



PROCEDURAL ORDER FOR CONDUCTING CERTAIN INVESTIGATIVE ACTIONS ON THE CRIME OF ARBITRARINESS

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Annotation

This article highlights aspects that investigators should pay attention to when conducting certain investigative actions in cases of arbitrariness crimes. In particular, it addresses the specifics of recording interrogations, searches, seizures, and obtaining presented items in cases of arbitrariness crimes. The article outlines aspects that should be considered during the interrogation of the accused, victim, and witnesses in a crime of arbitrariness, as well as issues that investigators should focus on when obtaining objects and documents.

Keywords: law, state authority, criminal law, criminal punishment, subjects of arbitrariness, victim.

In recent years, large-scale reforms have been carried out in every sphere of our country. These ongoing reforms have not bypassed judicial and investigative activities. The main goal of reforms in the judicial and legal sphere is to increase the responsibility of the judiciary and other law enforcement agencies in ensuring human rights and freedoms in practice, and protecting the interests of the state and society. In other words, it is no exaggeration to say that at the core of these reforms, the glorification of human dignity in our country has risen to the level of state policy and has become the main goal and criterion of state bodies' activities.

In this regard, the Decree of our President Sh.M.Mirziyoyev dated January 28, 2022 No. UP-60 "On the Development Strategy of New Uzbekistan for 2022-2026" confirms our opinion by indicating that one of the priority areas to be implemented is to make justice and the rule of law the most fundamental and necessary condition for development in our country[1].

First of all, for justice and the rule of law to prevail in society, no person should be held criminally liable for a crime they have not committed. Indeed, the Universal Declaration of Human Rights states that every person accused of committing a crime has the right to be presumed innocent until their guilt is established in accordance with the law through an open court session, provided that all possibilities for defense are ensured[2]. Similarly, Article 23 of the current Criminal Procedure Code indicates that a suspect, accused, or defendant is presumed innocent until their guilt in committing a crime is proven in the manner prescribed by law and established by a court verdict that has entered into legal force[3].

Therefore, one of the main goals of activities aimed at investigating crimes of arbitrariness is to identify and establish the presence or absence of elements of a crime in the committed act through a comprehensive and complete study and objective assessment of the circumstances of the case, as well as to determine and consolidate the circumstances that must be proven in the criminal case.

In the investigation of arbitrariness crimes, along with tasks such as analyzing the criminalistic characteristics of these crimes and typical investigative situations that arise, the issue of studying the circumstances that need to be proven, collecting, verifying, and evaluating evidence on them is also of great importance. Rapid, comprehensive, complete, and objective verification of all circumstances subject to proof ensures high efficiency and quality of the preliminary investigation[4].

Circumstances requiring proof, being an important link in the methodology of investigating crimes, have attracted the attention of many scientists.

Regarding this situation, R.S. Belkin and other forensic scientists in their scientific works indicate the need for constant improvement of private forensic methods for investigating certain types (groups) of crimes and propose to include a new element in the structure of private forensic methods - circumstances that must be proven[5].

According to A.M. Kustov, individual elements of the structure of the methodology of private criminalistics for investigating crimes do not contribute sufficiently to the formation of programs for resolving conflict or complex investigative situations. In this regard, they propose the development of private methods based on knowledge of typical models of the circumstances and mechanisms of crime that must be proven in criminal cases[6].

According to V.K. Gavlo, "for investigative methodology, the decisive factor is the general approach to determining the circumstances that must be proven, based on the elements of the crime, taking into account the general object of the attack"[7].

G.A. Abdumazhidov, R.A. Alimova, T.E. Aripov, and other scientists propose to consider the circumstances that must be proven as one of the elements of the criminalistic characterization of crimes[8].

O.D. Allanazarov emphasizes that the circumstances to be proven are an integral part of the private methodology for investigating crimes, since the circumstances to be proven include the identification and verification of not only the forensic aspects of the act, but also all the signs and characteristics of the act that have criminal-legal and criminal-procedural significance[9].

Despite the fact that many scientists have put forward different opinions on this issue, they have not commented on how the forensic description and the circumstances that need to be proven differ from each other.

In our view, the circumstances that must be proven are not one of the elements of the criminalistic characterization of crimes, but a specific methodology for investigating crimes and an integral part of the investigation. In our view, it is advisable to distinguish between the forensic description and the circumstances that need to be proven on the basis of their commonality and specificity.

