

## PROCEDURAL LEGAL REGULATION OF PROSECUTOR'S CONTROL IN PRELIMINARY INVESTIGATION

**Rustamov Nodirbek**

Independent researcher of the Academy of the General Prosecutor's Office of the Republic of  
Uzbekistan,

**Abstract:** The article deals with the issues related to improve the legislation on the main tasks of prosecutorial control during the preliminary investigation, the legal mechanism, to eliminate some shortcomings in its application in practice.

**Keywords:** preliminary investigation, inquiry, refusal to initiate a criminal case, cancellation of the decision to refuse to initiate a criminal case, giving instructions, conducting investigative actions.

**Introduction.** The organizational and legal framework of the prosecutor's participation in the prejudicial proceedings includes a wide range of legal sources, including international legal standards, norms of the Constitution of the Republic of Uzbekistan, criminal procedure legislation, and guidelines of the Plenum of the Supreme Court, orders and instructions of the General Prosecutor's Office. [1, P.9]

As B.A.Mirensky and others noted, the organization and functioning of the prosecutor's bodies is regulated by the Constitution of the Republic of Uzbekistan, the law "On the prosecutor's office", as well as other legislative acts in force in the Republic of Uzbekistan. [2]

Prior to the investigation, the Code of Criminal Procedure of the Republic of Uzbekistan (hereinafter referred to as the Code of Criminal Procedure) plays an important role in the process of legal regulation of prosecutorial control.

As F.Kh.Alimov noted, the main law governing the activities of the prosecutor's office on the application of the law is the Code of Criminal Procedure, which determines that the procedure for criminal proceedings in the territory of the Republic of Uzbekistan is unique and mandatory for all courts, prosecutors, investigative bodies, inquiries, lawyers and citizens. [1, P.15]

In this regard, a number of agreed changes to the CCP aimed at fundamentally changing the nature of the research institute are of particular importance until an investigation is carried out on the basis of the Law of the Republic of Uzbekistan "On Amendments and Additions to Some Legislative Acts of the Republic of Uzbekistan in Connection with the Improvement of the Institute".

In particular, Chapter 47 of the CCP sets out in detail the issues of control over the implementation of the law by the bodies of inquiry and preliminary investigation, as well as by the bodies conducting preliminary investigation.

According to it, consideration and resolution of applications and reports on the commission of a crime, the procedure for conducting an investigation established by this Code, the legality of decisions are areas of control over the implementation of laws by inquiry and preliminary investigation bodies (Article 382 CCP).

Article 382 of this chapter strengthens a total of 16 powers of the prosecutor in this area. Special attention should be paid to the powers of the prosecutor to monitor the implementation of the law by the bodies conducting the investigation prior to the direct investigation in this regard.

In general, before the court, the grouping of procedural powers of the prosecutor in the implementation of the prosecutor's control over the case is also common. In particular, in the proceedings of the court A.G.Teteriuk divides the powers of the prosecutor into the following: control over the legality of the investigation of reports on impending and committed crimes; prosecutorial control over the implementation of indiscriminate investigative actions; prosecutorial

control over the activities of bodies of inquiry and preliminary investigation. [3] In our opinion, this list ignores a number of issues related to the implementation of preliminary investigation activities.

Article 382 of the Code of Criminal Procedure specifies the following powers of the prosecutor at the preliminary investigation stage:

- to request documents, materials and other information on the progress of operational-search, inquiry, preliminary investigation of the committed crimes in order to investigate the case from the bodies carrying out preliminary investigation or operational-investigative activities;

- to check at least once a month for compliance with the requirements of the law on the reception, registration and settlement of applications and information about crimes committed or prepared;

- to cancel illegal and unsubstantiated decisions of an official of the body conducting the preliminary investigation;

- to submit a petition to the court to refuse to initiate or terminate the criminal case on the basis of the amnesty act, to exhume the corpse, to seize postal and telegraphic items, to suspend the passport (travel document);

- to provide instructions to the bodies carrying out the investigation or operational-search activity prior to the investigation on arresting persons, bringing them into force, making decisions on the search, execution of the court's decision on the application of a precautionary measure in the form of imprisonment or house arrest, as well as on the detection of crimes in the Proceedings of the prosecutor;

- to initiate criminal cases or refuse to initiate them, end cases or stop their proceedings; in cases provided for by law, the investigator or the investigator agrees to terminate the case; confirms the conclusion of the accusation, the indicative Act or decision, sends the cases to the court.

