of ensuring the rights of individuals at the stage of preliminary investigation and trial is of particular importance due to its urgency. V. S. According to Shadrin, the status and efficiency of protection of the rights and legal interests of the individual in the criminal proceedings depends to a large extent on the extent to which these rights are ensured during the preliminary investigation process. Problematic situations related to non-provision or restriction of rights and freedoms of a person participating in criminal-procedural relations arise at the initial stage of investigation⁸. In our opinion, the investigator, prosecutor and the court should ensure that the rights and freedoms of the individual are not violated while refusing or closing the criminal case and create all the conditions for them to fully exercise their rights.

It is appropriate to cite Article 64 of the Civil Procedure Code as norms guaranteeing the rights of individuals in criminal-procedural relations. Because this norm obliges



the bodies responsible for conducting the case to explain the legal rights of the persons participating in the criminal-procedural relations and to create all the opportunities for them to exercise these rights³. In particular, Article 64 of the Civil Code states that the investigator, investigator, prosecutor or judge must explain the rights granted to the suspect, the accused, the defendant, as well as the victim, the civil plaintiff, the civil defendant and their representatives and provide opportunities for the implementation of these rights.

In the process of closing the criminal case, we can see that the guaranteed use of the rights of the participants in the proceedings is expressed in Article 375 of the Criminal Code. In particular, as stated in this article, when the investigator makes a decision to close the criminal case, he must inform the suspect, the accused and the defense about this and the right to get acquainted with the case materials, and submit the case for perusal at their request⁹.

Before informing the accused about the termination of the investigation in the case, the investigator must familiarize himself with the case materials of the victim, the civil plaintiff and the civil defendant or their representatives, in accordance with Article 375 of the Criminal Code. In order to ensure the safety of victims, witnesses, impartial and other participants of the process, the introductory part of the report of investigative actions may not be made available for review.

However, the current norms of the Criminal Code do not specify the requirement to explain to the suspect, the accused or the defendant, as well as to their legal representatives, if they are participating in the case, the essence of the relevant basis and the legal consequences arising from its application, before applying the grounds provided for in Article 84 of this Code. However, most people do not fully understand the difference between the grounds expressed in Article 84 of the Criminal Code and the grounds for rehabilitation (exoneration) defined in Article 83 of this Code. This is a criminal case against some persons who do not consider themselves innocent

It may be the reason for termination on the grounds provided for in Article 84, and the real culprits who committed this crime may escape from responsibility. Since the grounds for refusing to initiate certain criminal cases are related to the relevant articles of the Criminal Code, it is appropriate to quote the norm of the Criminal Code related to the basis used.

According to the norms of Article 333 of the Criminal Code of the Criminal Code, in the event that the circumstances provided for in paragraphs 1 and 2 of Article 83



of the Criminal Code and Clauses 1, 3 - 8 of the first part of Article 84 of the Criminal Code are detected, the official of the body conducting the investigation, the investigator, the investigator or the prosecutor shall close the criminal case before the investigation. issues a decision to reject the prosecution, the citizen, enterprise, institution, organization, public association or official who reported the commission of the crime is informed about it. It is necessary to explain to them the right and the procedure to appeal the decision. A copy of the decision on refusal to open a criminal case is sent to the prosecutor.

In the event that the situation referred to in paragraph 2 of the first part of Article 84 of this Code is determined by the investigator, investigator or prosecutor, the refusal to initiate a criminal case shall be carried out by the court in accordance with the provisions provided for in Chapter 63 of this Code.

It is not allowed to refuse to open a criminal case on the grounds provided for in clauses 1, 2, 3 of the first part of Article 84 of this Code, if the person against whom the issue of refusing to open a criminal case or the close relatives of the deceased object is raised.

Before the investigation, if the official of the body conducting the investigation finds out the situation provided for in paragraph 2 of the first part of Article 84 of this Code, the application, message and other information about the crime will be sent to the prosecutor immediately. 10"Initiation of a criminal case should be refused in the following cases, provided:

- 1) if no criminal incident occurred;
- 2) if the person's act does not contain a criminal element;
- 3) if the term of holding the person responsible has passed;
- 4) if the announced decision on amnesty concerns the person who committed the crime;
- 5) if the person who committed the crime has died;
- 6) if there is a legally binding judgment of the court against the person on this charge;
- 7) if there is a legally binding ruling (decision) of the court to close the case against the person on this charge, or an unrevoked decision of an authorized official to refuse to open a criminal case or to close the case
- 8) in cases where the case is initiated only by the complaint of the victim, if he does not have a complaint;
- 9) when the person committed a socially dangerous act, he was under the age to be held criminally liable;



10) taking into account the nature of the committed act, the identity of the person who committed a crime of low social risk for the first time, it is appropriate to give the materials to the interdepartmental commission on juvenile affairs.

The official of the body conducting the investigation before the investigation, the investigator, the investigator or the prosecutor makes a decision to refuse to open a criminal case, and the citizen, enterprise, institution, organization, public association or official who reported the commission of a crime is informed about it. It is necessary to explain to them the right and the procedure to appeal the decision. Before the investigation, the official of the body conducting the investigation, the investigator, the investigator sends a copy of the decision on refusal to open a criminal case to the prosecutor.