In our opinion, if the forensic description covers general rules applicable to all crimes, then the circumstances that need to be proven are a set of specific rules applied by investigators based on the type and circumstances of each crime.

In the investigation of an arbitrary crime, it is important, first of all, to determine the subject and limits of proof of the crime. This allows the investigator and inquiry officer to purposefully conduct an investigation or inquiry, to see its ultimate goal, and to solve tasks in criminal legislation, criminalistics, and criminal procedure.

The range of circumstances subject to proof for committed crimes is defined in Articles 82-84 of the Criminal Procedure Code of the Republic of Uzbekistan, according to which the following are subject to proof for any committed crimes:

- object of the crime;
- the nature and amount of damage caused by the crime, circumstances characterizing the personality of the victim;
- time, place, method of the crime committed, as well as other circumstances specified in the Criminal Code;
- the causal link between the act and the socially dangerous consequences that have occurred;
- commission of the crime by this person;
- whether the crime was committed with direct or indirect intent or as a result of negligence or self-confidence, the motives and purposes of the crime;
- circumstances characterizing the personality of the accused, defendant.

Also:

- the presence or absence of grounds for rehabilitation specified in Article 83 of the Criminal Procedure Code;
- The presence or absence of grounds for terminating a criminal case without resolving the issue of guilt, as specified in Article 84 of the Criminal Procedure Code.

According to O.D. Allanazarov, the content of the above-mentioned norm is mainly aimed at identifying the socially dangerous act committed and its characteristics significant for bringing the person who committed it to justice. However, for a comprehensive, complete, and impartial resolution of the case, it is not enough to prove elements of the corpus delicti itself, but it is necessary to identify all circumstances that exclude the criminality of the act (such as necessary defense, causing harm during the detention of a person who has committed a socially dangerous act, etc.), mitigate and aggravate the punishment, and serve as grounds for exemption from criminal liability and punishment[10]. Because if the act is committed by a specific person in a state that precludes the criminality of the act, that is, in a state of necessary defense or extreme necessity, the person should be released from criminal liability. Failure to prove these circumstances during investigative actions may lead to serious violations of the law on ensuring the rights of the individual.

Supporting the above opinion of O.D. Allanazarov, in our opinion, the investigator and inquiry officer should also pay attention to the significance of the social act, the circumstances related to the execution of an order or other task during the investigation of a criminal case. Because in criminal legislation, it is noted that liability is not established even if a crime is committed in cases of minor offenses and the execution of an order or other task. However, in my opinion, the definition given to an insignificant act in legislation is insufficient. That is, no normative legal act specifies under what circumstances a minor act was committed and what crimes are recognized as minor.

Scholars also differ in their views on the definition of the subject and limits of proof of a crime, and in this regard, R.R. Shakurov and others emphasize that the elements of the criminalistic description of a specific type of crime constitute the subject of proof of this crime[11].

B.A. Kurinov includes in the range of circumstances subject to proof the elements that constitute the corpus delicti and considers them as the subject of proof in each criminal case[12]. R.S. Belkin asserts that the subject of proof is the "core" of the forensic description[13].

In turn, Yu.V. Grigorieva emphasized that the circumstances that must be proven for the crime of arbitrariness should consist of: circumstances related to when, where, by whom, and for what purpose the acts of arbitrariness were committed; the nature and method of committing the acts of arbitrariness; the presence or absence of the violated rights of the guilty person; the range of participants in the commission of arbitrariness, their roles in the commission of the crime; the nature and amount of damage caused as a result of arbitrariness; whether the damage caused is serious or not; what circumstances led to the commission of this type of crime[14].

In our opinion, the list of cases cited by the scientist is not exhaustive. On the contrary, the facts presented by the scientist are taken too roughly and concisely and do not cover a number of facts that are important for proof, which leads to certain shortcomings.

Based on the requirements of Articles 82-84 of the Criminal Procedure Code, we came to the conclusion that the following must be proven by investigators and inquiry officers during the investigation of an arbitrary crime:

- whether the guilty party committed actions contrary to the procedure established by the regulatory legal act;
- on the basis of what normative act the guilty party should have acted to legally resolve this situation;