In accordance with the established procedure, the instructions of the procurator to the bodies of inquiry and preliminary investigation, as well as to the bodies carrying out preliminary investigation or operative-investigative activities related to preliminary investigation, initiation of cases and investigation shall be binding on these bodies.

At the same time, Article 28 of the Law of the Republic of Uzbekistan "On the Prosecutor's Office" of August 29 [4], 2001 defines the powers of the prosecutor to monitor the implementation of the law by law enforcement agencies, the content of which is the same as in Article 382 of the CCP.

The Law of the Republic of Uzbekistan dated December 25 [5], 2012 "On Operational Search Activities" also plays a special role in the legal regulation of prejudicious investigation. In particular, Article 21 of this Law establishes the procedure for consideration by the prosecutor of decisions on the conduct of search operations.

In this case, the consideration of correspondence, telephone conversations and other messages, postal, courier messages, telegraphic messages and other messages transmitted through communication channels, the rights to confidentiality of information, as well as materials on operational search measures restricting the right to inviolability of the home, carried out by the prosecutor at the location of the body engaged in operational-search activities. In exceptional cases, materials on the conduct of such events are allowed for consideration by the prosecutor at the place of the events.

According to the law, the prosecutor will be provided with the decision of the head of the body carrying out operational-search activities, based on the need to carry out operational-search measures specified in part one of this article. The prosecutor has the right to demand other materials that served as the basis for conducting operational-search measures.

In addition, in accordance with the procedure established by this law, the prosecutor authorizes the conduct of an appropriate operational-search measure based on the results of consideration of the submitted materials or refuses to conduct it on the grounds specified in the resolution. If the prosecutor refuses to impose a sanction on the conduct of an operational-search

operation, the body carrying out the operational-search activity shall have the right to appeal against such a decision to a higher prosecutor.

I.B.Krylova believes that the powers of the prosecutor to eliminate the state of violation of the law include the cancellation of the decision of the investigator or inquiry officer at the stage of the proceedings in the court, the indication of the person's participation in the labor activity as the accused, the correct qualification of the guilty person, and the adoption of measures to ensure the legitimate interests of the participants in the process. [6]

Taking into account the analysis of the current legislation and the views expressed in the scientific and theoretical literature, in our opinion, it is expedient to divide the procedural powers of the prosecutor in the preliminary investigation into four groups: powers to identify violations by the prosecutor; powers to prevent violations of the law by the prosecutor; powers to eliminate violations of the law by the prosecutor; powers to restore the legal order, rights and interests violated by the prosecutor.

In this case, the powers of the prosecutor to identify violations of the law may include:

- to check the fulfillment of the requirements of the law on the acceptance, registration and settlement of statements and messages about committed or prepared crimes;
- to receive and investigate complaints about the actions and decisions of the official of the investigative body before the investigation;
- to sanction the conduct of investigative actions in cases provided by law;
- to initiate a criminal case or refuse to institute criminal proceedings, terminate a criminal case or terminate proceedings on it ;;
- to conduct some investigative actions in any case in person or conduct an investigation in full;
- to require an examination before the start of the investigation or from the bodies carrying out operational-search activities in criminal cases, before the start of the investigation, operational-search activities, documents and materials of the inquiry and preliminary investigation, as well as other information subject to examination;
- to coordinate of the activities of the relevant bodies conducting the preliminary investigation.

Alternatively, the prosecutor's powers to prevent violations include:

- to carry out certain investigative actions and give written instructions on the search for persons hiding when committing a crime;
- to cancel illegal and unjustified decisions of the official of the body conducting the investigation before the start of the investigation;
- to conduct an investigation, initiate a criminal case and issue binding instructions related to the investigation before starting an investigation;
- to find the execution of decisions on arrest, coercion, search, search, seizure in the bodies carrying out investigative or operational-search measures prior to carrying out investigative actions;
- to give instructions on the disclosure of crimes and the adoption of necessary measures to search for persons who committed a crime;
- to expulse an investigator or interrogator who violated the law in the course of criminal proceedings, transfer of a criminal case from an investigator to an investigator, from one body of preliminary investigation and inquiry to another body of preliminary investigation and inquiry;
- to terminate criminal proceedings or terminate proceedings against them.