In the cases provided for in paragraphs 1 and 2 of the first part of this article, the property damage caused to a person as a result of illegal detention or restriction of other rights shall be the basis for the recovery of the consequences of moral damage. In the event that the situation referred to in paragraph 3 of the first part of this article is established, the refusal to initiate a criminal case shall be carried out by the court in accordance with the provisions provided for in Chapter 63 of this Code.

Refusal to open a criminal case on the grounds provided for in clauses 3, 4, 5, 8, 9 and 10 of the first part of this article, if the person against whom the issue of refusing to open a criminal case or the close relatives of such a deceased person has objected to it, a criminal case is initiated and the proceedings are continued in the general procedure.

Before the investigation, if the official of the body conducting the investigation discovers the situation provided for in paragraph 4 of the first part of this article, the application, message and other information about the crime will be immediately sent to the prosecutor.

Also, with certain grounds in the first part of Article 84 of the Criminal Code, in particular, when it is determined that the period of prosecution has passed after the person was brought to participate as a defendant in the case, or in the case of the adoption of an amnesty act, or on the grounds of the death of the accused, the defendant, the accused, the defendant or the death of the accused the accused, the defendant's close relatives must not have demanded to continue the proceedings in general order. In this regard, the analysis shows that in most of the terminated cases, the demand to continue the work in general order was not stated. Also, there was no document confirming that the rights to demand the continuation of the case in



general order were explained by the officials authorized to close the criminal case. It is worth noting that the analysis showed that the following are the reasons for the low application of this norm in practice:

firstly, the explanation of these rights to the persons who have the right to demand the continuation of the work of the relevant competent bodies in the process of closing the criminal case is not clearly mentioned in Articles 84, 374 or 375 of the Criminal Code or other norms;

secondly, it is not specified how to formalize the request to continue the proceedings in general order;

thirdly, persons involved as suspects and accused in a criminal case have no desire to continue the case in general order.

In our opinion, in order to eliminate the existing situation, the suspect involved in the case should be given the right to demand that the case be continued in general order. The expression of this procedure in our current legislation does not contradict other legal documents, on the contrary, it serves to determine the truth in criminal-procedural relations and to find justice in the criminal case.

Noting that the annulment of the decision of the investigating authorities on the termination of the criminal case is at the discretion of the accused, the defendant or their close relatives after their death, based on the grounds mentioned in clauses 1, 2, 3 and 8 of the first part of Article 84 of the Criminal Code, the person who committed a socially dangerous act Why is the legal representative of the suspect or the accused not guaranteed the right to cancel the decision to close the criminal case in cases where the criminal case is closed due to the fact that he is under the age of criminal prosecution? In our opinion, in cases where a criminal case has been terminated due to the commission of a socially dangerous act by a minor who has committed a socially dangerous act, in order to prove the person's innocence, the minor himself or his legal representative (parents, guardians with relevant rights) in the case require that the case be continued in the general order. if they do, the work must be continued in general order

As a result, the principles of JPK, such as truth-finding and presumption of innocence, will take a wider place in criminal-procedural relations, and every person will be given the opportunity to prove his innocence through the court. For this purpose, the sentence "in the case of the death of the accused, the defendant, if the accused, the defendant or the deceased accused, the defendant" in the second part of Article 84 of the Criminal Code is replaced by "in the case of the death of the suspect,



the accused, the defendant, if the suspect, the accused, the defendant or the deceased "suspect, accused, defendant" should be changed.

Article 84, paragraph 2 of the fifth part of the Code of Criminal Procedure states that "the person who committed a crime with a low social risk or a serious crime for the first time eliminated the damage caused after committing the crime, sincerely regretted his actions and actively helped to expose the crime" It is one of the basics that needs to be studied and improved today. Moreover, taking into account that more than 70% of the total crimes committed in our country are crimes with little or no social risk, we are convinced that it is extremely important to ensure the effective use of our chosen framework. Because, as we mentioned, the use of this basis is of great importance in the detection of crime.

As we noted above, it is not an exaggeration to say that one of the main factors preventing the effective use of the institution of refusal to initiate a criminal case is the negative attitude of the management and control bodies towards this institution. After all, it is their point of view, that is, their attitude towards criminal cases when rejecting a criminal case, that determines the level of application of this institution. According to them, "the termination of a criminal case is the result of a mistake made during its initiation or conduct." This is a one-sided approach to this issue, moreover, how important is the institution of criminal prosecution in the fulfillment of the tasks of "... from exposing the guilty and ensuring the correct implementation of the law so that no innocent person is held responsible and convicted" in Article 2 of the Criminal Code It comes from ignorance.

In conclusion, the more effective application of grounds for refusing to initiate a criminal case should become one of the important institutions in ensuring the rights of persons protecting their interests in criminal-procedural relations, serving the decision of justice in each criminal case.

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