



INCOMPLETENESS OF INQUIRY AND PRELIMINARY INVESTIGATION AS ONE OF THE GROUNDS FOR THE PROSECUTOR TO RETURN THE CASE FOR ADDITIONAL INVESTIGATION

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Abstract: This article analyzes crucial aspects that need to be considered during the prosecutor's review of criminal cases submitted with an indictment by inquiry and preliminary investigation bodies at the pre-trial stage of criminal proceedings. Specifically, the procedural grounds for the prosecutor's return of a criminal case for additional investigation and their types are systematically examined. The study thoroughly analyzes the practice of returning cases for additional investigation due to incompleteness of the investigation, as well as how this institution is established in criminal procedure legislation. Additionally, scientifically substantiated proposals and recommendations have been developed regarding which circumstances may lead to an investigation being assessed as incomplete, and their practical significance has been highlighted.

Keywords: inquiry, preliminary investigation, prosecutor, additional investigation, inquiry officer, investigator, court, criminal case.

The judicial reform currently being implemented in the Republic of Uzbekistan has also affected such an important institution as the return of criminal cases for additional investigation. Today, the issue of significantly limiting the court's right to return criminal cases for additional investigation is relevant, since this is a remnant of the Inquisition criminal process, and its distinctive feature is the implementation of the prosecution function of the court.

Reforming and improving the judicial and legal system plays an important role in ensuring the rule of law and justice in our society, protecting the rights and freedoms of citizens, and stimulating the democratic development of our country. In this regard, the legislative acts adopted in recent years, including Presidential decrees and resolutions, ensure the processes of intensive development and modernization of all spheres of the judicial and legal system and serve to strengthen the foundations of the rule of law.

The institution of returning criminal cases for additional investigation serves as an important tool in establishing the truth in criminal proceedings. The norms providing for the return of criminal cases for additional investigation are aimed at ensuring the comprehensiveness, completeness, and objectivity of the study of criminal case materials; correcting errors and violations of the norms of substantive and procedural law committed in their application; restoring and eliminating the violated rights of participants in criminal proceedings, and ultimately guaranteeing the fulfillment of the tasks of criminal proceedings, which has been repeatedly emphasized by well-known procedural scholars[1]. The problems of returning criminal cases for additional investigation not only have not lost their scientific and practical significance, but also put on the agenda many new pressing issues requiring prompt resolution.

In the current criminal procedure law, serious violations and incompleteness of the investigation are mentioned only in relation to the judicial stage. Nevertheless, prosecutors actively use the concept of "serious violations" or "incomplete investigation" in their decisions on returning a criminal case to the investigator for further investigation.

Serious violations should be distinguished from incomplete investigations, especially when these violations are committed simultaneously in the case. For example, the fact that an expert examination was not conducted indicates the incompleteness of the investigation. Violation of the procedure for conducting an expert examination is a serious violation of criminal procedure law. However, as a result, two separate violations lead to one negative consequence. Violation of the procedure for conducting the expert examination led to the rejection of the expert opinion as evidence.

"A serious violation of criminal procedure law and incompleteness of the investigation can constitute an ideal and real sum of grounds.

The term "ideal set" is used when two or more violations of the law are committed, which constitute different grounds for returning a criminal case for further investigation"[2].

S.V. Yeskina explains the concept of "ideal set" with the following example: the investigator did not repeatedly interrogate the witness in the criminal case and did not confront the accused with the witness. In reality, the investigator should have additionally interrogated the witness to verify the defendant's defense version. As a result of the failure to perform these actions, circumstances that refute the accusation were not established, which led to a serious violation of criminal procedure law. In this case, the requirements of part 2 of Article 23 of the Criminal Procedure Code were violated, that is, the suspect, accused, or defendant was required to prove their innocence. Thus, the fact that the investigator does not interrogate an important witness indicates the incompleteness of the preliminary investigation, and this situation is equivalent to a violation of the law.

The importance of timely detection and elimination of serious violations of criminal procedure law lies in the fact that, although the incompleteness or one-sidedness of the investigation may be subsequently supplemented by the court, the identified serious violations are the basis for returning the criminal case for additional investigation in almost all cases.

From the content of part two of Article 4151 of the Criminal Procedure Code, we can understand that the concept of "incompleteness of the preliminary investigation" refers to cases where "grounds have been established for replacing the charges against the defendant with a more serious one or a charge that, depending on the actual circumstances, differs significantly from the initial one, or for involving another person in the case as an accused." However, this norm is not a clear definition. Article 319 of the Criminal Procedure Code of the Uzbek SSR stipulated that "an inquiry, preliminary investigation, or judicial inquiry shall be considered unilateral or incomplete if circumstances that are of significant importance in the issuance of a sentence are not established"[3].