Orders of the Prosecutor General of the Republic of Uzbekistan also play an important role in the procedural legal regulation of the prosecutor's control in the preliminary investigation. In particular, the order of the Prosecutor General of the Republic of Uzbekistan dated February 22, 2016 No 129 "On effective protection of the rule of law and protection of individual rights and freedoms in the fight against crime, inquiry, preliminary investigation and search operations" as one of the main criteria in the consideration of criminal applications, reports and other information, as

well as in the conduct of the preliminary investigation, it is stated that the requirements of criminal procedure legislation are fully complied with, and violations that lead to the return of criminal cases for further investigation are not allowed.

This order sets out 9 main criteria for assessing the performance of prosecutors in the field. These include, in particular, the development and implementation of measures in cooperation with law enforcement agencies, other agencies and the public in the organization of crime prevention and control, measures taken to coordinate the activities of operational search, inquiry and preliminary investigation bodies, their structure and effectiveness, completeness of control measures in operational-search, inquiry and preliminary investigation activities, timely application of prosecutorial control documents to eliminate violations, their validity and effectiveness.

The main criteria for assessing the prosecutor's activity were the full observance of the requirements of criminal procedure legislation in the consideration of criminal applications, reports and other information, as well as the conduct of preliminary investigations, and the absence of violations that would lead to the reopening of criminal cases.

According to this order, the status of registration, consideration and resolution of criminal statements, messages and other information is summarized every six months, unjustified execution of the investigation deadlines before the start of the investigation is not allowed, appropriate measures are taken in respect of employees who unreasonably violated or allowed censorship without introducing censorship within the established time period of in accordance with the established procedure, compliance with strict legal requirements is monitored. Moreover, the results of registration, consideration and resolution of criminal cases are included in the discussion of the Coordinating Council of Law Enforcement Agencies by regional, district (city) prosecutors and prosecutors equated to them every six months, and measures are also determined to prevent systematic violations.

In addition to the above-mentioned order, the preliminary investigation materials of the regional prosecutor's office or the transfer of the criminal case to another regional prosecutor's office according to the territorial investigation shall be carried out by the General Prosecutor's Office, the district (city) prosecutor's office or transfer the criminal case to another territory or the regional prosecutor's office, as well as the investigation material or the transfer of the criminal case to the lower prosecutor's office prior to the investigation of the regional prosecutor's office with the written permission of the regional prosecutors. [7]

Preliminary investigation activities are directly related to the initiation of criminal proceedings. In particular, Article 320<sup>2</sup> of the CCP provides for prejudicial investigation in accordance with the rules set out in Chapter 41 of the CCP ("Initiation of a criminal case").

In this regard, it is initially necessary to touch upon the procedural characteristics of the stage of initiating a criminal case. It should be noted that the initiation of a criminal case is one of the main stages of the criminal process affecting human rights. According to article 15 of the CCP, the inevitability of initiating a criminal case is one of the imprints of the Criminal Procedure Law, according to which the prosecutor, investigator and interrogating officer are obliged in each specific case to initiate a criminal case within their competence, to establish in the criminal case the perpetrators of the crime, and take all necessary measures.

The stage of initiating a criminal case is an integral part of criminal proceedings, which is regulated by criminal procedure legislation (Chapter 41 of the CCP). As D.M.Mirazov noted, "the initiation of a criminal case is an independent stage of the criminal process, from which the criminal case begins. This stage serves to perform the general functions of criminal proceedings specified in Article 2 of the CCP. But it also has an independent task - to resolve the issue of instituting criminal proceedings. Initiation of a criminal case is a necessary precondition for prosecuting, punishing and punishing the perpetrator. It serves as a legal basis for the implementation of procedural coercive measures and investigative actions provided by law." [8]