- does the guilty person have the subjective right against which they object;
- the existence of a dispute (conflict) between the victim and the guilty party on a specific subjective right;
- the time of the unauthorized actions; the period (duration) of the circumstances under which the perpetrator illegally possessed the property of the victim or deprived him of other property;
- the place of committing acts of arbitrariness, the place of transfer and storage of material assets and other things chosen by the person who committed the act of arbitrariness;
- direct manifestation of arbitrary actions of the guilty persons;
- what means of committing the crime were used: upon arrival at the scene of the incident, direct unauthorized actions, confiscation, relocation, and illegal detention of the object of unauthorized actions;
- what property belonging to the victim was illegally seized and (or) damaged, destroyed by the person who committed the unauthorized act; the amount of property damage caused;
- whether violence was used against the victim (s), whether there was a threat of violence, and in what form; whether the actions of the guilty party (s) caused physical and (or) moral harm, and to what extent;
- the presence of evidence confirming the seriousness of the damage caused to the victim;
- who committed the unauthorized actions (socio-psychological characteristics of the perpetrators);
- the number of participants in unauthorized actions, the role and specific actions of each;
- what requirements were made by the person who committed the unauthorized act to the victim and other persons, in his opinion, as conditions for restoring the violated subjective right of the victim;
- what are the reasons for committing arbitrary actions;
- the presence of circumstances precluding the criminality and punishment for the unlawful actions of a person who has committed acts of arbitrariness;
- the presence (absence) of circumstances mitigating and (or) aggravating punishment for arbitrariness;
- the presence of circumstances that may lead to the release of the guilty party from criminal liability and punishment for arbitrariness;
- the presence of circumstances contributing to the commission of an act of arbitrariness, including those necessary for the commission of this crime from the point of view of the unlawful actions of the victim.

In this regard, we support the opinions of B.A. Kurinov, O.V. Chelysheva, and O.D. Allanazarov. After all, most of the circumstances subject to proof, defined in Article 82 of the Criminal Procedure Code, consist of elements forming the *corpus delicti*, and all circumstances subject to proof in the case must be carefully, comprehensively, fully, and objectively investigated. When resolving any issue arising in the case, circumstances must be established and taken into account that both expose and acquit the accused or defendant, as well as mitigate and aggravate their liability.

Of the circumstances that must be proven in the crime of arbitrariness, first of all, it is necessary to determine the degree of damage caused to human property, health, honor and dignity. Notably, other circumstances requiring proof are verified as a logical continuation only after these facts are confirmed.

Each investigator and inquiry officer conducted investigative actions based on a unique approach to investigating a specific crime. It would not be an exaggeration to say that in the investigation of any criminal case, the interrogation (of the victim, witness, suspect, defendant) serves as the main and leading investigative action. After all, based on the

testimony obtained during each interrogation, the investigator plans future investigative actions (search, seizure, appointment of expert examination, etc.). Therefore, when investigating a crime of arbitrariness, it is necessary to address what the investigator should know, what should be clarified regarding the situation, and what questions should be asked to the interrogated individuals.

According to the general procedure of interrogation, the investigator or inquiry officer interrogates a witness, victim, suspect, and accused at the place of the inquiry, preliminary investigation, or where the interrogated person is located, and the court at the place of the trial[15].

A witness, victim, as well as a suspect, accused, and defendant in custody are summoned by summons to the investigator, inquiry officer, prosecutor, and court. The summons is sent by mail or delivered by courier. The call can also be by telephoneogram, telegram, radiogram, or fax.

The summons is handed over to the conscript and a receipt is obtained. In the event of a temporary absence of the conscript during the delivery of the summons, the summons is handed over against signature to one of the adult family members living with him, the dormitory administration, the homeowner, or a representative of the citizens' self-government body[16].

In the course of our research, we found that today, investigators and inquiry officers, when investigating criminal cases, do not use summonses, telephoneograms, telegrams, radiograms, or telefaxes, but instead summon persons subject to interrogation by calling mobile devices. More than 348 officials of the pre-investigation verification body, inquiry officers, and investigators who participated in our sociological survey in this regard, responded to our question "Which way do you call individuals for explanations and questioning?" 90% of respondents, or 313, answered "I will call by phone," 4% "I will call by summons," 4% "I will go to the person who needs to give an explanation myself," and 2% "I have not encountered such a problem."

Here, as an example of the problematic situation with the summons, it is appropriate to recall the telephone conversation of blogger H.N. (author of the activist) with an internal affairs officer, which spread on social networks in April 2023. In this conversation, an employee of the internal affairs bodies demanded that blogger H.N. come to the administrative building of the Shaykhantakhur District Department of Internal Affairs of the city of Tashkent, the blogger H.N. explained why he was going to the employee, that a summons had not been sent to him, and that in accordance with the law, after sending the summons, he would go to the address indicated by the employee. The employee of the internal affairs bodies said that a phone call was sufficient, and in case of non-appearance, a protocol on bringing him to administrative responsibility under Article 194 of the Code of the Republic of Uzbekistan on Administrative Responsibility would be drawn up against him. Subsequently, the blogger H.N. was sentenced to 15 days of administrative arrest by the Shaykhantakhur District Criminal Court[17].