A.A. Davletov defines incompleteness as "the result of insufficient circumstances and evidence necessary to establish the legal characteristics of the case, i.e., the failure to reach the required level of research"[4].

According to D.P. Libozayev, "the significance of the incompleteness principle lies in the fact that without a comprehensive, complete, and objective study of all the circumstances of



the case, it is impossible to establish the circumstances that must be proven in the criminal case and to ensure the legitimate interests of the participants in the criminal process"[5].

Except for Article 415-1 of the Criminal Procedure Code, the criminal procedure legislation does not provide a clear definition of incompleteness of the investigation, however, based on existing practice, the incompleteness of the preliminary investigation means that not all the circumstances that must be proven in the criminal case specified in Article 82 of the Criminal Procedure Code have been studied. We consider it expedient to link the incompleteness of the investigation to the lack of clarification of the circumstances specified in Article 82.

In a survey of prosecutors and deputy prosecutors, respondents explained the concept of incompleteness of the investigation, which is the basis for returning the criminal case for additional investigation, as follows:

- the version of the accused has not been verified, not all persons who have important information for the investigation have been interrogated - 21%;
- contradictions between evidence have not been resolved and measures have not been taken to resolve them - 18%;
- not conducted in cases where forensic examinations and medical examinations are mandatory for minors - 15%;
- the defendant's guilt was not proven due to insufficient investigative actions - 163%;
- Cases stipulated by Article 82 of the Criminal Procedure Code were not identified - 45%.

Thus, the majority of respondents attribute the incompleteness of the investigation to the lack of clarification of the circumstances specified in Article 82 of the Criminal Procedure Code.

In theoretical and practical activities, the question of the correlation between the concepts of incompleteness and one-sidedness of the preliminary investigation arises. The completeness, comprehensiveness, and objectivity of the investigation are a single procedural principle consisting of three elements. According to A. S. Stepanyans, "violation of completeness, comprehensiveness, and impartiality can lead to such consequences as the annulment of the sentence and subsequent return of the criminal case for additional investigation"[6].

A.S. Stepanyans "recognizes only the subject of proof as an indisputable criterion of incompleteness, nothing else. Also, one-sidedness means that the investigator has ignored other assumptions in the criminal case, whereas any assumption has the right to exist and should be investigated"[7].

A.S. Stepanyans "under a comprehensive examination of the circumstances of the committed crime means the following: the investigator must check all versions and not limit himself to checking only the version he has chosen"[8].

The significance of establishing the incompleteness of the preliminary investigation lies in the fact that, according to paragraph 9 of the Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan dated May 14, 2022 No. 7 "On Judicial Practice in the Trial of Criminal Cases in the Court of First Instance," "A case on a charge against a defendant or newly brought to participate in the case as an accused, which is new, more serious, or differs significantly from the original charge in accordance with the actual circumstances, may be tried only in compliance with the conditions and procedure provided for in Articles 416 and

417 of the Criminal Procedure Code"[9]. According to Articles 416-417 of the Criminal Procedure Code, a petition from the prosecutor supporting the state prosecution or the victim, their representative, or the defendant, their defense counsel, or legal representative is required to eliminate the incompleteness of the inquiry, preliminary investigation, or serious violations of the norms of criminal procedure law. The court, without the request of the parties, cannot return the criminal case to the prosecutor to eliminate the incompleteness of the inquiry, preliminary investigation, or a serious violation of the law committed at the stage of pre-trial proceedings. Therefore, the completeness of the preliminary investigation must be ensured, since the investigator cannot entrust his obligations to the court to ensure the quality of the investigation of criminal cases. Therefore, the inquiry and preliminary investigation must be carried out thoroughly. This is precisely the essence of the institution of returning a criminal case for additional investigation by the prosecutor. When investigating criminal cases received with an indictment, the prosecutor must perform the function of selection and assume the obligation to ensure the completeness of the preliminary investigation.

In addition to serious violations of the law and incompleteness of the investigation, scientists cite other grounds for returning the criminal case for further investigation.

According to A. A. Petukhovskiy, "incompleteness of the investigation can arise when there are grounds to bring another charge against the accused, to make the charge more serious, and there are grounds for bringing other persons to criminal responsibility in the criminal case"[10]. In our opinion, instead of separating these grounds into a separate group, it is advisable to consider them as serious violations of criminal procedure law.