The stage of initiating a criminal case is an independent stage of the criminal process that initiates criminal proceedings, the essence of which is that the investigator, prosecutor in his action decides to initiate a criminal case or, on the contrary, makes it clear that there are no such signs or that there are circumstances, excluding criminal proceedings. [9]

Despite the short-term nature of Y.N.Belozerov, the stage of initiating a criminal case is an important component of the criminal procedural activities of the bodies of inquiry, investigators, prosecutors and courts. The adoption of legal and substantive decisions at the stage of initiation of a criminal case creates conditions for the effective performance of the functions of the Criminal Procedure Law, contributes to the disclosure of crimes, the identification of the persons who committed them, ensuring the rights and legitimate interests of citizens. [10] Thus, the stage of instituting criminal proceedings is an important legal guarantee against unjustified involvement of a person in criminal proceedings. [11]

At the stage of instituting criminal proceedings, the prosecutor's control, as noted by Sh.M.Abdul-Kadyrov, is multifaceted and includes criminal prosecution and control over the implementation of laws by the relevant authorities. [12]

A study of the receipt, consideration and resolution of criminal complaints and reports the Violation of the rule of law in a criminal case is also pending criminal messages (concealment of crime; falsification of reported crimes; the refusal to accept applications under various pretexts), in the prejudicial investigation of criminal reports and appropriate procedural decisions (the refusal to initiate criminal proceedings with obvious signs of a crime; falsification of materials and decisions of prejudicial investigation; qualification of a criminal offense as an administrative offense; prejudicial investigation expiration of the term, untimely adoption of a procedural decision; conducting unauthorized investigations and other actions with the CCP at the stage of preliminary investigation; unjustified initiation of criminal proceedings). [13]

An official of the preliminary investigation body, after examining the report and other information identified or received as a result of the preliminary investigation, makes one of the decisions to initiate a criminal case, refuse to initiate a criminal case, send an application or message depending on the investigation (Article 330 CCP).

In this regard, it should be noted that in the criminal process, the timely reception, consideration and resolution of criminal messages and other information is of great importance. After all, the fact that most reports of a committed or impending crime are not accepted into production negatively affects the correct determination of the strategy and tactics of combating it by state bodies, as a result of which the actual situation of the crime in a certain territory and throughout the republic develops. [14, P.42]

In this regard, in the words of M.V.Kolesov, the fact that the fact of criminal aggression is not statistically accounted for, and thus has a direct impact on the performance of operational and investigative activities, also leads to failure to investigate cases of criminal aggression, thereby avoiding liability. [15]

The need to prevent violations of the law in the consideration of reports of committed or planned crimes requires the introduction of an effective system of law enforcement at the stage of initiating criminal proceedings. In turn, a necessary component of this system is the prosecutor's control in this area.

We may also observe that there are some problems in the practice of investigation in dealing with criminal reports and other information.

In particular, according to the third part of Article 329 of the CCP, only the prosecutor has the right to extend the period of preliminary investigation of criminal applications and reports to one month by a reasoned decision of the inquiry officer or investigator. In this regard, in order to save the time of the prosecutor, as well as to increase the independence and responsibility of the head of the investigation department, it is expedient to expand the powers of the head of the investigation department:

To this end, the second part of Article 37 of the Criminal Procedure Code, after the words "... the chief and his deputy," reads: transfer of preliminary investigation materials from one inquiry officer to another; according to the nature of the preliminary investigation, as well as to give instructions on measures to prevent and eliminate crimes".

As noted above, prosecutorial oversight, which does not depend on the interests of the various agencies, plays an important role in the system of ensuring the legality and validity of criminal proceedings.

According to Article 27 of the Law of the Republic of Uzbekistan "On the Prosecutor's Office" of 29 August 2001, the subject of prosecutorial control at the stage of instituting criminal proceedings is, on the one hand, the procedural procedure established by law for reviewing and resolving criminal complaints and reports; is the legitimacy.

The prosecutor has been given a number of procedural rights to effectively carry out the responsibilities assigned to him. In particular, according to Article 382 of the Code of Criminal Procedure, the prosecutor has the authority to verify compliance with the law in the receipt, registration and resolution of criminal reports.