In this situation, a natural and legitimate question arises: was the blogger right? As an answer to the question, it can be said that our legislation stipulates that the summons must be delivered by mail or courier, the summons must be handed over to the summoned person with a receipt, and if the summoned person is temporarily absent when the summons is delivered, the summons must be handed over to one of the adult family members living with them, the dormitory administration, the homeowner, or a representative of the citizens' self-government body with a receipt. However, in the above case, the problem arose from the fact that no regulatory document defines the requirement of internal affairs bodies to call blogger H.N. to the administrative building of the Department of Internal Affairs as a summons.

It should be noted that today almost 85 percent of citizens living in our country have and use mobile communication devices. According to the State Statistics Committee, as of April 1,

2022, the number of mobile subscribers in Uzbekistan is 29.91 million, in other words, 84 subscribers per 100 people[18].

From this point of view, in order to further eliminate cases similar to those cited in the above example, it is advisable to state Article 97 of the Criminal Procedure Code in the following wording:

"A witness, victim, as well as a suspect, accused, and defendant in custody are summoned to the investigator, inquiry officer, prosecutor, and court by phone call (SMS notification), summons, telephone message, telegram, radiogram, or fax. Summonses, telephone messages, telegrams, or fax messages are sent by mail.

When summoned by phone call (SMS notification), the official, introducing himself, must explain who the person summoned for questioning is, to which address and to whom he is summoned, on what day and at what time he must appear, as well as what consequences will arise if he fails to appear without valid reasons.

Summonses, telephone messages, telegrams, radiograms, or fax messages must indicate who the person is summoned to, to which address and to whom, on what day and at what time they should appear, and what consequences will arise if they do not appear without valid reasons.

When summoning an interrogated person by phone call (SMS notification), the investigator, inquiry officer, or prosecutor shall draw up a report, which the court shall enter into the minutes of the session. When making a call through a telephone call (SMS notification), if it is impossible to contact the called person, the call is made by calling their close relatives or a representative of the local self-government body.

The summons is handed over to the conscript and a receipt is obtained. In the event of a temporary absence of the conscript during the delivery of the summons, the summons is handed to one of the adult family members living with him, to the administration of the dormitory, to the owner of the house, or to a representative of the citizens' self-government body against signature.

We believe that as a result of our proposal, this gap in the legislation will be eliminated, and in the future, it will serve as a legal basis confirming the legality of the actions of employees, as well as the correct application of Article 194 of the Code of Administrative Offenses.

When investigating a crime of arbitrariness, investigators and inquiry officers should pay special attention to the following aspects during the interrogation and investigation:

- when and how the relationship between the suspect (accused) and the victim began (when and how they got acquainted, were there any preventive actions between them, which actions of the victim prompted the accused to act arbitrarily);
- who was aware of the contacts between the suspect (accused) and the victim;
- who witnessed the unauthorized actions of the suspect (accused) and how the suspect (accused) treated them;
- what actions should the suspect (accused) have taken so as not to act arbitrarily;

Considering that the investigation of arbitrary crimes is currently being conducted within a group, it is necessary to record the actions of the group members in the report during the interrogation process.

The investigative action following the interrogation is independently chosen and conducted by the investigator or inquiry officer based on the circumstances of the case.

In many cases, confrontational investigative actions are conducted to resolve contradictions in testimonies. Today, investigative practice shows that there are cases of confrontation by officials during pre-investigation checks, which hinders the establishment of the truth, leads to the subsequent change of testimony by persons, and also prevents the evaluation of explanations during pre-investigation checks as evidence. From this point of view, in our opinion, it is appropriate to conduct seminars and trainings on the ground to



explain to officials carrying out pre-investigation checks that "confrontation" is an investigative action and to deepen their knowledge in this area.

Based on the foregoing, the improvement of the circumstances that must be proven for the crime of arbitrariness will allow practicing employees to correctly plan the direction of the investigation of this type of criminal case, to establish the truth through the careful, comprehensive, complete, and objective conduct of investigative actions, and to ensure the inevitability of punishment for the crime in society.

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