Also, "in legal literature, many scholars consider such a basis as the incorrect combination or separation of a criminal case as one of the types of serious violations of criminal procedure law"[11].

Within the framework of the study, having analyzed the decisions and written instructions of prosecutors on the return of a criminal case to the investigator for additional investigation, we come to the following conclusion: prosecutors understand serious violations of criminal procedure law as:

- Violations of the law identified when drawing up a ruling on the involvement of a person as an accused, including: incorrect indication in the indictment of the place of the crime, the initials of the accused's name, failure to indicate the time of the crime, non-compliance of the indictment with Articles 82, 361 of the Criminal Procedure Code, incorrect indication of the amount of damage caused by the crime, failure to establish the form and reason of guilt;

- Violations arising in the process of conducting forensic examinations, for example: failure to conduct an examination in cases requiring mandatory examination; failure to question an expert based on the expert's conclusions;

- Failure to make procedural decisions if necessary

- Failure to establish the circumstances provided for in Article 82 of the Criminal Procedure Code (in particular, failure to collect information on the execution of the sentence and punishment);

As a result of studying the prosecutor's decisions on returning the criminal case for additional investigation, it was established that the prosecutors use such concepts as



"violation of the law" and "gross violation of the law." By these concepts, prosecutors mean the following offenses:

- unresolved issue of bringing third parties to criminal liability;
- inconsistency of the charges with the materials of the criminal case;
- incorrect legal assessment of the criminal act;
- violation of the requirements of Articles 82 and 361 of the Criminal Procedure Code;
- not all witnesses were interrogated or confrontations were not conducted;
- Amendments to the charge, unconfirmed amendments to the interrogation were not formalized in the manner prescribed by criminal procedure legislation;
- No submission was made to eliminate the causes and conditions that contributed to the commission of the crime;
- The mandatory examination was not conducted; or the participants were familiarized with the decision to appoint an examination after the examination was conducted;

Thus, when returning criminal cases to the investigator, prosecutors use the concept of "violation" without indicating its importance. At the same time, it is unclear what prosecutors mean by gross violations and what consequences such violations will lead to, since this concept does not exist in the legislation. The distinction between material and minor offenses is of fundamental importance, as only material offenses are grounds for the prosecutor to return the criminal case to the investigator for further investigation. Non-essential offenses, due to their insignificance, do not entail any legal consequences.

Since the current legislation does not specify exactly which violations are serious, prosecutors, when returning cases for additional investigation, classify any violations that they consider serious in their opinion as serious violations.

The concept of "shortcomings" is often used by prosecutors when making decisions on the return of a criminal case to the investigator.

In particular, in the explanatory dictionary of the Uzbek language, prepared under the editorship of A.Madvaliev, "kamchilik" is defined as "shortage, lack, deficiency." Also, a deficiency is defined as something that violates the normality, the norm of something"[12].

Studying the materials of prosecutorial oversight allows us to conclude that prosecutors often use the concept of "deficiencies," but it is unclear what consequences these deficiencies will have for the criminal case. By shortcomings, prosecutors mean:

- additional interrogation of witnesses;
- the issue of considering the necessity of conducting an examination;
- unverified testimony of the accused;
- the need to accuse a person of committing a more serious crime.

Some prosecutors, returning cases to investigators for further investigation, indicate grounds, but do not generalize them under the concepts of "serious violations," "shortcomings," "incompleteness." In our opinion, this is incorrect, since the prosecutor, returning the case, must justify why it cannot be sent to court, what violations of the law have been identified, and what obstacles exist for this. Thus, it can be concluded that prosecutors assess the same grounds as both serious violations of the law and incompleteness of the investigation.

According to the results of our research, one of the most frequent grounds for returning a criminal case today is a serious violation of the law. All classifications of grounds for



returning a criminal case for additional investigation are divided into two main groups: a) serious violation of criminal procedure law; b) incompleteness of the investigation.

Based on the analysis and opinions of scientists, we considered it necessary to define the incompleteness of the investigation as follows.

Incompleteness of the investigation is a state of insufficient clarification or verification of the circumstances to be proven as a result of non-compliance with the requirements for a complete and comprehensive examination of all material circumstances in a criminal case, which manifests itself in the insufficient performance of procedural actions during the preliminary investigation, such as questioning of persons, appointment of mandatory examinations, elimination of contradictions between evidence, and other necessary procedural actions. Incompleteness of the investigation, as a rule, leads to the absence of a procedural basis for sending the case to court and is a basis for the prosecutor to return the case for additional investigation.

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