In particular, the prosecutor requests documents, materials and other information about the crimes committed to investigate the case from the investigating authorities before starting the investigation as part of monitoring compliance with the criminal cases resolution procedure, checks at least once a month the degree of compliance with the requirements of the law on admission, registration and settlement criminal cases (Article 382 of the CCP).

In accordance with the procedure provided for in the criminal procedure legislation, the instructions of the prosecutor to the bodies of inquiry and preliminary investigation related to the preliminary investigation, initiation of cases and investigation shall be binding on these bodies. The prosecutor shall make a mandatory presentation on the identified violations. In this regard, the problem of registration and concealment of a crime cannot be solved only by improving the methodology of prosecutorial control. To do this, it is necessary to take measures of an organizational nature at the state level. [16]

Another important area of prosecutorial oversight is overseeing the legality and validity of decision-making on criminal reports, the initiation of criminal proceedings, or the refusal to initiate criminal proceedings.

When supervising the initiation of a criminal case, the prosecutor shall carefully study the materials of the investigation of criminal reports; not to delay the initiation of criminal proceedings when the symptoms of the crime are obvious; the investigator shall verify the decision and materials of the inquiry on the initiation of criminal proceedings, and in the case of separate investigative actions - immediately upon receipt of their protocols and decisions, their validity and sufficiency for a procedural decision; determine whether it was conducted in a timely and lawful manner. [17]

The prosecutor monitors not only the legality of the initiation of criminal proceedings, but also the legal refusal to initiate criminal proceedings. There is a practice in the police that a copy of the decision to refuse to institute criminal proceedings is sent to the prosecutor for notification. This, in turn, is an important means of preventing the concealment of crimes by the decision to refuse to prosecute. [14, P.44]

To sum up, the procedural regulation of prosecutorial oversight in preliminary investigations is important, firstly, as it creates a legal basis for carrying out these activities, and secondly, because it sets clear boundaries for prosecutorial oversight in this regard.

**In addition**, the following can be summarized as follows:

1. Before the investigation began, the investigation was based on the fact that it covers the following stages: 1) adoption of the basis for initiating criminal proceedings; 2) implementation of investigative and other procedural actions aimed at investigating the notification of the crime received by the law enforcement agency; 3) making a final decision on the results of the investigation.

2. The procedural actions carried out at the preliminary investigation stage are grouped according to their content as follows: 1) procedural actions related to the investigation of a crime report; 2) procedural actions related to the collection of evidence; 3) procedural actions related to the initiation of a criminal case; 4) procedural actions related to the prevention and termination of the crime and the collection of evidence.

3. The four specific features of preliminary investigation activities were identified: a clear scope of procedural actions that could be taken during the preliminary investigation was identified; the duration of the preliminary investigation; the scope of the subjects conducting the preliminary investigation; the specificity of the tasks assigned to the subjects conducting the preliminary investigation.

4. The purpose of the prosecutor's control during the preliminary investigation was to determine: first, to ensure the supremacy of the Constitution and laws in the preliminary investigation, to protect the rights and legitimate interests of participants in criminal proceedings; secondly, to protect human rights and freedoms, the legitimate interests of the organization, society and the state from criminal encroachments in the preliminary investigation process, as well as to ensure law and order in the country, fight and prevent crime.

5. During the preliminary investigation, the tasks of the prosecutor's control were as follows: to promptly and completely identify each committed crime and to ensure the immediate initiation of criminal proceedings; to take all necessary measures established by the legislation to identify the committed crime, to promptly and fully investigate it, to identify and expose all persons guilty of the crime; ensuring that the law is correctly interpreted and applied so that every person who commits a crime is sentenced to a fair sentence by a court and no guilty person is prosecuted or convicted.

6. In the preliminary investigation, the object of the prosecutor's control shall be the criminal-procedural activity of the official of the preliminary investigation body and the criminal-procedural decisions made by him.

7. The subject of the prosecutor's control during the preliminary investigation is the state of observance of the rights and freedoms of the person by the official of the preliminary investigation body during the preliminary investigation; that an official of the prejudicial investigation body has complied with the procedure established by the criminal procedure legislation during the preliminary investigation; the legality of the decisions and actions taken by the official of the investigative body prior to the investigation in the course of the prejudicial proceedings.

8. While exercising prosecutorial control during the preliminary investigation, it is advisable to divide the procedural powers of the prosecutor into four groups: the powers of the prosecutor to identify violations of the law; powers to prevent violations of the law by the prosecutor; powers to eliminate violations of the law by the prosecutor; The powers to restore law and order, rights and interests have been violated by the prosecutor.

## References

1. Alimov F.Kh. Procedural position of the prosecutor in pre-trial proceedings: theory and practice: Diss... Cand. jurid. sciences. - Tashkent: Academy of the Ministry of Internal Affairs, 2009. - P. 9.
2. Mirensky B.A. Law enforcement agencies of the Republic of Uzbekistan. Textbook. - Tashkent: Adolat, 1998. - p. 105; Elchiboev N. Some issues of introduction of dispositive rules of legislation in criminal proceedings // Philosophy and law. - Tashkent, 2005. - №4. - P.37-41.
3. Teteruk A.G. Prosecutor's supervision over the production of inquiry: criminal procedure and organizational aspect: Author's abstract. diss. ... Cand. jurid. sciences. - N. Novgorod, 2011. - p. 13.
4. Law of the Republic of Uzbekistan "On Prosecutor's Office" № 257-II of August 29, 2001 // Bulletin of the Supreme Assembly of the Republic of Uzbekistan, 2001, № 9-10, Article 168.

5. Law of the Republic of Uzbekistan № ZRU-344 of December 25, 2012 “On operational search activities” // Collection of Legislation of the Republic of Uzbekistan, 2012, № 52, Article 585.
6. Krylova IB Prosecutor's supervision over the observance of human and civil rights and freedoms in the course of preliminary investigation: Dis ... cand. jurid. Sciences: 12.00.09 M., 2003.- P.91.
7. Matmurotov A., Kenjaboev D. Institute of pre-investigation in criminal procedure legislation: issues of analysis and improvement // Bulletin of legal sciences. - Tashkent, 2018. - №2. - P.123-125.
8. Criminal procedure of the Republic of Uzbekistan. Textbook. Team of authors. Completed 2nd edition. Under the general editorship of Sh.T.Ikramov. - Tashkent: Academy of the Ministry of Internal Affairs of the Republic of Uzbekistan, 2013. - P. 273, 275.
9. Shamurzaev T.T., Kulanbaeva Z.A. The stage of initiating a criminal case in the context of reforming the criminal justice of the Kyrgyz Republic // Bulletin of the KRSU. - 2013 .-- Volume 13. - № 5. - P. 109.
10. Belozarov Yu.N. Ensuring the rights and legitimate interests of the individual at the stage of initiating a criminal case: textbook. allowance. - M.: UMTs, 1994 .-- P. 40.
11. Ovsyannikov I.V. Consideration of reports of crimes. Procedural and forensic problems: Scientific and practical and teaching aid. - M.: Jurlitinform, 2010 .-- P. 7.
12. Abdul-Kadyrov Sh.M. Functions and powers of the prosecutor at the stage of initiating a criminal case // Legality. - Moscow, 2012. - № 9. -P. 12-15.-
13. Information on the results of the activities of the Prosecutor General's Office of the Republic of Uzbekistan in 2018. - Tashkent, 2019.
14. Shamsiev A.A. Features, problems and their solutions of the prosecutor's control over the pre-investigation // Journal of Legal Research. - Tashkent, 2019. - №9. - P. 42.
15. Kolesov M.V. Concealment of crimes from accounting: concept and methods of committing // Collection of materials of the scientific and practical conference "Cooperation of the CIS member states in the fight against corruption: problems and prospects (December 6-7, 2012)". - M., 2013 .- P. 365.
16. Pulatov B.X. Procurator control. Textbook. - Tashkent, 2009. - 517 p .; Soloviev A.B., Tokareva M.E., Khaliulin A.G. Prosecutor's supervision over the execution of laws in the investigation of crimes. - M., 2000 .- P. 84.
17. Abdul-Kadyrov Sh.M. Prosecutor's supervision over the execution of laws in pre-trial criminal proceedings // Bulletin of the Academy of the General Prosecutor's Office of the Russian Federation. - Moscow, 2013. - № 4 (36). - P. 19-23.